COURT FILE NO.: 06-CV-315827PD1
DATE: 20070425

2007 CanLII 15803 (ON SC)

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: OLGA PODGORNAJA v. PETER MACCIONE and HAYHURT ELIAS DUDEK INC.

BEFORE: MADAM JUSTICE HARVISON YOUNG

COUNSEL: JORDAN BLACK, for the Defendants

OLGA PODGORNAJA on her own behalf

DATE HEARD: April 24, 2007

ENDORSEMENT

(transcribed from handwritten endorsement released April 25, 2007)

[1] The defendants move to strike the statement of claim on the grounds that it

(a) discloses no reasonable cause of action, and
(b) is an abuse of court process and vexatious.

[2] The plaintiff who has been self-represented since 2004, brought an action (initially with a lawyer) in 2003 in relation to an alleged "slip and fall" in a Sobey's / Price Chopper supermarket – see tab C of this motion record. That action (Court File No. 03-CV-256512 CM2) has been proceeding; discoveries have been held, a pre-trial was held; and it is on the trial list. She amended her claim in December 2004.

[3] On July 26, 2006, the plaintiff commenced this action, also relating to the slip and fall, but naming Peter Maccione and Hayhurt Elias Dudek ("HED") as defendants. In the course of her oral submissions to the court on this motion, the plaintiff stated that she brought the action against Peter Maccione because

(i) He is the owner of the supermarket (disputed by the defendants) and because he continues to "victimize" her, an allegation which relates at least to evidence he gave at discovery. She also alleges that she was not given answers to some questions at discovery as the defendants' lawyer asserted they were "irrelevant", and thus she felt justified in bringing this new cause of action. The defendant states that (a) Mr. Maccione is an

employer in the store and that as such, if negligence is established at trial, the store (which is a defendant) would be vicariously liable in any event, and thus, nothing is added by this action; (b) she would, in any event, have sought to add him as a party at an earlier stage if it had been necessary. As far as HED is concerned, it seems that he was named because the plaintiff thought he was the defendant's insurer, though she seemed to concede during argument that he in fact is a broker, and thus is not an appropriate defendant in any event.

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[4] Having reviewed the materials filed by the defendants – none were filed in advance by the plaintiff, and heard submissions, I conclude that this claim should be struck. On its own terms, it articulates no reasonable cause of action (R. 21.01(1)(b) of the *Rules of Civil Procedure)* that are independent of the action commenced in 2003. Moreover, it clearly relates to the same slip and fall forming the subject of that action. This is true of the essence of the 2006 action – but for the 2003 action and the alleged facts upon which it is based, it would be as a 2006 action. Allowing this action to continue would give rise to some of the policy concerns that form the basis of the inherent jurisdiction of the court and dismiss an action for abuse of process, and these include the risks of a multiplicity of processes: see *Kenderry Esprit v. Burgess 53 O.R. (3d) 508* per Molloy J*; see also Vaughan v. Ontario* [1996] O.J. NO. 164 per Lederman J.

[5] With respect to HED, there is no cause of action in any event as indicated above. With respect to Peter Macchione, the plaintiff's submissions suggest that her central concerns relate to his credibility at discovery, and she will be able to address that at the trial of the earlier action.

[6] At the beginning of the hearing, the plaintiff sought an adjustment of the motion, which was opposed by the defendant on the basis that it had been adjourned 3 times already. The last adjournment was granted adjourning the April 3, 2007 date to April 24, 2007 to accommodate the plaintiff's religious request. The defendant submitted that the other reasons for the plaintiff's adjournment request were the same proffered previously on account of poor health, absence of legal advice. In my view, these were not, at this time, given the delay to date in hearing the motion and the need to proceed with the earlier action, sufficient to justify an additional adjournment, which would not be likely to change matters.

[7] The plaintiff is to pay costs to the defendant in the amount of $2,000 payable forthwith. No further actions against any parties related to the alleged slip and fall are to be commenced by the plaintiff without leave of the court.

Harvison Young J.

DATE: April 25, 2007