

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CIVIL SUIT NO: 553/1993

BETWEEN

JACINTA DUPRE

Plaintiff

and

COLOMBIAN EMERALDS INTERNATIONAL LIMITED

Defendant

Appearance

Mr. Dexter Theodore for Plaintiff

Mr. Anthony Mc Namara for Defendant

1996: May 21
1999: June 29
2000: May 3
October 5

JUDGMENT

[1] **d’Auvergne J.:** This is an old case which suffered many adjournments, change of Judges and Counsel before it was completed. The matter was started on the 21st May 1996 before Matthew J. as he then was. On the 21st day of October 1997. Fararar J. noted that both Counsel agreed to adopt the notes of evidence and fixed the next trial date as the 18th November 1997 but the matter was only continued on the 29th June 1999. The Plaintiff was first represented by Mr. Mario Michel followed by Mr.

Marcus Foster and was concluded by Mr Dexter Theodore. The Defendant had the same Counsel throughout.

- [2] This is an action filed by the Plaintiff against the Defendant seeking a declaration that she was wrongfully dismissed and is therefore entitled to be re-instated or to be paid damages.
- [3] The Plaintiff who is presently self employed as a seamstress told the court that she worked as a salesperson for the Defendant at its Point Seraphine outlet (from June 1991 to May 1993) for almost two years at an income of \$250.00 weekly, plus 4 ½% commission of her weekly sales and that she earned an average of \$3,000.00 per month.
- [4] According to the Plaintiff she had no problems with the manageress and members of staff until about lunchtime on the 14th day of May 1993. She said that she spoke 'politely' to another saleswoman Judith Sundborg requesting that "if anyone should come to me with a business card give me a call because I am not too far away." That sentence was prefaced with the endearment "my dear" to which Judith objected. The Plaintiff said she was troubled by Judith's attitude so at closing time she approached her "in a polite manner" said "what was the problem" and the latter replied that she did not want her to call her 'My dear' for she had no time for people who was dealing with Obeah."

[5] An exchange of words ensued whereupon Judith raised her dress over her head, bent her bottom, uttered indecencies and continued to quarrel; that the Assistant Manager walked in during the quarrel, the Plaintiff reported the matter to her who in turn informed the manageress. Plaintiff further said that on Monday the 17th of May 1993 both Judith and her went to the manageress' office and narrated the incident to the latter and then returned to their respective posts; that after lunch they were both called once more to the manageress' office and were each given a letter but whereas hers was for termination, that of Judith was only for a four day suspension. She told the court that she telephoned and wrote to the managing director in St Thomas. She exhibited two letters written to him by her. She further exhibited two other letters one which she received from the President of Colombian Emeralds and her letter of dismissal.

[6] The Plaintiff denied using any abusive language to any member of staff and of receiving verbal and written warnings concerning abusive language from any official of the Defendant. Afterwards she told the Court that in 1991 she received a written warning but that she did not have a copy of that letter and went on to narrate the incident which resulted in the letter. She said that, at that time, the Defendant owned two stores in St. Lucia one store dealt with "plain gold and watches and the other with gem stones (emerald and diamonds);" that she worked at the store with the gem stones; when one day a member of staff from the other store came to "my

store to get some jewellery boxes and without seeking advice started “digging” for the size of box she wanted.

[7] The Plaintiff said that she told her (the other member of staff) that in future she should ask someone to assist her whereupon the other replied “mash” and proceeded to lead her (the Plaintiff) further into the store where the other members of staff were present and carried on a tirade. Plaintiff said she ignored the attitude and replied “politely.” Eventually that person was pushed out of the store. Once more the matter was reported and both the Plaintiff and that other member of staff were issued with written warnings. The Plaintiff said that she thought that the issuing of that letter was unfair, so she informed Mrs Rosemary Deligny the then and present manageress about it. She later exhibited a letter written by the said manageress which described her as “an honest, pleasant and hard working an asset to our company.”

