

THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SLUHCV2018/0157

BETWEEN:

ASTRIDE ST. CATHERINE

Claimant

and

SAINT LUCIA NATIONAL HOUSING CORPORATION

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Ms. Trudy O. Glasgow for the Claimant

Mrs. Petra Nelson for the Defendant

2022: February 8;
March 29.

RULING

Preliminary Issue-Whether claim can be entertained given the provisions of section 455 of the Labour Act

- [1] **CENAC-PHULGENCE J:** The claimant, Ms. Astride St. Catherine ("Ms. St. Catherine") was an employee of the defendant, Saint Lucia Housing Corporation ("SLHC") for twenty four (24) years until 24th January 2018 when she alleges she was constructively dismissed. As a result, Ms. St. Catherine filed a claim on 28th March 2018 against SLHC seeking general damages arising from constructive dismissal and breach of contract, vacation pay of \$6,227.77, gratuity of \$175,156.12, interest, and costs. An amended claim and statement of claim were filed on 10th April 2018; however there was no change to the relief sought.

- [2] SLHC responded to the claim and admitted that the sum claimed as gratuity being \$175,156.12 was owed to Ms. St. Catherine. SLHC filed its defence on 30th April 2018 and categorically denied that Ms. St. Catherine was constructively dismissed as alleged and averred that she had resigned of her own volition. SLHC again reiterated that it had acknowledged in writing that Ms. St. Catherine was entitled to the gratuity and any vacation pay which she was entitled to at the time of her resignation.
- [3] The matter was referred to mediation by order dated 6th June 2018. The mediation order was extended on three occasions, the last being on 14th January 2019. On 16th April 2019, case management directions were given for among other things, the filing of standard disclosure by 15th May 2019 and witness statements by 15th June 2019.
- [4] Ms. St. Catherine and SLHC filed standard disclosure on 15th May 2019 and 6th June 2019 respectively. Both parties did not file witness statements by the date ordered. On 14th June 2019, Ms. St. Catherine filed an application for extension of time to file her witness statements and relief from sanctions. One of the reasons given was that counsel for SLHC had indicated that the matter should go to the Labour Tribunal and suggested that the matter be stayed to proceed in that manner to which counsel for the claimant had agreed. An application to stay the proceedings was filed on 14th June 2019 as well; one of the grounds being that the matter should be heard before the Labour Commissioner in accordance with sections 410 and 455 of the **Labour Act**¹ ("the Act") to save court time and costs.
- [5] By Order dated 8th July 2019, the Court granted a stay of the proceedings pending the outcome of the matter being heard pursuant to the provisions of the Act. Ms. St. Catherine filed an application to the Labour Tribunal on 2nd August 2019 seeking redress for constructive dismissal.

¹ Cap 16.04, Revised Laws of Saint Lucia.

- [6] Despite the stay, SLHC filed an application for extension of time to file witness statements and for relief from sanctions on 11th July 2019 and responded to the applications which had been filed by Ms. St. Catherine on 14th June 2019. SLHC exhibited a letter dated 17th May 2019 written to counsel for Ms. St. Catherine in which SLHC's counsel pointed out that Ms. St. Catherine had failed to exhaust the internal remedies provided by the Act in sections 410 and 455 prior to filing of her claim and therefore the claim ought to be withdrawn or a stay applied for failing which SLHC would make application for the claim to be dismissed.
- [7] The matter next came up for hearing on 11th November 2019 and was adjourned to 17th March 2020 as the hearing before the Labour Tribunal was scheduled for December 2019. Due to Covid-19 pandemic, the matter was re-scheduled and was next heard on 10th November 2020 when the Court was advised that the matter before the Labour Tribunal had to be re-scheduled. The matter was adjourned to 13th April 2021 for further report. When the matter came on for hearing on the 28th September 2021, counsel for the claimant sought another adjournment whilst counsel for the defendant indicated that the matter had been placed before the Labour Tribunal and a decision had been given dated 28th April 2021.
- [8] The Court ordered that a copy of the decision dated 28th April 2021 be filed and adjourned the matter to 16th November 2021 to allow the parties to have discussions or to address the court on the claim given section 455 of the Act. The decision of the Labour Tribunal was filed 5th October 2021. That decision concerned the question whether the Tribunal had jurisdiction to hear the matter. The Tribunal concluded that the complaint did not fall within the provisions which allowed for matters to be made directly to the Tribunal and therefore ought to have been made to the Labour Commissioner for resolution. The Tribunal concluded that it would refer all documents filed to the Labour Commissioner forthwith. Nothing has happened since then.
- [9] Having reviewed the decision of the Labour Tribunal and heard both counsel, it was clear to me that the effect of section 455 was still an issue between the

