

IN THE COURT OF APPEAL OF MANITOBA

Coram: Twaddle, Steel and Freedman JJ.A.

B E T W E E N:

BRYAN R. BENSON

(Plaintiff) Appellant

- and -

CANADIAN NATIONAL RAILWAY

(Defendant) Respondent

) ***B. R. Benson***
) *In Person*
)
) ***E. B. Eva and***
) ***D. P. Ryall***
) *for the Respondent*
)
) *Appeal heard:*
) ***April 29, 2003***
)
)
) *Judgment delivered:*
) ***September 9, 2003***

TWADDLE J.A.

1 The plaintiff appeals from an order striking out his statement of claim.
The issues for our consideration are:

- (i) Did the motions judge who made the order misapprehend the facts or err in principle or palpably?
- (ii) If the motions judge did so err, did the error materially influence the order made?

The Proceedings to Date

2 The plaintiff filed his statement of claim on April 4, 2002, and amended it on April 25, 2002. The defendant responded by filing a notice of motion asking that the claim be struck out under Queen’s Bench Rule 25.11 on the following grounds:

- (i) *The Limitation of Actions Act*, R.S.M. 1987, c. L150;
- (ii) The Amended Statement of Claim is scandalous and vexatious, is an abuse of process of the Court, and does not disclose a reasonable cause of action against the Defendant.

3 No evidence was filed in support of that motion. The plaintiff, however, filed an affidavit of his own in response to the motion.

4 The motion was heard by a master who determined in [2002] M.J. No. 327 (QL), 2002 MBQB 210 at para. 23, that “the amended statement of claim should be dismissed without leave to file a reamended statement of claim.” He did so, at para. 20, on the grounds that “the amended statement of claim establishes no reasonable cause of action and that, additionally, in light of the evidence furnished by the plaintiff himself, the amended statement of claim is an abuse of process and is vexatious.”

5 In finding the claim to be an abuse of process and vexatious, the master appears to have accepted three submissions of the defendant; namely:

- 1. the plaintiff’s claims are barred by *The Limitation of Actions Act*;

2. the plaintiff's claims are barred by *The Workers Compensation Act*, R.S.M. 1987, c. W200; and
3. the plaintiff had released the defendant from all the claims he now advances.

6 The plaintiff appealed from the master's order to a judge. In response to this appeal, the defendant filed an affidavit sworn by an employee of its lawyers. This exhibited the release given by the plaintiff to the defendant, a certificate of acknowledgment of independent legal advice signed by the plaintiff, a medical report certifying the capacity of the plaintiff to give a release and a certificate of independent legal advice.

7 The motions judge hearing the appeal agreed with the master that the statement of claim disclosed no reasonable cause of action. She went on, however, to find that at least part of the plaintiff's claim fell within the exclusive jurisdiction of the Workers Compensation Board, that the release given by the plaintiff served to release the defendant from any actions arising from the employment relationship, and that the action was barred by *The Limitation of Actions Act*. She concluded by dismissing the appeal on the ground that the "statement of claim discloses no reasonable cause of action and it might be called vexatious or an abuse of process"

8 From the motions judge's decision, the plaintiff appeals.

The Plaintiff's Status as a Self-Represented Litigant

9 With the exception of matters which fall within the small claims jurisdiction of the Queen's Bench, our legal system on the civil side is

designed for litigants who are legally represented. Whether it be due to lack of knowledge of the rules of practice or the law or to the inability of some to express themselves with clarity, self-represented litigants are often at a disadvantage. Not all such litigants represent themselves out of choice: many, though ineligible for legal aid, lack the means to retain a lawyer. Judges should, in my opinion, be sensitive to the difficulties such litigants face, but cannot permit less than substantial compliance with the rules of practice and the law.

10 So in this court, sensitive to the difficulties which the plaintiff faced, we permitted him to deal with the merits of his case rather than alleged errors on the part of the motions judge. Ultimately, however, we are bound to decide the appeal on the well-established principle that it can be allowed only if we find material error in the making of the order appealed from.

Did the Motions Judge Commit a Material Error in Striking Out the Statement of Claim?

11 The defendant argued not only that the statement of claim disclosed no reasonable cause of action on its face, but also that:

- (i) any cause of action it did disclose was barred by *The Limitation of Actions Act*;
- (ii) the defendant had been released from liability for any matter alleged in the statement of claim; and
- (iii) any claim which the plaintiff might have fell within the exclusive jurisdiction of the Workers Compensation Board.

