

IN THE SUPREME COURT OF BELIZE, A.D. 1997

ACTION NO. 19

	( RICARDO MAGANA	Plaintiff
	(	
BETWEEN	( AND	
	(	
	( FREE ZONE BUSINESS	
	( ASSOCIATION LTD.	1 <sup>st</sup> Defendant
	( EDMUND LONGSWORTH	2 <sup>nd</sup> Defendant
	( AND ARTURO LIZARRAGA	3 <sup>rd</sup> Defendant
	( d.o.b. as Free Zone Business	
	( Association	

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**BEFORE** the Honourable Abdulai Conteh, Chief Justice.

Mr. Aldo Salazar for the Plaintiff.  
Ms. Jaseth Jackson for the First and Second Defendants.  
Mr. Arturo Lizarraga, Third Defendant, in person.

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**JUDGMENT**

Mr. Ricardo Magana in this action is, in essence, claiming against the defendants for the wrongful termination of his contract of employment as an engineer by the defendants.

2. The first defendant, the Free Zone Business Association is an organization formed to solicit and promote the interests of investors in the Corozal Free Zone. It was registered under the Business Names Act on 11<sup>th</sup> May 1995.
3. The second defendant, Mr. Edmund Longsworth, was at all times material to this action, chairperson of the first defendant, the Free Zone Business Association.
4. The third defendant, Arturo Lizarraga was at all times material to this action, the Executive Officer and Secretary of the first defendant.
5. On the 1<sup>st</sup> December, 1995, Mr. Magana was engaged as the Free Zone Engineer for a period of five years by a written contract

between him and the first defendant, signed by himself and the third defendant as the Executive Officer of the Free Zone Business Association, the first defendant in this action.

6. In clause 2 of the contract with the plaintiff, his remuneration is stated as follows:

*“2. The initial salary of the office is \$10,000 and the person engaged will enter at TEN THOUSAND DOLLARS (\$10,000) per annum with 20% gratuity per annum and with 5% annual increment”.*

7. The plaintiff's contract of employment was put in evidence as **Exhibit RM 1**”.

8. However, Mr. Magana said in evidence that sometime in July 1996, he received a letter dated 26 July 1996 relieving him of his duties effectively from that date. This was a little over seven months after his engagement by the defendants. This letter was tendered in evidence as **Exhibit RM 2**. As a result, he instituted this action against all three defendants claiming the contract value of his engagement for five years in the sum of \$69,070.38 less \$5,900.33 he had received by way of salary before his termination. He therefore claims the sum of \$63,170.05 as due him for the premature termination of his engagement.

9. Clause 7 of the plaintiff's written contract provides for the **Determination of The Engagement** and so far as relevant paragraph (b) provides as follows:

*“(b) If the services of the person engaged are discontinued after three months, the EXECUTIVE OFFICER shall pay the person engaged the full value of his contract”.*

10. Mr. Magana testified however that since the termination of his engagement he was unemployed for over three years but has since then secured employment with the Belize City Council in 1999 at a salary of \$48,000.00 per annum; a salary, I must say, that is appreciably more than that available under his engagement with the defendants.

11. A peculiar feature of this case is that for reasons best known to him, the plaintiff chose to add on the second and third defendants, suing them “doing business as Free Zone Business Association”.
12. At the trial of this action, Ms. Jaseth Jackson appeared as attorney for both the first and second defendants. The third defendant appeared for himself.
13. There was an Amended Defence in this matter dated 5 May, 2003 which I take to relate only to the first defendant and, probably, the second defendant as well, as it is not clear exactly for which of the defendants it was entered.
14. The Amended Defence however denies the statement in paragraph 1 of the plaintiff’s Statement of Claim that the Plaintiff entered into a written agreement with the defendant on 1<sup>st</sup> December 1995 for his employment by the defendant as an engineer. The Amended Defence however avers that it was the Commercial Free Zone Management Agency that employed the plaintiff and not the defendant. Curiously however, the defendant, while not making any admission as to paragraph 2 of the Statement of Claim, relies on the averment that it was the Commercial Free Zone Management Agency that had employed the plaintiff. I say curiously because, paragraph 2 of the Statement of Claim, is crucial to the plaintiff’s case for there he alleges the gist of his case of the wrongful termination of his employment. This paragraph states in terms:
  - “2. *In or about the month of July 1996 the Plaintiff received a letter dated the 26<sup>th</sup> July 1996 from the Defendant terminating his services but containing no allegation of impropriety as provided by Clause 6 of the said Contract*”.
15. In effect therefore, from the pleadings in this case, the wrongful termination of the plaintiff’s engagement is not as such denied, what is put forward instead is that the plaintiff was not engaged by the defendant.

