

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Hajdu v. Triple Hair Group Inc.*,  
2025 BCSC 1996

Date: 20251010  
Docket: S235671  
Registry: Vancouver

Between:

**Attila Hajdu**

Plaintiff

And

**Triple Hair Group Inc. and Triple Hair Inc.**

Defendants

Before: The Honourable Justice Loo

## Reasons for Judgment

Counsel for the Plaintiff:

K.G. Ho

Counsel for the Defendants

G. Morrison

Place and Dates of Hearing:

Vancouver, B.C.  
August 21–22, 2025

Place and Date of Judgment:

Vancouver, B.C.  
October 10, 2025

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## **CONCLUSIONS AND COSTS**

### **Introduction**

[1] In this wrongful dismissal action, the plaintiff Attila Hajdu seeks judgment against the defendant Triple Hair Inc. by way of summary trial under R. 9-7 of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009.

[2] Triple Hair is a biotechnology company specializing in the development of treatments for hair loss. Mr. Hajdu started working for Triple Hair as its Vice-President of Business Development in February 2020.

[3] A written agreement between Mr. Hajdu and Triple Hair states that Mr. Hajdu was employed on a full-time basis as the company's Chief Business Officer starting in June 2020.

[4] Triple Hair terminated Mr. Hajdu from his role with the company on May 1, 2023. Mr. Hajdu was 56 years old at that time.

### **Issues**

[5] Mr. Hajdu seeks damages arising from breach of contract for Triple Hair's failure to:

- a) pay wages owing to Mr. Hajdu for the period from December 2022 to May 2023;
- b) provide reasonable notice upon Mr. Hajdu's termination; and
- c) pay Mr. Hajdu an accrued vacation entitlement.

[6] I will address each of these claims in turn.

### **Suitability**

[7] Under R. 9-7(15), the Court may grant judgment on a summary trial unless it is unable, on the whole of the evidence, to find the facts necessary to decide the issues of fact or law, or if it is of the opinion that it would be unjust to decide the issues on the application. If the Court determines that it is able to find the necessary facts, and that it would not be unjust to decide the issues, it must then determine whether the applicant has established entitlement to the relief sought.

[8] In *C.K.M. v. H.R.M.*, 2021 BCSC 1297 at para. 14, this Court cited the well-known decision in *Inspiration Mgmt. Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 at 214, 1989 CanLII 229 (C.A.), where the Court of Appeal set out the factors a judge may consider when determining whether it would be unjust to grant judgment in a summary trial. These factors include:

- a) the amount of money involved;
- b) the complexity of the matter;
- c) the urgency of the case;
- d) the prejudice likely to arise by reason of delay in taking the case to trial;
- e) the cost of taking the case forward to a conventional trial in relation to the amount involved; and
- f) the course of the proceedings.

[9] Triple Hair submits that this matter is not suitable to be resolved by summary trial and argues that the examination for discovery of Mr. Hajdu revealed credibility issues which require further exploration. In response, Mr. Hajdu submits that Triple Hair has had sufficient opportunity to obtain discovery on all of the relevant issues.

[10] The notice of application in respect of this summary trial was filed on February 22, 2024. The application was set down for hearing on August 29 and 30, 2024 but at that time no examinations for discovery had been conducted.

[11] In its application response dated March 11, 2024, the company submitted that the matter was not suitable to be decided by summary trial because discovery was required and the matter could not fairly proceed in the absence of further evidence.

[12] In oral reasons pronounced August 30, 2024, Justice Morellato adjourned the plaintiff's summary trial application and ordered that the parties were to complete document discovery by September 26, 2024, that the plaintiff was to be examined for discovery no later than October 16, 2024, and that the parties were not to tender any further evidence on the summary trial after November 15, 2024, unless agreed by the parties or otherwise ordered by the Court.

[13] In August 2024, Triple Hair conducted an oral discovery of Mr. Hajdu as authorized by Justice Morellato. Since then, Mr. Hajdu's summary trial application has been adjourned several times, for reasons not the fault of either party.

