

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
GRENADA
IN THE HIGH COURT OF JUSTICE
(CIVIL)**

GRENADA

CLAIM NO.: GDAHCV2016/0192 consolidated with GDAHCV2016/0234 and migrated on the portal as GDAHCV2023/0024

BETWEEN:

JOYCE WILLIAMS

Claimant

and

**MARGARET CHARLES
SEASONS FASHION LIMITED**

Defendants

CLAIM NO.: GDAHCV2016/0234

ANIKA SANDY

Claimant

and

**MARGARET CHARLES
SEASONS FASHION LIMITED**

Defendants

Oral Judgment
Full written ruling

Before:

The Hon. Mr. Justice Raulston L.A. Glasgow

High Court Judge

Appearances:

Ms. Danyish Harford for the Claimants

Mr. Jerry Edwin for the Defendants

2023:27th July

1. The court had previously, on 27th July 2023, issued an abridged ruling in this matter. Below is the full ruling in this claim.

Salient Facts

2. The 2 claimants in these consolidated claims are former employees of the 2nd defendant (Seasons Fashion). The claimants were tasked with handling the company's sales and cash. The first defendant (Ms. Charles) is the owner of the business conducted by Seasons Fashion. On 14th September 2023, the claimants reported for work at Seasons Fashion's downtown St. George's location. Shortly after arriving at work, they were summoned to a meeting with Ms. Charles in her office. The other employees were asked to put away their cell phones. The other employees were eventually given back their cell phones and told to leave the compound for the day. Seasons Fashion's doors were closed, and the closed sign was mounted.
3. The first claimant (Ms. Williams) was the first of the 2 claimants to meet Ms. Charles in her office. Upon entering the office, she met Ms. Charles and her daughter, Ms. Nadine Charles there. There was a police officer present there as well. His name is Dennis Charles.
4. A short account of Ms. Williams' encounter with the 3 persons present in the office is that Ms. Williams was accused of stealing goods and money from Seasons Fashion. The encounter of accusations and denials in the office ended with Ms. Williams being told to sign a document which stated that she misappropriated monies from Seasons Fashion and that she promised to repay the same.
5. Officer Dennis Charles and Ms. Nadine Charles then escorted Ms. Williams to Bank of Nova Scotia (now Republic Bank (Grenada) Ltd.) located in St. George's. Officer Charles left the bank at some point since he asserted that he needed to return to Season Fashion "to deal" with the 2nd claimant (Ms. Sandy). Ms. Nadine Charles remained with Ms. Williams while she visited 2 banks where she withdrew money which she gave to Ms. Nadine Charles further to the demand that she repays Seasons Fashion the money that she was accused of misappropriating.
6. Ms. Williams then returned to Seasons Fashion with Ms. Nadine Charles where she was told to collect her personal items and leave the compound. Her services with Seasons Fashion had been terminated.
7. Ms. Sandy's journey to trial in this matter took a fairly similar route to Ms. Williams'. By the 14th September 2015, Ms. Sandy had been employed with Seasons Fashion for about 7 years. In February 2015 she became pregnant. At first all went well with the pregnancy but then she started to become very unwell. By 31st August 2015, she submitted a resignation letter to Seasons Fashion which was to take effect on 31st September 2015. However, before the resignation took effect, she was summoned to the 14th September 2015 meeting with Ms. Charles.
8. Like Ms. Williams, Ms. Sandy met with Ms. Charles, Ms. Nadine Charles and Officer Dennis Charles in the office. Just as occurred in the meeting with Ms. Williams', Ms. Sandy recalls being

accused of stealing from Seasons Fashion and threats made by the officer and the 2 ladies present. Ms. Sandy recounts the same experience of being escorted to her bank where she claims that Ms. Nadine Charles demanded that she withdrew all the money that was in her bank account. She withdrew all but \$100.00 from her bank account. Ms. Nadine Charles then accompanied her back to Seasons Fashion where she handed over the money that she withdrew from her bank account. She was told to sign the acknowledgement that she stole from Seasons Fashion and was thereafter asked to leave the premises.

