IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20040521
Docket: S040514
Registry: Vancouver

Between:

Colleen Nicholson

PLAINTIFF

And:

Sight, Sound & Action Ltd.

DEFENDANT

Before: The Honourable Mr. Justice Singh

Oral Reasons for Judgment

May 21, 2004

Counsel for Plaintiff	S.K. Kent
Appearing for Sight, Sound & Action Ltd.	D. Law
Place of Trial/Hearing:	Vancouver

[1] **THE COURT:** The plaintiff, Colleen Nicholson, instituted action against the defendant, Sight, Sound and Action Ltd., for breach of contract. A brief summary of the facts of this matter would suffice to give the reason as to this action coming before the court.

[2] The defendant, together with a sister organization known as Four Brothers, is involved in the theatrical entertainment business. It had in progress the

development of *Glad Tidings*, which was controlled, created and owned by one Stewart Ross. He had hired as a director one Dunaway.

[3] Exhibit 1 contains documents that clearly show that Dr. Law, on behalf of his corporations, was dissatisfied with the activities of Stewart Ross. There was somewhat a similar dissatisfaction with the director, Dunaway.

[4] At the time that the plaintiff came on the scene, clearly there was much tension, tug of war and dissatisfaction. That is confirmed by an e-mail addressed by Dennis Law to his controller and chief operating officer, Mark Holden. That e-mail is dated the 1st of October 2003, and he recites as to how they should deal with Stewart Ross and what the plaintiff should do.

[5] That appears in tab 7, Exhibit 1. The relevant portion reads:

> "It is good that Colleen has so far exercised the best of restraint, so they cannot accuse of trying to kill the deal. Colleen must try to document in notes what conversations have transpired. We need a file containing all course of dealings. E-mails are clear records, but please remind Colleen to keep brief notes regarding telephone calls. It is good to have a record that we are doing our best to keep the production alive, if ultimately to be thwarted by Ross himself."

[6] I make reference to this for the reason that what is contained in this e-mail, of which Dr. Law is the author, clearly shows that Dr. Law appreciated the necessity of keeping in writing and documented all of the facts that he would subsequently rely upon in dealing with whom he considered Stewart Ross to be a recalcitrant.

[7] It thus follows that Colleen Nicholson, the plaintiff, came upon the scene during difficult times. She prepared a contract after initially being hired by Dunaway, and subsequently Dunaway was fired. That created much resignation, particularly Dunaway himself and the co-producer, Judy Arnold. The defendant was fully aware of the delicate situation it was in, and it needed appropriate personnel to ensure that the production would stay on rails.

[8] Dr. Law, as the chief executive officer of the defendant, was dissatisfied with Dunaway having hired the plaintiff without his approval. Notwithstanding, he was impressed with the plaintiff and was willing to keep the plaintiff employed. She thus forwarded a contract prepared by her on the 12th of September 2003, to the defendant. That contract was then amended by the operating mind of the defendant, Dr. Law. The parties signed their assent to the terms of that contract on the 24th of September 2003.

[9] That contract contained clearly and unambiguously the fact that the plaintiff was steadfast in having a contract that would be based upon length of time rather than length of productions or number of productions. That contract period was stipulated to be September 15, 2003, terminating April 30, 2004, for the full contract sum of $30,000 to be payable in six equal installments of $5,000. If there were additional bonuses payable, that would be done in good faith and that would be dependent upon the defendant earning a profit.

[10] For her benefit, the plaintiff had a termination clause that she could terminate the contract at any time during the life of the contract upon giving two week's notice.

[11] The defendant had the contract amended from the original draft contract to include also a termination clause in its favour, which the first draft did not have. That termination clause as drawn by the defendant reads:

> "Client has already warranted that the amount paid to producer would remain the same even if one or more shows can be cancelled. However, client reserves the right to cancel this contract for cause, which shall include but not limited to fraud, misrepresentation and lack of proper fiduciary responsibility. Under these circumstances, contract salary will be prorated to the time of termination."

[12] Simply put, what the defendant required was its authority to terminate the contract as long as the defendant had justifiable cause, without restricting the nature of the cause.

[13] Much has been said about the cause that gave rise to the termination of the plaintiff's contract after she was paid only $10,000 of the $30,000. It was as a result of the questioning of the Court of the defendant that the defendant relies upon just cause as being the plaintiff failed in her duties as a producer and, as he put it, it is not her capabilities but her to capacity to carry out the duties of a producer that has resulted in her termination.

[14] Under the circumstances that led to the creation of this contract, the inability of the plaintiff to discharge the duties of a producer is not a justifiable cause for termination. The defendant has admitted that it was fully aware that the plaintiff was not a producer in the sense that the activities of the defendant required, but that he had the faith in her that she could be trained and developed, given her personality and training and experience, to be an acceptable producer.

[15] Given this knowledge, the defendant still went ahead and entered into a contract for a fixed period of time. Of significance also, the law is quite clear that if one employer wishes to terminate for cause, the employer or contractor must first be given notice as to the concern of the employer and that thereafter, there must be a written record of the failure of the employee to remove or to amend or correct the complaints of the employer as to just cause.

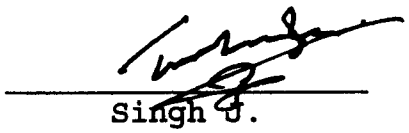
[16] In this case, there was no warning, documented or otherwise, that the plaintiff was put on notice that the employer or the defendant was considering just cause to terminate her employment. Of significance, the defendant very properly and forthrightly had some budgetary complaints but said that they do not blame the plaintiff for the overrun of some $600,000.

[17] The contract speaks for itself. There was no just cause for the termination. It was done unilaterally, and accordingly I find that the defendant is liable to the plaintiff for the amount unpaid under the terms of the contract. She will therefore have judgment for the sum of $20,000.

[18] The plaintiff also seeks aggravated damages. She bases that on the fact that she has been harmed in her self-esteem and therefore by the conduct of the defendant, she is entitled to aggravated damages. I do not find though that the plaintiff's evidence brings her within those factors that cause the Court to exercise its discretion to award any aggravated damages.

[19] She prepared the contract. She determined its length. She determined the value of that contract to be which was agreed to by the defendant. Any

consequences that were tangentially attached to that contract does not warrant damages. The plaintiff therefore is denied aggravated damages. She is entitled to her costs on scale 3.



Singh J.