

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO. GDAHCV2024/0126 (formerly CLAIM NO. GDAHCV2016/0099)

BETWEEN:

RAWLE TITUS

Claimant

and

**ANTHONY BRYAN
MONIQUE SANDIFORD
SANDRA CLARKE
(T/A ADVOCATE PUBLISHERS 2000)**

Defendants

Before:

The Hon. Justice Raulston L.A Glasgow

High Court Judge

Appearances:

Ms. Caryn Adams for the Claimant

No appearance for the Defendants

2024: July 10th
[Re-issued on 16th July 2024]

REASONS FOR DECISION

[1] **GLASGOW, J.:** The claimant, Mr. Rawle Titus initiated this claim on 31st March, 2016 claiming as against the defendants general damages (in the alternative) for negligence, breach of contract, breach of statutory duty or wrongful dismissal, special damages in the sum of \$66, 220.00, a Certificate of Termination of Employment in accordance with the Employment Act No. 14 of 1999, interest and costs. Mr. Titus claims that he was employed as an editor of the defendants' newspaper 'The Grenada Advocate', pursuant to an oral contract entered into in February, 2005. Mr. Titus alleges that his duties included compiling all of newspaper's content, inclusive of pictures and writing the weekly editorial.

[2] Mr. Titus' first complaint is that as editor, he was initially paid the sum of \$4,000.00, but in 2010, the defendants without justification or explanation, reduced his salary to \$2,700.00. Mr. Titus further complains that his employment was terminated by an email sent by the 3rd defendant, Ms. Sandra Clarke on 21st March, 2012. Mr. Titus pleads that he was terminated after he approved a story that was published in the newspaper on 9th March, 2012, entitled 'Prime Minister Makes Fresh Moves', which received opposition from the then Prime Minister of Grenada. Prior to his termination, Mr. Titus claims that Ms. Clarke asked him to issue an apology in the newspaper for the story, but he refused to do so, as in his opinion, the professional standards of journalism were maintained. Mr. Titus further claims that the story was prophetic, as the contents of the story were unfolding within the political party in question.

[3] After Mr. Titus' termination, he claims that he only received the sum of \$2,700.00, and did not receive compensation in lieu of dismissal or a certificate of termination. Mr. Titus pleads that he caused his attorney to write the 1st defendant, requesting compensation for dismissal. Ms. Clarke responded, stating that Mr. Titus was engaged as a freelance writer from 2005 until 2012, but Mr. Titus argues that this is untrue. Mr. Titus particularized the defendants' negligence on the basis that the defendants' owed him a duty to fairly compensate him, since his work and method of payment was consistent with continuous employment. Mr. Titus alleges that the defendants' breached that duty by failing to adequately compensate him on his termination, causing him to suffer loss.

[4] The defendants' filed a joint defence on 12th October, 2016, denying that Mr. Titus was an employee or editor of the newspaper. They aver that Mr. Titus was an independent contractor, engaged as a freelance writer, to provide news and related materials for the newspaper and other persons held the position of editor. The defendants confirm that Mr. Titus was engaged to provide weekly written material and accompanying photographs for publication in the newspaper, and acknowledge that it was initially agreed that Mr. Titus would be paid a monthly sum of \$4,000.00.

They aver that it was understood as among them that Mr. Titus would not be entitled to any payment, should he fail to provide a monthly quota of material. The defendants further plead that they held discussions with Mr. Titus about the newspaper's earnings, as they could not continue to pay the usual sum for articles, and proposed to pay Mr. Titus the reduced sum of \$2,700.00 monthly. The defendants allege that there was no objection from Mr. Titus, as he continued to provide material for this reduced amount.

[5] The defendants plead that Mr. Titus was required to verify the factual basis of any material supplied for publication in the newspaper, and that the article written and factually verified by Mr. Titus in 2012 put the newspaper in jeopardy. The defendants contend that they asked Mr. Titus to issue an appropriate apology, but he refused. This offending article and Mr. Titus' refusal to apologize led the newspaper to lose all trust in Mr. Titus' judgment. The defendants state that they consequently discontinued the existing freelance arrangement with Mr. Titus.

