

NOVA SCOTIA COURT OF APPEAL

Citation: *Ocean Nutrition Canada Ltd. v. Matthews*, 2018 NSCA 44

Date: 20180524

Docket: CA 460556

Registry: Halifax

Between:

Ocean Nutrition Canada Limited

Appellant

v.

David Matthews

Respondent

Judge:

The Honourable Justice David P.S. Farrar
The Honourable Justice J.E. (Ted) Scanlan (Dissenting)

Appeal Heard:

November 16, 2017, in Halifax, Nova Scotia

Subject:

**Constructive Dismissal. Wrongful Dismissal.
Interpretation of Employee Long Term Incentive Package.**

Summary:

The respondent, David Matthews, worked for Ocean Nutrition and its predecessor companies from January 1997 to June 2011. In June 2011, he resigned and sued Ocean Nutrition for wrongful dismissal seeking damages for breach of his employment contract, including the loss of a Long Term Incentive Plan which had been provided to him by the company.

Under the terms of the Plan, if the company was sold during the period of time that Mr. Matthews was employed by it, he was entitled to receive a portion of the sale proceeds based on the formula contained in the Plan.

The Plan provided that if Mr. Matthews was not employed by the company at the time of the sale he would not be entitled to

share in the proceeds. This was so whether he resigned or was wrongfully dismissed. The hearing judge found that Mr. Matthews was entitled to 15 months' notice. The sale of Ocean Nutrition took place during that 15-month period. Had Mr. Matthews been employed with the company at the time of the sale he would have been entitled to receive approximately \$1.1M under the Plan.

The hearing judge found that despite Mr. Matthews not being employed with the company at the time of the sale, he was still entitled to recover under the Long Term Incentive Plan because the notice period overlapped with the sale of the company.

The hearing judge also ordered that Ocean Nutrition should pay 50% of the amount of the damages awarded to Mr. Matthews directly to Revenue Canada.

Ocean Nutrition appealed.

Issues:

- (1) Did the hearing judge err in finding that Matthews had been constructively dismissed?
- (2) Did the hearing judge err in finding the reasonable notice period was 15 months?
- (3) Did the hearing judge err in finding that Mr. Matthews was entitled to damages pursuant to the Long Term Incentive Plan or the Short Term Incentive Plan? And
- (4) Did the hearing judge err in ordering the defendant to remit a specific amount to CRA?

Result:

Appeal allowed, in part. Scanlan, J.A. dissenting.

The hearing judge did not err in finding that Mr. Matthews had been constructively dismissed, nor did he err in finding that the reasonable notice period was 15 months. However,

the majority found that he erred in awarding damages pursuant to the Long Term Incentive Plan where that Plan, by its plain wording, precluded any such payment. He also erred in ordering a specified amount be paid directly to CRA.

Scanlan, J.A. in dissent would have confirmed the amount awarded by the trial judge related to the LTIP. Even though the LTIP itself prevented recovery under that agreement the employment contract had an implied duty of honesty and good faith. Ocean management, one person in particular, was dishonest, resulting in Matthew's constructive dismissal. The appropriate notice period was 15 months and that meant that but for Ocean's manager, and his dishonesty, Matthews would have received the LTIP benefits. The LTIP can be used to measure those damages as part of the general damages Matthews is entitled to recover. The dissenting judge would have dismissed the appeal on the issue of the Long Term Incentive Plan finding that it was within the reasonable contemplation of the parties that if Mr. Matthews was constructively dismissed he would be entitled to the payment under the LTIP.

The appeal was allowed, in part, and the damages awarded under the Long Term Incentive Plan set aside. However, because success was divided, no costs were awarded to any party.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 59 pages.