

COURT OF APPEAL FOR ONTARIO

CITATION: Preston v. Cervus Equipment Corporation, 2024 ONCA 804

DATE: 20241101

DOCKET: COA-24-CV-0325

Hourigan, Madsen and Pomerance JJ.A.

BETWEEN

Matthew Preston

Plaintiff (Respondent)

and

Cervus Equipment Corporation

Defendant (Appellant)

Tudor Carsten, for the appellant

Kevin Fox, for the respondent

Heard: October 24, 2024

On appeal from the judgment of Justice John Callaghan of the Superior Court of Justice, dated February 9, 2024.

REASONS FOR DECISION

Introduction

[1] At issue on this appeal is the scope of a release and indemnity and minutes of settlement (the “Settlement Documents”) executed by Mr. Preston after he was terminated from his employment. More particularly, the question before the motion

judge was whether the Settlement Documents released Mr. Preston's claim for damages for certain vested stock units he held.

[2] The motion judge found that the Settlement Documents did not include vested stock units and, accordingly, Mr. Preston was entitled to receive compensation for his vested units. As we will explain, it is our view that the motion judge erred in law in his interpretation of the Settlement Documents by failing to give effect to clear and broad language regarding the scope of the claims being released. Consequently, we allow the appeal.

Background

[3] Mr. Preston was an employee with Cervus Equipment Corporation ("Cervus") from 2014-2018. He had been enticed away from his former employer and as a result, he lost his accrued bonus when he left his previous employment. Cervus induced him to leave his former employer by granting him \$25,000 in stock units that vested when Mr. Preston started his employment with Cervus.

[4] During his employment, Mr. Preston was entitled to participate in Cervus' Deferred Share Plan (the "Plan"), which permitted him to apply up to \$20,000 of his annual bonus towards the purchase of stock units which would immediately vest. If the employee opted into the Plan, Cervus would match those purchases with stock units that would vest over three years. The Plan also provided that upon termination, vested stock units would be automatically redeemed while unvested

stock units would be cancelled and would not be redeemed. Mr. Preston participated in the Plan.

[5] Mr. Preston was terminated without cause on January 9, 2018. At this time, he had 4,964.04 vested stock units (this includes those given at the commencement of his employment and paid for with his annual bonus) and 4,499 unvested stock units (the matching stock units from Cervus). The value of the vested stock units was \$75,949.81. There was no dispute between the parties about the amount or value of the vested stock units.

[6] On termination, Mr. Preston received a letter from Cervus, dated January 9, 2018, advising that his vested stock units could be exercised in accordance with the Plan. The letter also stated that Mr. Preston would receive a severance package of 15 weeks' pay in lieu of notice. Mr. Preston was not satisfied with this amount and commenced an action on June 21, 2018 for damages in lieu of reasonable notice including any applicable bonus during the notice period (the "wrongful dismissal action"). There was no claim for the vested stock units. The wrongful dismissal action was settled for \$100,557.12, less deductions, on July 16, 2024. Mr. Preston signed the Settlement Documents on July 23, 2018, and Cervus signed on July 24, 2018.

[7] Mr. Preston received independent legal advice before executing the Settlement Documents. The minutes of settlement included, among other provisions, the following terms:

AND WHEREAS Cervus and Mr. Preston have agreed to fully and finally settle all matters and entitlements (earned or claimed) arising from or relating to Mr. Preston's employment (or the cessation thereof), including all matters and entitlements (earned or claimed) that were raised (or could have been raised) in the Action, without any admission of liability by Cervus in accordance with the terms of these Minutes of Settlement;

...

The entitlements set out in these Minutes of Settlement, including the Settlement Payment, are inclusive of any and all entitlements that Cervus may owe, or which may have accrued, to Mr. Preston pursuant to statute, contract, common law or otherwise.

...

These Minutes of Settlement, together with the attached Release and Indemnity, constitute the entire agreement between Cervus and Mr. Preston in reference to the matters stated herein and relative to all entitlements (earned or claimed) arising from or relating to Mr. Preston's employment (or the cessation thereof). Execution of these Minutes of Settlement, together with the attached Release and Indemnity, cancel and supersedes all previous oral or written understandings and agreements between Cervus and Mr. Preston in respect of any entitlements (earned or claimed) arising from or relating to Mr. Preston's employment (or the cessation thereof). [Emphasis added.]

