

GRENADA

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

CLAIM NO. GDAHCV1999/0328

BETWEEN:

GRENADA PORTS AUTHORITY

Claimant

AND

**(1) VELDA LEWIS
(2) CLETUS ST. PAUL
(3) BENJAMIN ROMAIN**

Defendants

Appearances:

Mr. C. Hood for the Claimant

Mr. Carol Bristol QC with Ms. D. Forrester for First-named Defendant

2010: December 21

2011: February 14

JUDGMENT

- [1] **CUMBERBATCH, J.:** The claimant is a statutory body incorporated under the Ports Authority Act, Chapter 207 of the 1990 Revised Edition of the Laws of Grenada. The first-named defendant was, up to and at the time of her termination, employed by the claimant.
- [2] In or around the year 1994 the first-named defendant evinced an interest in advancing her career and sought study leave to pursue studies to obtain the BSc Degree in Management. The claimant granted her application for study leave and the parties entered into a written agreement and a bond. It was a term of the written agreement that upon successful completion of her studies the first-named

defendant would serve the claimant for three years. The agreement also stated, inter alia, that should the first-named defendant leave the employ of the claimant, prior to the expiration of her three years service, without its consent in writing or should the first-named defendant's employment be terminated, she would pay to the claimant the sum of \$115,000.00 EC currency.

[3] The bond provided as follows:

(Beginning of bond not clear enough to be seen)

"... (hereinafter referred to as "the Employee") and I, Cletus St. Paul of Tempe, St. George's and I, Benjamin Romain of Mt. Moritz, St. George's (hereinafter together referred to as the Sureties") are held and firmly bound unto the GRENADA PORTS AUTHORITY incorporated under the Grenada Ports Authority Act 1978 (hereinafter referred to as "the Authority") in the sum of one hundred and fifteen thousand dollars (\$115,000.00) East Caribbean Currency for payment of which sum the Employee and the Sureties bind themselves their successors and assigns jointly and severally by these presents.

SEALED with our respective seals and dated this 1st day of September 1994

WHEREAS the Employee by an Agreement made the 1st day of September 1994 between the Authority of the one part and Employee of the other has agreed to serve the Authority upon the terms and conditions contained in the said Agreement.

NOW THE CONDITION of the above written bond is such that if the Employee shall serve the Authority and observe the terms and conditions in the said Agreement contained this obligation shall be null and void but otherwise shall remain in full force and effect but no alteration in the terms of the said Agreement and no forbearance or forgiveness in or in respect of any matter or thing concerning the said Agreement on the part of the Authority shall in any way release the Sureties from any liability under the above-written Bond.

SIGNED SEALED AND DELIVERED

By the said VELDA A. LEWIS-CLARK

In the presence of ... DUNCAN

SIGNED SEALED AND DELIVERED

By the said CLETUS ST. PAUL

In the presence of ...DUNCAN

SIGNED SEALED AND DELIVERED

By the said BENJAMIN ROMAIN

In the presence of ... DUNCAN"

[4] The defendant proceeded on her approved study leave and on the successful completion of her period of study she reported for duty at the offices of the claimant. Within a short period thereafter unhappy differences arose between the first named defendant and her employers. This was evidenced by a sequence of events, including, but not limited to, an exchange of correspondence and the holding of meetings as follows:

- 1st August 1997, first named defendant resumes duties
- 11th August 1997, letter from the first-named defendant to the Chairman of the claimant raising concerns of her status, salary, working facilities,
- 2nd July 1998, letter from the first-named defendant to the Chairman highlighting allegations of inadequate pay and a deteriorating working relationship with herself and the General Manager.
- 2nd July 1998, letter from the first-named defendant to the Chairman requesting that she be freed from the bond aforesaid and be at liberty to obtain employment elsewhere,
- 15th August 1998, letter from the Chairman to the first-named defendant in response to her requests in her letter of the 2nd July 1998 requesting that she be freed from the bond aforesaid and be at liberty to obtain employment elsewhere,

- 17th August 1998, letter from the first-named defendant to the Chairman again requesting that she be freed from her obligations under the bond and that she be at liberty to seek employment elsewhere,
- 9th September 1998, letter from the Chairman to the first-named defendant denying her request to be relieved from her obligations under the bond,
- 14th September 1998, third letter from the first-named defendant to the Chairman requesting that she be released from her bond inter alia,
- 18th September 1998 letter from the Administrative Manager to the first-named defendant on matters of allegations of unpaid wages inter alia,
- 18th September 1998, letter of response from the first-named defendant to the Administrative Manager containing accusations and complaints,
- 22nd September 1998 letter from the General Manager to the first named-defendant advising her that she retract her letter of the 18th September 1998 to the Administrative Manager and submit a written apology,
- 3rd November 1998 letter from the General manager to the first-named defendant responding to her concerns of emissions from the PABX likely to cause health problems and the relocation of the air condition units,
- 9th November 1998, letter from the General Manager to the first-named defendant terminating her services and stating the reasons therefore. This letter also demands payment of sums of money by the first-named defendant pursuant to the terms of the bond.

