



[2013] JMSC Civ. 40

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2010 HCV 04985

BETWEEN	CHARMAINE TAYLOR	CLAIMANT
AND	BRANCH DEVELOPMENT LIMITED	DEFENDANT

Mr. Gavin Goffe instructed by Myers, Fletcher & Gordon for the Defendant/Applicant

Mr. Nigel Jones and Miss Kashina Moore instructed by Nigel Jones & Company for the Claimant/Respondent

Heard on 15th November, 2012, 27th March 2013 and 23rd July, 2013

Application for Court Orders for matter to be transferred to the Resident Magistrate Court – Claim for breach of employment contract – Damages for breach of contract – Damages for defamation – Whether reasonable grounds for bringing defamation claim – Whether claim is in excess of Jurisdiction of Resident Magistrate’s Court – Jurisdiction – Civil Procedure Rules 64.6(1); 11.3(2); 65.15

Morrison, J.

[1] By way of Notice of Application for Court Orders fixed on December 8, 2010 the Defendant/Applicant (Applicant) implores the Court to order that:

- a. The claim be transferred to the Resident Magistrate’s Court, St. James.
- b. Alternatively, the Claimant’s statement of case be struck out.

- c. In the further alternative, paragraph 9 of the Statement of Case be struck out for failure to disclose a reasonable ground for bringing a claim for defamation against the Defendant.
- d. Costs to the Defendant to be taxed if not agreed.

[2] The grounds on which the Application is made are:

- a) the claim is for breach of an employment contract in circumstances where the maximum damages recoverable from the Defendant arising from the breach is less than \$1,00,000.00 and is therefore within the jurisdiction of the Resident Magistrate's Court pursuant to Section 17 of the Employment (Termination and Redundancy Payments) Act as amended.
- b) The claim for special damages for breach of contract representing one year's loss of income in circumstances where the contract could lawfully have been terminated by either party giving two weeks notice is an abuse of the process of the court and/or is likely to obstruct the just disposal of the proceedings in the Resident Magistrate's Court.
- c) The Claimant cannot properly certify that the damages claimed exceed the civil jurisdiction of the Resident Magistrate's Court in accordance with Rule 8.10(1)(b).
- d) The Claimant has failed to plead the defamatory words that were uttered or published by the Defendant, its servants or agents against the Claimant.

Let me now train attention on the pleadings

The Pleadings

[3] According to the Claim Form filed on October 8, 2010, the Claimant of Spot Valley District, Little River P.O. Rose Hall, St. James, "claims against the Defendant.... To recover damages for employment breach of contract in that on June 1, 2010 the Defendant purportedly laid off the Claimant from her job and in effect dismissed her

without offering her reasonable notice, or reasonable notice to pay causing the Claimant to suffer loss, along with damages for defamation of character (sic).”

[4] In particularizing the Claim the Claimant, rather pointedly and pertinently pleads at paragraph 6 that her dismissal was unreasonable having regard to her qualification, seniority and the difficulty of obtaining similar employment. At paragraph 7, continues the particulars of claim, “the Defendant’s reason for terminating the Claimant’s contract was that the Claimant was suspected of criminal conduct.”

Particulars of Defamation of character were supplied. They are in extensor:

- a) On June 2010, the Defendant informed the Claimant that she will be laid off due to their suspicion that the Claimant was involved in conduct which is defamatory of the Claimant;
- b) The conduct of the Defendant suggests by way of innuendo that the Claimant is a criminal;
- c) Effecting immediate dismissal in the presence of management and staff members ...

Applicant’s Submissions

[5] The Applicant contends that the jurisdiction of the Resident Magistrate’s Court was increased to \$1,000,000.00 for claims of breach of employment contract. The rationale for the increase in its monetary jurisdiction was designed to, first, shift more of the burden for dealing with such typical cases from the Supreme Court to the Resident Magistrate’s Court; second, to ensure that the parties do not have to engage in unnecessary travel to another jurisdiction; third, to facilitate a speedier trial of the matter; fourth, to limit the attendant costs of the attorney-at-law to which the parties may be exposed. Viewed against that reasoned exposition then the matter ought to be transferred to the jurisdiction of the Resident Magistrate’s Court, Saint James.