[6] The defendants indicate that they informed Mr. Titus of the reason for the end of the arrangement, and deny that there was compensation payable in lieu of notice, or a need to issue a certificate of termination. The defendants deny that Mr. Titus was entitled to any of the relief sought, as he was not an employee and was therefore not entitled to any of the benefits accruing to employees under the Employment Act. The defendants conclude by strenuously denying any findings of negligence, breach of duty, loss or damage as alleged.

[7] Mr. Titus filed a reply to the defendants' defence on 29th March, 2017, denying the defendants' averments, and restating that he was always employed with the defendants as an editor of the newspaper. He alleges that he was responsible for all local content including sports and pictures and writing editorials each week. Mr. Titus insists that he had the autonomy to decide the number of stories to be published, and the defendants never had any difficulty with this arrangement. Mr. Titus claims that since 2005, he was paid a monthly sum, and this fixed monthly

salary is sufficient proof that he was a full-time employee and not paid per job or story. Mr. Titus denies that he agreed to the salary reduction, and alleges that he spoke to an employee of the defendants, who promised to speak to the 1st defendant to have Mr. Titus' full salary restored.

[8] Mr. Titus also claims that he was always awaiting a written contract from the defendants, but this was never provided. He further avers that he always followed the professional standards of journalism while employed with the defendants, and in his 30 years as a journalist, his work was never the subject of a civil claim. Mr. Titus denies that he was ever told of the reasons for his dismissal and states that the impugned article could not have caused the defendants to lose trust in his judgment requiring his termination. Mr. Titus alleges that his termination was unlawful and wrongful in all the circumstances.

[9] Four witnesses gave witness statements in support of Mr. Titus' case; Mr. Rawle Patterson, Mr. Hamlet Mark, Mr. Peter David and Mr. Titus himself. Three witnesses gave witness statements in support of the defendants' case; Mr. Gillian Marshall, Ms. Sandra Clarke and Mr. Anthony Bryan. When the matter came on for trial on 14th March, 2024, Mr. Titus and two of his witnesses, Mr. Mark and Mr. David attended, but none of the defendants appeared. Mr. Titus' witness statement and that of his two witnesses were tendered into evidence.

[10] At the conclusion of the trial, the court invited counsel for Mr. Titus to file closing submissions on two issues:

- 1) whether Mr. Titus was an employee or independent contractor, and
- 2) whether the defendants were liable for wrongful dismissal, breach of contract or breach of statutory duty.

Counsel for the claimant duly filed closing submissions on 12th April, 2024. As the defendants did not attend the trial and there was no appearance by Mr. Paterson, the court only had the benefit of considering the evidence of Mr. Titus, Mr. David

and Mr. Mark. Upon consideration of their evidence and the closing submissions filed by counsel, I determined that the claimant was not an employee, but an independent contractor and that the defendants are not liable for wrongful dismissal/breach of contract/breach of statutory duty or negligence as alleged. Accordingly, Mr. Titus' claim ought therefore to be dismissed. These are the reasons for the decision.

DISCUSSION & ANALYSIS

[11] As there was no evidence from the defendants, I have to consider whether Mr. Titus met the requisite burden of proof on a balance of probabilities, that he was an employee. The existence of an arrangement where someone receives remuneration for services does not automatically make a person an employee. There is no absolute or standard basis of determining whether a person falls within the confines of an employee employed under a contract of service or an independent contractor employed under a contract for services. The courts have formulated several tests to determine this issue. As stated by Lord Denning in **Stevenson Jordan Harrison Limited v MacDonald and Evans**¹,

“...it is almost impossible to give a precise definition of the distinction. It is often easy to recognize a contract of service when you see it, but difficult to say wherein the difference lies. A ship's master, a chauffeur and a reporter on the staff of a newspaper are all employed under a contract of service; but a ship's pilot, a taxi – man and a newspaper contributor are employed under a contract for services. One feature which seems to run through the instances is that, under a contract of service, a man is employed as part of the business and his work is done as an integral part of the business, whereas under a contract for service, his work, although done for the business is not integrated into it but is only an accessory to it.”²

¹ [1952] 1 TLR 101.

