

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:



DR. STEVEN SMALL

Plaintiff

and

DEALNET CAPITAL CORPORATION, BRENT HOULDEN,
and HAROLD BRIDGE

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The Claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.


If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date May 3, 2018

Issued by 
Local Registrar M. Brenton

Address of court office: Superior Court of Justice
393 University Avenue, 10th Floor
Toronto ON M5G 1E6

TO: Dealnet Capital Corporation
4 King Street West
Suite 1700
Toronto ON M5H 1B6

AND TO: Brent Houlden
177 Cortleigh Blvd.
Toronto ON M5N 1P6

AND TO: Harold Bridge
476 Coleen Drive
Oakville ON L6J 6A5

CLAIM

1. The Plaintiff claims:

- (a) a declaration that his employment was wrongfully terminated, effective March 28, 2018, or, in the alternative, a declaration that the Plaintiff resigned his employment for good reason, as of the same date;
- (b) against the Defendants jointly and severally, damages for breach of contract and conspiracy, in an amount to be particularized before trial, but thought to be approximately \$10,000,000;
- (c) against the Defendants jointly and severally, general and reputational damages in the amount of \$5,000,000;
- (d) against the Defendants jointly and severally, moral or aggravated damages in the amount of \$500,000;
- (e) against the Defendants jointly and severally, punitive damages in the amount of \$500,000;
- (f) an order requiring the Defendant, Dealnet Capital Corp. (“**Dealnet**” or “**the Company**”) to redeem the Designated Share Units that it granted to the Plaintiff, in accordance with Employment Agreement (as defined below) and the other agreements referred to therein;

- (g) an order requiring Dealnet to grant the Plaintiff the stock options to which he is entitled under his Employment Agreement, and an order that all of the Plaintiff's stock options will vest immediately;
- (h) a declaration that Dealnet continues to be bound by all of the obligations in the Employment Agreement that survive termination of employment, including section 4 ("Indemnification of Executive") and sub-section 8.10 ("Non-Disparagement");
- (i) an order requiring Dealnet to return all of the Plaintiff's personal property in its possession, including artwork and furniture valued at a total of \$100,000, at its expense, and to compensate the Plaintiff for any damage to that property;
- (j) pre- and post-judgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (k) the costs of this proceeding, plus all applicable taxes; and
- (l) such further and other Relief as to this Honourable Court may seem just.

The Parties

2. The Plaintiff, Dr. Steven Small, is an individual residing in the city of Toronto, Ontario.
3. Dr. Small is a retired Certified Specialist in Anaesthesiology for Dentistry, and an active businessman. He has an established track record of building successful companies in the non-bank finance sector. In 1984, he was the first investor and a founding director in Newcourt Credit Group, which was sold for \$2 billion in 1999. He subsequently co-founded Element Financial Corp. ("**Element**"), a multi-billion dollar finance and fleet management company. Dr. Small has had significant involvement in numerous other successful public and private finance companies.

4. In June 2015, Dr. Small was appointed as a director and the Executive Chairman of Dealnet, a position he held until his employment was terminated on March 28, 2018.
5. The Defendant, Dealnet, is a corporation incorporated under the laws of the province of Ontario. Dealnet was originally incorporated under the laws of British Columbia in 1986, and was continued under the laws of Ontario in 2000. It adopted its current name in 2012.
6. Dealnet is a public issuer, and trades on the TSX-Venture (“TSX-V”) exchange.
7. Dealnet has two primary lines of business. First, it provides financing for consumer home improvement products through its subsidiaries, EcoHome Financial and One Dealer Financial. Second, it provides communication services for other businesses, including by operating call centre facilities in Canada and the United States and through SMS messaging software and related services.
8. The Defendant, Brent Houlden, is an individual residing in the city of Toronto, Ontario.
9. Mr. Houlden is the President and CEO, and a director, of Dealnet. He was appointed as the Company’s CEO on April 9, 2018, after serving as its interim CEO since October 27, 2017. Mr. Houlden is a chartered accountant and was formerly a partner at Deloitte LLP (“**Deloitte**”). After leaving Deloitte and before becoming Dealnet’s CEO, Mr. Houlden has served as a consultant at a number of companies, but has not held any permanent management positions.
10. The Defendant, Harold Bridge, is an individual residing in the city of Oakville, Ontario.