parties and I gave directions for the filing of submissions on the preliminary issue of whether the claim can be entertained by the Court in light of section 455 of the Act.

[10] SLHC filed submissions on 17th December 2021. SLHC contends that Ms. St. Catherine's claim is for constructive dismissal and falls within the scope of the Act.

[11] SLHC argues that Ms. St. Catherine's claim falls squarely within the ambit of the Act and therefore all procedures under the Act ought to have been complied with. SLHC argues further that Ms. St. Catherine's claim is not maintainable because she had not exhausted the internal remedies as required by section 455 of the Act before approaching the court in respect of her claim for constructive dismissal.

[12] Ms. St. Catherine filed her submissions on 14th January 2022 after the time which the Court directed. The gravamen of the submissions is that at no time during the two-year period after the claim was filed did SLHC's counsel challenge the jurisdiction. Counsel for Ms. St. Catherine cited section 459 of the Act but did not expand or provide any analysis as to this section's applicability to the case at bar.

[13] Counsel for Ms. St. Catherine refers to the case of **Josandre Bain v The Incorporated Trustees of the Westmorland School**² and argues that SLHC's conduct which eventually led to Ms. St. Catherine's constructive dismissal was a breach of her contract of employment which existed before her dismissal.

[14] Counsel further argues that Ms. St. Catherine's claim ought to be heard either by the Labour Tribunal or the Court. Ms. St. Catherine was forced to resign due to the conduct of the SLHC which damaged the implied term of trust and confidence in the employment contract and constituted a breach of contract.

² GDAHCV2020/0187, delivered 27th January 2021, unreported.

Ms. St. Catherine therefore requests that she be allowed to pursue her claim for damages arising from constructive dismissal.

Analysis

- [15] It is important to look at Ms. St. Catherine's claim. It is a claim for damages arising from constructive dismissal and breach of contract. The particulars of breach outlined in Ms. St. Catherine's claim are: (i) that SLHC breached the express and implied terms of the contractual employment agreement; (ii) SLHC failed to provide Ms. St. Catherine with a positive working environment which made Ms. Catherine feel disrespected in her capacity as Head of Department and (iii) due to the breach of the contractual agreement, Ms. St. Catherine suffered significant loss.
- [16] Constructive dismissal is the label applied to the claim which is based on a breach of contract by the employer. It is where an employee resigns in response to a breach of contract by their employer. In essence, it occurs where an employer treats an employee so badly that the employment relationship is irretrievably broken, in other words, the employer breaches the implied terms of trust and confidence in the employment contract and that entitles the employee to resign and treat themselves as having been constructively dismissed.
- [17] Section 132 of the Act provides as follows:
- “(1) An employee is entitled to terminate the contract of employment without notice or with less notice than that to which the employer is entitled by any statutory provision or contractual term on grounds of constructive dismissal where the employer's conduct has made it unreasonable to expect the employee to continue the employment relationship.
 - (2) Where the contract of employment is terminated by the employee under subsection (1), the employee shall be deemed to have been unfairly dismissed by the employer and shall be entitled to compensation in accordance with this Act.”
- [18] This section deems an employee as being unfairly dismissed where there is termination of a contract by an employee under subsection (1). The authors of

