

COURT OF APPEAL FOR ONTARIO

CITATION: Agostino v. Gary Bean Securities Ltd., 2015 ONCA 49

DATE: 20150126

DOCKET: C59222

Doherty, Juriansz and Huscroft JJ.A.

BETWEEN

Maurizio Agostino

Plaintiff

(Appellant)

and

Gary Bean Securities Ltd. and Gary Bean

Defendants

(Respondents)

Maurizio Agostino, acting in person

Linda M. Smits, for the respondents

Heard and released orally: January 16, 2015

On appeal from the order of Justice A. Duncan Grace of the Superior Court of Justice, dated July 9, 2013.

ENDORSEMENT

[1] This is an appeal from the decision of Justice A. Duncan Grace of the Superior Court of Justice, dated July 9, 2013, dismissing the appellant's action for wrongful dismissal and granting judgment on the respondents'

counterclaim for \$63,179.66, money found owing as a result of the appellant's expense account.

[2] The appellant argued that the trial judge erred in permitting two witnesses who were not included on the pre-trial conference report to testify at the trial. However, the trial judge properly exercised his discretion to allow the respondents to call the two witnesses to testify. The appellant chose to proceed with the trial rather than adjourning the matter as the trial judge was prepared to allow. He cannot now claim that the trial was unfair on this account.

[3] The appellant argued that the trial judge erred in concluding that the corporate respondent had just cause to terminate his employment. It was open to the trial judge to conclude that the appellant was properly terminated given his findings that the appellant made unauthorized trades, lied to a client, and misled the respondent.

[4] There is no legal principle requiring progressive discipline in every case. The trial judge considered whether progressive discipline was appropriate in these circumstances and determined that it was not given his conclusion that the appellant's dishonesty went to the heart of the employment relationship (see paras. 86-91). We agree with his conclusion.

[5] There is no basis to suggest that the respondents acted with malice or bad faith toward the appellant.

[6] Given that the appellant fails on the appeal, there is no need to consider his argument that the trial judge did not determine an inappropriate notice period in the circumstances.

[7] The trial judge's calculation of the expense monies owed by the appellant to the respondent are supported by the facts found by the trial judge and we defer to his conclusion in this regard.

[8] For these reasons, the appeal is dismissed.

[9] Costs in favour of the respondents are fixed in the amount of \$10,000 including disbursements and relevant taxes.

“Doherty J.A.”

“R.G. Juriansz J.A.”

“G.A. Huscroft J.A.”