11. Mr. Bridge is the Chairman of Dealnet's board of directors and the chairman of its audit committee. Mr. Bridge was also formerly a partner at Deloitte, and is currently the CEO of a private financial advisory services company in Toronto.

12. Mr. Bridge and Mr. Houlden were colleagues at Deloitte, and are close personal friends.

Dealnet Recruits and Hires Dr. Small

13. Between 2011 and 2015, Dr. Small was employed as the lead independent director, and later the Executive Vice Chairman, of Element.

14. Dr. Small met Michael Hilmer, the then-interim CEO of Dealnet, in 2015 when Dealnet was seeking a contract to provide business communication services to Element.

15. At the time, Dealnet's business was mostly limited to business communication services. Mr. Hilmer was seeking to expand into consumer financing, and had initiated a small pilot project in that area. Mr. Hilmer was impressed by Dr. Small's reputation and experience in the sector, and sought to hire Dr. Small to build Dealnet's non-bank finance business.

16. Dr. Small was initially uninterested in joining Dealnet. At the time, its finance operations were limited and he was concerned that the business would be uneconomical, given Dealnet's limited access to funding, lack of loan originations, and weak back-office infrastructure. The Company would need a complete overhaul to succeed in the consumer finance space.

17. However, Dr. Small was intrigued by the idea of building another business in the finance sector. He believed that the Company's business model could become successful with the right direction.

18. As a result, after further discussions with Dealnet's board of directors and Mr. Hilmer, Dr. Small ultimately agreed to join Dealnet as its Executive Chairman, conditional on certain terms, including that:

- (a) he be given the authority to recruit a new board of directors for the Company;
- (b) he be permitted to do other work, including, but not limited to, continuing to act as a director of other companies; and
- (c) he be compensated in a manner that was commensurate with his experience and stature.

19. Dr. Small retired from Element in April 2015 after serving as its Executive Vice Chairman, and joined Dealnet in June of that year.

20. The new directors that Dr. Small recruited for the Dealnet board in 2015 included Mr. Bridge and Mr. Houlden.

The Terms of Dr. Small's Employment

21. Before his employment at Dealnet commenced, the Company and Dr. Small negotiated the terms of an agreement to govern his employment. The terms were memorialized in an Executive Employment Agreement (the "**Employment Agreement**"), which was approved by Dealnet's board of directors.

22. The Employment Agreement sets out Dr. Small's duties, his compensation and benefits, the conditions for the termination of his employment, and his obligations to the Company, including confidentiality, non-solicitation, and non-competition, terms which were required by Dealnet.

23. Dr. Small's duties under the Employment Agreement (the "**Duties**") included: (i) chairing the Company's Board; (ii) providing advice on strategy, business development, and acquisitions; and (iii) providing guidance on corporate, investor, and capital markets relationships.

24. Dealnet agreed to provide Dr. Small a compensation package consisting of a base salary, bonuses, share unit and stock option grants, and other benefits.

25. The Employment Agreement required Dr. Small to devote as much time to his Duties as he reasonably determined was prudent. Shortly after he joined Dealnet, it became clear to Dr. Small and the Company that he would be required to make a more significant contribution of skill and energy than had been anticipated.

Base Salary

26. Dr. Small's initial annual salary was \$90,000. The Employment Agreement requires base salary increases of a minimum of 25% annually.

27. In recognition of the increased contributions Dr. Small was making to the Company, Dealnet's board of directors approved multiple increases in his base compensation during 2016.

