

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

**GRENADA
CLAIM NO: GDAHCV2014/0267**

BETWEEN

Chester Humphrey
Bert Paterson

Claimants

And

The Grenada Breweries Ltd

Defendant

Before:

The Hon. Mde Justice Agnes Actie

Appearances:

Mr. Ruggles Ferguson for the Claimants

Mr. Dickon Mitchell with Mrs Crystal Braveboy Chetram for the Defendant

2020: December 2nd, 8th

JUDGMENT

- [1] **ACTIE, J:** The claimants as the President General and General Secretary, respectively, of the Grenada Technical and Allied Workers Union (TAWU") were appointed by Court to represent Ninety Three (93) persons who are current and past employees of the defendant company, Grenada Breweries Limited.
- [2] The employees presented themselves for work between the 19th to 20th December 2011 after a strike action but were locked out. Upon further negotiations and interventions, the employees were allowed back to work on the 20th February 2012.

- [3] On 8th July 2014, 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. The claimants seek the payment of all salaries and other benefits due to the employees from December 19, 2011 to February 22, 2012.
- [4] In its filed defence, the defendant states that the claimants' claim discloses no cause of action and the reliefs claimed without pleading a cause of action are insufficient to be found and maintain in law. The defendant also filed a counterclaim for damages for breach of contract of employment for the unlawful strike action of the employees.
- [5] The matter was scheduled for trial for two days on November 17th – 18th 2020. The defendant, in submissions filed on 16th November 2020 challenges the court's jurisdiction to hear the claim. The defendant avers that the parties are seeking to have the court adjudicate on a trade dispute rather than utilizing the mechanism for resolution of disputes in the Collective Bargaining Agreement. The defendant asserts that the parties are bound by the terms of the Collective Bargaining Agreement for the period 1st June 2011 to 31st May 2013.
- [6] Counsel for defendant, Mr. Dickon Mitchell, submits that the Collective Bargaining Agreement sets out an exhaustive procedure for settlement of grievances and disputes, inclusive of a provision for the setting up of an arbitration tribunal in keeping with the provisions of the **Labour Relations Act Cap 157 A of the 2010 Revised Laws of Grenada**.
- [7] Counsel for the claimants, Mr. Ruggles Fergusson, objects to the jurisdictional challenge raised by the defendant in the form of submissions filed on the eve of the trial. Counsel contends that the defendant having filed a defence is in breach of the strict compliance requirements of CPR 9.7 (4) and relies on the Court of Appeal decision in **Pacific Electric Wire & Cable Company Limited v Texan Management Limited & Others**¹.
- [8] In response, Mr. Mitchell, contends that the jurisdiction point can be taken at any time and relies on the Court of Appeal decision in **The Attorney General of St. Lucia et al v Vance Chitolie** ² citing with approval the case of **Wilkinson v Barking Corporation**³.

¹ Civil Appeal No 19 of 2006

² CIVIL APPEAL NO.14 OF 2003

Analysis

[9] Mr. Fergusson's contention on the preliminary issue in the manner in which the defendant has presented the challenge to the court's jurisdiction can be dealt with succinctly. The Court of Appeal decision in **Pacific Electric Wire & Cable Company Limited v Texan Management Limited & Others** on which Mr. Fergusson relies was overruled by the Privy Council in **Texan Management Limited and Others v Pacific Electric Wire & Cable Company Limited**⁴. Lord Collins in delivering the judgment said, "**It has often been said that, in the pursuit of justice, procedure is a servant and not a master**". Further at paragraph 78 of the judgment the Board said:

"78. This point, which relates to the application by Texan and All Dragon, can be dealt with shortly. The effect of the EC CPR is as follows. The application must be supported by evidence on affidavit: EC CPR r.9.7(4). There is nothing in r.9.7 which deals with the time at which the evidence must be filed or served. It is r.11.11 which deals with service. When the notice of application is served it must be accompanied by any evidence in support: EC CPR r.11.11(4). The notice of application must be served at least 7 days before the hearing, but the court has power to direct that sufficient notice has been given: EC CPR r 11(1)(b), (3). An affidavit must be filed before it is used in proceedings: EC CPR r.30.1(6). There is nothing in EC CPR Part 11 which requires evidence in support of an application to be filed when the application is made. **Nor is there anything in ECR CPR 9.7 or Part 11 which makes the validity of an application dependant on service or filing of evidence in support at the time the application is filed or served.**"(emphasis added)

[10] Mr. Fergusson further contends that the defendant having filed a defence has accordingly submitted to the court's jurisdiction and it is not now open to the defendant to challenge the court's jurisdiction.