² [1952] 1 TLR 101 at 111.

[12] The initial consideration used to determine the form of employment relationship is an examination of the contents of the express and implied terms of the employment contract governing the relationship. As Mr. Titus' acknowledges that his relationship with the defendants was created and endured through an oral contract, there are no written terms for the court to consider, analyse or imply. This is not the end of Mr. Titus' case, as oral contracts are enforceable at law, but this does impact the way the court concludes its finding on the relationship. Thus, as stated by Carter J in **Rohan Walters v The Labor Commissioner**³,

“ there are a number of factors that the court must consider in arriving at a conclusion as to whether a contract of service or contract for services exists. ... and the court must undertake the investigation and evaluation of the particular factual circumstances in order to arrive at a conclusion on the issue.”⁴

This is principally because the distinction between a contract of service and a contract for service is a mixed question of fact and law. The relationship is first determined by an investigation and evaluation of the factual circumstances in which the work was performed if the relationship does not depend solely upon the true construction of a written document⁵. Thus, the classification of Mr. Titus' relationship with the defendants within the factual context is critical in determining their liability, if any. Additionally the analysis must take into consideration the requisites of the law and in particular, the Employment Act of Grenada⁶, which like most statutory employment protection statutes in the Commonwealth Caribbean is intended to protect employees and not independent contractors⁷.

³ SKBHCV2013/0287.

⁴ SKBHCV2013/0287 at 8.

⁵ Lee Ting Sang v Chung Chi Keung [1990] 2 WLR 1173.

⁶ Cap 89 of the 2010 Continuous Revised Edition of the laws of Grenada.

⁷ Natalie Corthesy and Carla- Anne Harris- Roper, *Commonwealth Caribbean Employment and Labour Law*, (Routledge 2014) at page 95.

[13] In examining Mr. Titus' evidence in support of his case, he explains that he is a journalist with several degrees and certifications in journalism, having held several significant positions in journalism for over 30 years in his career. Mr. Titus states that at the time of the creation of the oral contract, it was held out to him that he was the 'front man' editor of the newspaper. Much of Mr. Titus' evidence in support of the employment relationship centres on the fact that he was paid a monthly salary throughout the tenure of the arrangement. Mr. Titus deposes that he was paid \$2,500.00 monthly initially, which was upgraded to \$4,000.00 at some time, and later reduced to \$2,700.00. In relation to Mr. Titus' diminution in salary from \$4,000.00 to \$2,700.00, he claims that it was unilaterally done, and he protested against it, but his salary was never restored.

[14] The other aspect of Mr. Titus' case was the scope of the work which he claimed to have done as editor, as Mr. Titus pleads that he was responsible for receiving stories from all contributing journalists, and that he ultimately made the decisions on how the newspaper would be organized. Mr. Titus asserts that the defendants' letter in response to his counsel's request for compensation after termination, which labelled him as a freelance writer was alarming. Mr. Titus claims that his employment status was never in issue before, as it was always understood that he was a full-time employee of the newspaper as editor, earning a monthly salary and prays that the court grant him the relief claimed.

[15] Mr. David's evidence in support of Mr. Titus' case is that he has known Mr. Titus for 25 years as a distinguished journalist in Grenada, and to be employed with the Grenada Advocate from 2005 to 2012 as the editor, having control over the paper and writing editorials for same. Mr. David however acknowledges that he does not personally know the details of Mr. Titus' employment with the defendants. Mr. Mark's evidence is that he has known Mr. Titus for over 30 years while they worked together in the field of journalism. Mr. Mark testifies that he personally knows that Mr. Titus commenced working with the defendants' newspaper as an editor, because Mr. Titus told him this at the time he was hired by the defendants. He also testified that

during 2005 to 2012, Mr. Titus had overall control and management of the content of the paper, and he also wrote the weekly editorial. Mr. Mark further states that he believes Mr. Titus was a full-time time employee of the defendants on the basis that he was paid monthly, as there were no quota of articles or stories which Mr. Titus had to meet daily or weekly.

