

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

Citation: ***Marchen v. Dams Ford Lincoln Sales Ltd.***,  
2009 BCSC 400

Date: 20090326  
Docket: S053163  
Registry: Vancouver

Between:

**Tyler Marchen**

PLAINTIFF

And

**Dams Ford Lincoln Sales Ltd.**

DEFENDANT

Before: The Honourable Mr. Justice Goepel

**Reasons for Judgment**

Counsel for the Plaintiff:

A.C. Kempf

Counsel for the Defendant:

G. Ancil

Date and Place of Trial:

September 30, October 1-2, 2008  
March 12-13, 2009  
Vancouver, B.C.

**INTRODUCTION**

[1] The plaintiff, Tyler Marchen, (“Tyler”) seeks damages from the defendant Dams Ford Lincoln Sales Ltd. (“Dams”) arising from the premature termination of a four-year apprenticeship agreement. The issues to be determined include whether the agreement could be terminated on reasonable notice, whether the method of termination was such to give rise to moral damages, whether the wrongful termination of an apprentice allows for consequential damages, and whether the conduct of the defendant warrants an award of punitive damages.

**BACKGROUND**

[2] Tyler graduated from high school in June of 2000. In school, he had done well in shop and automotive courses. He comes from a family of mechanics. His father had been an auto mechanic at a Ford

dealership for many years. His uncle was a long time mechanic at Dams. His older brother, Anthony, worked in the Dams parts department.

[3] Dams is a full service automobile dealership that employs approximately 200 people. Dams has locations in Surrey and Langley. Gordon Dams started the company in 1974 and remains its president.

[4] The Surrey dealership operates out of two adjoining buildings. In one building is the showroom and parts department. The second building contains a body shop and commercial truck repair facilities.

[5] In the spring of 2002, Tyler commenced casual employment at Dams' Surrey location. His work included cleaning the body shop. Journeymen employees in the body shop encouraged him to consider a career as an automotive collision repair technician. In the fall of 2002, the manager of the body shop approached Tyler concerning an apprenticeship.

[6] On November 13, 2002, Tyler and Dams entered into a written employment contract (the "Apprenticeship Agreement"). The Apprenticeship Agreement was made pursuant to the **Industry Training and Apprenticeship Act**, S.B.C. 1997, c. 50 (the "**Act**").

[7] The term of the Apprenticeship Agreement was from November 13, 2002 to November 12, 2006. Its provisions included:

1. The EMPLOYER agrees:
  - (a) to receive the Apprentice/Trainee for the period stated herein and to teach efficiently the trade or occupation specified in this Agreement; and
  - (b) to fulfill the other obligations of an Employer as set out in Schedule "A".
2. The APPRENTICE/TRAINEE agrees:
  - (a) to place himself/herself as an apprentice/trainee in the trade/occupation listed in this application/agreement for the period of time as stated below;
  - (b) to complete the prescribed hours of technical training;
  - (c) to share school and examination results with the Employer;
  - ...
3. The EMPLOYER and APPRENTICE/TRAINEE further agree:
  - ...
  - (d) that the term of this agreement may be extended at the sole discretion of the Industry Training and Apprenticeship Commission for a period of not more than 13 months, upon written notification to the parties.

[8] Schedule "A" of the Apprenticeship Agreement includes the following provisions:

- ...
3. Every Employer shall:
  - ...
  - (c) Keep each Apprentice/Trainee employed so long as work is available for the Apprentice/Trainee;
  - ...
  - (g) Notify the CEO and obtain the approval of the Industry Training and Apprenticeship Commission before making any change affecting the Industry Training and Apprenticeship Agreement;
  - (h) Notify the CEO immediately of any difficulty that occurs which could interfere with the fulfillment of the terms of the Industry Training and Apprenticeship Agreement; and

- (i) Notify the CEO in writing immediately when, for any reason, an Apprentice/Trainee is laid off or terminated from employment.
- 4. Every Apprentice/Trainee shall:
  - (a) Render faithful, honest, and diligent service to the Employer during the period of apprenticeship;
  - ...
- 5. (a) The period of apprenticeship shall be as set out in the Industry Training and Apprenticeship Agreement.

