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Price Check Foods v. Gowlings – a Strong Message on Damages

Overview

This recent decision brings forward some strong messages about plaintiffs' claims for damages, as well as liability. One of the key messages is the confirmation of the responsibility of the plaintiff to establish damages, and the quantum of damages, through sufficient evidence. Without this, a plaintiff's case is considerably weakened.

Here, the Plaintiffs' claim for damages exceeded \$10 million, plus punitive damages. However, Madame Justice Mesbur found that even if there was liability, the damages would have been \$150,000 to the company, \$425,000 to one principal, and \$150,000 to the other principal.

Background

Price Check Foods ("PCF") bought 15 medium sized grocery stores from Sobeys in 2001 for approximately \$2 million. Less than 18 months later the chain was placed in receivership by the Bank of Nova Scotia ("BNS"), the primary secured creditor. PCF and two of the principals alleged Gowing Lafleur Henderson LLP was negligent in its provision of legal services, was in a position of conflict and breached its fiduciary duties to them as clients.

Madam Justice Mesbur found that Gowlings was not liable.

Damages

The plaintiffs elected not to call an expert on the issue of damages. The judge cited *Martin v. Goldfarb* to confirm the responsibility of the plaintiff to establish damages and the quantum of damages.

Some of the reasons for denying more than \$9 million in damages claimed are:

- **Inadequate support** – Many of the damages claimed failed because the documents presented did not adequately support the damages claimed;
- **Causality** – Many of the damages claimed failed because they were not caused by the breach or wrong; and
- **Incomplete brief** – Not all relevant materials were shown in the final damages brief, for example, funds withdrawn by the principals from PCF were shown in earlier damages briefs, but not in the final damages brief.

In addition, there were a number of interesting financial aspects to this case:

- **Breach of security agreement** - Small business loans obtained by PCF for individual stores may have breached PCF's security agreement with BNS;
- **Damages not payable to PCF** - Any damages payable to PCF (if there was a finding of liability) would likely vest with the Receiver appointed by BNS.

Peter Macaulay worked with defendant's counsel in responding to the damages claims advanced by the Plaintiffs.

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Peter Macaulay focuses on damage quantification in commercial disputes. He is a Chartered Accountant and has been designated as a specialist in Investigative and Forensic Accounting by the CICA.

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PCF Acquisition Corp., Peter Brown and Geordie Brown v. Gowling Lafleur Henderson LLP. 2008 CanLII 19791 (ON S.C.) — 2008-04-30 Ontario — Superior Court of Justice