[8] The release and indemnity included, among other provisions, the following terms:

I, the undersigned, MATTHEW PRESTON (on behalf of myself and my heirs, executors, administrators, successors and assigns) ... hereby release and forever discharge CERVUS EQUIPMENT CORPORATION ... of and from all manner of actions, causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, claims and demands whatsoever which against the said Releasees I ever had, now have or can, shall or may hereafter have for or by reason of any cause, matter or thing whatsoever existing up to the present time, and more particularly, but without restricting the generality of the foregoing, all claims and demands arising in or out of or in any way connected with my employment by the Releasees, the cessation of such employment, and/or the obligations, statutory, contractual or otherwise, of the Releasees to me in respect thereof....

...

I expressly declare that no wages, commissions, overtime pay, vacation pay, holiday pay, termination pay or severance pay is due and owing to me by the Releasees. I further declare that I have no entitlement under or from, or any claim of any nature or kind against the Releasees in respect of, any bonus, share award, stock option, deferred share or similar incentive plan offered by or on behalf of the Releasees I further declare that I have no entitlement, or any claim of any nature or kind, to any ownership or equity interest in the Releasees whatsoever. [Emphasis added.]

[9] One day before the Settlement Documents were signed by Cervus, Mr. Preston emailed Cervus and requested that his vested stock units be paid out. Cervus did not respond to this request for several months. Eventually, in

October 2018, Cervus took the position that Mr. Preston released his claim to the vested stock units. Mr. Preston started this action and sought damages for the value of the vested stock units.

[10] Both parties moved for summary judgment. The issue was whether the Settlement Documents covered Mr. Preston's vested stock units. Mr. Preston argued that the Settlement Documents did not address the vested stock units as they were not part of the wrongful dismissal action and were already his property. Mr. Preston did not submit that the settlement was invalid or that there was a unilateral mistake in respect of the settlement or his signing of the Settlement Documents. Mr. Preston also did not seek rectification.

[11] Cervus submitted that the entitlement to the vested stock units was released when the wrongful dismissal action was settled. Cervus sought an order dismissing the action.

Decision of the Motion Judge

[12] In regard to the interpretation of the Settlement Documents, the motion judge relied on *Corner Brook (City) v. Bailey*, 2021 SCC 29, [2021] 2 S.C.R. 540, at para. 20, as follows:

As noted in *Corner Brook*, a release is an agreement and is to be interpreted in accordance with the rules of contractual interpretation. Like any agreement, the goal of contractual interpretation is to ascertain the objective, mutual intentions of the parties at the time of the formation of the Release. This includes having regard to

the factual matrix or surrounding circumstances. Of course, the surrounding circumstances are intended as an interpretative aid and are not to overwhelm the words of the Release. The surrounding circumstances are also not to be used to deviate from the text to effectively create a new agreement....

[13] The motion judge also cited *Corner Brook*, at para. 35, for the proposition, “[s]ometimes the ordinary meaning of the words and the surrounding circumstances come into tension, and courts must decide whether to rely on the surrounding circumstances to refine the meaning of the words, or whether doing so would impermissibly overwhelm the words of the agreements, in which case the words must override.”

[14] Further, he took guidance from the following statement in *Corner Brook*, at para. 38:

For these reasons, releases may tend to lead to dissonance between the words of the agreement on their face and what the parties seem to have objectively intended based on the surrounding circumstances, with greater regularity than other types of contracts... In resolving this tension, courts can be persuaded to interpret releases narrowly more so than other types of contracts, not because there is any special rule of interpretation that applies to releases, but simply because the broad wording of releases can conflict with the circumstances, especially for claims not in contemplation at the time of the release. The broader the wording of the release, the more likely this is to be so.

[15] Ultimately, the motion judge found that the vested stock units were not released under the Settlement Documents. In support of that conclusion, he noted

that the wrongful dismissal action did not include a claim for stock units and that those units were automatically redeemed on Mr. Preston's termination.

[16] The motion judge also noted that the settlement made little economic sense if Mr. Preston was giving up in excess of \$75,000 in vested units:

The Plaintiff states that the settlement of the wrongful dismissal action would yield little benefit if he gave up the \$75,949.81. Indeed, the entire net benefit of the wrongful dismissal action from the initial proposal by the Defendant would be less than \$7,000. I accept that the wrongful dismissal action makes little sense if the Plaintiff forgoes the redeemed vested share units.

