Case In Point

Appellate Court Considers Contractual Rights Upon Termination

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The Court of Appeal recently considered the issue of an employee's contractual rights versus his common law rights upon the termination of his employment.

In *Mikelsteins v. Morrison Hershfield Limited*, the defendant employer appealed a partial summary judgment that had awarded the plaintiff, a former employee, an increased value for shares that had been bought back by the defendant when the employment ended. The motion judge held that the value of the shares had to be calculated as of the last day of the common law reasonable notice period, rather than the much earlier date of when the employment actually ended.

The Court of Appeal allowed the appeal. It stated that the motion judge had conflated two forms of compensation owing to the plaintiff when he was dismissed: his common law rights arising from the end of his employment and his contractual rights arising from the operation of the company's Shareholders' Agreement (Agreement), through which the defendant had bought back the plaintiff's shares in the company.

The Court of Appeal explained that "the fact that a dismissed employee may be entitled to certain benefits during the notice period does not change the date when his or her employment ends." Under the terms of the Agreement, the share buyback occurred when the plaintiff's employment ended, not at the end of whatever notice period may have been owed to him under the common law. As a result, for the purposes of the buyback, the value of the shares was to be determined at the date the plaintiff's employment actually ended. The common law reasonable notice did not affect those terms.

Mikelsteins serves as an important reminder that various rights are at issue at the time of termination. Contractual terms regarding termination (such as those found in a Shareholders' Agreement) which are express and enforceable will govern applicable entitlements upon termination, rather than the common law.