Dr. Small's Independent Compensation Review

28. In line with corporate best practices for public companies, Dealnet retained the international corporate consultancy Global Governance Advisors Inc. ("**GGA**") in March 2016 to review the roles of its directors and senior management and to develop comprehensive compensation plans for them.

29. In its comprehensive review of Dealnet's Executive Chairman position, dated November 2016, GGA found that Dr. Small's "experience, reputation, skills and ongoing relationships within

the non bank finance and lending sector provide Dealnet with a valuable advantage” and that his presence would “be a critical component in developing the sustainable future growth of the organization”.

30. The report also noted that, as a result of his critical role in the development of Dealnet’s finance business, Dr. Small was “widely recognized as a founder of Dealnet”, and that his employment had “fundamentally elevated and accelerated Dealnet’s visibility and credibility within the capital equity and debt markets”.

31. GGA recommended that Dealnet increase Dr. Small’s base salary to \$337,500 for 2017. The Company’s board of directors decided to award Dr. Small a base salary of \$340,000.

Additional Compensation

32. Under the Employment Agreement, Dr. Small was entitled to participate in a number of “incentive plans”, under which he received bonuses based on certain performance measures. For 2017, his aggregate bonus was \$250,000.

33. Dr. Small was also entitled to \$12,000 annually as a “Perquisite Package”, granted in lieu of any in-kind perquisites. This amount was increased to \$20,000 in 2016. However, it was not paid in 2016 or 2017, and has not been paid so far in 2018.

Option and Share Unit Grants

34. The Employment Agreement provided for several types of compensation based on grants of or rights to acquire the Company’s shares.

35. Dr. Small was granted 250,000 deferred share units (“DSUs”) when he joined the Company. The Company’s equity policies provide that each DSU is redeemable, on termination of employment, for one share of the Company’s stock.

36. The Employment Agreement provides that Dr. Small is entitled to the grant of stock options equivalent to 2% of the Company’s outstanding shares, which will vest immediately, and carry a ten year exercise period. The Company currently has approximately 287,000,000 shares outstanding, meaning that Dr. Small is entitled to approximately 5,740,000 options.

37. To date, Dr. Small has been granted 4,000,507 options. As a result, he is entitled to a grant of 1,740,000 additional options.

Other Covenants

38. The Employment Agreement requires Dealnet to indemnify Dr. Small for losses that he might suffer as a result of his employment at the Company, both during its term and thereafter.

39. Dealnet also agreed to pay Dr. Small \$100,000 in exchange for his agreement not to compete directly with Dealnet for a period of 12 months following the termination of his employment, however caused.

Termination Provisions

40. The Employment Agreement provides for termination of Dr. Small’s employment in seven circumstances: termination by the Company for just cause, termination by the Company without cause, resignation by the Dr. Small without good reason, resignation by Dr. Small with good reason, termination without cause following a change of control, disability, and death.

41. In the case of a termination by the Company without good cause, or a termination by Dr. Small for good reason, the Company agreed to compensate Dr. Small as follows:

- (a) all accrued but unpaid amounts for base salary, vacation pay, perquisite package, and expenses;
- (b) the previous year's non-salary bonuses, pro-rated for the amount of time worked during the year of termination;
- (c) two times his base compensation, defined as base salary plus short term bonuses, to be paid within 30 days of the termination date;
- (d) ongoing enrollment in the Company's benefits plans for two years following the termination date; and
- (e) equity entitlements as provided for in the various equity plans, as well as immediate vesting of Dr. Small's stock options, exercisable for a period of 10 years from the granting date.

42. The parties agreed to waive the common law concept of mitigation with respect to the payment of these amounts.

43. Dr. Small was entitled to terminate the Employment Agreement for good reason on the occurrence of (among other things) a material reduction in his duties or status, or failure by the Company to pay his compensation or benefits.

