

IN THE SUPREME COURT OF BELIZE, A.D. 2006

CLAIM NO. 248 OF 2006

ULRIC WILLOUGHBY

Claimant

BETWEEN AND

DANGRIGA TOWN COUNCIL

Defendant

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Kareem Musa for the claimant.
Ms. Tricia Pitts for the defendant.

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JUDGMENT

Mr. Ulric Willoughby, the claimant in this case, had been employed with the Dangriga Town Council, the defendant, since 2002. He was first engaged as the Town Administrator for a period of three years starting on 5th March 2002.

On the completion of his first contract, he entered into another contract, again for three years, starting 1st April 2005.

2. Mr. Willoughby continued in the defendant's employ as the Town Administrator until 17th March 2006 when he received a letter from the new Mayor of Dangriga Town terminating his employment.

3. It is the facts and circumstances of Mr. Willoughby's termination on 17th March 2006, by the defendant, that have given rise to his claim in this case for breach of contract and wrongful dismissal by the defendant.
4. The backdrop to all of this is that on 1st March 2006, Municipal Election was held for the Dangriga Town Council. This resulted in a new Town Council with a new Mayor, different from the one that had initially employed Mr. Willoughby in 2002 and continued his employment as Town administrator on 1st April 2005.
5. The defendant, Dangriga Town Council, denies Mr. Willoughby's claim and asserts instead that he was terminated in accordance with clause 8 of his written contract with the Town Council. As I have pointed out above, this contract was concluded between Mr. Willoughby and the Town Council in 2005, before the change in the political directorate of the Council. The defendant further states that Mr. Willoughby's termination was necessitated by his gross misconduct.
6. The defendant in its Defence proceeds to state what it says constituted this gross misconduct on the part of Mr. Willoughby as follows:

“i. The claimant (Mr. Willoughby) was advised that an analysis of the Council's income and expenditure would be conducted by Mr. Cedric Flowers, Certified Accountant and was instructed to make available for inspection the Council's Budget, all balances standing to the Council's accounts, a statement of taxes paid and taxes outstanding, and employees' personal files all of which the Claimant directly worked with or were in his control or supervision

ii. *In breach of his contract, the Claimant deliberately refused to provide the second information requested of him.*

iii. *The Claimant additionally tampered with and/or deleted valuable information stored in the computer workstation thereby severely hampering and frustrating the work of the said Cedric Flowers.*

The Provisions on Dismissal in Mr. Willoughby's contract

7. Mr. Willoughby's written contract with the defendant was for a term of three years from 1st April 2005, with a probation period of twelve months and it had an option for renewal.

This case however does not engage the probation period or the renewal option of the contract.

8. The case is about his dismissal and the circumstances relating to it in the light of Clause 8 of Mr. Willoughby's letter of engagement. This is annexed as a Schedule to the letter itself and it provides in terms:

Dismissal 8. *If the person engaged, at any time after signing hereto neglects, refuses to, or for any cause (excepting ill health not caused by his own misconduct as provided in clause 8 (sic)), becomes unable to perform any of his duties or refuses to comply with any proper order or discloses confidential information in respect of affairs of the Council to any unauthorized person, (not authorized by the Mayor or any*

appointed Councilor), the Council may dismiss the person engaged and on such dismissal all rights, benefits and other advantages reserved to the engaged person by this agreement shall cease.

9. It was pursuant to this provision that the defendant, through the Mayor of Dangriga, wrote to Mr. Willoughby on 17th March 2006, dismissing him from his position as Town Administrator. This letter, **Exhibit UW 3**, on the Defendant Town Council's letterhead is crucial to this case. It states as follows:

17th March, 2006

*Mr. Uric Willoughby
Town Administrator
Dangriga town Council
Market Square
Dangriga Town*

Dear Mr. Willoughby,

In accordance with the terms of reference of your contract, your responsibilities entail creating an environment of trust, integrity, transparency and accountability. On the contrary, the Council has uncovered recent actions of yours that constitute gross misconduct.

It was discovered that on March 2nd, 2006 you deleted from one of the Council's computers, information that is most invaluable to the Council. This action amounts to gross dereliction of duty and is a clear attempt to sabotage the work of the new Council. It is also a clear violation of your duty of fidelity to the Council and your duty to exercise care in conducting Council's business. These deletions are directly traceable to your profile and password.

Based on this discovery, the Council has taken the decision to terminate your employment forthwith. Accrued Vacation Leave to date will be calculated and the amount due to you will be paid in four equal installments.