[8] The Plaintiff then told the Court of another incident which resulted in a letter dated 18th February 1993 which she exhibited. She said that one morning a customer came into the store and examined a pair of earrings and promised to return and buy it in the afternoon so she gave the customer her business card. The customer returned as promised while she (the Plaintiff) was attending to another customer so she asked a member of staff to hold on with the afternoon customer while she settled the bill with

the morning customer; that the member of staff did not respond so she attended to the morning customer; and then observed the other member of staff attending to the afternoon customers whose purchase amounted to almost \$4,000.00 American dollars.

[9] She said that after the departure of the customers she accused that member of staff of double crossing her and a quarrel ensued, she left the room and on her return she met the manageress in “Conference” with two members of staff including that other member, whereupon the manageress said “I am tired of telling you all when you all are dealing with a customer don’t try to look for other sales while dealing with a customer.” The Plaintiff said that she tried to explain but to no avail. Two weeks later she received a letter of warning so she approached the manageress for an explanation but instead was asked to leave followed by the slamming of the office door.

[10] The Plaintiff replied to that second letter of warning. In that letter she accused the manageress of not being fair to her and of having favourites. The concluding paragraph of that letter is worthy of note and I quote:

“As I come to a close, I must say I do respect you very much as the manageress and if I ever get a fair dismissal from you, I will not hesitate to accept it, take my bag and leave immediately. But if I get an unfair dismissal for no valid reason, I will resist such

dismissal, so I am requesting that my reply to your letter be put on file.”

- [11] The manageress replied. The gist of her letter was that the staff should work as a team and stop fighting over commissions. She urged the Plaintiff to try and understand that her efforts (the manageress) were for improvements. The letter which followed was the one of dismissal dated 17th May 1993 which is also reproduced.

Exh. JD4

Miss Jacinta Dupre
C/o Colombian Emeralds Int.,
Pointe Serephine
Castries.

May 17th 1993,

Dear Jacinta,

An incident regarding yourself and Mrs. Sundborg in the store on Friday the 14th May, 1993 was reported to me by the Assistant Manager.

Your insolent and offensive behaviour will no longer be tolerated by the Company. You have received several verbal and written warnings concerning your abusive language. You have left us with no alternative but to terminate your employment forthwith.

Any monies due to you will be paid.

Yours sincerely
R. Deligny

Island Manager

- [12] The Plaintiff replied querying her dismissal and informing the manageress that she would be seeking Justice. Subsequently she filed this action

claiming a declaration that she had been wrongly dismissed and therefore should be reinstated or alternatively, should be give damages for wrongful dismissal. She also claimed general damages and costs and in Court further sought for two weeks vacation leave.

[13] Under Cross Examination the Plaintiff admitted that the Defendant has a high class jewellery store and that the level of Customer Service is of a higher level than the average store, that at the commencement of the job she underwent a basic training of one week where it was emphasized that excellent customer relations, behaviour beyond reproach and positive attitude to customers were essential aspects of the job. She however denied that she received two letters namely letter dated 11th October 1991 and letter dated 25th November 1992. She said however that she received a letter in November 1992 which to her was different from the one she was shown in Court, though they dealt “with similar things” but that she no longer had her letter in her possession. She said “I read it and dumped it in the bin.” She also denied that she was the one who started the confusion with Judith Sundborg and that she used obscene language but insisted that Judith was the aggressor.

[14] Eventually the Plaintiff admitted to receiving two letters of warning the first one she said was the one that was thrown away in 1992 and the other was the one dated 18th February 1993. She was reminded that she referred

to a letter received in 1991 to which she replied if she said so it was a mistake.

[15] Rosemary Deligny gave evidence on behalf of the Defendant and told the court that she is the island manager of the Defendant company and has worked in that position from 1991. She told the court that the Defendant has three outlets namely Point Seraphine, La Place Carenage and Hewannorra Airport, that they are duty free stores and catered for “very professional persons usually in the income bracket to afford fine jewellery;” that they offered “an extremely high level of customer service.”

