

CITATION: Khatib v. GoEasy Ltd, 2026 ONSC 3513
COURT FILE NO.: CV-19-00633555-0000
DATE: 20260616

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

Shadi Khatib

Applicant

– and –

Goeasy Ltd.

Respondent

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) *Muneeza Sheikh, Aisha Abawajy*, for the
) Applicant

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) *Jonathan H. Pinkus, Gurlal Kler*, for the
) Respondent

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) **HEARD: March 9-12, 2026**

MATHEN, J.

REASONS FOR JUDGMENT

INTRODUCTION

[1] This is a claim for damages flowing from a wrongful dismissal.

[2] The plaintiff, Shadi Khatib, took a position as a Senior VP at the defendant financial services company, Goeasy Ltd.¹ on May 16, 2016. He was dismissed without cause on October 21, 2019.

[3] Mr. Khatib sues for:

- a. 12 months' notice;
- b. Payment of his full bonus for 2019, and on a pro-rated basis for the remainder of his notice period;

¹ The defendant's corporate name is "goeasy". Throughout these reasons, I have capitalized the name.

- c. Payment of Long-Term Incentive Plan benefits during the notice period as follows:
 - i. The value of his Restricted Stock Units (RSUs) and Share Options (SOs), which vested during the notice period and
 - ii. The value, on a pro-rated basis, of his unvested RSUs and SOs; and
- d. Bad faith, punitive and/or moral damages of at least \$100,000.

[4] Mr. Khatib says Goeasy induced him to leave a prior position where he made significantly more money. He and Goeasy negotiated certain terms, like a signing bonus and participation in the firm's Long-Term Incentive Plan (LTIP). Mr. Khatib says that, when he signed the employment agreement (EA), he was not told that either (a) RSUs and SOs had an expiry date or (b) he would forfeit any outstanding incentives if his employment was terminated.

[5] Goeasy says that Mr. Khatib was a sophisticated party who drove a hard bargain. He cannot now say he was induced or duped.

[6] Accordingly, the issues are:

- a. Did Goeasy induce Mr. Khatib from secure employment?
- b. What is the reasonable notice period to which Mr. Khatib was entitled upon termination?
- c. Is Mr. Khatib entitled to receive his bonus/Short-Term Incentive that he would otherwise have earned during the notice period?
- d. Is Mr. Khatib entitled to receive damages in lieu of the value of his LTIP and, if so, which ones and at what value?
- e. Is Mr. Khatib entitled to a tax gross-up?
- f. Is Mr. Khatib entitled to receive bad faith, punitive and/or moral damages and, if so, in what amount?

ANALYSIS

[7] My findings of fact are contained in the following analysis.

Credibility

[8] Credibility is a primary vehicle for determining the truth of alleged facts. Assessing credibility is not an exact science: *Konstan v. Berkovits*, 2023 ONSC 497, at para. 11, citing *R. v. Gagnon*, 2006 SCC 17, [2006] 1 S.C.R. 621, at para. 20. Traditionally, it involves criteria such as witness demeanour, inherent probability in the circumstances, and internal and external consistency: *Prodigy Graphics Group Inc. v. Fitz-Andrews*, 2000 CarswellOnt 1178 (S.C.), at para. 46.

[9] Where a party has the burden to discharge a legal onus, I must satisfy myself, on a balance of probabilities, of “the credibility and reliability of the evidence in order to be in a position to make the relevant findings of fact”: *Berkovits*, at para. 9.

[10] Courts assess credibility based on the totality of the evidence, as well as common sense and reason: *F.H. v. McDougall*, 2008 SCC 53, [2008] 3 S.C.R. 41, at para. 58. A judge may accept some, none, or all of a witness’ evidence, and can attach different weight to different parts. In civil cases where there is conflicting testimony, as long as the judge does not ignore evidence, “finding the evidence of one party credible may well be conclusive of the issue because that evidence is inconsistent with that of the other party”: *McDougall*, at para. 86.

[11] Credibility differs from reliability. Credibility has to do with whether someone is honest, while reliability concerns whether their testimony is accurate: *R. v. Sanichar*, 2013 SCC 4, [2013] 1 S.C.R. 54, at para. 19. One may find a witness credible yet doubt their reliability. Conversely, a witness who is not credible may still offer reliable testimony.

[12] This trial featured the following witnesses:

- a. Shadi Khatib
- b. Steve Goertz, a former Goeasy employee
- c. David Cooper, Goeasy’s representative witness

Shadi Katib

[13] Mr. Khatib spoke clearly and straightforwardly about his recruitment, employment, and post-termination experience with Goeasy.

[14] According to Mr. Khatib:

- a. Before joining Goeasy, he earned approximately \$450K CAD. His compensation and bonus were paid in US Dollars.
- b. He was “happy” with his prior employer and not looking for anything when he was approached by an executive recruiter which Goeasy had hired.
- c. Once he and Goeasy started negotiations, he was shocked at the equity portion he was being offered. He was firm that he would not accept an offer unless it was significantly improved.
- d. He negotiated an increase in RSUs received as a signing bonus, from 2,500 to 5,000 units – a difference worth approximately \$100,000.
- e. During negotiations, Goeasy provided spreadsheets and calculations to reassure Mr. Khatib of the likelihood that his shares would double vest. That convinced him that the move made economic sense.

- f. Goeasy never told Mr. Khatib that the shares were subject to expiry, or to forfeiture on termination. Had Mr. Khatib known those things, he would not have signed the contract.
- g. When Mr. Khatib received his first LTIP grants, which included the expiry/forfeiture provisions, he immediately objected.
- h. Around the same time, Mr. Khatib became aware of a higher class of Senior Vice Presidents who were not subject to the same restrictions. He asked to be placed in that category. Goeasy refused.

[15] I discuss Mr. Khatib's testimony at length throughout these reasons. I find him generally credible. I do not, however, find all his testimony reliable.

Steven Goertz

[16] Mr. Khatib called as a witness Mr. Goertz, who was Goeasy's Chief Financial Officer from 2009-2018. Mr. Goertz was involved in Mr. Khatib's hiring, although he did not negotiate the financial terms of Mr. Khatib's contract.

[17] Mr. Goertz spoke at length about his own employment arrangements. He stated that, when he departed Goeasy, he received:

- a. 12 months' severance;
- b. continuation of his benefits for those 12 months;
- c. his STIP, including on a pro-rated basis;
- d. RSUs and SOs that had vested but not been exercised; and
- e. for RSUs and SOs that had not yet vested on his last day of employment, their value under the plan, if they vested during the next 12 months.

[18] Mr. Goertz discussed his own contract with Goeasy. He confirmed that his contract had similar language to Mr. Khatib's. He also confirmed that the expiry and forfeiture clauses in the LTIP grant letters were uniform across the company. However, he was "not concerned" by those clauses because his Employment Agreement confirmed his entitlements, and that Agreement would "supersede" anything in the Letters.

[19] Mr. Goertz knew of other employees who had voiced concerns similar to Mr. Khatib's about the forfeiture provisions. Mr. Goertz said that, to his knowledge, no employee succeeded in changing their employment letters to reflect a different position in the company.

[20] Mr. Goertz confirmed that in 2017-2018, the plaintiff approached him to express concern about the language of the grant. Mr. Goertz agreed to broach the issue with the CEO, but the company did not change Mr. Khatib's grant letters. Mr. Goertz also challenged Mr. Khatib's

allegation that he did not “accept” the grant. Mr. Goertz said that there was nothing in the grant letters to which an employee could “consent” or “refuse consent”.

[21] Mr. Goertz acknowledged that Mr. Khatib wanted to become an Executive VP. Mr. Goertz said he advised Mr. Khatib that the company would not promote him.

[22] Mr. Goertz confirmed that Mr. Khatib was the fifth most senior person in the company.

[23] Mr. Goertz confirmed that, during his tenure, but before Mr. Khatib joined the company, some departing employees were permitted to keep pro-rated vested stock. Mr. Goertz could not recall those employees’ EAs. Mr. Goertz said he did not know how that would have happened, as such details would have been negotiated with the CEO.

[24] Mr. Goertz authored the notices of annual general meeting and circulars in 2016, 2017 and 2018. Those documents were vetted with external legal counsel and approved by the Board.

[25] I find Mr. Goertz generally, though not entirely, credible. I accept the company’s evidence that Mr. Goertz left Goeasy on strained terms, after a newly appointed CEO decided not to keep him on as CFO. That suggests that Mr. Goertz is not neutral as between the parties. I also do not find him completely reliable. Mr. Goertz failed to explain (a) why the 2017 share options grant had a fifty-three rather than thirty-six month vesting period and (b) why the 2018 Information Management Circular states, erroneously, that Mr. Khatib would receive stock units upon termination.

