

Think carefully before signing that release

Releases are usually the final word, so both employers and employees should make sure they're prepared to live with it

BY RONALD MINKEN

MOST do not question the enforceability of a signed release with respect to known claims at the time the release is signed. But what about “unanticipated” claims that are discovered after the release has been signed? Can those claims be pursued?

In *Born v. Regis Corporation*, the Ontario Human Rights Tribunal determined that the employee’s application pursuing a new claim could not proceed due to the fact that the employee had previously signed a full and final release with respect to a wrongful dismissal claim, and allowing the application to proceed would be an abuse of process pursuant to the *Statutory Powers Procedure Act*.

Rosella Born, and her former employer, Regis Corporation, entered into a binding settlement at mediation to resolve wrongful dismissal claims Born had made. The terms of settlement included Born signing a full and final release that included her releasing Regis Corporation from all claims, including any pursuant to the Ontario Human Rights Code, that she “had, now had, or hereinafter may have” against the Regis Corporation. Born didn’t realize at the time she signed the release that she was entitled to payment of employment expenses incurred during her employment — she only discovered this several months later. After discovering that Regis Corporation had paid similar expenses for other employees, Born commenced an application against the employer for discrimination on the basis of sex, sexual solicitation or advances, and reprisal.

At a preliminary hearing, Born took the position that the release was not binding and did not prevent her application from proceeding because she signed the release under duress and without knowing that Regis Corporation should have paid her employment expenses. The duress argument was based on the fact that the mediator — who revealed at the start of the mediation that his sister worked for Regis Corporation — allegedly bullied Born into accepting the settlement and that she was in poor health — having not fully recovered from a car accident earlier that year — and was very vulnerable to the alleged bullying.

The tribunal reviewed the facts, along with s. 23(1) of the Statutory Powers Procedure Act and relevant case law. The tribunal stated that in some cases an application may proceed despite the existence of a signed release without the application being an abuse of process. However, in this circumstance, allowing the application to proceed would be an abuse of process.

The tribunal reviewed the test for duress and determined that Born did not sign the release under duress despite the alleged conduct of the mediator, as Born had both legal counsel and her husband present at the mediation to provide legal and emotional support. Born received legal advice with respect to the content and legal implications of the release, including the language regarding the release of claims that she “had, now has, or hereinafter may have,” and did not have to resolve matters at the mediation.

The employee had both legal counsel and her husband present to provide support

The tribunal held that Born clearly released Regis Corporation from “claims for any and all specific head of damages, including those that may or may not have been anticipated or considered by [Born] at the time she signed the release.” The fact that Born did not know at the time the release was signed that her employment expenses should have been paid by the employer was not a valid justification for voiding the release. Accordingly, the application was dismissed.

Lessons for employees

Employees should be aware that while there may be very narrow circumstances where

a signed release will later be deemed to be null and void, typically releases will be upheld to prevent further legal action against the employer. Depending on the language, the signed release will likely apply to “unanticipated” claims that are not known at the time of signing and are discovered at a later time. For this reason, employees should be very careful when entering into a release and consider not only the present, known claims that are being released, but also potential claims that may arise in the future. If properly drafted and entered into, full and final releases will be binding forever!

Lessons for employers

This decision demonstrates that although there is typically finality to a matter once an employee signs a full and final release, there may be circumstances in which a subsequent legal action may proceed without there being an abuse of process or another legal barrier. While this appears to be rare, the right circumstances may arise. To prevent such an occurrence, it is crucial that the language of the release be carefully drafted to eliminate loopholes and that it be signed under proper circumstances.

For more information see:

• *Born v. Regis Corporation*, 2015 HRTO 555 (Ont. Human Rights Trib.).



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