Dr. Small's Significant Contributions to Dealnet

44. Dr. Small brought substantial value to Dealnet during the term of his employment.

45. Shortly after joining the Company, Dr. Small was primarily responsible for securing approval for Dealnet to list on the TSX-V exchange. The Company had previously been listed on the Canadian Securities Exchange, a secondary market catering to very small companies using a simplified listing procedure. In a contemporaneous news release, the Company explained that a listing on the TSX-V would “advance[] the [Company’s] credibility and capability to secure additional business from major corporate clients.”

46. Another significant accomplishment was securing lower-cost financing for Dealnet. Before Dr. Small joined the Company, it was attracting all of its funding in the form of high-interest debentures from retail broker investments, at an annual cost of around 12%. Since Dealnet’s financing contract revenues were expected to average approximately 8%, a more affordable financing source would be essential for the Company to turn a profit. Dr. Small was able to lower the company’s cost of funds to approximately 4%, which allowed for significant growth in its portfolio. Over his two and a half years at Dealnet, Dr. Small presided over an increase in the size of Dealnet’s book of financing from \$1.9 million to more than \$170 million.

47. Dr. Small’s contributions also included bringing in funding from more stable sources, including institutional investors, investment funds, top-tier investment bankers and other funders, which not only lowered the Company’s cost of capital, but improved its reputation among investors and in the capital markets.

48. Dr. Small also orchestrated two major rounds of raising equity capital, which provided large infusions of funds for the Company, amounting to over \$44 million in total, in addition to material amounts from the exercise of warrants. At the time of his termination, Dr. Small was in

the process of negotiating another large infusion of equity capital, from a large New York hedge fund.

Dealnet's Financial Difficulties

49. In early 2017, Dealnet began to suffer from financial difficulties.

50. These difficulties had several causes, including excessive operating costs, a lack of loan origination (exacerbated by the introduction of regulatory changes), and an unexpectedly high number of delinquencies in the portfolio of EcoHome, which had been acquired by Dealnet on the basis of misrepresentations by its former owners.

51. In or around October 2017, Dealnet's board determined that Dealnet's then-CEO, Michael Hilmer, did not have sufficient managerial skill to resolve the Company's problems and decided to terminate his employment.

52. After Mr. Hilmer's departure, Mr. Houlden became the interim CEO of Dealnet. Mr. Houlden has significant experience in cost-cutting and corporate reorganization. Mr. Houlden immediately set to work reducing Dealnet's costs.

53. Dr. Small was aware of Dealnet's financial difficulties, and he agreed in December 2017 to temporarily defer the 25% increase in his base salary to which he was entitled under the Employment Agreement. Under the terms of the Agreement, his base salary for 2018 is \$425,000.

The Defendants Terminate Dr. Small's Employment Without Cause

54. On March 28, 2018, following a meeting of Dealnet's board of directors, Harold Bridge informed Dr. Small that the board had eliminated the Company's Executive Chairman position.

Mr. Bridge characterized this decision as a cost-cutting measure, explaining that the board felt that Dealnet could no longer afford Dr. Small's salary and bonuses.

55. Mr. Bridge told Dr. Small that the Company would honour the terms of the Employment Agreement, which includes specific provisions for compensation in the event that the employee is terminated without cause or terminates the employment relationship with good reason. Mr. Bridge's actions amounted to a termination of the Employment Agreement or a constructive dismissal.

56. That night, Dr. Small informed Mr. Bridge that he would treat the elimination of his position as termination without cause and/or a constructive dismissal, and invoke his rights under the Employment Agreement. Under the Agreement, Dr. Small had the right to consider elimination of his position as grounds for termination for good reason.

57. The following day, Dr. Small attended a lunch meeting with Mr. Bridge and Mr. Houlden to discuss his departure. Mr. Houlden confirmed that Dealnet had eliminated his position, purportedly as a cost-cutting measure. However, Mr. Houlden also told Dr. Small that the Company no longer intended to honour his Employment Agreement. Instead, Mr. Houlden proposed for the Company to pay Dr. Small a reduced termination package on the premise that the Company could not afford to pay him what was required under the Employment Agreement.