The Council bids you well in your future endeavors.

Sincerely yours

*Sgd: F Mena
Mayor Frank Mena*

*Cc: Ministry of Local Government
Manager of Finance
file*

10. It is in the light of this letter that Mr. Willoughby now claims that the defendant Council wrongfully breached his contract by wrongfully dismissing him for alleged “acts of sabotage against the Town Council”: see para. 3 and claim of Mr. Willoughby.
11. The defendant for its part, justifies its dismissal of Mr. Willoughby. It says that Mr. Willoughby was guilty of “gross misconduct” and avers therefore that his employment with the defendant was properly terminated in accordance with clause 8 of his written contract.
12. I have at paras. 6 of this judgment reproduced the details of the “gross misconduct” leveled at Mr. Willoughby by the defendant as the reasons for his termination. These are contained in para. 6 of its Defence.

13. I have as well, reproduced clause 8 of the written contract between Mr. Willoughby and the defendant Town Council, relating to dismissal, at para. 8 of this judgment.
14. Therefore, substantively, the defendant's charge of "gross misconduct" against Mr. Willoughby, as the reason for terminating his contract is grounded in two reasons. The first, to be gleaned from the Defence is that contrary to the Council's instructions, Mr. Willoughby deliberately failed to make available to a Mr. Cedric Flowers, a Certified Accountant, certain information relating to the defendant Council's budget, all bank balances standing to its credit, statement of taxes paid and outstanding taxes and all the personal files of the Council's employees. The purpose of this information was to have Mr. Flowers make an analysis of the council's income and expenditure.
15. It should be noted here that this charge was never mentioned in the defendant's letter of 17th March 2006 terminating Mr. Willoughby's contract with the Council. It is therefore not surprising that Mr. Willoughby said that the first time he heard of it was when this came up for trial.
16. The second charge and evidently the only reason stated by the defendant for terminating Mr. Willoughby's contract (as per defendant's letter of 17th March 2007) that he tampered and deleted valuable information from his computer work-station with the defendant.
17. It is significant to note that the defendant stated that the discovery of the deletion of information from the computer was made on 2 March 2006. This was a day after the election of the new Town Council; but it was only forwarded as the reason for Mr. Willoughby's dismissal on 17th March 2006.

The Evidence in the case

18. Both Mr. Willoughby and the defendant Town Council filed witness statements: One by Mr. Willoughby himself on his own behalf; and two witness statements on behalf of the defendant i) by Mr. Frank Mena who was the Mayor of Dangriga Town Council at the time and ii) by Mr. Hubert Usher. In addition to these witness statements, at the trial, Mr. Willoughby gave oral evidence on his own behalf and was cross-examined by Ms. Tricia Pitts, the attorney for the defendant. And Mr. Frank Mena and Mr. Hubert Usher also gave oral evidence and were cross-examined by Mr. Kareem Musa, the attorney for Mr. Willoughby.

19. First, in so far as the charge of failure to provide Mr. Cedric Flowers, the Certified Accountant brought in by the defendant to evaluate and analyze the Council's financial position is concerned, I should say again that this was never put to Mr. Willoughby at any time by the defendant. Mr. Willoughby however vehemently denied this. He testified that he recalled receiving instructions from the Mayor late one afternoon at about 4:30 p.m. on March 6, 2006 to meet with Mr. Cedric Flowers. He said he recalled meeting with Mr. Flowers who asked about 70 questions relating to the Council's business. Mr. Flowers told him that he had obtained similar information from other Councils and commended the Dangriga Town Council as the best prepared. Mr. Flowers asked for the budget of the Council for the past five years; he however told him that he only had the current budget and the Council's financial officer would have the budgets for the other preceding years. Under cross-examination by Ms. Pitts for the defendant, Mr. Willoughby stated that he provided all the information he had on the Council's business to Mr. Flowers. This was put on a floppy disk and sent to Mr. Flowers in Belize City and that when he later said that that information was not what he wanted, they sent all the

information. He emphasized that he was never reluctant to provide Mr. Flowers with the requested information.

20. I am, having listened and seen Mr. Willoughby give evidence, inclined to believe him. I find that he did not fail or refuse to provide Mr. Cedric Flowers with the information requested by the Mayor. The alleged failure to provide the requested information to Mr. Flowers was not at any time prior to this case put to Mr. Willoughby and was, in fact, as I have observed earlier, not even mentioned in the defendant's letter of termination on 17th March 2006. I find as well, the absence of any testimony or statement from Mr. Flowers himself on this account to be a serious chink in the defendant's shield.

