False Allegations of Cause Prove Costly for Employer

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Employers who choose to raise unfounded allegations of just cause for strategic reasons, to avoid severance costs or to use such allegations as leverage to reduce their severance obligations, ought to beware. The end result could be more costly. This clear message was sent to an Ontario employer, Altus Group Limited ("Altus"), in a recent Ontario Superior Court decision.1

Alan Gordon sold the assets of his business to Altus in November 2008. Some of the sale proceeds were linked to the performance of the business after closing, with the provision of an adjustment to the purchase price by February 2010 based on the company's performance. Mr. Gordon was hired to continue as an employee of Altus post-sale under a written fixed term employment agreement. The agreement included an express termination provision. Conflict developed between Gordon and Altus as the parties approached the purchase price adjustment date, and Mr. Gordon gave notice to activate the arbitration clause in the purchase agreement to resolve the dispute.

In March 2010, Altus terminated Mr. Gordon's employment for cause. Amongst its allegations were that he had spoken to senior management in a derogatory manner, swore often in the workplace, and was generally unpleasant to work with. In addition, Altus alleged and that Mr. Gordon had failed to disclose lending money to a company with which Altus was doing business, placing him in a conflict of interest. Altus also alleged that Mr. Gordon had hired and continued to employ an individual who had been charged with fraud.

However, Justice Glass concluded there was little merit in the employer's allegations, and that once Mr. Gordon gave notice to arbitrate the purchase price adjustment, Altus wanted to end the employment contract without paying him severance. "In other words, they decided to be cheap and then conjured up a cause for firing in order to save money."2Justice Glass concluded that Altus' actions were outrageous and warranted punitive damages in the amount of $100,000. In arriving at the quantum, the court stated, "that sum of money notes the harsh treatment of Alan Gordon over an extended period of time as a means of sanctioning Altus for its terrible conduct."3

Employers should be careful to allege cause only where there is a foundation for such allegations. Otherwise, courts may sanction the employer's conduct. While exemplary

damages in employment cases used to be few and far between, the *Altus* decision (among others) shows that courts will not shy away from awarding them against an employer whose conduct is deserving of punishment.

1 *Gordon v. Altus Group Limited*, 2015 ONSC 5663.

2 Supra, at para 25.

3 Supras, at para 42.

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