IN THE SUPREME COURT OF BELIZE, A.D. 2013

CLAIM NO. 162 of 2012

JOSE LUIS MORENO	**CLAIMANT**
AND	
GAS TOMZA LIMITED	**DEFENDANT**

Hearings
2012
23rd October
5th November
11th December
2013
11th January
14th February

Mr. Oswald Twist for the claimant.
Ms. Pricilla Banner for the defendant.

LEGALL J.

JUDGMENT

1. This is a claim by the claimant against the defendant for breach of an alleged written contract of employment. The claimant alleges that his

employment was unlawfully terminated by the defendant in breach of the said written contract; and he claims damages in the amount of $169,418.76 for such breach. In defence of the claim, the defendant states that at no time did it enter into a written contract of employment with the claimant; and the alleged written contract relied on by the claimant is fraudulent. The defendant relies on terms of the alleged written contract, which we will examine below, to prove that it did not make the contract, and that it was fraudulent. The claimant, says the defendant, was employed on an oral contract, which came to an end because the claimant abandoned his employment: he walked off the job.

2. The defendant is a company incorporated in Belize with a registered office at Phillip Goldson Highway, Belize City, and in the business of supplying gas to customers. The head offices of the company, though, are in neighbouring Guatemala and Mexico. The directors of the company are resident in Guatemala, and the owners in Mexico. In Belize, the company has seven outlets or branches in different parts of Belize, including one branch at Silk Grass Village, Stann Creek District, Belize. In late August 2009 – the claimant says the 25th August, the defendant says the 27th August – the claimant commenced employment with the defendant at the Silk Grass Village branch as the Branch Manager. The parties agreed that under the terms of employment, the claimant was required to work six days a week, from Monday to Saturday, from 7:00 a.m. to 5:00 p.m., except one hour for lunch, and he was entitled to expenses in relation to transportation, fuel and telephone, and such other reasonable employment expenses.

There is though a dispute between the parties in relation to salary and other emoluments; and in relation to the termination of the employment. There is agreement that the employment ended on 16th January, 2012; but the circumstances under which it ended are heavily disputed.

3. According to the claimant, on 16th January, 2012, he had a telephone conversation with the General Manager of the defendant, Eduardo Tala Jeronimo, in which Mr. Jeronimo asked him why he authorized a door to be removed from a vehicle owned by the defendant. It was alleged by the defendant, that the claimant, on being asked the question, proceeded to use insulting and vulgar language; and hung up the phone, matters which were denied by the claimant. According to the claimant, during the telephone call, the General Manager terminated his employment. This is how the claimant stated the termination in his witness statement:

> "10. On 16th January, 2012 at about 3:30 p.m. my employment abruptly came to an end in breach of the terms of the contract when the defendant company servant or agent Mr. Rudy Jeronimo Tala the General Manager at the time terminated my employment by calling and telling me that I must immediately leave the work station at Silk Grass
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> 11. At the time I told the defendant's agent Mr. Tala for him to come or send someone for me to hand the station to, he however told me that he

had no time for that and I must just leave the station.

12. On that same date I left the station and had not returned since."

4. There is no letter of termination or dismissal of the claimant, and there is no evidence that the General Manager specifically told the claimant that his employment was terminated or that he was dismissed. The claimant's case is that by telling him that he must "immediately leave the work station" and that he "must just leave the station" clearly meant that his employment was verbally terminated by Mr. Jeronimo.

5. The defendant has a different version. Mr. Jeronimo swore that at no time did he terminate the claimant's employment, and he did not tell the claimant to leave the station. He swore that the claimant abandoned his employment, but admitted that he had a conversation with the claimant via telephone on the date the employment ended. Mr. Jeronimo in his witness statement swore as follows:

> "12. To this very day Gas Tomza has not (either orally or in writing) terminated the employment of Mr. Moreno as Mr. Moreno states in his Claim form. In fact, what actually occurred is that on the 16th January, 2012 I spoke to Mr. Moreno on two occasions. On the first occasion I spoke to Mr. Moreno by telephone about the unauthorized removal of the doors from a delivery vehicle belonging to Gas Tomza. After I informed Mr. Moreno about this unauthorized removal of the door from the

> delivery vehicle for no apparent reason, Mr. Moreno disconnected the phone line after using insulting and vulgar language against me.
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> 13. Mr. Moreno called me later that day and on that occasion he informed me that he was leaving the Silk Grass Plant and that I would then "know who he (Moreno) is." Mr. Moreno communicated this information to me in the Spanish language.

