

COURT OF APPEAL FOR ONTARIO

CITATION: Hausmann v. Deloitte & Touche LLP, 2012 ONCA 547

DATE: 20120822

DOCKET: C55224

Rosenberg, Gillese and Armstrong JJ.A.

BETWEEN

Fred Hausmann

Plaintiff (Appellant)

and

Deloitte & Touche LLP

Defendant (Respondent)

Andrew J. MacDonald for the appellant

James R. Lane, for the respondent

Heard: August 20, 2012

On appeal from the judgment of Justice Ted Matlow of the Superior Court of Justice, dated February 21, 2012 and seeks leave to appeal the order of Justice Matlow as to costs dated March 28, 2012.

APPEAL BOOK ENDORSEMENT

[1] Time to appeal is extended. As to the appeal, there was a genuine issue requiring a trial that could not be resolved on the summary judgment motion at this stage; namely, whether the respondent was entitled to direct the appellant to take his vacation during the notice period. The respondent's vacation policy is ambiguous and therefore entitlement to direct as it did could not be resolved, at

least at this stage, before discoveries. If the respondent was not entitled to direct as it did, they (i) may not have accepted the appellant's resignation and may have constructively dismissed him or (ii) may have breached the contract as was also pleaded by the appellant.

[2] Accordingly, the appeal is allowed and the judgment of Matlow J. is set aside.

[3] The appellant is entitled to its costs of the appeal and the motion fixed at \$37,500 inclusive of disbursements and HST.