[6] Further, contends the Applicant, as the measure of damages for claim for breach of an employment is limited to the Defendant’s minimum contractual obligation, that is to say, J\$58,739.20, which is the maximum of the Claimant’s/Respondent’s entitlement in

the event that she succeeds in her claim, and, as the costs of pursuing this claim in the Supreme Court would surpass any award of damages under this head, then the matter ought to be transferred to the jurisdiction of the Resident Magistrate's Court, Saint James.

[7] Furthermore, the Applicant takes exception to the claim for defamation of character on the basis that it is not susceptible of proof as it is presently pleaded. That being the case, the submission goes, then the forum and jurisdiction of the Supreme Court is inexpedient.

In support of its submission, the Applicant pressed in aid the following list of authorities:

- a) Section 17 of the Employment (Termination and Redundancy Payments) Act;
- b) Remedies for Torts and Breach of Contract, 2nded. (1994) by Andrew Burrows;
- c) Best v Charter Medical of England Ltd. And Anor. (2011) All E.R. (d) 395;
- d) Lindon Brown v Jamaica Flour Mills Ltd; S.C.C.A No. 2000/B199

Submissions By The Respondent

[8] In deflecting the submissions of the Applicant the Respondent says, first, that as the Claimant's case is twofold, namely, a claim for breach of contract and a claim for defamation, and, as the claim for special damages on the breach of contract claim is over J\$1.5million, then the jurisdiction of the Resident Magistrate's Court is ousted.

[9] Accordingly, the Supreme Court in determining whether the claim was within the jurisdiction of the Resident Magistrate's Court ought properly to have regard not only to the nature of the claim and the amount of the claim as pleaded, but to the relevant statute, that is the Employment (Termination and Redundancy Payments) Act.

[10] Second, that as the claim for defamation can be committed by conduct, then the claim ought to be made to go forward. This is pointedly the case as the particulars of claim clearly disclose a cause of action on the basis of which the Claimant is seeking to recover damages for defamation of character.

[11] Third, as an award of damages for defamation is at large and which is likely to be in excess of the jurisdiction of the Resident Magistrate's Court, then the matter should be allowed to proceed in the Supreme Court.

The Respondent hinged her reliance on the Civil Procedure Rules; **Welch Thomas v Caribbean Aviation Training Center and Cpt. Errol Stewart**, Resident Magistrate's Civil Appeal No. 09/08; **Sebol Limited v Selective Homes Properties Limited and Ken Tomlinson**, Supreme Court Civil Appeal No. 115/2007; **Rodney Campbell v The Jamaica Observer Limited and Chester Francis-Jackson**, Claim No. CL 202/C-238; Gatley on Libel and Slander, and the Employment (Termination and Redundancy Payments) Act.

The Law

[12] I wish to put into bold relief Section 67 of the Employment (Termination and Redundancy Payments) which speaks to the monetary jurisdiction of the Resident Magistrate's Courts. It reads:

“Notwithstanding any provision in any enactment limiting the Jurisdiction of

Resident Magistrate's Courts in relation to claims arising from contract, a Resident Magistrate's Court shall have jurisdiction in any action arising from a contract of employment to which this Act applies, or from any claim in respect of a redundancy payment, in which the amount of each claim does not exceed one million dollars.”

[13] From the Particulars of Special Damage it emerges that the Claimant is seeking to recover the sum of J\$1,461,462.96 and the sum of J\$60,894.29 for two (2) weeks vacation pay. The bases of this claim are as contained at paragraphs 8(A) through to 8(c) of the Particulars of Claim. When condensed to its finest distillation the Claimant/Respondent is saying that the Defendant did not give to the Claimant a sufficient notice of her dismissal and failed to adhere to the expected procedural standard in order to effect a dismissal.

[14] It seems to me that the complaint of the applicant is unfounded. I do not read into the relevant legislation that the monetary jurisdiction of the Resident Magistrate's Court represents a predetermined absolute abstract limit. Whether the Claimant can recover the sum of \$1,512,000.00 is a matter which has to be decided on the merits of the claim. To attempt to forestall that claim by antecedent submission that it is peremptorily disallowed is to shut out the Claimant without a hearing on that aspect of her claim.

[15] In **Welch Thomas**, supra, the Claimant's case was for non-payment of J\$50,000.00 which he claimed was owed to him by his employer for wages. The Resident Magistrate declined jurisdiction. On appeal, Harris, J.A. said, *inter alia*: "It is without doubt that Section 17 of the Act expressly places restriction on the jurisdiction of the Resident Magistrate's Court in a claim brought under the Act arising from a contract of employment or redundancy, which exceeds seven thousand dollars."