Who employed the Plaintiff?

From the evidence in this case, it is in my view, undeniable that the plaintiff was not engaged by the defendant. **Exhibit RM 1** speaks for itself as to the relationship between the plaintiff and the defendant. It is a written agreement made expressly between the defendant and the plaintiff dated 1<sup>st</sup> December 1995 by which he was engaged for a period of five years as the Free Zone Engineer. The agreement was signed by the plaintiff himself and the third defendant as Executive Officer and was witnessed by one Sandra Esther Perez; and it was expressly stated to be for and on behalf of the Free Zone Business Association, the first defendant.

The evidence of the plaintiff was that he was employed by written contracts by the Management of the Commercial Free Zone Management Agency **and** the Free Zone Business Association as the zone engineer for a period of five years at salary of \$40,000.00 per annum with 20% gratuity plus 5% annual increments. However, he stated that there were two contracts. The first was with the Commercial Free Zone Management Agency which was for \$30,000.00 per annum with 20% gratuity and 5% annual increment. The second contract, the plaintiff testified, was with the Free Zone Business Association, at a salary of \$10,000.00 per annum with 20% gratuity and 5% increment per annum.

16. It is in respect of the latter contract that the plaintiff has sued. From the evidence in this case, I am satisfied that the plaintiff was engaged as stated in **Exhibit RM 1** by the defendant. Even under relentless cross-examination by Ms. Jackson for the defence, the plaintiff maintained that he had two contracts but he had no problem with the contract with the Free Zone Management Agency and that he continued to work for the latter for about a month after he was terminated by the defendant, Free Zone Business Association.

Under cross-examination by the third defendant in person, the plaintiff also testified that for over six months, the second and third defendants and one Curtis Arnold signed cheques for his salary together with other staff members of the Free Zone Business Association. The second defendant, Mr. Longworth, however testified that there was no Chief Executive Officer of the Free Zone

Business Association as it was not necessary to have one and in fact the Association did not enter into any contract of employment with the plaintiff. He however said that he became aware of the plaintiff's contract only after the plaintiff and others walked off their jobs. Under cross-examination however, Mr. Longworth admitted to signing cheques for the payment of the plaintiff's salary from the account of Free Zone Business Association, albeit, he said in order to assist the Corozal Free Zone Management Agency.

17. I am however, satisfied that from the evidence in this case, the plaintiff was employed by the first defendant as stated in **Exhibit RM 1**. The third defendant also clearly testified that the plaintiff was hired by and worked for the Free Zone Business Association.

*The breach of the Plaintiff's contract of employment*

18. The terms of the plaintiff's engagement were set out in the schedule to his written agreement with the Free Zone Business Association.
19. The plaintiff testified that after working for about eight months for Free Zone Business Association, he received a letter from the third defendant stating that his services with the first defendant were terminated. The reasons given were the objections of the president of the first defendant, that is, Mr. Longworth the second defendant in this action, and his refusal to continue to sign cheques for the pay of staff of the Free Zone Business Association. The plaintiff tendered in evidence as **Exhibit RM 2**, the letter of termination.
20. This letter, of course, was quite at variance with the express terms for the determination of the plaintiff's services as stipulated in Clause 7(b) of the agreement between the parties. I have referred to this already.
21. There was some suggestion during the cross-examination of the plaintiff by Ms. Jackson that the plaintiff walked off his job with the Corozal Free Zone Management Agency. The plaintiff denied this and said that he together with other staff members were escorted off by the police. Whatever the truth of this aspect, it cannot be in doubt that **Exhibit RM 2** was in clear breach of the plaintiff's engagement.

22. I am therefore satisfied that, on the evidence, there was a wrongful termination of the plaintiff's engagement with the first defendant as zone engineer.

Determination of the issues of existence of the contract with the plaintiff and its breach

23. In the course of her address Ms. Jackson had submitted that the 3<sup>rd</sup> defendant had no authority to have appointed the plaintiff.