[17] The motion judge stressed that the Settlement Documents had to be read in the context of the Plan, which provided for automatic redemption of vested units on an employee's termination. He found that the language in the Settlement Documents releasing claims to stock options and share awards must be read as referring to "stock or share awards which have either not been awarded or not been redeemed and which were still subject to the terms of the Plan. The Plan, by its very wording, no longer had any application to the redeemed vested stock units."

[18] Finally, the motion judge referenced Mr. Preston's email to Cervus regarding payment of the vested stock units prior to the Settlement Documents being signed by Cervus but did not rely on that communication in support of his analysis.

[19] In the result, the motion judge awarded Mr. Preston judgment in the amount of \$75,949.81.

Analysis

[20] The motion judge correctly cited the applicable law, noting that pursuant to *Corner Brook*, releases are to be interpreted in the same manner mandated by *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633. He also correctly observed that the factual matrix of the case could not overwhelm the ordinary meaning of the words used in the release.

[21] In considering his analysis it is instructive to consider the factual matrix at the time of the execution of the Settlement Documents.

[22] It is not disputed that, upon the termination of Mr. Preston's employment, the vested stock units were automatically redeemed in accordance with the terms and conditions of the Plan, which was made explicit to Mr. Preston in the termination letter of January 9, 2018. It is also not disputed that all parties knew that the vested stock units had not been paid out by Cervus at the time the parties executed the Settlement Documents.

[23] In our view, the motion judge made three extricable legal errors in his analysis. First, he allowed his interpretation of the factual matrix to overwhelm the actual wording of Settlement Documents and effectively rewrote the contract between the parties. In this regard, we do not accept his conclusion that the

statement that the release of stock units applied only to stock or share awards which have either not been awarded or not been redeemed. The parties could have specified this result but chose not to do so. Instead, they used the following specific language: “I further declare that I have no entitlement under or from, or any claim of any nature or kind against the Releasees in respect of, any bonus, share award, stock option, deferred share or similar incentive plan offered by or on behalf of the Releasees.”

[24] Second, we find that the motion judge’s reliance on the Supreme Court’s guidance in *Corner Brook* to the effect that broad releases may be narrowly construed was misplaced in the circumstances of the case at bar. While it is true that the Settlement Documents included a broad release of claims, the language regarding the release to claims for stock options and other share awards was specific.

[25] Third, it is not the province of a judge interpreting minutes of settlement to evaluate the economic benefits conferred under the settlement, absent a party being under disability.

[26] In our view, the words of the Settlement Documents should be given their ordinary meaning, which included a release of any payments to be made under the Plan. In this regard we note the following from the Minutes of Settlement:

The entitlements set out in these Minutes of Settlement, including the Settlement Payment, are inclusive of any

and all entitlements whatsoever that Cervus may owe, or which may have accrued, to Mr. Preston pursuant to statute, contract, common law or otherwise.

[27] Clearly the payment of the settlement funds was intended to cover, among other things, all claims and entitlements owed or accrued pursuant to any contract, including Mr. Preston's employment contract and the Plan. It is evident looking at the Settlement Documents that they were intended to be final and bring an end to the parties' relationship and obligations.

Disposition

[28] The appeal is allowed. We set aside the judgment granted to Mr. Preston and grant judgment in favour of the appellant as our reasons dispose of the matter. We allow the appeal recognizing that Mr. Preston has lost rights to assert a claim for damages for property he had earned and in circumstances where it has not been explained why, with the benefit of legal advice, he executed Settlement Documents, which clearly released his entitlement to those damages. We offer no comment regarding other legal remedies potentially available to him related to the legal advice he received.

[29] Cervus is entitled to costs of the appeal and has made a claim for \$20,000. However, in the circumstances of this case, we find that a more modest costs award is appropriate. We order Mr. Preston to pay costs of the appeal to Cervus fixed in the all-inclusive amount of \$5,000. If the parties are unable to agree on the issue of costs of the proceeding below, they may make written submissions to this

court. Cervus will have seven business days from the release of this decision to provide written costs submissions. Mr. Preston will have a further four business days to respond. Cervus will then have two business days to serve and file any reply submissions. Costs submissions are confined to three pages, not including a bill of costs.

“C.W. Hourigan J.A.”
“L. Madsen J.A.”
“R. Pomerance J.A.”