David Cooper

[26] Goeasy’s representative witness was David Cooper, Executive Vice President and Chief People Officer. He was Vice President, Human Resources, at the time of Mr. Khatib’s hiring and was the person who negotiated the terms with Mr. Khatib.

[27] Mr. Cooper spoke to Goeasy’s recruitment process, the parties’ negotiation of Mr. Khatib’s EA, and the structure of the short and long-term incentive plans.

[28] I discuss Mr. Cooper’s evidence on behalf of Goeasy in more detail throughout these reasons. Generally, I find him credible, reliable and very straightforward. He did not avoid or sugarcoat any facts, including those that I find are unfavourable to the company.

Issue One: Did Goeasy induce Mr. Khatib from secure employment?

[29] Mr. Khatib argues that Goeasy induced him to leave secure employment to join the company, and this should increase his period of reasonable notice.

The Law

[30] Mr. Khatib bears the burden to show that inducement occurred.

[31] A claim of inducement requires looking at:

- a. the reasonable expectations of both parties;
- b. whether the employee sought out work with the prospective employer;
- c. whether there were assurances of long-term employment;
- d. whether the employee did due diligence before accepting the position by conducting their own inquiry into the company;
- e. whether the discussions between the employer and prospective employee amounted to more than the persuasion or the normal “courtship” that occurs between an employer and a prospective employee;
- f. the length of time the employee remained in the new position, the element of inducement tending to lessen with the longevity of the employment; and
- g. the employee’s age at termination, and length of employment with the previous employer.

Miller v. Alaya Care Inc., 2025 ONSC 1028, at para. 82, citing *Grimaldi v. CF+D Custom Fireplace Design Inc.*, 2023 ONSC 6708, at paras. 52-53.

Party positions

[32] Mr. Khatib says he had a good job with his previous employer, System Micro. He earned a base salary of \$250,000 USD and a 50% bonus. Goeasy approached Mr. Khatib through Bedford Consulting, which he says was “active recruitment”. Mr. Khatib testified he was not looking for a new position.

[33] Mr. Khatib says that the fact that Goeasy interviewed other candidates does not negate inducement. The company’s pursuit of Mr. Khatib went far beyond normal courtship. Goeasy told Mr. Khatib about the LTIP. The parties designed the overall compensation package to put Mr. Khatib in a better position than the one he had at Systems Micro.

[34] According to Mr. Khatib, Goeasy offered a one-time signing bonus of 2,500 RSUs. Mr. Khatib demanded and secured a grant of 5,000 RSUs. Goeasy knew that the LTIP was a necessary incentive for Mr. Khatib to join the company. At trial, Mr. Cooper admitted that the one-time LTIP grant was a way to “enrich” the offer.

[35] Mr. Khatib argues that the length of his service with Goeasy, which was under four years, does not preclude a finding of inducement. Nor does the fact that the EA has a clause stating that no inducement occurred. Mr. Khatib says the court should focus on the realities of the employment relationship rather than boilerplate language in a contract.

[36] Goeasy argues that its discussions with and offers to Mr. Khatib were “no more than the normal persuasion that prospective employers engage in with prospective hires.” The company relies on the fact that it considered many candidates. It denies misleading Mr. Khatib in any way.

Application

[37] I am not persuaded that Mr. Khatib was induced to leave secure employment.

[38] First, in a number of the cases Mr. Khatib cites, such as *Wallace v. United Grain Growers Ltd.*, [1997] 3 S.C.R. 701, the employee had been at their former job for a very long time. In *Wallace*, the tenure was twenty-five years. Mr. Khatib was at Systems Micro for only two years and, prior to that, in a series of positions for between two to four years. Mr. Khatib’s job history suggests that either (a) he was always ready to consider new offers or (b) he was in the type of field that did not tend to offer very long-term employment.

[39] Second, Goeasy had many other candidates for the job. In all, the company considered fifteen people and interviewed eight of them. While a competition does not preclude the possibility that there was inducement, it weakens the argument that Goeasy was ready to do anything to hire Mr. Khatib.

[40] Third, while I do not find that Mr. Khatib’s length of service with Goeasy is a bar to finding inducement, in this case I am not convinced that his tenure supports the claim either.

[41] Fourth, I am not convinced that Goeasy’s representations to Mr. Khatib were more than the normal back and forth between sophisticated parties negotiating a senior management position. Mr. Khatib says he was lulled into thinking that his STIP and LTIP entitlements were stronger than what Goeasy says they were. That issue is more relevant to the analysis later in these reasons about Mr. Khatib’s entitlements to receive any value for those plans. I do not find the parties’ negotiations about either plan sufficiently probative to support a finding of inducement.

[42] Fifth, I find that the EA’s non-inducement clause is more relevant than Mr. Khatib suggests:

- a. To begin, I agree with Mr. Khatib that the court is not bound by a “boilerplate contractual clause” that conflicts with the reality of a particular situation. A non-inducement clause should not protect an employer who behaves in a grossly unfair or prejudicial manner. For example, a non-inducement clause should not shield an employer who persuades someone to leave long-term employment with the promise of security, but fires them soon afterwards. In addition, inducement may not be discoverable until after the contract has been executed.
- b. However, the present case does not raise such concerns. Mr. Khatib engaged in negotiations with Goeasy and secured a number of concessions. Goeasy hired Mr. Khatib into a senior position that was similar to ones he had held in the past. Mr. Khatib was a seasoned professional, not a new graduate securing his first job. He could have insisted that the no-inducement clause be removed. He did not.

- c. At trial, Mr. Khatib was dismissive about the no-inducement clause. He did not argue that the clause is unenforceable. Rather, he testified that the clause held no meaning for him. Mr. Khatib's position is unsupportable. When he signed the employment agreement, Mr. Khatib is assumed to have agreed to its terms. Unless a clause is legally unenforceable, Mr. Khatib cannot argue, today, that it is of no consequence.

[43] Therefore, Mr. Khatib's claim of inducement is dismissed.

Issue Two: What is the reasonable notice period to which Mr. Khatib was entitled upon termination?

[44] Goeasy does not seek to rely on the notice provisions in the EA. Therefore, the question is the reasonable notice to which Mr. Khatib is entitled at common law.

[45] Mr. Khatib argues that the minimum reasonable notice period is 12 months.

[46] Goeasy argues that the reasonable notice period is 6 months.

The Law

[47] The approach to determining reasonable notice is found in *Bardal v. Globe & Mail Ltd.* (1960), 24 D.L.R. (2d) 140 (Ont. H.C.) <https://canlii.ca/t/gghxf> – which states that reasonable notice does not depend on a set catalogue, formula or checklist. Every case must be assessed on its own merits, having regard to:

- a. character of employment;
- b. length of service;
- c. age; and
- d. availability of similar employment, considering experience training and qualifications.

Bardal, at p. 145.

[48] The court should not focus primarily on length of service: *Love v. Acuity Investment Management Inc.*, 2011 ONCA 130, 89 C.C.E.L. (3d) 157, at para. 19, leave to appeal refused, [2011] S.C.C.A. No. 170. That is because, while lengths of service are relatively easy to compare, the other *Bardal* factors may not be. The factors must be balanced, with no predetermined weight attached to any of them.

[49] A longer notice period may be appropriate for senior management employees: *Celestini v. Shoplogix Inc.*, 2021 ONSC 3539, at para. 59, rev'd on other grounds, 2023 ONCA 131, 85 C.C.E.L. (4th) 220.

Application

[50] Based on the *Bardal* factors, I find the reasonable notice period to be 8 months.

Character of employment

[51] Mr. Khatib was a member of Goeasy's management team. It is not fair to describe Mr. Khatib as a "mid-level" functional lead – as Goeasy does. He did important work for the company and occupied a position of fiduciary responsibility. At the same time, Mr. Khatib was not in the senior-most cadre in the company. While he may have engaged with a large overseas workforce, he did not have hundreds of direct reports. I find his description of the position as involving "exceptional scope, complexity and seniority" to be exaggerated.

[52] Mr. Khatib's position therefore entitles him to a somewhat longer notice period but not as long as he claims.

Length of service

[53] Mr. Khatib worked at Goeasy for 3 years and 5 months, which is neither "short" (generally, less than 3 years), nor "long" (generally, over 5 years). I find this factor neutral.

Availability of similar employment, considering experience training and qualifications

[54] Mr. Khatib secured comparable employment within 3 months of his termination. That suggests that he did not encounter undue difficulty in finding a position.

