

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

Cite as: Behrens v. Helicopter Survival Rescue Services Inc., 2005 NSSM 15

BETWEEN:

FRED BEHRENS

Claimant

- and -

HELICOPTER SURVIVAL RESCUE SERVICES INC.

Defendant

Counsel: The Claimant was self-represented
The Defendant was represented by Kenneth A. MacLean

Decision :August 15, 2005

Agreement between employer and employee to pay severance on employee's leaving his employment. Employer believed employee was going to work in a different business than employer's and employee intending to do so. Eventually the former employee went back into business that competed with his former employer and former employer stopped payment under severance agreement.

DECISION and ORDER

This matter came before the Small Claims Court of Halifax and Province of Nova Scotia on the 9th day of June, A.D. 2005.

The parties were asked if there were any preliminary matters or motions the wished to make and after being advised of the procedure of the Small Claims Court the matter preceded accordingly.

This claim concerns severance pay which the Claimant says he is owned pursuant to an agreement he had with his employer, the Defendant.

The Defendant in its pleadings state that any such agreement was based on misrepresentation that the Claimant breached a fundamental term of the agreement and the Claimant breached his employee/fiduciary duties.

Facts:

The Claimant worked with the Defendant Company for 16 years and he decided he wanted a change. During his working career with the Defendant he worked his way into a managerial position. The company was planning on expanding into a foreign market and the Claimant expressed his desire to move into that area. As it turned out, that change did not occur however the Claimant's responsibilities changed to doing special projects which the Claimant was told would have a limited life. While involved in this new role the Claimant approached the owner of the Defendant Company and told him he was ready for a change in his career direction and was planning to go into the insurance industry. The Claimant requested a severance package of two weeks pay for every year worked or 32 weeks pay in this particular case. The Defendant agreed and the Claimant requested that the owner of the Defendant Company reduce their agreement to written form. The owner suggested to the Claimant that he could draft something and it would be signed. The letter was drafted by the Claimant and it was signed by the Defendant owner of the company.

The letter stated in part:

It is with regret that I inform you that effective July 23 your services with Helicopter Survival Rescue Services will no longer be required. I would like to thank you for your dedication, hard work and contributions to HSRS over the past 16 years.

You will receive the 32 weeks of severance pay, two weeks for every year you have been employed with HSRS, to be paid to you by payroll continuance until March 4, 2005, or in a lump sum of the outstanding amount prior to any sale of HSRS should this occur before March 4, 2005. Twenty days of accrued vacation time will be paid to you on the pay period July 31, 2004. Your medical and dental benefits will continue until March 4, 2005.

The payments were to be made over a similar pay in which both parties were accustomed. What the Claimant did not mention at the meeting with the Defendant was that he was also making inquiries in other areas with respect to work changes, including with competitors of the Defendant.

Everything proceeded as expected; the Claimant left the company and the Claimant received \$12,758.04 representing nearly half of his payments until the Defendant learned the Claimant was working for its competitor. Payments ceased from that point forward and the Claimant now claims for the remaining payments pursuant to the severance letter in the amount of \$16,411.19 which the Claimant has reduced to \$15,000.00 in order to fit within the monetary guidelines of the Small Claims Court.

In this particular case, the Claimant decided not to go into the insurance field, and instead ended up working with a competitor of the Defendant. There is no evidence that the Claimant used confidential information acquired while he was employed with the Defendant, in his new employment to the detriment of the Defendant. Nor is there any evidence that he used information to gain an advantage for his current employer over the Defendant. Further there is no substantive evidence to support any suggestion that there was a loss of monies, contractual

work or sales that the Defendant experienced as a result of the Claimant's move to a competitor. Notwithstanding the Defendant did not draft the severance letter, there was nothing to stop the Defendant from inserting a non-competition clause in the letter. There is no question that the Defendant was upset that the Claimant went to work for a competitor after he left his employ with the Defendant.

While the Claimant did in fact go with a competitor of the Defendant, I am not convinced in listening to his testimony or the evidence he provided that that was the primary reason for leaving the Defendant Company. His role with the Defendant Company had changed, through no fault of his own and when he took on the role of dealing with special projects both the employer and the Claimant knew that the life of such projects may well be limited. Based on all the testimony I heard I found the Claimant to be credible in asserting that his goal or object upon leaving the Defendant Company was to go into the insurance business. He took courses, he moved in that direction but it did not work out and he ended up going back to the business area that he knew. I do not believe there was a scheme to leave the Defendant Company and to go into business with a competitor of the Defendant to the detriment of that Defendant Company. I considered the elements of fraudulent and negligent misrepresentation in the Claimant's negotiations with the Defendant and I find no such misrepresentation. The Claimant left the Defendant Company hoping to go into the insurance business but ultimately decided to work in an area which he was familiar.

The amount of the claim exceeds the \$15,000.00 limit of the Small Claims Court in that the total not paid to the Claimant pursuant to the agreement between the Claimant and the Defendant is \$16,411.19. The Claimant has reduced his claim to \$15,000.00 to fit within the monetary jurisdiction of this Court.

IT IS THEREFORE ORDERED that the Defendant shall pay the Claimant the following sums:

\$15,000.00
45.00 service costs
<u>160.00 Court costs</u>
\$15,205.00

Dated at Halifax, on the 15 day of August, 2005.

David T.R. Parker
Small Claims Court Adjudicator