IN THE SUPREME COURT OF BELIZE A.D.2003

ACTION NO. 46 OF 2003

BETWEEN: LYDIA GUERRA PLAINTIFF

AND

BELIZE CANE FARMERS ASSOCIATION DEFENDANT

Mr. Darlene Vernon for the plaintiff.
Mr. Leo Bradley Jr., for the defendant.

AWICH J.

21.5.2010 J U D G M E N T

1. *Notes: Contract – contract of employment; employment for a fixed term; wrongful termination; liquidated damages awarded in place of assessed damages.*
Civil Claim Procedure; judgment entered for part of a claim on part admission – R 14. Court will not make an award more than the sum claimed; and court will not make an order to offset a sum against an award when a counterclaim has not been made. Failure of witnesses to attend court when they were given notice-trial will proceed.

2. This is an action commenced under the old Rules of Court. The writ of summons issued on 24.1.2003. For a long time the pleadings were not completed. The plaintiff could not set down the case. On the advent of the 2005 Rules of Court, the plaintiff/claimant had to apply for case management conference which was held by the Registrar on 8.2.2006. Case management orders were made and the claim was duly listed for pre-trial review on 19.6.2006. On that date Mr. Leo Bradley Jr., learned attorney for the defendant, had to attend at the Court of Appeal. The trial was adjourned; parties were to obtain a suitable date from the Registrar.

3. It seems that parties attempted settlement out of court. The next trial date was 21.11.2008. On that date learned counsel Ms. M. Vernon, for the claimant, had not been served with defence witness statements. She asked the court to hear witnesses for the claimant only and not to hear witnesses for the defendant. Mr. Bradley Jr. informed court that he was not sure he still had instruction to represent the defendant. Court adjourned the trial for four days to 25.11.2008, to enable Mr. Bradley Jr. to have his instruction confirmed or not, and also gave permission for late service of defence witness statements. On

25.11.2008, parties did not attend court. Court directed that the Registrar relist the case for trial soon.

4. It seems no action was taken until the case was listed for trial on 26.3.2010, when it was tried in two days. That was not without more difficulty. Witnesses for the defendant did not attend court, although attorney for the defendant had asked them to attend. Attorney inquired before the second day of trial, the response was that the board of the defendant had a meeting the previous day and the witnesses were too busy to attend court. Court directed that trial would proceed.

5. The facts of the case are common facts. The inference to be drawn from them and the questions of law were the issues.

6. The facts were these. Lydia Guerra, the claimant, was employed as a receptionist by Belize Cane Farmers Association, the defendant, for five years from 2.4.1998. The contract of employment was a formal one, dated on the date of commencement of the employment. She was to be paid $837.00 per month, and a gratuity of 10% of the total salary

at the end of the employment. She was also entitled to 21 days leave after every six months of service. There was a clause for termination of the employment by the employee by giving three months notice. There was no similar clause for the defendant to terminate the employment by notice. However, the employer could terminate the employment in the first three months, by giving one month notice, or by payment of one month salary. The employer was not required to give any reason for the termination within the three months. After three months, the employer could not terminate the employment in that way. Instead, there was a clause that the employer would make certain payments if it terminated the employment of the claimant before the end of the period of employment.

7. In 1999, the manager became ill. The claimant was verbally appointed manager at a salary of $2,808.00 per month, with effect from February 1999. The verbal appointment was communicated to her by the chairman and vice chairman of the defendant's board. They also told the claimant that the rest of the terms of her employment remained the same as in the contract signed in respect of the appointment to the post of a receptionist.

8. In 2002, a new board took over the management of the defendant. On 26.2.2002, the board terminated the employment of the claimant. She claimed that she was entitled to certain "special damages" payments, according to the terms of the written contract of employment dated 2.4.1998, which she contended was merely varied, but only in respect to the post and salary. She claimed the following: (1) one month salary for each year of service, that is, $837.00 for the year ending January 1999, $2,808.00 for each of the years ending, January 2000, January 2001 and January 2002, the total claimed was $9,261.00; (2) annual holiday pay, $815.23; and (3) gratuity at, "10% of the total salary in respect of engagement, $14, 482.80". The total sum of these so called special damages were shown as $24,559.03. I have to say rightaway that what the claimant claimed were in law liquidated damages, not special damages.

9. In addition to the "special damages", the claimant claimed "damages". I took the latter to mean unspecified general damages.

10. The defence of the defendant was really in the nature of confession and avoidance. The defendant admitted that it terminated the

employment of the claimant. The reason it gave was, "financial constraint.." The defendant went on to admit liability to the extent of $10,000.00. On that admission the court entered judgment for the claimant for that sum, pursuant to ***R 14.7 of the Supreme Court (Civil Procedure) Rules, 2005.***

11. ***Determination.***

The defendant contended that the first contract of employment was terminated by mutual consent, and a new oral contract of employment in the post of manager was entered into, therefore, they argued, the claimant was entitled under the new contract to damages in the sum of $10,000.00. The defendant did not disclose the calculation by which it arrived at the sum of $10,000.00.

