Case In Point

Ontario Court of Appeal Comments on Notice Entitlements Following an Asset Transaction

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In *Manthadi v. ASCO Manufacturing*, the Ontario Court of Appeal unanimously found that summary judgment was not appropriate in a case where a plaintiff was awarded 20 months' reasonable notice damages after one month service with a company (Purchaser) that had bought the assets of her former employer (Vendor). The Court set aside the summary judgment and ordered that the matter proceed to trial. In doing so, it reviewed the law on reasonable notice owed to an employee whose employment was terminated by a vendor and who was then hired by the purchaser.

The plaintiff was employed by the Vendor for approximately 36 years before she was given notice that the business would be sold and her employment would be terminated. She was told that she would be offered continued employment with the Purchaser. The plaintiff signed a Settlement and Release Agreement which provided her with notice and released the Vendor from all liability associated with her employment.

The plaintiff was employed by the Purchaser for just over one month before being laid off and never recalled. The plaintiff brought a claim for wrongful dismissal against the Purchaser under the simplified procedure in the *Rules of Civil Procedure.* The Purchaser brought a third party claim against the Vendor.

There was a dispute between the parties about whether the Purchaser hired the employee on a temporary basis or as an indefinite employee to continue her duties. There was also a dispute about whether or not there was an express understanding about whether the employee's service with the Purchaser would be credited with her years of service with the Vendor.

Despite these unresolved disputes, the motion judge found the material facts on the motion were either admitted or not refuted and any matters in conflict were not material and would not impact her decision. Summary judgment was granted Vendor and the Vendor was ordered to pay 20 months' reasonable based on continuous employment of 36 years.

The Purchaser appealed to the Court of Appeal. The Court held that the motion judge erred in deciding that the motion for summary judgment was appropriate in the circumstances. The factual disputes that were not – and could not – be resolved on the record before the motion judge and were genuine issues requiring a trial.

Specifically, the nature of the plaintiff's employment contract (fixed versus indefinite employment), the impact of the Settlement and Release Agreement, and the treatment of her past service were all material to the application of the common law. Without resolving these issues, the Court could not determine the existence and extent of the plaintiff's entitlements upon termination.

The Court also commented on the calculation of reasonable notice for an employee whose employment was terminated by the vendor and who was hired by the purchaser. The Court confirmed that *Addison v. M. Loeb Ltd.* remains the law in Ontario. The Court in *Addison* found that prior service need not be "stitched together" with service with the purchaser. Rather, "it recognized the employee's service with the vendor by appropriately weighing the employee's experience and the benefit of that experience to the purchaser." This approach at common law is distinct from the requirements under the *Employment Standards Act, 2000.*

Key Takeaways

Employers involved in, or considering, asset purchases should be aware of the impact of the common law when making offers of employment to employees of the vendor. Despite the signing of a release, an employee's past service with the vendor may still be a factor in the calculation of common law damages upon termination of employment by the purchaser, but not by "stitching together" that past service with the current service. As stated by the Court, "reasonable notice is determined by applying the usual *Bardal* factors considering all the circumstances of the particular case and appropriately weighing the experience a long-time employee brings to the purchaser."