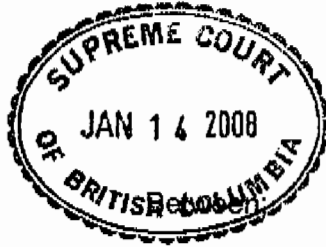


IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Paddy v. Starbucks Coffee Canada, Inc.,
et al,***
2008 BCSC 11



Date: 20080114
Docket: S076105
Registry: Vancouver

Greg Paddy

Plaintiff

And

**Starbucks Coffee Canada, Inc., and
Starbucks Corporation**

Defendants

Before: The Honourable Mr. Justice Melnick

Reasons for Judgment

Counsel for plaintiff

D. Gleadle

Counsel for defendants

M. Korbin
D. Bloor

Date and Place of Hearing:

November 30, 2007
Vancouver, B.C.

[1] The plaintiff, Greg Paddy ("Mr. Paddy"), was dismissed without cause or reasonable notice from his employment with the defendants, Starbucks Coffee Canada, Inc. and Starbucks Corporation (collectively "Starbucks"), after 14.5 years of employment in middle management positions. At issue is the length of notice he should have received following his dismissal on July 24, 2007, and the financial component of that notice.

I. BACKGROUND

[2] Mr. Paddy was continuously employed by the defendant, Starbucks Corporation, from December 1992 until July 24, 2007. After 2002, he was employed by both defendants. He began working for Starbucks Corporation when he was 30 years of age. At the time of his dismissal he was 45 years of age.

[3] Prior to working for Starbucks, Mr. Paddy worked in tourism and hotel management. He has had a number of positions with Starbucks, starting as a store manager in Vancouver in 1992. He subsequently held the following positions with Starbucks: District Manager, Vancouver; Operations Manager, Western Canada; General Manager, New Zealand; Regional Manager, Business Alliances, Canada; National Manager, Licensed Stores, Canada; National Sales Manager, Licensed Stores, Canada; and, since 2005, National Account Manager, Business Development, Canada. In the position he held at the time of termination, no one reported to him. His role was focused on expanding Starbucks' licensing business across Canada (as distinct from Starbucks' own retail locations).

[4] At the time of his dismissal, Mr. Paddy's salary and benefits package consisted of a base salary of \$119,507, a short-term incentive plan, certain medical, life and disability insurance coverages, an RRSP matching program, certain stock options, and a home office stipend to reimburse him for costs associated with working out of an office in his residence.

[5] As a term of his employment, Mr. Paddy was a party to a non-competition agreement dated October 4, 2001. According to the non-competition agreement, he cannot, without the prior written consent of Starbucks, be in any way employed by any business in direct competition with Starbucks. The term of the non-competition agreement is for a period of 18 months following the termination of Mr. Paddy's employment with Starbucks. Both parties regard him as continuing to be bound by this agreement.

[6] To the end of Starbucks' fiscal year 2006, Mr. Paddy received a performance rating of "1.9 - meets expectations". His performance rating during the first half of Starbucks' fiscal year 2007 was 2.0, also in the range of "meets expectations". It is the position of Starbucks that, thereafter, Mr. Paddy's performance dropped markedly and consequently he would not have been eligible for any performance bonus had he remained in its employ. Mr. Paddy disputes that characterization of his performance, insisting that he continued to perform at a level consistent with his past performance notwithstanding his having had some challenges. It is noteworthy that in 2005, Mr. Paddy received a total bonus of \$37,137; in 2006 he received a total bonus of \$27,272; and the trend, to the extent that he received a bonus in 2007, continued downward.

[7] Starbucks terminated the employment of Mr. Paddy on July 24, 2007 without cause and without notice. Starbucks does, however, continue to pay him the salary component of his former income because it recognizes that he is entitled to be compensated in lieu of a period of notice.

