Claim No: SCCH - 464447

# IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

**Cite as: Eastpoint Engineering Ltd. v. Fisher, 2017 NSSM 51**

BETWEEN:

EASTPOINT ENGINEERING LTD.

Claimant

- and -

COLIN SCOTT FISHER

Defendant

---

## REASONS FOR DECISION

---

**BEFORE**

Eric K. Slone, Adjudicator

Hearing held at Halifax, Nova Scotia on August 14, 2017

Decision rendered on August 24, 2017

**APPEARANCES**

| | |
|---|---|
| For the Claimant | Aubrey Palmeter,<br>President |
| For the Defendant | self-represented |

**BY THE COURT**:

[1] This case concerns the financial fallout and necessary adjustments following the Defendant's resignation as an employee of the Claimant company.

[2] The Defendant is an engineer who worked for the Claimant beginning March 10, 2014. His annual base salary was $120,000.00. At the time of hiring he was given a signing bonus of $25,000.00, with a stipulation that a pro-rata portion would be repaid if the employment ended prior to five years.

[3] On April 28, 2017, with a little less than two years remaining on the contract, the Defendant resigned his employment in order to pursue another opportunity. He does not deny that he has to repay a portion of this bonus. The live issues concern the offsets that he is entitled to for vacation pay, his last paycheque for the weeks before his resignation, and his notice period. The Claimant is also seeking to recoup a portion of fees that it paid for his professional licencing, which would be 8 months portion of $915.17, or (rounded) $610.00.

[4] Some of these items are not disputed. The Claimant admits that it withheld $3,320.00 of owed vacation pay and one-week's salary of $2,308.00. I note that these are gross numbers, and it may be that there are necessary deductions before they can be paid, or used as offsets.

[5] The Defendant denies that the Claimant has any right to recoup part of his professional fees. I agree with him. There is nothing in the Professional Employment Agreement that entitles the Claimant to recoup these amounts.

The employment contract contains an “Entire Agreement” clause, which would exclude any implied understanding that this could be recouped.

[6] The Defendant claims that he is also owed two weeks of pay after he resigned. This bears a closer look.

[7] The Professional Employment Agreement specifies that the Defendant was to give two weeks of notice if he was quitting. This is not precisely what happened. On Friday, April 28, 2017, he went into the office of the President, Aubrey Palmeter, and handed him a letter. Some of what that letter said is this:

> This letter is to inform you of my resignation from EastPoint Engineering. I have decided that I need to move on to find an opportunity that better suits my long-term professional and financial goals.
>
> I have enjoyed my time working with EastPoint and have a great deal of respect for the team. I hope that my departure does not make it too difficult for the team. There is never a good time to leave as a senior team member, but most of my projects are either wrapped up, between phases or still in the proposal stage, so I think you will find that it is a relatively easy transition. I have left a project summary sheet in my folder on the shared drive that summarizes where everything is and who can pick up where I left off.
>
> Due to the nature of the projects I am currently involved with at EastPoint, rather than the customary two week notice period, where my final day would be May 12, 2017, I offer to provide EastPoint with up to 80 hours of support as required over the next eight weeks as an alternative. Since my forecasted billable work over the next couple of weeks is low, there is little value in me sitting in the office for two weeks with minimal billable work to do and provides EastPoint with a longer period of transition support.

[8] Mr. Palmeter testified that he was taken totally by surprise, and did not know what to say. He testified that the Defendant mentioned that he was undecided but was thinking about starting his own business or buying into a business. Mr. Palmeter said he wanted to think about the Defendant's proposal.

[9] The following week the Defendant did not show up to work, but was answering emails at home.

[10] What the Defendant did not tell Mr. Palmeter was that on April 28 he already had in hand an offer of employment from a large engineering firm, CBCL, that was a competitor of the Claimant. In fact, by Thursday of that following week the Defendant started full time at that other job.

[11] By May 11, which was well into the second week, and while working full time at CBCL, the Defendant was pressing Mr. Palmeter for confirmation of the proposed 8-week arrangement. After being pushed for a decision, he rejected the proposal. By then he had learned of the Defendant's employment at CBCL and was unhappy with the lack of disclosure. One of the issues was that this created a conflict for one of the Claimant's clients, who insisted that the Defendant be taken off its file because CBCL was acting for another party whose interests were potentially adverse. This was embarrassing to the Claimant and meant that the Defendant's offer to work further hours became less valuable.

[12] As of May 11, there was no agreement to spread out the two weeks notice over a longer period.

[13] On the evidence, the Defendant put in a few hours over those two weeks, consistent with his expectation that his proposal would be met with favour. He argued at trial that Mr. Palmeter's silence for 12 or 13 days was tantamount to acceptance. Under the circumstances, I do not think it can be taken that way.

[14] The evidence is clear that Mr. Palmeter was completely taken by surprise on April 28 and it was understandable that he would want time to consider options. I also find that the Defendant was not entirely forthcoming about his plans. Had he disclosed that he was going to work at CBCL, the decision about the Defendant's notice requirement could have been made based on all of the relevant information. Although his contract required him to give two weeks' notice, that requirement might have been waived. Or the Claimant might have insisted on two weeks of full time work.

[15] The evidence also establishes that the Defendant put in no billable hours during the almost two weeks, so his value to the Claimant was dubious.

[16] I find that the contract was at an end as of May 12, 2017, and that the Defendant put in no more than 10 to 15 hours of work between May 4 and 12. He should be paid something for that time. I would fix this at one-third of a week's pay.

[17] The precise amount of the repayment of the signing bonus was not agreed. I believe it should be calculated as if the employment ended on May 12, 2017, which was two weeks from when he resigned. The calculation should therefore be:

number of days to end of 5 years 667 X $25,000 = $9,132
divided by five years (1826 days) 1826

[18] The Claimant is accordingly entitled to $9,132.00. The Defendant is entitled to be credited his vacation pay and last week of pay, plus (as I have found) a further one-third of a week's pay. That one-third of a week, in gross terms, is $769.23.

[19] I am reluctant to use actual numbers because these offsets are subject to valid payroll deductions, and they are not simple offsets.

[20] As it was substantially successful, the Claimant is also entitled to its costs of $394.85.

[21] It may be most effective, from an accounting point of view, for the parties to exchange cheques, with the Defendant paying the Claimant $9,132.00 + $394.85 = $9,526.85, and the Claimant paying the Defendant his salary and vacation pay, as set out above, with all necessary deductions.

[22] I will not issue a formal order, unless asked by either of the parties in the event that they are unable to work out the mechanics of these payments. If a problem arises either of them may ask Court Administration for the matter to be placed on my docket and the formal order may be made.

**Eric K. Slone, Adjudicator**