

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

JAN 28 2022

No.: SE220651
Vancouver Registry



In the Supreme Court of British Columbia

BETWEEN:

LINA REID

Plaintiff

- and -

LONDON DRUGS LIMITED

Defendant

**SUBJECT TO RULE 15-1
NOTICE OF CIVIL CLAIM**

This action has been started by the plaintiff 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.

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 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.

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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.

Part 1: STATEMENT OF FACTS

The Parties

1. The plaintiff in this wrongful dismissal action is Lina Reid (the “Plaintiff”), a sixty (60) year old individual residing in Vancouver, British Columbia. The Plaintiff has an address for service at 580 Hornby Street, Suite 520, Vancouver, BC V6C 3B6, care of Samfiru Tumarkin LLP.
2. The defendant, London Drugs Limited (the “Defendant”), is the Plaintiff’s former employer. The Defendant has an address for service at 1850 – 745 Thurlow Street, Vancouver, BC V6E 0C5, care of Roper Greyell LLP.
3. The Plaintiff was employed with the Defendant for a continuous period of sixteen (16) years and five (5) months. On or about November 1, 2021, the Plaintiff’s employment was constructively dismissed by the Defendant.

Background of Wrongful Dismissal

4. On or around May 5, 2005, the Plaintiff commenced employment with the Defendant in the position of Staff Pharmacist pursuant to a verbal agreement. The Plaintiff was not provided with any letter, contract, or other agreement that limited or otherwise set out her entitlements in the event of termination at the time, or at any time throughout her employment.
5. On or around March 11, 2020, COVID-19 was declared a global pandemic. The Defendant was able to continue operations and ensured a healthy and safe workplace by implementing various safety measures which the Plaintiff followed, such as masking and social distancing. During this time, the Plaintiff adequately carried out her duties and complied with the Defendant’s safety protocols.
6. On or about August 23, 2021, the Defendant announced that it was introducing a mandatory policy that would require COVID-19 vaccination as a condition of employment. The Defendant stated this policy would be enforced effective November 1, 2021 for staff, but

that customers entering the Defendant's retail premises would not be required to show proof of vaccination. The Defendant further specified that it was expected that the policy would be extended to future booster requirements as recommended by public health, but the specific elements and procedures regarding the policy were not provided.

7. On or about October 12, 2021, the Defendant provided the Plaintiff with the COVID-19 Vaccination, Testing, & Records Policy (the "Policy"). The Policy required all employees to be fully vaccinated against COVID-19 by or on November 1, 2021 or, in the alternative, to submit to COVID-19 Testing and any further measures determined necessary. The Policy did not provide details pertaining to the location and manner of testing, and expressly stated that the Defendant reserved the right to charge for such testing.
8. On or about November 1, 2021, the Defendant placed the Plaintiff on an unpaid leave of absence for an undetermined length of time because she was not fully vaccinated and did not consent to COVID-19 Testing pursuant to the terms of the Policy. At no time was the Plaintiff or the Defendant subject to a government or health authority mandate with respect to vaccinations.
9. The Plaintiff pleads that there is no explicit or implicit agreement or term of employment between herself and the Defendant that allowed the Defendant to mandate that the Plaintiff undergo a medical procedure (either vaccination or testing) or for the Defendant to unilaterally place her on an unpaid leave of absence.
10. The Plaintiff pleads that her employment with the Defendant was terminated on November 1, 2021, being the same day that the Defendant placed her on an unpaid leave of absence for the first time in her sixteen (16) year tenure, without work and without pay.
11. In terminating the Plaintiff's employment, the Defendant failed to provide any notice of termination or pay in lieu thereof.
12. At the time of her termination, the Plaintiff worked in the position of Staff Pharmacist and was remunerated with the following:
 - (a) an annual salary of \$83,460.00;

- (b) enrollment in the Defendant's comprehensive benefits package;
- (c) participation in the Defendant's Pension Plan;
- (d) an annual "pay for performance" bonus; and
- (e) five (5) weeks' paid vacation.

13. At the time of her termination, the Plaintiff was sixty (60) years old.

Part 2: RELIEF SOUGHT

1. The Plaintiff seeks the following relief:

- (a) damages for wrongful dismissal equivalent to eighteen (18) months of notice;
- (b) special damages for out-of-pocket expenses incurred in attempting to mitigate her losses and obtain alternate, comparable employment, the full particulars of which will be provided prior to or at trial;
- (c) pre-judgment interest on the aforementioned amounts pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- (d) post-judgment interest on the aforementioned amounts pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
- (e) costs of this action, together with applicable taxes thereon, in accordance with the *Excise Tax Act*, R.S.C. 1985, c. E-15; and
- (f) such further and other relief as counsel may advise and this Honourable Court may permit.