[9] Section 15(6) of the **Act** contains the following relevant provision:

- (6) party to a registered industry training or apprenticeship agreement may terminate it without the consent of the other parties.

[10] To qualify as an automobile collision repair journeyman, Tyler had to complete 6,750 hours of on-the-job training. He also had to attend and complete three periods of in-school technical training and complete a national certification examination. When attending the in-school courses, the apprentice is eligible to receive Employment Insurance benefits.

[11] As an apprentice, Tyler's wage was calculated on a sliding scale as a percentage of the employer's journeyman wage. For the first six months of the apprenticeship he was paid 50% of the journeyman's wage. The wage increased every six months so that in the last six months of his apprenticeship he would earn 90% of the journeyman's wage. When terminated, Tyler was earning \$15.95 per hour which was 70% of the Dams journeyman's wage of \$22.72 per hour.

[12] Tyler's apprenticeship proceeded without incident until his termination on January 27, 2005. By January 27, 2005, he had completed 3,343 hours of on-the-job training. In 2003 and 2004, he had successfully completed his in-school courses and was then registered to complete his final in-school program from March 7 to April 8, 2005. Dams employees who testified at the trial considered him a good worker.

[13] On January 27, 2005, the body shop manager, Mr. Barry Delion, asked Tyler to remain after work. On completion of his shift, Tyler met with Mr. Delion and Mr. Delion's supervisor, Mr. Ike Penner, Dams' General Service Manager. The meeting took place in Mr. Delion's office.

[14] At the meeting, Mr. Delion advised Tyler that his services were no longer required. He gave Tyler an envelope containing his Record of Employment ("ROE") and two weeks' severance pay. When Tyler asked why he was being terminated, he was told that it was not up for discussion. Mr. Penner told him he was not welcome in the future on any Dams property.

[15] Mr. Delion then accompanied Tyler back into the body shop where he checked Tyler's toolbox to make sure Tyler had no Dams tools in his possession. Tyler said that Mr. Delion told him at that time that he had tried to stop it but the decision had come right from the top.

[16] The ROE contains a box where the employer indicates by code the reason for termination. The codes include "A" for shortage of work and "M" for dismissal. Mr. Penner decided what code should be used. He made a considered decision to use code M.

[17] Tyler testified his dismissal came without any warning. He said he was emotionally devastated. He was particularly upset that he had been given no reason for the termination.

[18] The day following the dismissal, Tyler's father, Al Marchen ("Mr. Marchen") telephoned Gordon Dams. Mr. Marchen and Mr. Dams have very different versions of what was said in their conversation. To put their competing versions in context, it is first necessary to review prior dealings between Mr. Marchen and Mr. Dams concerning Tyler's brother, Anthony.

[19] Anthony had worked for several years in the Dams parts department. In the summer of 2004, he became a suspect in a stolen parts investigation. When Anthony failed to return to work from a scheduled vacation, Mr. Dams arranged a meeting with his parents. At the meeting, Mr. Dams advised Anthony's parents

that he believed Anthony had a drug problem. He indicated that the thefts from the parts department involved some \$30,000 to \$40,000.

[20] Approximately a week after this meeting, Mr. Marchen, this time with Anthony, again met with Mr. Dams. Anthony admitted he had been stealing parts to support a drug habit and implicated a second employee in the scheme. Anthony denied, however, he was responsible for all the thefts from the department.

[21] At a third meeting, the other implicated employee was also present. Anthony agreed to assist in determining the thefts for which he was responsible. At the meeting Mr. Dams indicated that if Anthony went into a rehabilitation program, he could eventually return to work and pay off his debt. Mr. Dams agreed that he would ask the RCMP not to move forward with their investigation.

[22] During the meetings concerning Anthony, there was some discussion about Tyler. Tyler's parents advised Mr. Dams that Tyler was much different from his brother and his reputation should not be tarred because of Anthony's actions.

