

# COURT OF APPEAL FOR ONTARIO

CITATION: Wilkes v. Deep Foundations Contractors Inc., 2015 ONCA 231

DATE: 20150407

DOCKET: C58074

Feldman, Benotto and Brown JJ.A.

BETWEEN

Ken Wilkes

Respondent (Plaintiff)

and

Deep Foundations Contractors Inc.

Appellant (Defendant)

Thomas A. Stefanik, for the appellant

Paul McKeeever, for the respondent

Heard and released orally: March 30, 2015

On appeal from the judgment of Justice Bruce A. Glass of the Superior Court of Justice, dated November 25, 2013.

## ENDORSEMENT

[1] The appellant asks the court to set aside the decision of the trial judge on the basis that the reasons do not address an important issue of credibility and therefore do not tell the parties why the respondent won and the appellant lost.

[2] The respondent was terminated for alleged cause. The cause was that he did outside consulting work after July 30, 2009, after the employer made it clear, and the employee agreed, not to do so. The alleged transgression was a health and safety manual which the respondent prepared for Rockwood General Contractors Limited. There was conflicting evidence regarding when that manual was prepared and delivered. The respondent said it was before July 30, it was dated July 2, 2009, and Mr. Hary of Rockwood said it was delivered between April and September 2009. The respondent had sent a September invoice to Rockwood and a September date also appeared on a company adoption page in one version of the manual.

[3] The trial judge made a specific finding that the appellant's evidence did not substantiate its allegations and that the respondent did not do outside consulting work after July 30.

[4] There was some conflicting evidence about what the parties recalled they had said at the termination meeting of November 30, 2009.

[5] Although the trial judge did not address those discrepancies directly, his finding that the defendant's evidence did not substantiate its allegations effectively dealt with the issue.

[6] In our view, there is no basis to interfere with the decision of the trial judge. The appeal is therefore dismissed. Costs to the respondent fixed in the amount of \$12,500, inclusive of disbursements and HST.

“K. Feldman J.A.”  
“M.L. Benotto J.A.”  
“David Brown J.A.”