12. From the oral testimonies of the three witnesses for the claimant, I concluded that what took place was that the parties, by mutual consent, terminated the written contract of employment dated 2.4.1998, for the employment of the claimant as a receptionist. In its place, they agreed to a new oral contract. Pursuant to that oral contract, the defendant employed the claimant as a manager with effect from the date of the contract in February 1999. The terms of

the oral contract were to be the same as the terms of the earlier contract, except in regard to the post, salary, duties and any term that could be inconsistent with those three main terms. The oral contract of employment was valid, the employment under it commenced immediately, and not later than one month from the making of the contract, so written form was not required - see ***ss: 37 and 38 of the Labour Act, Cap 297.***

13. There is one other general point that I must decide before I consider the specific heads of claim. It is this. According to her pleadings and testimony, the claimant understood the period of her employment to end five years from 2.4.1998, the date on which she was first employed by the defendant. There has been no evidence from the defendant on the point. In any case, reckoning by the claimant, of the period of her employment of 5 years to be comprised of the period during which she was employed as a receptionist and the period during which she was employed as a manager, was more favourable to the defendant's case. So by her reckoning, the oral contract would end on 1.4.2003. I accepted that evidence.

14. I start determination of the specific heads of claim by noting again that, whereas there was a provision in the contract for the claimant employee to terminate her employment before the end of the fixed term of five years by giving notice, there was no such provision for the defendant employer to terminate the employment. Instead, there was provision for certain payments to be made by the defendant to the claimant, in the event the defendant terminated the employment earlier. It is a common fact that the defendant terminated the employment of the claimant on 26.2.2002, well before the end of 5 years. The relevant terms of the contract that apply to termination were these:

"SCHEDULE

TERM OF ENGAGEMENT

1. (a) The engagement of the person engaged is for 5(five) years, commencing on the 2nd April, 1998.

…

DETERMINATION OF ENGAGEMENT

4. (A) During the first three months of the period of engagement the association may terminate the services of the person engaged without assigning any reason, by giving her one month's notice or paying her one month's salary in lieu of notice.

(B) After the expiration of three months, the person engaged may at any time terminate her engagement by giving the Association three months notice.

(C) If the Association terminates the employment of the person before the expiration of this agreement otherwise than in accordance with this section, the Association shall be liable to pay the person engaged, as liquidated damages, the following:

I One month's salary for every year of service from the time of employment.

II Full gratuity as if the person engaged had completed the total number of years of service specified in this agreement.

LEAVE OF ABSENCE

The person engaged shall after a minimum period of six months be eligible to vacation leave with full pay at the rate of twenty one working days, or part thereof, per annum.

GRATUITY

6. After termination of the agreement, the person engaged is eligible to a gratuity pay of 10% of the total salary as stated under the agreement".

15. Applying the above provisions of the contract of employment, I concluded that the claimant was entitled to claim *liquidated damages* under the various heads of payments provided in the contract. The

liquidated damages were certainly not in the nature of penalties. The claimant referred to them as, "special damages". The wrong description does not cause her claim to fail. I make the awards that follow.

16. The claimant was entitled under paragraph 4 (C)(i) to one month salary for each year of service completed. The actual figures claimed were these:

April 1998 to January 1999	$ 837.00
February 1999 to January 2000	$2,808.00
February 2000 to January 2001	$2,808.00
February 2001 to January 2002	$2,808.00
	$9,261.00

17. According to the evidence, the first year of service completed by the claimant ended on 1.4.1999, (not in January 1999). The salary on that date was already $2,808.00, so I would allow $2,808.00 instead of the $837.00 claimed. Secondly, her full years of service as manager should be taken to have commenced on 1.2.1999. Her full years of

service as a manager therefore ended on 31.1.2000, 31.1.2001, and 31.1.2002. The award I would make under paragraph 4(C)(i) would be $11, 232.00. However, court cannot make an award more than the amount claimed. Accordingly, I award the sum of $9,261.00 claimed.

18. Under paragraph 4(C) (ii), in the event of earlier termination by the defendant, of the employment, gratuity at 10% is payable on the sum that the employee would have earned in the entire period of the employment. In this case, the claimant earned $837.00 for each of the first 10 months; the total sum was $8,370.00. Then she would have completed 4 years and 2 months at a salary of $2,808 per month, thus earning $140,400.00. The total salary for the 5 years would be $148,770.00. A gratuity of 10% would be $14,877.00. The claim made was for $14,482.80. I award $14,482.80 claimed.

19. Under paragraph 5, the claimant was entitled to leave. I award the sum of $815.23 claimed as leave pay.

20. The total award of $24,559.03 is comprised of the actual sums claimed, namely, $9,261.00, $14,482.80, and $815.23. Out of that

award, judgment has already been entered for $10,000.00 which was admitted. The question of tax that might have been retained and paid over to tax authorities was not raised, and I have not taken tax into consideration.

21. The claim for further general damages is refused. Parties agreed liquidated damages. The total award I have made was based on the liquidated damages. In any case, no evidence was adduced as to whether the claimant remained unemployed, and if so, whether she made any effort to get employed.

22. The order made is that, judgment is entered for the claimant for damages in the sum of $24,559.03; the sum of $10, 00.00 awarded earlier is included. Interest at 6% is chargeable from 24.1.2003, when the claim was filed at court, until payment in full. Costs of the claim, to be agreed or taxed, are awarded to the claimant.

23. During the trial, the claimant admitted that she owed $13,695.00 out of a loan given to her by the defendant. That was not pleaded and counterclaimed. I cannot offset it against the judgment sum in this

claim. I advise that the claimant simply allows the defendant to recover the loan sum out of the award made in her favour, otherwise the defendant may make a court claim for the loan.

24. Delivered this Friday 21st day of May 2010
At the Supreme Court
Belize City

Sam Lungole Awich
Judge
Supreme Court of Belize