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COURT REINSTATES MILLION DOLLAR DAMAGES AWARD TO CONSTRUCTIVELY DISMISSED EMPLOYEE

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On October 9, 2020, the Supreme Court of Canada issued its much-anticipated decision in *Matthews v Ocean Nutrition Canada Ltd*[1] in which it reinstated a $1.1 million dollar damages award for an employee who had been constructively dismissed. In writing the decision, the Supreme Court of Canada took the opportunity to clarify the law relating to damages for wrongful dismissal, and in particular, when bonus or incentive payments are owed to an employee. The case sets a high standard for employers to meet when seeking to limit an employee's right to incentive or bonus payments during a reasonable notice period.

Factual Background and Case History

Mr. Matthews was a long term employee of Ocean Nutrition Canada Limited ("**Ocean**" or "**Company**"), having worked with the Company in a number of management positions from 1997 to 2011. As part of Ocean's senior management team, Mr. Matthews participated in Ocean's Long Term Incentive Plan ("**LTIP**"). Under the terms of the LTIP, employees were entitled to receive a payout upon the occurrence of a "Realization Event", which included a sale of the Company.

Approximately 10 years into Mr. Matthews' employment with Ocean, Ocean hired a new Chief Operating Officer ("**COO**"). Shortly thereafter, the COO commenced a "campaign to marginalize" Mr. Matthews by limiting his responsibilities, changing his title and being dishonest with him about his status with Ocean. Although Mr. Matthews wanted to remain with Ocean, Mr. Matthews eventually resigned from his position and commenced employment with a new employer.

Thirteen months following Mr. Matthews' resignation, Ocean was sold. The sale constituted a Realization Event and resulted in a payout to employees who were eligible under the LTIP. Ocean took the position that Mr. Matthews was not entitled to payment under the LTIP because he was no longer actively employed by Ocean.

Mr. Matthews commenced an action against Ocean alleging that he had been constructively dismissed, and sought reasonable notice damages, as well as payment under the LTIP. He also alleged that the constructive dismissal was carried out in a way that breached Ocean's duty of good faith.

At trial, Ocean took the position that Mr. Matthews did not qualify for payment under the LTIP because he was not actively employed by Ocean at the time of the Realization Event. Ocean relied on the following limiting provisions of the LTIP:

"2.03 CONDITIONS PRECEDENT:

ONC shall have no obligation under this Agreement to the Employee unless on the date of a Realization Event the Employee is a full-time employee of ONC. For greater certainty, this Agreement shall be of no force or effect if the employee ceases to be an employee of ONC, regardless of whether the Employee resigns or is terminated, with or without cause. [...]

2.05 GENERAL:

<u>The Long Term Value Creation Bonus Plan does not have any current or future value other than on the date of the Realization Event and shall not be calculated as part of the Employee's compensation for any purpose, including in connection with the Employee's resignation or in any severance calculation."</u>

The trial judge found that Mr. Matthews had been constructively dismissed and was entitled to 15 months' pay in lieu of reasonable notice. In addition, the trial judge found that Mr. Matthews was entitled to damages in the amount of $1.1 million on account of payment under the LTIP.

Ocean appealed the decision to the Nova Scotia Court of Appeal. The Nova Scotia Court of Appeal upheld the finding that Mr. Matthews had been constructively dismissed, but overturned the decision relating to the LTIP payment on the basis that the LTIP was sufficiently clear to eliminate any right to a payout after employment had ended.

Mr. Matthews appealed the decision to the Supreme Court of Canada.

The SCC Decision

In a unanimous decision, the Supreme Court of Canada allowed the appeal, set aside the Court of Appeal's decision, and restored the trial judgment and damage award to Mr. Matthews. In making the decision, the Court clarified the law relating to damages for wrongfully terminated employees.

The Court confirmed that it is an implied duty of every employment agreement that an employee is entitled to reasonable notice upon termination. If an employee is terminated without appropriate reasonable notice, then the employee is entitled to damages for breach of this implied term, and those damages will include all of the salary including bonuses that an employee would have earned had the employee continued to work through the reasonable notice period.

When determining whether the damages for breach of this implied term includes bonus payments or other benefits, the Court stated that two questions must be asked:

1. Would the employee have been entitled to the bonus or benefit as part of their compensation during the reasonable notice period; and
2. If so, do the terms of the employment contract or bonus plan unambiguously take away or limit that common law right?

In Mr. Matthews' case, the Court found that had Mr. Matthews worked through the reasonable notice period, he would have been employed when the Realization Event occurred and would have been entitled to the LTIP payment. With respect to the second question, the Court examined the limiting provisions of the LTIP and found that the provisions did not "clearly and unambiguously" limit Mr. Matthews' common law right. In particular, the Court found that:

- Language requiring an employee to be "full-time" or "active" will not suffice to remove an employee's right to common law damages because if an employee had been provided with reasonable notice, they would be "full-time" or actively employed" throughout the reasonable notice period; and
- Language that purports to remove an employee's common law right to damages upon termination "with or without cause" will not suffice to remove an employee's right to common law damages when an employee has been terminated without notice, because a termination without reasonable notice does not equate to a "without cause" termination. A termination without reasonable notice is instead an "unlawful" termination and such an event was not provided for in the limiting provisions.

The Court went on to say that even if the clause had referred to an "unlawful termination", this would not still not suffice to unambiguously alter the employee's common law entitlement.

Good Faith

On the issue of good faith, the Court made it clear that the contractual breach of duty of good faith is separate and distinct from the failure to provide reasonable notice. While the Court commented generally on a duty of good faith, the Court declined to rule on whether a broader duty of good faith exists during the life of the employment contract, stating only that "one day (a duty of good faith) may bind the employer based on mutual obligation of loyalty in a non-fiduciary sense during the life of the employment agreement".

Takeaways for Employers

This case sets an extremely high standard for employers who are seeking to limit an employee's common law right to bonus or incentive payments during a reasonable notice period. Employers should be vigilant moving forward that any limitation or exclusion clauses are “absolutely clear and unambiguous” and cover any potential circumstance that may arise. Employers may also wish to review their current contracts and incentive plans to ensure that the limiting language is consistent with the Court’s decision in this case.

Only time will tell whether, one day, on the appropriate facts, a Court may recognize a broader duty of good faith extending throughout the employment relationship. For now, employers can expect that this argument will continue to be raised by litigants, and as such, employers should be careful to conduct themselves with good faith throughout the entirety of the employment relationship.

by Dianne Rideout and Fiona Wong (Articled Student)

[1] 2020 SCC 26 [*Matthews*].[ps2id id='1' target=''/]

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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