

CA 45034

VANCOUVER

JAN 12 2018

COURT OF APPEAL  
REGISTRY

Court of Appeal File No. \_\_\_\_\_  
Supreme Court File No.: S-162957  
Supreme Court Registry: Vancouver

COURT OF APPEAL

BETWEEN

MANDALENA LEWIS

Respondent  
(Plaintiff)

AND

WESTJET AIRLINES LTD.

Appellant  
(Defendant)

NOTICE OF APPEAL

Take notice that the Defendant, WESTJET AIRLINES LTD. ("WestJet"), hereby appeals to the Court of Appeal for British Columbia from the order of The Honourable Madam Justice Humphries of the Supreme Court of British Columbia pronounced the 15<sup>th</sup> day of December, 2017 at Vancouver, British Columbia regarding the Application of WestJet to strike out the whole or part of the Notice of Civil Claim.

1. The appeal is from a:

- Trial Judgment
- Summary Trial Judgment
- Order of a Statutory Body
- Chambers Judgment

2. If the appeal is from an appeal under Rule 18-3 or 23-6 (8) of the Supreme Court Civil Rules or Rule 18-3 or 22-7 (8) of the Supreme Court Family Rules, name the maker of the original decision, direction or order:

N/A

3. Please identify which of the following is involved in the appeal:

- Constitutional/Administrative
- Civil Procedure
- Commercial
- Motor Vehicle Accidents
- Municipal Law
- Real Property
- Torts
- Equity
- Wills and Estates

Family -

- Family Relations Act*
- Corollary Relief in a Divorce Proceeding*
- Other Family*

*(The Divorce Registry will, as applicable, be notified by the Court of Appeal Registry on filing if the appeal involves divorce, corollary relief in divorce proceeding or matters under the Family Relations Act)*

And further take notice that the Court of Appeal will be moved at the hearing of this appeal for an Order:

1. Quashing the Judgment of Madam Justice Humphries, and further that the Plaintiff's Notice of Civil Claim be struck out, in whole or in part, pursuant to Rules 9-5(1)(a) and 9-5(1)(b) of the *Supreme Court Rules*, BC Reg 168/2009, as this action is appropriately brought before the Canadian Human Rights Tribunal and the provincial Workers Compensation Boards;
2. Further, and in the alternative, that:
  - (a) paragraphs 6, 20, 62-63 of Part 1;
  - (b) paragraph 1(d) of Part 2; and
  - (c) paragraphs 3-6 of Part 3of the Plaintiff's Notice of Civil Claim be struck out pursuant to Rule 9-5(1)(a) of the *Supreme Court Civil Rules*, as they do not disclose a reasonable cause of action being that restitutionary disgorgement is not a remedy available to the Plaintiff;
3. Further, and in the alternative, that the Plaintiff's Notice of Civil Claim be struck out, in whole or in part, in particular paragraphs 22-40 of Part 1 that describe allegations of activities that occurred more than two years prior to April 4, 2016, as the claim is time barred by the operation of the *Limitation Act*, RSBC 1196, c. 266;
4. Further, and in the alternative, that the Plaintiff's Notice of Civil Claim be struck out, in whole or in part, pursuant to Rule 9-5(1)(d) of the *Supreme Court Civil Rules*, as this action is otherwise an abuse of process of the Court;
5. In any event, that the Judgment of Madam Justice Humphries be stayed pending the disposition of this application and any subsequent appeal;
6. That costs of this action be awarded to WestJet, or in the alternative costs of this application be awarded to WestJet; and
7. Granting such further and other relief that this Honourable Court deems just.

The hearing of this proceeding occupied two (2) days.

Dated at Calgary, Alberta, January 12, 2018.

*Don Dear*

for Don Dear, Q.C.  
Solicitor for the Appellant, WestJet  
Airlines Ltd.

To: The Respondent:  
Mandalena Lewis

And to: Her solicitors:  
JFK Law Corporation, Karey Brooks & Tim Dickson

This Notice of Appeal is given by Don Dear, Q.C. of the firm McLennan Ross LLP, whose address for service is: c/o Michael Dery, Alexander Holburn LLP, Suite 2700-700 W Georgia St, Vancouver BC V7Y 1B8; Telephone (McLennan Ross LLP): (403) 303-9107

To the respondent:

IF YOU INTEND TO PARTICIPATE in this appeal, YOU MUST GIVE NOTICE of your intention by filing a form entitled "Notice of Appearance" (Form 2 of the Court of Appeal Rules) in a Court of Appeal registry and serve the notice of appearance on the appellant WITHIN 10 DAYS of receiving this Notice of Appeal.

IF YOU FAIL TO FILE A NOTICE OF APPEARANCE:

- (a) you are deemed to take no position on the appeal, and
- (b) the parties are not obliged to serve any further documents on you.

The filing registries for the British Columbia Court of Appeal are as follows:

*Central Registry:*

B.C. Court of Appeal  
The Law Courts  
800 Smithe Street  
Vancouver, B.C. V6Z 2E1

*Other Registries:*

B.C. Court of Appeal  
The Law Courts  
P.O. Box 9248, Station Provincial Government  
850 Burdette Avenue  
Victoria, B.C. V8W 1B4

B.C. Court of Appeal  
223 – 455 Columbia Street  
Kamloops, B.C. V2C 6K4

Inquiries should be addressed to (604) 660-2468  
Fax filings: (604) 660-1951