[55] Mr. Khatib says his new position, at a company called Flexiti, was considerably less favourable than his job with Goeasy. Flexiti paid Mr. Khatib a salary of \$250,000 and a bonus of up to 50% of salary per year. While it is true that Flexiti did not have stock options, no caselaw before the court suggests that the difference is material. There is little evidence about Mr. Khatib's time with Flexiti, such as his duties, managerial responsibilities, and why he left. I conclude that the position at Flexiti was reasonably comparable, though not identical to the position at Goeasy.

[56] At the time of trial, Mr. Khatib had not worked for several years. He urges the court to recognize that "the market for an executive capable of managing a geographically dispersed and technically sophisticated global workforce is exceptionally thin". He says that the "scarcity of comparable C-Suite roles in niche technology sectors, particularly those requiring oversight of many global staff, justifies a significantly longer notice period."

[57] I accept that Mr. Khatib encountered difficulty in the market after securing a position at Flexiti in 2020. The question is whether and to what degree Goeasy bears any responsibility for that.

[58] I agree with Goeasy that it does not.

[59] There are too many other things, independent of Goeasy, that could explain Mr. Khatib's current employment status. Once Mr. Khatib obtained a new position, Goeasy's responsibility for his future job prospects was greatly attenuated. Without more specific evidence, which it was Mr. Khatib's duty to provide, I am not persuaded that Goeasy is at fault for any difficulties Mr. Khatib encountered after he secured comparable employment with a different firm.

[60] Therefore, I find, this *Bardal* factor does not increase Mr. Khatib's notice.

Age

[61] When he was fired, Mr. Khatib was 46 years old. At the time of trial, he was 54 years old. Mr. Khatib seems to suggest that his current age should factor into reasonable notice. If that is Mr. Khatib's argument, I do not accept it. The appropriate focus for this factor is Mr. Khatib's age when he was terminated: *Grimaldi*, at para. 73.

[62] There is no evidence that Mr. Khatib's age on termination should increase his notice. He found comparable employment within 3 months – strongly suggesting that his age was not an impediment.

Other Factors

[63] Had it been proved, inducement would be a factor going to reasonable notice. I have found that inducement is not proved.

Conclusion on Reasonable Notice

[64] Mr. Khatib argues that a reasonable period of notice is, at least, 12 months. Goeasy argues that the right period is 6 months.

[65] Given the position that Mr. Khatib held at Goeasy, I find 6 months' notice to be low.

[66] That said, Mr. Khatib's proposed notice of at least 12 months relies on a claim of inducement, a particular description of his job, and his current difficulty in finding suitable employment. Given that (a) I have dismissed the argument for inducement, (b) I do not fully accept Mr. Khatib's description of his former position, and (c) I do not find Mr. Khatib's current difficulties finding employment relevant, I fix reasonable notice at (eight) 8 months, the end date for which is June 21, 2020.

Mitigation

[67] On February 4, 2020, Mr. Khatib was offered employment with Flexiti, where he received an annual salary of approximately \$250,000 and a bonus of up to fifty (50) percent of his salary, payable at the end of each year.

[68] Mr. Khatib says it took him four months to secure a new position. Goeasy says it took him three months. The precise period is three months and fifteen days.

[69] Within fourteen days of this decision, Mr. Khatib shall provide a calculation for the amount owing in mitigation for the compensation he earned from Flexiti, from his first day of employment to the end of the eight month notice period. Mr. Khatib shall rely on the figures he has already provided for his earnings at Flexiti.

Issue Three: Was Mr. Khatib entitled to receive payments under the Short-Term Incentive Plan?

[70] The next issue is whether, following his termination, Mr. Khatib was entitled to receive his bonus, also known as the Short-Term Incentive Plan, or STIP.

The Law

[71] As the Court of Appeal for Ontario states in *Paquette v. TeraGo Networks Inc.*, 2016 ONCA 618, 34 C.C.E.L. (4th) 26, at para. 16, the basic principle in awarding damages for wrongful dismissal is that:

the terminated employee is entitled to compensation for all losses arising from the employer's breach of contract in failing to give proper notice... [Those damages] will typically include all of the compensation and benefits that the employee would have earned during the notice period.

[72] I adopt the following legal summary provided by Mr. Khatib (some citations omitted):

The test to determine whether a bonus, discretionary or not, will be provided during the reasonable notice period has two (2) parts and has been affirmed by the Supreme Court in *Matthews v. Ocean Nutrition Canada Ltd*, [2020 SCC 26, [2020] 3 S.C.R. 64]. First, is it an integral aspect of the employee's compensation? If yes, then the employee is entitled to it at common law. Second, is there something in the plan that removes this entitlement? If not, the employee will receive the bonus.

To determine whether the bonus meets the first step, the following factors are considered:

(i) whether bonuses are received each year; (ii) whether bonuses are required to remain competitive with other employers; (iii) whether bonuses were historically awarded and the employer never exercised its discretion against the employee; and (iv) whether bonuses constitute a significant component of the employee's overall compensation.

Groves v. UTS Consultants Inc, 2019 ONSC 5606, at para. 84, aff'd 2020 ONCA 630, 65 C.C.E.L. (4th) 161.

Application

[73] Since Goeasy does not rely on the EA's termination provisions, the source of Mr. Khatib's STIP entitlement on termination must be found somewhere else.

[74] The EA provides:

You are eligible to participate in our Short-Term Incentive Plan with an annual target bonus of 40% of your base salary, prorated for the year, providing the Company meets its financial goals and you meet your individual goals. Additional information can be provided upon request.

[75] Goeasy stressed that the word “eligible” signifies that the STIP was conditional on other factors – unlike, say, if the clause had used the word “entitled”: *Fraser v. Canerector Inc*, 2015 ONSC 2138, 19 C.C.P.B. (2nd) 244, at para. 68, aff’d 2016 ONSC 6071, 37 C.C.E.L. (4th) 46 (Div. Ct.).

[76] Goeasy argues, further, that the Short-Term Incentive Plan stipulates that employees must be actively employed at the time of payout. The relevant portion is:

10. Terminations/Resignations

STIP awards are earned based on annual financial and individual performance objectives. STIP compensation is not earned by a Participant who is terminated or resigns from employment with the Company prior to the payout times previously described.

[77] Mr. Cooper testified that it was the company’s practice to provide copies of these plans to employees at the time of hire.

[78] For the following reasons, I find that Mr. Khatib is entitled to be paid his bonus for the entirety of the notice period:

- a. I am satisfied that the STIP was an integral part of Mr. Khatib’s compensation. Goeasy does not say that it was not – only that the STIP was forfeited in the event of termination.
- b. While the STIP contains forfeiture language if an employee is terminated, there is no evidence that Mr. Khatib received that plan when he was hired. Mr. Cooper testified that it was Goeasy’s general practice to send the plan to new hires, but he could not confirm that Mr. Khatib received it. Mr. Khatib says he did not. Therefore, the Plan does not supersede the language of the EA.
- c. I do not find that the EA’s use of the word “eligible” rather than “entitled” is sufficient to strip Mr. Khatib of his bonus on termination. The reality is that, for Goeasy employees like Mr. Khatib, a bonus is part of their compensation.
- d. Bonuses were received each year.
- e. Goeasy acknowledged that bonuses are required for it to remain competitive with other employers

- f. There is no evidence that Mr. Khatib was ever denied his bonus.
- g. I accept Mr. Khatib's claim that he received a bonus of at least 40% of his base salary. I find the bonus to have constituted a significant part of his compensation.

[79] Accordingly, Mr. Khatib is entitled to be paid his bonus for the entirety of the notice period. The EA between the parties does not prohibit pro-rated bonuses. That supports awarding Mr. Khatib a bonus, to the extent that his notice period extends past 2019.

[80] For completeness, I will address Mr. Khatib's argument about Goeasy's termination offer. In exchange for a Final Release and Indemnity, Goeasy offered to pay Mr. Khatib his 2019 STIP based on a full year of service. Mr. Khatib argues that it would be "inherently unfair" to not hold Goeasy to those terms. I reject that argument. I do not find the offer relevant to Mr. Khatib's legal entitlements. Therefore, I would not award Mr. Khatib a bonus, on that basis.

[81] The remaining question is the amount of the bonus. Mr. Khatib argues that he regularly received more than the 40% quoted in the EA. He submits, for example, that in 2017, he received a bonus of \$174,633.58, which is over 60%. However, Mr. Khatib found the document that allegedly proves that amount on the last day of the trial, after he had completed his case. Out of concern for trial fairness, especially given that Mr. Khatib has had many years to prepare for this trial, I did not permit him to return to the stand to introduce that document.

