

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

(CIVIL)

Suit No.299 of 1992

Between:

CHARLES DUPLESSIS

Plaintiff

vs

JOSEPH CLIFFORD HARRY

Defendant

Mr. D. Theodore for Plaintiff

Mrs. V. Barnard for Defendant

1994: March 3
1997: March 3, June 13

JUDGMENT

Re: AVERGOS, S.

On the 12th of June 1992 the Plaintiff filed a writ of summons indorsed with a statement of claim asking for special damages in excess of thirty-six thousand dollars (\$36,000.00) general damages and costs against the Defendant.

The Defendant entered an appearance on the 23rd of June, 1992 but filed a defence on the 12th October, 1992 outside of the time prescribed by law but accepted by the Plaintiff.

Facts

The Plaintiff's case is that based on an oral agreement between the Defendant and himself he took up the post of General Manager of the Green Parrot Restaurant at a salary of three thousand dollars (\$3,000) per month with effect from 15th March, 1992 which would be increased within fifteen days, namely, 1st April, 1992, to an amount to be negotiated; that he would be provided with free housing accommodation, free

transportation and free meals.

He said that he was introduced to a Mr Lenox Deterville and was informed by the Defendant that he (Deterville) had been the former General Manager. He also told the Court that he received the free housing accommodation, the free meals, but never received the free transportation since he had to pay taxis \$30.00 or \$40.00 at each occasion he attended meetings of the St Lucia Hotel Association on behalf of the Green Parrot or the various opening ceremonies at different hotels.

He denied the allegations in the defence that he applied for the said post in January of 1992 and that his employment would be on a probationary period of three months commencing March 1992, that he was asked and he promised to provide the Defendant with two written references. He vehemently denied that he was told that his post would only be made permanent upon receipt of the two written references and that the free transportation and accommodation would only be granted to him after the post had been made permanent.

He further denied the allegations that during the period of employment he engaged in conduct which would or would likely be prejudicial to the Defendant's business and in particular that he had intimate relationships with a number of the female staff or seduced single female guests. Moreover, he said that the Defendant never cautioned or even mentioned any misconduct on his part.

He said that on the 28th day of April, 1992 he received a letter from the Defendant informing him that his "*services as General Manager will no longer be required*" since "*his responsibilities towards staff as a General Manager has not been of an acceptable quality and as a result staff discipline*

and conduct has suffered."

The Plaintiff also told the Court that he earned an average of US \$4,500.00 monthly, \$3,000.00 on a Hot Dog concession and \$1,500.00 from a land scaping contract.

He agreed that he "more or less suggested" the salary of \$3,000.00 EC. which he thought was reasonable at the time, but it was for a probationary period of thirty days, with free meals and accommodation. He concluded his evidence by stating that he was paid a salary for the months of March and April, 1992.

The Defendant told the Court that he was and still is the proprietor of the Green Parrot Restaurant and Hotel (hereinafter referred to as The Green Parrot); that he received at least one application for the said post at the Green Parrot from a Mr.Duplessis who then lived in the United States of America, that Mr.Larcher had a conversation with him concerning the employment of the said Mr.Duplessis and eventually arrived accompanied by the Defendant at the Green Parrot.

He said that after discussions, he orally agreed (a) to employ the Plaintiff for a probationary period of three months at a salary of \$3,000, that (b) the Defendant would make use of a room and kitchenette and any of the restaurant's many vehicles until after the probationary period when a definite agreement would be arrived at.

He said that the Plaintiff commenced his duties and at first he appeared to be very capable and had a very good rapport with the guests. Soon however there were many reports concerning his conduct with female members of staff. He said that within the period that the Plaintiff was employed at the

Green Parrot he was forced "to fire four" members of the female staff; that he informed the Plaintiff of the various reports but he persisted in his behaviour; that within a week following a conversation with the Plaintiff he saw the latter escorting a female guest to her room and a number of the female staff standing in front of that guest's room.

