

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** Blackman v. Merrill Lynch Canada Inc., 2013 NSSC 87

**Date:** 20130308

**Docket:** Hfx. No. 266089

**Registry:** Halifax

**Between:**

Richard George Blackman

Plaintiff

v.

Merrill Lynch Canada Inc.

Defendant

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**Judge:** The Honourable Justice Allan P. Boudreau

**Heard:** January 7, 8, 9 and 10, 2013 in Halifax, Nova Scotia

**Subject:** Contracts - Employment - Collateral Agreements - Implied Terms - Constructive Dismissal - Damages - Causation

**Summary:** Richard Blackman (“Mr. Blackman”) is an Investment Adviser/Broker, having been in the business since 1984. In 1996, Mr. Blackman was working for Richardson Greenshields when that business was acquired by RBC-Dominion Securities (“RBC”). Shortly thereafter, Mr. Blackman was approached on a regular basis by Hugh Wilson (“Mr. Wilson”), a regional manager with another investment firm, Midland Walwyn (“Midland”), with the prospect of Mr. Blackman becoming employed with Midland. For reasons which will be discussed more fully later, Mr. Blackman eventually decided to move himself, and as much of his investment business as would follow him, to Midland.

A detailed contract of employment was eventually signed between Mr. Blackman and Midland. Mr. Blackman has contended that he was very concerned about having to rebuild his investment “book of business” once he moved from RBC to Midland because he could not be certain how many of his clients would follow him to Midland. He said that, for that reason, Mr. Wilson agreed that Mr. Blackman would commence at Midland with a “Length of Service” (“LOS”) designation of zero (0). This alleged agreement or term was not mentioned in the eventual contract of employment. Mr. Blackman contends that this was an

important condition for him and that, notwithstanding that it is not in any written document, it was a legally binding collateral agreement.

After three years of employment with Midland, which had by then been purchased by the defendant, Merrill Lynch, Mr. Blackman's LOS designation was indicated as LOS (10). Mr. Blackman protested this change in his LOS designation, but without resolution. Merrill Lynch's Canadian retail operations were subsequently purchased by CIBC-Wood Gundy ("CIBC"), effective early 2002.

Mr. Blackman's employment was transferable to CIBC and he did so by entering into a new contract of employment with CIBC. He subsequently resigned his employment with CIBC in 2004.

Mr. Blackman contends that the change of his LOS designation by Merrill Lynch to (10) after only three years with that firm was a breach of his "collateral" contract or agreement with Merrill Lynch; and alternatively, that the manner of his transfer of employment from Merrill Lynch to CIBC in 2001-2002 constituted a constructive dismissal.

Mr. Blackman claims that he had no choice but to resign from CIBC in 2004 primarily because of his LOS designation, and he claims damages ranging from 1.3 million dollars to 3 million dollars.

Merrill Lynch denies any collateral employment agreement or any breach of such alleged agreement or any wrongful dismissal of any kind.

**Issues:**

- 1. Has Mr. Blackman proven that his employment contract with Midland was subject to a collateral agreement regarding his LOS designation?**
- 2. If the answer to issue No. 1 is "yes", then has Mr. Blackman proven that an implied term of that collateral agreement was that his LOS designation would remain unchanged as it progressed annually from LOS (0) to LOS (10+)?**
- 3. If the answer to issue No. 2 was also "yes", then has Mr. Blackman proven any damages caused by his designation change from LOS (2) in 2000, to LOS (10) in 2001?**
- 4. If the answer to any of issues No. 1, No. 2 or No. 3 is "no", then has Mr. Blackman proven a constructive dismissal when his employment was transferred from Merrill Lynch to CIBC in 2001-2002?**
- 5. If the answer to issue No. 4 was "yes", then has Mr. Blackman proven any damages?**

**Result:** Found there was a collateral agreement regarding the plaintiff commencing at Midland as a Length of Service - LOS(0); but not as to its duration. Therefore, there could not be a breach by changing to the plaintiff's "actual" LOS after three years. Even if there had been a breach, the plaintiff failed to prove that a change in his LOS designation "caused" any damages. In the result, the plaintiff's claims were dismissed with costs.

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