58. Dr. Small and the Company negotiated the terms of Mr. Houlden's offer over the next day, including reviewing the tax implications of the offer with Dr. Small's accountant.

59. Ultimately, Dr. Small rejected the Company's offer, and made a counter-offer. Dealnet failed to respond to that offer.

60. On April 8, Mr. Bridge sent Dr. Small an email informing him that his employment with Dealnet had been terminated, now purportedly for good cause. The following day, the Company sent Dr. Small a formal letter reiterating this position (the “**April 9 Letter**”). Despite negotiating over Dr. Small’s termination entitlements over the course of the preceding week, this was Dealnet’s first insinuation that there were grounds for termination of his employment for cause.

61. On the same day, Dealnet issued a press release announcing its appointment of Mr. Bridge as its new non-executive chairman and Mr. Houlden as its permanent CEO. Dealnet reported on an earnings call on April 24 that the Company had eliminated the Executive Chairman position in order to save money.

62. The allegations regarding good-cause termination contained in the April 9 were boilerplate, devoid of specificity or factual support. None of them are true. Dr. Small was never informed of any of these allegations beforehand, nor given a chance to respond to them. Dealnet never performed any investigation, let alone an independent investigation, into these allegations.

63. The allegations contained in the April 9 Letter do not support a termination of Dr. Small’s employment for cause. To the contrary, they are self-serving, bad faith attempts to retroactively establish the illusion of cause in order to improve the Company’s negotiating position and with the goal of avoiding the full contractual payments due to Dr. Small. They were strategic and pretextual.

Mr. Bridge and Mr. Houlden’s Conspiracy to Remove Dr. Small for their Personal Benefit

64. The actions of Mr. Bridge and Mr. Houlden with respect to the termination of Dr. Small’s employment were not motivated only by concern for the financial well-being of the Company. To the contrary, their conduct was designed primarily to benefit themselves.

65. Since leaving Deloitte, Mr. Houlden has worked as a consultant on short-term contracts, and had not been able to secure permanent employment as a senior executive. He was eager to find a long-term position, which would give him job security, as well as compensation, benefits, and prestige.

66. Mr. Bridge, for his part, was experiencing financial difficulties, and wanted to increase his compensation from the Company. He had also never before been the chairman of a public company, and wanted this appointment prior to retiring.

67. Mr. Houlden and Mr. Bridge believed that they could both achieve their goals by forcing out Dr. Small on a contrived pretext. With Dr. Small out of the picture, and the Company freed from its obligation to pay his salary or termination entitlements, they would be able to orchestrate Mr. Houlden's hiring as the Company's full-time CEO, and Mr. Bridge's as its chairman.

68. In order to achieve their aims, Mr. Bridge and Mr. Houlden worked together to cause the Company to unlawfully terminate Dr. Small's contract and deny him his contractually-guaranteed termination rights. They carried out a surreptitious campaign against him at the Company's board, and fabricated a series of offensive accusations, including regarding his job performance. The Company hired Mr. Houlden as permanent CEO and Mr. Bridge as chairman only days after Dr. Small's wrongful termination.

69. Mr. Bridge and Mr. Houlden's deceitful scheme was characterized by misrepresentation, vindictiveness and bad faith toward Dr. Small.

70. Mr. Bridge and Mr. Houlden knew that their scheme would cause Dr. Small damages, in the form of lost employment and contractual entitlements and future opportunities consistent with his stature in the industry.

Breach of Contract

71. The Company has terminated Dr. Small's employment without good cause. In the alternative, the Company's elimination of his position amounted to grounds for Dr. Small to terminate his employment for "good reason" under the Employment Agreement. The Company's obligations to Dr. Small are the same in either case.

