

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO SLUHCV 2009/0811

BETWEEN:

CECILIA DETERVILLE

Claimant

And

FOSTER & INCE CRUISE SERVICES (ST.LUCIA) LTD

Defendant

Appearances:

Mr. Horace Fraser for the Claimant

Mr. Mark Maragh for the Defendant

2010 : September 29th

2011: May 23rd

JUDGMENT

- [1] **BELLE J.** In the Pre-Trial Memorandum the Claimant sets out the Claimant's case as follows:

"The Claimant's case is that (i) the purported termination is an unlawful dismissal and (ii) she was dismissed because the Defendant's manager did not approve or had a problem accepting her sexual persuasion, her being bi-sexual.

The Claimant's contention is that the actions of the Defendant in dismissing her because of her sexual persuasion, is in violation of Section 3 of the Equality of Opportunity and Treatment in Employment and Occupation Act Cap 16.14 of the Revised Laws of Saint Lucia 2001."

- [2] The Claimant's Memorandum of Facts and Issues sets out the Defendant's case as follows:

- (i) *The Claimant was repeatedly reprimanded for breaches of duty in the performance of work, failure to perform, failure to comply with Company*

procedure and policy, unprofessionalism and rudeness to Company clients.

- (ii) *The Claimant's contract was lawfully terminated with notice.*
- (iii) *It has a very liberal policy on homosexuals in the workplace does not discriminate on the basis of sex or otherwise."*

- [3] The Claimant's position was that there were two main issues before the Court: (i) whether the Claimant was unlawfully dismissed and (ii) whether her dismissal was actuated by the Defendant's general manager's intolerance towards homosexuals.
- [4] The Claimant alleged in her Statement of Claim that it was an implied term of the contract of employment entered into between the Claimant and the Defendant on 22nd October 2007; and it was expressly written in the Defendant's Code of Conduct that once the Claimant acts in her office with courtesy, accuracy, deportment and professionalism the Defendant shall respect those core values therefore her job will be secure with an express promise of annual appraisal, salary increases and bonus. See: paragraph 4 of the Statement of Claim.
- [5] The Claimant admits her bisexuality and it is common ground that the Defendant's general manager was also aware of it. But the Claimant claims that the Defendant's general manager threatened to dismiss the Defendant because of her bisexuality. According to Melissa Albert this threat was made in her presence.
- [6] The Statement of Claim expressly alleges that the Defendant in breach of the implied term of trust and confidence violated all its core values when its manager openly threatened to dismiss the Claimant on the ground of her sexuality which caused the Claimant emotional trauma and did carry out the threat on the 25th August, 2009 when the Claimant's employment was terminated on the ground of her having "grossly violated the core values of the Company and its code of conduct."
- [7] The Claimant further alleges:
 - "8. *The Claimant contends that the purported termination was an unlawful dismissal based on her sexual orientation which was violative of Section 3 of the Equality of Opportunity and Treatment in Employment and Occupation Act Cap 16.4 of the Revised Laws of Saint Lucia 2001.*

9. *The Claimant further contends that the alleged termination of her employment on the ground of a gross violation of the core values of the Defendant Company and its Code of Conduct was a convenient way of procuring her unlawful dismissal.*
10. *At all material times the Claimant was not aware or apprised of any breach of the Code of Conduct she allegedly committed nor was any such allegation put to her nor was she given an opportunity to comment or respond to such an allegation."*

[8] The Defendant answers these allegations in paragraphs 4 to 8 of the Defence:

4. *Paragraph 5 is denied. The Defendant states that the Claimant was repeatedly reprimanded for breaches of duty in the performance of work, failure to perform, failure to comply with company procedure and policy, unprofessionalism and rudeness to company clients.*
5. *Save that the Defendant states that the Defendant's Manager Manuela Charlemagne, hired the Claimant and was aware, from inception, of the Claimant's stated sexual orientation, paragraph 6 is denied and the Claimant is put to strict proof thereof.*
6. *Paragraphs 7, 8 and 9 are denied and the Claimant is put to strict proof thereof.*
7. *Paragraph 10 is denied and the Defendant states that notwithstanding that the Claimant was terminated with notice, with payment in lieu thereof, her violation of the Defendant's core values and code of conduct was communicated to her at the time of her dismissal. In any event such reasons are immaterial having regard to the fact the termination was based on notice.*
8. *The Defendant states that the Defendant has a very liberal policy on homosexuals in the workplace and does not discriminate at all on the basis of sex or otherwise, once sexuality, heterosexuality or otherwise, is kept out of the workplace. In fact there are three openly homosexual individuals on staff."*