[5] The first-named defendant did not pay the sums demanded in the termination letter of the 9th November 1998 aforesaid and on the 9th July 1998 the claimants filed the action herein by writ of summons together with a statement of claim. The first-named defendant filed a defence and counterclaim to which the claimants filed a reply.

[6] At the case management conference, held before Master C. Pemberton, as she then was, the Master was called upon to hear and adjudicate on the following issue, that is, to 'consider the enforceability of the bond by the claimant as against the first-named defendant'. In a written judgment the learned Master found at paragraph 10 thereof that 'the agreement and the terms thereof have been incorporated in the bond'. Master Pemberton, as she then was, went on to find at paragraph 11 of her judgment that the following issues are to be determined at the trial, to wit:

- Whether there was due observance of the conditions as contained in the bond,
- If the evidence leads to the conclusion that there was non-compliance, was the first-named defendant in any way prevented by the claimant from performing her obligations under the agreement,
- Was the first-named defendant given an opportunity to obtain independent legal advice before committing herself to the terms of the bond?

[7] As a consequence of the ruling of the learned Master aforesaid the claimants sought and obtained leave to file and serve an amended statement of claim and an amended reply and defence to the counterclaim of the first-named defendant. In its amended statement of claim the claimant sought the following;

- “(a) Against the First-named Defendant the sum of \$76,666.67 together with interest thereon from the date of the Writ of Summons issued herein on 9th July, 1999 until earlier payment or judgment, at a rate to be determined by the Court
- (b) Against the Second and Third Defendants jointly and severally the sum of \$76,666.67.
- (c) Court fees in the sum of \$125.00
- (d) Legal Practitioner's fixed costs on issue in the sum of \$1,500.00.”

[8] The defendants did not make a similar application to amend their pleadings.

THE TRIAL

- [9] At the hearing of this matter, learned Queen's Counsel for the first-named defendant submitted that the order of Master Pemberton, as she then was, ought not to be followed as it pertains to the issues to be determined at the hearing. He contended that the order of the Master was not drawn up and sealed as a case management order. Mr. Hood for the claimant however contended that pursuant to the provisions of order 42.2 (b) of the CPR the defendants are bound by the order of the Master as the first-named defendant's Counsel was present when the Master delivered her judgment. He further contended that, as a result thereof, the claimants sought and were granted leave to file and serve an amended statement of claim and an amended reply and defence to the first-named defendant's counterclaim.
- [10] The Court held that the decision of Master Pemberton, as she then was, was at the time of the trial still in force having not been challenged by way of appeal or otherwise nor was it set aside. The Court also found that Counsel for the parties was present at the delivery of the said decision, hence the provisions of part 42.2 (b) of the CPR applied. Whilst the Court acknowledges that it is not bound by the decision of the learned Master, the Court was not persuaded that it should not follow the findings of the learned Master aforesaid. In the circumstances, the Court proceeded to hear and determine this matter pursuant to the issues identified by the learned Master aforesaid.
- [11] The claimants relied on the evidence of the witnesses Ambrose Phillip and Kathleen Doyle. In his evidence-in-chief Ambrose Phillip relied on the evidence in his witness statement the contents of which he swore were true and correct. In that witness statement Mr. Phillip testified that:

"The agreement and bond were then prepared by the Claimant using a form of agreement and bond previously prepared by its solicitors in relation to a different employee, as a guideline. The claimant did not consult with its solicitors in relation to the actual agreement and bond it prepared in this case. I signed the agreement on the claimant's behalf. The first defendant did not sign the agreement or the bond at the same

time that I signed. She wanted to take the document away to seek consultation before she signed them. I agreed and the first defendant went away with the said document and later delivered them to the claimant signed."

