

COURT OF APPEAL FOR ONTARIO

RE: FILIPPO GIANANTE (Respondent/Plaintiff) v.
DAIMLERCHRYSLER CANADA LTD. (Appellant/Defendant)

BEFORE: BORINS, SHARPE and JURIANSZ JJ.A.

COUNSEL: Richard B. Swan and
Alix P. Herber
for the appellant

Rodney M. Godard
for the respondent

HEARD: May 11, 2004

On appeal from the judgment of Justice R.J. Abbey of the Ontario Superior Court, dated October 25, 2002.

ENDORSEMENT

[1] This appeal must be allowed.

[2] The trial judge found as a fact that in August of 1998, Mr. Giansante became aware of the specific requirements of DaimlerChrysler's Integrity Code which provided:

The use of outside concerns to provide goods or perform services of a personal nature is strongly discouraged, even though paid for by the employee. If unavoidable (e.g. vehicle service/repair provided by a Chrysler dealer), fair market value must be paid for the goods or services, and the payment must be documented.

[3] The trial judge further found that the fence that Mr. Giansante arranged to have constructed for him by DaimlerChrysler's supplier was completed in October 1998, that

payment was due upon completion, and that Mr. Giansante had not paid for the fence before he was advised on December 11, 1998 that he would be terminated.

[4] The trial judge did find that Mr. Giansante “considered the subject of the fence wrapped up in the discussion which took place in respect of the pool” and that this provided a reasonable explanation of why he did not mention the fence, which was then under construction, to the investigators. However, this finding does not explain why Mr. Giansante failed to make and document payment for the fence when payment became due.

[5] The trial judge went on to find that “While it may have been preferable, as against the standard expressed in the Code, for the plaintiff to have documented the arrangement for the fence, ultimately the arrangement was documented in the final invoice.” This is an erroneous interpretation and application of DaimlerChrysler’s Integrity Code. The Code required documentation of payment, not merely documentation of the contractual arrangement for payment.

[6] We are satisfied that on the findings of fact made by the trial judge, Mr. Giansante was in clear breach of the Code after August 1998. Given his senior management position, the conflict of interest he created when he arranged with DaimlerChrysler’s supplier to provide an in-ground swimming pool, a fence and landscaping compromised the employment relationship. We find that DaimlerChrysler had just cause to terminate his employment. The judgment in favour of Mr. Giansante is set aside, and his action is dismissed with the defendant’s costs at trial to be assessed.

[7] Accordingly, we would allow the appeal, set aside the judgment and order that the action be dismissed with costs. The appellant is awarded its costs of the appeal on a partial indemnity basis fixed at \$15,000.00 plus disbursements and GST.

“S. Borins J.A.”

“Robert J. Sharpe J.A.”

“R.G. Juriansz J.A.”