

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

GRENADA

CLAIM NO. GDAHCV2023/0158 (formerly GDAHCV2019/0308)

BETWEEN:

[1] **MATTHEW LALGIE**
(deceased, represented by Karlene Bernard)

[2] **KARLENE BERNARD**

Claimants

AND

[1] **TONY GEORGE**
[2] **CLINTON GEORGE**
[3] **CALVIN BAKER**

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mrs. Deborah Mitchell for the Claimants

Miss Gerissa Rodney for the Defendants

2024: May 14, 23

JUDGMENT

[1] **ACTIE, J.:** The claimants, in a claim filed on 3rd July 2019, alleged that the defendants acted in breach of contract of the Grenada Airport Taxi Association Rules when they suspended the first claimant from working his turn on the Maurice Bishop International Airport.

Background facts

[2] The claimants are father and daughter respectively. The first claimant is one of the founding members of the Grenada Airport Taxi Association (hereafter referred to as “the Association”). The defendants are executive members of the Association with the first defendant as the President and the second defendant as the Treasurer of the Association.

- [3] Sometime in the year 2012, the first claimant's health became compromised, and he authorized the second claimant, his daughter, to work his turn at the Maurice Bishop International Airport. It is the claim that the first named claimant requested a name change of his surname from "Joseph" to "Lalgie" to reflect the name on his birth certificate.
- [4] On or about 6th December 2018, the second claimant was informed by the first defendant that the first claimant's right to work was suspended until a general meeting was held on 7th December 2018 to deal with the request for the name change.
- [5] The second claimant completed her shift at the Airport on that day despite the direction of the first defendant. On 17th December 2017, the second claimant was informed of a meeting to be held on 19th December 2017. At that meeting the second claimant was suspended from working for a period of ninety (90) days and was to resume work on 20th March 2019.
- [6] The defendants refused to reinstate the claimants after the expiration of the suspension, despite the claimants' repeated attempts to pay the monthly subscription fees to enable resumption of their trade. The claimants claim from this court, among other things, declarations; an order restraining the defendants from preventing the claimants from taking up the first claimant's turn without due process; damages, interest and costs.
- [7] The defendants deny that the Rules of the Association constitute a contract among its members. The defendants state that the second claimant was insubordinate to authority, and that disciplinary proceedings were initiated and conducted in accordance with the Association's Rules.
- [8] The defendants further state that the second claimant attended the disciplinary proceedings and was given an opportunity to be heard whereby she pleaded guilty. The defendants deny that the claimants suffered any loss or that any damage allegedly suffered was as a result of the action of the disciplinary committee.

Legal Analysis

Whether the Rules of the Association amount to a contract

[9] Counsel for the claimants' states that as a matter of law, the relations between a member and an unincorporated body are governed by a contract, usually expressed in governing rules. The claimants contend the document entitled Rules of the Grenada Airport Taxi Association (hereafter referred to as "the Rules") set out rights and obligations of members. On the other hand, the defendants aver that there is no contract between the members of the Association and the Association. Counsel for the defendants states that the Rules are unilateral, in that they are set by the organisation and members of the organisation are expected to be in compliance with the Rules..

[10] In the case of **Donald Bridgeman v HKZ INC**¹ the following was stated:

"The essential elements of a valid contract are trite. There must be an offer, an unconditional acceptance of that offer by another person and there must be consideration flowing from the promisor... To give rise to a binding agreement, the contracting parties must evince an intention to create legal relations and with each other... In *Keith Garvey v Richardo Richards*, Harris JA (at para 10) put it this way:

"It is well-settled that an agreement is not binding as a contract unless it shows an intention by the parties to create a legal relationship. Generally, three basic rules underpin the formation of a contract, namely, an agreement, an intention to enter into the contractual relationship and consideration. For a contract to be valid and enforceable all essential terms governing the relationship of the parties must be incorporated therein. The subject matter must be certain. There must be positive evidence that a contractual obligation, born out of an oral written agreement, is in existence."

