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An Employer's $115K Mistake in a Wrongful Dismissal Settlement

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On November 9, 2020, Brown J.A., writing for a unanimous Ontario Court of Appeal, released his decision in *Kearns v Canadian Tire Corporation Limited*, upholding the 2019 decision of the Ontario Superior Court. The Court of Appeal held that while the employer had made a unilateral mistake in making a payment in error to the plaintiff after his termination, there was no fraud on the employee's part. As a result, the Court of Appeal found that the Minutes of Settlement constituted a binding and enforceable contract. The employer was liable to pay the full amount under the Minutes of Settlement and could not deduct the amount of the payment that was previously made in error.

BACKGROUND

The plaintiff, Jamie Kearns, was employed as an Associate Vice-President by Canadian Tire Corporation, Limited ("Canadian Tire") or affiliated dealers for 27 years. He was terminated without cause at the age of 53. His termination letter identified two kinds of compensation: (i) "guaranteed" payments representing 8 weeks' base salary in lieu of notice, 12 weeks of severance pay as required by the *Employment Standards Act, 2000* and certain incentive payments; and (ii) an offer of "contingent" payments equal to 30 weeks' salary in exchange for a full release and indemnity.

Mr. Kearns did not accept Canadian Tire's offer and commenced a lawsuit for wrongful dismissal, seeking 24 months' pay in lieu of notice as well as associated performance payments and benefits. The parties reached a settlement through the mandatory mediation process (the "Minutes of Settlement"). The Minutes of Settlement stated that Canadian Tire would provide Mr. Kearns with a $150,000 payment "in addition to amounts already paid."

By the time of mediation, Mr. Kearns had received three termination-related payments. Canadian Tire's representatives who attended the mediation were not aware of the third payment, which was approximately $115,000. Upon realizing the payment of this third amount, Canadian Tire advised Mr. Kearns that its payroll personnel mistakenly paid out "gratuitous" separation support payments that were offered to him in the termination letter in exchange for a release. Canadian Tire described this payment as an overpayment and therefore the remaining amount payable pursuant to the Minutes of Settlement was approximately $45,000.

Mr. Kearns brought a motion for judgment to enforce the Minutes of Settlement, and Canadian Tire brought a cross-motion seeking judgment in favour of the amount in the Minutes of Settlement, less the amount it alleged was mistakenly paid prior to the mediation. The motion judge held in favour of Mr. Kearns, enforcing the Minutes of Settlement, and dismissed Canadian Tire's cross-motion. Canadian Tire appealed the motion judge's findings.

THE ISSUES

The four issues before the Ontario Court of Appeal were whether the motion judge erred:

1. in applying the principles of contractual interpretation with respect to paragraph 1 of the Minutes of Settlement;
2. by finding the parties were *ad idem* on the terms of the Minutes of Settlement;
3. in failing to find that Mr. Kearns acted in bad faith by not disclosing the "mistaken" in the context of the settlement of his entitlements under his employment contract; or
4. by finding that the matter could be resolved on a motion and without the need to exercise his powers under r. 20 or defer the matter to trial.

ANALYSIS

Brown J.A. found no reversible error in the motion judge's analysis and findings, as the motion judge applied the appropriate legal principles regarding the enforcement of minutes of settlement..

Brown J.A. outlined the legal test to succeed on an assertion of unilateral mistake: Canadian Tire must establish that a mistake occurred and there was fraud or the equivalent of fraud on the part of Mr. Kearns (i.e. he knew or must be taken to have known that when the Minutes of Settlement were executed, Canadian Tire misunderstood its significance and he did nothing to enlighten them).

Firstly, the court found that while the company's representatives who participated in the mediation may not have known about the last payment, others in the company certainly knew. The last payment was clearly reflected in Canadian Tire's payroll records and the company's representatives who participated at the mediation admitted they had reviewed Mr. Kearns' pay stubs. Secondly, the court rejected Canadian Tire's argument that the motion judge failed to consider the subjective understanding of the parties at the mediation, finding that the factual matrix only consists of the objective evidence at the time of the contract. Lastly, the court found that Canadian Tire's position contradicted its statement of issues filed at the mediation, in which Canadian Tire stated that it had provided Mr. Kearns with 30 weeks' pay in lieu of notice in addition to its minimum statutory termination payment requirements. Accordingly, the Court of Appeal found that there was no fraud or bad faith on the part of Mr. Kearns.

On the final issue, the Court of Appeal upheld the motion judge's determination of the matter by way of motion.

LESSONS FOR EMPLOYERS

The Court of Appeal's decision in *Kearns* provides the following lessons for employers:

- **A deal's a deal**: A negotiated settlement agreement constitutes a binding contract, absent exceptional circumstances, such as a mistake together with fraud.
- **The left hand needs to know the right hand has done**: Individuals who are negotiating binding agreements on behalf of the employer should obtain all the necessary information beforehand.
- **The devil is in the details (or the drafting)**. Carefully worded terms of settlement will minimize the risk of disputes regarding the interpretation or enforcement of the settlement. In *Kearns*, the dispute would likely have been avoided if the "amounts already paid" in the Minutes of Settlement were specified. Documents that are intended to impose obligations or limitations on one or more parties should be reviewed or prepared by legal counsel.

For more information on the topic discussed in this update, or for legal advice regarding this topic or any other employment law matter, please contact a member of WeirFoulds' Employment Law Group.

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