Employers Beware: Ontario Court Of Appeal Upholds Exceptional Ruling In Wrongful Dismissal Case

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In its recent decision, *Ruston v. Keddco MFG. (2011) Ltd.*, 2019 ONCA 125 (*Keddco*), the Ontario Court of Appeal upheld an extraordinary damages award and unusually high costs ruling against an employer due to its breach of the duty of good faith and fair dealing in the manner of dismissal. The case serves as an opportunity for employers to learn from another's mistakes.

Facts

The plaintiff, Scott Ruston, was first hired by the defendant employer, Keddco, as a sales representative in 2004. Over the course of his employment, he advanced quickly, and was promoted to president of the company in 2011.

In 2015, Keddco terminated Ruston's employment, claiming that he was being terminated for cause and that he had committed fraud. When Ruston indicated that he would be retaining legal representation, Keddco advised him that, if he hired a lawyer, it would counter-claim against him and that it would be very expensive.

When Ruston filed a statement of claim seeking damages for wrongful dismissal, Keddco responded with a statement of defence and counter-claim alleging cause and claiming damages of $1.7 million for unjust enrichment, breach of fiduciary duty and fraud, as well as $50,000 in punitive damages.

Decision

Lower Court

The trial judge found that Keddco had failed to prove cause or any of its other allegations against Ruston. She also found that its counter-claim for $1.7 million in damages was an intimidation tactic and that Keddco had breached its obligation of good faith and fair dealing in the manner of Ruston's dismissal. The counter-claim was dismissed in its entirety and Ruston was awarded the following damages:

1. Pay in lieu of reasonable notice based on a 19-month notice period, including bonus and benefits
2. $100,000 in punitive damages
3. $25,000 in moral damages

Ruston was also awarded $546,684.73 in substantial indemnity costs in a separate costs decision.

Keddco appealed all of the above damages amounts and sought leave to appeal the costs award.

Court of Appeal

The Court of Appeal upheld all aspects of the lower court's ruling and dismissed Keddco's appeal in its entirety.

First, the court found that the trial judge had given "careful and cogent reasons" for her award of a 19-month notice period, noting that Ruston's age (54 years), that he had family ties to a smaller area for the purpose of finding similar employment, and that he was terminated for serious allegations of cause and was not provided with a letter of reference, justified the longer notice period.

Second, the court found that the moral damages award was warranted based on Keddco's manner of dismissal, which included threatening Ruston not to make a claim and commencing a counter-claim, both of which caused Ruston stress.

The court also upheld the punitive damages award, dismissing Keddco's argument that the trial judge had erred by failing to consider the punitive aspects of a substantial costs award and compensatory damages. The court held that the trial judge referring to the same underlying conduct in making both the moral and punitive damages awards did not amount to double punishment as the two heads of damages serve distinct purposes. There was no basis upon which to interfere with the trial judge's award, as the employer's conduct was deserving of denunciation and the trial judge had been "alive to the concerns about double compensation."

Finally, the court denied the motion for leave to appeal from the costs award, finding it fair and reasonable in the circumstances.

Commentary

The *Keddco* decision is a potent reminder for employers to satisfy their duty of good faith and fair dealing when dismissing an employee.

The ruling underscores that allegations of cause should not be made lightly, and certainly not in a bad faith or unfair manner.

Where employers breach the duty of good faith and fair dealing, including by making baseless cause allegations, they face the risk of being liable for significant amounts for both moral ***and*** punitive damages and a substantial costs award.

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