COURT OF APPEAL FOR ONTARIO

CITATION: Brant Securities Limited v. Goss, 2025 ONCA 8
DATE: 20250109
DOCKET: COA-24-CV-0305

Sossin, Madsen and Pomerance JJ.A.

BETWEEN

Brant Securities Limited

Plaintiff/Defendant by Counterclaim
(Respondent)

and

Donald Goss

Defendant/Plaintiff by Counterclaim
(Appellant)

Kenneth A. Dekker and Ardita Sinojmeri, for the appellant

James Renihan, for the respondent

Heard: December 16, 2024

On appeal from the order of Justice Robert Centa of the Superior Court of Ontario, dated February 29, 2024.

REASONS FOR DECISION

[1] This is an appeal of an order granting summary judgment brought by Brant Securities Ltd. (“Brant”), the respondent, to enforce a promissory note signed by the appellant, Mr. Goss, and dismissing the appellant’s counterclaim for set-off in relation to unpaid performance bonuses. For the following reasons, the appeal is dismissed.

BACKGROUND

[2] The background is straightforward. The appellant was an investment advisor who joined Aston Hill Securities ("AHS") in 2013. As part of his employment agreement, he received a "recruitment bonus" in the form of an interest-free loan of $1.6 million to enable his acquisition of common shares of Aston Hill Financial Inc. ("AHF"), the parent company.

[3] The loan was documented by a promissory note ("the Original Promissory Note") that stipulated that he was to pay back the loan in ten annual instalments of $160,000. However, as part of the employment agreement, if the appellant met his revenue benchmarks, he would receive an annual bonus of $160,000, to be applied against the debt arising from the recruitment bonus, effectively resulting in an annual loan forgiveness of the amount due. If he defaulted on the loan, the total outstanding amount would become due and payable. For reasons that are unclear, AHS did not award the annual bonuses to the appellant in 2014 and 2015, notwithstanding the uncontested fact that he had met his benchmarks; nor was any amount credited against his outstanding loan.

[4] In 2016, AHS amalgamated with Brant. The appellant, AHS, and AHF entered into an amended and restated promissory note (the "Amended Note"). The Amended Note stated that the Original Promissory Note should have been in the name of AHF, not AHS; confirmed that the 2014 and 2015 annual bonuses had

not been paid; and confirmed that the appellant had not made any payments on the $1.6 million loan. The Amended Note extended the payment period by two years and permitted transfer of the note to AHS, which amalgamated with Brant. From 2017-2020, the bonus amounts were credited against the debt owed under the Amended Note, and the appellant signed annual confirmation letters documenting the (decreasing) amounts he owed thereunder.

[5] In 2021, the respondent was acquired by another company and the appellant's employment was terminated. Brant demanded the immediate payment of $461,000, being the amount still owed under the Amended Note, less certain amounts owing to the appellant for unpaid compensation and referral fees. The appellant declined to pay, and Brant commenced the underlying action to recover on the note. The appellant defended the action in part on the basis that the Amended Note was not enforceable for lack of consideration, and counterclaimed for amounts he claimed were owing to him.

[6] The motion judge granted summary judgment in favour of Brant on its claim for $461,000 owed under the Amended Note, as well as the appellant's counterclaim for $33,616.60 in unpaid entitlements under the *Employment Standards Act, 2000*, S.O. 2000, c. 41, but dismissed the balance of the appellant's counterclaim in relation to damages for wrongful dismissal. In reaching this conclusion, the motion judge found, *inter alia*, that: the Amended Note is valid and enforceable and the appellant received fresh consideration for agreeing to its

terms; that any claims by the appellant to the bonuses for 2014 and 2015 are statute-barred; and that the appellant is not entitled to set-off of the value of the unpaid 2014 and 2015 bonuses as against the amounts owed to Brant. The appellant challenges each of these conclusions on appeal, only the first of which requires consideration by this court.