[11] Counsel for the claimants relies on the text of **Chitty on Contracts**², wherein paragraphs 657 and 660 provide:

"657 Inasmuch as unincorporated associations are generally not legal persons, but mere collective names for all their members, a contract made by one member with some person or persons on behalf of the association

¹ GDAHCV2021/0011

² (vol 1., 25th edn, Sweet & Maxwell)

is a contract by a man with himself and others... if that contract is broken the injured member can sue and recover damages from those who have broken it...

660 The relations between the members of a club are governed by a contract between the members which may be express or implied and which is usually found in the rules of the club; membership of a club may also confer proprietary rights on members which will be of significance where the club is being dissolved..."

- [12] The said text referenced the case of **Lee v Showmen's Guild of Great Britain**³, wherein Lord Denning stated in reference to the rules relative to a trade union that:

"The jurisdiction of the committee of the Showmen's Guild is contained in a written set of rules to which all the members subscribe. This set of rules contains the contract between the members and is just as much subject to the jurisdiction of these courts as any other contract.

...

"The rules are the contract between the members. The committee cannot extend their jurisdiction by giving a wrong interpretation to the contract, no matter how honest they may be. They have only such jurisdiction as the contract on its true interpretation confers on them, not what they think it confers. The scope of their jurisdiction is a matter for the courts, and not for the parties, let alone for one of them."

- [13] The objects of the Rules include the promotion and protection of trade for its members. This involves the preparation of terms and conditions with labour organisations, the settlement of disputes, and representation of its members. Furthermore, reference is made in Rule 3(i) to members of the Association being prohibited from becoming members in any other Taxi Association or Taxi Union.

- [14] The defendants argue that there was no intention to create legal relations between the members of the Association and the Association. However, the defendants' argument is not supported by law.

- [15] **Halsbury's Laws of England**⁴ states that:

³ [1952] 2 QB 329

⁴ (5th edn., 2019) vol. 22, para 102

“In the case of agreements regulating business relations, it follows almost as a matter of course that the parties intend legal consequences to follow. Ordinarily, such an implication will be deduced from the existence of consideration; and this is particularly the case where a party signs an agreement knowing it to be such, even where that agreement is drafted by laymen.”

[16] In the extant case, though the Rules are not signed by the Association or its members, a member is required to apply for enrolment, pay an enrolment fee and Association fees, and is thereafter entered onto a Register of members. These circumstances, together with the relations between the members and the Association being of business, suggest that there is an intention to be legally bound by the terms of the Rules of the Association.

[17] The defendants further argue that there is no valuable consideration provided by either party to the contract. With respect to valuable consideration, the authors of **Halsbury’s Laws of England**⁵ state:

“Quite early, the courts decided that they would not audit the bargain made between the parties; the consideration necessary to support a promise need not be adequate but it must be of some value, albeit nominal.

Furthermore, the courts have rejected the argument that any act or promise, regardless of content, should be enforceable in the interests of morality; and have affirmed that a promisee can only enforce a promise if in return for it he gave something of value in the eyes of the law. Whilst there is a general insistence that consideration must be of some value, that is, sufficient, there seems to be no single theory which explains all the cases in which the consideration has been held to be insufficient.

...

It is not, however, clear whether the benefit or detriment required for valuable consideration must be factual or legal. The terms 'benefit' and 'detriment' may be used in two different senses: (1) any act, forbearance or promise which has economic value, that is where a benefit is in fact obtained, or a detriment is in fact suffered; or (2) an act, forbearance or promise the performance of which is not already legally due from the promisee...”

[18] It is the evidence that members are required to pay monetary dues to the Association for the provision of representation and protection of their trade. In

⁵ (5th edn., 2019) vol. 22, para 117

turn, the Association collects the said dues and represents its members when necessary. Accordingly, the arguments by the defendants are unfounded as the evidence of valuable consideration being paid by the members of the Association give rise to a binding contract with the Association. The court finds therefore that a contract existed between the first claimant and the Grenada Airport Taxi Association.