[14] Triple Hair's present position, in essence, is that more evidence in its favour may be uncovered if it were allowed to seek further documents and discovery. However, an argument that further resort to discovery processes might turn up something useful is "insufficient to defeat a summary trial application": *Tassone v. Cardinal*, 2014 BCCA 149 at para. 38.

[15] Triple Hair complains that the order made by Justice Morellato "handcuffed" its ability to follow up on evidence given by Mr. Hajdu in his discovery, but Justice Morellato's order was subject to variation and Triple Hair did not seek to vary it.

[16] In any event, Mr. Hajdu also argues, persuasively, that the credibility issues identified by Triple Hair in support of its argument that this matter is not suitable for summary trial are either tangential to the claims in this action or can be resolved on the materials before the Court.

[17] Several of the issues raised by Triple Hair are relevant only to Mr. Hajdu's general credibility. As one example, Triple Hair alleges that there were misrepresentations in the resume provided by Mr. Hajdu to Triple Hair at the outset of their relationship. In respect of those issues, the collateral fact rule does not permit the adducing of extrinsic evidence to prove facts which have no relevance to the issues in the case beyond a party's general credibility: see Sidney N. Lederman, Michelle K. Fuerst & Hamish C. Stewart, *Sopinka, Lederman & Bryant*:

*The Law of Evidence in Canada*, 6th ed. (Toronto: LexisNexis Canada Inc., 2022) at para. 16.277. Therefore, in respect of those issues, further discovery would be of no, or extremely limited, utility.

[18] Other issues raised by Triple Hair can, in my view, be resolved on the materials before the Court. One example is whether the plaintiff agreed, and if so on what terms, to a reduction in pay in December 2023. As will be seen below, I have determined this issue on the basis of the evidence of the parties and the contemporaneous correspondence.

[19] I observe that the amount of money involved in this case is modest and the issues are not particularly complex. The cost of a full trial or of awaiting further discovery procedures would be disproportionate to the amounts at issue, and the delay would be prejudicial to the parties.

[20] For these reasons and for the further reasons set out below, I have concluded that I am able to find the facts necessary to decide the issues of fact and law, and that it is just to decide the issues on this application.

### **Evidentiary issue**

[21] The plaintiff objects to the admission of a second affidavit made by Jean-Phillipe Gravel, the Chief Executive Officer of Triple Hair, on November 12, 2024, on the basis that it is not proper reply. It was filed after a reply affidavit was made by Mr. Hajdu and after examinations for discovery.

[22] I have reviewed the affidavit and observe that Mr. Gravel does not state in the affidavit precisely what evidence he is responding to, if any. As such, the affidavit appears to be improper, at least in part. That said, I have concluded that the evidence in the affidavit would not change the Court's decision on the issues addressed in these reasons. Accordingly, it is unnecessary to make any ruling with respect to its admissibility.

### **Discussion**

#### **Wages for the period between December 2022 and May 2023**

[23] As stated, five months after Mr. Hajdu joined Triple Hair in February 2020 as its Vice-President of Business Development, the parties entered into a written

agreement dated June 3, 2020 (the “June Agreement”). That agreement states that Mr. Hajdu was to be employed as the company’s “Chief Business Officer” on a full-time basis. It required that Mr. Hajdu be paid an annual salary of \$180,000 on the basis that he would work an average of 40 hours per week.

[24] In December 2022, Mr. Hajdu, along with other consultants and employees of Triple Hair, was asked to accept a reduction in salary because the company was having financial difficulties. His salary was reduced to \$120,000 per annum.

[25] Triple Hair’s position is that Mr. Hajdu’s employment was terminated in December 2022, and that between January 2023 and May 2023, he was a contractor who was to be paid \$10,000 per month. If Triple Hair is correct in this regard, Mr. Hajdu was not entitled to any more than the reduced salary for January to May 2023. He invoiced the company for the reduced salary amounts at the time, and these amounts were paid to him.

[26] However, in my view, Triple Hair’s position on this issue is not supported by the contemporaneous evidence. In text messages following their discussion regarding the reduction in pay, Mr. Hajdu asked Mr. Gravel, “Can we switch my status back to consulting? Also is it possible to obtain in writing the pay decrease and subsequent top up in compensation?”

