

SAINT LUCIA

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE

CLAIM NO: SLUHCV2012/0565

BETWEEN: LESTER CAZAUBON

Claimant

AND

EAST CARIBBEAN FINANCIAL HOLDINGS LIMITED

Defendant

Appearances:

Mr. Vern Gill of Counsel for the Claimant
Mr. Thaddeus M. Antoine of Counsel for the Defendant

2013: May 14th

2014: May 15th

DECISION

[1] **TAYLOR-ALEXANDER M:** The defendant has applied to strike out or alternatively for summary judgment of a claim filed by the claimant for a declaration that the claimant's employment was unlawfully terminated; special damages; and for pension contributions. The defendant alleges that the claim discloses no reasonable grounds for bringing the claim, it disclosing no cause of action recognisable under the Laws of Saint Lucia.

[2] Under Part 26.3 (1) (b) of the Civil Procedure Rules 2000 (CPR 2000) the court is entitled upon application or on its own initiative to sanction a party to the

proceedings by striking out its statement of case or part of its statement of case if it appears to the court that the statement of case or the part to be struck out does not disclose any reasonable ground for bringing or defending a claim. The court may also of its own initiative or when encouraged to do so by application of a party to the proceedings under Part 15.2 of CPR 2000 give summary judgment on the claim or on a particular issue if it considers that the claimant has no real prospect of succeeding on the claim or the issue.

The Pleading in Sum

- [3] The claimant was an employee of the defendant bank when on the 27th September 2010 he was terminated for what he refers to as a breach of protocol. The averments of the parties distilled from their pleadings are that the claimant was a senior employee of a branch operation of the defendant with an enviable record of service. The claimant pleads that on the day in question, a breach of protocol attached to the claimant's job occurred which resulted in a false alarm that some money might have been missing from the vault. The claimant himself raised the alarm and other staff members eventually determined that the money was not missing. The claimant pleads that he was unlawfully terminated consequent upon that incident for which he has suffered loss and damage. In particular the claimant claims to be entitled to earnings for a period of one year; The value of the health Insurance he has lost; continuing health coverage; and the sum of \$30,000.00 being a sum comprising his pension contributions held by the defendant on his behalf.
- [4] The defendant pleads that a sum of \$50,000.00 went missing from its vault at the branch, while the claimant was the senior of two vault attendants assigned to the vault treasury and whose duties involved receiving and distributing treasury to tellers and operators and ensuring that the treasury balanced with the cash book at the end of the day. The sum of money was eventually recovered in the garbage holding area. That the money went missing the defendant avers, is a fundamental

breach of operating rules and procedures of the bank which goes to the heart of the claimant's employment. The defendant denies that the claimant's contract of employment was unlawfully terminated, such a cause of action being unknown to statute or the common law in Saint Lucia additionally, that any loss or damage suffered by the claimant was not as a fault of the defendant.

Relevant Information

- [5] The enactment of the Labour Act No 37 of 2006 replaced what was the Contract of Services Act Cap 16.03, (the former Act), enacted to regulate contracts of service, including the particulars to be given in written contracts; to provide for a minimum period of notice to terminate the employment of those who have been employed for a qualifying period and further, to provide for severance payments on the termination of a contract of service in certain cases. The former Act continues to apply for causes of action up to the 31st July 2012. It is agreed that the claimant's cause of action arose under the currency of the former Act.

The Claimant's Submissions on the Application

- [6] Counsel for the claimant has submitted that the law prior to 1st August 2012 in relation to a cause of action in employment cases was recognised as being a right to make a claim for wrongful or unlawful termination or dismissal from one's employment pursuant to the former Act. Despite what was a clear understanding of the law it was common practice to use the terminologies interchangeably. He submits that the unlawfulness or the wrongness of the dismissal or the termination of the contract of employment always depended on the circumstances of the case and as such evidence had to be led to prove or disprove the same.
- [7] In support of his submissions counsel relies on cases out of Saint Lucia **Andre Scholar v Hess Oil St. Lucia Ltd** SLUHCV1984/0149 and **Cecilia Deterville v**

Foster and Ince Cruise Services St Lucia Ltd SLUHCV2009/0811; **Craig Wallace and Cody Wallace v Anguilla Development Corporation Limited** AXAHCO2009/0038; and **Freeman v The Attorney General et al** BVIHCV2008/0382. Counsel submits that it is the pleadings that establish the cause of action, and the nature of the termination is revealed when evidence is taken at trial.

The Defendant's Submissions

- [8] Given the entitlement of an employer to terminate an employee, wrongful dismissal is a common law remedy actionable in instances of breach of contract where the employer has dismissed the employee in breach of the requisite period of notice, or payment in lieu of notice. No other remedy is available to an employee who has been dismissed at common law. The authorities of **Ridge v Baldwin** and **Anderson v Pringle of Scotland Ltd** [1998] IRLR 64 and **Addis v Gramophone Co Ltd** [1909] AC 488 were all relied on in support of the submissions advanced.