Whether it is an implied term of the contract that the defendants have an obligation to treat members equally and fairly

[19] The claimants contend that they have been treated unequally and unfairly, in contravention of an implied term of the Rules. Counsel for the claimants' states that the tenor of the Rules is one of equality of treatment. Counsel submits that on a reading of the Rules, a term requiring equality of treatment and fairness ought to be implied.

[20] Reliance is placed on **AG v Belize Telecom**⁶ wherein it was stated:

“in every case in which it is said that some provision ought to be implied in an instrument, the question for the court is whether such a provision would spell out in express words what the instrument, read against the relevant background, would reasonably be understood to mean.”

[21] A court of law is entitled to enforce implied terms which may logically arise from the formation of a contract. The authors in **Halsbury's Laws of England**⁷ state that:

“Even where a term may not be logically implied from the words used, the law admits of certain other terms to be implied as follows: (1) terms which the parties probably had in mind but did not express; (2) terms which the parties, whether or not they actually had them in mind, would probably have expressed if the question had been brought to their attention; and (3) terms which, whether or not the parties had them in mind or would have expressed them if they had foreseen the difficulty, are implied by the court because of the court's view of fairness or policy or in consequence of rules of law...”

⁶ [2009] UKPC 10

⁷ Halsbury's Laws of England 4th edn Vol. 9(1) para 778

[22] Further, **Halsbury's Laws of England** at para 167⁸ states that:

“Whether or not the broad approach referred to above is adopted, it is clear that terms are not lightly to be implied in fact. If a contract does not expressly provide for what is to happen when some event occurs, the most usual inference in such a case is that nothing is to happen and if the event has caused loss to one or other of the parties, the loss lies where it falls. In this respect there remains a fundamental difference between interpretation and the implication of terms in fact. The court has no discretion to create a new contract for the purpose of doing what seems to it just and reasonable (though no term will be implied in fact unless it was reasonable)...”.

[23] The objects of the Association include:

“(b) To assist in settling any dispute which may arise between the Association and any person or body of persons, whatsoever, or between its members.

...

(m) Generally to do such acts, matters and things as may appear to the Association to be conducive to be the promotion of its interest and welfare and the attainment of its aims and objects.”

[24] The Rules also make reference to a Disciplinary Committee, though it does not prescribe procedures for a disciplinary hearing. According to the Rules, the Disciplinary Committee is tasked with charging or suspending members. Given the objects of the Association and the responsibilities of the Disciplinary Committee, the members are required to be treated fairly and equally and not to be discriminated against.

[25] The unequal treatment complained of by the claimants is the request for the name change of the first claimant. It is the evidence that the first claimant's request was met without response from the Association. Nevertheless, on 6th December 2018, before the approval of the name change, the second claimant was informed that she was not entitled to operate on behalf of the first claimant until the name change was processed during an executive meeting in December 2018.

⁸ 4th edn., Vol. 22

- [26] The first claimant passed away since the filing of this claim and leave was granted to rely on his witness statement pursuant to the Evidence Act. The first claimant in his witness statement, stated that he knew of other members who had name alterations without any difficulty in transitioning with same, namely Denis Neptune and Ashford Strachan. However, no evidence was brought on behalf of these members.
- [27] In any event, Lord Denning in **Lee v Showmen's Guild of Great Britain**⁹ stated the following:
- “The courts have never allowed a master to dismiss a servant except in accordance with the terms of the contract between them. So also they cannot permit a domestic tribunal to deprive a member of his livelihood or to injure him in it, unless the contract, on its true construction, gives the tribunal power to do so.”
- [28] The defendants' defence did not admit or deny whether the direction to the second claimant not to work on the 6th December 2018 was related to the request for the name change as alleged by the claimants. It is the defendants pleaded case that the disciplinary proceedings were brought against the second claimant for insubordination to authority in accordance with Section 6 (a) (b) of the Rules.
- [29] However, the first defendant in his witness statement states that he informed the second claimant that she should not work her turn on the 6th December since she had worked the night before and would be depriving another member of his income if she worked on the said day.
- [30] The defendants assert that the second claimant was given notice of the meeting and an opportunity to be heard on the charges levelled against her to which she pleaded guilty and was suspended.
- [31] At the trial, counsel for the claimants took the preliminary point that the defendants defence failed to comply with Parts 10.5 and 10.7 of the CPR 2023 and relies on the authority of **The National Lotteries Authority v Jerome De Roche**¹⁰ where Ward JA said:

