

SUPERIOR COURT OF JUSTICE - ONTARIO

BETWEEN: Ahmad Mohammad

Plaintiff

AND:

Jessica Cali, Bruce Milliken, Allison Sekuler, and Patrick Bennett

Defendants

BEFORE: The Honourable Justice R. J. Nightingale

COUNSEL: Ahmad Mohammad, Self Represented Party

Sean Murtha, Counsel for the Defendants

HEARD: January 9, 2024

ENDORSEMENT

- [1] The plaintiff brings this motion for summary judgment and damages on his fresh amended statement of claim which was issued under the simplified procedure provided in Rule 76 of the *Rules of Civil Procedure*.
- [2] In that claim, he requests substantial financial and psychological compensation to be determined by the court. In addition, he states he requires proper citation for his publications, immediate stoppage of any of the defendants' roguish plans, immediate stoppage against the unethical direct or indirect utilizations of the government and/or institutional authorities, immediate revelation of the grants, and immediate revelation of whether any of them has legal immunity.
- [3] The defendants dispute those claims in their fresh as amended statement of defence and submit that the motion for summary judgment should be dismissed.
- [4] In support of his motion, the plaintiff provided his affidavit of November 19, 2022 with numerous exhibits which included his earlier affidavit of February 3, 2022 referring to a number of documents and the affidavit of Essra Mohamed.
- [5] Each of the defendants filed their own responding affidavits. The defendants also provided the affidavit of Chris McCormack of the defendants' law firm which outlined the procedural history of this action along with details of four other actions involving his

claims while a graduate student at McMaster University the plaintiff has commenced in Hamilton and Toronto.

- [6] No cross-examinations on any of the parties' affidavits and examinations for discovery of any of the parties have been conducted.

Background Information

- [7] The essential facts from the material confirmed that the plaintiff was formerly a graduate student at McMaster University in 2014 and 2015 and from 2017 to 2019 enrolled in the Computational Science and Engineering Interdisciplinary PhD program. He worked under the supervision of the defendant Dr. Milliken, a professor in the Department of Psychology, Neuroscience and Behaviour at the University who also supervised the defendant Jessica Cali while she also was a graduate student since 2014.
- [8] The defendant Dr. Sekuler was also a professor in the same department and was one on the plaintiff's PhD supervisor committee and also one of the defendant Jessica Cali's PhD supervisors.
- [9] The defendant Dr. Bennett was a professor in the same department and also one of the defendant Jessica Cali's PhD supervisors.
- [10] The affidavit evidence of the plaintiff, although not altogether clear, essentially stated that the scientific research materials and experiments he conducted in vision research while under the supervision of the defendant Dr. Milliken and discussed with him were subsequently provided by Dr. Milliken to all the defendants. He refers to them as experiment 2/2 and experiment 3.
- [11] The plaintiff's affidavit in summary states that the defendants Cali, Bennett and Sekuler published papers in medical journals in 2015 and 2020 referring to the information and results of those experiments the plaintiff had conducted by rephrasing them but did not provide any accreditation to him while doing so. In submissions, he was blunt in stating that they stole his ideas and experimental results.
- [12] The plaintiff's affidavit also alleges that in 2020 he had requested informational access to federal government research grants obtained by the defendants which the defendants declined except for some redacted information from Dr. Milliken. He states that part of his claim in this action is that he should be entitled to some of those funds from those research grants the defendants received because of his own research work that he did under the supervision of Dr. Milliken.
- [13] The plaintiff also provided the affidavit of his sister Esraa Mohamed who stated she is an expert in cognitive neuroscience and vision research. She stated that she believed the experiment 2/2 and experiment 3 referred to in the 2020 defendants' medical journal article were taking the plaintiff's concepts and then rephrased to "camouflage the judicial system but not the experts".
- [14] The plaintiff's allegations are strenuously denied in the defendants' affidavits.