[82] Even if Mr. Khatib regularly received more than 40% in bonuses, I am not persuaded that he is entitled to a bonus of more than 40% during his notice period. Mr. Khatib did not argue that Goeasy lacked discretion to decide on the amount of the STIP from year to year. I find there is insufficient evidence to conclude that Mr. Khatib would have earned a bonus of more than 40% in 2019 or 2020.

[83] Therefore, Mr. Khatib shall receive his STIP calculated as 40% of his base salary throughout the eight-month notice period. Since Mr. Khatib was terminated in October 2019, he is entitled to his bonus for the entire year. In addition, he is entitled to a pro-rated bonus, at a rate of 40% of his base salary of \$275,000, for the remaining weeks of his notice from January 1, 2020 to June 21, 2020.

[84] Mr. Khatib's charts appear to calculate a 60% bonus. Within 14 days of this decision, Mr. Khatib shall recalculate the amount of his bonus, on the terms outlined above, based on a rate of 40% of his 2019 base salary.

Issue Four: Is Mr. Khatib entitled to the value of shares he accrued through this Long-Term Incentive Plan and, if so, which ones and at what value?

Introduction

[85] Mr. Khatib received two types of grants under the LTIP: Restricted Stock Units (RSUs) and Share Options (SOs).

[86] The Employment Agreement provides:

2.3 You are eligible to participate in our Long-Term Incentive Plan (“LTIP”) with an annual grant valued at 40% of your base salary assuming targeted vesting and based on the Company’s share price at grant date. The LTIP provides for up to two (2) times vesting and allows you to participate in any increase in the Company’s share price. Units granted under our LTIP vest at the end of three (3) years provided performance targets are met. All LTIP grants are upon approval of the Board of Directors. Additional information can be provided upon request.

2.4 In addition to eligibility for annual LTIP participation, you will be eligible to receive a one-time LTIP grant of 5000 units in 2016. This off-cycle LTIP grant provides a maximum vesting of 5000 units at 100% target performance and allows you to participate in any increase in the Company’s share price. Units granted under our LTIP vest at the end of three (3) years provided performance targets are met. All LTIP grants are upon approval of the Board of Directors. Additional information can be provided upon request.

[87] Upon hiring, Mr. Khatib was told:

- a. He was eligible to participate in GoEasy’s LTIP with an annual grant valued at 40% of his base salary.
- b. He was eligible to receive a one-time LTIP grant of 5,000 units in 2016.

The Law

[88] I have already determined that Mr. Khatib is owed damages in lieu of eight months’ notice. The purpose of damages is to place the employee in the same financial position they would have been in had they received reasonable notice: *Matthews*, at para. 49; *Sylvester v. British Columbia*, [1997] 2 S.C.R. 315, at para. 1.

[89] As already cited, in *Matthews*, at para. 55, the Supreme Court of Canada set out a two-part test to determining the quantum of damages during the reasonable notice period:

Would the employee have been entitled to the bonus or benefit as part of their compensation during the reasonable notice period? If so, do the terms of the employment contract or bonus plan unambiguously take away or limit that common law right?

[90] For the purpose of calculating wrongful dismissal damages, the employment contract is not treated as “terminated” until after the reasonable notice period expires: *Matthews*, at para. 66.

[91] As Ramsay J. wrote in *Ruel v. Air Canada*, 2022 ONSC 1779, 78 C.C.E.L. (4th) 281:

[w]here the LTIP is a ‘unilateral contract’, that is, the parties did not negotiate its terms, the principle of contractual interpretation that clauses excluding or limiting liability will be strictly construed ‘applies with particular force’”: at para. 79, citing *Matthews*, at

para. 64; *Hunter Engineering Co. v. Syncrude Canada Ltd.*, [1989] 1 S.C.R. 426, at p. 459.

[92] Any ambiguity about the meaning and scope of an excluding or limiting term in a contract is resolved against the party who inserted it: *Consolidated-Bathurst Ltd. v. Mutual Boiler & Machinery Insurance Co.*, [1980] 1 S.C.R. 888, citing *Cheshire and Fifoot's Law of Contract* (9th ed.), at pp. 152-3. That doctrine applies with particular force in employment contracts: *Miller v. Alaya Care*, at para. 39 citing *Miller v. A.B.M. Canada Inc.*, 2015 ONSC 1566 (CanLII), 27 C.C.E.L. (4th) 190, at para. 15 (Div. Ct.); *Ceccol v. Ontario Gymnastic Federation* (2001), 2001 CanLII 8589 (ON CA), 55 O.R. (3d) 614 (C.A.), at para. 45.

[93] Contractual rights are different from common law rights. Where an employee's shareholder rights are set out in a Shareholders' Agreement, that agreement governs his entitlement to shares and the rights and obligations pertaining to holding those shares. For example, in a case concerning transfers of shares, the Court of Appeal held that the "common law relating to compensation for breaches of a contract of employment does not apply to [the employee's] entitlements regarding his shares": *Mikelsteins v. Morrison Hershfield Limited*, 2019 ONCA 515, 56 C.C.E.L. (4th) 1, at para. 13.

[94] There is some dispute, in the caselaw, about whether restricted share units and stock options are "wages" for the purposes of an employee's compensation during the notice period: compare *Wigdor v. Facebook*, 2025 ONSC 4861, at para. 34 and *Maynard v. Johnson Controls Canada*, 2022 ONSC 3863.

Party positions and sub-issues

[95] Mr. Khatib received RSUs and share options in 2017, 2018 and 2019, which fully vested in 2020, 2021 and 2022, respectively.

[96] Mr. Khatib says the approximate value of the various grants is:

a. RSUs

- i. 2017: \$493,824
- ii. 2018: \$198,272
- iii. 2019: \$173,824

b. SOs

- i. 2017: \$483,175.14
- ii. 2018: \$160,426.50
- iii. 2019: \$104,075.20

[97] Mr. Khatib argues that nothing in his Employment Agreement, or at common law, strips his entitlement to the LTIP. He seeks:

- a. His LTIP in the form of both RSUs and SOs, which would have vested within his claimed notice period of twelve months).
- b. The value of his pro-rated LTIP (for both RSUs and SOs).
- c. A different vesting date – February 14, 2020 – for the 2017 SOs, on the basis that the date in the grant document is inconsistent with the EA.

[98] Goeasy says that Mr. Khatib's LTIP entitlement is covered by separate contracts, represented by the separate grants each year, which renders the common law irrelevant. It says that Mr. Khatib is bound by those contracts because he accepted the shares, and received the consideration of grants that were significantly higher than the 40% figure stated in the EA. Therefore, by accepting those grants, Mr. Khatib forfeited the value of those RSUs and SOs when he was terminated.

[99] Goeasy says that the 5,000 RSU's were not a "guaranteed signing bonus", but part of the LTIP. As such, they, too, are subject to forfeiture on termination.

[100] Goeasy says that if, in contradiction to the forfeiture clauses in the grant documents, this court decides that Mr. Khatib is entitled to any portion of his LTIP, the LTIP grants must be capped at 40% of his base salary (since that is the figure in the EA), and the shares should be valued using an average share price.

[101] The sub-issues to be determined are:

- a. the relevance of the company's Management Information Circulars;
- b. Mr. Khatib's entitlement, if any, to the value of the LTIP that vested before the end of the notice period;
- c. Mr. Khatib's entitlement, if any, to pro-rated vesting;
- d. the enforceability of the vesting period in the 2017 Share Options grant; and
- e. the valuation method.

Application

[102] I find that Mr. Khatib is entitled to some value for his LTIP but not on all of the terms that he proposes.

The Management Information Circulars

[103] The parties argued about the relevance of Goeasy's Management Information Circulars (MIC). MICs are annual corporate documents which, as a publicly traded company, Goeasy is

legally required to send to its shareholders. The MICs in question include the compensation and termination provisions for Goeasy's senior employees. As the fifth-highest paid person in the company, Mr. Khatib was considered a senior employee.

[104] The issue is that the 2018 MIC (for fiscal year 2017) states that, in the event that Mr. Khatib is terminated, he is entitled to "the value of option and share based awards which vest in accordance with the particular plan". That language is different from Mr. Khatib's EA. In the 2019 MIC, the description of Mr. Khatib's entitlements on termination do not include the above-noted language.

[105] Mr. Khatib introduced the MICs to support his argument that, on termination, he was entitled to benefits that had accrued under the Long-Term Incentive Plan.