6. The task of the court is to decide who is speaking the truth. The court must also bear in mind that the burden is on the claimant to prove, on a balance of probabilities, that Mr. Jeronimo on behalf of the defendant told him to leave the station, thereby meaning that his employment was terminated. The claimant called three witnesses, two of whom – Israel Manzanilla and Manuel Martin – were former employees of the defendant, employed as Accountant/Resource Manager and General Manager respectively, but who were not employed by the defendant at the date of the alleged termination of the claimant's employment. They gave evidence to the making of the alleged written agreement, but were not witnesses in relation to the telephone conversation in relation to the alleged termination of the claimant's employment. The only witnesses in relation to the alleged termination are the claimant and Mr. Jeronimo. Though there were other employees at the Silk Grass station at the time of the alleged termination, these employees were not called by either the claimant nor the defendant to give evidence in that regard. Mr. Jeronimo said

that he spoke to the employees but they said that they did not want problems.

7. It seems strange to me that the claimant who worked with the defendant for over two and half years, and who having given, to use his own words "all my work for the company," and who knew, according to the alleged termination clause of the written agreement (which we will examine below), that only the court could terminate the alleged written contract before 25th August, 2015, would believe that his employment was terminated by a telephone call from the General Manager telling him to leave the plant, assuming that that was stated during the call. In addition, the evidence is that the claimant carried on his own business in selling butane gas between 1998 and 2006 for about eight years. He is an experienced businessman. His experience would have told him to enquire from Mr. Jeronimo what he meant by telling him to leave immediately the plant; or insist in something in writing of the alleged termination. Assuming Jeronimo told him that on the phone, and considering all of the above matters, I think the claimant acted rashly and inappropriately in leaving his employment and not returning. Bearing in mind his termination clause in his contract, he ought to have stood his ground. Even apart from that, he ought to have enquired from Jeronimo before leaving the work station, the import of his alleged exhortation to leave the work station.

8. Considering that there was an allegation by Jeronimo that the claimant was responsible for the removal of the door from the vehicle, it may

well be that since Jeronimo believed that, he therefore told the claimant to leave the station, meaning to terminate his employment for being responsible, as Branch Manager, for the missing door. On the other hand, it may well have been that since the claimant knew of the favourable termination clause below, he decided to take the opportunity, on being suspected of removing the door, to benefit from the favourable provisions of the termination clause of his alleged written contract.

9. The burden is on the claimant to prove that Jeronimo told him to leave the station; and by telling him so, Jeronimo meant to terminate his employment. I am not satisfied on the evidence and, on a balance of probabilities, that the claimant has proven that Jeronimo told him so, and that he meant to terminate the employment of the claimant. Since the claimant said that he did not return to the job, I am satisfied, on a balance of probabilities, that he abandoned his job. This is enough to dispose of this case. But in deference to submissions of learned counsel for both sides on the alleged written employment agreement, I will venture to give my views.

10. The claimant submits that there is a written agreement made by the parties in August 2009 containing terms of his employment, such as gross salary of $625.00 per week, plus a yearly increase, and the payment of bonuses and a sales incentive of one month's salary on sales equalling or exceeding, monthly, 136,000 gallons of gas, which written agreement was breached by the defendant by the unlawful termination of his employment for which he is entitled to the above

damages. The clause of the alleged written agreement of employment, allegedly breached is as follows:

> "Termination of Contract before Maturity Date: This contract may only be terminated before the maturity date if it is proven in a court of law that the employee did not meet any or some of the requirements above-mentioned in the "Terms of Employment." If the contract is terminated before the maturity date then the company is liable to pay the employee in full payment all moneys due from the termination date to the maturity date of the contract. Both parties may then mutually sign a termination agreement once all moneys due have been paid in full."