Part 3: LEGAL BASIS

Constructive Dismissal

1. The Plaintiff pleads that by placing her on an unpaid leave of absence without the express

or implied contractual authorization to do so, the Defendant has made fundamental and unilateral changes to the implied and/or express terms of her employment. Accordingly, the Defendant has breached its contractual obligations owed to the Plaintiff and has repudiated the employment relationship in a manner that is irreparable, resulting in the Plaintiff's constructive dismissal.

2. The Plaintiff pleads that she was not subject to any agreement that limited or rebutted the common law presumption of reasonable notice of termination. Therefore, the Plaintiff pleads that it was an implied term of her contract of employment with the Defendant that her employment could only be terminated upon the provision of reasonable notice in accordance with the common law, or pay in lieu thereof, or for just cause.
3. The Plaintiff pleads that there is no explicit or implicit agreement or term of employment between herself and the Defendant that allowed the Defendant to mandate that the Plaintiff get vaccinated as a basis for continued employment.
4. The Plaintiff pleads that since March 2020, the Defendant has been able to operate safely by following public health guidelines, including masking, social distancing, contact tracing and health questionnaires. The Plaintiff specifically pleads that the unilateral decision to now require vaccines and testing could not have been a bona-fide occupational requirement as the Defendant has repeatedly demonstrated that it can safely operate without such a requirement. This point is further underscored by the fact that the British Columbia government has specifically chosen not to impose a vaccine mandate on the Defendant or the general population.
5. The Plaintiff pleads that the Defendant's Policy was ineffective, disproportionate, unreasonable, and unnecessary, for reasons including but not limited to:
 - (a) the Defendant's workplace being sufficiently safe and not having an outbreak prior to its implementation;
 - (b) failing to provide adequate testing conditions;

- (c) failing to demonstrably improve workplace safety or reduce the spread of the COVID-19 virus;
 - (d) being informed and motivated by political reasons and broader policy concerns, and not workplace safety;
 - (e) not considering or allowing for other safe measures or reasonable alternatives; and
 - (f) unduly infringing on the privacy rights and bodily autonomy of the Plaintiff.
6. The Plaintiff pleads that the Defendant did not have cause to terminate her employment and puts the Defendant to the strictest proof thereof.

Wrongful Dismissal Damages

7. The Plaintiff pleads that she is entitled to a reasonable notice period of eighteen (18) months based on the following circumstances:
- (a) her tenure with the Defendant of sixteen (16) years and five (5) months;
 - (b) her position as the most senior Pharmacist at the store and responsibility of team lead;
 - (c) her age of sixty (60) years at the time of termination;
 - (d) the lack of comparable employment; and
 - (e) other factors which will be particularized prior to or at trial.
8. The Plaintiff states that she is entitled to damages for her economic losses as a consequence of the Defendant's failure to provide her with reasonable notice of termination. Specifically, the Plaintiff states that she is entitled to be compensated for the loss of all components of her remuneration package over the applicable notice period, including her wages, benefits, vacation pay, bonus, pension contributions, and any further form of compensation as particularized prior to trial.

Special Damages

9. As a consequence of the wrongful termination of her employment, the Plaintiff pleads that she is entitled to special damages for out-of-pocket expenses incurred in attempting to mitigate her losses and obtain alternate comparable employment, the full particulars of which will be provided prior to or at trial.

Plaintiff's address for service: **Samfiru Tumarkin LLP**
Barristers & Solicitors
580 Hornby Street, Suite 520
Vancouver, BC V6C 3B6

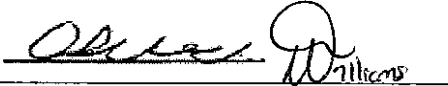
Fax number address for service: 604-637-5621

Email address for service: osaro.obaseki@stlawyers.ca

Place of trial: Vancouver, BC

The address of the registry is: 800 Smithe Street
Vancouver, BC V6Z 2E1

Date: January 28, 2022


Signature of Lawyer for the Plaintiff
Osaro Obaseki Agent for

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:

This is an action for damages for *inter alia*, wrongful dismissal, and lost benefits.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

- a motor vehicle accident
- medical malpractice
- another cause
- 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 issues 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:

- Builders Lien Act
- Divorce Act
- Family Relations Act
- Insurance (Motor Vehicle) Act
- Insurance (Vehicle) Act

- Motor Vehicle Act
- Occupiers Liability Act
- Supreme Court Act
- Wills Variation Act
- Other:

1. *Employment Standards Act*, R.S.B.C. 1996, C. 113