

# Employment Update



## **Court of Appeal Upholds That There Was Valid Consideration for New Contract**

When providing new contracts for their current employees to sign, employers must provide fresh consideration, such as a signing bonus, pay increase, increased paid vacation time, or some other benefit, for the new contract to be valid and its terms legally binding. Whether a second employment contract was valid was the key issue in the wrongful dismissal appeal of [\*Giacomodonato v. PearTree Securities Inc.\*](#), published June 3, 2024. The Ontario Court of Appeal (the “court”) upheld the trial judge’s decision to award the employee plaintiff and appellant, Davide Giacomodonato (the “Employee”), \$671,765 in compensatory and punitive damages, along with legal costs in the amount of \$830,761.75, against his former employer, PearTree Securities Inc. (the “Employer”). The key issue for the Employee’s appeal was whether the trial judge had erred in finding the second employment contract valid and binding, and calculating wrongful dismissal damages based on the terms of that second employment contract, rather than the first. The court affirmed the trial judge’s findings, noting that the second contract included fresh consideration, such as a \$40,000 payment and extra vacation time, and that the power imbalance between the parties had been mitigated. The Employer’s cross-appeal seeking to alter the costs award was dismissed, with the court finding insufficient grounds to overturn the decision, which had been influenced by the Employer’s conduct during litigation.

The Employee, an accomplished investment banker with notable expertise in the mining industry, was hired by the Employer in early 2016 to assume the role of President and co-head of banking. The trial judge determined that the parties entered into a binding employment agreement (the “First Contract”) in April 2016, followed by a new employment agreement (the “Second Contract”) in July 2016. The Employer terminated the Employee’s employment without cause in January 2018. The Employee argued that the trial judge mistakenly based the wrongful dismissal damages on the terms of the Second Contract rather than the First Contract. To prevail on this appeal, the court noted the Employee would have needed to demonstrate that the trial judge “made a series of errors of law and mixed law and fact in finding that the second contract was valid, binding, and enforceable”.

However, the court found that the trial judge correctly determined there was fresh consideration for the Second Contract. The Employee received a \$40,000 payment from the Employer (PearTree) to cover his costs of leaving his previous employer, and an additional two weeks of paid vacation. The court was not convinced by the Employee’s

argument that the trial judge erred in concluding that the \$40,000 payment was part of the negotiations for the Second Contract. Although the trial judge incorrectly stated that the Employer made the \$40,000 payment in 2016 rather than 2017, the conclusion was based primarily on the fact that this payment was discussed in relation to the Second Contract. Additionally, the trial judge found that the extra vacation time alone constituted “fresh and non *de minimis* consideration.”

The court also rejected the Employee’s argument that the trial judge should have conducted a comparative analysis of the benefits and drawbacks of the First Contract and Second Contract to determine whether there was fresh consideration for the Second Contract; the Employee provided no legal authority to support the requirement for such an analysis. Additionally, the court dismissed the Employee’s argument that the trial judge ignored the power imbalance between the parties. The trial judge had acknowledged the significance of consideration in employment contracts, specifically recognizing the inherent power disparity and the vulnerability of employees who rely on their compensation. The court found that the power imbalance typically present in employment contracts was mitigated in this case due to several factors. These included the Employee’s access to detailed information about the Employer’s operations, his extensive experience in negotiating contracts, and the fact that he was represented by legal counsel throughout the month-long negotiation process of the Second Contract.

This case is a reminder for charities and not-for-profits of the importance of the legal requirement for new consideration in any replacement employment contract for current employees. When requiring existing employees to sign new contracts, it is recommended that a lawyer review the matter to provide advice on whether there is legally recognized consideration for the terms of the new contract to be valid and legally enforceable.

[□Read the August 2024 Charity & NFP Law Update](#)

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

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