- [12] The witness goes on to testify that the first-named defendant on her return to the job, having successfully completed her degree course, felt that she should have been given an office of her own and was unhappy with her accommodations notwithstanding the fact that the claimant's offices were housed in an area of limited physical space. He added that the first-named defendant was constantly in conflict with and insubordinate to her superior officers and that she constantly complained about her salary.
- [13] Mr. Phillip identified in his testimony, three separate occasions, commencing from about a year after she returned to work, that the first-named defendant wrote to the claimant seeking a release from the bond, stating that she no longer wished to serve the claimant. He continued that from the time that the first-named defendant wrote the claimant seeking a release from the bond, her relationship with the accountant deteriorated and so did her standard of work. In the circumstances according to Mr. Phillip's testimony the claimant was forced to terminate the first-named defendant's employment by letter dated the 9th November 1998.
- [14] This witness was cross-examined and rather surprisingly, learned Queen's Counsel for the first-named defendant, did not challenge the testimony of this witness in his witness statement on the reasons for the claimant's dismissal of his client set out aforesaid. The witness denied that the first-named defendant was not given an opportunity to obtain independent legal advice before signing the agreement. He stated that before signing same the first-named defendant sought and was granted time to consult before she did so. Against that background, Mr. Ambrose said he did not advise the first-named defendant to seek legal advice, but he was certain that she fully understood what she signed, that is the agreement and the bond.

[15] Kathleen Doyle also relied on the contents of her sworn witness statement which she testified were true and correct. She stated that she left the employ of the claimant in the year 2005 and that she was still there when the first-named defendant was terminated.

[16] The first-named defendant testified on her own behalf. She too relied on the contents of her sworn witness statement and said she stands by what is contained therein. She was cross-examined and conceded that the letter of the 7th January 1999 from the claimant's attorneys did not admit the sums claimed in her counterclaim. She admitted that whilst she was studying in Trinidad she did not serve the claimant. She admitted that she was paid whilst studying but that was not because of the agreement which she signed but because she had a right to be paid whilst not working. She later resiled from that position and stated that she was paid because of the agreement which she signed. I shall return to this statement later in this judgment. She agreed that the contents of paragraphs 4 & 5 of her witness statement are true but goes on to state that she did not agree with what is in paragraph 5. Paragraphs 4 & 5 of the witness statement read as follows:

- "4. It was a term of the agreement that I shall enter into a Bond with two or more sureties acceptable to the Plaintiff in the sum of \$115,000.00 East Caribbean Currency to serve the Plaintiff as herein provided for a period of 3 years after completion of my course of study.
5. It was a further term of the said agreement that the condition of the Bond would be that should I leave the service of the Authority before the expiration of the said term without the consent in writing of the Authority or have my employment terminated by the Plaintiff, I would pay the said sum of \$115,000.00 to the Plaintiff."

No reason was offered by the first-named defendant as to why she signed the agreement notwithstanding her disagreement with its terms.

[17] The Court should note, that at that time learned Queen's Counsel for the first-named defendant rose to inform the Court that his client is not resiling from the agreement. She testified that she signed the bond before Mr. Roberts, but admitted that the bond shows that she signed same before the Deputy Registrar of

the Supreme Court, Ms. Duncan. She conceded that she wanted to resign but did not do so because she knew that she had signed an agreement and had she resigned then she would have to repay the money. She testified that she had filed and served a claim against the claimant for wrongful dismissal some eleven years ago, but conceded however that that is not stated on her sworn witness statement.

SUBMISSIONS

[18] As stated aforesaid, the issues to be determined at the trial were previously decided at the case management conference and were set out in her written decision aforesaid. I will now consider the submissions as they relate to the issues to be determined.

1. Whether there was due observance of the conditions as contained in the bond.

[19] Ms. Forrester for the first-named defendant contends in her written submissions that the first-named defendant complied fully with the terms of the agreement as set out at paragraph 5 thereof. Counsel contends that the bond entered into by the first-named defendant and the claimant only stipulates that ***'the employee shall serve the authority and observe the terms and conditions in the agreement'***. Counsel further submits that her client abided with the laws of the Republic of Trinidad and Tobago, adhered to the rules and regulations of the U.W.I and duly graduated. Moreover at the successful completion of her studies she returned and served the claimant. In concluding Counsel contends that her client did observe the conditions of the bond.