[27] Mr. Gravel responded: “I don’t see any issue with switching you back to consultant but let me verify just in case. Yes, I will put the adjustments and subsequent compensation in writing.”

[28] Subsequently, on December 12, 2022, Mr. Gravel wrote to Mr. Hajdu via email, stating:

Starting this week, we will diminish your compensation from 180K (15K per month) annually to 120K annually (10K per month) until we close our current financing round.

Once the closing is done, we will bring you back to your current compensation.

If we close the financing before March 1, we will pay you the monthly 5K difference (December would be prorated) and we will add an extra 5K in cash and 20,000 options ...

If we close the financing after March 1, we will pay you the monthly 5K difference and we will add 10K in cash and 40,000 options...

[29] It is apparent from this correspondence, in my view, that neither party viewed the June Agreement as having terminated in December 2022. There is no reference in any of the communications between Mr. Gravel and Mr. Hajdu to a termination of the June Agreement.

[30] Rather, it is evident from the correspondence that both parties acknowledged that the relationship in the June Agreement was continuing, albeit with reduced and deferred compensation. Mr. Gravel promises in his December 12, 2022, email that once a refinancing has been done, “we will bring you back to your current compensation”. It is clear, in my view, that he was referring to the plaintiff’s compensation of \$180,000 per annum under the June Agreement. It would not make sense for him to say this if he viewed the June Agreement as having been terminated.

[31] In my view, the only terms of Mr. Hajdu’s legal relationship with Triple Hair that changed in December 2022 were that part of his salary was deferred and the method by which he would be paid was changed. He had previously been paid as a contractor and then from April 2021 onwards had been paid from the company’s payroll. He requested in December 2022 to be paid as a contractor again. I note that the June Agreement says nothing about method of payment.

[32] I find that the June Agreement was not terminated in December 2022. Further, Triple Hair did not take the position that Mr. Hajdu’s entitlement to deferred salary was contingent upon the company’s ability to refinance, although I understand that Triple Hair may have refinanced recently in any event. As a result, Mr. Hajdu continues to be owed the \$5,000 per month by which his income was reduced between December 2022 and April 2023.

### **Reasonable notice**

[33] Mr. Hajdu seeks damages for wrongful dismissal in lieu of reasonable notice.

[34] Although Triple Hair advances some evidence which appears to relate to an allegation of just cause for termination, it does not allege just cause and did not do so when it terminated Mr. Hajdu’s role with the company in May 2023.

[35] Further, although para. 4.03 of the June Agreement provides for a one-month notice period regardless of the length of the employment relationship, Triple Hair does not rely on that provision. I infer that it does not seek to rely upon this provision because it accepts that the clause is unenforceable.

[36] In order to determine the plaintiff's claim for damages in lieu of reasonable notice, I have considered the following sub-issues:

- a) What was the nature of the legal relationship between Mr. Hajdu and Triple Hair at May 2023?
- b) If Mr. Hajdu was entitled to common law reasonable notice, what ought that notice to be?
- c) Should any damages awarded in respect of that notice be reduced either because he failed to mitigate or because he in fact mitigated his losses?

### ***The legal relationship***

[37] Historically, a worker's legal status as an employee or independent contractor was regarded as an important issue, since an "employment relationship" formed the basis for finding a duty to provide reasonable notice of dismissal. However, not all non-employees are disentitled from receiving notice. Some non-employees fall on the spectrum between independent contractors and employees.

[38] In *TCF Ventures Corp. v. The Cambie Malone's Corporation*, 2017 BCCA 129 [*TCF Ventures*], the Court of Appeal held that workplace relationships exist on a continuum and "where the relationship bears more resemblance to, or is akin to, an employer/employee status the relationship will be treated as an employee/employer relationship for the purpose of implying an obligation to provide reasonable notice.": para. 24.

[39] The Court in *TCF Ventures* explained that where a relationship falls on the continuum depends on a non-exhaustive list of factors described in *Marbry Distributors Ltd. v. Avreca Int. Inc.*, 1999 BCCA 172. Those factors include the duration or permanency of the relationship, the degree of reliance and closeness of the relationship, and the degree of exclusivity: *TCF Ventures* at para. 22.

