COURT OF APPEAL

CANADA
PROVINCE OF QUEBEC
REGISTRY OF MONTREAL

No: 500-09-022828-123
(500-17-056977-104)

MINUTES OF THE HEARING

DATE: September 20, 2012

THE HONOURABLE PIERRE J. DALPHOND, J.A.

PETITIONER	ATTORNEY
CMP ADVANCED MECHANICAL SOLUTIONS LTD	Mtre Philip Aspler *ASPLER & ASS.*

RESPONDENT	ATTORNEY
ARTHUR SNOW	Mtre Raphael Levy *LEVY TSOTSIS*

MOTION FOR LEAVE TO APPEAL FROM A JUDGMENT RENDERED ON JUNE 12, 2012 BY THE HONOURABLE SUZANNE COURTEAU OF THE SUPERIOR COURT IN THE DISTRICT OF MONTREAL

Clerk: Annick Nguyen	Court Room: RC.18

HEARING

9:53 Commencement of the hearing. Submission by Mtre Aspler.
10:11 Submission by Mtre Levy.
10:15 Reply by Mtre Aspler.
10:17 BY THE JUDGE. Judgment – See page 3.

Annick Nguyen

Clerk

JUDGMENT

[1] The petitioner seeks leave to appeal from a judgment of the Quebec Superior Court that ordered it to pay to the respondent, a former employee, an amount of $31,630.49 in lieu of notice of termination.

* * * * *

[2] It is not disputed that the parties were bound by an individual contract of employment with an indeterminate term.

[3] Pursuant to article 2091 *C.C.Q.,* the petitioner, the employer, was entitled to put an end to this contract by giving an adequate notice of termination to the respondent, unless the termination was for a serious reason as provided by article 2094 *C.C.Q*.

[4] The petitioner makes the argument that it was going through an unexpected economic hardship and thus had to terminate the respondent at the same time than 37 other employees. According to its attorney, this was a reason serious enough to justify a termination without prior notice.

[5] Subsidiary, the attorney argues that s. 82 of *Labour Standards Act*, R.S.Q., c. N-1.1, was the sole provision applicable because it was a case of massive layoff. Thus the respondent was entitled to an eight-week severance pay and no more. Since this severance pay was paid at the time of termination, the respondent's action should have been dismissed.

[6] Finally, the petitioner argues that respondent was under an obligation to mitigate, which he has failed to meet. Therefore, the judge should have reduced the amount awarded accordingly.

* * * * *

[7] In my view, none of these arguments is serious enough to justify leave to appeal.

[8] As the trial judge correctly pointed out, the *Labour Standards Act* provides for a minimum. It does not preclude an employee to seek more than the eight weeks the respondent was entitled under s. 82 of *Labour Standards Act,* as specifically provided in the section itself:

> 82. The employer must give written notice to an employee before terminating his contract of employment or laying him off for six months or more.
>
> The notice shall be of one week if the employee is credited with less than one year of uninterrupted service, two weeks if he is credited with one year to five years of uninterrupted service, four weeks if he is credited with five years to ten years of uninterrupted service and eight weeks if he is credited with ten years or more of uninterrupted service.

> A notice of termination of employment given to an employee during the period when he is laid off is absolutely null, except in the case of employment that usually lasts for not more than six months each year due to the influence of the seasons.
>
> This section does not deprive an employee of a right granted to him under another Act.
>
> (Emphasis added)

[9] As for what qualifies as serious reason for an employer to unilaterally terminate a contract of employment without prior notice under article 2094 *C.C.Q.,* it is clear to me that jurisprudence and doctrine say that the financial situation of an employer does not constitute such a reason. Audet, Bonhomme, Gascon and Cournoyer-Proulx write:

> La jurisprudence a presque unanimement décidé que la mauvaise situation économique d'une entreprise ne pouvait être retenue comme une cause juste et suffisante de congédiement annihilant le droit au préavis.[1]

[10] Since the respondent had been an employee of the petitioner for over seventeen years, the notice under article 2091 *C.C.Q.* had to be of a substantial length.

[11] The trial judge concluded that he was entitled to a ten-month notice. This conclusion does not appear unreasonable considering the length of the relationship, the nature of the work, the age of the respondent and his education and skills.

[12] As for the obligation to mitigate by the former employee, the judge acknowledged it. There is no error of law.

[13] The rest is an analysis of the evidence presented leading her to conclude that the respondent did fulfill his obligation to mitigate:

> [47] Arthur Snow recognizes the obligation to mitigate damages. He replies that it is an obligation of means, not of results. He was obliged to take reasonable steps to look for a job, which he did:
>
> - in September after the termination of his employment, he was in a state of shock. He just could not do anything;
>
> - between October 2009 and February 2010, he looked for jobs but found nothing in the newspapers. He realized that he has no diplomas and learns somewhat of the fact that the new jobs sites are on the Internet;
>
> - in February 2010, after having been referred to Emploi Québec, he starts the process to obtain his Secondary V equivalence diploma, which he gets in May;
>
> - in May, he can finally start looking for a job which he secures in June-July 2010.

[1] Georges Audet, Robert Bonhomme, Clément Gascon and Magali Cournoyer-Proulx, *Le congédiement en droit québécois en matière de contrat individuel de travail*, 3th ed., vol. 1, loose-leaf edition, Cowansville (Qc), Éditions Yvon Blais, May 2012, No. 4.2.78, p. 4-50.

> [48] The Court accepts Arthur Snow's arguments and recognizes that special circumstances prevented him from applying for jobs as early as September 2009. His long-term employment with CMP, for 17 years, provided experience for Mr. Snow during these many years: he never had to worry about having a Secondary V diploma or its equivalent to secure employment.
>
> [49] Similarly, searching on various job sites on the Internet was certainly not the usual way of looking for a job before 1992. Mr. Snow had to learn how to proceed, get an equivalency diploma and submit a CV.
>
> [50] The Court accepts that Arthur Snow took the necessary steps to mitigate his damages until he found employment with Les Matrices Carritecs inc.

[14] The evidence supports this conclusion.

[15] Finally the amount awarded take into consideration the eight weeks paid on termination.

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[16] **FOR ALL THESE REASONS,** the motion for leave to appeal is DISMISSED, with costs.

PIERRE J. DALPHOND, J.A.