11. The defendant denies making the alleged written contract, and contends that it is a fraud, because it does not have a stamp of the company, and because the claimant, Martin and Manzanilla, former employees of the defendant want to bankrupt the company. Let us examine the circumstances under which the written contract was allegedly made. In August 2009, the General Manager of the defendant was Manuel Martin, and not Mr. Jeronimo who became General Manager in August 2010, on the dismissal of Mr. Martin by the defendant. It was during the tenure of Mr. Martin's employment that the alleged written contract was made. In paragraphs 6, 7, 8 and 9 of his witness statement, Mr. Martin swore as follows:

> "6. As General Manager I was responsible for the employment and termination of all branch managers throughout Belize.

7. On 25th day of August, 2009 on behalf of the defendant I entered into a written contract with Jose Luis Moreno for him to manage the defendant's operation at Silk Grass Village, Stann Creek District.
8. The terms of the contract was embodied on the contract which consists of two pages signed by myself on behalf of the defendant and witness by Justice of the Peace Israel Manzanilla who at the time was Accountant/Resource Manager for the defendant (refer copy of contract attached marked M.E.M. 1 for identification).
9. At the time the contract was entered into by the claimant and the defendant company I had all the authority as General Manager to enter into the contract."

12. Mr. Martin's name appears as a signatory to the alleged written agreement. Another signatory to the agreement is Israel Manzanilla a Justice of the Peace, who began working with the defendant in August 2008 as an Accountant Resource Manager. He swore as follows:

"3. On 25th August, 2009 I witness the signing of a contract between Manuel E. Martin General Manager of the defendant and Jose Luis Moreno.
4. I saw both parties signed the document and I witness the signatures."

Mr. Manzanilla resigned from the defendant company sometime after the signing of the written agreement.

13. In relation to both Martin and Manzanilla, it was submitted that both were disgruntled former employees who have an axe to grind and who have cause to help the claimant to punish the defendant, rather than speaking the truth. It was said that Manzanilla resigned because of loss of privileges and alleged discrepancies in the accounts of the defendant; and therefore his evidence ought to be viewed with that in mind. In relation to Martin, he is a dismissed employee of the defendant and therefore, according to the defendant, his credibility is suspect. The signatories on the alleged written agreement, which it was submitted by the defendant was signed after the date of the alleged written agreement, have not been shown not to be the signatories of Martin and Manzanilla. They swore that they signed the agreement. The evidence of Martin and Manzanilla to the effect that Martin had the authority to enter into the written contract on behalf of the defendant, had been denied by Mr. Jeronimo, on the ground that since he had been working with the defendant, he had "been aware both as Accountant and General Manager that Gas Tomza never enters into written contract with employees. . . . There is no written contract with employees." But Mr. Jeronimo admitted in cross-examination that as General Manager he could employ people and terminate their services.

14. Another witness for the defendant, Stivally Andrade, an accountant employed by the defendant, swore that she did not have a written contract; and at no time during four years of her employment with the defendant, did she ever see a written contract on file for the claimant, or for any employee of the defendant. But she also swore that the fact

that she did not find a contract did not mean that a contract did not exist.

15. It must be noted that in August 2009 when the contract was allegedly made, Mr. Jeronimo, as he testified, was working in Guatemala, and he took up his position in Belize in August 2010. This ought to be considered in an evaluation of Mr. Jeronimo evidence that Martin in August 2009, had no authority to make the contract. And though Jeronimo was never aware of employees written contracts, he did not testify that from his personal knowledge that he knew that Martin had no authority to enter into the written contract. Moreover, he has given conflicting testimony with respect to whether he checked with the directors in Guatemala in relation to the alleged written contract. At one point he said he did not check with Guatemala or Mexico, and later he said he checked with the directors about the contract.

16. There are, also discrepancies between the claimant and his witnesses, as to the persons involved in making the terms of the written agreement. The claimant said three persons – himself, Mr. Martin and the Accountant Mr. Manzanilla – were involved in the process of making the contract; but Mr. Martin stated that the claimant did not suggest any terms of the written agreement as he was the one who stipulated the terms of the agreement. Mr. Manzanilla said that Martin dictated much of the agreement to him, and he, Manzanilla helped in the preparation of the agreement. Mr. Manzanilla also testified that there was dialogue with the claimant.

