

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DAVID PARKER

Plaintiff

- and -

BLACKBERRY LIMITED

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

STATEMENT OF DEFENCE

1. The defendant (“BlackBerry”) admits the allegations contained in paragraphs 2, 3, 8 (with the qualification that BlackBerry announced that it planned to do so), 30 and 46 of the amended statement of claim.
2. BlackBerry has no knowledge or incomplete knowledge in respect of the allegations contained in paragraph 43 of the amended statement of claim.
3. BlackBerry denies the allegations contained in the remaining paragraphs of the amended statement of claim.

Overview

4. Contrary to the allegations in the amended statement of claim, the class members – former BlackBerry employees – were not wrongfully dismissed by BlackBerry.
5. While they were still employed by BlackBerry, these employees each received an offer of alternate, full-time employment from the Ford Motor Company of Canada (“Ford”). It was Ford’s decision to offer them employment in connection with its development of ‘connected car’

and autonomous vehicle technology. It was each employee's choice whether to accept their offer or not. They could have chosen to decline it and remain a BlackBerry employee, with all of their existing employment rights vis-à-vis BlackBerry preserved (including the right to receive termination pay in the event BlackBerry subsequently terminated their employment at any point). A number of employees did in fact decline Ford's offer and remained BlackBerry employees. Each of the class members, however, chose to accept their Ford offer and leave BlackBerry's employ, most of them submitting express notices confirming their resignations. The employees then started working at Ford, earning higher compensation than at BlackBerry. BlackBerry did not terminate, let alone wrongfully terminate, their employment and no further compensation is owed to them by BlackBerry.

The Parties

6. BlackBerry is a Canadian company headquartered in Waterloo, Ontario, and is a leader in providing secure software and services for enterprise and government customers.

7. The representative plaintiff, Mr. Parker, is a former employee of BlackBerry who accepted an offer of full time employment from Ford, and left BlackBerry's employ to work at Ford. The other class members are also former BlackBerry employees who left its employ after accepting offers of employment from Ford.

BlackBerry's Mobility Solutions Business Unit and Project Silver

8. Mobility Solutions is BlackBerry's business unit relating to the development and licensing of BlackBerry's software for mobile devices. In recent years, it has shifted away from the design and development of hardware (*i.e.* smartphones and tablets), and in the fall of 2016 BlackBerry announced that it planned to end all internal hardware development. Its Mobility Solutions business unit, however, has continued to focus on software, including software development, and licensing.

9. In the fall of 2016, BlackBerry entered into contractual arrangements with Ford in which BlackBerry agreed – through its Mobility Solutions business unit – to provide engineering services to Ford in respect of software systems and technologies for use in Ford cars. This engineering services project, known internally as "Project Silver", related to software for use in

‘connected vehicles’ and the development of a fully autonomous vehicle – a new and emerging area of technology in which Ford has been investing significantly.

10. Besides securing engineering services from BlackBerry in respect of this new technology, Ford was also seeking to in-source various services upon the conclusion of Project Silver. Under the parties’ contractual arrangements, BlackBerry agreed to permit Ford to make offers of employment to BlackBerry employees working on Project Silver, and to facilitate this, if Ford chose in its sole discretion to do so.

11. There were many BlackBerry employees working on Project Silver during the period late 2016 until the end of February 2017. It is not uncommon for employees to work on a number of different projects or team assignments during their employment at BlackBerry, and within Mobility Solutions – Project Silver was one such project. Prior to Project Silver, Mr. Parker himself had previously moved between teams within Mobility Solutions.

12. The employees working on Project Silver had varying job functions, roles and seniority. The majority of the class members worked in software-related roles (job functions that would be a continuing focus of Mobility Solutions and BlackBerry going forward), while a small minority had worked in hardware-related roles (the area of the business from which Mobility Solutions was shifting away). Most of the employees that worked on hardware design and development were in the United States, and are not class members.

The Ford Employment Offer Process and Communications with Employees

13. The process leading up to Ford making offers of employment to the class members, and their consideration of those offers, is outlined below. While Mr. Parker highlights in his amended statement of claim a small number of communications or meetings during the process that involved most of the class members, the process through which employees received and considered their employment offers from Ford was largely an individual one involving individual communications. Employees had individual discussions with BlackBerry human resource representatives and/or their BlackBerry manager in respect of their own and differing employment situations and options, prior to deciding whether to accept their Ford offers. They also had discussions with Ford representatives about their offers and the opportunity at Ford. These discussions were in the context of, and for purposes of, the employees considering and

weighing their options – which considerations and weighing differed markedly among employees – and deciding whether to accept their Ford job offer.