[106] I do not find the MICs relevant because:

- a. The MIC is prepared for the purpose of public disclosure of relevant company information to its shareholders.
- b. The court was not provided with any precedents stating that an MIC constitutes a legally binding undertaking between an employee listed therein and the company.
- c. Based on the evidence, I find that the 2018 MIC's reference to options and share-based awards owing to Mr. Khatib is a drafting error. The person responsible for drafting the 2018 MIC is Steven Goertz, one of the Plaintiff's witnesses. Mr. Goertz did not testify that 2018 MIC accurately described Mr. Khatib's entitlements. Goeasy's witness, Mr. Cooper, testified that the reference was a mistake. I find Mr. Cooper's explanation more plausible.
- d. There is no evidence that Mr. Khatib ever saw the 2018 MIC. Mr. Khatib did not testify that he relied on the document at any time during his employment.

[107] Therefore, the analysis below does not consider the MICs.

Mr. Khatib's entitlement to the value of the LTIP that vested before the end of the notice period

[108] Whether Mr. Khatib is entitled to the value of the LTIP that vested before June 21, 2020 (the end of his notice period), depends in part on whether Mr. Khatib's RSUs and SOs are governed by contracts other than the Employment Agreement; and, if they were, whether the termination/forfeiture provisions in those contracts are enforceable.

[109] Based on the evidence, I find that Mr. Khatib did have separate contracts regarding the RSUs and SOs. However, the termination provisions in those documents are unenforceable.

[110] Goeasy argues that the grant documents are separate, self-contained contracts. Goeasy argues that the language in those contracts is clear that: (a) "no period of notice" or "payment in lieu thereof" shall be considered as extending the period of employment for the purposes of the plan and (b) "no cash or other compensation" is payable for any units "that are forfeited or

terminated.” Therefore, the grant documents disentitle Mr. Khatib to any compensation for units, whether vested or unvested, that he had not already exercised as of his termination date.

[111] Mr. Khatib argues that none of the grant documents are independent contracts because they were not properly incorporated into the employment agreement and he never signed or agreed to the grant terms.

[112] Goeasy’s arguments treat the termination provision in all the grants documents as equivalent. The company does not highlight any differences in language. Therefore, I will use as representative the relevant provisions in the 2017 SOs grant:

4.1 Unless otherwise determined by the Company at any time and except as otherwise provided in a Participant’s written employment agreement with the Company, a Subsidiary or a Designated Affiliated Entity, on a Participant’s Termination Date, any RSUs credited to the Participant’s RSU Account which are not Vested RSUs shall terminate and be forfeited. In the event of termination of the employment of a Participant by an Employer for cause, all RSUs credited to the Participant’s Account shall terminate and be forfeited, whether or not such RSUs are Vested RSUs.

...

4.3 Neither designation of an employee as a Participant nor the grant of any Units to any Participant entitles any Participant to the grant, or any additional grant, as the case may be, of any Unit under the Plan. Neither the Plan nor any action taken thereunder shall interfere with the right of the Employer of a Participant to terminate a Participant’s employment at any time. Neither any period of notice, if any, nor any payment in lieu thereof, upon termination of employment, wrongful or otherwise, shall be considered as extending the period of employment for the purposes of the Plan. No cash or other compensation shall at any time be paid in respect of any Units that are forfeited or terminated hereunder, as damages or otherwise.

4.4 Participation in the Plan shall be entirely voluntary and any decision not to participate shall not affect the Participant’s employment with the Employer.

[113] I find that the grant documents do constitute additional agreements to the basic LTIP entitlement described in the EA, but I am not persuaded that the documents strip Mr. Khatib of his entitlement to any LTIP during his notice period. While the language that Goeasy cites above sounds clear, the forfeiture provisions do not define “Termination Date”. Goeasy’s witness, Mr. Cooper, was unable to define the term. He suggested that a definition could be found in the EA. It cannot. In any event, Goeasy does not rely on any termination provisions in the EA.

[114] Goeasy's former CFO, Mr. Goertz, testified that his own grant documents contained the same forfeiture language, but he was able to realize the value of his LTIP because his EA permitted it. His testimony on that point, which I accept, suggests that the forfeiture provisions in the grant documents are not completely self-contained but can be overridden by the EA. Goeasy's witness, Mr. Cooper, did not dispute that part of Mr. Goertz's testimony.

[115] Accordingly, I am persuaded that the lack of a definition for "Termination Date" in the grant documents creates an ambiguity over whether a termination date includes a period of notice. That ambiguity redounds to Mr. Khatib's benefit: *Paquette*, at paras. 41, 46.

[116] Goeasy argues that an employer is entitled to change a contract partway through employment. While that may be so, it does not meet the issue of the defects in the language concerning termination, as discussed above. The termination clauses in the RSU and SO agreements are insufficiently clear to deprive Mr. Khatib of the benefit of the grants that existed prior to the end of his reasonable notice period.

[117] I am not persuaded that the 5,000 RSUs Mr. Khatib received on hiring should be treated differently. Whether or not the 5,000 RSUs were a signing bonus, the termination provisions in the grant documents for those units are not enforceable.

[118] Therefore, I find Mr. Khatib's basic entitlement to RSUs and SOs continues throughout his eight months' notice. That means that any LTIP that vested by or before June 21, 2020 and was not already exercised must be valued. The eligible grants are the August 2, 2016 RSUs (the signing bonus) and the May 3, 2017 RSUs.

Is Mr. Khatib entitled to pro-rated vesting?

[119] A key dispute in this case is whether Mr. Khatib is entitled to pro-rated vesting for RSUs and SOs.

[120] Mr. Khatib says that, because the EA does not mention forfeiture of unvested units on termination, he did not realize that was a possibility until he saw the first grant in 2017. He immediately objected to the forfeiture provisions and asked that they be removed. Mr. Khatib denies that he "accepted" the forfeiture provisions simply because he accepted the grants themselves. In answer to the question of whether he expected that the unvested value of his RSUs/SOs would be forfeited, he testified: "Of course not." Mr. Khatib stated that he believed that, once granted, the units were his, regardless of when they vested.

[121] Goeasy argues that unvested equity was always conditional on continued employment. The equity was "tied to binding forfeiture provisions". Mr. Cooper testified that the LTIP was intended to incentivize employees to remain with the company. Therefore, it makes no sense that an employee could capitalize on unvested value after being terminated. Goeasy stresses that it never promised Mr. Khatib that he was entitled to unvested equity. It says that the general terms of the LTIP was disclosed in the EA, and that more detailed terms were contained in the grant documents themselves. It adds that it was Mr. Khatib's responsibility to apprise himself of all the terms.

[122] As explained above, given that Goeasy does not rely on the EA's termination clauses, there is nothing in that agreement that suggests how LTIP, including unvested units, will be treated upon termination.

[123] I have already found that Mr. Khatib is not bound by the termination clauses in the grant documents themselves.

[124] Some of Goeasy's arguments are misconceived. The company stresses the EA's silence about what happens to LTIP, including to any units that are/were unvested – and compares that silence to the clear forfeiture provisions in the grant documents themselves. Mr. Cooper also suggested, in essence, that Mr. Khatib did not exercise due diligence before he accepted the employment offer. The company's position does not accord with important employment law principles, namely, that (a) an employee is entitled to know the consequences of termination at the time of hire (b) the burden to communicate those consequences falls on the employer and (c) any ambiguity or silence in the employment contract is resolved to the employee's benefit: *Maynard v. Johnson Controls Canada LP*, 2023 ONCA 392, at para. 9; *Maynard v. Johnson Controls Canada*, 2022 ONSC 3863, at para. 19.

[125] In addition, I am satisfied that at least some employees were permitted to retain the pro-rated value of unvested stock units when they *left* the company. That suggests that Goeasy did not view the LTIP solely as an "employee-retention" device. That, in turn, differentiates this case from some of the precedents that Goeasy cites, such as *Veer v Dover Corp* 1997 CanLII 12429 [ONSC]. While the *Veer* court did hold that the employee was not entitled to damages for stock options with a vesting period beyond the proper termination date, it based this conclusion on the testimony of another retired employee who concluded that he was unable to exercise unvested stock options and did not do so. In addition, in *Veer*, the court did not find any termination provisions unenforceable, as I have in this case.

[126] Goeasy argues that the "heart of this proceeding" is that Mr. Khatib wrongly "felt that he felt deserved to be treated 'the same way as other executives', since 'other executives within the organization...were allowed to keep their stocks.'". For clarity, I do not find the fact that other employees enjoyed pro-rated vesting made it unfair for Mr. Khatib to be deprived of that right. Goeasy could have achieved that deprivation with clear, unambiguous and legally enforceable provisions. It is the combination of (a) the lack of clear, unambiguous and legally enforceable provisions and (b) the fact that other employees' employment agreements allowed for pro-rated vesting at all, that strengthens the inference that Mr. Khatib is entitled to pro-rated vesting during the period of notice.

