

Company was entitled to terminate its relationship with a contractor without giving notice despite being in breach of contract itself

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Employment Law News

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Company was entitled to terminate its relationship with a contractor without giving notice despite being in breach of

contract itself

A recent High Court decision demonstrates that where a Company has breached the express or implied terms of the contract, if the response or reaction from the other party itself amounts to a breach, the Company may still be able to rely on the other party's breach and terminate the contract with immediate effect.

What does the law say?

If a party to a contract commits a repudiatory breach (a breach of contract that is so serious as to go to the root of the relationship), the other party is entitled to terminate the contract immediately or "summarily" (i.e. without notice or payment in lieu of notice, if relevant).

In an employment context, this may include scenarios such as where the worker is guilty of gross misconduct or the employer does not pay the worker his or her salary.

What happened in this case?

Mr Palmeri was a self-employed investment manager at Charles Stanley (the **Company**), who employed his own team. His contract provided for termination by either party on three months' notice, but there was no right for the Company to terminate the contract immediately and pay in lieu of notice (**PILON**). As such, the only way in which the Company was permitted to stop the contract straight away was if Mr Palmeri was in repudiatory breach of contract (e.g. guilty of gross misconduct).

Some years into the relationship, the Company proposed to change its operating model. The Company wished to take a larger amount of the revenue that Mr Palmeri generated, meaning that he would suffer a 15% reduction in income.

Negotiations on the new terms were not fruitful. Accordingly,

the Company called Mr Palmeri into a meeting and adopted a “take it or leave it” approach. Mr Palmeri was told that if he did not accept the new terms, his old contract would be terminated with immediate effect and he would be paid in lieu of notice (despite the fact that the contract did not permit this).

Mr Palmeri reacted aggressively to this ultimatum. He shouted, swore and questioned the integrity and competence of senior management. Mr Palmeri had a history of aggressive outbursts and had been warned that if it occurred again, he risked termination.

Following this episode, Mr Palmeri said he would agree to the new contractual terms and work under protest. However, the Company decided that the outburst was so serious his contract should be terminated with immediate effect. Later, the Company discovered that Mr Palmeri was responsible for certain compliance and regulatory breaches, which would have been grounds for summary termination in any event.

Mr Palmeri brought a claim for wrongful termination of his contract. He argued that the Company breached the contract when they suggested the immediate termination and payment in lieu of notice when there was no contractual right to do this.

He also argued that the Company wished to prevent the orderly transition of his clients (which would have happened had the Company allowed him to serve his three months’ notice) and this was a breach of the implied term of trust and confidence.

He argued that he was entitled to substantial damages.

What was decided?

The Court held that Mr Palmeri’s conduct (including the outburst and the regulatory breaches) amounted to sufficiently serious misconduct as to amount to a fundamental breach of contract. The Court also noted that it could not ignore the history of similar incidents and the warning given to Mr

Palmeri about his behaviour.

The fact that the Company had been prepared to commit a repudiatory breach of contract itself did not prevent them from relying on Mr Palmeri's repudiatory conduct (including that which was discovered after he had left).

The Court concluded that the contract had been lawfully terminated and the Company was not liable to pay any compensation to Mr Palmeri for any losses he suffered as a result.

What are the learning points?

Just because one party to a contract has already breached the contract, it doesn't give the other party carte blanche to behave inappropriately. They have a choice. They can either accept the outrageous behaviour as bringing the contract to an end or they can affirm the contract – i.e. keep it alive, which is what Mr Palmieri did. However, if the worker does that then s/he must abide by the terms of the contract.

Palmeri & Ors v Charles Stanley & Co Ltd

If you would like to know more or your business needs advice on how to manage a termination process please contact Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

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