[9] Section 3. of the Equality of Opportunity and Treatment in Employment and Occupation Act (the Act) states that :

- (1) *For the purposes of this Act, a person discriminates against another person if the first-mentioned person makes, on any of the grounds specified in subsection (2), any distinction, exclusion or preference, the intent or effect of which is to nullify or impair equality of opportunity or treatment in occupation or employment.*
- (2) *The grounds referred to in subsection (1) are-*
 - (a) *race, sex, religion, colour, ethnic origin, family responsibilities, pregnancy, material status, or age except for purposes of retirement and restrictions on work and employment of minors or for the protection of minors; or*

(b) any characteristic which appertains generally or is generally imputed to persons of a particular race, sex, religion, colour, ethnic origin, social origin, political opinion, disability, family responsibility, pregnant state, marital status or age except for purposes of retirement and restrictions on work and employment of minors or for the protection of minors.

(3) Any act or omission or any practice or policy that directly or indirectly results in discrimination against a person on the grounds referred to in subsection (2), is an act of discrimination regardless of whether the person responsible for the act or omission or the practice or policy intended to discriminate and constitutes an offence."

[10] It is noted that there is no reference in section 3 of the said Act to "sexual orientation." Section 2 of the Act does not assist in that regard. This issue would therefore have to be resolved in accordance with the Civil Code principles, or if that Act is silent, principles of the common law.

[11] For the purpose of completeness I note that section 24 of the Act creates certain remedies for acts or omissions of any employer in contravention of Part 2 of the Act which includes section 3. The remedies are:

- (a) "damages from the employer, or any other person or body covered under this Act, for any loss caused directly or indirectly as a result of the contravention;*
- (b) an order directing the employer or other relevant person or body covered under this Act to redress the contravention, including an order to employ, re-employ or reinstate any person, although the vacancy in question has already been filled and although the employer may be liable to any claim arising from the need to dismiss or terminate the services of any other employee who has been engaged;*
- (c) an order making any decision found to have been based on unlawful discrimination voidable;*
- (d) any other order the court may deem fair and just to remedy the cause and effect of the discrimination."*

Application to Exclude Evidence of the Defendant

[12] At the outset it is important to deal with an attack on the Defendant's case. The Claimant argues that the Defendant in raising in her evidence, the issue of a loss of a cruise line contract due to her, the Claimant's failures, was introducing matters which went outside of the scope of their more general pleading that the Claimant was repeatedly reprimanded for breaches of duty in performance of work, failure to perform,

failure to comply with company procedure and policy, unprofessionalism and rudeness to company clients. The implication here is that the Defendant should have specifically pleaded the loss of the cruise line contract. While I agree that such a pleading would have been helpful. It would not be true to say that the detail of the cruise line loss being the last straw, so to speak, being mentioned in the Witness Statement should not be permitted pursuant to Part 10 of the CPR 2000. In my view there was sufficient information in paragraph 4 of the Defence for the Claimant to question the specific breaches of duty and unprofessionalism referred to. The Claimant did not do so. I do not think that the Defendant should suffer sanction in those circumstances.

[13] Indeed in light of the fact that the Claimant was making the sexual orientation issue the main issue, the Defendant was entitled to focus on a specific denial of that allegation and put other facts in issue as part of that denial. Based on this conclusion I do not find the authority **Kenneth Harris v Sarah Gerald** Civil Appeal No.3 of 2003 to be helpful.

[14] The other point which should be dealt with at the outset is this. The Defendant is saying that they gave the Claimant notice of dismissal. This usually means two things. Firstly there is a contractual obligation to terminate the contract in accordance with the contract terms. Secondly notice usually implies the payment of a sum of money or time being given for the Claimant to pursue other employment before the payment of wages or salary ceases. Adequate notice is determined by way of assessment of the kind of employment being terminated, the time of service and other factors pertinent to the particular kind of employment. In the premises then the breach of the employee's contract when there is notice given is restricted to an assessment of the adequacy of the notice given and the actual reason given for the dismissal pales into insignificance unless there is a statutory provision requiring specific grounds to be stated at the time of dismissal and in a particular form such as a letter.

[15] Where there is no notice given then the court would be called upon to examine the alleged act of the employee which led to the dismissal, to determine whether summary dismissal was an appropriate response before looking at the issue of adequacy of notice or damages.