[16] This witness told the court that upon employment a new employee initially attended a two-week training where “Customer Service which involves being courteous and pleasant to internal and external customers at all times.” is stressed. She said that she knew the Plaintiff for she was employed with the Defendant from June 1991, that she was “the only employee with the name Jacinta;” that the Plaintiff started off as a great saleswoman but her behaviour deteriorated to the extent that her probationary period had to be extended to six months.

[17] She said that the Plaintiff was noted for frequent outburst of anger on the sales floor usually in the presence of valued customers, that she had

constant disagreements with other members of staff. She said that she spoke to her very often about her behaviour and attitude, which would change for the better but which only last for a maximum of two days whereupon Plaintiff would revert to her former habits; that she recalled the Plaintiff telling her “that was her way of dealing with conflicts.”

[18] The witness exhibited letter dated 11th October 1991 which is reproduced:

Exhibit R.D (1)

11th October 1991

Dear Jacinta

I am extremely perturbed and alarmed at your behavior in the store yesterday. Not only was your unruly and disruptive behavior unfair to your fellow workers, but even more unfortunate was that your outbursts was in the presence of our valued customers.

I must warn you, that should a further such incident occur, I will be left with no alternative but to terminate your employment with the company immediately without pay.

Yours sincerely

R. Deligny
Manager

[19] She said that Plaintiff’s behaviour and attitude was the cause of many altercations on the sales floor and she was spoken to in an effort that she would change her ways.

- [20] The witness recalled that in November 1992 she had cause to write to the Plaintiff about a disagreement with another member of staff concerning a customer and commission. She exhibited that letter which is reproduced:

Exhibit R.D (2)

Jacinta Dupre
Marchand Road
Castries.

November 25th, 1992

Dear Jacinta,

It is with regret that I write to you again about your unruly and disruptive behavior in the presence of our valued customers.

Whenever you are dissatisfied with a decision made between yourself and another member of staff, your first resort is to shout out your displeasure regardless of who is present in the store at the time. When I have spoken with you about this, your reply is that you are only human, and this is the only way you can react to the situation.

Kindly be informed that this behaviour is not becoming, and learn to contain yourself with a degree of decorum when you find yourself in these situations.

Please accept this as a formal warning letter.

Yours sincerely,

R. Deligny
Manageress

- [21] Two other letters formerly admitted to and exhibited by the Plaintiff were exhibited by the Defendant. The first one is hereby reproduced. The second one the letter of termination is exhibited on page 6 of this judgment.

The first of these two letters is as follows.

Miss Jacinta Dupre
Castries.

February 18th, 1993

Dear Jacinta,

Your behaviour over the issue of commissions has been intolerable and unacceptable by company standards. Whenever I have tried to resolve the creations of your unnecessary encounters, you continue to raise your voice in the store in the presence of customers.

Please accept a formal warning. Should such incidents recur, you will leave me no alternative but to terminate your services with the company.

Allow me to reemphasise our company policy on commissions.

- (1) HELP ONLY ONE PERSON AT A TIME.
- (2) IF YOU DON'T STAY WITH A CUSTOMER, ANOTHER SALESPERSON IS FREE TO TAKE OVER
- (3) SIMPLY GREETING A CUSTOMER, EVEN SHOWING A FEW PIECES, BUT NOT DEVELOPING A SALES RAPPORT DOES NOT MAKE THAT PERSON YOUR CUSTOMER
- (4) WHOEVER CLOSES THE SALE MAKES THE SALE
- (5) DO NOT BICKER IN FRONT OF ANY CUSTOMERS
- (6) SIMPLY ASKING A MEMBER OF STAFF TO HELP A CUSTOMER ESPECIALLY ON A BUSY DAY, DOES NOT MAKE THAT PERSON'S SALE YOURS.

I implore you to work together and work fairly. While everyone tries to maximise their earnings much is said about "GREED" VERSUS "THE WAY IT USED TO BE."

Please follow the above guidelines, based on company's policy which are derived in the main from a degree of common sense and consideration for others.

