

COURT ORDERS WALLACE DAMAGES FOR A SEVERANCE PACKAGE OFFER

Stuart v. Navigata Communications Ltd., 2007 BCSC 463

By Wesley D. Booker

The Supreme Court of British Columbia recently ordered an employer to pay special damages for attempting to negotiate a severance package with an employee without disclosing to her that she would be terminated if she did not accept the offer.

The Plaintiff held the position of Manager of Strategic Accounts and was responsible for the company's top ten accounts. In 2001, the company permitted the Plaintiff to switch to a three-day work week so that she could better take care of her two children. Despite this arrangement, the Plaintiff maintained her high level of performance. In February 2006, the Plaintiff requested, and received, a paid leave of absence to care to her son, who had just been diagnosed with Type I Juvenile Diabetes.

During the Plaintiff's leave, the company offered her the option of accepting a severance package that would enable her to stay at home and care for her son on a permanent basis. Believing that she still had the option of returning to work, the Plaintiff entered into negotiations with the company for a severance package. The company, conversely, had decided that the Plaintiff would be dismissed if she did not accept a severance package. It was clear to the company that the Plaintiff did not suspect that her employment was in danger. However, the company permitted the Plaintiff to continue to believe that her employment was secure. When it became clear to the company that it was not going to be able to conclude a severance agreement with the Plaintiff, it dismissed her without cause. The Plaintiff sued the company for wrongful dismissal and claimed special damages against the company for dealing with her in bad faith.

The Supreme Court of British Columbia found that the Plaintiff had been wrongfully dismissed. The Court did not find that the company acted discriminatory, stating that the Plaintiff's dismissal was in no way related to her son's illness because the company had decided to terminate her before finding out about the illness. The Court considered the Plaintiff's claim for special damages based on the Supreme Court of Canada's decision in *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701 ("*Wallace*").

In *Wallace*, the Supreme Court of Canada imposed a duty of good faith and fair dealing on employers. At paragraph 98 of the *Wallace* decision, the Supreme Court of Canada stated,

[I]n the course of dismissal employers ought to be candid, reasonable, honest and forthright with their employees and should refrain from engaging in conduct that is unfair or is in bad faith by being, for example, untruthful, misleading or unduly insensitive

The Supreme Court of British Columbia found that the company intentionally entered into negotiations with the Plaintiff for a severance package and withheld the fact that it would dismiss

her if negotiations failed. The Court found that this constituted bad faith conduct and that the company had breached its duty to be honest and forthright with the Plaintiff. As a result, the Court added two months of *Wallace* damages to the wrongful dismissal award.

This decision stands as a beacon cautioning employers to be forthright with their employees if they are considering reducing their workforce by offering severance or early retirement packages.

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