72. Specifically, the Company is obliged to pay Dr. Small his contractual termination compensation and grant his non-monetary contractual rights. By failing to do so, it has breached the Employment Agreement.

73. The compensation owed by Dealnet to Dr. Small under the Employment Agreement consists of:

- (a) his accrued but unpaid perquisite payments, a total of \$46,667 (\$20,000 x 2 for 2016, 2017, plus \$20,000 x 3/12 months worked in 2018);
- (b) Dr. Small's aggregate bonus for 2017, pro-rated based on his employment term in 2018, a total of \$62,500 (\$250,000 bonus for 2017 x 3/12 months worked in 2018);
- (c) two times his base compensation, a total of \$850,000 (\$425,000 base compensation x 2);
- (d) 250,000 shares of Dealnet stock in satisfaction of the DSUs; and

(e) \$100,000 under the non-competition agreement.

74. In addition, the Employment Agreement requires Dealnet to:

- (a) grant Dr. Small an additional 1,740,000 stock options, plus such additional options as required to equal 2% of the Company's outstanding shares, and to cause them to vest immediately and be exercisable for 10 years;
- (b) maintain Dr. Small's benefits under the Company's benefits plans for two years following the date of his termination; and
- (c) continue to indemnify Dr. Small in respect of all claims arising from his employment by the Company.

75. Dealnet is also required to return all of Dr. Small's personal property to him forthwith, and to exercise due caution in doing so.

Conspiracy

76. Mr. Bridge and Mr. Houlden have conspired to eliminate Dr. Small's job at Dealnet. They are therefore liable to him for his likely future earnings and general damages, in such amounts as to be particularized before trial.

Reputational Damage

77. Dr. Small's reputation as an honest and expert businessman is critical to his continued employability in the finance sector. The Defendants' false, vague, and reckless accusations will cause significant harm to his reputation, which will in turn limit his capacity to obtain properly compensated employment, directorships and other related business opportunities in the future.

78. These opportunities were likely to have been highly lucrative. As a result, in consideration of reputational damage and lost opportunities he is likely to suffer as a result of the Defendants' misconduct, Dr. Small is entitled to damages in the amount of at least \$5,000,000.

Moral Damages

79. It was an implied term of the Employment Agreement that the Defendants would treat Dr. Small in a good faith and honest manner at all times, and in particular at the time of the termination of his employment.

80. The Defendants' dishonest conduct was designed to deprive Dr. Small of several contractual and common law entitlements and was in bad faith, the particulars of which are as follows:

- (a) scheming to concoct allegations of just cause for termination that the Defendants knew were unmeritorious;
- (b) negotiating over Dr. Small's severance entitlements in bad faith; and
- (c) failing and/or refusing to provide Dr. Small with his entitlements under the Employment Agreement, for strategic purposes, which the Defendants knew or ought to have known were required by the Employment Agreement.

81. The Defendants' bad faith conduct was contrary to the implied terms of the Employment Agreement and the common law. The Defendants did not honestly perform their obligations under the Employment Agreement.

82. The Defendants' conduct, outlined herein, caused Dr. Small anxiety, stress, and a loss of self-esteem, all of which were avoidable but for the Defendants' deliberate conduct. The

Defendants should be required to pay Dr. Small moral or aggravated damages as a result of their conduct in this regard.

The Defendants' Wanton and Flagrant Misconduct Warrants Punitive Damages

83. The Defendants' misconduct as pleaded herein was egregious, high-handed and wholly reprehensible, and warrants the condemnation of this Court. In the circumstances, the Defendants' conduct warrants an award for punitive, aggravated or exemplary damages in the amount of \$500,000.

84. The Plaintiff proposes that this action be tried in the City of Toronto.

May 3, 2018

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DR. STEVEN SMALL
Plaintiff

-and- DEALNET CAPITAL CORPORATION et al.,
Defendants

CV-18-00597/61-0000
Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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