Communications with employees prior to receiving their offers from Ford

14. At a “town hall” meeting with Mobility Solutions employees in early December 2016, the chief operating officer of BlackBerry described the ongoing shift in focus of Mobility Solutions toward software development and licensing, including the Project Silver engineering services for Ford. The following day, representatives of Ford and BlackBerry jointly held another meeting for Project Silver employees, at which Ford announced that it intended to make offers of employment to various employees in January 2017.

15. In the weeks following these meetings, many employees followed up individually with BlackBerry human resources representatives as well as their managers to discuss the Ford opportunity and their employment situation. Some employees specifically sought to clarify that the Ford opportunity would be an offer of employment they could decline if they chose to (*i.e.* that it was not a mandatory transfer, as Mr. Parker alleges in his amended statement of claim). In response BlackBerry confirmed that, if employees received an offer from Ford, it would be their choice whether to accept it or not. If they chose to decline it, they would remain BlackBerry employees and BlackBerry would take steps to place them on another project or team after the conclusion of Project Silver (with their employment rights against BlackBerry preserved in this scenario).

16. BlackBerry expressly denies the characterizations in paragraphs 18-22 of the amended statement of claim of the individual discussions Mr. Parker had with BlackBerry representatives in this period. While BlackBerry’s chief operating officer informed Mr. Parker that not all activities in Mobility Solutions would continue in the future after the shift to software licensing was completed, he specifically confirmed for Mr. Parker that if he received an offer from Ford and chose to decline it, he would remain a BlackBerry employee and BlackBerry would endeavour to match his skillset with the ongoing activities in the software licensing team going forward.

17. Contrary to the characterizations in paragraphs 23-26 of the amended statement of claim, on January 6, 2017, BlackBerry’s chief executive officer sent an email to all Mobility Solutions

employees, a group which included many employees who were not working on Project Silver (and/or were working in the United States) and who are not class members. In that email he broadly discussed the shift in focus within Mobility Solutions. He referred to the opportunities for employees at Ford (and also at a different company to which hardware development was being outsourced) as an “an alternative employment option”. He further stated that for those employees who do not receive an offer from Ford (or from the other company), or who chose to decline an offer, BlackBerry “will evaluate internal opportunities to redeploy you within BlackBerry as much as possible.” The email encouraged employees to speak with their manager or human resources representative if they had questions.

The employment offers from Ford

18. In January 2017, representatives from Ford were on-site at BlackBerry’s offices to present individual offers of employment to most, though not all, of the Project Silver employees included in the class.

19. Ford decided in its sole discretion to which Project Silver employees it would offer employment and what the terms of those offers were. Ford presented its offers at individual meetings with employees. Each employee who received an offer discussed their offer and their employment opportunity with Ford.

20. No BlackBerry representative attended these meetings between employees and Ford. BlackBerry was not privy to the terms of Ford’s offers or to the discussions between Ford and the employees.

21. BlackBerry understands Ford gave each employee at least a week to decide whether to accept their offer.

Communications with employees while they were considering their offers

22. During the time while employees were considering their offers, BlackBerry human resources representatives and employees’ managers met and spoke extensively with employees individually, to answer questions from them and to discuss their employment situation and options. These discussions differed among employees, as each employee was focused on his/her

own employment situation, the terms of the offer each had received from Ford, and the factors he/she was taking into account in considering Ford's offer.

23. In many cases employees' reactions to Ford's offers were very positive, including because it was an opportunity to work on new cutting edge technology at a strong company, and because employees indicated that Ford was offering signing bonuses and increased compensation compared to the compensation BlackBerry was paying. Mr. Parker has now confirmed that Ford offered him a salary that was higher than his BlackBerry salary and also a \$33,000 signing bonus.

24. During these discussions, BlackBerry reiterated that it was the employee's choice whether to accept Ford's offer. If they chose to decline it they would remain a BlackBerry employee, and BlackBerry would take steps in an effort to place them in a comparable role on another team or project after the completion of Project Silver. There were many roles on other projects and teams to be filled going forward. If employees asked human resources representatives about specific roles or projects that would be available for them after the conclusion of Project Silver (which could not be definitely determined at that point), they were encouraged to speak individually with the appropriate managers, and many employees did so.

25. Some employees specifically asked what would occur in the event they chose to decline Ford's offer and subsequently could not be placed on another project to team in a comparable role after the conclusion of Project Silver. They were told that BlackBerry would do everything possible to find a comparable role for them at that time (as there was no intention to terminate them), but if that ultimately turned out not to be possible, then their employment might need to be terminated. If that occurred they would receive the termination pay to which they were entitled in that scenario. All of their existing employment rights vis-à-vis BlackBerry would be preserved if they chose to turn down their Ford offer and remain at BlackBerry. In the technology industry, including at BlackBerry, some uncertainty as to future prospects and job security is an ongoing reality for employees.