[20] Mr. Hood for the claimant on the other hand, submits that while his client duly observed and complied with the terms of the agreement, the first-named defendant failed to do so. He contends that the argument of the first-named defendant, that serving the claimant in accordance with the terms of the agreement and bond; was isolated from her obligations as an employee was not supported by her answers in cross-examination when she admitted that serving

the claimant placed on her certain obligations. He further submitted that there were implied terms in the contract of employment that the employee would, obey all lawful directions of the claimant, act with all skill, care and competence, not neglect her duties, and not to act in a manner which would entitle the claimant to terminate her employment. Mr. Hood concludes by stating that the evidence clearly shows that the first-named defendant did not observe the terms and conditions of the agreement and the bond.

2. If the evidence leads to the conclusion that there was non-compliance, was the first named defendant in any way prevented by the claimant from performing her obligations under the agreement.

[21] Counsel for the claimant in his written submissions contends that from a relatively early stage of her resumption of duties with the claimant, the first-named defendant stated that as a result of her unhappiness and dissatisfaction with the job, she wanted to leave the employ of the claimant and be relieved from her obligations under the bond and the contract. He contended that she admitted in cross-examination that she was aware that if she left the employ of the claimant before the expiration of three years then she would have to pay the claimant the sums stipulated in the bond and agreement. Her only alternative therefore was to force the claimant into a position where they would have to terminate her services. He concludes by submitting that it would not in the circumstances be correct to say that the first-named defendant was prevented from performing her obligations under the bond and agreement.

[22] Ms. Forrester for the first-named defendant raised a discrete point on this issue. Counsel contends that the law applicable at the time of her client's termination was the common law. She further contends that under the common law an employer is entitled to summarily determine a contract of employment for just cause, such as allegations of misconduct. Additionally, an employer is also entitled to terminate an employee's contract by giving reasonable notice or payment in lieu thereof.

[23] Counsel goes on to submit that the claimant had an option to terminate her client's contract of employment either for cause or with notice. She contends that the form used by the claimant herein was the latter as is evidenced by the terms of the letter of the 9th November 1999. Counsel submits that the allegations of cause in the letter do not displace the form chosen by the claimant, and whether or not the allegations of cause were present it was not possible to dismiss by payment in lieu of notice and for cause at the same time. Counsel concluded by submitting that by terminating the first-named defendant's contract in the form and manner in which they did, the claimant prevented her client from launching a successful action for wrongful dismissal as the payment received by her would be in the nature of damages. As a consequence thereof, the claimant cannot deny that it was as a result of their act that her client was unable to serve them further. Counsel relied on several authorities in support of her contention.

3. Was the first-named defendant given an opportunity to obtain independent legal advice before committing herself to the terms of the bond?

[24] Ms. Forrester for the first-named defendant submits that at no time was her client told that she should obtain independent legal advice before signing the agreement. She contends that this was crucial, having regard to the nature of the relationship between the parties, balanced against the nature of the transaction at the time of entering into the agreement and the bond. She further submits that the circumstances of the matter give rise to the presumption of undue influence. Counsel relied on several authorities in support of her contention that the claim should be dismissed as her client's unchallenged evidence is that she was neither advised or allowed to seek and obtain independent legal advice before signing the contract and bond.

[25] Mr. Hood for the claimant contends that this is essentially a question of fact to be determined by the Court. He submits that Mr. Ambrose Phillip testified, that before the first-named defendant signed the agreement and the bond, she asked to be

allowed to take same away for consultation which was allowed. He further submits that the bond, on the face of it, indicates that it was signed in the presence of the Registrar of the Supreme Court and has asked the Court to accept the evidence of Mr. Phillip in this regard and to find that the first-named defendant did consult with Counsel.

FINDINGS

- [26] I have considered the evidence adduced by the witnesses called herein as it pertains to the issues to be determined. On the first issue, I do not accept the narrow interpretation of the agreement and the bond urged by Ms. Forrester. I find that the whole matter of the first-named defendant being granted the facility to further her studies arose out of the contract of employment existing between herself and the claimant. I find that whilst the terms and conditions set out in the agreement and the bond do address matters peculiar thereto.
- [27] I find that for those obligations to be satisfied more particularly the one to serve the claimant for three years on the successful completion of her studies, meant that she was required to do so as an employee of the claimant. In those circumstances the terms and conditions of her contract of employment would be brought to bear.
- [28] It seem quite clear to me that within a year of her return, the first-named defendant embarked on a crusade to ensure her departure from the employment of the claimant. This is clearly evidenced by the exchange of letters and the meetings held between the parties all at the instance of the first-named defendant to accomplish this intention.
- [29] I find on a balance of probabilities that upon the refusal of the claimant to accede to her requests, that the first-named defendant was, as described in the unchallenged evidence of Ambrose Phillip and Kathleen Doyle, calculated to place the claimant in a position where she would have to be dismissed. I have also considered the tenor and contents of her letter to the Administrative Manager and

her neglect and or refusal to comply with the directive of her General Manager to withdraw same and apologise as compelling evidence that the first-named defendant's conduct on the job was unacceptable. Indeed, under cross-examination, the first-named defendant conceded that disobedience of directives of superior officers, failure to perform her duties with skill and diligence, the neglect of her duties and acts of insolence to management do not amount to serving the claimant.

