Prospective Self represented Representative Plaintiff Put Out Of Commission

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In Biley v Sherwood Ford Sales Limited, the Court of Queen's Bench of Alberta recently dismissed multiple proceedings brought by the self-represented plaintiff against his former employer. In 2015, the plaintiff, Mr. Jonathan Biley, began working at Sherwood Ford Sales Limited. Six weeks later, Mr. Biley quit and began a campaign against his former employer through multiple lawsuits, including a proposed class action. The decision dealt with a variety of issues relating to self-represented litigants and abusive litigation, but is particularly interesting for its discussion of a class action commenced by a self-represented litigant.

Each of the actions commenced by Mr. Biley alleged that Sherwood did not pay him commissions that he should have received, due to various forms of misconduct by Sherwood and its staff. Mr. Biley commenced one of the actions under Alberta's Class Proceedings Act. Mr. Biley sought to represent a proposed class of sales persons who obtained commissions from Sherwood and claimed damages of approximately $11 million.

Sherwood brought a vexatious litigant application to have the actions disposed of. In response, Mr. Biley sought to join his various actions and opposed the vexatious litigant application. Mr. Biley attempted to persuade the court that it ought to be lenient in applying procedural rules and allow him to act as a self-represented representative plaintiff. Mr. Biley relied on the recent Supreme Court of Canada decision in Pintea v Johns, which endorsed the Canadian Judicial Council's Statement of Principles on Self-Represented Litigants, and argued that "self-represented class actions may prove in the future to be one of the most effective means of achieving mass justice…"

The court disagreed with Mr. Biley's characterization of himself and the proposed class members as "vulnerable people" and described him as a self-represented litigant who demanded special unwarranted rights or treatment simply because he did not have legal representation. The court further held that Alberta's Legal Professions Act, did not authorize Mr. Biley to act for anyone other than himself. The court adopted the reasoning in its previous decision in Champagne v Sidorsky, which concluded that a self-represented litigant cannot act as a representative for a class action.

Mr. Biley also argued that the class action constituted 'public interest litigation', as defined by the Supreme Court of Canada in Canada (Attorney General) v. Downtown Eastside Sex Workers United Against Violence Society. The court noted that such a claim for public interest standing was "clearly spurious" for three reasons. First, the action was in tort and breach of contract and not founded in a constitutional challenge. Second, Mr. Biley had no legitimate interest in the proposed class action as he already had an individual lawsuit on the exact same subject. Third, characterizing a proceeding as public interest litigation is only appropriate where that is the only reasonable and effective means to advance an action. In this case, the proposed class members could file their own lawsuits if they believed that Sherwood caused them injury.

After laying out the lengthy chronology of Mr. Biley's various claims, the court struck out the class action (along with the other claims) as an abuse of process. As part of the decision, the court provided various examples of Mr. Biley's abusive and unprofessional litigation conduct, including in his handling of the class action. The court acknowledged that the Pintea v Johns decision instructed judges to be mindful of the disadvantages faced by litigants who appear without counsel. However, the Statement of Principles on Self-Represented Litigants imposes upon self-represented litigants certain obligations, including "to familiarize themselves with the relevant legal practices and procedures pertaining to their case," whether in the context of an individual proceeding or a class action.

By

Jonathan Thoburn, David Elman

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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