"DON'T WORRY, WE ALL KNOW WHAT THAT CLAUSE MEANS" – COURT REAFFIRMS THE IMPORTANCE OF CAREFULLY DRAFTING FIXED-TERM EMPLOYMENT AGREEMENTS

Posted on June 21, 2018

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Businesses and employees alike have been repeatedly reminded by their lawyers that employment contracts must be carefully and clearly drafted. The Ontario Superior Court recently pronounced itself on this issue in *Norgren v. Plasma Power LLC*.

In Norgren, the terminated plaintiff sought a ruling that his employment contract was for a 3-year, fixed-term, notwithstanding an early termination without cause from his employer. He argued that he was, therefore, entitled to be paid for the entire remaining balance of the contract upon termination. Contrary to the usual positions taken in fixed-term cases, the employer, in Norgren, argued that the employee was (only) entitled to common law notice.

The contract contained only one statement indicating that it might be for a fixed term: "[the agreement] will time out in 3 years and the goals will be reset." With no other language or reasonable indicator that the contract was meant to expire after three years, the Court ruled that the above phrase was insufficient to denote a fixed-term contract.

In discussing what is required for a fixed-term employment agreement, the Court wrote that it must determine whether there is any ambiguity to the language relied upon. In this case, the term "and the goals will be reset" was unambiguous, just not in the way the plaintiff employee would have liked. Rather than stipulate a fixed-term, using language that evidenced some kind of surviving obligation demonstrated an intention to have an indefinite employment term. As a rule, to find that there is a fixed-term contract requires unequivocal and unambiguous language to that effect.

As a result, the Court awarded Norgren common law notice of termination; not the full contract value which he sought.

Takeaways for Employers

Fixed-term agreements continue to be scrutinized by the courts. Norgren demonstrates the importance of

using unequivocal contract language, especially when establishing a fixed-term employment contract. A Court will not find that an employee's term of employment is fixed unless a contract explicitly says as much and lacks indicators of a contrary intention.

Interestingly, the Court was silent on Ontario Regulation 288/01 to the *Employment Standards Act, 2000* "Termination and Severance of Employment". Section 2 of the Regulation stipulates that the termination without cause entitlements in the ESA are not applicable where a contract term has expired, unless the task for which the employee was hired lasts more than 12 months or is not yet completed in 12 months. It is likely that the Court did not consider the Regulation because the employee was, at least, entitled to common law rather than the statutory notice of termination. Nevertheless, employers should be aware of this important stipulation before considering a fixed-term employment agreement.

by Kyle Lambert and Martin Thompson

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