

Ontario Superior Court Upholds Principles of New Employment Agreement for Existing Employee

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In *Lancia v. Park Dentistry*, released on February 7, 2018, the Ontario Superior Court of Justice granted summary judgment against an employee who claimed that she had been constructively dismissed after signing a new employment contract.

Facts

Michelle Lancia was employed by Park Dentistry and its predecessor as a restorative dental hygienist from November 1997 to February 2016. In August 2014, as part of Park Dentistry's effort to transition all employees to written employment contracts, Ms. Lancia was presented with a letter attaching a new employment agreement and explaining that she had the option of signing the new Agreement by January 14, 2016, or her employment would be terminated in 18 months, on February 14, 2016 (with the period between August 2014 and February 2016 constituted working notice).

Ms. Lancia signed the new Agreement two days after it was provided to her, despite being given ample time to seek legal advice. She received a signing bonus of \$2,000 for signing prior to September 19, 2014.

On February 9, 2016, Ms. Lancia resigned from her employment with Park Dentistry. She then brought a claim — approximately 13 months after her resignation — alleging that she was constructively dismissed from her employment due to a material change in the employment relationship (claiming that the new employment agreement was unenforceable for lack of consideration), and alleging sexual harassment.

Both parties sought summary judgment in favour of their respective positions.

Decision

The Court held that there was no genuine issue requiring a trial and that Ms. Lancia was not constructively dismissed. In coming to this conclusion, the Court rejected Ms. Lancia's argument regarding consideration and highlighted her delay in bringing a claim for constructive dismissal. The Court also found that Ms. Lancia had not established her allegations of sexual harassment.

With respect to the employment agreement, the Court found that Ms. Lancia had in fact received consideration: the \$2000 signing bonus. The Court also commented that, in any event, Park Dentistry was not required to provide consideration in the circumstances. In this regard, the Court confirmed that an employer has the right to transition an employee to a new contract without consideration as long as common law reasonable notice of the change is provided. The manner in which Park Dentistry went about introducing its new employment contracts was, in this case, appropriate and consistent with established legal principles.

The Court also found Ms. Lancia's delay in bringing her constructive dismissal claim to be significant. If an employee intends to treat an alleged breach of contract as constructive dismissal, he or she must communicate that decision to the employer within a reasonable

time. Ms. Lancia had failed to allege constructive dismissal until 13 months after she resigned.

In the end, the Court concluded that Ms. Lancia had unilaterally terminated the employment relationship and that her constructive dismissal claim had no merit.

The *Lancia v. Park Dentistry* provides a helpful summary of the issues and principles for employers to consider when imposing new employment agreements on existing employees. It serves as a reminder that, while it can be challenging in some cases, it is possible to impose new agreements on existing employees, so long as the proper process is followed and employees are provided with sufficient reasonable notice of the change.

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