VP Not Entitled to Commissions After Termination

What Happened: A Vice President’s employment contract set a base salary, imposed a sales target that the VP predicted he could achieve, permitted the employer to change the compensation scheme unilaterally and allowed either party to terminate the contract. When it became clear the sales target wouldn’t be met and the business was failing, the employer changed the compensation arrangement replacing the base salary with monthly commissions based on gross profits. Thereafter, the employer terminated the VP citing failure to “meet or even approach the sales targets set out in the Employment Contract.” A contractual joint venture the VP had developed for the company during his employment still generated profits after he was terminated. The VP sued the employer claiming he should be paid commissions from that venture as long as the arrangement continued or was renewed, even after he was terminated. He argued the agreement never stated commissions would end at termination.

What the Court Decided: The court found either party had a right to terminate the contract and the VP wasn’t entitled to commissions after termination.

How the Court Justified the Decision: The court explained that the contract between the parties was terminable by either party and upon termination each party’s obligations to the other ceased. If the employer terminated without giving required notice, and without cause, then the VP might have a wrongful dismissal claim for failure to provide notice of termination or compensation in lieu of notice, the court said. But the employer was under no obligation to continue paying the VP the commissions once the contract terminated. The court distinguished fixed-term contracts, which entitle the employee to damages for early termination and could include any commissions that would have been earned during the intended life of the contract. The court also distinguished cases in which a salesman earns a commission *at the time he makes a sale* or puts together a venture. In those cases, an employee might be entitled to payments after the employment ended, the court said, because he earned the right to those before he was terminated. But in this case, the court concluded, the VP earned his commissions on gross profits each month. So he didn't earn a right to future commissions before he was terminated. Thus, when his employment terminated, his right to commissions on future profits of that venture did too [*Gill v. Navigate Capital Corp.*, 2013 BCSC 1479 (CanLII), Aug. 15, 2013].

ANALYSIS

The good news is that the court was not willing to imply an obligation to continue paying commissions indefinitely to a terminated employee. The court rejected the VP's argument that because his contract didn't say commissions ended upon employment termination, he was entitled to commissions as long as that venture generated profits. In this case, the VP was hired to generate business opportunities and was going to benefit from them when they were profitable. He felt he should share in the benefits of any venture he created as long as that venture continued to exist, even if he wasn't with the company anymore. But that's not what the contract said and the court wasn't going to read that obligation into the contract.

Bottom Line: While the court here wouldn't imply an obligation to continue paying commissions, the contract was silent and that gave the VP room to argue. So it's best to make sure the contract clearly states what obligations survive termination of a contract. If the contract here had clearly stated those monthly commissions ended upon termination of employment, the company could have saved itself the time and expense of litigation.

Fired VP's Contract Didn't Entitle Him to Commissions After Termination