21. Secondly, on the charge of deliberately tampering and deleting information from his computer by Mr. Willoughby, I am not satisfied that on the evidence this charge could be substantiated or is sustainable as a reason, as the defendant alleged in its letter of Mr. Willoughby's termination. This conclusion is, in my view, warranted by the following reasons: Mr. Hubert Usher, a computer analyst was engaged by the Mayor of the defendant Town Council soon after the new Town Council was elected into office in March 2006, to evaluate the condition of the then existing computer system of the Council, including its workstations and local area network and to secure all data on every computer workstations in the Council's office. After conducting an evaluation and analysis of the computers in the Council's office, Mr. Usher found that only Mr. Willoughby's Dell Optiplex CX260 Desktop Computer had no documents stored on its hard drive. Mr. Usher also stated that after a comprehensive check for the deletion of the files and/or folders, it was found that entire folders were removed and files deleted from Mr. Willoughby's computer. In his witness statement, Mr, Usher states that the contents of one of the folders on Mr. Willoughby's desktop computer labeled "Admin Correspondence" were non-existent.

But “that with the use of “a file recovery routine” he was able to retrieve all the documents that were previously stored within this folder. Mr. Usher also stated in his witness statement that another folder found on Mr. Willoughby’s computer labeled “recently used documents”, had had its files removed from the system. However, as a result of “a file recovery routine” he ran, he was able to recover all the files in this folder. Mr. Usher stated that at the request of the Mayor of the defendant he made a written report to him on 9th April 2006. This Report was put in evidence as **Exhibit FM 2**. It is however, to be noted that it is dated “Friday, April 7 2006”.

22. I cannot help but note that both the request for the Report and the Report itself are said to be 9th April and 7th April 2006, well after the letter from the defendant dated 17th March 2006 terminating Mr. Willoughby’s employment for allegedly deliberating tampering with and deleting information from his computer.

23. On this issue of tampering and deleting information from his computer, Mr. Willoughby testified and was cross-examined by Ms. Pitts. I must say that I found him to be an honest truthful and believable witness. He denied ever removing information from his computer. I reproduce here his testimony-in-chief on this point:

Q: The allegation is that you tampered and in particular deleted files from this computer. What do you have to say in response to that allegation?

A: In response to that sir, I would just basically say that I was not aware that I was being accused of deleting any information until I received that termination letter from the Mayor. So I can say that it came as a surprise.

Q: It came as a surprise?

A: Yes

Q: Anything else you wish to say with respect that you tampered with the council's computer?

A: Certainly. The information that is being alleged that I tampered with, I was quite surprised since if there was any information that was not on my computer at any point in time I would have imagine that someone could have approached me and ask me, Mr. Willoughby, have you ever deleted any information from off the computer and I certainly could have said from the first day I have started working there I have deleted information from day one towards the end.

Q: You have deleted files?

A: Absolutely. I think any working individual has deleted files off their computer.

Q: So they could have just asked you for a particular files, couldn't they?

A: They could have asked me.

Q: How would you be able to deliver that file to them?

A: Well we do have – and I will just backtrack a bit. Understanding that computers do crash, I asked that we install a backup system, backup meaning there was a physical copy being kept somewhere other than the location of my employer.

Q: So all the information and all the computers data are stored on a backup?

A: Off site.

Q: Where is this site?

A: We opened a safety deposit box at the Belize Bank, Dangriga Branch.

Q: At the Belize Bank?

A: Yes, Dangriga Branch.

Q: So if the Mayor or anybody else wanted to look on the history of all computer files all they had to do was to go to the Belize Bank?

A: Right.

Q: And he would have access?

A: Absolutely. The signatories on that account would have been the Financial Manager, not myself having access to that filed but I would request it through the Financial Manager.

Q: Anybody else as signatory?

A: And the past Mayor but the current mayor could suffice.

Q: So were you at any time informed when the Mayor and the computer analyst were going into your computer?

A: Absolutely not.

Q: And as far as you are aware on what day did this happened?

A: Certainly it happened on a Saturday.

Q: And I presume the Council does not open on a Saturday?

A: No, sir, we are not opened on Saturdays. My office was actually locked over the weekend so they literally had to break into my office to be able to get to the computer system.

Q: So you were not there to witness anybody going into your computer?

A: No, sir.

Q: Because you were not informed of this operation.

A: Exactly.