26. Many employees did not ask about their options for remaining at BlackBerry, or what might occur in the future if they declined their Ford offer, as they were excited about the employment opportunity at Ford and happy with the terms of their Ford offer. Upon receiving

their Ford offer many employees quickly decided that they wanted to accept it, rather than stay at BlackBerry.

27. Contrary to the allegations in the amended statement of claim (including at paragraphs 32 and 47), the employees each understood from the various communications and individual discussions that took place with BlackBerry representatives that:

- (i) their Ford offer was an offer of new employment at Ford, not a mandatory transfer of employment;
- (ii) it was the employee's choice whether to accept the Ford offer and leave BlackBerry's employ or not; and
- (iii) if they chose to decline the offer, they would remain a BlackBerry employee (with all of their existing employment rights) and BlackBerry would take steps to place them in a comparable role on another project or team at the conclusion of Project Silver.

The Acceptance of Offers by Employees and Subsequent Resignation Letters

28. The employees who each decided to accept their employment offer from Ford are the class members. They communicated their acceptances to Ford. Their reasons for accepting their offer differed from employee to employee, including based on their own view of the attractiveness of the Ford opportunity and offer, and their own weighing of their options and other individual considerations. They each found the opportunity at Ford and the terms of their Ford offer sufficiently attractive to accept it.

29. At the end of January 2017 – in respect of those employees who had received an offer earlier that month – Ford informed BlackBerry of the list of employees that had chosen to accept their Ford job offer.

30. After receiving that notification from Ford, BlackBerry human resources personnel sent an email in early February 2017 to those employees it understood had accepted Ford's offer, asking for written confirmation from the employees that they had decided to resign from BlackBerry's employ in order to work at Ford, and to confirm the date they would be leaving BlackBerry. Prior to receiving this email, employees were aware that if they decided to leave

BlackBerry's employ, it would mean they were resigning from BlackBerry. Some employees had specifically clarified and confirmed this point before they accepted their offers from Ford.

31. Although Mr. Parker himself did not do so, the majority of employees who accepted Ford's job offer subsequently submitted a resignation notice or letter to BlackBerry, expressly confirming that they were resigning from BlackBerry's employ effective February 28, 2017.

32. Various other employees did not submit an express resignation letter or notice, and were simply silent in response to the request referred to at paragraph 30 above.

33. A relatively small number of other employees – including Mr. Parker – did not provide express resignation letters or notices, but instead engaged in individual communications with BlackBerry representatives in which they raised concerns. BlackBerry responded to those employees individually.

34. After Mr. Parker had accepted his offer of employment from Ford, but while he was still employed by BlackBerry, he raised an issue with his BlackBerry human resources representative regarding wrongful termination. The human resources representative indicated to him that he had not been, and was not being, terminated by BlackBerry. Further communications then ensued between Mr. Parker and BlackBerry. BlackBerry specifically indicated that it had available roles at the same level matching Mr. Parker's skillset, and that human resources would work with him to find a suitable role if he preferred to stay at BlackBerry. In response, Mr. Parker did not in fact indicate that he wanted to remain a BlackBerry employee.

35. Mr. Parker and the other class members all left BlackBerry's employ on February 28, 2017 and started working at Ford the next day under the terms of the agreements they had entered into with Ford. They did so after BlackBerry had indicated it understood they were resigning and accepted their resignations.

Different Process and Timing for Various Class Members

36. Some class member employees followed a somewhat different process or timing than above in respect of obtaining and accepting an employment offer from Ford.

37. Certain employees took proactive steps to pursue obtaining an offer from Ford (the full particulars of which are known to the employees, not BlackBerry). Some class members were either not working on Project Silver in January 2017 or did not receive offers initially from Ford.

38. Certain class members only started to work for BlackBerry at the end of January or in early February 2017. Some were only added to Project Silver in February 2017. These employees received employment offers from Ford in February 2017, after most or all of the alleged communications from BlackBerry on which Mr. Parker relies in his amended statement of claim had already taken place.

39. Certain class members were on maternity leave for all or part of the period between December 2016 and February 2017, resulting in them receiving information in a different manner, including not attending the town hall meetings or being part of other alleged communications on which Mr. Parker relies.

40. Like the other class members, these employees all left BlackBerry on February 28, 2017, after BlackBerry confirmed that it understood they were resigning and accepted their resignations.

The Employees Who Declined Ford's Offer Remained Employed by BlackBerry

41. A number of BlackBerry employees working on Project Silver – who went through the same Ford job offer process and were subject to the same BlackBerry communications and other conduct and circumstances Mr. Parker alleges amounted to a wrongful termination – in fact decided to decline their Ford job offers and they remained BlackBerry employees. There was no cessation or termination of their employment.