Commonwealth Caribbean Employment Law³ posit that the deeming of the employee's action as being akin to unfair dismissal is an attempt by the legislature to provide greater protection than that available at common law. I do not see that section 132 of the Act creates a statutory cause of action of constructive dismissal as the Act does with unfair dismissal. Instead, it creates another avenue by which an employee can seek even greater redress than the common law provides, where they are constructively dismissed. This does not however take away from the common law action which exists for wrongful dismissal arising from constructive dismissal. This is supported by the case of **Josandre Bain** referred to by counsel for Ms. St. Catherine.

[18] In the **Josandre Bain** case referred to by counsel for Ms. St. Catherine, the claimant filed a claim for declaratory reliefs that the defendant acted in breach of the contractually agreed disciplinary procedure and implied duty of trust and confidence during the period of employment, and the statutory notice in the **Employment Act** and sought damages for breach of contract of employment, aggravated damages and other consequential relief. The defendant filed an application to strike out the claim contending that the claimant's claim was for constructive dismissal within the meaning of sections 76 and 80(1) of the **Employment Act** and accordingly deemed to be treated as a claim for unfair dismissal for which the court lacked jurisdiction. The claimant, in answer, argued that the claim was for breach of contract of employment which is a common law cause of action which the court has jurisdiction to determine.

[19] The court, in that case, rightly pointed out it is settled law that an employee's remedy for unfair dismissal whether actual or constructive is a statutory remedy for which the court lacks jurisdiction. However, the court concluded relying on the House of Lords decision of **Eastwood and another v Magnox Electric PLC; Mc Cabe v Cornwall County Council and another**,⁴ that the fact that the employee is unfairly dismissed will not preclude a claim for damages on the basis for example that an employer's poor treatment in suspending the employee amounted to pre-dismissal breach of contract. In

³Corthesy, Natalie and Harris-Roper, Carla-Anne, Routledge, 2014, page 169.

⁴ [2005] 1 AC 503.

such a case, an employee has a cause of action for breach of contract on events leading up to the dismissal. In cases where, for example, the employer has breached the implied term of trust and confidence before the dismissal, a common law claim can be brought as the implied term does not apply to the actual act of dismissal. I note though that the Grenada legislation does not contain a section similar to section 455 of the Act.

[20] I agree that Ms. St. Catherine had open to her the option of pursuing a complaint for unfair dismissal before the Labour Commissioner as provided for in section 132(2). It is clear that unfair dismissal is a creature of statute and therefore the Court has no jurisdiction to entertain such a claim. The question therefore is whether the mechanisms under the Act had to be pursued prior to Ms. St. Catherine being able to file her claim in the High Court for wrongful dismissal.

[21] Section 455 of the Act is titled "Complaint to court after internal remedies exhausted" and states:

"Except where expressly exempted in this Act, an application for redress of any alleged contravention of this Act may be made to a court only after a complaint has been made to the Labour Commissioner or to the Tribunal or to any other tribunal established for the purposes of dispute resolution under this Act and has been exhausted."

[22] By virtue of section 410 of the Act complaints are to be made to the Labour Commissioner and the Labour Commissioner may then refer a matter to the Tribunal for determination. This is the procedure except where provision is made under the Act for a complaint to be made directly to the Tribunal. Per section 432 of the Act, the Labour Tribunal has power to hear complaints referred to it by the Labour Commissioner and by section 416, the power to review the decision of the Labour Commissioner within six weeks of a determination. If the Labour Commissioner does not determine the matter within six weeks from the date of receipt of a complaint, the matter shall be referred to the Tribunal for determination. The above gives an idea of the internal structure for claiming redress pursuant to the Act.