- [16] In light of the fact that the Act does not speak to sexual orientation, I conclude that the Claimant would have to rely on the approach set out above. This therefore gives rise to the question; was the Claimant given notice of dismissal and if so was the notice adequate? But the Claimant has not pleaded lack of due notice.

The Implied Term of Trust and Confidence

- [17] In spite of my finding on the Act I think it apposite to explore the issue of the implied term of trust and confidence which is the major legal issue raised in this case. I do this to put beyond doubt the reason why I conclude that the Claimant's claim would not succeed pursuant to the Act or at common law, or as argued by counsel. The authority **Malik v Bank of Credit and Mahmud** House of Lords 12th June, 1997 was cited in support of the Claimant's application for damages for breach of the implied term of trust and confidence in the contract of employment in the context of this case.
- [18] In **Malik** the Appellants Mr. Raihan Nasir Mahmud and Mr. Qaiser Mansoor Malik claimed that their association with the B.C.C.I placed them at a serious disadvantage in finding new jobs because of the "stigma" which they suffered at that bank.
- [19] Mr. Mahmud had worked for the bank for 16 years. At the time of his dismissal he was manager of the bank's Brompton Road branch. Mr. Malik was employed by the bank for 12 years. His last post was as the head of deposit accounts and customer services at B.C.C.I's Leaderhall branch. On 3rd October 1991 they were both dismissed by the provisional liquidators of the Bank on the ground of redundancy.
- [20] Their appeals against the liquidator's decision to reject their claim in damages were rejected by the High Court and the Court of Appeal on the preliminary ground whether the applicants' evidence disclosed a cause of action or sustainable claim for damages.
- [21] For the purposes of the preliminary issue it was assumed the bank operated in a corrupt and dishonest manner and that Mr. Mahmud and Mr. Malik were innocent of involvement, that following the collapse of B.C.C.I its corruption and dishonesty became widely known, that in consequence Mr. Mahmud and Mr. Malik were at a handicap on the labour market because they were stigmatised by reason of their previous employment by B.C.C.I and that they suffered loss in consequence.

- [22] It was further agreed at the Court of Appeal and the House of Lords that the contracts of employment of both Mahmud and Malik each contained an implied term to the effect that the bank would not without reasonable and probable cause, conduct itself in a manner likely to destroy or seriously damage the relationship of confidence and trust between employer and employee.
- [23] Considering the facts and legal issues, the House of Lords held the B.C.C.I was a dishonest and corrupt business. The court also held that when an employee learned the true nature of the bank's business from whatever source, he was entitled to say "I wish to have nothing more to do with this organisation. I am not prepared to help this business, by working for it. I am leaving at once."
- [24] The broader implication of this was that the innocent employee can treat the bank's breach of the term of the contract of employment as a repudiation of its contractual obligation. A necessary corollary of the employee's right to leave at once was that the bank was under an implied obligation to its employees not to conduct a dishonest or corrupt business, one particular aspect of the general obligation not to engage in conduct likely to undermine the trust and confidence required if the employment relationship is to continue in the manner the employment contract impliedly envisages.
- [25] The House of Lords per Lord Berkenhead was of the view that the trust and confidence required in the employment relationship can be undermined by an employer or indeed an employee in many different ways. The conduct must of course impinge on the relationship in the sense that, looked at objectively, it is likely to destroy or seriously damage the degree of trust and confidence the employee is reasonably entitled to have in his employer. That requires one to look at the circumstances.
- [26] This is an objective test. Loss of confidence in the employer is not essential- although the time when the employee learns of the misconduct and his response to it may affect his remedy.
- [27] In some circumstances the employee may treat the employer's conduct as a repudiatory breach, entitling him to leave. But he may choose to stay. The extent to which staying would be more than an election to remain, and would be a waiver of the breach for all purposes, depends on the circumstances.

