



NO. S-103215
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

DARRYL SOMMERVILLE

PLAINTIFF

AND

CATALYST PAPER CORPORATION

DEFENDANT

RESPONSE TO CIVIL CLAIM

Filed by: The Defendant

PART 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant’s Response to Facts

1. None of the facts alleged in Part 1 of the Notice of Civil Claim are admitted.
2. All of the facts alleged in Part 1 of the Notice of Civil Claim are denied other than the facts alleged in paragraph 14 thereof.
3. The facts alleged in paragraph 14 of Part 1 of the Notice of Civil Claim are outside the knowledge of the Defendant.

Division 2 – Defendant’s Version of Facts

The Plaintiff’s Employment

4. The Defendant is not the employer of the Plaintiff. The employer of the Plaintiff at all material times was Catalyst Paper (“Catalyst”), a general partnership between the Defendant and its wholly owned subsidiary Catalyst Pulp Operations Limited. The Defendant is the managing partner of Catalyst.
5. The Plaintiff was working at all material times at Catalyst’s mill in Powell River as a Mechanical Pulping Operations Specialist. He is a salaried employee and is not a member of a union.
6. The Plaintiff has been employed by Catalyst or its predecessors since 1977.

Catalyst’s Business

7. The Defendant, together with its affiliates, including Catalyst, produces and markets specialty printing papers and newsprint and also manufactures market pulp.

The Short Term Incentive Plan

8. Catalyst’s predecessors developed and implemented a bonus plan known as the Short Term Incentive Plan (“STIP”) for its non-unionized employees.
9. Catalyst, like its predecessors, has revised the STIP from time to time, in its discretion.

10. At all material times, the terms of the STIP were entirely discretionary. Catalyst never promised the Plaintiff either orally or in writing that if certain conditions were satisfied, a STIP award would be payable in any particular amount, or even at all.
11. On the contrary, it was an express or, alternatively an implied term of the STIP that the STIP was subject to revision from time to time by Catalyst, at Catalyst's sole discretion, with little or no notice, and that such revisions could operate to reduce or eliminate altogether the STIP award that would otherwise be payable to the Plaintiff.

The Decision not to pay a STIP Award in 2009

12. The Defendant admits that the Plaintiff was eligible to participate in the STIP in 2009, but subject to its terms as established by Catalyst in its discretion.
13. The STIP terms for 2009 were communicated to the Plaintiff by letter on or about May 4, 2009. Those terms included the following:
 - (a) as in previous years, a target was established as a percentage of base salary (between 10% and 30%);
 - (b) the target was made up of three components, weighted as follows:
 - (i) corporate - 50% of the total target;
 - (ii) divisional - 40% of the total target; and
 - (iii) individual - 10% of the total target;
 - (c) the actual award to be paid could be anywhere between 0% and 100% of the target, at Catalyst's discretion;

- (d) the total STIP budget for all employees was capped at 10% of free cash flow as defined and reported in the Management Discussion and Analysis (MD&A) section of Catalyst's annual report; and
 - (e) each employee's award was to be proportionately reduced as necessary to ensure that the total of all awards did not exceed the budgeted cap.
14. At no time did Catalyst promise the Plaintiff that it would pay him any share of free cash flow, even if the prescribed targets were met. On the contrary, it was an express, or alternatively an implied term of the STIP in 2009 that the pool of funds allocated for the STIP would be capped at a *maximum* of 10% of free cash flow and that STIP awards could be reduced or eliminated altogether by Catalyst as it saw fit in response to business conditions.
15. During 2009, the corporate target was not achieved but 68.3% of the Plaintiff's divisional target was achieved. His individual target was not calculated in light of the decision not to pay any STIP awards for 2009.
16. Catalyst concluded that no STIP award would be paid to the Plaintiff or any other Catalyst employee for 2009 because, among other things, free cash flow was technically achieved on the balance sheets only by means of certain drastic, extraordinary and unsustainable reductions in capital and maintenance expenditures in response to the severe business challenges Catalyst was facing at the time. Catalyst reached this conclusion in order to conserve cash and reduce costs in an effort to ensure its short-term survival and long-term viability as a company.
17. The decision not to pay a STIP award to the Plaintiff was communicated to the Plaintiff by letter dated January 28, 2010.