[23] Mr. Dams testified that in November 2004, a police officer attended at the dealership. The officer advised Mr. Dams that he was there to arrest Anthony because he had breached his parole arising from a conviction for the possession of a stolen vehicle. This information came as a shock to Mr. Dams who had understood that Anthony had not had prior difficulties with the law. Even more upsetting to Mr. Dams was the discovery that the stolen vehicle in question had been repainted in the Dams body shop.

[24] Mr. Dams said he told the officer that Anthony was no longer employed at the dealership and suggested he call Anthony's parents. He testified that shortly thereafter he received a telephone call from Mr. Marchen who was most upset that the police were at his house looking for Anthony. As a result of his meeting with the police officer, Mr. Dams asked the RCMP to reopen their investigation into the thefts from the parts department.

[25] Mr. Marchen denied having a discussion with Mr. Dams in November 2004. He said he only learned about the stolen car on January 28, 2005 when he called Mr. Dams about Tyler's termination.

[26] Mr. Marchen testified that in the January 28th conversation he asked Mr. Dams why Tyler had been terminated. He said that Mr. Dams told him that Tyler had been fired because the criminal investigation had spread to the body shop and that charges might be laid against both Tyler and Anthony. Mr. Marchen said he told Mr. Dams that he was making a mistake, as Tyler was not involved in any of Anthony's activities.

[27] Mr. Dams denies he told Mr. Marchen that the criminal activity had spread to the body shop or that charges might be laid against both Anthony and Tyler. He says he told Mr. Marchen that Tyler was an adult and he was not prepared to discuss with his father why Tyler was terminated.

[28] On February 8, 2005, Ms. Mahovlich, an employee of Services Canada, contacted Mr. Penner concerning the reasons for Tyler's separation. Such enquiries follow as a matter of course when an ROE indicates that an employee has been dismissed. Depending upon the circumstances of the dismissal, a dismissed employee may not be eligible for Employment Insurance benefits.

[29] Mr. Penner advised Ms. Mahovlich that Tyler had been terminated due to a police issue, but he was unable to provide further details. He advised her that while Dams considered Tyler to be a good employee, it could not take the risk of keeping him on.

[30] Ms. Mahovlich then contacted Tyler. He advised her that he had done nothing wrong and had no idea what the employer was talking about in regard to a police issue.

[31] Having spoken to Tyler and Mr. Penner, Ms. Mahovlich determined that misconduct had not been proven and there was no evidence to support the termination. Given the failure of the employer to clarify any details or even if the offence being investigated was work-related, Tyler's application for Employment Insurance benefits was approved.

[32] On February 14, 2005, Tyler wrote to Mr. Dams concerning his termination. In his letter, he pointed out that he was employed under a fixed term contract and that in such circumstances the notice to which he was entitled had to take into account the remaining value of the contract. The letter contained a without prejudice settlement proposal. The settlement proposal contained in the correspondence was redacted and not before the court.

[33] On March 4, 2005, Mr. Dams responded to Tyler's letter. He enclosed a cheque for \$2,434.29 representing monies Mr. Dams acknowledged were owing to Tyler as a result of inadvertently underpaying him during the course of his employment. The letter did not offer any additional compensation arising from the termination. The letter indicated the cheque was being provided as "full and final settlement" of any amounts Tyler claimed were owing arising out of his employment.

[34] Included with the letter was an amended ROE which reflected the additional monies Tyler had earned while employed at Dams. The amended ROE also used code M as the reason for termination.

[35] Tyler did not immediately cash the cheque because of concerns that to do so might compromise his claim for additional compensation. During the course of this action, a new cheque was issued on the express understanding that the cashing of same would not compromise Tyler's ongoing claims.

[36] Tyler commenced this action on June 8, 2005. On June 16, 2005, Mr. Dams called Ms. Mahovlich and left a message that he would like to discuss what was said when his company was called for reasons concerning Tyler's separation. Ms. Mahovlich returned Mr. Dams' call and advised him of the information given by Mr. Penner at the time of termination. Mr. Dams then advised her that there was still an investigation going on but that it was primarily concerned with the claimant's brother. He told Ms. Mahovlich that Tyler was terminated because Dams had downsized its body shop operation.