9. Ms. Charles has a different description of how we got to today's hearing. The short version of her case is that at some point she suspected that the 2 former employees were misappropriating goods and money from Seasons Fashion. This was due to shortfalls "in cash receipts and profits." Ms. Charles claims that she had grounds to believe that on at least 2 occasions, the 2 former employees handed out store merchandise without accounting for the sale of those goods. She claims that Seasons Fashion did not have a credit system so no goods should have been given out without receipt of cash at the same time.
10. Ms. Charles' case is that due to discrepancies in the cash flows, she issued warnings to both employees who were responsible for collecting cash. She states that she had reasonable grounds to believe that they were both stealing from Seasons Fashion. She further claims that because she cared deeply for the claimants, she did not involve the police when her fears were confirmed.
11. Ms. Charles explains that because of her deep affection for the claimants, she sought "to resolve the matter" by convening the 14th September 2015 meeting. It is in this context that she explains Officer Dennis Charles' presence at the meeting. Ms. Charles gives 2 reasons for Officer Denis Charles' presence at the meeting. Firstly, she says, the officer was there as an independent witness, and that this was explained to the claimants. Secondly, the officer was there because he was known to all of the persons present at the meeting. He was unarmed and in plain clothes.
12. Ms. Charles gives a different description of what transpired at the 14th September 2015 meeting. In short, she describes the meeting as cordial and one at which the claimants both voluntarily acknowledged their alleged misdeeds. Ms. Charles claims that the claimants voluntarily signed the acknowledgment of their alleged misdeeds and that they willingly agreed to reimburse Seasons Fashion.

Trial

13. At this morning's trial, the court pointed out to both counsel that the central issue in this case is whether the defendants had any factual or legal basis on which to terminate the claimants. Secondly, what if any, was the effect of the reimbursement agreements?
14. For the defendants' part, they wish to rely on the witness statements of Ms. Charles, Natasha Cyrus, and Cindy Welsh in which those witnesses assert, orally, their knowledge of the alleged theft. The parties acknowledge that the defendants have not provided any documentary evidence to show shortfalls in cash or goods or any other documented material that demonstrates the

alleged thefts. While not fatal, documented evidence of the alleged stealing would have gone a long way in resolving the main contestation before the court.

15. Ms. Charles' witness statement does not take matters very far. She asserts that she noted a shortfall in cash. This is an oral statement unsupported by any documentary material. Without more this statement cannot be accepted in furtherance of the task at hand, that is, ascertaining whether the claimants stole from Seasons Fashion. Ms. Charles also states that she discovered that the claimants gave out store merchandise without accounting for the sale value. This statement is nowhere supported by any facts and is, again, a mere assertion without proof. Compounding matters is Ms. Charles' statement in her witness statement that she became suspicious of the claimants and kept them under surveillance. During this time of observation, Ms. Charles contends that she uncovered cash discrepancies. No material has been placed before the court to underpin or support the allegations of shortfall or discrepancies or what was the nature of the surveillance and what, if any, evidence, was unearthed by the surveillance. Ms. Charles further reiterates in her witness statement that she had reasonable grounds to believe that both claimants were stealing goods and money from Seasons Fashion. Again, no material has been placed before the court to show what if any steps Ms. Charles took to verify her suspicions of theft and what if any, evidence of theft was produced by that enquiry. Interestingly, Ms. Charles' witness statement adverts to the fact that Seasons Fashion was equipped with video cameras. Ms. Charles was prepared to produce a video tape of her meeting with the claimants on the 14th September 2015. I find it quite curious that none of this sort of evidence was produced to support the claims that the employees had stolen from the business. Equally, no accounting books or other information was produced to show when monies or goods may have been stolen and/or how much was stolen.
16. Ms. Charles' two supporting witnesses gave witness statements but did not appear at trial. These witnesses were obliged to attend to give their evidence. CPR 29.8 applies. CPR 29.8 reads –
 - “29.8 (1) If a party –
 - (a) has served a witness statement or summary; and
 - (b) wishes to rely on the evidence of that witness;that party must call the witness to give evidence unless the court orders otherwise.
 - (2) If a party –
 - (a) has served a witness statement or summary; and
 - (b) does not intend to call that witness at the trial;that party must give notice to that effect to the other parties not less than 28 days before the trial.”
17. In any event, even if permission was sought and obtained to rely on the evidence of these witnesses without calling them, it is not clear how much further their evidence would have taken matters. This is since they were both employees of Seasons Fashion at the time of making these witness statements. They were clearly self-interested witnesses who cannot be seen as being impartial. Additionally, they intended to say that they saw one or other of the claimants take money out of the register and put it in their pocket. They also asserted that either or both claimants gave goods to customers who did not immediately pay for receiving the same. None of these assertions assist the defendants. The witnesses can only say what they saw and none of what they say helps

to establish that the claimants in any shape or fashion converted any money or goods belonging to the defendants to the claimants' own use or benefit.