II. DISCUSSION

A. Period of Notice

[8] Counsel for Mr. Paddy suggests that, as "a long service senior management employee" with significant responsibilities, Mr. Paddy was entitled to a working notice period of 20 months. Counsel for Starbucks suggests that the appropriate period of notice was 10 to 12 months.

[9] While occupying a responsible position within the Starbucks organization, the position formerly occupied by Mr. Paddy is more properly characterized as a middle management position. Upon termination of his employment, he was entitled to reasonable working notice (see *Iacobucci v. WIC Radio Ltd.*, 1999 BCCA 753, 71 B.C.L.R. (3d) 234). As he did not receive such notice, he is entitled to be paid the salary and benefits he would have otherwise received had he been given that notice (subject to any express contractual arrangements between the parties to the contrary). In computing what is reasonable notice, I must take into account the factors outlined in *Bardal v. The Globe and Mail Ltd.* (1960), 24 D.L.R. (2d) 140 at 145 (Ont. H.C.) and *Ansari v. British Columbia Hydro and Power Authority*, [1986] 4 W.W.R. 123 at 133, 2 B.C.L.R. (2d) 33 (S.C.). I must also take into account the efforts made by Mr. Paddy to mitigate his damages, the reality of the current job

market in which he seeks to replace his employment, the strictures placed upon him by the non-competition agreement, and the fact that this application for summary judgment was only brought approximately four months after the termination of his employment.

[10] Mr. Paddy is still relatively young and clearly has good qualifications to fulfil any number of middle management positions in industries other than the retail coffee industry. However, virtually all of his experience has been within that industry at Starbucks and he cannot, for 18 months at least, offer his services to a competitor of Starbucks. He may not wish to, because he has apparently not sought to be relieved of the obligation of the non-competition agreement. However, as of the date of trial, both parties regarded him as being bound by that agreement.

[11] I can take judicial notice of the fact that the job market in British Columbia at the present time is very buoyant. Mr. Paddy should have no difficulty in obtaining alternative employment although there is little evidence to suggest that he will necessarily be successful in being compensated at the same level he enjoyed at Starbucks. While I accept that, at this relatively early stage following his dismissal by Starbucks, Mr. Paddy is being somewhat selective in his job applications, I do not find that he is failing to mitigate his damages.

[12] Given Mr. Paddy's background and work experience, I would be surprised if it takes him much more than a year to obtain good, relatively equivalent, employment. That said, it must be recognized that he is presently estopped from pursuing employment in the area that he knows best.

[13] In all of the circumstances, it is my view that a reasonable period of notice in this case is 14 months.

B. Bonus

[14] Ms. Kyriazis of Starbucks suggests in her evidence that Mr. Paddy would not have earned any bonus for the final two quarters of Starbucks' fiscal year 2007 because of declining performance. Although I recognize that over a three-year period his bonuses had decreased (due, presumably, to his decreasing level of performance), I do not accept the evidence that Mr. Paddy's performance so markedly decreased that he would not have been entitled to a bonus for the balance of Starbucks' fiscal year 2007.

[15] On the other hand, I do not accept the submission of counsel for Mr. Paddy that the method to determine his entitlement to the bonus component of his damages is to average the previous years' total bonuses. This would fly in the face of the reality that his bonuses were steadily decreasing. I accept the submission of counsel for Starbucks that, assuming that I find that Mr. Paddy is entitled to bonus for the third and fourth quarters of fiscal year 2007, his entitlement is \$9,193.

[16] Given the downward trend of Mr. Paddy's entitlements to bonuses, while it is possible that his performance would have markedly increased in 2008, I find it more probable that it would have continued to decline with the result that it is improbable that he would have earned any bonus in 2008.

C. Various Insurance Benefits

[17] There is no dispute that Mr. Paddy is entitled to be compensated for \$108 a month for BC Medical Services Plan coverage, \$95.70 a month for life insurance coverage for himself and his wife, and \$228 a month for family extended medical and dental coverage. I also find that he is entitled to be compensated \$2,543 for the cost of premiums for a 12-month long-term disability insurance policy.