[37] Upon being terminated, Tyler immediately began looking for work. He dropped off some 50 resumes but received no call backs. He was surprised that he was unable to find any work locally.

[38] In March 2005, Tyler attended his already scheduled in-school course. He successfully completed the course and in April 2005, he wrote and passed the certification exam. With the courses and exam successfully completed, all he required to complete his apprenticeship training and earn his journeyman certificate was to obtain the necessary work hours.

[39] Unable to find work locally, Tyler ultimately accepted a position at Ocean 'N Motion, a small body shop in Kelowna, British Columbia. His employer did little ICBC work and the work was of a lesser quality than that done at Dams.

[40] He started at Ocean 'N Motion in April 2005 at \$14 per hour. That rate was later reduced to \$11.50 per hour. Although he had discussed with his new employer their sponsoring him as an apprentice, that did not occur. He left Ocean 'N Motion in September 2005 as he determined his work there was not advancing his career.

[41] After leaving employment at Ocean 'N Motion, Tyler obtained a position at Old Skool Autobody. His starting wage was \$13.50 per hour. He had hoped that Old Skool would sponsor him in the apprenticeship program. Ultimately, it did not do so.

[42] Tyler continued to apply for positions at larger auto body shops. He sent out resumes and spoke to many people seeking such positions. Unfortunately, he was unsuccessful. He remained at Old Skool until June 2007.

[43] In August 2007, Tyler commenced employment at Shine It Up, a small auto body shop in Penticton, British Columbia which does light auto body repairs. His starting wage was \$13.50 an hour. He continues to be employed at Shine It Up. Shine It Up has no journeyman on its payroll.

[44] Since leaving Dams, Tyler has been unable to find a new apprenticeship sponsor. He has not been credited with any on-the-job training hours training credits. While it is possible that he may, through a statutory declaration, earn some credits for the hours he has worked in recent years, such credits must be approved by a new sponsor.

[45] Mr. Dams, Mr. Penner and Mr. Delion all testified. All acknowledged that Tyler was a good employee. All denied that Tyler was dismissed because of the criminal activities of his brother. Their evidence was that Tyler was let go because the dealership had decided to downsize its body shop operations in order to increase its capacity to repair commercial trucks.

## **POSITIONS OF THE PARTIES**

[46] Tyler submits that the Apprenticeship Agreement was a four-year fixed term contract and he is entitled to damages based on the difference between what he has earned subsequent to termination of his employment and what he would have earned if he had completed the apprenticeship. He also seeks moral damages arising from the way in which he was terminated and consequential damages arising from the premature termination of the Apprenticeship Agreement. In addition, he seeks punitive damages. He submits that subsequent to his termination Dams has acted in a reprehensible manner that departs to a marked degree from the ordinary standards of decent behaviour.

[47] Dams submits that Tyler's employment was terminated because of a lack of work arising from the decision to downsize the body shop. Pursuant to the Apprenticeship Agreement, an employer is only obligated to continue an apprentice's employment if there is available work. Alternatively, it submits that the Apprenticeship Agreement was terminable on reasonable notice. It relies on s. 15(6) of the **Act** in support of this submission. It submits that reasonable notice would be six to eight weeks. Dams submits that consequential damages are not recoverable at law and that the method of termination does not give rise to moral damages. Finally, Dams says that in the circumstances of this case, there are no grounds to award punitive damages.

## **DISCUSSION**

### **A. Reason for Termination**

[48] Before turning to the plaintiff's claims for damages, it is first necessary to make findings of fact concerning the reason for termination. The defendant submits that Tyler was dismissed because of a corporate decision to downsize the body shop operation. It notes that subsequent to the termination the body shop was in fact downsized. Four bays were taken away from the body shop and given to the truck shop. Dams did not hire a new apprentice to replace Tyler.

[49] While the evidence indicates that the body shop was ultimately downsized, the evidence does not support a finding that Tyler was terminated because of the decision to downsize the body shop operation.

