

CITATION: Kelland v. POI Business Interiors Inc., 2009 ONCA 67
DATE: 20090123
DOCKET: C49149

COURT OF APPEAL FOR ONTARIO

Laskin, Gillese and Rouleau JJ.A.

BETWEEN

Kimberley Kelland

Plaintiff (Appellant)

and

POI Business Interiors Inc.

Defendant (Respondent)

Yan David Payne, for the appellant

J.W. Kramer, for the respondent

Heard and released orally: January 15, 2009

On appeal from the order of Justice John Jennings of the Superior Court of Justice dated July 4, 2008.

ENDORSEMENT

[1] The appellant worked for the respondent for over 28 years. She alleges that her work environment deteriorated in the later years with the result that she began to suffer

from serious medical problems, including severe anxiety, depression, mental distress and work related exhaustion.

[2] It is unclear in law what employment relationship existed between the parties, if any, after May 30, 2007. In the face of that uncertainty, the appellant retained counsel and commenced a lawsuit for wrongful and/or constructive dismissal. Soon after launching the suit, she applied for, and obtained, long-term disability benefits which were available only to employees of the respondent. In her application, the appellant indicated that the duration of her employment with the respondent was from “1979 to current”.(She also indicated on the application form under “Injury Information” that legal action was involved and gave the name and address of her lawyer.) As required under the plan, the respondent submitted its plan sponsor statement to the insurer and indicated that the appellant was still employed by it. It continued to pay the monthly fee associated with the appellant’s membership in the plan.

[3] The respondent then moved for summary judgment. The motion judge granted the motion on the basis that there was no triable issue as to whether the appellant had been actually or constructively dismissed. It appears that he reached this conclusion on the basis of estoppel – that is, he reasoned that by filling out the application form for long-term disability as she had, she was estopped from maintaining that she had been dismissed from employment.

[4] In our view, it is for a trial judge to decide: (1) whether the appellant's acts amounted to a representation; (2) if they did, whether a representation to a third party amounts to an estoppel that the employer may rely on in these circumstances; and (3), if so, whether there was detrimental reliance. In the face of the outstanding lawsuit, and the appellant's affidavit evidence explaining why she had made the application for long-term disability benefits, these are triable issues. In addition and in any event, the core question of whether the appellant had been constructively dismissed is not necessarily resolved by a determination of the estoppel issue.

[5] Accordingly, the appeal is allowed. The appellant is entitled to her costs here and below which are fixed at \$4815 and \$5000, respectively. Both sums are inclusive of disbursements and GST.