⁹ [1952] 2 QB 329

¹⁰ GDAHCVAP2021/0025

“[39] In short, therefore, the claimant must plead the essential facts that constitute its case, and those facts must be sufficient to establish a cause of action and to enable the other side to know the case it has to meet in sufficient detail. CPR 8.7A prohibits reliance on allegations or facts not pleaded unless the judge gives permission, or the parties agree. CPR 10.5 and 10.7 place similar strictures on the defendant by providing respectively that the defence must set out all the facts on which the defendant relies to dispute the claim and that a defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission or the parties agree.”

[32] Further, counsel for the claimants raised the point that it is only in his witness statement that the first defendant outlined previous purported infractions and reports against the second claimant which had not been pleaded in the defence.

[33] The purpose of witness statements was elucidated by Ward JA in **The National Lotteries Authority v Jerome De Roche**¹¹ at paragraph 40:

“The purpose of witness statements

[40] A witness statement constitutes the evidence to prove an allegation of fact made in the statement of claim. It provides the details or particulars of the issues that arise from the pleader’s case. Its contents must, on analysis, be capable of being properly regarded as particulars or details of allegations already made in the pleadings.

[41] Once the case is sufficiently pleaded, then a witness statement may furnish the particulars and details of the allegations or facts contained in the pleadings. This is expressed concisely by the learned Chief Justice Pereira in Cedar Valley Springs Homeowners Association Incorporated v Hyacinth Pestaina and others where her Ladyship stated:

‘[19] ...[I]t is now well settled that with the advent of witness statements that the strictures to which pleadings were required to conform in earlier pre-CPR times have now been ameliorated with the advent of [the]CPR, where, once the case is sufficiently pleaded to enable the party to know the case which he has to meet, fuller details may be fleshed out in the witness statements’. (Underlining supplied).”

[34] The defendants’ pleaded case is that the second claimant was insubordinate to her authority and disciplinary proceedings were initiated pursuant to Rule 6 (a)

¹¹ GDAHCVAP2021/0025

(b). The first defendant's attempt to particularize new reasons in his witness statements to justify the disciplinary action is untenable and not in keeping with established legal principles. Accordingly, the court does not place any reliance on paragraphs 8 to 13 of the first defendant's witness statement.

[35] Rule 6 (a) (b) under the Rubric "Insubordination" provides that any ordinary member found guilty of such offence to those in high authority shall either be fined or suspended for a period of three months.

[36] The defendants' defence is silent on the reasons that the second claimant was directed not to work on the 6th December. However, it is the second claimant's evidence that she attended the meeting held on the 19th December 2017. At that meeting she was asked whether she worked on the 6th December 2017 against the advice of the President. The court is of the view that the second claimant's defiance is an act of insubordination, which naturally engage the sanctions outline in Rule 6(b) by either a fine or suspension of three months. The court accepts that the Association acted within the ambit of its disciplinary powers.

[37] It is the claimants' claim that the second claimant was not given a fair hearing neither was she given an opportunity to defend herself or to know the charge that was laid against her. The second claimant states that she only became aware on arrival at the meeting that she was there to attend a trial regarding the fact that she proceeded to work on 6th December 2017. The second claimant asserts that she was denied an opportunity to speak, and that the disciplinary committee were in violation of the Rules when it suspended the second claimant without a proper hearing and charged her without investigation.

[38] The first defendant on the other hand states that the second claimant was given an opportunity to defend herself, and that she admitted that she disobeyed his instructions.