³ [1948] 1 All ER 564.

⁴ [2009] UKPC 46

[11] The challenge to the court's jurisdiction after the filing of a defence was in issue in **Wilkinson v Barking Corporation**⁵. In that case, the Defendant entered an unconditional appearance and a pleaded defence. It was contended for the Plaintiff, inter alia, that the Defendant having entered an unconditional appearance to the writ, could not demur to the jurisdiction of the court to entertain the action. Asquith LJ applying **Pasmore v Oswaldtwistle Urban Council** ⁶ held

“The court had jurisdiction to decide whether or not it could deal with the matter; by entering an unconditional appearance the defendants had submitted to that jurisdiction but they were not thereby precluded from challenging the jurisdiction of the court to deal with the claim”.

[12] The ratio in **Wilkinson v Barking Corporation** was adopted by Gordon JA (ag) by our Court of Appeal in **The Attorney General of St. Lucia et al v Vance Chitolie** ⁷

[13] In **Tony Kisna v Coconut Bay Management Limited**⁸, Smith J in a labour relations dispute case said:

“ I am not convinced that CPR 9.7 is engaged in these proceedings. I say so because 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.”

[14] The jurisprudence on the challenge to the court's jurisdiction is well settled. However, I am in agreement with Mr. Fergusson that the challenge to the court's jurisdiction could have been taken at a much earlier point. The defendant's late challenge some Six (6) years since the filing of the claim in 2014, filing of witness statements and voluminous trial bundles and the court

⁵ [1948] 1 All ER 564

⁶ [1898] AC 387; 78 LT 569)

⁷ CIVIL APPEAL NO.14 OF 2003

⁸ SLUHCV2018/0192 consolidated with SLUHCV2018/0193

having set aside two (2) days for trial is not in keeping with the overriding objective of CPR 2000 in saving time, resources and expenses.

[15] The legislative effect of a Collective Bargaining Agreement is governed by **Section 44 of the Labour Relations Act**. Section **3A of the Labour Relations Act** provides for the Constitution of Labour Code of Grenada. The Section reads:

“ The provisions of the principal Act together with those of the Employment Act, Chapter 89, shall constitute the Labour Code of Grenada.”

[16] The purpose of the Collective Bargaining Agreement in relation to disputes is within the ambit of **The Labour Relations Act** and **The Employment Act**. The Court of Appeal of Trinidad & Tobago in **Texaco Trinidad Inc v OWTU**⁹ states:

“The terms of a registered collective industrial (collective) agreement are intended to operate as a statutory code in relation to the rights and obligations of the parties and accordingly cannot be varied by the court during its continuance”.

[17] The Union (TAWU) as the bargaining agents for the employees of the defendant company signed a Collective Bargaining Agreement on 20th February 2012. The Collective Agreement governs the industrial relations between the Union and the employees of the Brewery. The employees were all reinstated on 22nd February 2012. The dispute for the payment of salaries on the reinstatement of the employees is a new dispute arising post the signing of the Collective Bargaining Agreement.

[18] The High Court has the primary responsibility for the enforcement of fundamental rights. It has jurisdiction to pronounce upon all violations of fundamental rights. Mr. Fergusson for the claimants' states that the claim is for the common law remedy for breach of contract for which the court has jurisdiction. There is no such pleaded case. The claimants' pleaded claims and reliefs are all couched in the delay in concluding the Collective Bargaining Agreement and the alleged breaches of the Labour Relations Act. It is the defendant's counterclaim that raises the issue of breach of employment contract, a common law remedy for which the court has original jurisdiction. The claimants are bound by their pleadings and cannot raise a cause of action in

⁹ (1973) 22 WIR 516

submissions. It is of note however that Mr. Mitchell has conceded to the discontinuation of the counterclaim filed by the defendant.

[19] Conciliation followed by arbitration is the primary route of dispute resolution within the terms of the Collective Bargaining Agreement entered into by the parties. Article 20 of the Collective Bargaining Agreement clearly outlines the step-by-step grievance procedure.

[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.

ORDER

[22] In summary and for the above reasons, it is hereby ordered and directed that:

- (1) The claimants' statement of claim stands dismissed.
- (2) The defendant's counterclaim stand dismissed.
- (3) Each Party shall bear its own costs.

Agnes Actie

High Court Judge

By the Court

Registrar