- [23] It therefore means that before an individual can file a matter in the court for redress for alleged constructive dismissal, that individual would first have to show that he or she has exhausted all the internal remedies provided by the Act, whether it be by way of complaint to the Labour Commissioner or Labour Tribunal as the case may require.
- [24] Section 455 of the Act does not in my view preclude a claim such as that brought by Ms. St. Catherine being made to the court, but it stipulates a pre-condition. In this case, there is no pleading that this pre-condition was met prior to the filing of the claim. That is a critical component of the pleadings because it establishes the Court's jurisdiction to deal with the claim at the time of filing.
- [25] I refer to the case of **Chester Humphrey et al v The Grenada Breweries Ltd.**⁵ where the claimants would have presented themselves for work between the 19th to 20th December 2011 after a strike action but were locked out and only allowed back to work on 20th February 2012. As a result, the claimants filed a statement of claim seeking declarations from the court with respect to the defendant's refusal to reinstate the employees when they presented themselves for work on 19th December 2011 following the strike action and the refusal to pay the employees.
- [26] In this case, the defendant, in submissions, filed one day before the scheduled two-day trial challenged the court's jurisdiction to hear the claim contending that the claimants were seeking to have the court adjudicate on a trade dispute rather than utilizing the mechanism for resolution of disputes in the Collective Bargaining Agreement.
- [27] The Court in **Chester Humpheys** noted that the challenge to the court's jurisdiction which had been taken six (6) years after the filing of the claim, filing of witness statements and voluminous trial bundles and the court having scheduled the matter for trial for two days, could have been taken at a much

⁵ GDAHCV2014/01267, delivered 8th December 2020, unreported.

earlier point. This was certainly not in keeping with the overriding objective of CPR 2000 in saving time, resources and expenses.

[28] Notwithstanding that observation, the Court concluded at paragraphs [20] and [21] as follows:

“[20] The dispute resolution mechanisms of the Labour Relations Act under the agreed Collective Bargaining Agreement have been given statutory protection under the Labour Code and are legally enforceable. The parties are bound by their agreement. It would be incongruous and also render nugatory the Collective Bargaining Agreement, if an aggrieved party is allowed to bypass the entire grievance structure of the Collective Bargaining Agreement and institute proceedings in this Court before employing the mechanisms that they agreed.

[21] The issues relating to nonpayment of salaries are incidental to resolution of disputes under the Collective Bargaining Agreement. The parties to the dispute are to follow and exhaust the agreed grievance mechanisms before coming to the court. To hold otherwise would defeat the very object of the Labour Code. In the circumstances, the Court will decline to exercise jurisdiction at this stage.” (my emphasis)

[29] Whilst Chester Humphreys did not deal with a section similar to section 455 of the Act, the issue was similar in that the Collective Bargaining Agreement which contained the grievance mechanisms given statutory protection by the Labour Code of Grenada had to be followed and exhausted before the court could be approached.

[30] Were this not the case, a party would be free to choose where he brings his matter which clearly could not have been the legislative intention. The scheme of the **Labour Act** would be rendered nugatory if a party could bypass the provisions of the **Labour Act** and simply approach the Court.

[31] It is important to clarify that section 455 does not in any way speak to the Court’s jurisdiction. In **Tony Kisna v Coconut Bay Management Limited and another; Bertrand Stephen v Coconut Bay Management Limited and another; Dennis Boitnott v Coconut Bay Management Limited and**

another,⁶ Smith J expressed it in these terms at paragraph 10 and I agree with his reasoning:

“... I do not think that section 455 of the Code transfers or removes the original jurisdiction of the Court. It is similar to the requirement in judicial review proceedings that statutory remedies first be exhausted. **Such provisions are in the nature of administrative mechanisms designed to avoid burdening the Court with claims that can be dealt with through less contentious and costly avenues. The Court, however, at all times retains its jurisdiction, in appropriate cases where the statutory remedy might not be adequate, to hear and determine a matter notwithstanding the existence of a prescribed statutory remedy.**” (my emphasis)