Arguments:

Learned Counsel for the Defendant argued that the case was governed by the Saint Lucia Contracts of Service Act No.14 of 1970. She quoted Section 6 (2) of the said No.14 of 1970, Saint Lucia Laws which provides as follows:

(2) Notwithstanding any agreement to the contrary, the first twelve weeks of any employment under an oral contract of service shall be deemed to be probationary employment and may be terminated at will by either party without notice.

She further quoted Section 7-(1):

7-(1) Notwithstanding the provisions of Section 6, a contract of service terminated for any of the following reasons shall not give rise to any liability to pay wages (or make payment in lieu of notice):-

(a) Any reason for which the employer would be entitled at law to terminate a contract of service without giving due notice (which shall include the following circumstances)

(i) where an employee is guilty of misconduct whether in the course of his duties or not, inconsistent with the fulfillment of the express or implied conditions of his contract of service;

(ii) for wilful disobedience to lawful orders given by the employer;

(iii) for repeated substantial neglect of his

duties;

- (iv) for absence from work without the permission of the employer or without reasonable excuse;
- (v) for lack of skill which the employee expressly or by implication warrants himself to possess.

Learned Counsel urged the Court to accept the testimony of the Defendant, namely that the Plaintiff was dismissed for misconduct as the exhibit tendered showed and therefore the Defendant was not entitled to pay further wages or make payment in lieu of notice.

Learned Counsel for the Plaintiff contended that the evidence of the Defendant concerning the reports of the Plaintiff's misconduct is hearsay and should be disregarded. He argued that the Plaintiff should not be held responsible for the bad behaviour of staff.

He said that the Plaintiff left the United States of America in order to take up the post at the Green Parrot and therefore has suffered loss by the Defendant's arbitrary termination of his contract of employment.

He argued that once a contract was breached damages automatically followed. He concluded his argument by stating that the truth of the matter was the Defendant dismissed the Plaintiff for no good cause.

Conclusion:

"Notwithstanding any agreement to the contrary the first twelve weeks of any employment under any oral contract of service shall be deemed to be probationary employment and may be terminated at will by either party without notice."

Section 6 (2) of Contracts of Service Act 1970.

There is no dispute that the Plaintiff was employed under an oral agreement as the General Manager of the Green Parrot from the 15th of March to the 30th of April 1992, a period of six (6) weeks therefore according to Section 6(2) of the Contract of Service Act quoted earlier the period has to be regarded as probationary employment and the employment can be terminated by the Defendant without notice.

The only exhibit tendered in this case was the letter of termination of the Plaintiff's services which stated the reason for the termination.

In my judgement, *"your responsibilities towards staff as a General Manager has not been of an acceptable quality"* and the evidence by the Defendant that he had spoken to the Plaintiff about reported misconduct on his part in the course of his employment can only mean misconduct inconsistent with the fulfillment of implied condition of his contract of service. Section 7 (1) (i) of No.14 of 1970 Contract of Service Act.

I do not believe the Plaintiff when he said he gave up his Hot Dog Concession and Landscaping business in the United States of America in order to work at the Green Parrot because he also said, *"I planned on relocating to Saint Lucia after several years in the United States of America. I was to start a venture with Mr. Wilkie Larcher. It did not materialize. I came down here in January 1992 and Mr. Larcher took me to the Green Parrot. . . I was applying for the General Manager of the Restaurant and Hotel."*

It is my view that the Plaintiff had planned and returned to Saint Lucia *"for a venture with Mr. Larcher;"* that this having failed he took a substitute job as General Manager of the Green Parrot and therefore it is incorrect to say he suffered damage as a result of losing the said job.

The Defendant was well within the law when he wrote to the Plaintiff on the 28th day of April, 1992 informing him that his "*services were no longer required.*" He was paid in full for his services and since there was no breach of contract, again it is incorrect to say that the Plaintiff suffered any damage.

In my judgment the action should be dismissed with costs to the Defendant.

My order is as follows:

The action is dismissed against the Defendant.

The Plaintiff is to pay costs to the Defendant to be agreed or otherwise taxed.



**SUZIE d'AUVERGNE
HIGH COURT JUDGE**