ISSUES ON APPEAL

[7] The appellant argues that the Amended Note was not enforceable because it was unsupported by fresh consideration. Rather, he says, the Amended Note imposed additional burdens on him without providing new consideration, as it obliged him to work and meet his targets for two additional years (twelve years instead of ten) to pay off the amount owed. The appellant would also owe a larger amount should he be terminated before 2025. Further, the appellant argues that the motion judge failed to recognize the essence of the agreement between the appellant and the respondent – namely, that what was taking place was essentially an "accounting entry" – and that the respondent had simply failed to make that entry in 2014 and 2015. This error, he says, resulted in the motion judge characterizing the extension of time to repay the loan as a benefit to the appellant.

ANALYSIS

[8] The motion judge correctly summarized several core principles concerning the law of consideration. He set out the long-standing principle that consideration

can take multiple forms and that the law does not concern itself with the adequacy thereof. As long as there is consideration, the court leaves it to parties to form their own judgment over the adequacy thereof and to make their own bargain: *Loranger v. Haines*, [1921] 64 D.L.R. 364 (Ont. C.A.). Further, as he provided, the law does not require that consideration be in the form of money, or that the economic value of the benefits provided equal or exceed the economic cost of the agreement: *Techform Products Ltd. v. Wolda* (2001), 56 O.R. (3d) 1, at paras. 24, 28; *Lancia v. Park Dentistry*, 2018 ONSC 751, at para. 54; see also *Giacomodonato v PearTree Securities Inc.*, 2023 ONSC 3197, at para. 48, aff'd 2024 ONCA 437.

[9] The motion judge also correctly held that clarifying an unclear term in a contract to create certainly and avoid disputes can constitute valid consideration: *Richcraft Homes Ltd. v. Urbandale Corporation*, 2016 ONCA 622, at paras. 46-47.

[10] We see no error – and certainly no palpable and overriding error – in the determination that the appellant received consideration for agreeing to the terms of the Amended Note.

[11] The motion judge noted that the negotiation of the terms of the Amended Note took place when AHF was on the cusp of selling its business to the respondent, and that there were several options available to the parties at that time. Each could have insisted on performance of the other's obligations under the Original Promissory Note, attempted to enforce their rights through litigation, or

accepted a purported repudiation of the agreement. The appellant could have sought an immediate lump sum payment, which would have triggered a tax consequence. Instead, the parties signed the Amended Note. The findings that the appellant had signed the Amending Note and that there were negotiations leading to its execution were available on the evidence.

[12] In that context, the motion judge fairly identified at least three distinct benefits to the appellant under the Amended Note which constituted consideration. First, the Amended Note clarified the relationship between the parties, providing certainty and avoiding a future costly dispute. The Amended Note provided a "reset" of the relationship between the parties and allowed them to move forward with certainty as the company was changing hands. Second, the Amended Note allowed the appellant to defer taxes which would having been owing by him had the loan forgiveness taken place as scheduled in 2014 and 2015. The motion judge emphasized that avoiding the cashflow implications of paying taxes on the missed bonuses (where the appellant would have received principal reduction on the loan rather than cash in hand), was a further benefit to the appellant. While the appellant objects that there was neither expert nor other evidence of his tax circumstances, this is a result of his own refusal to provide his tax returns for the years in question on examinations for discovery. That deferring the payment of tax on $320,000 was likely a benefit was an available inference. Third, the Amended Note provided a

further two years of interest-free status of the loan, which the motion judge found was a benefit to the appellant.

[13] This case is distinguishable from *Hobbs v. TDI Canada Ltd.*, [2004] 192 O.A.C. 141 (Ont. C.A.), cited by the appellant, in which the court found there was no consideration where an employee entered into a subsequent “non-negotiable” agreement with the employer, and the employee was vulnerable. There was no evidence of particular vulnerability in this case and the motion judge found as a fact that the Amended Note was the product of negotiations.

[14] The Amended Note, on its face, resolved any further claim to the unpaid bonuses for 2014 and 2015 and provided a waiver of any claims to set-off. As acknowledged by appellant’s counsel in oral argument, our conclusion that the Amended Note is valid is sufficient to resolve this appeal. We therefore decline to address the other grounds of appeal.

DISPOSITION

[15] The appeal is dismissed. As agreed between the parties, costs are set at $12,000, inclusive of HST and disbursements, payable to the respondent.

“L. Sossin J.A.”
“L. Madsen J.A.”
“R. Pomerance J.A.”