

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV 2000/1243

BETWEEN:

CHRISTOPHER JONES

Claimant

and

CARIBBEAN CHATEAUX (ST. LUCIA) LIMITED

Defendant

Appearances:

Mr. Rhory McNamara for the Claimant.
Mr. Dexter V.O. Theodore for the Defendant.

2002: September 30
October 01

BREACH OF CONTRACT...RESTRAINT OF TRADE CLAUSE...DAMAGE TO
DEFENDANT'S VEHICLE...WAS CLAIMANT ACTING IN THE COURSE OF HIS
EMPLOYMENT

JUDGMENT

1. **HARIPRASHAD-CHARLES J:** Mr. Christopher Jones, the Claimant was employed by the Defendant Company as a Regional Sales Manager for the Caribbean pursuant to a written contract of employment dated 1st day of May 1998. By letter dated 30th day of June 2000, Mr. Jones' employment with the Defendant Company was terminated forthwith. In accordance with his contract of employment, Mr. Jones was paid certain entitlements

accruing from the immediate termination of his employment. He was dissatisfied with the computation of his those benefits and as a consequence, instituted legal proceedings against the Defendant.

2. At the trial, the seven agreed statement of issues were significantly reduced to three namely:

(i) If the restrictions placed on the Claimant found in Clause 9 of the Contract of Employment between the Claimant and the Defendant do apply in circumstances where the Claimant was dismissed from his employment. Are the said restrictions:-

(a) necessary restrains on the Claimant's rights and trade?

(b) reasonably necessary to protect the Defendant's interests and/or the interests of the public in Saint Lucia and abroad?

(c) too wide in restricting involvement in the "wine and spirits business for two years in territories covered by Caribbean Chateaux (St. Lucia) Ltd?

(ii) Whether the Claimant is entitled to reimbursement from the Defendant for the sum of EC \$1,925.00 expended on an airline ticket in June 2000?

(iii) Who should bear the costs of \$8,324.00 for repairs to the Company's vehicle which was involved in a road traffic accident while the Claimant was driving?

(i) RESTRAINT OF TRADE CLAUSE

3. Mr. Dexter Theodore for the Defendant relentlessly argued the issue of restraint of trade which became merely academic. The Court was unable to determine what damages (if any) the Defendant suffered in the absence of evidence.

(ii) AIRLINE TICKET

4. There is ample evidence that the Claimant was given one airline ticket to the United Kingdom when he was entitled to two. The airline ticket to France was for business purposes. The Claimant was sent to France by the Defendant to Vin Expo 1999. This ticket could not be categorized as a vacation ticket. As a consequence, the Claimant is entitled to a second “economy” class return ticket to the United Kingdom which he paid for in June 2000 at a cost of \$1,925.00.

(iii) REPAIRS TO COMPANY'S VEHICLE

5. The Claimant was involved in an accident on 17th day of May 2000. He alleged that the accident occurred during the course of his employment. Even if he were permitted to use one of the Company's vehicles as documented in a letter dated 2nd day of April 2001 by Ross Phillips (Exhibit CJ 2) (which the Defendant denied), the question to be determined is whether the accident occurred during the course of employment.
6. The Defendant will be liable for the negligence of the Claimant, if committed in the course of employment but is not liable for negligence, which is committed outside the scope of his employment: *James v Harrison (1978) 18 ACTR 36*.
7. In determining whether or not a servant's wrongful act is done in the course of his employment, it is necessary that a broad view of all the surrounding circumstances should be taken as a whole and not restricted to the particular act, which causes the damage: *Century Insurance Co. v Northern Ireland Road Transport Board (1942) AC 509*. There is no simple test which can be applied to cover every set of circumstances so that it remains essentially a question of fact for decision in each case: *per Finemore J. in Staton v N.C.B. (1957) 1 WLR 893, 895*.
8. In the instant case, the Claimant attested that he went to the Royal St. Lucian to discuss with the General Manager the current wine list and future events to take place at the hotel.

After the meeting which lasted from 2.00 p.m. to 6.00 p.m., the General Manager invited the Claimant and some guests to his (the General Manager's) home at Rodney Heights to dine. The Claimant alleged that the dinner was partly business and partly social. At about 10.00 p.m. the vehicle was involved in an accident. He alleged that he was returning to the Defendant's offices at Vide Bouteille when he was involved in the accident. Upon intense cross-examination by Counsel for the Defendant, the Claimant admitted that he was on his way home at Vigie.

9. The Defendant submitted that the Claimant is first of all, not entitled to a company's vehicle as it was not a term of his contract of employment. I am of the view that the Defendant acquiesced to the Claimant's use of a Company's vehicle when he was in Saint Lucia and on the night in question, he was using the vehicle with the consent of the Defendant. However, I am of the firm view that when the accident occurred, the Claimant had long ceased to be in the course of his employment. An act is done in the course of the employment, not only when the servant is actually doing the work, which he is employed to do, but also when the act is an incident in performing something he is employed to do and when he is about business which concerns the master and servant: *Staton v N.C.B.* (*supra*). The Claimant has not proved to the Court that the business he went to conduct at the Royal St. Lucian was something he was employed to do. And even if he was employed to do so, he has failed to prove that the dinner at the General Manager's residence was business-related. As I earlier indicated, I find that at the time of the accident, the Claimant was not in the course of his employment. As a result, he is responsible for the damages to the Defendant's vehicle. The costs of repairs to the vehicle was EC\$8,364.00. The Claimant will have to bear the costs.
10. Arising out of this issue is the correlative issue of the rental of a vehicle by the Claimant after the accident. The Claimant hired a vehicle after the accident at a cost of EC\$1,041.00. He alleged that he did so on the instruction of Mr. Pascal Boye. He later testified that Mr. Boye suggested to him that he hires a vehicle. The Defendant vigorously challenged this allegation. On this factual finding, I prefer the evidence of the Defendant to that of the Claimant. I do not think that Mr. Boye ever instructed or suggested to the

Claimant that he should hire a vehicle at the expense of the Defendant especially in light of the fact that the Claimant had been involved in a previous accident with the Defendant's vehicle.

11. In the premises, I will enter Judgment for the Claimant in the following sums:
 - (a) The sum of EC\$26,490.00 representing three (3) months salary in lieu of notice.
 - (b) Remuneration of commissions owed to the Claimant to date amounting to EC\$11,327.89 as well as commissions due on Invoice Nos. 1361, 1362 and 1462.
 - (c) The sum of EC\$3,513.11 representing relocation costs.
 - (d) The sum of EC\$1,925.00 representing the Costs incurred on the air ticket.
 - (e) The sum of EC\$4,927.10 representing vacation pay making an aggregate of EC\$39,859.10.
12. On the Defendant's counterclaim, I found that the Defendant was not acting within the scope of his employment when he negligently drove and damaged the Defendant's vehicle, occasioning repairs in the sum of EC\$8,324.00. If my mathematics is accurate, this leaves a balance of EC\$39,859.10 to the Claimant.
13. Accordingly, my order will be as follows:
 - (a) That the Defendant do pay to the Claimant the sum of EC\$39,859.10.
 - (b) Interest at the rate of 6 % per annum from the date of judgment to the date of payment.
 - (c) Costs agreed at \$6,000.00 to the Claimant to be paid not later than 31st day of December 2002.

INDRA HARIPRASHAD-CHARLES
High Court Judge