[50] I accept Mr. Marchen's evidence that Mr. Dams advised him on January 28, 2005 that Tyler was terminated because of concerns that he was involved in his brother's criminal activity. That suspicion had undoubtedly been triggered when Mr. Dams was told by an RCMP officer that a stolen vehicle had been repainted in the body shop. Although nothing turns on it, I suspect that information likely came to Mr. Dams in January, not November, and led immediately to the decision to terminate Tyler.

[51] I do not accept Mr. Dams' evidence that he did not tell Mr. Marchen the reason for termination. Mr. Marchen phoned Mr. Dams to find out the reason. He made notes of their conversation immediately after it took place. Although the notes were not put in evidence, they were reviewed by defence counsel and not put to Mr. Marchen during his cross examination.

[52] Mr. Dams' evidence that he told Mr. Marchen that he would not discuss Tyler's termination because he was an adult does not, given the previous dealings between Mr. Marchen and Mr. Dams, ring true. Just months before Mr. Dams had reached out to the Marchens for their assistance with Tyler's older brother. Mr. Dams did not then have any qualms discussing the employment of an adult child with his parents.

[53] Other evidence supports the conclusion that Tyler was terminated because of suspicions concerning criminal activity. That is what Mr. Penner told Ms. Mahovilich when she enquired as to the reason for Tyler's dismissal. Mr. Penner's suggestion that he may have mixed up the two brothers when speaking to Ms. Mahovilich is not credible. The conversation took place within two weeks of Tyler's termination. Anthony had never worked for Mr. Penner and Mr. Penner had played no role in Anthony's termination.

[54] That Tyler was terminated because of the suspicion of criminal activity is further corroborated by the code entered on the ROE. If Tyler had been terminated because of the decision to downsize the body shop, then code A – shortage of work – would have been entered on his ROE. Instead code M – dismissal – was used. Mr. Penner testified that code designations on a ROE were always a considered decision made by top management.

[55] Additional evidence casts doubt on the suggestion that Tyler was terminated because of a decision to

downsize the body shop. Body shop revenue in 2004 was in excess of one million dollars. Those revenues had increased from 2003. If Dams had decided by January 27, 2005 to downsize the body shop in order to expand its truck repair business, one would expect some sort of paper trail, be it by way of report or memorandum, making the business case for the change. No such documentation was produced. If downsizing was the justification for terminating Tyler, it makes little sense that Mr. Dams would be personally involved in the decision. Other employees had been let go from the body shop for lack of work without Mr. Dams' involvement. If Dams terminated Tyler because of a corporate decision to downsize the body shop, there would be no reason not to disclose that to Tyler. When the body shop had terminated another employee a year earlier, that employee had been given a letter explaining the reason for his termination. Further, if Tyler was only let go because of downsizing one would expect that Dams would have made attempts to assist Tyler in finding work elsewhere. They made no such attempts.

[56] I find that Tyler's termination arose from Mr. Dams' unfounded suspicion that Tyler was somehow involved in his brother's activity. There was no evidence whatsoever to support that suspicion. The evidence is that Tyler at all times was a loyal and faithful employee.

[57] I reject and do not believe the evidence of Mr. Dams, Mr. Penner and Mr. Delion that Tyler was terminated because of the decision to downsize the body shop. That evidence is inconsistent with the facts as I have found above based on the evidence which I do accept.

## B. Damages

### 1. Wrongful Termination

[58] In regard to damages, it is first necessary to determine whether the Apprenticeship Agreement is a fixed term contract or, alternatively, one terminable upon reasonable notice. Dams submits the contract can be terminated on reasonable notice. In support of that submission, it makes reference to s. 15(6) of the **Act** that allows a party to an apprenticeship agreement to terminate it without the consent of the other party. Dams submits that provision allows either party to terminate on reasonable notice. It cites **Vorvis v. Insurance Corporation of British Columbia**, [1989] 1 S.C.R. 1085 at 1109:

In the case at bar, the plaintiff was entitled to have the salary and benefits agreed upon under the contract of employment while he continued in such employment. Each party had the right to terminate the contract with the consent of the other, and where the employment contract was terminated by the employer, the appellant was entitled to reasonable notice of such termination or payment of salary and benefits for the period of reasonable notice. The termination of the contract on this basis by the employer is not a wrong in law and, where the reasonable notice is given or payment in lieu thereof is made, the plaintiff – subject to a consideration of aggravated damages which have been allowed in some cases but which were denied in this case – is entitled to no further remedy: see *Addis v. Gramophone Co.*, *supra*, and *Peso Silver Mines Ltd. (N.P.L.) v. Cropper*, *supra*.