[40] In *Wilkinson v. Valgold Resources Ltd.*, 2021 BCSC 572 at para. 28, this Court listed the following factors to be considered in determining the nature of a working relationship, and thus whether one is entitled to reasonable notice upon its termination:

1. The defendant's level of control over the worker's activities, including:
  - a) the defendant's power to select or not select the worker;
  - b) the payment of wages;
  - c) control over the method of work; and
  - d) the defendant's right of suspension or dismissal;
2. The exclusive nature of the relationship;
3. The worker's economic dependence on the defendant;
4. Whether the worker could hire their own helpers;
5. Whether the worker provides his or her own tools and equipment;
6. The worker's opportunity for profit in the performance of their tasks;
7. The degree of financial risk taken by the worker;
8. The worker's responsibility for investment and management;
9. Whether the worker is a crucial element of the defendant's business;
10. Whether the activity of the worker represents the defendant's business;
11. The permanency and length of the relationship; and
12. Whether the parties rely on each other or closely co-ordinate conduct.

[41] In *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, 2001 SCC 59, the Court held that while "there is no one conclusive test which can be universally applied ... [t]he central question is whether the person who has been engaged to perform the services is performing them as a person in business on his own account": para. 46–47.

[42] In this case, most if not all of these factors point towards a dependent contractor relationship.

[43] Regarding the issue of control, the June Agreement provided that Mr. Hajdu would "perform such duties and exercise such powers ... as may from time to time be assigned to him by the Employer" and it obligated him to work an average of 40 hours per week. He received a fixed wage, without any opportunity for profit or loss.

[44] Further, Mr. Hajdu was economically dependent on Triple Hair and held a central role with the company as its Chief Business Officer. He used a Triple Hair email account and represented Triple Hair at conferences that were important for Triple Hair. In my view, Mr. Hajdu worked for the company, as opposed to performing services for the company as a person in business on his own account.

[45] It might be noted that Triple Hair did not provide Mr. Hajdu with life insurance, health or dental benefits, or an office setup. These facts would in some cases lead the Court to conclude that he was a contractor. However, in this case, Triple Hair did not provide these benefits to any of its workers, regardless of whether they were viewed as contractors or employees. Everyone at Triple Hair worked remotely and the company did not have a physical office.

[46] In light of the foregoing, it is my view that Mr. Hajdu was clearly an employee or dependent contractor of the company and was therefore entitled to reasonable notice or damages in lieu thereof upon his termination.

#### ***The notice period***

[47] The issues of reasonable notice and mitigation were the most vigorously contested issues at this summary trial.

[48] Mr. Hajdu seeks an order based on a reasonable notice period of twelve months. He relies on three decisions in which senior executives were awarded twelve months notice despite being employed for less than four years:

- a) In *Felice v. Cardinal Health Canada Inc.*, 2014 ONSC 1190, the plaintiff was a 52-year-old “senior executive on Cardinal’s management team”. He was employed for 19 months, and the Court awarded him twelve months notice.
- b) In *Kussmann v. AT & T Capital*, 2000 BCSC 268, the plaintiff was a 47-year-old “vice president, portfolio development”. He was employed for 18 months, and the Court awarded him twelve months notice.
- c) In *Wright v. Chilliwack Community Services*, 2000 BCSC 972, the plaintiff was a 56-year-old “chief executive officer”. She was employed for three years and seven months, and the Court awarded her twelve months notice.

[49] Mr. Hajdu deposes that he has looked for work in his field since December 2022, and that he has not been able to find comparable employment. He cites the decision of this Court in *Schamborzki v. North Shore Health Region*, 2000 BCSC 1573 at para. 30 for the proposition that “[p]ersons with highly specialized skills, facing re-employment markets known to be limited, will generally be entitled to longer notice periods.”

[50] In response, Triple Hair observes that over the course of his 20-year career in the biotechnology industry, Mr. Hajdu has never experienced a gap of employment which lasted longer than a month despite changing jobs several times. It argues that there is no independent evidence before the Court demonstrating that the re-employment market faced by Mr. Hajdu is “known to be limited”.