[127] Therefore, given that: (a) Goeasy is not relying on the termination provisions in the Employment Agreement (b) the Employment Agreement states that Mr. Khatib is eligible to participate in the LTIP (c) the Employment Agreement is silent about the consequences of termination on LTIP including the right to pro-rated vesting, and (d) the grant documents' termination and forfeiture language is unenforceable, I find that Mr. Khatib is entitled to the pro-rated value of LTIP units granted to him that had not yet vested at the end of his eight-month reasonable notice period. I specify the methodology to calculate that value at the end of this section.

Is the fifty-three month vesting period in the Share Options grant of May 3, 2017, unenforceable? If it is, when should those shares be deemed to have vested?

[128] Mr. Khatib argues that the fifty-three month vesting period in the 2017 Share Options grant must be set aside. He asks the court to deem those shares to have vested on February 14, 2020.

[129] The grants made to Mr. Khatib during his employment have the following vesting periods:

Type	Grant Date	Vesting Date	Vesting Period
2016 RSUs	August 2, 2016	1/3 on December 31, 2016 1/3 on December 31, 2017 1/3 on December 31, 2018	5 months 17 months 29 months
2017 RSUs	May 3, 2017	February 14, 2020	33 months
2017 SOs	May 3, 2017	November 2, 2021	53 months
2018 SOs	February 20, 2018	February 19, 2021	36 months
2018 RSUs	March 28, 2018	February 19, 2021	35 months
2019 RSUs	April 5, 2019	February 11, 2022	34 months
2019 SOs	April 5, 2019	February 11, 2022	34 months

[130] The vesting period for the 2017 SOs grant is fifty-three months.

[131] Mr. Khatib testified that, when he received the 2017 SOs grant document, he raised an objection that “the vesting date was too far off” and “conflicted with my EA”. He says he immediately raised this with Steve Goertz. At trial, Mr. Goertz did not corroborate a specific complaint about the vesting period but confirmed that Mr. Khatib was unhappy with the structure of the grants.

[132] Mr. Khatib relies on section 2.3 of the EA, which states that “Units granted under our LTIP vest at the end of three years” [emphasis added]. Mr. Khatib says that the vesting period for the 2017 share grant grossly exceeds that period. He argues that the vesting date “must be read in line with the vesting timeline as set out in the Employment Agreement”, and, therefore, he is entitled to the value of the 2017 SOs on February 14, 2020, a date “which aligns with all the grants provided to him in subsequent years”.

[133] It is undisputed that Mr. Goertz was the person responsible for setting the allocation in 2017. At trial, he provided no explanation for the longer vesting period for the 2017 Share Options.

[134] Mr. Cooper testified that the reason for the longer vesting period is that the company had undergone due diligence related to a potential acquisition. That process created a “flight risk” for some members of senior management. As a result, Goeasy determined that a stronger retention incentive was appropriate for that year, which the company paired with a correspondingly longer vesting period.

Application

[135] The question is what Mr. Khatib’s LTIP entitlement would have been if he had remained employed throughout the notice period. In particular, would he have been entitled to have the 2017 SOs vest on February 14, 2020?

[136] For the following reasons, I am not persuaded that Mr. Khatib would have been entitled to have the 2017 SOs vest on any date other than the one set out in the grant itself.

[137] First, this particular issue is about the structure and grant of one particular LTIP grant, made to all Goeasy employees.

[138] Second, Mr. Khatib’s argument is not limited to the language found in the EA. Instead, he appears to rely on the vesting dates provided in the grants themselves – arguing that the court should pick “February 14, 2020” since that date “aligns” with subsequent grants.

[139] Therefore, Mr. Khatib’s submissions do not make sense unless he and Goeasy were parties to the RSUs and SOs grants to at least some extent. For example, while Mr. Khatib argues that his LTIP is governed by the EA, he clearly relies on the various LTIP grants to the extent that he accepts the share distributions contained therein. Thus, Mr. Khatib acknowledges that for some of the years, he received RSUs and SOs in excess of 40% of his base salary. Mr. Khatib says that the EA’s mention of a 40% LTIP was not intended to cap the grants. If that is true, there is no way to determine what the distribution is, except to consult the grant documents themselves.

[140] Third, section 2.2 of the EA uses the words “at the end of three years”. Mr. Khatib does not define that term. While any ambiguity in contractual language must be resolved in Mr. Khatib’s favour, I do not find the term ambiguous. It means “at the end of 36 months”.

[141] Fourth, of all the grant documents Mr. Khatib received, only the 2018 SOs grant has a vesting period of 36 months. The other vesting periods are either lower (29 to 35 months) or, in one case, significantly higher (53 months). (For the purposes of this analysis, I exclude the vesting periods, which are even lower, for the initial two tranches of the 5000 RSUs.)

[142] Mr. Khatib seeks to have a deemed vesting period for the 2017 SOs that “aligns” with the other vesting periods. He does not ask for an adjustment to any of the vesting periods which are less than 36 months. By necessary implication, Mr. Khatib does not argue that the vesting periods in those other grant documents conflict with the EA.

[143] Therefore, Mr. Khatib treats as valid vesting periods which are shorter than 36 months, while rejecting a vesting period that is longer than 36 months. I appreciate that the 2017 disparity with the three-year vesting period is larger than the others. However, the grant itself is also

approximately three times larger than any of the other share options, and many times larger than 40% of Mr. Khatib's base salary in 2017. I find that larger sum to constitute sufficient consideration for the longer vesting period.

[144] Goeasy argues that since it appears that Mr. Khatib has rejected the grant documents, if I decide to calculate LTIP I should use a combined set value of 40% as that is the figure provided for in the EA. I reject that argument for two reasons. First, both parties rely on the grant documents to some extent. Second, I can make legal findings about whether Mr. Khatib entered into separate agreements regardless of whether his own testimony suggests otherwise. I am not persuaded that it is appropriate to cap the LTIP.

[145] The question here is not strictly about entitlements on termination, but about whether to strike out a particular vesting period. Mr. Khatib has not persuaded me that, if he had remained employed with Goeasy, he would have been entitled to a different vesting period for the 2017 SOs grant. Therefore, the vesting period for the 2017 SOs remains November 2, 2021.

[146] As I have already found that Mr. Khatib is entitled to pro-rated vesting, Mr. Khatib's entitlement to pro-rated vesting for the 2017 SOs grant includes his reasonable notice of eight months, which terminates on June 21, 2020. Mr. Khatib shall calculate the proportion and value of those shares under the 2017 grant using the method I describe below.

How is the LTIP to be valued?

[147] Finally, the parties disagree on how the shares in the RSUs and SOs are to be valued.

[148] Mr. Khatib argues that the shares should be valued using the stock price on either the vesting date, or the end date of his reasonable notice.

[149] Goeasy argues that the court should use an average stock price. It says that Mr. Khatib's "ever-shifting stratagem is simply to select the share price that maximizes his claim at that particular moment, divorced from any past selling practice and resulting in a windfall[.]"

[150] I agree with Goeasy that quantification of equity is based on what would probably have happened had the plaintiff been employed until the end of the notice period: *O'Reilly v Imax Corporation*, 2019 ONSC 1239, 52 C.C.E.L. (4th) 85, at para. 3, aff'd 2019 ONCA 991, 59 C.C.E.L. (4th) 175.

[151] In this case, I am unable to determine what Mr. Khatib would have done with his equity. There is insufficient evidence to determine a reliable, or indeed any, sales pattern for the grants that did vest.

[152] Goeasy says that, as a result, I should not allow Mr. Khatib the "latitude" to choose a valuation date, and in particular, I should not use the date of vesting, as that would "reward the Plaintiff for failing to produce evidence that would otherwise ground an assessment of what "would have probably happened" had the particular grants vested.

[153] While Mr. Khatib's lack of evidence of how he treated his vested LTIP is suboptimal, I am not persuaded that Mr. Khatib's approach necessarily or unfairly rewards him. Basing the valuation on a vesting date, or, where the shares had not yet vested, on the valuation date at the end of the reasonable notice period, is simply a method. To the extent that that method produces a higher valuation than Goeasy's averaging method, the result is contingent on how the stock happened to perform over time.

[154] Goeasy says that "there is ample authority for the use of an historical average of income for purposes of quantifying damages in a wrongful dismissal action": *Dimmer v MMV Financial*, 2012 ONSC 7257, 5 C.C.E.L. (4th) 94, at para. 87, citing *Serrao v. National Bank Financial Inc.* 2004 CanLII 880, at para. 27 (Ont. S.C.). However, those cases deal with calculating an employee's income, not share price.