- [28] Learning of the breach after termination of employment does not mean that he has no remedy. In the ordinary course, breach of a contractual term entitles an innocent party to damages.
- [29] Unlike in the instant case at Bar, in **Malik** it was not argued that the trust destroying conduct brought about the termination of the contract. In Malik the employees did not sustain any loss of pay by reason of the premature termination of the contract. However just as in **Malik** the Claimant is arguing that she is worse off as a result of the breach of the term of trust and confidence by the employer. The Claimant also pleads loss owing to the positive damage to the Claimant's reputation by the Defendant's harsh behaviour.
- [30] In **Malik** the House of Lords considered two kinds of loss: premature termination loss and continuing financial loss. It must be that the Claimant would have to prove these losses specifically. But the House of Lords held that premature termination losses cannot be attributable to a breach of trust and confidence if the contract is terminated for other reasons.
- [31] As far as financial loss is concerned the Claimant would have to prove that her future employment prospects are negatively affected by the termination as a result of a breach of the trust and confidence term. But she has not in any way attempted to do so.
- [32] The House of Lords considered it an important point of principle whether financial losses of this character or "continuing financial losses" should be recoverable for breach of trust and confidence. The House concluded that if it was reasonably foreseeable that a particular type of loss of this character was a serious possibility, and loss of this type is sustained in consequence of a breach, then in principle damages in respect of loss should be recoverable.
- [33] However it is obvious in this case that the Claimant had no evidence of any foreseeable loss. She therefore relied on a statutory basis for challenging the Defendant's conduct and calculating the damages. In my view this statutory basis does not exist. Nevertheless for the purpose of completeness I add the following observations.

- [34] The court considered the approach taken in **Malik** a departure from the decision in **Addis v Gramophone Co. Ltd** [1909] A.C. 448 in so far as the matter of the measure of damages for wrongful dismissal was concerned. The court held that there is no basis for distinguishing (a) wrongful dismissal following a breach of the trust and confidence term, (b) constructive dismissal following breach of the trust and confidence term, and (c) a breach of the trust and confidence which only becomes known after the contract has ended for other reasons.
- [35] Lord Berkenhead concluded that the views expressed in the **Addis v Gramophone** decision cannot be read as precluding the recovery of damages where the manner of dismissal involved a breach of the trust and confidence term and this caused financial loss.
- [36] The House of Lords held that **Addis v Gramophone Co Ltd** was decided in days before this implied term (of trust and confidence) was adumbrated. Now that the term exists and is normally implied in every contract of employment, damages for its breach should be assessed in accordance with ordinary contractual principles. This was as much true if the breach occurs before or in connection with dismissal as at any other time.
- [37] Lord Berkenhead was also of the view that the reasoning here was consistent with the approach of courts and tribunals in unfair dismissal cases when exercising the statutory jurisdiction to award an amount of compensation which the court or tribunal considers "just and reasonable in all the circumstances."
- [38] Lord Bekenhead concluded as follows:
- "I do not believe this approach gives rise to artificiality. On the contrary the trust and confidence term is a useful tool, well established now in employment law. At common law damages awarded are awarded to compensate for wrongful dismissal. This loss which an employee would have suffered even if the dismissal had been after due notice is irrecoverable, because such loss does not derive from the wrongful element in the dismissal. Further, it is difficult to see how the mere fact of wrongful dismissal rather than dismissal after due notice, could of itself handicap an employee in the labour market. All of this is in line with **Addis**. But the manner and circumstances of the dismissal as measured by the standards of conduct now identified in the implied trust and confidence term, may give rise to such a handicap.*

Finally, although the implied term that the business will not be conducted dishonestly is a term which avails all employees, proof of a consequential handicap in the labour market may well be much more difficult for some classes of employees than others. An employer seeking to employ a messenger for instance, might be wholly unconcerned by an applicant's former employment in a dishonest business, whereas he might take a different view if he were seeking a senior executive."

- [39] The Claimant Cecilia Deterville was a middle management employee in a small business. She was entitled to trust and confidence but she was also obliged to maintain behaviour which secured the trust of her employer. The employer has not said that she breached its trust and confidence in spite of some reference to breach of the code of conduct. What the employer relies on is a contract which states that either party could terminate the contract on two weeks' notice or pay in lieu of such notice.
- [40] Lord Berkenhead in **Malik** was of the view that although the underlying purpose of the trust and confidence term is to protect the employment relationship, there can be nothing unfairly onerous or unreasonable in requiring an employer who breaches the trust and confidence term to be liable if he thereby causes continuing financial loss of a nature that was reasonably foreseeable. Employers must take care not to damage their employees' future employment prospects by harsh and oppressive behaviour or by any other form of conduct which is unacceptable today as a falling below the standards set by the implied trust and confidence term.
- [41] In finding in favour of the existence of a trust and confidence term in a contract of employment Lord Steyn in **Malik** examined a number of relevant decisions including **Withers v General Theatre Corporation Ltd.** [1933] 2 K.B. 536 which appeared to rule out a claim for loss as a result stigma due to the employer's breach of the implied contractual term of trust and confidence. He held that **Withers** was in conflict with the decision in **Marbe v George Edwardes (Daly's Theatre) Ltd.** [1928] 1 K.B. 269 where damages in respect of loss of an existing reputation was expressly held to be recoverable in a claim for breach of contract. Lord Steyn further held that the **Withers** decision was based on a misunderstanding of the decision in **Marbe** and was contrary to principle.
- [42] The claim in contract for loss occasioned by an employer's breach of the implied term of trust and confidence is therefore well established. Nevertheless in order to establish

the claim the claimant must surmount the limiting principles referred to by Lord Steyn as, causation, remoteness and mitigation. In this case before arriving at the limiting principles the claimant must first prove that the evidence on a balance of probabilities leads to the conclusion that such a breach of trust and confidence took place in the first place.

