



Employee loses by refusing replacement job offer

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In the recent decision of [Ghanny v. 498326 Ontario Limited](#), the Ontario Superior Court of Justice held that a former employee's wrongful dismissal action could not succeed because he failed to mitigate his losses when he rejected another position offered to him by his employer.

Background

Aleem Ghanny (Mr. Ghanny) had been an employee of a Toyota dealership for 18 years when he was informed that his position as Service Manager was to be terminated as a result of management reorganization. Upon informing Mr. Ghanny of this decision, the dealership owner offered him another management position with the same salary at a nearby Suzuki dealership, a recently acquired and related business. Mr. Ghanny, however, refused the offer for two (2) reasons: i) he thought his seniority at the Toyota dealership would be lost if he relocated, and ii) he was concerned that the future of the Suzuki dealership was uncertain. The owner, however, made it clear to Mr. Ghanny that his seniority would be transferred to Suzuki, and that whatever the future of the Suzuki dealership was, his job would not be at risk.

A month after his termination, Mr. Ghanny brought a wrongful dismissal action. Shortly thereafter, the dealership owner again offered Mr. Ghanny the replacement position, though Mr. Ghanny rejected it for a second time. He eventually found a lower-level position earning three-quarters of the salary he had been offered at the Suzuki dealership. The employer argued at trial that the action should be dismissed based on Mr. Ghanny's failure to mitigate his losses by accepting the offered position.

The Decision

At trial, Justice Belobaba dismissed Mr. Ghanny's action and found that his initial refusal of the replacement position was unreasonable. Citing the Court of Appeal's decision in [Misfud v. MacMillan Bathurst Inc.](#), Justice Belobaba found that a reasonable person would be expected to take up a replacement job offered by his dismissing employer "[w]here the salary offered is the same, where the working conditions are not substantially different or the work demeaning, and where the personal relationships involved are not acrimonious." Based on the assurances that the owner had given to Mr. Ghanny that his seniority would remain intact and that his job was safe, Justice Belobaba had no difficulty in finding that in refusing the replacement job Mr. Ghanny had not mitigated his damages. Despite Mr. Ghanny's arguments, Justice Belobaba held that the replacement job offer was not unclear or ambiguous, nor was there a factual basis for Mr. Ghanny to fear that the Suzuki dealership was in financial difficulties. Thus, he dismissed the action with costs in favour of the employer.

Justice Belobaba noted that had Mr. Ghanny's claim been successful, he would have awarded Mr. Ghanny a reasonable notice period of 14 months. This period was arrived at in light of Mr. Ghanny's age of 47 years, his 18 years of service, and the difficulties that he encountered in finding other work in the fall of 2008 as the financial crisis was taking hold.

Our Views

This case serves to reassure employers that an employee's duty to mitigate their damages may include accepting a replacement job offered by their employer. This will likely be the case where the job offered is comparable to the former position in regards to compensation and working conditions, and the work environment is not acrimonious. In circumstances where such factors are not comparable, however, a court may well hold that an employee was not required to mitigate.

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