- [15] Dr. Cali was clear in her affidavit that the data for the experiments referred to in the 2020 published article were collected in 2013, 2014, 2015 and 2019. Her evidence was that the plaintiff's idea and/or work had not contributed in any way to any work performed or published by her including but not limited to the 2020 Cali article. She had not read any of the plaintiff's abstracts or papers prior to receipt of the amended statement of claim. She states that whatever ideas conveyed by the plaintiff referred to in the amended statement of claim are not reflective of the content of her article which did not involve measuring pupil dilation. Furthermore, she states that the plaintiff's alleged common experimental methods and scientific concepts are either well-established in the field, not supported by any known research or not related in any substantial or meaningful way to the 2020 article.
- [16] The Defendants' affidavit of documents included an email of October 14, 2014 provided to the plaintiff which stated that they had worked on "experiment 2/2" during that period which they state supports their position. The plaintiff disputes that that email is an authentic version.
- [17] The defendants Dr. Sekuler and Dr. Bennett provided essentially the same evidence as Dr. Cali.
- [18] Dr. Milliken in his affidavit states that the plaintiff was resistant to receiving and following guidance on established practices in the discipline of experimental psychology when he worked with the plaintiff. Dr. Milliken stated that the plaintiff accused him of manipulating the data to undermine the plaintiff which he clearly denied as well as his claims of data irregularities in the research conducted by the plaintiff.
- [19] The plaintiff in his final submissions requested an order on summary judgment that the defendants be required to cite him in the medical journal articles so the community would know of his involvement, that another researcher Matthew Pachai be cited in another 2017 medical journal article, that McMaster University be required to now permit him to defend his thesis, that all four defendants be required to provide a letter of apology to him and that he receive financial compensation of \$200,000.

Analysis

- [20] Rule 20(04) of the *Rules of Civil Procedure* states that the court shall grant summary judgment if the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.
- [21] The Supreme Court of Canada in the leading case of *Hyrniak v. Mauldin* 2014 SCC 7 confirmed that summary judgements are only appropriate when the process (i) allows the judge to make the necessary findings of fact, (ii) allows the judge to apply the law to the facts, and (iii) is a proportionate, more expeditious and less expensive means to achieve a just result.
- [22] The bar on a motion for summary judgment is high as the plaintiff must discharge its evidentiary burden of proving that there is no genuine issue requiring a trial.

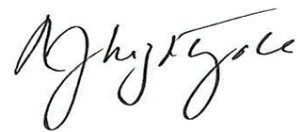
- [23] On a summary judgment motion, the court must first determine if there is a genuine issue requiring a trial based only on the evidentiary record before the court without using the enhanced fact-finding powers under Rule 20.04(2.1). If there is, the court in its discretion determines whether resort should be taken of the enhanced powers under the Rule to weigh evidence, evaluate the credibility of the deponent and draw any reasonable inference from the evidence or potentially require oral evidence be presented by one or more parties.
- [24] On a motion for summary judgment, the court assumes that the record before the court contains all the evidence that the parties would present at trial and that the parties have advanced their best case. Each side must “put its best foot forward”.
- [25] In my view, the plaintiff’s motion for summary judgment should be dismissed for the following reasons.
- [26] In this simplified procedure action, Rule 76.04 of the *Rules of Civil Procedure* confirms that neither party is permitted to cross-examine on the affidavits filed on the motion.
- [27] The Ontario Court of Appeal has confirmed that although summary judgment is available in actions brought under the simplified procedure, given that Rule 76 limits examinations for discovery and prohibits cross-examination on affidavits and examinations of witnesses on motions, the test for granting summary judgment will generally not be met where there is significant conflicting evidence on issues confronting the motion judge. *Singh v. Concept Plastics Limited*, 2016 ONCA 81 5 at para. 23; *Combined Air Mechanical Services Inc. v. Flesch*, 2011 ONCA 764 at para. 256.
- [28] The Court of Appeal in *Manthadi v. Asco Manufacturing*, 2020 ONCA 485 again confirmed that a motion for summary judgment in simplified proceedings remains exceptional. Simplified procedure rules are designed to get to trial with a minimum of delay and cost. Discovery is restricted and cross-examinations on affidavits are not allowed. The motions judge must assess the relative efficiency of proceeding by way of summary judgment as opposed to trial. However, the simplified procedure rules also constrain the parties’ ability to marshal evidence in a summary judgment motion and meet their obligation to put its best foot forward.
- [29] The allegations in the affidavits of the plaintiff and the defendants are diametrically contradictory on the essential issues in this case. It is simply not possible in this case based on the evidentiary record to fairly and properly evaluate the credibility of the parties’ evidence in the absence of cross-examination including on the relevant documents which is required to properly resolve the disputed factual issues.
- [30] In addition, evidence on a summary judgment motion must be based on admissible evidence. The defendants dispute the admissibility of the affidavit evidence of Essra Mohamed as expert opinion evidence.
- [31] I agree with that position. The witness’ affidavit failed, among other things, to disclose the reason for her opinion as required under Rule 53.03, but also does not include the completion of the required Form 53 signed by her acknowledging her expert’s duty to the court including to provide opinion evidence that is fair, objective and nonpartisan. In fact,

she is the sister of the plaintiff and the plaintiff's affidavit includes a letter McMaster University of May 3, 2019 addressed to her prohibiting her from attending any McMaster University property for one year for reasons that are not explained. I am not satisfied that in all those circumstances she would meet the requirements under rule 53.03 for the admissibility of her expert opinion evidence.

