

Dear Kelly:

This letter represents a formal notice that your employment with Telehop is terminated effective November 28, 2008.

You will receive your regular pay up to and including today, November 28, 2008.

You will receive an additional five months pay in lieu of notice of termination as per our obligations under the Employment Standards Act of Ontario.

Your entitlement to our group benefits program will continue during your notice.

You will receive a further payment, which will represent you accrued and owing vacation pay.

These payments together with your record of employment will be delivered to you by December 11, 2008.

I require you to deliver all company property including files, keys or any other item that may be in your possession immediately.

On behalf of the team at Telehop, I wish you well in your future endeavours.

Yours very truly,

[Emphasis added]

[5] There was a blank space at the bottom of the page where the plaintiff could sign if she was satisfied with the contents of the letter. The plaintiff signed in the space provided.

[6] The plaintiff had no prior warning or notice that her employment was coming to an end. There were no negotiations between the plaintiff and the defendant prior to the delivery of the letter. No further offers were made regarding any payment she would receive in respect of her being let go. There was no evidence, and nothing to suggest, that the company had advised her or explained that any further payments would be made or offered. The plaintiff did not receive, nor is there any evidence that it was suggested, she obtain independent legal advice in order that she might better understand her rights, both under the *Employment Standards Act* and at common law.

[7] Two or three days after the plaintiff signed the letter, the plaintiff attended at the offices of the defendant to deliver certain property belonging to the company. The Human Resources Manager wished to meet with her. The plaintiff was advised that the defendant had made a "mistake". The plaintiff would only be receiving three weeks' termination pay. The plaintiff was asked to sign a release which she did not do.

[8] The plaintiff found new employment on February 4, 2009.

[9] In this action, the plaintiff seeks to enforce the rights she says that she obtained through the letter provided to her, and signed by her, on November 28, 2008.

[10] The only issue before this Court is whether the letter is an offer and the acknowledgment, evidenced by her having signed it, an acceptance of that offer. Is the letter a contract? Is it, as the plaintiff would have it, a "Termination Agreement"?

[11] Counsel for the defendant agreed that, if the letter is a contract, his client is bound by its terms and would be required to pay the five months' salary referred to. The principle of rectification would not apply. For a contract to be rectified, the change must reflect an agreement or common understanding of the parties. The plaintiff never agreed that she would be paid only three weeks' salary.

[12] Counsel for the defendant submitted that the letter is nothing more than a notification of termination which outlines the obligations owed by the employer to the employee, pursuant to the *Employment Standards Act*. It does not require a release from the employee and leaves open whatever common law rights to notice the employee may have. The signature provided by the plaintiff was not an acceptance of an offer, but the acknowledgment that she had received the letter outlining her rights under the statute. Counsel for the defendant goes on to submit that there is no consideration flowing from the plaintiff to the defendant and that, accordingly, there can be no contract.

[13] To decide this question, it is helpful to consider the circumstances from the perspective of the plaintiff, the employee. There was no warning that she was to be dismissed; there was no discussion or negotiation as to the terms of the letter. The letter was prepared entirely by the employer. There is no suggestion that the plaintiff was advised that she should obtain independent legal advice, that she was provided with the opportunity to do so or told that she had legal rights beyond those referred to in the letter. In her affidavit the plaintiff deposed:

I accepted the written terms presented by the Defendant because they seemed fair and reasonable.

[14] There is nothing that would have suggested to the plaintiff anything other than that the employer intended that this was to be the end of the relationship without any further compensation being offered. The fact that no release was required, in the absence of any independent legal advice, does not detract from this as the intended result. Indeed, the plaintiff is not deemed to know the provisions of the *Employment Standards Act* and was quite entitled to

presume that the statute provided her with five months' pay, or that the employer intended to meet and exceed its statutory obligations. The plaintiff was required to sign the letter. There is nothing to suggest that she would have been paid, under its terms, if she had not done so. In doing so, she would reasonably have believed that she was accepting what was offered as being all that she would receive.

[15] When she refused to accept that she would only be receiving three weeks' pay in lieu of notice, she was asked to sign a release. In her affidavit, she deposed:

I advised [the Human Resources Manager] that [three weeks' pay in lieu of notice] was not what I agreed to and insisted that I be given five (5) months pay. [The Human Resources Manager] refused. [The Human Resources Manager] then requested that I sign a release. I refused.

[16] This request for a release serves to confirm that it was the intention of the employer that the acceptance of the terms in the letter would be the end of any obligations it owed to the plaintiff.

[17] Counsel for the plaintiff submitted that the letter is part of the consideration evidencing the employment contract between the plaintiff and the defendant. The plaintiff contracted to work for the defendant in return for which she was to receive certain benefits. These benefits included any rights provided, upon her dismissal, by statute and at common law. Until that day, she did the work and, thus, performed her part of the bargain. She provided the consideration she owed to her employer.

[18] The letter represented the employer providing consideration it owed to the employee. In the absence of any demonstrated intention of the employer to deal separately with its common law obligations, the submission that the letter was intended to deal only with the statutory obligations of the employer cannot stand. The letter was to be the completion of the contract. It represented not only the fulfillment of the employer's statutory obligations, but also its effort to conclude its common law responsibility to provide reasonable notice or pay in lieu of that notice. The acceptance of the letter would represent the completion of all the employer's obligations. The signature was the acceptance. The letter is part of the employment contract. It follows from this that the motion to recognize the change to that contract is, as counsel conceded, an improper attempt at rectification. The proposal that damages be awarded for pay in lieu of notice taking into account that the plaintiff found work within nine weeks is, when viewed from this perspective, another attempt at rectification. It was the employer's intention to make a lump sum payment, regardless of the plaintiff's mitigation efforts. It would be a change to the employment contract taking into account the benefits of hindsight.

[19] The motion is granted. The defendant is bound by the terms that it offered and the plaintiff accepted.

COSTS

[20] No submissions were made as to costs. If the parties are unable to agree, I will consider written submissions on the following terms: on behalf of the plaintiffs, within fourteen days of the release of these reasons; and on behalf of the defendants, within ten days thereafter. Such submissions are to be no longer than three pages, double spaced, exclusive of any Bill of Costs or Cost Outline and case law that may be provided.

LEDERER J.

Released: 20090623

COURT FILE NO.: CV-09-373488
DATE: 20090623

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

KELLY STOWAR

Plaintiff

- and -

TELEHOP COMMUNICATIONS INC.

Defendant

JUDGMENT

LEDERER J.

Released: 20090623