In principle and on authority, I am not at all persuaded that this is so. Ms. Jackson relied on the case of Freeman and Lockyer (a firm) v Buckhurst Park Properties (Mangal), Ltd. And Another (1964) 1 All E.R 630. A close perusal of this case would show clearly that the proposition contended for by Ms. Jackson is not borne out. In that case, a firm of architects and surveyors was hired by one of the shareholders of the company to submit application for planning permission and to prepare for appeals against refusal of permission and to prepare plans and define the boundaries of the estate the company was formed to develop. The plaintiff firm was hired by one of the shareholders of the company. It sued for its fees. The company disputed that the other shareholder was in fact the managing director of the company and had no authority to have engaged the firm of architects.

It was held at first instance that the company was liable for the firm's fees. On appeal by the company, which was dismissed by the Court of Appeal (English), Lord Diplock, after an analysis of the authority of an agent to create contractual rights and liabilities between his principal and a third party, stated that this branch of the law has developed pragmatically rather than logically, and stated at page 646 of the judgment, the rational basis for holding a contractor entitled to enforce a contract against a company entered into on behalf of the company by an agent who had no actual authority to do so.

Lord Diplock's dictum in this case was applied by the House of Lords in Armagas Ltd. v Mundogas SA The Ocean Frost (1986) 2 All E.R. 385; (1988) 1 WLR 1256.

24. I am therefore satisfied that from the evidence in this case and guided by the principle enunciated by Lord Diplock in the Lockyer case supra, that the third defendant as Executive Officer of the Free Zone Business Association must have represented to the plaintiff that he had the authority to engage him as zone engineer. And that the third defendant had actual authority to manage the business of the first defendant either generally or in respect of those matters to which the plaintiff's contract related, that is, hiring staff; and that the plaintiff was induced to enter into the contract by such representation, that is, the plaintiff relied on it. Moreover, there is nothing in evidence that the first defendant, the Free Zone Business Association, was deprived of capacity to enter into the kind of contract with the plaintiff, or that it had no capacity to have delegated the necessary authority to the third defendant, its Executive Officer, who from the evidence, was in charge of the affairs of the Free Zone Business Association and that of the Corozal Free Zone Management Agency.

25. I therefore hold that the plaintiff's engagement was wrongfully terminated.

*Is the plaintiff's contract unenforceable for non-attestation as required by the Labour Act?*

26. Although not pleaded, Ms. Jackson in arguing for the defence, relied in the alternative that because the plaintiff's contract with the first defendant was not attested by a labour officer as required by section 52 of the Labour Act, Chapter 297 of 2000 Revised Edition of the Laws of Belize, that consequently, it was by virtue of subsection (4), therefore unenforceable. The short answer to this, in my view, is the decision in the case of Taegar v Belize Tourist Board 1 BLR 235 where the Court held that the non-attestation of a contract of employment is not a fault that can properly be laid at the door of an employee who is improperly terminated so as to disentitle him from enforcing the contract, when the duty to attest the contract is vested, as in this case, in the employer. I respectfully adopt the reasoning in that case on this point.

Damages to the Plaintiff

27. The plaintiff had originally in his Statement of Claim asked for the full five years he was engaged for under the contract. But Mr. Aldo Salazar, the plaintiff's attorney said that he was only claiming for the three years he was unemployed. The plaintiff himself said in evidence that after his termination in 1996 he was able in 1999 to get placement with the Belize City Council as City Engineer at a salary of \$48,000.00 per annum.

This, it should be noticed, is higher than his combined salary earlier.

28. Accordingly, therefore, I hold that the plaintiff is entitled to the three year value of his engagement with the first defendant which would have probably run its agreed span of five years, but for its wrongful termination in 1996.

29. I therefore enter judgment against the first defendant as follows:

<u>Year 1</u>	<u>Base Salary</u>	<u>Increment</u>	<u>Gratuity (20%)</u>	<u>Total Sum</u>
<i>Year 1</i>	<i>\$10,000.00</i>	<i>\$500.00.00</i>	<i>\$2,000.00</i>	<i>\$12,500.00</i>
<i>Year 2</i>	<i>\$10,500.00</i>	<i>\$525.00</i>	<i>\$2,100.00</i>	<i>\$13,125.00</i>
<i>Year 3</i>	<i>\$11,025.00</i>	<i>\$551.25</i>	<i>\$2,205.00</i>	<i><u>\$13,781.25</u></i>
				<i>\$39,406.25</i>

30. Accordingly, judgment is entered for the plaintiff in the sum of \$39,406.25 against the first defendant. Also, I award the costs of these proceedings to the plaintiff in the sum of \$5,000.00 against the first defendant.

**A. O. CONTEH**  
**Chief Justice**

**DATED: 19<sup>th</sup> March, 2004.**