DATE: 20060501
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COURT OF APPEAL FOR ONTARIO

RE: **PIERRE MANONI (Plaintiff (Respondent)) – and – UCAL POWELL, in his personal capacity and as a representative of the individual members of the CENTRAL ONTARIO REGIONAL COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (Defendant (Appellant)) – and – FRANK MANONI (Third Party (Respondent)) – and JOHN VAN DER VEEN , in his personal capacity and as a representative of the individual members of LOCAL 2000 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (Fourth Party (Respondent))**

BEFORE: **MOLDAVER, GOUDGE and LANG JJ.A.**

COUNSEL: **Harold P. Rolph and Dave J.G. McKechnie**
for the appellant

D. Bruce Sevigny
for the respondent

HEARD: **April 25, 2006**

On appeal from the judgment of Justice David L. McWilliam of the Superior Court of Justice dated November 12, 2004.

E N D O R S E M E N T

[1] While the trial judge could have given more detailed reasons, on the succinct reasons he did provide, it is apparent to us that he was satisfied that OIC merged with the appellant CORC, that upon that merger, CORC continued the respondent's employment in accordance with the terms of a working agreement he had entered into with OIC and that the working agreement was not a sham (as the appellant argued) but a valid and binding agreement (as the respondent argued).

[2] In our view, it was open to the trial judge to make those findings and we see no basis for interfering with them.

[3] In light of those findings, the trial judge recognized, correctly in our view, that in its essence, this case boiled down to a question of reasonable notice.

[4] On that issue, the trial judge awarded the equivalent of fourteen months pay in lieu of notice. On the face of it, that award would appear to be excessive given that this was a younger employee who had been employed, at the equivalent of a middle level management position, for only about two and a half years. The only justification offered by the trial judge for this large award was the employer's failure, in the circumstances, to provide a promised reference letter, which the trial judge felt warranted additional notice pursuant to the principles in *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701.

[5] In our view, while the failure to provide a reference letter warranted some increase in the length of notice to which the respondent was entitled, in these circumstances, it did not justify the significant extension contended for by the respondent of fourteen months. We consider that award to be manifestly excessive.

[6] We are also of the view that the employment security provision in the respondent's contract provides little basis for an enhanced notice period in light of the circumstances in which the respondent worked. Indeed, on these facts, the provision gave the respondent no additional rights.

[7] In the circumstances, including the nature and length of the respondent's employment, the terms of his working agreement and a modest enhancement in accordance with *Wallace* principles, we think that a notice of seven months, while generous, would have been reasonable.

[8] The appellant also raised a bias argument. The record, in our view, does not substantiate the appellant's concern. Nor, in our view, is there any basis for interfering with the trial judge's disposition of the third party claim or with the costs awarded at trial.

[9] Accordingly, the appeal is allowed in part and the order of the trial judge is varied accordingly.

[10] The parties achieved mixed success. In our view, they should bear their own costs of the appeal.

Signed: "M.J. Moldaver J.A."

"S.T. Goudge J.A."
"S.E. Lang J.A."