



Amended pursuant to *Supreme Court Civil Rule 6-1(1)(a)*  
Original Notice of Civil Claim Filed 22/Dec/2023

No. S238708  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

ROBERT DAVID BARKER

PLAINTIFF

AND:

CONSTRUCTION AND SPECIALIZED WORKERS' UNION, LOCAL 1611  
also known as LiUNA LOCAL 1611

DEFENDANT

Amended Notice of Civil Claim

This action has been started by the Plaintiff(s) for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiff(s).

If you intend to make a Counterclaim, you or your lawyer must

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for Response to Civil Claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff(s) and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for Response to Civil Claim described below.

### Time for Response to Civil Claim

A Response to Civil Claim must be filed and served on the Plaintiff(s),

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service,
- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service, or
- (d) if the time for Response to Civil Claim has been set by order of the court, within that time.

## Claim of the Plaintiff

### Part 1 - STATEMENT OF FACTS

#### Overview

1. The plaintiff (also referred to here as “Mr. Barker”) advances a claim in wrongful dismissal and intentional infliction of mental suffering against his former employer, a trade union known as LiUNA Local 1611 (the “Union”).
2. While employed by the Union, the plaintiff discovered that his direct supervisor Nav Malhotra (“Mr. Malhotra”) was having an affair with the plaintiff’s wife, an employee of the international chapter of the Union (the “Affair”).
3. Mr. Malhotra engaged in misconduct and dishonest conduct, first by engaging in the Affair and then denying it repeatedly.
4. The plaintiff repeatedly asked the Union President to investigate the Affair and advised the Union President that Mr. Malhotra’s misconduct was causing him serious mental

distress. The Union refused to investigate. Instead, it authorized Mr. Malhotra to terminate Mr. Barker's employment.

5. In order to limit damages, the Union is attempting to rely on an unenforceable severance clause. The plaintiff is entitled to a common law notice period or damages in lieu, as well as damages for mental suffering inflicted by the Union.
6. The Union was aware of Mr. Barker's mental illness and disability. Mr. Barker confronted Mr. Malhotra about the Affair, and also told the Union President, Mark Olsen, about the Affair and the mental disability he developed as a result of it.
7. The Union intentionally or negligently caused Mr. Barker's mental disability.

## Parties

8. The plaintiff, age 54 at the point of dismissal, ~~is unemployed and~~ resides in Chilliwack, BC.
9. The defendant is a duly constituted trade union as defined in the British Columbia *Labour Relations Code*, RSBC 1996, c 244, with its head office located at #200-19092 26 Avenue, Surrey, BC, V3Z 3V7.
10. The defendant is a trade union representing employees across a wide variety of sectors in British Columbia.

## The Employment and the Affair between the Plaintiff's Supervisor and Plaintiff's Wife

11. From January 30, 2001 until February 16, 2016, prior to the commencement of his employment with the defendant, the plaintiff worked as a unionized employee represented by the defendant.

12. In or about 2015, the plaintiff was approached by the defendant and recruited to work for the defendant. As a result, the plaintiff resigned from his unionized employment in order to work for the defendant in a non-unionized capacity.
13. The plaintiff commenced employment with the defendant on or about February 16, 2015.
14. It was an implied term of the employment contract that the plaintiff would receive reasonable notice of dismissal.
15. At all times during the employment, the plaintiff was employed as a Service Representative.
16. The plaintiff performed his duties as a Service Representative/Organizer well throughout the employment, except when grappling with the symptoms of the mental illness and disability caused by the Affair and the Union's failure to address it.
17. As a Service Representative/Organizer, the plaintiff reported directly to the Union's Business Manager, Mr. Nav Malhotra.
18. Mr. Malhotra is an individual at or near the top of the Union's corporate hierarchy. He has significant power within the Union and he is subject to little or no oversight by the Union.
19. At all material times, the plaintiff's wife, Jennifer Farish, was an employee of the international chapter of the Union.
20. In or around late December 2019, the plaintiff discovered through Mr. Malhotra's wife that the plaintiff's wife may be having an affair. In 2020, the plaintiff confirmed that his wife was having an affair with Mr. Malhotra.
21. The plaintiff confronted Mr. Malhotra about the Affair on four separate occasions:

