Rio Algom Ltd. and Turcotte, 20 O.R. (2d) 769

Ontario Reports

ONTARIO

HIGH COURT OF JUSTICE

DIVISIONAL COURT

SOUTHEY, RUTHERFORD AND CARRUTHERS, JJ.

17TH JULY 1978.

20 O.R. (2d) 769

Case Summary

Leases — Termination — Employee tenant occupying premises owned by employer — Employer terminating employment and seeking to terminate lease — Whether claim by employee that dismissal wrongful a defence to claim by employer for possession of rented premises — Landlord and Tenant Act, R.S.O. 1970, c. 236, s. 103g(3)(d).

Section 103g(3)(d) (enacted 1975 (2nd Sess.), c. 13, s. 3) of the Landlord and Tenant Act, R.S.O. 1970, c. 236, provides that a Judge is not prohibited from granting a writ of possession if the tenant was an employee of an employer who provided the tenant with residential premises during his employment and his employment has terminated. When the situation envisaged by the section arises, the tenant cannot raise as a defence to the application for the writ of possession that the dismissal was wrongful. Rather the section applies whenever employment has been terminated, whether wrongfully or not, and the proper redress where an employee's employment has been terminated wrongfully is by way of damages in an action for wrongful dismissal.

APPEAL from an order of a Judge refusing to grant a writ of possession.

R. W. McInnes, for appellant landlord.

J. P. Turcotte, respondent tenant, in person.

The judgment of the Court was delivered orally by

SOUTHEY, J.

SOUTHEY, J.:— The respondent was hired by the appellant, Rio Algom Limited, on February 23, 1977, as a shaftman. In that capacity, his work took him underground. On March 15, 1977, he signed a lease for the occupation of certain company-owned premises in Elliot Lake. it is common ground that those premises are leased by the company to employees only, as a general rule, although the respondent, who appeared before us in person, said there were some units presently occupied by non-employees. In

any event, it is clear from the evidence that the respondent rented the premises knowing that he was only entitled to do so as an employee and could retain the premises only as long as he was an employee.

On March 23, 1977, he had a conversation with one of his supervisors at Rio Algom named Ken Doyle. Mr. Doyle is described in the evidence as the underground supervisor and, whatever may be the correct designation of his office, Mr. Turcotte described him as the highest supervisor at the mine at the time. On that day, Mr. Doyle informed Mr. Turcotte that he had silicosis. According to Mr. Turcotte, Mr. Doyle went on to say, calling the respondent by the initials of his first name, Jean Paul, "J. P., don't worry about it. I have that problem myself, so has your friend", referring to another fellow working with Mr. Turcotte, named Marcel Pilotte. "Marcel has that, too. We both receive a pension for it. Don't worry about it, J. P., you still have a job with us."

The evidence of the respondent, which was accepted by the learned District Judge, was that the respondent, acting in reliance upon the promise of Mr. Doyle that he would be able to retain a position with Rio Algom, notwithstanding his silicosis, took steps shortly after this conversation to have his family give notice to vacate the premises they were occupying in Sudbury. In due course, he moved them into the premises at Elliot Lake that he was leasing from the appellant. The family moved in on April 16th. On April 18th, the respondent was dismissed from Rio Algom. He has been told that the reason for the dismissal was that he would be unable to work underground again, because of his silicosis.

At the hearing before the learned District Judge in Sault Ste. Marie, the Judge found, in these proceedings by the appellant for a writ of possession of the leased premises, that the appellant would have been otherwise entitled to a writ of possession, if the appellant fell within the provisions of s. 103g(3)(d) of the Landlord and Tenant Act, R.S.O. 1970, c. 236, as amended [1975 (2nd Sess.), c. 13, s. 3]. That subsection provides that one of the circumstances in which a Judge hearing an application for possession by a landlord is not prohibited from granting a writ of possession is, if:

> (d) the tenant was an employee of an employer who provided the tenant with residential premises during his employment and his employment has terminated;

The learned Judge held that the appellant would have fallen within this subsection, but held the appellant could not rely on it because it was estopped from so doing by the promise made by Mr. Doyle to the respondent, as aforesaid. Because of that estoppel, in the view of the learned District Judge, the appellant was prevented from taking a position that was inconsistent with the promise of Mr. Doyle that the respondent could have a job with the appellant company.

We have the deepest sympathy for the respondent with his serious medical problem. We are all of the view that we would not reverse the decision of the learned District Judge on the ground that the facts did not give rise to an estoppel. We accept for the purposes of our judgment, without so deciding, that there were grounds for an estoppel, but that estoppel, in our judgment, does not prevent the appellant from taking the benefit of s. 103g(3)(d).

The estoppel, in our view, could not have put the employee in any better position that he would have been in, if he had had a subsisting contract of employment for an indefinite term with his employer at the date of his discharge. The argument of counsel for the appellant is that cl. (d) applies when an employment has been terminated, whether or not such termination was wrongful in the sense that it constituted a breach of contract. He submits that if the termination was wrongful, then the employee, in an action for wrongful dismissal, would be able to recover as part of his damages any loss suffered by him as a result of having to give up the residential premises provided by the employer. In our view, this submission must prevail. If it were not so, it would mean that an employer providing premises for occupation by his employees in cases where such occupation was necessary for the discharge of the duties of the employees, would be unable to obtain possession of those premises upon dismissing an employee whenever the employee claimed that his dismissal was in breach of contract. This would mean, for

example, that the owner of an apartment building would be unable to obtain possession of the supervisor's suite upon discharging a supervisor if the supervisor took the position that his employment had been wrongfully terminated.

In our view, s. 103g(3)(d) applies whenever employment has been terminated, whether wrongfully or not, and that the proper redress where an employee's employment has been wrongfully terminated is by way of damages in an action for wrongful dismissal.

For these reasons, the appeal will be allowed and the order of the learned District Judge set aside.

In the circumstances that have given rise to this appeal, we are of the view that the respondent ought to have at least one month before being required to vacate the premises in question. Section 107(2)(b) [rep. & sub. 1975 (2nd Sess.), c. 13, s. 7(2)] of the Landlord and Tenant Act, empowers a Judge of first instance to order that the enforcement of the writ of possession be postponed for a period not exceeding one week. We have been assured by counsel for the appellant that the appellant will not enforce a writ of possession before the elapse of one month from today's date. With that assurance, we shall simply provide in our order that in place of the order of the learned District Judge there be an order directing that a writ of possession issue.

Costs of the appeal to the appellant, if demanded.

Appeal allowed.
