

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

CLAIM NO. GDAHCV2007/0108

BETWEEN:

CECIL DUNN

Claimant

and

PARADIS LTD

Defendant

Appearances:

Mr. Dwight Horsford for the Claimant

Mr. Anselm Clouden for the Defendant

2009: April 28
August 28

JUDGMENT

- [1] MICHEL, J. (Ag.): By Claim Form and Statement of Claim issued on behalf of the Claimant on 6th March 2007, the Claimant instituted proceedings against the Defendant for wrongful dismissal from employment on a fixed term contract. The Defendant filed an Acknowledgement of Service on 8th March 2007 and a Defence on 23rd March 2007. An Amended Defence was filed on 27th March 2007 and the case went to case management before the Master on 23rd May 2007.
- [2] By Notice of Application dated 24th March 2009 the Defendant applied to the Court for an order that summary judgment be granted in its favour on the ground that the Claimant has no real prospect of succeeding on the claim or, alternatively, for an order striking out paragraphs 8 and 9 of the Statement of Claim on the grounds that they do not disclose any reasonable ground for bringing a claim and/or they are an abuse of the process of the

Court or are likely to obstruct the just disposal of proceedings. The Defendant's application was supported by an Affidavit of Anthony Geoffrey Croome, with accompanying exhibits.

- [3] On 25th March 2009 the Defendant filed written submissions together with a list of authorities in support of its application, while on 2nd April 2009 the Claimant filed a response to the Defendant's written submissions together with his own list of authorities.
- [4] The application was scheduled to be heard on 3rd April 2009, but Counsel for the Claimant sought an adjournment to file and serve additional submissions and the matter was adjourned to 28th April 2009. No additional submissions were, however, filed and served by the Claimant.
- [5] The matter was heard on 28th April 2009, with Counsel for both parties augmenting their written submissions with oral arguments.
- [6] The application for summary judgment was made under Part 15 of the Civil Procedure Rules 2000 (CPR). Rule 15.2 enables the Court to give summary judgment in respect of a claim brought by a claimant or on a particular issue in the claim if the Court considers that the claimant has no real prospect of succeeding on the claim or on the issue.
- [7] In his submission on behalf of the Defendant, Learned Counsel for the Defendant contended that the Claimant in the present case has no real prospect of succeeding on a claim against the Defendant for wrongful dismissal. He contended that the Claimant claims to have been dismissed without just cause, when there is no cause of action to that effect under the employment law of Grenada. He submitted that as long as an employee is paid his entitlements, including salary in lieu of notice, there is no cause of action for dismissal without just cause. He submits further that the Claimant alleges that his dismissal by the Defendant was negligent, done in bad faith and in breach of the rules of natural justice and deprived the Claimant of his constitutional right to work guaranteed to him by the Grenada Constitution, but that none of these allegations constitutes a cause of action maintainable in law against the Defendant. As such, the Claimant has no real

prospect of succeeding on his claim and summary judgment should therefore be entered for the Defendant.

- [8] Even if the Court were minded to go along with the Defendant thus far, however, the Defendant concedes that there may still be a triable issue of what in the circumstances of this case would be adequate notice to terminate the Claimant's contract of employment. Counsel for the Defendant then sought to argue that "one month's notice was quite sufficient" for the Claimant in this case, which is at best an argument which a court may or may not accept, but it is an issue which the Court must determine, especially having regard to the averment by the Claimant that his contract of employment with the Defendant was a fixed term contract of one year's duration terminating in December 2007 – some six months after its purported termination. A determination of the issue of the adequacy of the notice can only properly be made at the trial of the matter and to trial therefore the matter must go.
- [9] Having regard to the fact that the case must go to trial on the issue of the notice, it is pointless, and probably prejudicial, making any comment on the other matters raised by the Defendant as not constituting a cause of action maintainable in law against the Defendant, except in so far as they are dealt with later in addressing the application to strike out parts of the Statement of Claim.
- [10] The application to strike out paragraphs 8 and 9 of the Statement of Claim was made under Rule 26.3 (1) (b) and (c) of the CPR, which authorizes a court to strike out a statement of claim or part thereof if it appears to the court that the statement of claim or part to be struck out does not disclose any reasonable ground for bringing the claim or is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings.
- [11] Paragraph 8 of the Statement of Claim reads as follows: "The Defendant in so dismissing the Claimant acted negligently, in bad faith and in breach of the rules of natural justice and with intent to injure the Claimant's professional reputation by accusing the Claimant of

stealing.” There is, as far as this Court is aware, no cause of action for wrongful dismissal against a private entity founded in negligence, bad faith, breach of the rules of natural justice or injury to reputation and, as such, paragraph 8 of the Statement of Claim must be struck out as not disclosing any reasonable ground for bringing that particular claim against the Defendant.

- [12] Paragraph 9 of the Statement of Claim reads as follows: “By reason of the matters aforesaid the Claimant has been unjustly deprived of his right to work in his chosen field as guaranteed under the Constitution of Grenada and has been deprived of the salary he would otherwise have earned and the Claimant has thereby suffered loss and damage.” Again, there is no cause of action for wrongful dismissal against a private entity founded on breach of fundamental rights guaranteed under the Constitution and, as such, the offending part of paragraph 9 of the Statement of Claim must be struck out as not disclosing any reasonable ground for bringing the claim against the Defendant. The whole of paragraph 9 need not be struck out however, but only the offending part which reads: “has been unjustly deprived of his right to work in his chosen field as guaranteed under the Constitution of Grenada.” So that paragraph 9 (to be renumbered 8 after the striking out of paragraph 8) would now read: “By reason of the matters aforesaid the Claimant has been deprived of the salary he would otherwise have earned and the Claimant has thereby suffered injury, loss and damage.”

- [13] The case can now proceed to trial on the reconstructed Statement of Claim and a trial window is set for January - February 2010, with the precise date of trial to be determined and notified by the Registry of the High Court. The trial bundle is to be filed by the Claimant at least seven days before the trial date.

- [14] This application having partly succeeded and partly failed, each party shall bear his or its own costs.

[15] For the sake of completeness, it should be pointed out that the following cases were referred to by Counsel for the parties in their written and oral submissions and were perused and considered by the Court in arriving at its judgment:

- a. Swain v Hillman¹ ;
- b. Addis v Gramophone Co. Ltd.² ;
- c. Johnson v Unisys Ltd.³;
- d. Desmond Knight v BWIA West Indies Airways Limited⁴;
- e. Ramesh Lawrence Maharaj v Attorney General of Trinidad and Tobago⁵;
- f. Royal Brompton Hospital NHS Trust v Hammond⁶;
- g. The Bank of Bermuda Limited v Pentium (BVI) Limited et al⁷;
- h. Taylor v Midland Bank Trust Co.⁸ ;
- i. Irma Paulette Robert v Cyrus Faulkner et al⁹;
- j. Morris v Bank of America National Trust¹⁰.

Mario Michel
High Court Judge (Ag.)

¹ [2001] 1 All ER 91

² [1908-1910] All E.R. Rep. 1

³ [2001] 2 All ER 801

⁴ High Court Civil Suit No. 1163 of 2002 (Saint Lucia)

⁵ [1979] A.C. 385

⁶ [2002] UKHL 14

⁷ BVI Civil Appeal No. 14 of 2003

⁸ 1999] All ER (D) 831

⁹ Saint Lucia Civil Appeal No. 29 of 2007

¹⁰ [2000] 1 All ER 954}