18. All in all, there is little material before this court that demonstrates on a balance of probabilities that the claimants stole from their former place of employment. I must add a caution that this finding is not a vindication of the claimants' assertion that they did not embezzle Seasons Fashion funds or steal any of its goods. Rather, as I have stated before, the defendants have not shown any satisfactory basis for the claim that the claimants did steal from the defendants.
19. What then is to be made of the fact that the claimants signed documents to say that they stole from their employers? Were the circumstances under which they came to sign those documents any different, this court would have been more than comforted in finding that the defendants' assertions along with the signed acknowledgment of the claimants more than sufficed to lead to a conclusion that, on a balance of probabilities, the claimants did steal from their former place of employment and that their services were, as a consequence, properly terminated. However, this court has serious reservations about the way that the claimants came to sign the purported acknowledgments of theft. I take Ms. Charles' contentions as true for these purposes and even on this assumption I find that my disquiet remains about the way the claimants came to sign the acknowledgments on 14th September 2015.
20. Ms. Charles would have this court believe that Officer Dennis Charles was called into the meeting as a person known to all gathered there merely as an independent witness "having regard to what was to be raised at the meeting." This can hardly be a credible account of Officer Dennis Charles' presence at the meeting. If Ms. Charles wished to merely have an independent witness to her discourse with her employees, I believe that she could have called on any number of people to stand in that role. Rather, she chose to seek the intervention and involvement of an officer of the law. It goes without saying that the officer's presence alone would have created an environment of intimidation and/or coercion. Compounding this fact and if only to further underscore the point being made, Officer Dennis Charles was there to witness Ms. Charles confront her employees about allegations made against them about committing the serious criminal offence of theft. The environment created by Officer Dennis Charles' presence, in view of the matters at hand on that fateful day, does not suggest an environment of independence, objectivity, impartiality or neutrality. Ms. Charles alludes in her witness statement to the fact that the claimants were asked if they were comfortable with Officer Dennis Charles' presence and that they said yes. I am hardly surprised that they did say yes. The circumstances under which they were summoned commanded no less a response.
21. All in all, I am not satisfied that the claimants gave these acknowledgments of their own free will. As such I set aside the acknowledgments on the grounds that they were obtained in oppressive, coercive and/or less than impartial circumstances.
22. The conclusion of this matter is therefore that the claimants are successful in their claim. They must be compensated in damages for any loss they have suffered and can prove.
23. For Ms. Williams, damages are awarded as follows –

- (1) Loss of termination benefits for the 10 years that she was employed by Seasons Fashion – \$3,330.00.
- (2) Payment for termination in lieu of notice – \$1300.00.
- (3) Reimbursement of the sums paid to the defendants in furtherance of the acknowledgments – 22,815.00.
- (4) Payment in lieu of vacation leave foregone for 27 weeks – There has been no information placed before the court as to a contractual or statutory obligation to payment of money in lieu of leave. However, the parties agreed, and the court does share the view, that Ms. Williams was precluded from taking her vacation leave or making arrangements for taking the same by reason of her dismissal from the employ of the 2nd defendant¹. She must be compensated for the loss of this contractual entitlement. A period of 27 weeks amounts to 6 months, 3 weeks. Ms. Williams earned \$1300.00 per month. 27 weeks multiplied by \$1300.00 per month amounts to an award of \$8775.00.
- (5) \$300.00 for lawyer's letter - \$300.00

24. For Ms. Sandy, damages are awarded as follows –

- (1) Reimbursement of the sums paid to the defendants in furtherance of the acknowledgments – \$2380.00.
- (2) Payment in lieu of notice at 2 weeks' notice - \$550.00;

25. The parties have agreed that the defendants must pay the claimant's costs in the sum of \$6500.00.

IT IS HEREBY ORDERED THAT:

1. The claimants are granted a declaration that the agreements or acknowledgments signed between the claimants and the defendants on 14th September 2015 are null and void. The acknowledgments are therefore set aside.
2. The claimant, Joyce Williams is awarded –
 - (1) Loss of termination benefits for the ten years that she was employed – \$3,330.00.
 - (2) Payment for termination in lieu of notice – \$1300.00.
 - (3) Reimbursement of the sums paid to the defendants in furtherance of the acknowledgments – 22,815.00.
 - (4) Payment in lieu of leave foregone for 27 weeks –\$8775.00.
 - (5) \$300.00 for lawyer's letter - \$300.00
 - (6) Costs of \$3250.00
 - (7) Total damages plus costs of \$39,740.00 at an interest rate of 6 percent per annum from today's date until payment.

¹ Sonia Johnny v AG SLUHCVP 2017/0036

3. The claimant, Anika Sandy is awarded –
- (1) Reimbursement of the sums paid to the defendants in furtherance of the acknowledgments – \$2380.00.
 - (2) Payment in lieu of notice at 2 weeks' notice - \$550.00
 - (3) Costs of 3250.00
 - (4) Total damages plus costs of \$6180.00
4. The claimants have carriage of this order.

Raulston L.A. Glasgow
High Court Judge

By the Court

Registrar