- [32] Nothing in the language of section 455 of the Act, suggests that a person alleging a breach of the Act may, at his option, choose whether to make a complaint to the Labour Commissioner or proceed to the Court.
- [33] I think section 132 settles the matter as it indicates that where the contract of employment is terminated by an employee pursuant to that section, the employee shall be deemed to have been unfairly dismissed and compensation is to be in accordance with the Act. Provision is therefore made to deal with constructive dismissal under the Act by way of unfair dismissal and it is not open to a complainant to simply bypass the provisions of the Act and seek redress in the High Court without exploring the avenues under the Act.
- [34] Unfortunately for Ms. St. Catherine, the conclusion has to be that the Court must decline to exercise its jurisdiction and to entertain her claim as she failed to plead that she had exhausted all the internal remedies available under the Act. Attempting to do so after the fact cannot substitute for the clear requirement of section 455 to exhaust all the internal remedies before approaching a court. Section 455 does not leave any room for the Court to exercise its discretion and in this case that can only lead to the conclusion that Ms. St. Catherine’s claim for general damages arising from constructive dismissal must be dismissed.

⁶SLUHCv2018/0192; SLUHCv2018/0193; SLUHCv2018/0194 delivered , unreported.

[35] I wish to align myself with the sentiments expressed by the Court in **Chester Humphreys** in relation to the point at which this issue of section 455 has been formally raised. It does not appear that this was raised in the defence or at case management as far as the record shows. However, SLHC does indicate and counsel for the claimant acknowledges that counsel for SLHC did write in May 2019 raising the matter. This point is being dealt with almost four (4) years later after case management directions had been given and several adjournments granted.

[36] I have also considered that the claimant, although given time to engage the remedies under the Act, has still failed to do so in the correct way. This is certainly not an example of the efficient management of cases in keeping with the overriding objective. The Labour Tribunal has indicated that it would refer the matter to the Labour Commissioner, and I make no comment as to the correctness or otherwise of their decision, but it was always open to the claimant to make a complaint to the Labour Commissioner herself as the Act requires under sections 404-418 even at that point in April 2021. In the circumstances, I am of the view that there should be no order of prescribed costs on the claim but that each party, Ms. St. Catherine and SLHC should each bear their own costs.

[37] On review of the pleadings, I note that SLHC in their acknowledgement of service admitted the sums claimed as gratuity pay in the sum of \$176,156.12 and at paragraph 25 of the defence, had acknowledged in writing that Ms. St. Catherine was entitled to any vacation pay which had accrued up to the date of her resignation. I note though that there was no judgment entered for any of those amounts. There was some indication by counsel for SLHC that the sums acknowledged to be due to the claimant were paid.

[38] Whilst I have indicated that the Court would decline to exercise its jurisdiction, given the fact of admission by SLHC of the amounts claimed by Ms. St. Catherine as gratuity and vacation pay, the Court thinks it only fair and just that Ms. St. Catherine should have judgment for these amounts or the balance due

if payments had already been made towards those amounts and the claim for general damages for constructive dismissal be dismissed.

[39] Prior to the delivery of this decision, I would have engaged counsel for the respective parties and enquired about the status of the gratuity and vacation leave payments. I ordered counsel to file a joint statement confirming the amount, if any that had been paid to Ms. St. Catherine. This statement was filed on 17th March 2022 and confirmed that indeed the amounts which had been admitted by SLHC as being due to Ms. St. Catherine were paid to her. Those payments were: (i) vacation pay of \$6,004.76 paid by Bank of Saint Lucia (BOSL) Cheque No. 011724 dated 21st August 2018 and (ii) gratuity of \$176,745.87 paid by Bank of Saint Lucia (BOSL) Cheque No. 000089 dated 30th November 2018. I was therefore satisfied that Ms. St. Catherine had received the sums admitted by SLHC as being due to her.

Conclusion

[40] In light of the foregoing, I make the following order:

- (1) The claim for general damages for constructive dismissal is dismissed.
- (2) Each party shall bear their own costs on the claim.

**Kimberly Cenac-Phulgence
High Court Judge**

By The Court

Registrar