[59] I do not accept the proposition that the phrase “without the consent of the other party” in and of itself allows termination on reasonable notice. In my opinion, the phrase is limited to giving either party the right to terminate the contract without the consent of the other. If a party chooses to terminate the contract without cause, the damages which flow will depend upon the terms of the contract. If the contract is one of indefinite hiring, the contract can be terminated on reasonable notice: **Machtiger v. HOJ Industries Ltd.**, [1992] 1 S.C.R. 986. If, however, the contract is for a fixed term, the plaintiff's damages are assessed as equivalent to the pay he would have received had the contract been performed, less the wages he received from other sources during the unexpired period of the contract: **Neilson v. Vancouver Hockey Club Ltd.** (1988), 25 B.C.L.R. (2d) 235 (C.A.).

[60] I find this to be a fixed term contract. Pursuant to clause 3(c) of Schedule A, Dams agreed to employ Tyler for the period set out in the contract so long as work was available. If Dams had terminated Tyler because of a lack of work, the termination would not have given rise to a claim for breach of contract. Clause 3(c) is clearly intended to encourage employers to hire apprentices without fear that they may be liable for

damages if they no longer have work available.

[61] In this case, however, the termination did not arise from a lack of work but from unfounded suspicions concerning Tyler's conduct. In the circumstances, Tyler is entitled to damages based on the amounts he would have received to the end of the fixed term less the money he actually earned subsequent to his termination.

[62] If Tyler had been employed to the end of the Apprenticeship Agreement, he would have earned \$60,110.90. Taking into account his severance pay, together with his earnings at Ocean 'N Motion and Old Skool, Tyler's damages for loss of wages is \$18,151.73.

## 2. Moral Damages

[63] In *Honda Canada Inc. v. Keays*, 2008 SCC 39, [2008] 2 S.C.R. 362, the Court re-evaluated the circumstances when damages would be awarded for the manner of dismissal. The Court concluded that damages resulting from the manner of dismissal are available only if they result from circumstances in which the employer engages in conduct during the course of dismissal that is unfair or in bad faith. The Court emphasized that the normal distress and hurt feelings resulting from dismissal are not in themselves compensable.

[64] In cases where parties contemplated at the time of the contract that a breach in certain circumstances would cause the plaintiff mental distress, the plaintiff is entitled to recover moral damages. In such cases, damages will be awarded not through an arbitrary extension of the notice period, but through an award that reflects the actual damages. Examples of conduct that might result in compensable damages include attacking the employee's reputation by declarations made at the time of dismissal, misrepresentation regarding the reason for dismissal or dismissal meant to deprive the employee of a pension benefit or other right.

[65] In this case, Dams did not advise Tyler of the reason for his dismissal. It did, however, advise his father of the reason the following day. The dismissal itself took place at the close of business in the absence of his fellow employees. There is no evidence that Dams advised other prospective employers of its suspicion that Tyler had been involved in criminal activity.

[66] When Dams terminated Tyler, it had an honest, albeit mistaken, belief that he may possibly have been involved in some criminal activity. While that belief did not justify his dismissal, I find, given that belief, that Dams' conduct at the time of termination was not unfair, unfaithful, misleading or unduly insensitive. There is no evidence that Tyler suffered emotional distress in excess of the normal distress and hurt feelings that result from any dismissal. Tyler is not entitled to moral damages for the manner of his termination.

