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UNDERSTANDING CONSTRUCTIVE DISMISSAL - LET THE EMPLOYEE BEWARE

Richards Buell Sutton's Employment Newsletter

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The case of *Meyers v. Chevron Canada Ltd.*, [2013] B.C.J. No. 459 acts as a reminder to employees who make a hasty decision to "quit" their job, in response to unilateral changes made by the employer to the employee's position. If the changes imposed by the employer are not substantial changes to the essential terms of the employment contract, then the employee will not be able to recover damages for constructive dismissal and likely will be required to pay the employer's legal costs.

Facts

Warren Meyers worked for Chevron Canada Limited ("Chevron") from 1994 to 2010. During his tenure with Chevron, Mr. Meyers had several job changes, including both promotions and lateral moves. In 1997, he became an Implementation Lead in the information technology department ("IT"), and in 2002, he became the Applications Development Team Lead. As an Applications Development Team Lead, Mr. Meyers was a working supervisor. He had as many as four employees and three contractors reporting to him as a Team Lead. There was no evidence of any written contract of employment.

In 2010, Chevron re-organized its structure, consequently eliminating Mr. Meyers' position, and he was offered the new position of Business Analyst as part of the re-organization. In the new position, Mr. Meyers would have no employees reporting to him.

Mr. Meyers argued that, objectively viewed, the new position was a demotion and that the conduct of Chevron amounted to constructive dismissal. He sought general and special damages and damages for breach of contract. Chevron argued that the new position offered to Mr. Meyers was essentially equivalent in scope and, therefore, it did not constitute a constructive dismissal.

The Issues

The issues before Madam Justice Gerow were:

1. Was Mr. Meyers constructively dismissed?



2. If he was constructively dismissed, what was the appropriate notice period?
3. Did Mr. Meyers fail to mitigate his damages by not accepting the new position or by failing to seek other employment in a timely fashion?
4. What were the appropriate damages?

The Decision

The court held that Mr. Meyers failed to establish that he was constructively dismissed. In her reasoning, Justice Gerow referred to the seminal decision of *Farber v. Royal Trust Co.*, [1997] 1 S.C.R. 846 where the Supreme Court of Canada observed at para. 24:

Where an employer decides unilaterally to make substantial changes to the essential terms of an employee's contract of employment and the employee does not agree to the changes and leaves his or her job, the employee has not resigned, but has been dismissed. Since the employer has not formally dismissed the employee, this is referred to as "constructive dismissal". By unilaterally seeking to make substantial changes to the essential terms of the employment contract, the employer is ceasing to meet its obligations and is therefore terminating the contract. The employee can then treat the contract as resiliated for breach and can leave. In such circumstances, the employee is entitled to compensation in lieu of notice and, where appropriate, damages.

To reach the conclusion that an employee has been constructively dismissed, the court must determine whether the unilateral changes imposed by the employer substantially altered the essential terms of the employee's contract of employment.

Justice Gerow was not satisfied that there should be a term implied into Mr. Meyers' employment contract preventing Chevron from varying the subject matter of Mr. Meyers' management responsibilities. Furthermore, she held that the evidence did not support the view that the parties contemplated that Mr. Meyers' role was so rigidly defined. She commented that, while Mr. Meyers may have lost some stature because he no longer had a supervisory role and would have to sit in a cubicle, his concerns were more subjective than objective.

The court outlined that an employer requires some latitude to structure the affairs of its operation, and such an inflexible term would shift the balance too far in favour of the employee. To that end, the new position was not a dramatic qualitative change in his duties.

Summary

It is clear from *Meyers* that each case turns on its own facts. In every case where constructive dismissal is



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alleged it must be determined whether there was a breach of an essential term of the employment contract, either implied or express, and if there has been a breach whether the breach constitutes repudiation. Whether the breach constitutes repudiation of the contract by the employer depends on the nature and seriousness of the breach, the intention of the parties and the surrounding circumstances.

The lesson to be gleaned from *Meyers* is a simple one: an employee should seek legal advice before resigning from the employment relationship in response to changes made by the employer.