[51] Triple Hair also argues that the cases cited by Mr. Hajdu are distinguishable from the facts of this case. It submits that although Mr. Hajdu was given the title of “Chief Business Officer” at Triple Hair, all four people who were working for this start-up company at the time that he joined it were “chiefs: in addition to Mr. Hajdu, there [was] a chief scientific officer and a chief financial officer, together with Mr. Gravel, the chief executive officer.” By the time Mr. Hajdu’s relationship with the company was terminated, a Director of Marketing had been appointed and was reporting to him.

[52] Triple Hair submits that Mr. Hajdu cannot be compared to executives responsible for hundreds or thousands of employees. In *Felice, Kussman*, and *Wright*, the defendant companies appear to have been significant entities. Further, Triple Hair argues that Mr. Hajdu did not have a leadership role in the company; rather the June Agreement provided that he would “perform such duties and exercise such powers related thereto as may from time to time be assigned to him by the Employer”.

[53] In my view, Triple Hair’s submissions on this point are persuasive. The reason that CEOs and other “C-suite” executives are often entitled to longer notice periods is because of the greater responsibility attached to those jobs and the fact that there are few jobs to be found at the top of corporate hierarchies. In this case, the plaintiff did not have a role typical of top-level executives, and, in my view, he

is not entitled to be treated like those executives for the purpose of determining his notice period.

[54] Triple Hair has cited a number of cases in which employees who have worked for an employer for less than four years have been awarded damages based on notice periods ranging from two months to nine months. Triple Hair submits that the notice period in this case ought to be six months less any reduction imposed by the Court on account of mitigation.

[55] In my view, the decisions of this Court in *Chung v. Quay Pacific Property Management Ltd.*, 2020 BCSC 714 and *Nicholson v. Masonite International Corporation*, 2014 BCSC 1247 are of some assistance.

[56] In *Chung*, the plaintiff was a 53-year-old chief financial officer who worked for the defendant company for two and one quarter years before his employment was terminated. He was awarded nine months notice.

[57] In *Nicholson*, the plaintiff was a 45-year-old “regional controller” who was employed by the defendant for two and a half years and was awarded six months notice.

[58] In my view, Mr. Hajdu had fewer responsibilities than the plaintiff in *Chung* but was approximately eleven years older than the plaintiff in *Nicholson* when his role with Triple Hair was terminated. In light of these decisions and the conclusions I have reached above regarding Mr. Hajdu’s status in the company, I find that the appropriate notice period in this case, subject to mitigation, is eight months. Eight months’ pay at \$180,000 per annum equals \$120,000.

## **Mitigation**

### ***The obligation to mitigate***

[59] Triple Hair submits that Mr. Hajdu failed to mitigate his damages. The law in relation to the obligation to mitigate is well-established. In *Ehman v. Preston Chevrolet Buick GMC Cadillac Ltd.*, 2021 BCSC 1033, this Court held:

[55] Where a defendant asserts that a plaintiff’s damages should be reduced on the basis of a failure to mitigate, the defendant has the burden to show both that: (a) the plaintiff has failed to take reasonable steps to find alternate employment; and (b) that alternate employment could likely have been obtained had reasonable steps been taken: [citation omitted.]

[60] Triple Hair submits that the case at bar is analogous to the decision in *Steinebach v. Clean Energy Compression Corp.*, 2015 BCSC 460, rev'd on other grounds 2016 BCCA 112 wherein the Court held that the employee "placed a greater emphasis on his personal preferences and career objectives than was reasonable in all of the circumstances" and therefore failed to mitigate.

[61] In *Steinebach*, the plaintiff was originally employed in the natural gas industry but decided after approximately six weeks of unsuccessful job searching in that area to transition to a career in financial management. In those circumstances, the Court found that the plaintiff failed to take reasonable steps to find alternate employment.

[62] In the case at bar, the plaintiff enrolled in a real estate course in August 2022 and became licensed as a realtor in February 2023. Mr. Hajdu deposes that he has been working full-time as a realtor since his termination.