18. The Plaintiff has continued to work for Catalyst despite the non-payment of a 2009 STIP award.

Changes to Vacation, Pension and other Benefits

19. During the material time, Catalyst provided certain benefits for the Plaintiff as part of a package of benefits, including vacation, pension and other benefits (the "Plaintiff's Benefits Package").
20. In each year of his employment, including 2010, the Plaintiff was required to re-enrol into the then current benefits plan to reflect changes made in each year from the previous year's plan. These changes were communicated to the Plaintiff in January of each year, including 2010, with effect in that year. The benefit year runs from March to March.
21. In November 2009, Catalyst advised the Plaintiff that various changes were going to be made to the Plaintiff's Benefits Package in 2010 in order to reduce its costs so that it could weather the global economic recession.
22. The following changes to the Plaintiff's Benefits Package were announced to the Plaintiff in November 2009 and implemented in 2010 or later (collectively, the "2010 Benefits Package Changes"):
 - (a) annual vacation entitlement was capped at a maximum of five weeks, whereas the Plaintiff would have been entitled to seven weeks (six regular, one flex) had the cap not been put in place;
 - (b) the Plaintiff lost the option to trade flex vacation weeks for other benefits but the basic health benefit plan was now fully funded by Catalyst;
 - (c) the supplemental vacation programme was eliminated and employees such as the Plaintiff with more than five years service were granted a prorated amount of

vacation based on years of service, which could be taken as time off or could be cashed out;

- (d) the Plaintiff's "defined benefit pension plan" was converted into a "defined contribution pension plan" and Catalyst's contribution to the latter plan was reduced from 7% to 5% of pensionable earnings;
 - (e) the Plaintiff's health benefit plan was changed from a "Flex" benefit plan to a simplified employer paid "CorePlus" benefits plan with certain enhancements that the Plaintiff could purchase at his option;
 - (f) the Plaintiff was required to pay 50% of the cost of MSP coverage, whereas that cost had in previous years been borne entirely by Catalyst; and
 - (g) post-retirement benefits for employees, such as the Plaintiff, who will retire from Catalyst at age 55 or older after March 1, 2011 and have at least five years of service will be paid to age 65 when formerly the benefits were payable for the life of the employee/spouse.
23. The changes to the pension plan and vacation plan took effect on January 1, 2010. The changes to the other benefits took effect on March 1, 2010, except for future retiree benefits changes, which will take effect on March 1, 2011.
24. Although Catalyst also announced to the Plaintiff in November and December, 2009 that it would no longer pay for his life insurance and long term disability benefits, Catalyst opted not to make that change and so those benefits were maintained in 2010.
25. The amount of notice that Catalyst gave to the Plaintiff of the 2010 Benefits Package Changes was adequate, having regard to the following considerations, among others:
- (a) the fact that Catalyst was experiencing extraordinary financial hardship throughout 2009, which rendered it necessary to reassess the extent of its ability to fund the benefits package in the following year on an ongoing basis;
 - (b) the fact that the amount of notice was the same as that given in each previous year of the Plaintiff's employment where changes to the Plaintiff's Benefits Package were made; and

- (c) the fact that the impact of the changes on the Plaintiff has not been and will not be significant relative to the value to him of the Plaintiff's Benefits Package as a whole.
- 26. The Plaintiff elected to remain in Catalyst's employ despite the 2010 Benefits Package Changes and in February, 2010, specifically applied for and has since received benefits under the Plaintiff's Benefits Package in its revised form, and has thereby expressly or impliedly accepted or condoned the 2010 Benefits Package Changes.
- 27. The Defendant does not know the extent to which the Plaintiff has been or will be affected by the 2010 Benefits Package Changes, if at all, and puts the Plaintiff to the strict proof of any damages claimed as a result thereof.
- 28. In the alternative, if and to the extent the Plaintiff has been or will be affected by the 2010 Benefits Changes, he has failed to mitigate his loss.

Division 3 – Additional Facts

- 1. In answer to paragraph 2 of Part 1 of the Notice of Civil Claim, this is not a "class action" unless and until it is certified as such, nor can the Plaintiff be a "class" or representative plaintiff before then.

PART 2: RESPONSE TO RELIEF SOUGHT

- 1. The Defendant opposes the granting of the relief sought in Part 2 of the Notice of Civil Claim.

PART 3: LEGAL BASIS

- 1. In light of the facts as set out above, the Claim should be dismissed because:

- (a) Catalyst was not required by contract or otherwise to pay a STIP award to the Plaintiff in 2009;
- (b) Catalyst was not precluded by contract or otherwise from making the 2010 Benefits Package Changes in the way that it did;
- (c) in the alternative, the Plaintiff has either expressly or impliedly accepted or condoned the decision not to pay him a STIP award in 2009 and the 2010 Benefits Package Changes; and
- (d) in the further alternative, the Plaintiff has not suffered damages as alleged or at all.

Defendant's address for service:

Address for service:

McCarthy Tétrault LLP
Barristers & Solicitors
#1300 - 777 Dunsmuir Street
Vancouver, BC V7Y 1K2

Attention: Warren B. Milman

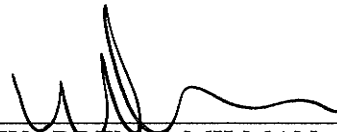
Fax number for service (if any):

604-622-5704

Email address for service (if any):

wmillman@mccarthy.ca

DATED: December 23, 2010



WARREN B. MILMAN
Counsel for the Defendant

Rule 7-1 (1) of the Supreme Court Civil Rules states:

1. Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists

- (i) all documents that are or have been in the party 's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
- (b) serve the list on all parties of record.