D. RRSP Benefits

[18] In 2006 Starbucks contributed \$1,488 to Mr. Paddy's RRSP (10% of his own contributions). On that basis, I conclude that he should also be awarded the sum of \$124 a month in compensation for that lost benefit.

E. Home Office Stipend

[19] For several years prior to his dismissal, Mr. Paddy operated out of a home office. He received a monthly amount of \$392 in compensation for his requirement to pay for a telephone, fax, internet connection, heat, power and so on. The contractual arrangements between the parties make it clear that this was intended to be a stipend to reimburse him for the expenses he incurred as a consequence of operating a home office. However, for reasons not explained, Starbucks commonly deducted withholding tax from the amount of the payments to him for the stipend. It seems obvious to me that this was done in error.

[20] Counsel for Mr. Paddy argues that this action by Starbucks is tantamount to its recognition that the home office stipend was actually a benefit rather than a true

reimbursement for expenses. I do not accept that argument. It may well be that Mr. Paddy can claim back the tax from Revenue Canada that was apparently incorrectly deducted from him. However, the deduction, in error, of the tax does not change the essential character of what was agreed by the parties to be a stipend to off-set additional costs to Mr. Paddy of operating an office out of his home for the benefit of Starbucks. As Mr. Paddy is no longer operating that office (even if one assumes he was to have received working notice), he is not entitled to receive payment of this stipend during the notice period.

F. Stock Option Plan

[21] From the time he commenced employment with Starbucks in 1992, Mr. Paddy annually received certain stock options. In January 2007, a change was made to the terms of the plan whereby, even if one's employment was terminated without cause, one would not be entitled to further participate in the plan. Mr. Paddy maintains that he did not receive notice of that change and Starbucks does not contest his position. However, counsel for Starbucks submits that, even under the former plan, Mr. Paddy has, essentially, not suffered any damages by not being able to have a certain number of additional shares vest during the time of notice. That is because, under the terms of the plan effective up to the end of 2006, the terms of which it is agreed are applicable to Mr. Paddy's situation, he had 90 days from termination of employment in which to exercise his option to purchase shares under an advantageous plan which allowed him to direct an agent of Starbucks to take up the options and sell the shares without his actually having to put up the money to accomplish this. The argument of Starbucks is that, as the price of Starbucks

shares dropped through the end of 2007, had Mr. Paddy had additional time in which to exercise his option to purchase those shares which would have become vested during the notice period, any gain he would thereby have made would have been more than off-set by the losses he would have incurred by the decrease in market value of Starbucks shares.

[22] I am satisfied that Mr. Paddy should have been entitled to extend the period in which he had to exercise his option to purchase additional vested shares. However, I cannot say that extending him the right to have exercised the option to purchase 204 shares that was granted on November 20, 2003 (which Mr. Paddy maintains results in a "clearly quantifiable loss of \$1,523") would have, on the evidence before me, resulted in his actually being financially ahead. I find that it is improbable that, if he had been given the opportunity to delay exercising this option for the vested shares beyond the 90 days from his dismissal, he most likely would have delayed exercising all of the options as there would have been no need to have done so at the time he did. He, therefore, would have been caught by a declining Starbucks share price, which would have meant that, ultimately, he would have had less value in shares (or money as a result of selling the shares), even with the additional shares, than he did by selling the smaller number of shares earlier. I, therefore, do not award Mr. Paddy any damages for this claim.

III. SUMMARY

[23] I find that the notice period that Mr. Paddy should have received was 14 months. I find that the compensation flowing from that conclusion is as set out

above. Counsel can do the mathematics with liberty to apply if there is any dispute. From the amount I have found that Mr. Paddy should have received by way of compensation should be deducted any sums that have been paid to him by Starbucks since the date of his dismissal. Counsel may address the issue of costs at a time to be arranged or in written submissions.

A handwritten signature in black ink, appearing to be 'W. J. [unclear]', written in a cursive style.