Yours sincerely

Rosemary Deligny (Mrs.)
MANAGERESS

[22] Mrs. Deligny told the court that she was off duty on the 14th May 1993 so the following day she called the Plaintiff and Judith Sundborg to her office and asked for an explanation of the reported incident and they complied. She listened to both sides and on the following day she wrote a letter of termination to the Plaintiff, paid her for two weeks holiday and for all commission that was due to her which she accepted without comment. Judith Sundborg was suspended for fourteen (14) days and not four (4) days.

[23] Mrs Deligny was rigorously cross examined but she insisted that the Plaintiff's behaviour kept on deteriorating, that she was constantly in conflict with other members of staff particularly with regard to commission, that she often had loud outburst of anger on the sales floor in the presence of customers.

[24] She was questioned about the exhibited letter wherein she stated that "Jacinta is honest, pleasant and hard working and is indeed an asset to our company. She earns a monthly wage of \$3,000.00." Mrs Deligny told the Court that she wrote this letter in order to facilitate the Plaintiff's application for an American Visa and that if the Plaintiff used it to facilitate the granting of a loan then she was deceitful for that was not the purpose for which it was written. She denied that the Plaintiff received \$3,000.00 monthly but said it was an average \$1,500.00 but during the

winter months a store assistant could earn up to \$3,000.00 as salary and commission combined.

[25] She confirmed that Plaintiff had been sent on promotion tours but that she was not singled out. Most of the other sales personnel were and are still being sent . She agreed that she was amongst the first sent since she was one of the first batch of employees. She said that Judith Sundborg later resigned and after six months reapplied and was accepted once more as a sales person at the Defendant company.

[26] The witness explained why there was a difference in the handling of Plaintiff's case and that of Judith Sundborg. She said that the latter was a first offender, there had never been any reports against her unlike the Plaintiff who was forever in conflict with different members of staff.

[27] Judith Sundborg gave evidence on behalf of the Defendant. She confirmed that both herself and the Plaintiff were employed by the Defendant in 1993. She described the Plaintiff as one who "was always arguing with other members of staff about commission." She narrated the incident of the 14th May 1993 but also told the Court of an incident which took place on the day before. She said the phone rang and the Plaintiff asked her to take the call. She did so and all she heard was a female voice swearing and carrying on a tirade accusing the Plaintiff of not wanting to

Speak to her and that she would be informing the manager of many things including Plaintiff's obeah letters.

[28] This witness confirmed both the Plaintiff and her own disrespectful behaviour and told the Court that she was suspended for one week but denied the various expressions she is alleged to have uttered.

[29] **Addresses**

Learned Counsel for the Plaintiff based his case on the **Contract of Service Act 1970** and said that the Plaintiff was entitled to a minimum period of notice.

[30] He argued that the reason for Plaintiff's dismissal was because the manager believed the obeah stories since just seven months before Plaintiff's dismissal the latter had written to Barclays Bank to facilitate a loan for the Plaintiff where she described the Plaintiff as "honest pleasant and hard working and is indeed an asset to our Company."

[31] He quoted two St Lucian cases 625 of 1994 **Samuel Clarke v Castries City Council** and No 488 of 1994 **Brenda Edwin vs St. Lucia Banana Growers Association** where the Plaintiff in that case (on appeal) was given six (6) months pay and also the most recent St Lucian case namely

187 of 1998 Austina Fanus vs Davie Estate Co. Ltd, where the Plaintiff was given nine (9) months pay for wrongful dismissal.

- [32] Learned Counsel for the Defendant commenced his arguments by asserting that the letter of the 21st October 1992 in which Plaintiff was described in glowing terms was a letter to facilitate her obtaining a visa and not towards obtaining a loan from Barclays Bank.
- [33] He forcefully argued that the Plaintiff was dismissed for her insolent and intolerable behaviour which went to the root of the contract for Plaintiff herself admitted that a very high standard of behaviour was expected of her. He urged the Court not to be taken in by her “goodie manner” in Court.
- [34] He said that when considering cases of wrongful dismissal the facts and circumstances of the case must be carefully examined; and that the facts clearly showed that the Plaintiff was always in some confusion with other members of staff thereby breaching the trust and confidence reposed in her by the Defendant.
- [35] Counsel referred to **Chitty on Contract** 25th Edition. **Paragraph 3506** which provides as follows:

Misconduct

“Where the employee is guilty of sufficient misconduct in his capacity as employee he may be dismissed summarily without notice and before the expiration of a fixed period of employment. The general rule is that if the employee does anything which is incompatible with the due or faithful discharge of his duty to his employer, he may be dismissed without notice; the employee’s conduct need not be dishonest since it is sufficient if it is conduct of such a grave and weighty character as to amount to a breach of the confidential relationship between employer and employee.”

[36] He further asserted that an employee may be summarily dismissed for disobedience if the quality of the disobedience is willful. He further quoted the case of **Sinclair v Neighbour 2Q.B Page 279**

[37] He concluded in stating that the Plaintiff was paid for two weeks’ notice and moreover her dismissal was not wrong and was therefore not entitled to any claim, which should all be dismissed with costs.

[38] **Conclusion**

Section 6 (3) of the Contracts of Service Act No 14 of 1970 (St Lucia)
provides:

The notice required to be given by an employer to terminate the employment of an employee who has been continuously employed under a Contract of Service for an indefinite period shall not be less than:

- (a) one week's notice if his period of continuous employment is more than twelve weeks but less than two years;
- (b) two weeks' notice if his period of continuous employment is two years or more but less than five years.

[39] The Plaintiff told the Court that she was employed with the Defendant from June 1991 to May 1993 a period of almost two years and therefore under the above act she is entitled to one week's notice.

[40] Plaintiff said that she "did not get two weeks' notice" whereas Mrs Deligny, the manageress of the Defendant said that the Plaintiff "was paid any commissions due to her up to that time and was also paid two weeks holidays. She made no complaint that money was wrong or incorrect." Neither party exhibited any documents to verify their statements and as I see it the Court will have to decide whose evidence it accepts.

[41] The Plaintiff has asserted that she was wrongfully dismissed whereas the Defendant has denied the assertion therefore the issue before the Court is whether the Plaintiff was wrongfully dismissed as she alleges or whether there was a fundamental breach of the contract of employment by the Plaintiff.

[42] It is undisputed that the Plaintiff was employed at a high class jewellery store where the customer service was higher than the average store and that the policy of the Defendant was “excellent customer relations, behavior beyond reproach and positive attitude to customers.”

[43] The authorities indicate that there is no rule of law defining the degree of misconduct which will justify a dismissal but confirm that the test to be applied must vary with the nature of the business and position held by the employee.

[44] **In Sinclair v Neighbour 1967 2 QB279 Sellers LJ** delivering the Judgment of the Court said:

“The question for this Court to decide is whether, in the circumstances of this case, it was conduct in its nature, as it has been described, quite irrespective of any point of pleading which justified the employer instantly dismissing “. . . the whole question is whether the

conduct was of such a type that it was inconsistent in a grave way – incompatible – with the employment in which he had been engaged”

[45] In my judgment the attitude of the Plaintiff was of an aggravating nature and incompatible with the employment in which she had been employed. I believe the Defendant when she said that Plaintiff had been warned on many previous occasions both verbally and written from 1991 soon after her employment.

[46] The evidence discloses that the behaviour of the Plaintiff was grossly improper and was an expressed repudiation of the fundamental terms of her contract. I further believe the Defendant that the Plaintiff was paid two weeks notice and all compensation due to her.

c[47] Taking the entire history of the Plaintiff’s behaviour into consideration and not only the incident of the 14th of May 1993 and applying the cases cited as guidelines, I find that the Plaintiff’s behaviour was both reprehensible and improper and of a type which justified instant dismissal. (It must be remembered that though I regard the behavior of Judith Sundborg in like manner that was not an issue before the Court.)

[48] In the premises my order is as follows:

The matter is dismissed.

That the Plaintiff do pay costs to the Defendant to be agreed or otherwise taxed.

**Suzie d’Auvergne
High Court Judge**