17. There is inconsistency between the claimant's evidence as to the preparation of the terms of the contract, and Mr. Martin's evidence, in that the claimant spoke of three persons involved in the process whereas Mr. Martin excluded the claimant from the process of making the contract. The evidence of Manzanilla is supportive of the claimant that the three persons were involved in the process of making the agreement. But there is no discrepancy in the evidence of all three witnesses that a written agreement of employment was made and signed by them. The fact that Martin excluded from the process the claimant is not enough for the court, in my view, to discredit and exclude the overwhelming evidence of the claimant and Manzanilla that all three persons were involved in the process of making the terms of the contract. Moreover, it is highly believable that since the agreement directly concerned the claimant, he would have had some input on the contents of the agreement.

18. I am not satisfied that the discrepancies in the evidence, and the fact that Martin, Manzanilla and the claimant are no longer in the service of the defendant, affect the credibility of these witnesses that the making of the written agreement was not false or fraudulent, when the totality of their evidence is considered. I accept the evidence of the claimant and Manzanilla, that the claimant, Martin and Manzanilla were involved in the process of making terms of the written agreement of employment, and that it was made for and on behalf of the defendant. I am satisfied, on a balance of probabilities, that Martin as General Manager had at the date of the agreement, the authority to make the agreement on behalf of the defendant. I am also

satisfied on the evidence that both of them signed the agreement which was witnessed by the Justice of the Peace Manzanilla.

19. The next question is what is the effect of the termination clause above of the written agreement. For ease of reference, I repeat it:

> "Termination of Contract before Maturity Date:
> This contract may only be terminated before the maturity date if it is proven in a court of law that the employee did not meet any or some of the requirements above-mentioned in the "Terms of Employment." If the contract is terminated before the maturity date then the company is liable to pay the employee in full payment all moneys due from the termination date to the maturity date of the contract. Both parties may then mutually sign a termination agreement once all moneys due have been paid in full."

The clause, it would seem, is not only ambiguous but also uncertain. On the one hand, it is saying that the contract can only be terminated before the maturity date of 25th August, 2015 if certain things are proven in a court of law; but on the other hand, it states that if the contract is terminated before the maturity date, the company is still liable to pay compensation to the claimant. Therefore if the court terminated the contract for cause as stated in the clause, the company, although the employee was dismissed for cause, is still liable to pay the employee full payment of all monies due to the employee up to the maturity date. This is not only uncertain but also vague.

20. Where terms of an agreement are vague or indefinite that it cannot be ascertained with reasonable certainty what is the intention of the parties, it is not enforceable at law. A term of a contract that is largely uncertain, as the above termination clause seems to be, cannot be enforced; and should, in my view, be ignored or severed from the contract. A good example of the court not enforcing a term in an agreement because of uncertainty of its meaning is ***Jacques v. Lloyd D. George & Partners Ltd. 1968 2 AER 187*** where in an action for a sum of money as commission in relation to the sale of property, which sale did not occur, the agent/claimant relied for his commission on the following uncertain and ambiguous clause in the agreement:

> "Should you be instrumental in introducing a person willing to sign a document capable of becoming a contract to purchase (the seller shall) pay a commission of £250."

21. The court was of the view that introducing a person to the vendor willing to sign a document capable of becoming a contract or agreement to purchase property was not enforceable because the above clause was wholly uncertain, as the vendor could not have intended the payment of commission without a concluded sale. Denning LJ says that: "a term which is wholly unreasonable and totally uncertain, as this is, then the estate agent cannot enforce it against the innocent vendor. . . .It can and should be rejected": see p 189. Cairns J was also of the same view. His Lordship says that

"because the clause has no clear meaning at all, it is, in my judgment of no effect": see p 193.

22. Since the termination clause in this case before me is largely uncertain, with no clear meaning, the court should, for those reasons, in my view, reject, ignore or sever the clause from the written agreement. In my judgment, the termination clause ought to be ignored because of uncertainty. Even if I had not found that the claimant had abandoned his job, he could not, for the above reasons ,enforce the terms of the termination clause.

23. There are other clauses of the contract dealing with remuneration and the duration of the contract; but in the light of my finding above that the claimant abandoned his job, I do not see the necessity to address these other clauses of the contract.

24. Costs follow the event. The court also has a discretion, and in the exercise of that discretion the court is entitled to consider the conduct of the parties.

25. For all the above reasons, I make the following orders:

(1) The claims in the claim form are dismissed.

(2) The claimant shall pay costs to the defendant in the sum of $5,000.00.

Oswell Legall
JUDGE OF THE SUPREME COURT
14th February, 2013