Wrongfully Dismissed Employee Entitled To Compensatory, Aggravated, And Special Damages For Employer’s Breach Of Duty Of Good Faith

Ms. Ogden moved to Canada from China in 2000 where she obtained her Bachelor of Commerce and Certified General Accountant, Level 2 and Certified Financial Planner designations. In 2004, she obtained employment with CIBC as a personal banker and, in 2006, was promoted to the position of financial adviser. Between 2006 and 2011, Ogden built an impressive portfolio of clients. She was regarded as an exemplary employee and, at the time of her dismissal, the value of her portfolio was over $230 million.

Ogden was dismissed following an incident involving wire transfers: she accepted two wire transfers in the middle of the night from third parties in China into her personal account. She then directed that these funds be immediately transferred to another client.

Ogden argued that the incident did not constitute just cause, as it was a judgment call made urgently when faced with a difficult situation; her client’s real estate deal was about to collapse if she did not take this measure. Further, Ogden did not perceive her actions to be in violation of the Code of Conduct.

Court’s Analysis

At trial, CIBC relied on cumulative cause. Specifically CIBC argued that the prior incidents in combination with the wire transfer incident amounted to cause.

The Court rejected this “cumulative cause” argument because Ogden was given the final warning letter for the prior incidents after the wire transfer incident. In the Court’s view, in order for an employer to be able to rely on a final warning letter as part of an allegation of cumulative cause, the alleged final warning must necessarily precede the ultimate and final act of misconduct.

Accordingly, the Court’s analysis with respect to cause focused solely on the wire transfer incident. Given all of the circumstances, the Court held that CIBC’s decision to end Ogden’s career constituted a disproportionately severe penalty for what the Court considered to be an error in judgment.

While CIBC’s witnesses at trial focused on the “commingling” of funds by Ogden, the Court found that there was no clear prohibition in CIBC’s Code of Conduct against Ogden’s conduct. The Court was also critical of CIBC’s lack of training with respect to the Code of Conduct and Conflict of Interest Policy.

Because there was no clear rule, the Court assessed the unique circumstances of the incident and considered whether Ogden’s exercise of judgment constituted such a violation of trust that the ongoing employment relationship was rendered impossible. The Court determined it was not. The evidence established that Ogden’s analysis of the situation at the time was made with the best of intentions. It was an honest mistake. The Court did not agree with CIBC that this single error of judgment was so egregious that it went to the core of the trust relationship and justified summary dismissal.

In addition to finding that Ogden was wrongfully dismissed, the Court found that she was entitled to aggravated damages for mental distress on account of CIBC’s bad faith in the manner of dismissal.

The Court was highly critical of CIBC’s investigation into the alleged misconduct and found that it forged ahead with the decision to terminate Ogden’s employment based on incomplete and inaccurate information. Further, the Court determined that CIBC had previously suspected that Ogden was thinking of quitting and used the wire transfer incident as an opportunity to push out a top performer and still retain her portfolio.

Conclusion and Take-Away

In summary, the Court found that CIBC had dismissed Ogden without cause. CIBC was liable for compensatory damages and aggravated damages, as well as special damages. The precise amount of damages and costs was left to be assessed at a later date.

Although CIBC’s conduct was determined to be in bad faith, this case provides important reminders even to employers acting with the best of intentions to:

1. Conduct all investigations thoroughly and completely;
2. Ensure codes of conduct and similar policies are clear, unambiguous, and consistently enforced. This will be important should the employer wish to rely on a violation of the policy to uphold discipline or dismissal; and
3. Give employees clear and express warnings about performance issues as and when they arise, and the opportunity to improve performance after the warning is issued. This will be a prerequisite for any claim of cumulative cause.

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