42. In particular, there were seven such employees who received offers from Ford in January 2017. They were in the same position and went through the same process as Mr. Parker and other class members, and were subject to the same factual circumstances alleged in the amended statement claim, but they made a different decision in respect of their offers than other employees. In light of the various communications from BlackBerry (including the communications to which Mr. Parker refers), they each understood they could choose to remain at BlackBerry – *i.e.* they were not being terminated – and they in fact did so.

43. At the conclusion of Project Silver these employees were each placed on another project or team, in comparable roles, and they subsequently continued their employment.

There Was No Wrongful Dismissal by BlackBerry

44. Contrary to the allegations in paragraphs 54-55 of the amended statement of claim, BlackBerry did not wrongfully terminate Mr. Parker's or other class members' employment. BlackBerry did not intend to, nor did it at law, terminate the employment of these employees. Rather, the employees individually decided to accept Ford's employment offer and leave BlackBerry's employ, and thus resign from BlackBerry.

45. As stated, the employees each made their own decision to accept Ford's offer based on their own circumstances and considerations. They did so voluntarily and with the intention of leaving BlackBerry's employ in order to work at Ford. Accordingly, it was the employees that decided to end their employment at BlackBerry.

46. The majority of the employees expressly confirmed their intention to resign by submitting resignation notices or letters to BlackBerry. In any event, all of the class members had made the decision to accept Ford's offer and leave BlackBerry.

47. BlackBerry expressly denies Mr. Parker's allegations that his own decision to accept his Ford offer was not voluntary, or that other class members did not make a voluntary decision. In fact, during the course of the certification proceedings, a number of employees expressly confirmed in testimony that they voluntarily chose to resign and understood they were not being terminated by BlackBerry.

48. Prior to them leaving its employ, BlackBerry expressly notified each of the class members that it acknowledged and accepted their resignations.

49. The employees carried out their resignations by leaving BlackBerry's employ on February 28, 2017 and commencing employment at Ford on March 1, 2017.

50. Therefore, given that the employees made the decision to resign from their BlackBerry employment to work at Ford, and BlackBerry accepted their resignation, there was no wrongful dismissal of them. At no time did BlackBerry intend to terminate their employment, let alone

notify them that they were being terminated. In fact, BlackBerry confirmed the opposite. Permitting Ford to make offers of employment (and facilitating that process) cannot at law amount to a termination by BlackBerry, as Mr. Parker seems to allege.

51. Also, two of the Project Silver employees who received and accepted employment offers from Ford brought applications to the Ministry of Labour making allegations and claims like those of Mr. Parker in the amended statement of claim. The Ministry considered their circumstances, including the communications they had with BlackBerry about their employment situation and options. The Ministry concluded that both of these employees knew they had the choice to stay at BlackBerry, and in accepting their Ford job offer they were resigning. There was no termination or wrongful termination by BlackBerry at law, and their applications were dismissed.

No Entitlement to Damages

52. Since BlackBerry did not wrongfully terminate the employment of Mr. Parker or other class members, they are not entitled to damages in the form of statutory, contractual or common law notice, severance pay, or any other amounts.

53. In the alternative, the damages claimed are excessive and to the extent any employees would have been entitled to reasonable notice at common law, those employees mitigated any such alleged damages by virtue of working at Ford during the notice period earning compensation at a level at least as high as (if not higher than) the compensation they would have earned at BlackBerry during the notice period. In respect of other employees, any damages entitlement (which is expressly denied) would be limited to the minimum statutory amounts or contractual amounts, as applicable.

54. There is no tenable basis for Mr. Parker's claims for bad faith or punitive damages. BlackBerry acted in good faith throughout, and there was no independent actionable wrong or conduct to justify any punitive damages award. Rather, BlackBerry's conduct and the arrangements with Ford resulted in class members being given an alternative employment opportunity and offer at Ford, while preserving all of the employees existing employment rights vis-à-vis BlackBerry if they chose to decline Ford's offer.

55. In other words, the employees' terms of employment with BlackBerry were not altered and the employees' existing rights were not compromised by virtue of Ford making an offer. If the offer Ford offer was attractive, employees were free to accept it. If not, they were free to decline it, and if they did so they would be in exactly the same employment situation at BlackBerry as before they received the offer, with all of their existing contractual and common law employment rights preserved. This would include the right to receive notice and/or severance in the event BlackBerry subsequently decided at any point to terminate their employment. Contrary to the allegations in the amended statement of claim, there was nothing high-handed, oppressive or malicious about this.

56. For all of the reasons above, BlackBerry asks that this action be dismissed with costs.

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DAVID PARKER v.
Plaintiff

BLACKBERRY LIMITED
Defendant

Court File No. 17-71659

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at OTTAWA

STATEMENT OF DEFENCE

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