[43] On the evidence the claimant is unable to prove that the claimant dismissed her because of her sexual orientation. This is the main basis for the allegation of breach of the term of trust and confidence. The fact is that even if the claimant was able to prove the allegation of breach of trust and confidence she would not be able to prove consequential loss beyond the ordinary payment of pay in lieu of notice. She is not able to prove any loss from stigma resulting from the employer's breach of trust and confidence nor the manner of dismissal as a result of the breach of trust and confidence term in the contract. Indeed the claimant conducted herself as openly bisexual and therefore the stigma from which she might suffer is that from the society in general. The employer cannot be blamed for this kind of stigma. Her situation cannot be compared with that of the claimants in **Malik**.

[44] In my view the Claimant has also failed to prove any unduly harsh treatment by the employer or any consequential loss other than that which usually flows from loss of employment. It is not possible to say that in spite of the contractual term which she signed she should be further compensated for any unusually harsh treatment suffered in her employment, the manner of her dismissal nor losses suffered as a result of her termination. If it were possible to so find, then she would be entitled to assessed damages at common law for that breach by her former employer.

[45] The evidence in this case is that the Claimant openly on a tour bus while on duty was seen passionately kissing another employee of the same sex. Even if this was an employee of the opposite sex, that behaviour would be considered unprofessional to say the least. A warning letter was written to the Claimant in relation to this incident. It was an appropriate warning. A fellow employee Fran St. Louis reporting on the kissing incident stated:

"This behaviour I felt was unbecoming as Cecilia Deterville was a Supervisor of the Company."

[46] The Claimant would want the court to accept that the kissing incident occurred outside of working hours. But it is not reasonable to suggest that an employee while being transported from a work assignment owes no duty to the employer, but the employer would owe such a duty if the vehicle for example became involved in an accident. Clearly a supervisor would be duty bound to deport herself in a manner which is a good example to the employees under her supervision. A public display of sexual behaviour such as a passionate kiss does not qualify as behaviour becoming a supervisor while on the way from an assignment in the company of other employees.

[47] One of the sections of the Defendant's Code of Conduct states:

"Employee Conduct

As a member of the FICS Team you are expected to maintain high standards. We all are employed with the expectation that we will be loyal conscientious and dependable. The following will not be tolerated:

.....
Impolite or indecent conduct"

[48] I am not at all clear what aspect of the Code of Conduct the Claimant is alleging that the Defendant has breached. While the reason for the dismissal could have been the Claimant's sexual orientation it could also have been lack of professionalism.

[49] It is my view that Melissa Albert who gave the evidence that the manager Ms Charlemagne threatened to dismiss the claimant and another employee because of their lesbian tendency, has an axe to grind since she too was dismissed on the same day as the Claimant. Consequently the court cannot rely on her evidence of a threat to get rid of the lesbians from the company.

[50] Indeed I find that the evidence of Mellissa Albert is contradictory because she alleges that Ms Charlemagne was going against what Ms Deterville seemed to be saying was Ms Charlemagne's dislike of the company's apparent liking for gay people. Yet when she was told of the threatening words she was not able to appeal to higher management who favoured the lesbians? Both cannot be true. Furthermore if Ms Albert did not immediately tell the Claimant about this encounter with the Manager what was her agenda at the time? She claims she was being offered the Claimant's

job. Indeed if she did tell the Claimant about this threat to fire all of the lesbians why did the Claimant not raise the issue of the possible breach immediately?

[51] The Claimant says that the defendant's manager became aware of her sexuality in March of 2009. Why did the Manager not act to get rid of her right away? Was it the problem that she was bisexual or that her sexual relationship with another employee could interfere with discipline and order in the business place? The kissing incident occurred in June 2009 but the Claimant was not dismissed in June 2009.

