CITATION: Envoy Relocation Services Inc. v. Canada (Attorney General), 2012 ONSC 1681
COURT FILE NO.: 07-CV-37522
DATE: 2012/03/13

SUPERIOR COURT OF JUSTICE - ONTARIO

2012 ONSC 1681 (CanLII)

RE: ENVOY RELOCATION SERVICES INC., and NATIONAL RELOCATION SERVICES (RELONAT) INC. (as contractual joint venture called Envoy Relocation Services), plaintiffs

AND

THE ATTORNEY GENERAL OF CANADA, defendant

BEFORE: Mr. Justice Peter Annis

COUNSEL: Ronald d. Luneau/Phuong T.V. Ngo/ Stephanie Pearce, Counsel, for the plaintiffs

Derek Rasmussen/Gregory S. Tzemenakis/ Elizabeth Kikuchi, Counsel, for the defendant

HEARD: March 12, 2012

ENDORSEMENT ON MOTION TO AMEND THE STATEMENT OF CLAIM

[1] In mid-trial, the plaintiffs seek to amend their statement of claim filed March 8, 2007. They do so on the basis of information obtained from documents provided by the defendant on February 24, 2012, consisting of the labour relations file of Mr. Michel Genest.

[2] Mr. Genest is an investigator from the Fraud Investigation and Internal Disclosures branch at PWGSC. He carried out an investigation in 2003 to determine whether conflicts of interest had occurred affecting the 2002 RFP process that resulted in an award of a contract for relocation management services to Royal Lepage.

[3] The allegations and particulars thereof, which the plaintiff seeks to add by way of amendment, may be generally described as follows:

a. The defendant intended or planned to conceal the investigation results from the plaintiffs;

b. The defendant threatened the investigator with discipline for having communicated his findings to the plaintiffs because by doing so, the defendant was prevented from concealing the investigation results;

c. The defendant made substantial revisions to the internal investigation reports while Mr. Genest remained under threat of reprimand; and

d. The defendant's decision to retender occurred because the plaintiffs had learned the results of the investigation which they were threatening to make public, and because the defendant wished to mollify the plaintiffs and make it appear that PWGSC was moving decisively to deal with the conflicts of interest problem.

[4] The defendant does not oppose the amendments of allegations in the statement of claim that the defendant planned to conceal the investigation results from the plaintiffs and that it made substantial revisions to internal investigation reports. Nor does it oppose the amendments sought in subparagraph 3d above.

[5] It opposes the allegations in the proposed amendments that the investigator was threatened with discipline for having communicated his findings to the plaintiffs as an act of reprisal for having disclosed the investigation results thereby thwarting the defendant's plan to conceal them from the plaintiffs.

[6] Pursuant to Rule 26 of the *Rules of Civil Procedure*, R.R.O. 1990 Reg. 194, the court has a very limited discretion to disallow a proposed amendment. Generally, it may only refuse an amendment if satisfied that it will result in prejudice, not compensable in costs, which is not argued by the defendant in this motion.

[7] The recent decision of the Ontario Court of Appeal in *Marks v. The City of Ottawa*, 2011 ONCA 248, ruled that the proposed amendment must nevertheless be shown to be an issue worthy of trial and *prima faci*e meritorious. In addition, the proposed amendment should be relevant to the law suit in the sense that it supports the case of the party seeking to make the amendment as generally described in the rest of the pleadings. See *Keneber Inc. v. Midland (Town)* (1994), 16 O.R. (3d) 752 at para 16.

[8] The defendants allege that the allegations of reprisals against Mr. Genest are not meritorious because they do not advance any of the causes of action of the plaintiffs in their statement of claim, namely: intentional infliction of economic harm by unlawful means, breach of contract, negligence or negligent misrepresentation.

[9] I do not agree. The plaintiffs' contend that they were treated unfairly throughout the 2002 and 2004 RFP processes. The statement of claim pleads multiple instances of conflict of interest; concealment of information from the plaintiffs; nondisclosure of relevant information; wilful or reckless provision of wrong information; lack of accountability and other instances of unjust treatment, including management's desire to favour Royal Lepage in the 2004 RFP process to avoid litigation.

[10] Although some of the individuals change throughout the years involved in this litigation, the pleadings allege a continuous pattern of biased conduct against the plaintiffs, which includes the evidence surrounding the conflict of interest issue and its investigation by Mr. Genest.

[11] Moreover, once it is acknowledged that the plaintiffs may amend their statement of claim to allege the defendant’s intention to conceal the investigation results, the allegations of the reprisals against Mr. Genest become relevant. The plaintiff’s theory is that discipline was threatened against Mr. Genest because his disclosure of the investigation results prevented

2012 ONSC 1681 (CanLII)

implementation of the defendant's strategy. The threats of discipline would therefore be relevant to proving an intention to conceal.

[12] Finally, and perhaps most importantly, the plaintiff alleges that the disciplinary threats against Mr. Genest were to pressure him to make, or at least accept, changes to his investigation report. Given that the there is agreement that the report is properly introduced in evidence, which includes changes he and Mr. Steinberg made to it while the threats of discipline were ongoing, the pleading of duress on Mr. Genest is relevant to assessing his conclusions and the fairness of the investigation process towards the plaintiffs.

[13] Accordingly, I will allow the proposed amendments because they do not cause the defendant prejudice in the sense that the term is used in rule 26.01, and are meritorious and relevant.

[14] The defendant argues that it should have some of its costs of the motion, irrespective of the outcome. It is difficult to attribute much blame to the plaintiffs for the lateness of the amendments given that they only became aware of the documents that occasioned the motion in February 2012. Conversely, there was no requirement on the defendant to produce the documents, as no prior mention was made of this issue in the pleadings.

[15] Also, I do not see much in the way of costs that will be thrown away as a result of the lateness of the amendments.

[16] Although the plaintiffs are not seeking costs, I am of the view that the most appropriate order is that the costs of this motion, which I fix at $5000, should be payable in the cause.

ORDER

[17] The plaintiffs are granted leave to amend their statement of claim in the form attached to their notice of motion herein at Schedule "A". Costs of the motion are fixed at $5000 to be paid in the cause.

Annis J.

Date: March 13, 2012

2012 ONSC 1681 (CanLII)

CITATION: Envoy Relocation Services Inc. v. Canada (Attorney General), 2012 ONSC 1681
COURT FILE NO.: 07-CV-37522
DATE: 2012/03/13

2012 ONSC 1681 (CanLII)

ONTARIO

SUPERIOR COURT OF JUSTICE

RE: ENVOY RELOCATION SERVICES INC., and NATIONAL RELOCATION SERVICES (RELONAT) INC. (as contractual joint venture called Envoy Relocation Services), Plaintiffs

AND

THE ATTORNEY GENERAL OF CANADA, Defendant

BEFORE: Mr. Justice Peter Annis

COUNSEL: Ronald d. Luneau/Phuong T.V. Ngo/ Stephanie Pearce, Counsel, for the plaintiffs

Derek Rasmussen/Gregory S. Tzemenakis/ Elizabeth Kikuchi, Counsel, for the defendant

---

ENDORSEMENT ON MOTION TO AMEND THE STATEMENT OF CLAIM

Annis J.

Released: March 13, 2012