[16] However, at paragraph 13, the learned judge of appeal affirms: "Neither Section 12 nor any other section of the Act imposes a mandatory provision to show that an action arising from a contract of employment cannot be decided in the Resident Magistrate's Court where the amount claimed falls outside the parameter of the statute. Section 17 does not operate to defeat the pursuit of an action in contract in the Resident Magistrate's Court whether the claim surpasses the statutory limit prescribed by the section." Having roundly proclaimed the jurisdiction of the Resident Magistrate's Court to hear the case notwithstanding that the sum claimed in excess of the prescribed limit of the Act, the Justice of Appeal continued: "It must be construed to mean that although there may be enactments to limiting the jurisdiction of the Resident Magistrate's Court, a Resident Magistrate may have jurisdiction over claims founded on the Employment (Termination and Redundancy Payments) Act which are not in excess of seven thousand dollars and so far as any other statute permits, if the claim exceeds the statutory limit prescribed by Section 17, he or she may hear and determine any claim under any contract, be it one of employment or otherwise."

[17] At paragraph 14 of the said judgment, Harris, J.A. with whom Morrison and Dukharan, JAA agreed, states emphatically that Section 71 of the Judicature (Resident

Magistrate's) Act empowers the court to entertain jurisdiction provided that, in a case founded on contract, the claim does not exceed two hundred and fifty thousand dollars.

[18] Of course it is noted that subsequent to the decision of **Welch Thomas** the monetary jurisdiction for breach of employment contracts was increased to \$1,000,000.00. By doing so a litigant was encouraged to keep such a case in the monetary jurisdiction of the Resident Magistrate's Court provided it did not surpass the monetary limitation. Part of the rationale behind that increase in jurisdiction was to reduce the costs which a litigant would suffer; augment a speedier trial of the case; and, importantly, limit the costs to the attorneys-at-law to which the litigants may be subject to. In support of the Applicant's contention that the Claimant would only be able to recoup such damages as are limited to the Defendant's minimum contractual obligations, being his loss of earnings restricted to the period of notice, that statement of principle as formulated finds support in the cited case of **British Guiana Credit v Da Silva** [1965] 1 W.L.R. 248 (not supplied) as well as on the authoritative work of **Andrew Burrows in Remedies for Torts and Breach of Contract** second edition, p. 94.

[19] In the unreported case of **Lindon Brown v Jamaica Flour Mills**, S.C.C.A. No. 2000/B199, Her Ladyship Sinclair-Haynes, J opined that as the Claimant had not referred his claim to the Minister under the Labour Relations and Industrial Dispute Act (LRIDA), then his remedy fell to be considered on common law principles. Accordingly, she drew on the authority of **Halsbury's Laws of England** in defining the legal term of 'wrongful dismissal': "A wrongful dismissal is a dismissal in breach of the relevant provision in the contract of employment relating to expiration of the term for which the employee is engaged. To entitle the employee to sue for damages two conditions must normally be fulfilled, namely :

1. The employee must have been engaged for a period terminable by notice and dismissed either before the expiration of that fixed period or without the requisite notice as the case may be; and
2. His dismissal must have been wrongful, it was without sufficient cause to permit his employer to dismiss him summarily.

[20] In addition, there may be cases where the contract of employment limits the grounds on which the employee may be dismissed or makes dismissal subject to a contractual condition of observing a particular procedure, in which case it may be argued that, on a proper construction of the contract, a dismissal for any extraneous reason without observance of the procedure is a wrongful dismissal on that ground.”

[21] Having stated the common law principles which treats with wrongful dismissal, her Ladyship went on to deal with the measure of damages and in the process brought to bear the authority of **Mayne and McGregor on Damages**, 12th edition, p. 522. Therein the learned authors say that. “The normal measure of damages for wrongful dismissal is *prima facie* the amount that the Plaintiff would have earned had the employment continued according to the contract ... (The) *prima facie* measure of damages is the contract price, which is all the Plaintiff need show.”

[22] In the instant case the Claimant has sued the defendant for breach of contract and has sought a sum of \$1,500,000.00 plus for special damages. In addition she has included a claim for defamation.

The **Lindon Brown** case is, in my view, distinguishable on the facts and pleadings.