Q: So just to recap on this issue of tampering, Mr. Willoughby, they did not ask you to go into your computer?

A: That is correct.

Q: They did not ask you for any particular file?

A: No, sir.

Q: They broke into your office on a Saturday?

A: That is correct. They simply could have asked me for the key and the password or for the information.

Q: All files are kept on backup at the Belize Bank?

A: That is correct.

Q: And aren't these files also on hard copy, actual printouts?

A: Different files could be in different file folders or wherever they need to be so that is highly possible.

Q: So in response to the Council's claim that you tampered, you are saying that you did not tamper with any of the council's file?

A: I did not have to.

Q: Di you tamper with the council's files?

A: No, sir.

24. I must say that Ms. Pitts in her cross-examination of Mr. Willoughby on this issue of tampering with and deleting information from Council's computer system did not draw him out on it at all. Mr. Willoughby remained steadfast that he did not tamper with or deliberately delete information from his computer.
25. I conclude therefore that on the evidence, I am not convinced or satisfied that Mr. Willoughby deliberately tampered with or deleted vital information stored on his computer such as to warrant his summary termination by the defendant.

Determination

26. In the light of my findings on the evidence in this case, I hold that the defendant's termination of Mr. Willoughby was well outside the provisions of clause 8 of the contract between them (which I have set out at para. 8 of this judgment), I find, in particular, that there was no neglect, refusal to comply with any proper order, or disclosure of confidential information in respect of the defendant Council's affairs to any unauthorized person, by Mr. Willoughby.
27. I therefore find and hold that his termination by the defendant was rather summary and in breach of his contract and a wrongful dismissal.
28. Accordingly, in terms of clause 9 (c) of the written contract between the defendant Council and Mr. Willoughby, the Council, is liable to him in the full amount of salary and benefits due under the contract. Clause 9 (c) of the contract provides under the Termination of Engagement provision of the contract that:

“9 (c) If the person engaged is terminated before the expiration of this agreement and otherwise than in accordance with Clause 8, the Council will be liable to pay him the full amount of salary and benefits due.”

29. Therefore, given the fact that I have found on the evidence, that Mr. Willoughby’s contract was wrongfully breached and at the time of his wrongful dismissal he had some two years of his 3-year contract to run, he would ordinarily, as a measure of the damages flowing from the breach of his contract, have been entitled to the remainder of his full salary and benefits as stipulated in the contract.

30. However, paradoxically and somewhat magnanimously on Mr. Willoughby’s part, he was categorical in his evidence, particularly in his re-examination by his attorney, Mr. Musa, that he was not interested in any future earnings but only in what was due him by virtue of his employment from the past by the defendant Town Council.

31. I reproduce here verbatim the evidence on this point:

“Q: It was suggested to you just a while ago, Mr. Willoughby, that you voluntarily resigned and you issued this letter of resignation because you wanted damages. Those were the words by my learned Council (sic). In that letter, did you request damages?”

A: I did not request any damages at all except what was due to me.

Q: So you were not seeking future damages, you were seeking what was owed to you by virtue of your employment from the past?”

A: Very much so, not interested in any future earnings at all.”

32. I cannot however, I think, properly overlook the evidence. Therefore, notwithstanding the wrongful termination of his contract, Mr. Willoughby is only claiming for what was due him on the date of his resignation. In this regard, he had in his letter of resignation of 17th March 2006, itemized and calculated what was due him then. (See **Exhibit UW 2**). This gives the grand total of \$9,414.00. I accordingly order this sum to be paid immediately to Mr. Willoughby with interest at 6% per annum from 17th March 2006 to 25th January 2007, when this claim was first heard.
33. I have found as well that there was a clear breach of Mr. Willoughby's contract by the defendant Town Council; for this I award the sum of \$10,000.00 as damages. I also award the costs of these proceedings to Mr. Willoughby in the sum of \$7,000.00.

Conclusion

34. I believe that with commonsense and goodwill this case could have been avoided and Mr. Willoughby paid what was due him at the time.

I accordingly order as follows

- i) The payment by the defendant of the sum of \$9,414.00 in respect of what was owed Mr. Willoughby on the effective date of his termination and his coincidental resignation, plus interest at 6% per annum from 17th March 2006 to 25th January 2007,
- ii) Damages for breach of contract against the defendant Town Council in the sum of \$10,000.00,

- iii) Costs of \$7,000.00 to Mr. Willoughby in respect of these proceedings.

A. O. CONTEH
Chief Justice

DATED: 16th September 2009.