[30] I find that she accepted that in the satisfaction of her obligation to serve the claimant, she was also negligent to satisfy obligations under her contract of employment.

[31] In the circumstances, I find that the first-named defendant acted in breach of the conditions of the agreement and bond, that is that she should not act in such a manner in the performance of her duties that would justify the claimant dismissing her for cause.

[32] I now turn to consider the second issue to be determined. Ms. Forrester submitted that the claimant by terminating the first-named defendant's contract of employment with pay in lieu of notice had essentially waived whatever acts of misconduct existed on the part of her client. She goes on to contend that the claimant chose that particular form of dismissal to resist a successful action by the first-named defendant for wrongful dismissal. Hence it cannot now be argued by the claimant with any justification that it did not prevent her client from satisfying her obligations under the bond and the agreement.

[33] I have already found that there was non compliance by the first-named defendant in the performance of her obligations under the agreement and the bond. However, the point raised by Ms. Forrester is that those acts of misconduct, having been waived by the claimant as is evidenced in the form and manner in which her client's employment was terminated, they cannot now be relied on by the claimant.

[34] I must immediately observe that this issue of waiver and condonation was not pleaded by the first-named defendant. However, for better or for worse I have duly considered same.

[35] In the Canadian decision of **Castell v Gardiner Thornton Davidson Garrett Masson & Associates** 30 D. L.R. (3d) 506; this issue arose to be determined by the British Columbia Supreme Court. In that case the plaintiff who was employed as an architect and was responsible for overseeing the performance of certain works by a contractor, sought a loan from the contractor. Upon discovering this, it was felt by his employers that they could not retain confidence in him so they decided to summarily terminate him. It was later discovered that the plaintiff was an employee of a firm of architects who sent him a further letter terminating his services and paid him one month's salary in lieu of notice

[36] Counsel for the plaintiff submitted that by dismissing his client on notice, the defendant had elected to waive the right to dismiss for cause. Ruttan J approached the issue thus:

"17. The principle of common law election between two distinct rights, as considered by Lord Blackburn in **Scarf v Jardine** (supra) is similarly of no relevance to the present case. In **Scarf v Jardine**, Lord Blackburn commented upon the plaintiff's right of choice of suit against one or another of two sets of parties and said that the plaintiff could not hold both sets of parties liable. His Lordship said at p. 360:

... where a man has an option to choose one or other of two inconsistent things, when once he has made his election it cannot be retracted, it is final and cannot be altered.

18. The election there was between two possible rights. Here there was no election, merely a decision whether to exercise an existing right, or to waive that right by condonation of the behaviour which gave rise to the right. The same learned judge when sitting as Blackburn, J in the case of **Phillips v Foxall**, L.R. 7 Q.B page 666 had this to say at p. 680:

"Now the law gives the master the right to terminate the employment of a servant on his discovering that the servant is guilty of fraud. He is not bound to dismiss him, and if he elects, after knowledge of the fraud, to continue him in his service, he

cannot at any subsequent time dismiss him on account of that which he was waived or condoned."

19. In that case His Lordship used the word 'election' to indicate waiver and condonation of a single right. The issue is in essence one of fact and the proposition is succinctly stated by Halsbury, 3rd Ed. Vo. 25 at page 488, paragraph 940 in these words:

A master who, with full knowledge of a servant's misconduct, elects to continue him in his service, cannot subsequently dismiss him for the offence which he has condoned.

Whether upon the facts proved, the summary dismissal of a servant is justified or not is itself a question of fact to be determined, in the case of an action tried with a jury, by a jury.

20. So in the present case we ask ourselves did the plaintiff act in a manner which would entitle the defendants to discharge him summarily? If so, was he so discharged, or was his behaviour condoned, and was he later discharged without proper notice?"