[23] It is of a truth that the Civil Procedure Rules, 2002, imposes on a Claimant a duty to set out his case. Section 8.9(1) says that the Claimant must include in the claim form or in the particulars of claim a statement of all the facts on which the Claimant relies. Taken in tandem with Rule 69.2, I am of the view that there is a sufficiency of particulars.

[24] In the instant case the Claimant in her Particulars of Claim, pleaded that on June 1, 2010 the Defendant informed the client that she will be laid-off due to their suspicion that the Claimant was involved in criminal conduct. That, by the conduct of the Defendant the latter suggested by way of innuendo that the Claimant is a criminal: affecting dismissal in the presence of management and staff members; being escorted from the property by security officers. The Claimant, by these series of actions is asserting defamation by conduct which the Defendant rebukes by saying it cannot so be established.

[25] However, in **Gatley on Libel and Slander**, *supra*, a clear statement on the law of defamation puts it that defamation can be committed by conduct, a view which I accept to be the law. Accordingly, I am of the view that a claim for defamation is maintainable.

[26] As to the application by the Defendant that the Claimant's case as pleaded be struck out, I am referred to the case of **Sebol Limited and Selective Homes Properties Limited v Ken Tomlinson (As the Receiver of Western Cement Limited)**, delivered on December 12, 2008 for the authority for so doing. Dukharan, JA reflecting the unanimity of the Court of Appeal indicated that the basis on which a court hearing such an application should proceed is by asking whether no reasonable grounds for bringing or defending a claim can be established.

It is still the rule that the jurisdiction to strike out is to be used sparingly as the exercise of the jurisdiction deprives a party of its right to a trial. Accordingly, striking out was limited to plain and obvious cases where there was no point in having a trial.

With that principle in view I am to say that on the state of the pleadings that it is neither plain nor obvious that there are no reasonable grounds for the Claimant's bringing of her claim. As such that aspect of the Applicant's submissions also fails. Let me now engage the Applicant's late submission in respect of a Practice Direction issued on May 16, 1985.

[27] It cannot escape observation that the Practice Direction is addressed to Probate and Administration matters. Accordingly, its application to the instant case is inappropriate. Additionally, the Applicant's response to the Respondent's submission was the insertion of **Addis v Gramophone Co. Ltd**; [1908-10] All E.R. 1, for the proposition that no action for defamation can be brought by an employee against an employer in connection with the termination of employment. The facts in the referenced case are that the Plaintiff had been employed by the Defendant as manager of their business in India. He could be dismissed by the Defendant on their giving six months notice, which in fact occurred. After the Plaintiff was given the notice another person was appointed in his stead. The Plaintiff brought an action in which he claimed damages for detinue and for breach of contract and an account.

[28] The matter of accounts was referred to arbitration. The causes of action were tried by a jury who found for the Plaintiff. There was controversy as to whether the quantum of damages was intended to include salary for the six months or merely damages because of the abrupt and oppressive way in which the Plaintiff's services were discontinued.

[29] In the upshot, and reading from the headnote, the House of Lords held that, "In an action for wrongful dismissal a jury in assessing the damages, are debarred from awarding exemplary damages because of circumstances of harshness and oppression accompanying the dismissal and injuring the feelings of the servant, and also from taking into consideration the fact that the dismissal will make it more difficult for him to obtain fresh employment. If some tort, eg. assault, libel, or slander, accompanies the dismissal, that cause of action is not merged with or extinguished by the proceedings for the wrongful dismissal which the commission of the tort accompanied, but remains available to the servant as a remedy for the tort which has been committed against him" (Emphasis mine)

[30] In the light of the emphasized extract I find myself unable to agree with the Applicant's submission that paragraph 9 of the Claimant's Particulars of Claim should be struck out on the basis that there is no cause of action that may be brought against an employer for defamation in connection with the termination of his or her employment contract. Clearly, the **Addis** case does not support the Applicant.

[31] Before I conclude this application I wish to say that I placed no great store, indeed any store, on the authority of **Timothy Sage v Double Hydraulics Limited And David Chambers v Megan Starkings**, as supplied by the Respondent being satisfied that the **Addis** case does not assist the Applicant.

[32] As the successful party is entitled to costs it is so ordered pursuant to Rule 64.6(1) of the CPR. Such costs are to be agreed, if not so agreed, then such costs are to be taxed.

[33] In summary I order that the matter ought to proceed in the Supreme Court. The order referring the case for mediation is to stand and is to be incorporated in case management orders on a date to be set by the Registrar.