[16] In my estimation, Mr. Titus' witnesses did not provide any independent evidence to support their claim that Mr. Titus was an employee, outside of the fact that they knew that he was employed with the newspaper and paid monthly. Both witnesses seemed to be confirming what Mr. Titus said to them, and Mr. David acknowledges that he did not have personal details on the extent of Mr. Titus' relationship with the defendants. In looking at the factual matrix, the court also took note of the documentary evidence which Mr. Titus produced, which were principally emails and cheque stubs. These emails did not reference who they were sent to, only the person that sent them, and appeared to be redacted in some forms and forwarded from others in other respects.

[17] In closing submissions, counsel for Mr. Titus submits that it was not disputed that Mr. Titus was paid on a monthly basis, and that he was terminated. Counsel also submits that, as there was no written contract, there must have been an oral contract existing between the parties on the basis that Mr. Titus was paid monthly and employed on a full-time basis. Counsel challenged the evidence given by the defendants where they denied that Mr. Titus was a full-time employee, referencing the witness statements of Sandra Clarke and Anthony Bryan, while still asking the court to take judicial notice of the fact that the defendants did not defend the claim. With respect to counsel, the aspects of her arguments which reference the defendants' witness statements will not be considered, as the defendants' evidence was not tendered at trial.

[18] Although the courts have used different criteria for identifying a contract of employment (for example the 'control' test, 'organisation' test, 'economic reality'

test), the modern approach is to use a 'mixed' or 'multiple' test and consider a number of factors, while having regard to the arrangement as a whole⁸. Under the control test as pronounced in **Yewens v Noakes**⁹, the court examines whether the person employed is subjected to or controlled as to the manner in which the work is done. If there is a sufficient degree of control, the case law suggests that this lends to an employer/employee relationship¹⁰. Under what is termed the organization or integration test, utilizing Lord Denning's dicta in **Stevenson Jordan**, the question for the court is whether the work done is integral to the employer's business or is merely an accessory to it. If it is the former, then the person may be considered an employee, but the latter lends to that of independent contractor.

[19] In relation to the economic reality test, Lord Wright in **Montreal v Montreal Locomotive Works Ltd**¹¹ suggested a fourfold test to determine whether the relationship was that of employee or independent contractor by examining the various elements which constitute the relationship between the parties including (i) the degree of control, (ii) ownership of the tools; (iii) the chance of profit, and (iv) the risk of loss. In **Ready Mixed Concrete (South East) Ltd v Minister of Pensions and National Insurance**¹², MacKenna J suggested the use of the multifactorial test:

“a contract of service exists if these three conditions are fulfilled: (i) the servant agrees that in consideration of a wage or other remuneration, he will provide his own work and skill in the performance of some services for his master; (ii) he agrees, expressly or impliedly that in the performance of that service he will be subject to the other's control in a sufficient degree to make that other master; (iii) the other provisions of the contract are consistent with its being a contract of service.¹³”

⁸ Harvey on Industrial Relations and Employment Law.

⁹ (1880) 6 QBD 530.

¹⁰ *Montgomery v Johnson Underwood Ltd* [2001] IRLR 269.

¹¹ [1947] 1 DLR 161.

¹² [1968] 2 QB 497.

¹³ [1968] 2 QB 497 at 515.

In relation to the third stipulation, McKenna J continued:

“the third and negative condition is for my purpose an important one and I shall try with the help of five examples to explain what I mean by provisions inconsistent with the nature of a contract of service.