[39] Counsel for the claimants relies on **Ridge v Balwin & Ors**¹² to argue that it is a principle of law that where a decision which would adversely affect a person is

¹² (1963) 2 ALL ER 66

contemplated, that person should be notified of the complaint against them and be given an opportunity to be heard before an adverse decision is rendered. Counsel further argues that the persons whose rights are at risk of being adversely affected must be given the material particulars of the complaint so that they can adequately defend themselves against the charge.

[40] The author Rajendra Manlogan in **Judicial Review in the Commonwealth**¹³ states that:

“Judicial review will not lie against an administrative body engaged in a private act but only where the decision complained of was taken as part of the exercise by the public body of a public function. Typically, cases that involve breach of contract, either employment contracts or otherwise, are treated as being more appropriate for private law.”

[41] In the **Application of Tyrone Karran**¹⁴, Davis J. stated the following:

“I have therefore to consider whether and to what extent the Applicant’s complaints involve an element of public law sufficient to attract public law remedies, and in particular, whether certiorari would lie in this case or not... In my view this is not a case upon which the Court’s Supervisory functions can be focused. It is a case in which mere private contractual rights are involved, and I accordingly have no jurisdiction to deal with it under Order 53 of the Rules of the Supreme Court.”

[42] The claimants seek to rely on public law principles in an action for judicial review proceedings in relation to a fair hearing. **Ridge v Balwin & Ors**¹⁵ is a public law case which dealt with the police force and the dismissal of a chief constable. In the extant matter, the claimant is claiming, primarily, a breach of contract, which is a private law issue. The claimants cannot rely on public law principles in an action for judicial review proceedings which is not available in private law.

[43] The Rules are silent on the proper form of notice to be given to a member on a disciplinary charge or otherwise. However, it is the evidence that the second claimant was given notice at least two days before the meeting. The claimants did not lead any evidence as to whether the second claimant enquired about the

¹³ (1st edn., 2007, Routledge-Cavendish)

¹⁴ HCA No 1111 of 1987 (TT)

¹⁵ (1963) 2 ALL ER 66

nature or purpose of the meeting neither was there any evidence of objections raised at the meeting. It is the evidence that the second claimant pleaded guilty to offence without any challenge. The claimants claim for breach of entitlement to a fair hearing is without merit and accordingly fails on that ground.

[44] However, the court takes note of the fact that the Rules only provide for a suspension period of three months for insubordination. The defendants failed to provide reasons for not reinstating the claimants after the expiration of the three-month suspension. It is the second claimant's evidence that she made several attempts to pay the dues in order to recommence her turn, but the Association refused to accept those payments. The action of the Association in not reinstating the first claimant and by extension the second claimant without justification is in breach of the Rules and the contract with the claimants. The Association have only such jurisdiction as the contract on its true interpretation confers on them, not what they think it confers. The Association could not have unilaterally extended their jurisdiction. The scope of the Association's jurisdiction is limited to the Rules which govern the disciplinary committee and the members.

[45] The court notes that it was only after the filing of the extant claim that the Association in a consent agreement dated the 10th January 2020 decided to accept the outstanding fees from the claimants and allowed the second claimant to resume her father's work turn. The court applying the law to the facts finds that the defendants acted in breach of contract without any justification. Accordingly, the claimants are entitled to damages for the obvious loss suffered from 20th March 2019 to the date they were allowed to resume their trade on the airport.

Conclusion

[46] For the foregoing reasons, it is ordered and directed as follows:

- (i) Judgment is entered in favour of the claimants against the defendants for breach of contract.

- (ii) Damages to be assessed if not agreed within twenty-one (21) days of today's date.
- (iii) Failing settlement, the claimants shall file witness statements, submissions with authorities in support of the assessment.
- (iv) The defendants shall file and serve witness statements, submissions with authorities within fourteen (14) days of service by the claimants.
- (v) The assessment of damages shall be conducted by the Master upon application by the claimants on a date to be notified by the court office.
- (vi) Costs agreed in the sum of \$6,000.00 to be paid by the defendants to the claimants within sixty (60) days of today's date.

Agnes Actie
High Court Judge

By the Court

Registrar