

# Is Just Cause A Lost Cause?



The basic legal principles underscoring the formation of a contract are no mystery to most employers – an offer is made, the employee accepts the offer, and both parties receive valuable consideration for the bargain. The recent decision of the Ontario Superior Court of Justice in *Dennis v Ontario Lottery and Gaming Corporation* underscores the primacy of these basic legal principles after the Court upheld a settlement agreement despite the fact that incriminating information tantamount to just cause was subsequently obtained by the employer.

## **Background Facts**

Brenda Dennis was terminated without cause by her employer, Ontario Lottery and Gaming Corporation (“OLG”), after having worked for OLG as a Security Manager for over thirteen years. Dennis was offered and accepted a severance package, which was incorporated into a settlement agreement. After the agreement was executed but before Dennis received the proceeds of the settlement, OLG discovered a shortfall in funds related to an initiative operated by Dennis on behalf of OLG’s employee social committee (the “Wonderland Initiative”).

As part of the Wonderland Initiative, Dennis sold discounted Wonderland tickets to OLG employees. At the end of the selling period, Dennis was required to reconcile the funds obtained with the tickets sold and return all unsold tickets to Wonderland by a specific date. On her final workday with OLG, Dennis was asked by the Director of Human Resources about the Wonderland Initiative and where the money, tickets and inventory list were stored. Dennis informed the Director that, with the exception of the funds required to purchase four tickets she intended to buy for herself that day, the money, tickets and inventory list were in the security safe.

Following Dennis’ departure, OLG determined that there was in fact a shortfall of \$1,268 in funds related to the Wonderland Initiative. During the resulting criminal investigation, Dennis admitted to taking the funds (with the intention of paying them back) and was charged with theft. Dennis, herself the victim of a fraud scam, “borrowed” the money to send along with approximately \$12,000 of her own money to a Nigerian she met on an online dating website.

Dennis repaid the funds prior to her first court appearance. Having made restitution and consistent with the diversion program for first-time offenders, the Crown withdrew the charge against her. Thereafter, OLG conducted an internal investigation that relied heavily on Dennis’ admissions during the criminal investigation and concluded that Dennis stole the missing funds. OLG withheld the settlement funds from

Dennis during the criminal and internal investigations and used the findings of those investigations to support its position that the settlement agreement was rescinded on the basis of after-acquired information that now supported a for cause termination of Dennis' employment.

## **Positions of the Parties**

OLG submitted that the settlement agreement was rescinded since: (1) Dennis' dishonestly when interviewed amounted to a material and fraudulent non-disclosure of information relevant to OLG's decision to terminate her without cause, and (2) Dennis knowingly concealed the fact that she stole funds, conduct that warrants termination for cause in and of itself.

Dennis argued basic contract principles and submitted that the case was simply a matter of enforcing a valid settlement agreement. She also pointed to OLG's reliance on inaccurate information.

## **Decision**

Coming back to the basic principles of contract law, the Court found that OLG made the initial settlement offer of its own accord; Dennis accepted the offer; and both parties received valuable consideration for the settlement. Dennis received consideration in the form of severance pay equivalent to 53 weeks' salary; and OLG received consideration in the form of a final release signed by Dennis, foregoing any claim for wrongful dismissal or related causes.

Central to this conclusion, the Court made a critical finding that negated OLG's rescission arguments: Dennis did not steal the missing funds. To this end, the Court emphasized the following facts:

1. Running the Wonderland Initiative was "voluntarily assumed" by Dennis and not an essential condition of her employment contract with OLG.
2. The missing funds were the property of Wonderland, not OLG.
3. The Wonderland Initiative was informal with no formal accounting requirements.
4. Dennis admitted only to borrowing the money with the intent of repaying it.
5. The internal investigation was "inadequate and inaccurate" as it relied heavily on and misinterpreted Dennis' "admission" in the criminal investigation (i.e. Dennis admitted to borrowing not to stealing).

While the Court acknowledged that Dennis engaged in a dishonest nondisclosure, it was not a material non-disclosure that would justify rescinding the settlement agreement. Thus, the Court concluded that it was "totally disproportionate" for OLG to view the misconduct as sufficiently egregious to support termination for cause.

## **Employer Take-Aways**

This case reinforces the old adage that "a deal's a deal". If an employer has any indication that it may have just cause to dismiss an employee, the time to thoroughly and diligently investigate those signals is before the termination is effected and the settlement documents are signed. Although in certain circumstances after-acquired information about an employee's misconduct will constitute grounds for rescission of an otherwise binding settlement contract, given the scrutiny after-acquired information receives by courts, employers should seek legal advice before withholding settlement funds from a dismissed employee on that basis.