[37] I have found that the claimant had ample cause to dismiss the first-named defendant. I find that the language used clearly stated the reasons why the board of the claimant came to the conclusion to dismiss the first-named defendant in the letter of dismissal of the 9th November 1999. Indeed, at no time could it be claimed with any justification that the claimant sought to waive or condone the misconduct of the first named defendant in the performance of her duties, as this was a burning issue for approximately one year prior to her termination. I find therefore the payment of wages in lieu of notice to be no more than gratuitous. I therefore find that there was nothing done to prevent the first-named defendant from satisfying her obligations under the agreement and the bond. In any event I find no evidence that there was any hint of condonation by the claimant of the misconduct of the first-named defendant and as such I do not accept Ms. Forrester's submission. The question of the wrongful dismissal of the first-named defendant was not specifically pleaded and was not pursued by Counsel. In any event that matter was not properly before the Court.

[38] In considering the third issue, I have carefully perused the terms of the bond and the agreement. I do not find the terms to be difficult to comprehend or of a

complicated nature. The terms are not unusual in contracts between employers where the employer in return for a specified period of service finances the further education of an employee. At the conclusion of the period of service as usually happens, the employee is free to pursue other employment opportunities armed with an advanced academic qualification and commensurate work experience. I do not find the terms and conditions of the bond and agreement to be unduly oppressive and as such I do not find that the claimant held a distinct advantage over the first-named defendant in the final constitution of the terms and conditions of the bond and agreement. I accept the evidence of Ambrose Phillip, that the first-named defendant was given the documents for consultation and the fact of the appearance of the signature and seal of the Deputy Registrar of the Supreme Court thereon, to be compelling evidence that she did take the documents to a legal practitioner. The Court takes judicial notice of the fact that the Deputy Registrar of the Supreme Court is an attorney-at-law.

- [39] In the circumstances the Court finds that the first-named defendant did have an opportunity to obtain independent legal advice.

THE COUNTERCLAIM

- [40] I now turn to consider the counterclaim. Counsel for the first-named defendant relied on provisions of the Protection of Wages Act Cap 260 ('the Act'), more particularly section 9 and 10 thereof. She has in her written submissions also referred the Court to the definition of the word wages as it appears in the Act. Ms. Forrester contends that the sums claimed in the counterclaim represent wages unlawfully withheld by the claimants, contrary to the provisions of the Act aforesaid.
- [41] It was a term of the agreement that whilst away from the job on study leave the first-named defendant would be paid sums amounting to 60% of her salary and the company would withhold 40% as collateral for the monies expended on her during her course of study.

[42] Mr. Hood on the other hand, contends that the reliance by the first named defendant on the provisions of the Act, was not pleaded and as such the Court should not consider submissions in this regard. Counsel contended in the alternative that the sums withheld were not wages within the meaning of the Act but were payable in terms of a contractual arrangement. He further submitted that such retention was permitted by sections 15 and 18 of the Act which allow for retention of wages on account of sums loaned.

[43] The Act defines wages thus:

"wages' include all remuneration and allowances payable to a worker for work or services performed or to be performed under a contract, but do not include –

(a) The value of any housing, lighting, water, medical attention or other amenities provided at the sole expense of an employer;

(b) Contributions paid by an employer on his own account to a pension or provident fund scheme;

(c) Travelling allowances or the value of any travelling concession;

(d) Sums paid to a worker to defray special expenses incurred by him by the nature of his employment, or

(e) Gratuity payable on discharge or retirement from the service of an employer."

[44] It is common ground that at the time when the sums from which deductions were made, the first-named defendant was on study leave and was not at work or performing services for the claimant. Indeed for some period of time she was away in Trinidad & Tobago. I find therefore that the sums paid to her were done not for work or services rendered but by virtue of a special contractual arrangement with herself and the claimant. Indeed it was admitted by the first-named defendant under cross-examination that she was paid whilst on study leave because of the contract she signed. It was mutually agreed that those sums were deducted as collateral for sums expended on her during her course of study. Had she satisfied

her obligations under the bond and the agreement, those funds would've been returned to her. Though the word salary was used in the agreement I find that this was not wages within the meaning of the Act.

CONCLUSION

- [45] The claimant succeeds in the relief sought in the statement of claim. The counterclaim stands dismissed. There shall be costs to the claimant in the sum of \$5000.00

A handwritten signature in black ink, appearing to read 'F. Cumberbatch', with a stylized flourish at the end.

Francis Cumberbatch
HIGH COURT JUDGE