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Feb 22
2017

Conflicting Evidence and Brief Reasons for Decision Convinces Court of Appeal to Overturn Summary Judgment Motion in Chiropractor/Clinic Dispute

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This case (<https://www.canlii.org/en/on/onca/doc/2016/2016onca966/2016onca966.html?searchUrlHash=AAAAAAAAAAEFzlwMTYgT05TQyAxNjZlChDYW5MSUkpAAAAAQANLzlwMTZvbNjMTYyMwE&res>) involved a “bitterly fought business disengagement” between a chiropractor and a clinic. The chiropractor had practised at the clinic for a few years before she abruptly left one night, taking her patient files with her. The clinic sued the chiropractor for damages for misappropriating confidential property and goodwill. The clinic was successful on a motion for an interlocutory injunction requiring the chiropractor to return the patient records. The chiropractor, meanwhile, counterclaimed against the clinic for loss of income and for an accounting of the fees she had earned. Both parties moved for summary judgment on their claims.

Summary Judgment Motion

In dismissing the clinic’s summary judgment motion and allowing the chiropractor’s motion (in part), the motion judge released very brief reasons for decision. The motion judge found that the clinic “breached its business arrangement” with the chiropractor, however, the entirety of the motion judge’s reasoning for this breach was found in one sentence:

I am satisfied from the evidence that the Clinic breached its business arrangement with the doctor and because of the breakdown in the relationship she departed.

The motion judge did not identify how the clinic breached the arrangement. Also, while he awarded \$45,664.75 in damages to the chiropractor, the motion judge did not identify the legal basis on which he found the clinic liable for damages.

Appeal

The Court of Appeal noted the brevity of the reasons and lack of identification of the breach and legal basis for damages. The Court inferred that the breach related to the clinic's decision to increase its share of the chiropractor's billings from 20% to 35%. However, the evidence on this was strongly disputed.

Hryniak v. Maudlin 2014 SCC 7 established a two-step process for summary judgment motions. First, the Court must ask whether the matter can be resolved in a fair and just manner in a summary way. Where, on the record it appears to be a genuine issue requiring a trial, then the second step is to consider whether the need for a trial can be avoided by using the new powers under Rules 20.04(2.1) and (2.2) of the *Rules of Civil Procedure* (a judge may weigh evidence, evaluate credibility, draw any reasonable inference from the evidence and order oral evidence be presented).

The Court of Appeal noted that there was a genuine factual issue that existed between the parties on the evidence. The motion judge did not state how the conflicting evidence ought to be resolved, and just appeared to prefer the evidence of the chiropractor over that of the principal (which was untested by cross-examination). Justice Lauwers on behalf of the Court of Appeal opined:

In my view, where the evidence in the record establishes a clear conflict, it is incumbent on a summary judgment motion judge to consider expressly whether the powers provided under rr. 20.04 (2.1) and 20.04 (2.2) are to be deployed in resolving the conflict. Anything less risks substantive injustice. (para.25)

Justice Lauwers also concluded that, given the conflicting evidence, the motion judge was obliged to explain the basis for his finding of liability and for granting summary judgment in favour of the respondent, as well as his determination of the amount of the damages. As he did not do this, the Court of Appeal set aside the judgment and left the parties free to pursue their claims including other motions for summary judgment, without being bound by any of the determinations made in the decision under appeal.

Conclusion

A summary judgment motion is an effective tool in civil litigation; however such a motion can result in the final disposition of a claim, so they must be considered seriously. It is incumbent upon judges to provide fulsome reasons if they are to grant a summary judgment, and consider whether the powers under the Rules should be used, especially where there is a conflict in the evidence. As noted above, to do otherwise "risks substantive injustice".

This case also acts as a reminder to health professionals to be clear on all terms *before* entering into a business arrangement with a clinic and to seek out independent legal advice where appropriate. If you require advice about business arrangements between health professionals and clinics, please contact us.

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