IN THE COURT OF APPEAL OF BELIZE, A.D. 2005

CIVIL APPEAL NO. 23 OF 2004

BETWEEN

WILFREDO GUERRERO **Appellant**

AND

THE ATTORNEY GENERAL **Respondent**

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BEFORE:

The Hon. Mr. Justice Mottley - President
The Hon. Mr. Justice Sosa - Justice of Appeal
The Hon. Mr. Justice Morrison - Justice of Appeal

Mr. Michael Peyrefitte for the appellant.
Ms. Andrea McSweaney, Crown Counsel, for the respondent.

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23 June, 18 October 2005.

MORRISON, JA

1. This is an appeal from a judgment of Awich J pronounced on 14 July 2004 by which he gave judgment for the respondent in an action brought by the appellant for damages for breach of contract. The background to the action and this appeal is succinctly set out in

the Chronology of Events prepared for and presented to this court by Miss McSweaney, who appeared for the respondent, which is set out in full below.

CHRONOLOGY OF EVENTS

1. On November 30, 1999, the Government of Belize (GOB), acting through the Ministry of Economic Development, entered into a written agreement with the Appellant, whereby the GOB agreed to employ the Appellant as Project Engineer/Manager of the Programme Coordination Unit of the Hurricane Rehabilitation and Disaster Preparedness Project (the Project).

2. Under the Agreement, the Appellant had several general and specific obligations.

3. The first three months of the Appellant's service were probationary.

4. By Memorandum dated January 25th, 2000, Mr. Osmond Engleton, the Programme Coordinator to whom the Appellant reported, reminded the Appellant that his deadline had passed for preparing advertising packages for retrofit work and new shelters construction for approval by IDB, and that this delay would stall the publication of invitations for bids which where scheduled for early February, 2000. There was also a delay by the Appellant in preparation of packages for already advertised invitations for the CDB buildings.

5. By Memorandum dated February 8th, 2000, Mr. Engleton also referred to the Appellant's Terms of Reference in reminding him that his activities to date should have already been recorded.

6. In February, 2000, the Appellant submitted his resignation as Project Engineer/Manager.

7. By way of letter dated March 17th, 2000, the Appellant withdrew his letter of resignation and decided to continue offering his services as Project Engineer with the Project Execution Unit.

8. In a Memorandum dated April 4th, 2000, the Appellant was informed by Mr. Engleton, his Supervisor, that he was being offered the responsibilities of the Belize City Drainage Component of the Project, and that the following one month would be a transitional period so that he could train his replacement in the Shelter Component and familiarize himself with the new responsibilities.

9. The Appellant accepted this offer, and requested assistance with accommodation in Belize City.

10. In this April 4th Memorandum, the Appellant was also directed to complete an Initial Report by April 28th, 2000, as a condition precedent for the disbursement of funding by the IDB. In this regard, he was invited to consult with the Programme Coordinator if he was in need of guidance.

11. The Appellant agreed verbally that as a condition of his taking his leave for the Easter vacations, he would prepare a draft outline thereof by April 20th. He failed to meet this deadline and was given an extension to April 25th, 2000, which deadline he also did not meet.

12. The Appellant also failed to meet the April 28th deadline for the Initial Report, but instead requested an extension to May 4th, which he again did not meet.

13. By letter dated May 2nd, 2000, Mr. Engleton wrote to Mrs. Yvonne Hyde, then Permanent Secretary of the Ministry of Economic Development, informing her that the Appellant had failed to submit a Draft Initial Report by the 28th April, 2000, and that the outline due on 25th April, 2000 (the extended time period) was in no way acceptable.

14. Mr. Engleton in said letter therefore recommended that the Appellant be dismissed from his post as Project Engineer/Manager in light of the fact that the appellant had continuously missed important deadlines.

15. By letter dated May 5th, 2000, the Report still unfinished, the Appellant was notified that his services were terminated with immediate effect pursuant to **Clauses 11 and 12** of the Schedule to the Agreement.

16. On 26th February, 2001, the Appellant filed a Writ in which he alleged **wrongful dismissal** and claimed special damages of $97,290 being his agreed salary for the duration of the Agreement, plus $8460, being a gratuity he would receive upon satisfactory termination of the contract period.

17. In its Defence, the Respondent claimed that the Appellant breached the Agreement by continuously failing to meet deadlines in submitting Project Reports and that it therefore lawfully and justifiably terminated the Agreement.