- [32] Furthermore, as indicated above, the plaintiff is asking for summary judgment now on some claims that are not made in his fresh as amended statement of claim and notice of motion. Among others, he makes a claim requiring McMaster University to allow him to present his thesis without any evidence to suggest why the court should interfere with the usual intergovernmental procedures of the University in that regard. A motion judge may not grant a claim on a motion for summary judgment that is not within the scope of the motion before the court as doing so would deny procedural fairness and natural justice. *Singh v. Trump*, 2016 ONCA 747 at para.140.
- [33] With respect to the plaintiff's claim for damages which he now submits should be in the amount of \$200,000, he provided no evidence on this motion to confirm what damages, including monetary, to his reputation or for his emotional or psychological condition he has suffered because of the failure of the defendants to provide him with the appropriate accreditation in their medical journal articles.
- [34] In addition, the plaintiff's affidavit evidence does not disclose any reasons why he should be entitled to claim part of the funds from the defendants' research grants because of his experimental work performed nor any details of the amounts of the grants they received, the hours spent in his work performed and the value of his contributions towards the defendants' work.
- [35] This case is not document driven or involves contested oral evidence that is limited in nature where a motion for summary judgment in Rule 76 proceedings may be appropriate as noted in the Court of Appeal in *Manthadi*.
- [36] As the credibility of the evidence of the witnesses cannot be assessed on the written record, oral evidence in a trial is required to resolve the disputed factual issues in this case.
- [37] The Ontario Court of Appeal in *Combined Air* at paras. 256 and 262 confirmed that although the court hearing a summary judgment motion could order the hearing of limited oral evidence under Rule 20.04(2.2), in most cases where oral evidence is needed, a summary judgment motion in a simplified procedure action that requires oral evidence from key witnesses offers little or no benefit from an efficiency standpoint as compared to the parties simply proceeding to trial. The efficiency rationale reflected in the rule indicates that the better course is to simply proceed with a speedy trial, whether an ordinary trial or summary one.
- [38] In this case, it is not appropriate or reasonable for the court to hear limited oral evidence on this motion. Proceeding to hear oral evidence including cross-examinations of the five parties within the summary judgment motion using the court's expanded fact-finding powers would not necessarily result in a shorter mini-trial or in a finding in favour of the

plaintiff which would not be an efficient or proportionate process by which to achieve a just result for the parties.

- [39] In addition, the potential of granting the plaintiff partial summary judgment on the liability issue but not damages of which there is no evidence on this motion and requiring the damages claim to proceed to trial is also contrary to the purpose of the simplified procedure rules. The court's review of the credibility of the parties on one issue may well influence the court's view on the other. Accordingly, the parties' and witness' credibility on the two issues should be assessed together not separately. *Cook v. Joyce*, 2017 ONCA 49 at para. 97.
- [40] In this case, requiring the parties to proceed with a summary trial under the simplified procedure that should be completed in a relatively short time and not by summary judgment motion would be more efficient and achieve a just result for the parties rather than to conduct cross-examinations within a summary judgment motion.
- [41] Accordingly, the plaintiff's motion for summary judgment is dismissed.
- [42] With respect to costs, the defendants claim \$3,000 for costs of defending the plaintiff's motion and submitted an outline for costs for their actual time spent in the amount of \$6,788 including HST. The defendants having successfully defended the plaintiff's motion are presumptively entitled to costs of the motion. However, those costs payable are not based on actual costs incurred on a mathematical calculation of defendants' counsel's time spent multiplied by an hourly rate. Rather, their costs should be fixed in a reasonable and fair amount that the unsuccessful plaintiff would reasonably expect to pay in the circumstances.
- [43] The amount claimed of \$3,000 by the defendants is that reasonable amount. Accordingly, the plaintiff shall pay to the defendants the sum of \$3,000 for the costs of this motion.



Nightingale J

Date: January 15, 2024