[155] Therefore, I find it appropriate to use in the valuations for the LTIP shares either (a) the dates on which they vested within Mr. Khatib's employment including the notice period or (b) the final day of the notice period, which is June 21, 2020.

Conclusion

[156] After the close of trial, I asked the parties to make further submissions so I could better understand their respective methodology for calculating pro-rated shares.

[157] Goeasy says:

- a. While its main position is that no LTIP can accrue as it was all tied to binding forfeiture provisions, the company's alternative position is that the only LTIP that can be valued is that which vested on May 3, 2020.
- b. The law prohibits any pro-rated vesting.
- c. Should the court decide to do a calculation anyway, it should be based on an LTIP grant valued at 40% of Mr. Khatib's base salary, i.e., an RSU grant worth 20% and a share option grant worth 20%.
- d. Under Goeasy's proposed methodology, the relevant vesting dates are not derived from the grant documents themselves since Mr. Khatib has rejected those documents. The court should use the May 3, 2017 LTIP grant date as the closest proxy such that any RSUs and SOs would be treated as having vested on May 3, 2020.
- e. Goeasy then provides an amount for a maximum accrual of RSUs and SOs.

[158] Goeasy's methodology relies on certain premises I have rejected, including that any LTIP for Mr. Khatib is capped at 40%. The company stresses that pro-rated vesting is impermissible,

describing that as a “radical departure from decades of well-established Ontario jurisprudence.” Given my earlier findings and conclusions, I cannot rely on Goeasy’s submissions.

[159] Mr. Khatib says:

- a. The LTIP grants vest at the end of three years from the date the LTIP was granted.
- b. The three-year date is 100% of the LTIP. A percentage of the LTIP is derived from the amount of time that elapsed between the grant date and the reasonable notice period.
- c. Mr. Khatib’s methodology is based on his requested notice of 12 months.
- d. Based on Mr. Khatib’s asserted 12 months’ notice, certain LTIP grants have fully vested. That includes the May 3, 2017 RSU and SOs grants (the latter being deemed to have vested on February 14, 2020).
- e. Mr. Khatib then derives a percentage for vesting for the outstanding grants.
- f. Mr. Khatib then provides a method for valuing the actual LTIP based on stock price, units and performance factor achieved for the RSUs; and option price, stock price and options amount for the SOs.

[160] While I find Mr. Khatib’s approach more useful, it also relies on certain premises I have rejected, namely, (a) that Mr. Khatib is entitled to 12 months’ notice and (b) that I should change the vesting date for the 2017 SOs grant.

[161] Therefore, I direct as follows:

- a. The calculation for the pro-rata LTIP relies on the percentage of the LTIP that would have vested from the date the LTIP was granted to the end of the reasonable notice period, that is, June 21, 2020.
- b. For every grant document that did not vest by June 21, 2020, Mr. Khatib shall calculate the total number of days for (a) the period between the initial grant and June 21, 2020 and (b) the total length of the vesting period.
- c. He shall then divide (a) by (b). By way of illustration, if (a) is 340 days and (b) is 900 days, the result of the division is 0.377.
- d. The result of the division shall be converted to a percentage, which shall not be rounded up or rounded down. The percentage in the illustration, therefore, is 37%. The result of the conversion is the percentage of the LTIP to which Mr. Khatib is entitled (“LTIP percentage”).

- e. Mr. Khatib shall calculate the 100% of the value of each LTIP using the vesting date to derive the monetary value of the GoEasy stock price as enclosed in the Agreed Statement of Fact at paragraph 25 (“Stock Price”).
- f. To calculate the value of the RSUs, the Stock Price shall be multiplied by the LTIP percentage. That sum is then multiplied by the performance factor achieved (“ESP”) for the particular grant as agreed upon at paragraph 26 of the Agreed Statement of Fact.
- g. To calculate the value of the Share Options, the Option Price on the date of the grant is first subtracted from the Stock Price on June 21, 2020. The sum is then multiplied by the LTIP percentage. Finally, that sum is then multiplied by the ESP.

[162] Within 30 days of this decision, Mr. Khatib shall calculate:

- a. the value of any of his LTIP that vested on or before June 21, 2020, using the methodology in Mr. Khatib’s charts attached to his closing submissions based on the share price at the applicable vesting date(s); and
- b. the pro-rated value of any of his pro-rated LTIP that was unvested during the notice period, using the methodology described above and based on the share price as at June 21, 2020.

Issue Five: Should Mr. Khatib’s damages be grossed up for taxes?

[163] Mr. Khatib argues that any compensation he receives should be subject to a ‘gross-up’ for taxes. He says that:

In *Mikelsteins v. Morrison*, 2018 ONSC 6952 (CanLII) it was established that a tax gross-up in a wrongful dismissal case is generally calculated to ensure that the employee receives damages net of tax equivalent to what they would have received if the award had been paid as employment income or as capital gains, depending on the nature of the compensation.

This is necessary because damages awarded for wrongful dismissal are usually taxed differently than the income they replace, potentially resulting in a higher tax burden for the employee. Courts may order a gross-up to compensate for this difference, especially where the employee would have held shares or other compensation in a tax-advantaged account such as an RRSP, but the damages are taxed as ordinary income upon receipt.

[164] Mr. Khatib also relies on *Dowling v. Ontario (Workplace Safety and Insurance Board)* (2004), 246 D.L.R. (4th) 65 (Ont. C.A.). At para. 77 of that decision, the Court of Appeal upheld a trial judge’s decision to “offset the additional tax liability occasioned by receipt of the funds all at once, as opposed to over time” to ensure that a person realizes “the full benefit of the damages awarded in a wrongful dismissal case.”

[165] Goeasy argues that Mr. Khatib has not provided any legal support for applying a gross-up to damages based on salary or equity. Mr. Khatib's cases relate to pensions and RRSPs, which are not taxed as income in the same way.

[166] The cases support a gross-up in certain circumstances, but not others. In other words, the issue is one of judicial discretion.

[167] I agree with Goeasy that notice-related damages seek to restore to the employee the compensation and benefits they otherwise would have earned. In the normal course, an employee would have been taxed on that compensation and benefits as those monies were received.

[168] None of the damages that Mr. Khatib seeks would be taxed other than as income. Mr. Khatib's base salary alone places him in the highest marginal tax rate.

[169] Therefore, I decline to gross-up Mr. Khatib's damages.

Issue Six: Is Mr. Khatib entitled to damages for medical health and dental benefits?

[170] Mr. Khatib seeks damages in lieu of notice with respect to medical health and dental benefits. Goeasy argues that Mr. Khatib is not owed anything, because (a) Goeasy provided continued access to those benefits for six months, (b) Mr. Khatib secured comparable employment within three months, which included medical health and dental benefits and (c) Mr. Khatib did not advise Goeasy that he was covered under another plan and, therefore, was "double dipping" for three months.

[171] Mr. Khatib never testified that he was not insured, by Goeasy, for the first six months of his termination. He says that once he joined Flexiti, he probably used his new benefits.

[172] The question is what Mr. Khatib would have been entitled to had he been provided reasonable notice. In this case, I have fixed reasonable notice at eight months, so Mr. Khatib was entitled to medical health and dental benefits, or damages in lieu, for that period. I do not accept that Goeasy was required to give damages in lieu; it could simply opt to keep Mr. Khatib insured.

[173] I am persuaded that Goeasy did keep Mr. Khatib on its benefits policy for six months. That leaves two months unaccounted for. The fact that Mr. Khatib secured alternative employment does not relieve Goeasy of its legal obligations. At the same time, Mr. Khatib also has a duty to mitigate his damages.

[174] Therefore, the most appropriate way to address this claim is to (a) determine a value for the benefits for two months and (b) offset that amount by the value of Mr. Khatib's benefits received from his subsequent job during the same two months.

[175] I find that an appropriate way to value the benefits is at ten percent of Mr. Khatib's base salary.

[176] Therefore:

- a. Mr. Khatib is entitled to pro-rated damages from Goeasy in lieu of medical health and benefits for two months, which amount to \$4,583.33.
- b. Mr. Khatib's damages are offset by the pro-rated value of his benefits while employed at Flexiti during the same period – or \$4,166.67.
- c. Accordingly, Mr. Khatib is owed \$416.66.

Issue Seven: Is Mr. Khatib Entitled to Bad Faith, Punitive Damages and/or Moral Damages?

[177] Following the close of trial, I asked Mr. Khatib to clarify what damages he sought in addition to damages in lieu of notice. His counsel submitted that he seeks bad faith, punitive and moral damages.