[52] The Claimant states:

"When the manager employed me she was not aware of my sexuality or sexual preference. When she found out she openly became disquiet about my employment with the Defendant Company after she learnt I am bi-sexual. Some time in March, 2009 the Manager called me into her office and said to me one Kerwin Flourent told her I had a girlfriend working in the Company and that she intends to address that issue, I did not know what she meant by she will address that issue, but she did appear to be upset by what she was told by Kerwin Flourent."

[53] This event and others reported by Ms Albert are used as the basis for the argument that the Claimant must have been dismissed because of her sexual orientation. I am not convinced that there could not have been another reason for the dismissal. For example the Claimant's former girlfriend Chrystal Belizaire said she was aware of some issues between the Defendant/Company and Cecilia. These included allegations of poor performance relating to work with Costa and Pullman Tours two tour operators with which the Defendant shared contractual relations. Belizaire said she got a letter of recommendation from the company.

[54] But under cross examination Ms Charlemagne the Manager said the following:

"I was called to the office at 5 p.m. on 24th August. Staff members told me that Cecilia and Melissa caused tension in the office which was unbearable and demoralising. The behaviour was very intimidating and unwarranted. They threatened staff and wanted to fight."

No I didn't take the decision that they should go. Head Office confirmed that they should go. They were dismissed for indiscipline."

- [55] I am of the view that this report was true. And it explained the sudden termination and the reason why the Claimant who was on vacation at the time, 24th August, 2009, had to return from vacation to terminate the claimant and Melissa Albert.
- [56] The fact is however that even if this allegation and all of the other allegations are overblown minor incidents or fabrications, the Claimant signed a contract which contained a termination and notice clause regulating the manner of termination. The employer complied with that clause. Secondly the Claimant is unable to prove the loss and damage which she claimed to have suffered as a result of the stigma of being dismissed for being bi-sexual.
- [57] In the final analysis we have to return to the approach earlier stated. Was the Claimant dismissed with notice or pay in lieu thereof? Was the pay in lieu of notice adequate in the circumstances? I answer yes to both questions. The claimant was working for the defendant company for less than two years. There is no evidence that her promotion was of such significance that the court would imply an amendment of the contractual term relating to dismissal as some courts have decided in recent times.
- [58] On the two issues identified by the Claimant in her memorandum of facts and issues, the court answers both in the negative. The Claimant was not unlawfully dismissed and secondly the dismissal was not actuated by the Defendant's General Manager's intolerance towards homosexuals. The reasons for these conclusions are as follows:
- (i) The Claimant signed a Contract on the 22nd October 2007 in which she agreed that either party could terminate the contract on two (2) weeks notice being given or pay in lieu of notice.
 - (ii) The Defendant complied with the terms of the contract in relation to termination.
 - (iii) The contract of employment was consistent with the common law and neither counsel submitted that it was in conflict with any aspect of the Civil Code of Saint Lucia.
 - (iv) Based on the Claimant's pleadings the employer's behaviour only became relevant if it was in breach of the Equality of Opportunity and treatment in Employment Act Cap. 16:14. That Act modifies the common law in relation to grounds for termination of employment.

- (v) No other behaviour of the employer is material unless that behaviour constitutes a breach of trust and confidence. But no other behaviour other than sexual discrimination was pleaded.
- (vi) The Equality of Opportunity and treatment in Employment Act does not apply to discrimination on the grounds of sexual orientation.
- (vii) Furthermore the Claimant has failed to prove that there was any breach of trust and confidence during her employment based on sexual orientation or any other basis which led to her dismissal.
- (viii) The relationship between the Claimant and the Defendant was normal, with credit given when it was due and criticism given when due or required.
- (ix) The Claimant was given one month's pay in lieu of notice (the contract said she was entitled to two weeks pay), and vacation pay due. She has not pleaded that these sums were inadequate at common law nor pursuant to any statute other than the Equal Opportunity and treatment in Employment Act, such as the Civil Code of Saint Lucia.
- (x) The Claimant has not proved that at common law or pursuant to any other law she has suffered damages or loss as a result of the Defendant's breach of trust and confidence. Her pleadings of loss of future financial benefits, loss of career building opportunity, diminished employment prospects owing to the positive damage to the Claimant's reputation by the Defendant's harsh behaviour and continuing financial loss are all rejected by the court.
- (xi) In the circumstances the Claimant is not entitled to any damages for unlawful dismissal nor breach of the implied term in her contract of employment of trust and confidence, during the life of the contract nor in the manner of dismissal.

[59] The claim is therefore dismissed.

[60] The Defendant is awarded costs in accordance with Part 65 of the CPR 2000.


Francis H V Belle
HIGH COURT JUDGE