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EDITOR: TERRANCE S. CARTER

COURT UPHOLDS EMPLOYEE TERMINATION CLAUSE IN CONTRACT

By Barry W. Kwasniewski*

A. INTRODUCTION

The Ontario Superior Court of Justice released its decision in *Simpson v Global Warranty Management Corp.* ("*Simpson*")[1] on February 4, 2014. In this case, Eoin Simpson (the "plaintiff"), who was employed as a claims adjuster for Global Warranty Management Corp. (the "defendant"), brought an action against the defendant for damages for alleged wrongful dismissal. The important issue in this decision was whether the employer may rely on a contractual termination "without cause" clause limiting the employee to those minimum amounts of termination pay prescribed by the *Employment Standards Act, 2000* ("ESA")[2], notwithstanding that the employer defended the lawsuit on the basis that the termination was for "just cause". This *Charity Law Bulletin* explores the *Simpson* decision, which upheld the employment contract limiting the plaintiff to minimum termination pay entitlements under the ESA, and explains how this case relates to charities and not-for-profits.

B. FACTS

The plaintiff was an employee for the defendant. Prior to commencing work for the defendant in May 2003, the plaintiff voluntarily signed a letter accepting the terms of a written employment contract. The employment contract included a termination clause stating that:

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* Barry W. Kwasniewski, B.B.A., LL.B., practices employment and risk management law with Carters' Ottawa office and would like to thank Adriel N. Clayton, B.A. (Hons.), J.D., Student-At-Law, for his assistance in the preparation of this *Bulletin*.

[1] *Simpson v Global Warranty Management Corp*, 2014 ONSC 724, available online at: <http://canlii.ca/t/g64bh>.

[2] *Employment Standards Act, 2000*, SO 2000, c 41.

> …unless an employee is terminated for cause, an employee's employment may be terminated at the sole discretion of the Employer and for any reason whatsoever upon providing the employee with one (1) week's notice or pay in lieu thereof, subject to any additional notice, pay in lieu thereof or severance that may be required to meet the minimum requirements of the *Employment Standards Act* R.S.O. 1990, c.E 14, as amended from time to time.[3]

The plaintiff continued in his employment for almost eight years. However, on February 4, 2010, the plaintiff was advised by the defendant that he was being laid off for a period of time. He was not recalled within the time period specified in the ESA, and was subsequently paid an amount equivalent to thirty days pay, plus accrued vacation pay.

The plaintiff challenged the "lay-off", claiming it constituted a wrongful dismissal, and sought damages equivalent to twelve months pay in lieu of notice. The defendant defended the lawsuit on the basis that it had just cause to terminate the plaintiff, and that if just cause did not exist, his damages were limited to the amounts prescribed in the above termination clause, which had already been paid.

C. DISMISSAL FOR JUST CAUSE

The court first considered whether or not the plaintiff was dismissed for just cause. The plaintiff took the position that the February 4, 2010 "lay-off" did not allege cause. In support of that position,he noted that an email received on February 5, 2010 stated that if he was not recalled within 13 weeks, he would receive 30 days' pay in lieu of notice, along with further amounts for vacation pay. According to the plaintiff, these actions by the employer were not indicative of any "just cause" termination.

The defendant claimed that the plaintiff was dismissed for cause, as the plaintiff "was not performing to acceptable standards" and his conduct justified termination. The defendant also alleged that it couched the termination as a "lay-off" to cushion the personal impact on the plaintiff. To assess the evidence regarding the reason for the dismissal, the court examined the plaintiff's performance appraisals, which awarded the plaintiff three ratings of "very good", six ratings of "good", and just one rating of "below average". Upon reviewing all the evidence, the court found that the plaintiff's performance could not meet the legal standard to justify dismissal for cause. In the result, the court agreed with the plaintiff that he was not dismissed for just cause.

[3] *Supra* note 1 at para 8.

D. RELIANCE ON THE EMPLOYMENT CONTRACT

After finding that the plaintiff was not dismissed for just cause, the court turned to the important question of whether the employment contract precluded the plaintiff from being awarded damages apart from the minimum allowable under the ESA, as set out in the employment contract. The plaintiff argued that the damage limitation clause in the employment contract could not be relied on, as it was followed by the words "…unless an employee is terminated for cause…" The plaintiff further argued that the defendant could not rely on the damage limitation clause because it had alleged "just cause" in its defence to the plaintiff's claim.

However, the court rejected this argument, relying instead on other wording in the employment contract that stated that damages would be limited to the minimum prescribed by the ESA. It compared the damage limitation clause in this case to that in a similar case, *Roden v The Toronto Human Society* ("*Roden*")[4]. In that case, the Ontario Court of Appeal referred to the Supreme Court of Canada case of *Machtinger v HOJ Industries Ltd* ("*Machtinger*")[5] and stated that an employment contract that provides for less than the statutory minimum notice required by the ESA is void. However, the "without cause" termination provisions were held to be valid in both *Roden* and *Machtinger*, as they incorporated the minimum notice periods prescribed by the ESA. For this reason, the court held that the damage limitation clause in *Simpson* was also valid.

The court then provided further analysis as to the basis upon which the defendant could rely on the employment contract. It relied on *Roden*, a case in which the employees argued that the employer could not raise just cause as a defence because the employer had treated the employees as if they were dismissed without cause. The Court of Appeal in *Roden* held that the employer could raise just cause as a defence, as the question of cause was a live issue that was raised in the statement of defence. The Court of Appeal further stated the fact that prior to litigation, the employer initially treated the dismissals as if they were without cause was not determinative of their legal rights and obligations.

In *Simpson*, the defendant also treated the plaintiff as if he was dismissed without cause prior to litigation, paying the plaintiff 30 days' salary (*i.e.* the minimum notice period required by the ESA given the plaintiff's length of service). Similarly, the court stated that the defendant's pre-litigation conduct did not preclude it

[4] *Roden v The Toronto Humane Society*, 259 DLR (4th) 89, available online at <http://canlii.ca/t/1lmtb>.
[5] *Machtinger v HOJ Industries LTD*, [1992] 1 SCR 986, available online at <http://canlii.ca/t/1fsd2>.

from relying on a just cause defence, or from arguing in the alternative that the plaintiff was dismissed without cause but that the damage limitation clause ought to apply."[6]

Based on the above reasons, the court held that the purpose of the limitation clause was to limit the plaintiff's damages to the minimum damages required under the ESA in cases of dismissal without cause. The court stated that there was no ambiguity in the employment contract, and the plaintiff voluntarily signed the employment contract. As such, as the plaintiff was found by the court to have been dismissed without cause, the court held that the plaintiff was limited to the minimum damages allowable under the ESA in accordance with the employment contract. The plaintiff's claim was therefore dismissed.

E. CONCLUSION

The *Simpson* case demonstrates to all employers, including charities and not-for-profits, the importance of properly drafted termination clauses in employment contracts in order to effectively limit their potential liability for terminated employees. Through proper drafting, charities and not-for-profits may, as demonstrated in *Simpson*, be able to limit their termination liability to the minimums allowable under labour standards legislation. Such contractual terms are of particular importance to charities and not-for-profits, which may not have available funds to pay large termination packages to terminated employees.

[6] *Supra* note 1 at para 69.