[178] Mr. Khatib seeks additional damages of at least \$100,000. He claims that Goeasy:

- a. induced him to leave his former job;
- b. refused to pay Mr. Khatib any portion of his STIP for 2019 unless he signed a release;
- c. deprived Mr. Khatib of his STIP and LTIP entitlements throughout the notice period;
- d. treated Mr. Khatib differently from other departing employees;
- e. failed to reimburse Mr. Khatib for business expenses until February 6, 2020 – many months after his termination; and
- f. delayed the within litigation including by making a “baseless” counterclaim.

[179] Mr. Khatib argues that Goeasy's conduct “reflects a deliberate strategy of attrition, designed to exploit the inherent power imbalance between a corporation and...a terminated executive.”

[180] Mr. Khatib also seeks punitive and/or aggravated damages, in the discretion of the court.

[181] Goeasy admits that the manner of Mr. Khatib's termination was “not perfect”. It denies that it acted out of bad faith or that punitive damages are warranted.

The Law

[182] Damages resulting from the manner of dismissal are available where the employer has engaged in conduct causing mental distress that is “unfair or is in bad faith, by being, for example, untruthful, misleading or unduly sensitive”: *Honda Canada Inc v. Keays*, 2008 SCC 39, [2008] 2 S.C.R. 362, at paras. 57, 59. Examples of bad faith conduct include attacking the employee's reputation or dismissing the employee to deprive them of a pension benefit: *Keays*, at para. 59.

[183] Bad faith damages are not available to address the “moral distress and hurt feelings” that any termination might cause: *Groves* at para. 113, citing *Keays*, at para. 56. The employee must show a psychological injury that goes beyond normal and expected distress: *Groves*, at para. 113.

[184] In *Boucher v. Wal-Mart Canada Corp.*, 2014 ONCA 419, 120 O.R. (3d) 481, the Court of Appeal held that, to obtain punitive damages, the plaintiff must show that the defendant’s conduct was “malicious, oppressive and highhanded”, and that punitive damages are “rationally required to punish the [d]efendant and to meet the objectives of retribution, deterrence and denunciation”: at para. 79.

[185] Moral damages are distinct from litigation-related expenses: *Galea v. Wal-Mart Canada Corp.*, 2017 ONSC 24 at paras 233-235. Such damages may be awarded where, among other things, an employer “demeans” the employee: *ibid.*

Application

Bad Faith Damages

[186] I appreciate that Mr. Khatib feels highly aggrieved by how Goeasy treated him. However, for the following reasons, I am not persuaded that Goeasy acted in bad faith.

[187] First, I have dismissed Mr. Khatib’s argument that Goeasy induced him away from secure employment.

[188] Second, with respect to Goeasy’s refusal to pay Mr. Khatib the STIP and LTIP, I am not persuaded that it was bad faith to rely on termination provisions in the grants providing short and long-term incentives. Nor do I find it bad faith for an employer to seek a release when it offers an amount (in this case, the 2019 STIP) to which the employer does not think the employee is legally entitled.

[189] Third, with respect to Goeasy’s treatment of other employees:

- a. Mr. Khatib has not alleged that Goeasy discriminated against him on the basis of a prohibited ground (race, sex, etc.). Absent a discrimination claim, the fact that Goeasy may have had different arrangements with other employees is not relevant to damages.
- b. It is not necessarily bad faith for an employer to treat employees at different levels differently.
- c. Numerous decisions hold that, in a wrongful dismissal claim, severance arrangements with other employees are irrelevant and, therefore, inadmissible: *Amir Mazinani v Zoran International, Inc*, 2010 ONSC 4582, 100 C.P.C. (6th) 264, at paras. 33-34; *Brennan v Labatt Brewing Co.*, 1994 CarswellOnt 3516 (Ont. Gen. Div), at para. 6. Mr. Khatib’s arguments on the importance of consistent treatment of departing employees do not cite any applicable precedents. Therefore, I decline

to fix bad faith damages derived from a claim of differential treatment based on other employees' severance packages.

[190] Fourth, I have determined that Mr. Khatib was entitled to eight months' notice, not the twelve months he requested. Goeasy's suggested notice period – 6 months – is only slightly shorter than my finding. Goeasy cannot have acted in bad faith for refusing to pay out compensation in relation to a notice period it reasonably thought it was not legally required to provide.

[191] Fifth, I am not persuaded that Goeasy sought to delay the trial. I am unaware of court endorsements (a) finding that Goeasy did not follow the applicable rules or (b) awarding costs against it on that basis. As for Goeasy's counterclaim, the court understands that the claim was abandoned a few days before a previously scheduled trial date. Goeasy argues that it had a genuine concern about Mr. Khatib's conduct post-termination, but after "it became apparent that the evidentiary foundation necessary to prove the counterclaim was unlikely to be established" the company withdrew it. I am not satisfied on a balance of probabilities that the counterclaim was pursued in bad faith, or that Goeasy dropped the claim to further delay the trial.

[192] In summary, I do not find damages for bad faith appropriate. To the extent that Mr. Khatib has legitimately suffered because of the time it has taken this matter to get to trial, that can be addressed with pre-judgment interest.

Punitive and Moral Damages

[193] Given my reasons for failing to find that Goeasy acted in bad faith, I do not find the company's conduct so egregious as to warrant the judicial sanction of punitive damages.

[194] Moral damages are closely linked to the other categories of damages Mr. Khatib seeks. Given my findings above, moral damages are not warranted. I have awarded Mr. Khatib damages based on a reasonable notice period of eight months. His damages include his bonus, the value of both vested and unvested RSUs and SOs and the value of his health benefits. Those damages sufficiently compensate Mr. Khatib for any harm done to him.

Costs

[195] Success in this case has been somewhat divided. I urge the parties to come to an agreement about costs. If they cannot, they may make submissions as set out in the order below.

ORDER

[196] In conclusion, I make the following order.

[197] Mr. Khatib's claim is granted in part:

- a. Mr. Khatib's claim that he was induced is dismissed.

- b. At the time of his termination, Mr. Khatib was entitled to eight months' notice, which ended June 21, 2020.
- c. Mr. Khatib claim for his STIP is granted in part:
 - i. Mr. Khatib is owed a bonus for 2019, which shall be calculated as 40% of his base salary;
 - ii. Mr. Khatib is owed a bonus for the remainder of the reasonable notice period, being January 1, 2020 to June 21, 2020, which shall be calculated on a pro-rated basis based on 40% of Mr. Khatib's 2019 base salary.
- d. Mr. Khatib's claim for his LTIP is granted in part:
 - i. Mr. Khatib is owed the value of his LTIP shares that vested by or before June 21, 2020, based in part on the share price of those shares on the applicable vesting date(s).
 - ii. Mr. Khatib is owed the value of his unvested LTIP on a pro-rated basis, based in part on the share price on June 21, 2020, to be calculated per the methodology set out in paragraph 160 of these reasons.
 - iii. Mr. Khatib's request to deem the 2017 Share Options grant to have vested on February 14, 2020 is dismissed.
- e. Within thirty days, Mr. Khatib shall calculate:
 - i. the amount he is owed based on the damages owed for his STIP and LTIP in (c) and (d), above;
 - ii. the employment income he earned between October 21, 2019, and June 21, 2020.
- f. Mr. Khatib is owed \$416.66 in lieu of medical health and dental benefits.
- g. Accordingly, Mr. Khatib is owed:
 - i. \$416.66, plus
 - ii. The amount in (e)(i), above, minus
 - iii. The amount in (e)(ii), above.
- h. Mr. Khatib's claim for a tax gross-up is dismissed.
- i. Mr. Khatib's claim for bad faith, punitive and/or moral damages is dismissed.
- j. Pre- and post-judgment shall run according to the *Courts of Justice Act*.

[198] Once Mr. Khatib has completed the required calculations, he shall serve and submit a summary of the results to the Defendant and to me. The results will be conveyed via a brief memo with an explanation of the calculations. A spreadsheet may be attached if desired.

[199] The Defendant shall have 7 days from receipt of the calculations to point out any mathematical errors to the Plaintiff and to me.

[200] If necessary, I will provide further directions about the calculations.

[201] The parties are urged to come to an agreement on costs. Should they fail to agree, they may submit costs submissions limited to 5 pages of argument, together with Bills and any offers to settle, within 60 days.

[202] Unless further directions are required, the parties may submit a Judgment/Order for my signature, reflecting the provisions above and including the amounts owing, within 45 days.

Mathen, J.

Released: June 16, 2026

CITATION: Khatib v. GoEasy Ltd, 2026 ONSC 3513
COURT FILE NO.: CV-19-00633555-0000
DATE: 20260616

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

Shadi Khatib

Applicant

– and –

Goeasy Ltd.

Respondent

REASONS FOR JUDGMENT

Mathen J.

Released: June 16, 2026