## 3. Consequential Damages

[67] In *Fidler v. Sun Life Assurance Co. of Canada*, 2006 SCC 30, [2006] 2 S.C.R. 3, the court confirmed that the rule in *Hadley v. Baxendale* (1854), 9 Exch. 341, 156 E.R. 145 (Eng. Ex. Div.) remains the only rule by which compensatory damages for breach of contract should be assessed. Since *Hadley*, it has been the law that damages for breach of contract should as far as money can do it, place the plaintiff in the same position as if the contract had been performed. Damages must be "such as may fairly and reasonably be considered either arising naturally --- from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties": *Hadley* at 151.

[68] In regard to employment contracts, the general rule governing damages stems from *Addis v. Gramophone Co.*, [1909] A.C. 488 (H.L.). Damages allocated in such actions are confined to the loss suffered as a result of the employer's failure to give proper notice. No damages are available to the employee for the actual loss of his or her job, pain and distress that may have been suffered as a consequence of being terminated or for the loss he or she may sustain because of the fact that having been dismissed of itself makes it more difficult to obtain fresh employment: *Honda* at para. 50.

[69] *Dunk v. George Waller & Son*, [1970] 2 All E.R. 630 (C.A.) recognized an exception to this general rule in regard to apprenticeship contracts. At 634, Widgery L.J. described a contract of apprenticeship as follows:

A contract of apprenticeship is significantly different from an ordinary contract of service if one has to consider damages for breach of the contract by an employer. A contract of apprenticeship secures three things for the apprentice: it secures him first, a money payment during the period of apprenticeship, secondly, that he shall be instructed and trained and thus acquire skills which would be of value to him for the rest of his life, and thirdly, it gives him status, because the evidence in this case made it quite clear that once a young man, as here, completes his apprenticeship and can show by certificate that he has completed his time with a well-known employer, this gets him off to a good start in the labour market and gives him a status the loss of which may be of considerable damage to him.

Lord Denning noted at 633:

The very object of an apprenticeship agreement is to enable the apprentice to fit himself to get better employment. If his apprenticeship is wrongly determined, so that he does not get the benefit of the training for which he stipulated, then it is a head of damage for which he may recover.

[70] Those comments are consistent with the principles set out in **Hadley**. The wrongful termination of the Apprenticeship Agreement has significantly set back Tyler's career. Instead of learning his trade at a well-established dealership, he has been forced to scramble to find employment. His wages remain well below what he would have earned as a journeyman. In spite of his best efforts, he has been unable to find a new sponsor to complete his apprenticeship. He has not had the benefit of the training for which he contracted. The termination of the Apprenticeship Agreement has dimmed his future prospects.

[71] I find in the circumstances of this case that Tyler is entitled to damages in respect of the loss of training and loss of status which has resulted. Such an award cannot be calculated with any precision. I award \$25,000 for this loss.

#### 4. Special damages

[72] In order to mitigate his damages Tyler was forced to move to the Okanagan to find work. He is entitled to recover his relocation expenses of \$2,036.

#### 5. Punitive Damages

[73] In **Whiten v. Pilot Insurance Co.**, 2002 SCC 18, [2002]1 S.C.R. 595, the Court set out at para. 94 the considerations that should be taken into account in determining whether to award punitive damages:

(1) Punitive damages are very much the exception rather than the rule, (2) imposed *only* if there has been high-handed, malicious, arbitrary or highly reprehensible misconduct that departs to a marked degree from ordinary standards of decent behaviour. (3) Where they are awarded, punitive damages should be assessed in an amount reasonably proportionate to such factors as the harm caused, the degree of the misconduct, the relative vulnerability of the plaintiff and any advantage or profit gained by the defendant, (4) having regard to any other fines or penalties suffered by the defendant for the misconduct in question, (5) Punitive damages are generally given only where the misconduct would otherwise be unpunished or where other penalties are or are likely to be inadequate to achieve the objectives of retribution, deterrence and denunciation. (6) Their purpose is not to compensate the plaintiff, but (7) to give a defendant his or her just desert (retribution), to deter the defendant and others from similar misconduct in the future (deterrence), and to mark the community's collective condemnation (denunciation) of what has happened. (8) Punitive damages are awarded *only* where compensatory damages, which to some extent are punitive, are insufficient to accomplish these objectives, and (9) they are given in an amount that is no greater than necessary to rationally accomplish their purpose. (10) While normally the state would be the recipient of any fine or penalty for misconduct, the plaintiff will keep punitive damages as a "windfall" in addition to

compensatory damages. (11) Judges and juries in our system have usually found that moderate awards of punitive damages, which inevitably carry a stigma in the broader community, are generally sufficient.

