



No. VLC-S-S-207024
Vancouver Registry

In the Supreme Court of British Columbia

Between

James Hawes,

Plaintiff

and

Dell Canada Inc. operating as Dell Canada,

Defendant

RESPONSE TO CIVIL CLAIM

Filed by: Dell Canada Inc. operating as Dell Canada (the "defendant")

PART 1: RESPONSE TO NOTICE OF CIVIL CLAIM FACTS

Division 1 – Defendant's Response to Facts

1. The facts alleged in paragraphs 1 of the notice of civil claim are admitted.
2. The facts alleged in paragraphs 2 to 15 are denied.

Division 2 – Defendant's Version of Facts

3. In 2016, the defendant acquired EMC Corporation ("EMC"), which employed the plaintiff. As a result of the acquisition, the plaintiff's employment continued with the defendant as a sales representative.
4. By letter dated March 25, 2020, the defendant provided the plaintiff with working notice that his employment would terminate without cause effective April 10, 2020.
5. In addition to the working notice provided to the plaintiff, the defendant paid to the plaintiff the total sum of \$40,769.23 less statutory withholdings (the "Termination Payment"). The defendant offered an additional severance package on certain terms, but the plaintiff did not accept it.
6. At the time of his termination, the plaintiff's Total Target Compensation for the 2020 year was \$265,000. This target amount was not guaranteed, and the plaintiff's potential earnings would likely be significantly impacted by the economic consequences of the COVID pandemic. The plaintiff was also entitled to certain other benefits, including participation in the defendant's RRSP and DPSP, subject to the terms of the applicable plans.

7. During the period of working notice and thereafter, the plaintiff made disparaging comments about the defendant, including to customers. Further, the plaintiff posted a reference to the parties' confidential settlement discussions on his LinkedIn profile, which read "Working on a massive settlement with Dell". The defendant took appropriate steps to address this conduct, all of which was in breach of the plaintiff's duties and obligations of good faith, confidentiality and fidelity owing to the defendant.

Division 3 – Additional Facts

1. Nil.

Part 2: RESPONSE TO RELIEF SOUGHT

1. The defendant opposes the granting of the relief sought in paragraph 1(a)-(g) of Part 2 of the notice of civil claim.

Part 3: LEGAL BASIS

1. In answer to the whole of the notice of civil claim, the Termination Payment satisfies any obligations owing by the defendant to the plaintiff respecting his termination, and accordingly no further payments or monies are owing to the plaintiff.

2. In the alternative, if any further monies are owing to the plaintiff, his total earnings from prior years are not a proper basis on which to assess damages for the common law notice period, as his potential future earnings would likely be significantly less as a result of the COVID pandemic.

3. In further answer to the notice of civil claim, the facts as pleaded fail to disclose a claim for bad faith damages. Further and alternatively, the defendant has at all times conducted itself in good faith in the manner of termination, including in negotiating an additional severance package.

4. Further and alternatively, the defendant denies that the plaintiff has suffered any loss or damage, as alleged or at all.

5. Further and alternatively, the plaintiff has failed to take reasonable or any steps to mitigate his damages. Further, by making and posting disparaging comments about the defendant, the plaintiff has damaged his employment prospects.

Defendant's address for service:

BORDEN LADNER GERVAIS LLP
1200 Waterfront Centre
200 Burrard Street
P.O. Box 48600
Vancouver, British Columbia
V7X 1T2
Attention: Steve M. Winder

Fax number address for service (if any):

None

E-mail address for service (if any):

None

Date: September 9, 2020



Signature of lawyer for Defendant
Steve M. Winder (BORDEN LADNER GERVAIS LLP)

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

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