12 The motions judge found validity in those arguments and, because of
them, said that the statement of claim “might be called vexatious or an abuse
of process.” With great respect, those arguments, while they might have
merit on a motion for summary judgment, should not have been entertained
on the motion to strike out the claim.

13 In *Manning v. Nassar*, [1991] 1 W.W.R. 37 (Man. C.A.), this court
held that, as a general rule, the alleged expiry of a limitation period is not a
ground for striking out a statement of claim. The expiry of a limitation
period is a matter of defence which need not be anticipated by the plaintiff in
his statement of claim. It follows that the existence of a possible limitation
defence does not, by itself, make the action vexatious or an abuse of process.

14 In like vein, an alleged release from liability is a matter of defence. It
is neither vexatious nor an abuse of process to advance a claim merely
because there might be a defence to it. A defendant who says it has been
released from liability should plead this as a defence, giving the plaintiff the
opportunity to reply. In his reply the plaintiff may deny that he gave the
release, assert that the release given does not encompass the cause of action
advanced, or otherwise assert facts which, if proved, avoid the release
defence. The defendant should wait until the pleadings are closed and then,
if no genuine issue is raised or if any issue raised is unsupportable, move for
summary judgment.

15 I do not think it sufficient, as a general rule, for a defendant seeking to
strike out a claim on the ground that it is vexatious or an abuse of process to
show that the cause of action disclosed by the claim is one within the

exclusive jurisdiction of a statutory tribunal. The defendant's proper remedy, a stay or dismissal of the action, would more appropriately be obtained by an application under Q.B. Rule 21.01(3) grounded on the court's lack of jurisdiction. The remedy of striking out a claim as vexatious or an abuse of process should generally not be sought where a more direct remedy (such as an order under Q.B. Rule 21.01(3)) is available.

16 In any event, it is impossible, in my view, to say that the plaintiff's claim is one that falls within the exclusive jurisdiction of the Workers Compensation Board. It touches on matters already considered by that Board, but advances no new claim within its jurisdiction. The defendant has failed to establish that the cause of action advanced in the statement of claim (if there be one), is not justiciable in the Court of Queen's Bench.

17 With great respect, I find no basis for suggesting that the statement of claim herein is either vexatious or an abuse of process.

Did the Motions Judge's Error in Finding the Statement of Claim to be Vexatious and an Abuse of Process Materially Influence the Order Made?

18 The fact that the motions judge erroneously found the statement of claim to be vexatious and an abuse of process does not mean that the order cannot be sustained. The order can be supported on the ground that, as the motions judge found, the statement of claim discloses no reasonable cause of action.

19 As the motions judge correctly noted, "the issue of whether a pleading discloses a reasonable cause of action must be decided on the face of the pleading alone." I have no reason to believe that she did not follow this

principle in deciding that the statement of claim disclosed no reasonable cause of action.

20 The errors which were made in dealing with the argument that the statement of claim was both vexatious and an abuse of process do not, in my opinion, affect the finding that, on its face, the statement of claim discloses no reasonable cause of action. Although the motions judge's reasons for making that finding occupy only a small part of her overall reasons, the finding of no reasonable cause of action nonetheless stands on its own.

21 In reaching her conclusion, the motions judge noted that the plaintiff, a self-represented litigant, was just as bound by the rules of pleading as a litigant who is represented by counsel. Although that may be a mild overstatement of the position, which I believe requires only substantial compliance by the self-represented litigant, it makes no difference in this case where the attack on the plaintiff's statement of claim is not based on a technical failure. Even in argument before this court, the plaintiff was unable to articulate a cause of action he might be allowed to pursue.

Decision

22 In the result, I would dismiss the appeal, with costs if asked for.

Misnomer

23 The plaintiff sued the defendant under the name "Canadian National Railway." In subsequent court documents the defendant was sometimes referred to by that name and sometimes by the name "Canadian National Railways." Neither of those names is correct. The company's correct name

is “Canadian National Railway Company”: see S.C. 1995, c. 24, s. 14. We do not think it appropriate to make a correction now. In the first place, the misnomer was not identified until after we had reserved our judgment and, in the second place, there is no need to do so in light of the result.

I agree: _____ J.A.

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_____ J.A.