[74] Employers are bound to deal with employees fairly and in good faith. The courts should only resort to punitive damages in exceptional cases. Conduct meriting punitive damages must be “harsh, vindictive, reprehensible and malicious” as well as “extreme in its nature and such that by any reasonable standard it is deserving of full condemnation and punishment”: **Honda** at para. 68.

[75] Retribution, denunciation and deterrence are the recognized justifications for punitive damages. An award for punitive damages must be proportionate to the blameworthiness of the defendant’s conduct. The level of blameworthiness may be influenced by many factors including 1) whether the misconduct was planned and deliberate; 2) the intent and motive of the defendant; 3) whether the defendant persisted in the outrageous conduct over a lengthy period of time; 4) whether the defendant concealed or attempted to cover up its misconduct; 5) the defendant’s awareness that what he or she was doing was wrong; 6) whether the defendant profited from its misconduct; 7) whether the interest violated by the misconduct was known to be deeply personal to the plaintiff: **Whiten** at paras. 111-113.

[76] In this case, the claim for punitive damages arises not from Tyler’s dismissal but Dams’ attempt throughout this litigation to cover up the real reason for his dismissal. If Dams had been able to establish that Tyler was dismissed for a lack of work, Tyler’s claim would have been dismissed, as lack of work was a proper ground to terminate the contract.

[77] Dams’ attempt to justify Tyler’s dismissal on the ground of downsizing was a planned and deliberate attempt to mislead this court as to its true motives. Its conduct persisted over a lengthy period of time. The misconduct commenced shortly after the issuance of the writ when Mr. Dams contacted Ms. Mahovlich to rewrite the reasons given for Tyler’s termination.

[78] I find that Dams’ actions are reprehensible and a substantial departure from the conduct and practices reasonably to be expected from an employer such as the defendant. It breached its obligation to Tyler to act fairly and in good faith. It is particularly reprehensible that Dams acted in this manner in regard to a young apprentice whom it wrongfully terminated from his first full-time job because of unfounded suspicions. Tyler was a hard working, loyal employee. He deserved better. While I have found that method of termination did not warrant moral damages, I find that Dams’ attempt to cover up the true reasons for the termination merit an award of punitive damages.

[79] The award for punitive damages must be proportionate to blameworthiness of the defendant’s conduct, the degree of vulnerability of the plaintiff, the potential harm directed specifically at the plaintiff and the need for deterrence.

[80] In this case, Dams’ conduct was planned and deliberate and intended to mislead the court. The motive was to keep Tyler from receiving damages to which he was entitled. The conduct began within days of the commencement of the litigation with Mr. Dams’ call to Ms. Mahovlich and continued through the trial. Dams’ misconduct is not the subject of any other fine or penalty and absent an award of punitive damages would go unpunished. Taking all of the above matters into account, I award punitive damages of \$100,000.

## **COSTS**

[81] Dams’ attempt to mislead the court as to the true reasons for termination is reprehensible conduct deserving of rebuke: **Garcia v. Crestbrook Forest Industries Ltd. (No. 2)** (1994), 119 D.L.R. (4th) 740 (B.C.C.A.). The plaintiff is entitled to special costs.

## **SUMMARY**

[82] In summary I make the following awards:

1. \$18,151.73 for wrongful termination;

2. \$25,000 in consequential damages;
3. \$2,036 in special damages;
4. \$100,000 in punitive damages; and
5. Special costs.

“The Honourable Mr. Justice Richard B.T. Goepel”

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The Honourable Mr. Justice Richard B.T. Goepel