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Whose Property Is It Anyway?
Employee Not Entitled to Use of Company Car During (Disputed) Notice Period

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In [*415909 Canada Inc c.o.b. PARS 2000 v Moghadam*](#),¹ the Ontario Superior Court of Justice held that an employee must first prove they were wrongfully dismissed and entitled to common law reasonable notice before the court will consider a remedy for benefits allegedly owed during the common law notice period (in this case, use of a company vehicle). Until then, an employee is not entitled to maintain possession of company property or other fringe benefits.

What happened in Moghadam?

The employee, a director of the employer, was dismissed after the employer learned of certain financial irregularities. During his tenure, the employee had the use of two company vehicles. After his dismissal, the company requested the return of the vehicles, but the employee refused. The employer successfully obtained an interlocutory injunction for the return of company vehicles, but the employee continued to refuse to do so, resulting in the employer obtaining a second order for the return of its property.

The employee asserted that because the employer wrongfully dismissed him, he was entitled to use of the vehicles, which were a benefit of his employment, during what he alleged to be the reasonable notice period (at the time, undetermined and in dispute).

¹ 2024 ONSC 3886 [*Moghadam*].

The court rejected the employee's position, holding an employee must first prove they were wrongfully dismissed and entitled to common law reasonable notice, before the court will consider any alleged entitlements during the common law notice period. In this case, if the employee is successful in his wrongful dismissal action, he may be compensated for the value of any employment benefits he would have enjoyed during the reasonable notice period. Until then, the employee was not entitled to use the vehicles post dismissal.

The court ordered the employee to return the vehicles and awarded \$10,000 in costs to the employer.

Takeaways for employers

This decision has several important takeaways for employers.

From a legal standpoint, courts have confirmed the following:

- An employee must prove they were wrongfully dismissed before the court will consider what, if any, damages are owed to compensate the employee for entitlements earned or accrued during the common law reasonable notice period.
- Even if an employee succeeds in their wrongful dismissal suit, they generally will not be entitled to continued use of fringe benefits, such as a company car. Instead, they may be entitled to a monetary remedy for loss of the use of those benefits.
- In an extraordinary case, if an employee can prove monetary damages are an inadequate remedy, an employee may be entitled to the benefit itself. This is known as "specific performance," and it is considered difficult to obtain.

Practically, although an employer must ensure it complies with its obligations under employment standards legislation in maintaining terms and conditions of employment (including participation in group benefit plans) during the minimum statutory notice period, in most cases, there is no need for an employer to continue to provide fringe benefits, such as the use of a company vehicle, during the common law reasonable notice period. If an employee refuses to return the car, an employer can seek recourse from the court. If the employee ultimately succeeds in proving wrongful dismissal and entitlement to common law reasonable notice, the employee may then be entitled to monetary damages for the loss of the fringe benefit.

Last, but certainly not least, it is important to remember that an employer's most effective tool to minimize the potential for liability arising out of a wrongful dismissal is a well-drafted employment agreement with an enforceable termination provision. A small investment today can minimize a much greater expense down the road.

To learn more and for assistance drafting enforceable employment agreements, advising on terminations, and managing any workplace-related issue, contact the employment lawyers at Sherrard Kuzz LLP.

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