[63] However, the plaintiff also deposes that between December 8, 2022, and February 7, 2023, he applied for jobs to at least 34 different companies. Further, he exhibits to his affidavit cover letters showing that he applied to various companies in the period between November 10, 2023, and December 11, 2023. The gap in applications between February 7, 2023, and November 10, 2023, is unexplained, except by a general statement in Mr. Hajdu's affidavit that his search for a suitable career opportunity is not fully illustrated by the applications or cover letters that he has submitted.

[64] While there may be some merit to Triple Hair's argument that Mr. Hajdu failed to take reasonable steps to find a new position in the biotechnology field, particularly between May 1, 2023 when his role with Triple Hair was terminated and November 2023 when he appears to have resumed sending out applications, it is my view that it is unnecessary to assess the first part of the mitigation test set out in *Ehman* in the circumstances of this case.

[65] This is because Triple Hair has not offered any evidence to satisfy the second part of the test: that alternate employment could likely have been obtained had reasonable steps been taken. Triple Hair submits that the Court may draw an inference in this regard on the basis that, historically, Mr. Hajdu has never been without employment in the health or biotechnology fields for more than a few

weeks. In my view, however, this argument is insufficient to meet the defendant's burden.

[66] It is common in wrongful dismissal cases for the employer to lead evidence, often from expert witnesses, of potential job opportunities available to the employee that the employee did not pursue. In that context, the court may then find a specific date at which the employee likely would have found suitable employment had he taken reasonable steps, or it may weigh the likelihood that such steps would have led to comparable alternative employment: see *Steinebach* (BCCA) at paras. 35–37. In this case, Triple Hair advanced no such evidence.

[67] For these reasons, I have concluded that Triple Hair has not met its burden to show that Mr. Hajdu's damages should be reduced because of a failure to mitigate.

#### ***Actual mitigation / avoided loss***

[68] Notwithstanding the conclusion I have reached above regarding Mr. Hajdu's obligation to mitigate, he did mitigate his damages by earning income during the notice period. Therefore, his damages must be reduced by these amounts.

[69] As stated above, Mr. Hajdu is entitled to damages in lieu of an eight month notice period which began on May 1, 2023, and ended on December 31, 2023. Mr. Hajdu earned \$45,955.12 as a realtor in July and August 2023, and a net sum of \$1,158.85 working as an Uber driver in December 2023. These amounts total \$47,113.97 and shall be deducted from the damages otherwise payable by Triple Hair to Mr. Hajdu.

#### **Accrued vacation entitlement**

[70] Mr. Hajdu has exhibited to his first affidavit a table in which he calculates the vacation pay that he asserts is accrued and payable to him by Triple Hair. Triple Hair submits that his calculation contains a mathematical or typographical error but otherwise does not oppose Mr. Hajdu's claim.

[71] For 2023, Mr. Hajdu correctly states in the body of his affidavit that he accrued six days of vacation between January 1 and May 1, 2023, having worked four months of the year. However, in the calculation table appended to his affidavit,

Mr. Hajdu credits himself with a full year of vacation—20 days—for 2023. Therefore, the table overstates his vacation entitlement by 14 days.

[72] The result is that, rather than having accrued 21 days of vacation as set out in the table, Mr. Hajdu is entitled to seven days of vacation pay. According to the uncontested evidence advanced by Mr. Hajdu, his entitlement for those seven days is \$4,846.15, being \$180,000 divided by 260 multiplied by seven.

### **Conclusions and costs**

[73] Triple Hair is liable to Mr. Hajdu for the following amounts:

- a) \$25,000 for amounts owing for the period between December 2022 and May 2023;
- b) \$72,886.03, being \$120,000 in damages in lieu of reasonable notice less \$47,113.97 for amounts mitigated; and
- c) \$4,846.15 in accrued and unpaid vacation pay.

[74] Because there may have been a settlement offer relevant to costs, counsel have asked for leave to address costs after this Court's determination of the merits of the action. If there were any such settlement offers, and the parties cannot agree on the appropriate outcome as to costs, either party may arrange through the registry to make brief written submissions. If there were no settlement offers that would affect the disposition of costs, costs of the action shall be payable by Triple Hair to Mr. Hajdu at Scale B.

“Loo J.”