- (i) A contract obliges one party to build for the other, providing at his own expense the necessary plant and materials. This is not a contract of service, even though the builder may be obliged to use his own labour only and to accept a high degree of control: it is a building contract. It is not a contract to serve another for a wage, but a contract to produce a thing (or a result) for a price.
- (ii) A contract obliges one party to carry another's goods, providing at his own expense everything needed for performance. This is not a contract of service, even though the carrier may be obliged to drive the vehicle himself and to accept the other's control over his performance: it is a contract of carriage.
- (iii) A contract obliges a labourer to work for a builder, providing some simple tools, and to accept the builder's control. Notwithstanding the obligation to provide the tools, the contract is one of service. It is not a sufficiently important matter to affect the subsistence of the contract.
- (iv) A contract obliges one party to work for the other, accepting his control and to provide his own transport. This is still a contract of service. The obligation to provide his own transport does not affect the substance. Transport in this example is incidental to the main purposes of the contract. Transport in the second example was the essential part of the performance.
- (v) The same instrument provides that one party shall work for the other subject to the other's control and also that he shall sell him his land. The first part of the instrument is no less a contract of

service because the second part imposes obligations of a different kind.¹⁴

[20] In looking at the tests commonly utilized under employment law as stated in the case law above, I have found that Mr. Titus does not meet the conditions that indicate that he was an employee but that he was an independent contractor. Mr. Titus' evidence does not support a finding that he was paid monthly by the defendants as alleged. I carefully considered this aspect, given that there was no cross examination on this point, and the weight to be attached to Mr. Titus' evidence. Even though Mr. Titus claimed to have been employed with the defendants and receiving consistent monthly payments from the defendants for his work, only four cheque stubs in June 2010, October 2010, December, 2010 and March, 2011 were produced to evidence these monthly payments. I have not been able to conclude that these four payments were in fact made every single month as he has alleged. What is evident from what he has produced is that when he was paid, he received the full emoluments of his salary. Independent contractors are usually responsible for the payment of statutory deductions such as NIS and income tax, but employers are liable to pay these deductions for their employees¹⁵.

[21] Further even if these deductions were made, this issue would not make Mr. Titus an employee, as even in **O'Kelly v Trusthouse Forte plc**¹⁶, where these contributions were deducted from the salaries of casual banqueting staff, the court found that they were independent contractors based on the surrounding facts. Taken the totality of the circumstances, I do not find that Mr. Titus has made out that he was a full time monthly paid employee of the defendants on his own evidence. Further, the issue of the diminution of Mr. Titus' salary throughout the arrangement suggests that the defendants were quite casual in their dealings with Mr. Titus and

¹⁴ [1968] 2 QB 497 at 515.

¹⁵ Jamaica Public Service Co Ltd v Winston Barr et ors (1988) 25 JLR 326.

¹⁶ (1983) ICR 728.

lend further credence to the point that he was not considered to be an employee, but an independent contractor.

[22] If one examines the scope of work which Mr. Titus alleges that he did, it does not appear that the defendants exercised a sufficient degree of control over him in the manner in which his work was done. On his own evidence, Mr. Titus states that he was free to receive and edit stories as he wished without quarrel or input by the defendants prior to his termination. Mr. Titus' work also cannot be said to have been integral to the defendants' newspaper, as there were several persons like Mr. Titus who submitted work to the defendants' newspaper for publication. Mr. Mark even admitted that he had submitted articles to Mr. Titus for publication in the newspaper because he had a story to share.

[23] Even if the court were to accept that Mr. Titus was an editor of the newspaper, that finding in and of itself would not promote him into being an employee. It is clear from Mr. Titus' evidence that he utilized his own tools and mechanisms to obtain stories and information, without input from the defendants, to supply content to the defendants. No information was presented that Mr. Titus was required only to work for the defendants, had set working hours, enjoyed paid holiday or sick leave, made contributions to any pension or health plans¹⁷, or any other matters as in decided cases make this issue determinative.

[24] Mr. Titus has not met the requisite standard of proof to support the finding that he was an employee of the defendants throughout his arrangements with them from 2005 to 2012. As I have found that Mr. Titus was an independent contractor, the rest of his claim of wrongful dismissal and breach of duty also consequently fails. On the issue of costs, even as Mr. Titus was unsuccessful, the defendants did not defend their case, and no order for costs will be made.

IT IS HEREBY ORDERED THAT:-

1. The claimant's claim is dismissed;

¹⁷ Sagicor Insurance Company v Carter et al BB 2007 HC 19.

2. No order as to costs.

Raulston L.A. Glasgow

High Court Judge

BY THE COURT

REGISTRAR