18. In the Supreme Court, the learned Judge found in favor of the Respondent and emphasized that the relationship between the parties was that of an employer engaging an independent contractor for services and that their duties and obligations were those stated in the Agreement. Further, the learned Judge held that the Appellant breached the Agreement generally and in particular by failing to

> submit the Initial Report, upon which the disbursement of funds depended.
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> The Appellant now appeals the decision of the trial Judge based on two grounds: (1) the Appellant was not responsible for the Initial Report and therefore did not breach the Agreement; and (2) the weight of the evidence is against a finding that the Appellant was lackadaisical.

2. Mr. Peyrefitte for the appellant complained that Awich J misinterpreted the contract of employment between the appellant and the respondent dated 30 November 1999 ("the contract") in a manner which overstated the appellant's responsibilities under the contract, thereby holding him responsible for failures which ought not to have been laid at his door, in particular failing to prepare an "initial report" to be submitted to the Inter American Development Bank (IDB). Mr. Peyrefitte also complained that Awich J's statement at paragraph 17 of his judgment that "the evidence as a whole gives the impression that the plaintiff was deliberately lackadaisical in his work, possibly because he hated having to report to the project co-ordinator" was not consistent with the weight of the evidence.

3. Miss McSweaney's response was that under the relevant provisions of the contract it was clear that the Initial Report due on 28 April 2000 was the appellant's responsibility and there was therefore no basis for the appellant's complaint that he was being

asked to do something outside his duties. In the result, Miss McSweaney submitted, “Owing to the urgency and importance of the Report, the Appellant committed a fundamental breach, and the Respondent was justified in terminating the Appellant, and did so lawfully” (see paragraph 17 of the respondent’s Skeleton Arguments). Miss McSweaney also submitted that “there was sufficient oral and documentary evidence of the Appellant‘s missed deadlines and failure to fulfill undertakings before the trial judge for him to find that the Appellant was lackadaisical in his work” (see paragraph 29 of the Respondent’s Skeleton Arguments). Miss McSweaney completed her admirable submissions by making reference to the decisions of the House of Lords in **Powell and Wife v Streatham Manor Nursing Home [1935] AC 243** and of this court in **Adolphus v Popper (2000) 3 BZ LR130**, both in support of the proposition that “great weight should be attached to the judgment of the learned trial judge, particularly in cases such as this where the judge’s estimate of the man formed a substantial part of the reasons for his conclusion of fact” (see paragraph 31 of the Respondent’s Skeleton Arguments).

4. In my judgment, the submissions of Miss McSweaney are unanswerable. The contract itself required the appellant to “diligently and faithfully perform the duties of Project Engineer/Manager, Programme Co-ordination Unit” and to “act at

all times in accordance with the provisions of this agreement and lawful instructions given to him by the Government." The Schedule to the contract provided further that the appellant's general duties were "set out in the Terms of Reference annexed to the Agreement, and shall include any other duty related to the project that may become necessary from time to time." The appellant was also mandated to "at all times conduct himself in a manner that is consistent with his position and to promote the best interests of the Project." There were, additionally, requirements that the appellant should submit initial and semestral reports and that he should carry out all lawful instructions.

5. Against the background of this copiously documented set of reporting and performance obligations, there is no basis, it seems to me, to interfere with the clear finding of the learned judge, after a full review of the contract and the evidence, that the "plaintiff breached his contract of engagement generally, and in particular when he failed to prepare the "Initial Report" to be submitted to the IDB" (see paragraph 17 of the judgment). Neither is there a basis in the circumstances, it seems to me, to question the learned judge's "impression" that the appellant was "deliberately lackadaisical in his work." Indeed, it is in this regard that, as this court observed in **Adolphus v Popper** (at page 134), "the

overwhelming advantage lies with the [trial judge]", whose findings of fact ought therefore not lightly to be interfered with.

6. I would accordingly affirm the judgment of Awich J on the issues which were before him. It would be remiss of me not to point out, however, that the appellant was in fact terminated fully in accordance with the provisions of clause 11 of the contract. This was made clear in the course of the argument before this court, when it was confirmed by Mr. Peyrefitte that the appellant had received the one month's salary in lieu of notice stipulated for by clause 12, as well as a proportionate part of his gratuity, both of which had been promised by the letter of termination dated 5 May 2000, a copy of which was handed up to the court. It therefore appears that, even if the appellant had succeeded in establishing a breach of contract, he might have been hard put to establish that, given the termination clause in the Agreement, he had suffered any loss for which he ought to be compensated by the respondent.

7. For all of the above reasons, I would dismiss this appeal, with costs to the respondent to be taxed, if not agreed.

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MORRISON JA

SOSA JA

For the reasons given by Morrison JA in his judgment, I, too, am of the opinion that this appeal should be dismissed with costs, to be agreed or taxed.

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SOSA JA