Discussion

- [9] I have assessed the critical issue for determination to be whether the claimant's pleading constructs a cause of action against the defendant bank and if so, the nature of that cause of action and the relief to which the claimant is entitled. The claim filed did not disclose whether the claimant was employed subject to an express written contract or not, nor did it indicate the express or implied terms to which the claimant knew himself to be subject.
- [10] Under the former Act, a cause of action was available to an aggrieved person where in his or her termination other than for cause, an employer failed to meet the minimum statutory requirements of the Act. Its application was limited to mandatory minimum statutory requirements.

[11] In particular the pre amble to the former Act states that it was enacted to regulate contracts of service, including the particulars to be given in written contracts; to provide for a minimum period of notice to terminate the employment of those who have been employed for a qualifying period and further, to provide for severance payments on the termination of a contract of service in certain cases. The act by providing for minimum requirements recognized the freedom of all parties to contract with the exception that any provision in a written contract which contravened the minimum statutory provision was null and void and the corresponding statutory provision was substituted therefor and was to have effect as if it had originally been included in the written contract. Limitedly, any right of statutory redress could only be that the mandatory minimum statutory requirements were not met in relation to a person, and I would submit that correspondingly the relief claimed could only be that those requirements are met.

[12] There is no allegation of summary termination, neither was it pleaded that there was a failure on the defendant's part to meet any statutory requirements. As such this is not a case brought in violation of the former Act.

[13] Under the common law where an employee is dismissed in breach of contract, his normal remedy is a claim for damages or a declaration that his dismissal was wrongful¹. John Bowers Q.C and Carol Davis of the treatise (Wildy Practice Guides) Termination of Employment 5th Edition 2010 at page explain the cause of action thus:—

"At common law an employee may bring a claim for wrongful dismissal if his dismissal is in breach of his contract of employment. The dismissal will be in breach of contract if the employee is without cause, dismissed without full notice or pay in lieu of notice"

¹ See Chitty on Contracts paragraph 27-022

[14] Halsbury's Laws of England Vol 16th 4th edition at page 451 comprehensively defines the common law action as follows:—

"a dismissal in breach of the relevant provisions in the contract of employment relating to expiration of the term for which the employee is engaged. To entitle the employee to sue for damages two conditions must normally be fulfilled namely:

(1) the employee must have been engaged for a fixed period or for a period terminable by notice and dismissed either before the expiration of the fixed period or without the requisite notice as the case may be; and

(2) His dismissal must have been wrongful that is to say without sufficient cause to permit his employer to dismiss him summarily. In addition there may be cases where the contract of employment limits the grounds on which the employee may be dismissed or make dismissal subject to a contractual condition of observing a particular procedure, in which case it may be argued that on a proper construction of the contract, a dismissal for any extraneous reason or without observance of the procedure is a wrongful dismissal on that ground"

[15] Where the contract of employment is silent on the question of notice, then the common law will imply a term to the effect that the employee is entitled to a reasonable period of notice. What is 'reasonable' is a question for the court to decide having considered all the circumstances of the case. In practice it is never likely to be less than one week, or to be less than the notice which the employee is required to give to the employer.

Has the claimant established a case for breach of contract

[16] It is the function of pleadings, including particulars, to apprise the opposite party of the case it has to meet and of limiting the issues of fact to be investigated by the court. This is enshrined in CPR 2000 r 8.7 (1). This on the one hand prevents the

injustice that may occur when a party is taken by surprise and on the other it saves expense by keeping the conduct of the case within due bounds.

- [17] It is evident from the explanation in Halsbury's that a claim for breach of contract and for wrongful dismissal other than one alleging summary dismissal, must as a minimum and in order to establish a cause of action for breach plead the nature of the employment of the employee, whether fixed or terminable by notice. An additional necessary requirement to be pleaded is what he knew or otherwise expected his minimum period of notice to be. Without that, I am afraid the pleadings would not have met the threshold requirements of the common law action. I find that the claim filed fails entirely to articulate a cause of action under the common law not does it set out the case that the defendant is expected to answer.

Unlawful Termination

I agreed with the claimant's submissions that a misnomer in the pleadings does not prevent the court from finding a cause of action for the claimant, and I was not swayed in my ultimate decision by the reference in the claim to a cause of action for unlawful termination. I was guided by what was the pleaded cause of action in fact and the damages which the claimant stated flowed from the breach. My decision remains unchanged. The claim is inarticulate as to a cause of action, and although the damages can with some judicial ingenuity be applied to a claim for wrongful dismissal I find the entire claim to be prolix.

- [18] I therefore grant the application of the defendant but on the grounds and reasons I have articulated in this judgment. The claimant is to pay the defendant's costs on the application in the sum of \$1000.00

V. GEORGIS TAYLOR-ALEXANDER

HIGH COURT MASTER