- a. In or around August or September 2020;
  - b. In or around March 2021;
  - c. In or around May 2021; and
  - d. In or around November 2022.
22. Mr. Malhotra always denied the Affair.
23. The plaintiff spoke to the Union President on three occasions, requesting that the Union investigate Mr. Malhotra's misconduct and dishonesty. The Union President and the Union refused to do so.
24. Arising from Mr. Malhotra's dishonesty and the Union's refusal to investigate the matter (while still requiring the plaintiff to report to the person having an affair with his wife) the plaintiff suffered a mental breakdown.
25. In or around November 2022, the plaintiff had two confrontations with Mr. Malhotra. As a result, Mr. Malhotra suspended the plaintiff without pay and required him to complete certain anger management courses and other training before being allowed to return to work. The plaintiff was not paid his salary in December 2022 or January 2023.
26. By January 2023, the plaintiff completed a course on Workplace Violence & Harassment, offered by Worksite Safety, and a course on Respectful Workplaces, offered by BCIT. By then, he had been suspended without pay for approximately two months.
27. On or around February 7, 2023, Mr. Malhotra and Mr. Barker were scheduled to meet to discuss Mr. Barker's return to work. Mr. Malhotra refused to meet with Mr. Barker.
28. On or about February 17, 2023, Mr. Barker was terminated.

29. At the time of dismissal, the plaintiff's remuneration and benefits included the following:

- a. base salary of \$128,390.08 per year;
- b. pension contributions equal to 29% of salary contributed to the LiUNA Staff & Affiliates Pension Fund;
- c. pension contributions equal to \$6,864.00 per year to the Labourers' Pension Plan of BC;
- d. vehicle allowance of \$1,000 per month;
- e. a company gas card for professional and personal use except when on holiday;
- f. cell phone and cell phone plan paid;
- g. BCAA membership;
- h. vacation entitlement of 6 weeks per year;
- i. paid statutory holidays;
- j. \$2,500 per year for insurance;
- k. vehicle repair costs for minor maintenance and mechanical repairs;
- l. medical and dental plan contributions; and
- m. contribution to Canada Pension Plan premiums.

## Wrongful Dismissal

30. On February 17, 2023, the defendant dismissed the plaintiff effective immediately without cause and without notice.
31. The dismissal of the plaintiff without cause and without reasonable notice was a wrongful dismissal.
32. The termination provision incorporated by reference into the plaintiff's contract of employment is invalid and therefore the plaintiff is entitled to notice at common law.

## Bad Faith in Manner of Dismissal

33. The Union acted in bad faith in the manner of the plaintiff's dismissal, particulars of which are set out above at paragraphs 17-28.

## Damages

34. Upon dismissal, the ~~plaintiff~~ Union, relying on an unlawful termination clause, was provided the plaintiff with severance pay in the amount of \$28,048.29.
35. As a result of the wrongful dismissal, the plaintiff has suffered a loss of employment income and is now owed pay in lieu of the remuneration and benefits that he otherwise would have earned during the reasonable notice period.

## Intentional Infliction of Mental Suffering by the Union

36. The Union engaged in flagrant or outrageous conduct during the course of the plaintiff's employment, particulars of which are set out above at paragraphs 17-28 (the "Outrageous Conduct").
37. The Union's Outrageous Conduct (including but not limited to Mr. Malhotra's Affair, his repeated denials of the Affair and his unilateral termination of the plaintiff as a result of

the Affair and the plaintiff's mental disability) was calculated to produce harm. The Outrageous Conduct resulted in a visible and provable illness suffered by the plaintiff.

### The Union's Counterclaim

38. The Union did not allege cause at the time of the plaintiff's termination.
39. After the plaintiff commenced this action, the Union filed a counterclaim on January 23, 2024, alleging it had cause to terminate the plaintiff.
40. In the counterclaim, the Union does not rely on any information not available to it in February 2023, when it terminated the plaintiff without cause.
41. The Union, to now allege cause, relies on alleged misconduct for which it had already disciplined the plaintiff prior to termination, through a suspension without pay. A termination for alleged misconduct that has already been addressed through a suspension offends the principle against double jeopardy.
42. The counterclaim amounts to improper retaliation against the plaintiff for commencing legal proceedings. The Union's conduct in that respect is high-handed, vindictive and malicious.

### **Part 2 - RELIEF SOUGHT**

~~WHEREUPON THE PLAINTIFF CLAIMS against the defendant:~~

- a. Damages for wrongful dismissal, including damages for bad faith in the manner of dismissal;
- b. Damages for intentional infliction of mental suffering;
- c. Aggravated damages;



- d. Punitive damages;
- e. Special costs ~~Costs;~~
- f. Interest;
- g. Such further and other relief as this Honourable Court may deem just.

