

EMPLOYER'S FAILURE TO INVEST IN PROPER EMPLOYMENT CONTRACT LEADS TO SIGNIFICANT DAMAGES

Are you dreaming of becoming the next president of a company? Or is it your goal to purchase a small business and finally become your own boss? Jim Maizis pursued this goal when he left his full-time job to buy Chatten's Better Hearing Service, a small hearing-aid provider in Oshawa, Ontario.

New to the business, Maizis needed a company veteran to help him with the transition. Dawn Loyst was the perfect fit. Loyst worked for the former owners of Chatten's for nearly nine years managing the bookkeeping and the office. She knew the ins and outs of Chatten's business and she also knew that she could demand a high price for her services.

Loyst asked for a five year guaranteed job with a 15% ownership stake in the company at the end of those five years. Maizis agreed to these requests but instead of hiring a lawyer to draft a proper employment offer for Loyst, he gave her a short letter instead which simply confirmed that Loyst would be hired for five years by the company and then given a 15% share of its ownership. Without any other written document, this letter had the same effect as an employment contract.

At the time, Maizis understood what he was agreeing to but without the benefit of a lawyer's advice in negotiating the agreement, he failed to realize one critical error: there was no way to terminate Loyst before the end of the five year term, without paying her for the remaining period of time on the contract.

Although their relationship started out well, Loyst and Maizis grew increasingly uncomfortable with each other over time. Matters finally boiled over during a telephone call when Maizis accused Loyst of hanging up on him and Loyst later declared that she "had a problem" with Maizis. This was the final straw for Maizis and the next day he gave her a reduced role and compensation. When Loyst protested, he told her to pack up and leave. Believing that she was terminated, Loyst sued not only for the remaining 29 months of pay under the contract but for the value of 15% of the company.

Maizis tried to wiggle out from the agreement by claiming first that Loyst had resigned and later that there was cause to fire her because of misconduct. However, both of these arguments were swiftly rejected by Ontario Superior Court Justice Thomas Mcewen who recently heard the case.

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Whitten & Lublin is a team of legal experts who provide practical advice and advocacy for workplace issues.

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In his regular [Globe & Mail](#) column, [Daniel Lublin](#) explains what employers should not do in a termination meeting in "[Why courts will say no to unfair termination contracts](#)" and how to prove bullying in the workplace in "[How to strike back against workplace bullying](#)".

[David Whitten](#) put on a seminar "Advanced Terminations: Getting It Right" for the Human Resources Professionals Association and the Certified General Accountants Association of Canada on July 12. He was also quoted in [the Star](#) newspaper regarding the bullying issues at the workplace. David Whitten was interviewed regarding an article in the [Globe and Mail](#) called "What to watch for before signing an employment contract", where he advised about which provisions to question before signing an employment agreement.

[Aaron Rousseau](#) delivered a presentation: The Rise of Workplace Stress and Harassment Claims: What Employers Can Do, on July 25, 2012 to the Human Resources Professionals Association (HRPA).

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Loyst was awarded more than \$250,000 for lost salary during the remainder of the contract and 15% of the value of the company.

In this case, Maizis' inexperience in employment law matters cost him dearly. This is because most employment contracts (and especially those with a five year term) provide the employer with some form of an "out". Since the simple agreement drafted with Loyst was silent regarding termination, Maizis' hands were tied and he was stuck with a choice between continuing to employ an individual he could no longer tolerate or paying her approximately two and half years' severance to leave.

The human resources lesson may be obvious but the advice still very valuable. Employers should invest proper time and energy in each and every one of its employment contracts as those contracts often can provide the latitude to dismiss employees with only minimum statutory severance obligations (among other things) - but only if drafted properly at the outset.

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[DAVID WHITTEN](#)

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