

EMPLOYMENT AGREEMENT CAN INCLUDE COVER EMAIL PRESENTING IT

Posted on January 24, 2017

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Many employers mistakenly believe that they have an “ironclad” contract which limits employee severance obligations. The recent decision in *Ballim v. Bausch & Lomb Canada Inc.*, 2016 ONSC 6307 confirms that this is not always the case: even if the document “looks clean”, a covering email which attaches an agreement or offer can be used to determine the intention of the parties.

Background Facts

In the fall of 2015, Bausch & Lomb Canada Inc. interviewed Sandra Ballim about possible employment. The position involved replacing an employee who was going on maternity leave.

Following two successful interviews, Ballim was sent an email with the subject noted as “Offer”. The email attached an employment agreement and also stated as follows: “It is a one year contract.” At trial, the evidence was that this one year term reference was not solicited by Ballim.

The employment agreement, which the company prepared, did not contain a termination clause. The document as presented in the email was signed back by Ballim without amendment or apparent discussion, particularly regarding the term of the agreement.

In February 2016, Ballim’s employment was terminated without cause, and she was offered three weeks pay in lieu of notice.

Positions of Parties

Ballim refused the company’s offer, which had been based on the amount arguably owing to a short service employee who had been hired on an indefinite contract. Ballim claimed that there was a one year fixed term contract which the company had terminated. As a result, she sought damages equal to the balance of the one year contract term.

The company took the position that the contract itself was silent on the alleged one year term, and it was not permissible to introduce statements made verbally or in emails prior to the execution of the written

agreement.

Decision

The case was decided by way of summary judgment, with the Court ruling in favour of Ballim. The email was found to be part of the agreement, being characterized as “inextricably tied to the terms of the employment contract...”

In addition, the Court noted that there was no “entire agreement” clause in the contract which might have cancelled out the effect of the email or related discussions. The wording of the agreement was also potentially an issue, since it referred to Ballim being hired “on contract” as opposed to indefinitely.

The Court noted that it is employees who have the onus of establishing that their employment is for a fixed term. To be fixed, the intention of the parties must be clearly expressed and unequivocal. In this particular case, the surrounding context was a maternity leave replacement, which implied a one year position. This was reinforced by the express wording of the covering email, and was not displaced by the terms of the agreement.

Employer Takeaways

Each case of employment contract interpretation will turn on its facts. The Ballim decision confirms that one potential fact which can be relied upon by employees is an email from HR sent with their offer letter. This outcome reinforces the importance for employers to take great care in how they manage recruitment communications and any documentation with refers or relates to employment agreements.

By George Waggott

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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