### Part 3 - LEGAL BASIS

#### Wrongful Dismissal

1. The facts establish a cause of action against the defendant for wrongful dismissal and breach of contract.
2. At common law, it is an implied term of an employment contract that an employer may only dismiss an employee without cause by providing reasonable notice of termination. Dismissal of an employee without cause and without reasonable notice is a breach of the employment contract and is a wrongful dismissal of the employee.
3. The Union failed to provide the plaintiff with reasonable notice at common law as it is required to do. Instead, the Union seeks to rely on an unlawful termination provision in an attempt to improperly limit severance.
- ~~3. — Upon a wrongful dismissal, the employer must pay monetary damages to the employee for the losses caused to the employee by the wrongful dismissal. The monetary damages that an employer must pay to an employee upon wrongful dismissal include compensation for all remuneration and benefits that the employee would have earned if the employment had been allowed to continue according to its terms throughout the period of working notice.~~

~~4. In determining what constitutes the length of a reasonable notice period, courts are called upon to consider the character of the lost employment, the employee's length of service, the age of the employee, and the availability of similar employment, having regard to the experience, training, and qualifications of the employee. These factors are not exhaustive however, and every wrongful dismissal requires a case by case analysis that does not give any one factor disproportionate weight. Inducement has been added as a factor to consider in determining reasonable notice.~~

4. The termination of the employment contract by the defendant without cause and without reasonable, or any, notice is a wrongful dismissal of the plaintiff, entitling the plaintiff to wrongful dismissal damages.

5. The plaintiff will rely on the *Supreme Court Civil Rules* including Rules 1-3 and 14-1.

### **Bad Faith in Manner of Termination and Subsequent to Termination**

6. Where a defendant acts in bad faith and/or dishonestly, the plaintiff is entitled to additional damages: *Bhasin v. Hrynew*, 2014 SCC 71; *Honda Canada Inc. v. Keays*, 2008 SCC 39.

7. The Union's manner of dismissal and retaliatory counterclaim constitutes bad faith conduct and a breach of the duty of honesty.

8. As a result of the Union's bad faith conduct, the plaintiff has suffered and continues to suffer damages and loss.

9. The Union's bad faith conduct is independently actionable and warrants an award of damages for breach of the duty to act with honesty and good faith.

### **Intentional Infliction of Mental Suffering**

10. The Union engaged in flagrant and outrageous conduct.

11. The Outrageous Conduct was calculated to produce harm.
12. The Outrageous Conduct resulted in the plaintiff suffering from a provable and visible illness.

### **Vicarious Liability**

13. Where an employee commits an actionable wrong in the workplace, the employer is liable for the employee's conduct.
14. The Union is vicariously liable for Mr. Malhotra's conduct.

### **Aggravated Damages**

15. The plaintiff suffered from mental distress resulting from the manner of termination of his employment and is entitled to aggravated damages.

### **Punitive Damages**

16. The Union engaged in outrageous conduct deserving of this Court's rebuke. The outrageous conduct includes the Affair, the Union's failure to address Mr. Malhotra's misconduct, Mr. Malhotra's dishonesty, and the Union's bad faith termination of Mr. Barker's employment.
17. In the circumstances, a combined award of general and aggravated damages is not sufficient to address the Union's conduct and achieve the goals of punishment and deterrence.
18. The plaintiff is entitled to punitive damages.

Special Costs

19. The Union's improper and retaliatory counterclaim amounts to reprehensible conduct in the litigation justifying an award of special costs.

Plaintiff's address for service:

Mitha Law Group  
Barristers and Solicitors  
570 Granville Street, Suite 300  
Vancouver, BC V6C 3P1  
Attention: Nazeer T. Mitha, KC

Email address for service:

Service by email will only be accepted if  
delivered to both email addresses below:  
service@mithalawgroup.ca  
nmitha@mithalawgroup.ca

~~Plaintiff's address for service:~~

~~Yeager & Company Law Corporation~~  
~~#406-145 Chadwick Court~~  
~~North Vancouver, BC V7M 3K1~~

~~Fax number address for service:~~

~~604.988.1200~~

~~Email address for service:~~

~~bharvey@dismissal.ca~~

Place of trial:

Vancouver, British Columbia

The address of the registry is:

The Law Courts  
800 Smithe Street, Vancouver, BC V6Z 2E1

Dated: ~~December 22, 2023~~ 07/Mar/2024

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Signature of lawyer for plaintiff  
Nazeer T. Mitha, KC  
~~Brendan Harvey~~

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
  - (a) prepare a list of documents in Form 22 that lists
    - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
    - (ii) all other documents to which the party intends to refer at trial, and
  - (b) serve the list on all parties of record.

## Appendix

### Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Breach of contract and wrongful dismissal

### Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☒ ~~personal injury, other than one arising from a motor vehicle accident~~
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☒ an employment relationship
- ☐ a will or other issue concerning the probate of an estate
- ☐ a matter not listed here

### Part 3: THIS CLAIM INVOLVES:

- ☐ a class action
- ☐ maritime law

- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☒ none of the above
- ☐ do not know

#### Part 4: STATUTES

*Court Order Interest Act, R.S.B.C. 1996, c. 79*