

IN THE SUPREME COURT OF BELIZE, A.D. 2012

CLAIM NO. 14 of 2011

DAVID MADRID

CLAIMANT

AND

**BELIZE SUGAR CANE FARMERS
ASSOCIATION**

DEFENDANT

Hearings

2012

13th January

10th February

19th March

Ms. Pricilla J. Banner for the claimant.

Mr. Jose Cardona for the defendant.

LEGALL J.

JUDGMENT

1. The defendant is a body corporate established under section 35 of the Sugar Industry Act Chapter 325 with power to enter into contracts, and to sue and be sued in its corporate name. The claimant was employed by the defendant in 2008 as an accountant, and in July 2009, he was appointed by the defendant as Chief Executive Officer

(ag.), because the contract of the substantive holder of that office had come to an end. The claimant acted in that office until 15th January, 2010 when he was appointed as CEO of the defendant by virtue of a written contract of the same date, signed by the claimant and five out of six members (one abstained) of the Committee of Management of the defendant, for a period of three years commencing from 15th January, 2010 to 15th January, 2013 at a monthly salary of \$4,500.00. The Committee of Management (COM) is established by section 42(1) of the Sugar Industry Act, and according to the section, COM has control over the income and property of the defendant, and has full authority in all matters connected with the appointment and dismissal of officers and employees of the defendant. The COM also has full authority in all matters connected with the administration of the affairs, objects and purposes of the defendant.

2. Clause v(a) of the claimant's contract states that upon completion of the term of the contract, and subject to the circumstances as provided for in clause V11 of the said contract, the claimant would be eligible to receive a gratuity of 10% of the total salary earned under the contract, provided that the claimant's services have been appraised as satisfactory. Clause V11 provides for termination of the contract and states:

“The COM of the BSCFA may terminate the services of the person engaged:

1. With cause by giving one month's notice, or paying him or her one month's salary in lieu of notice;

2. Without cause by paying him/her all the remaining term of his/her contract.”
3. The contract which is given in the appendix to this judgment, states in clause 1, that the person engaged, the claimant, shall faithfully and diligently perform the duties of CEO and shall report directly to the Committee of Management and shall act in all respects according to the general directives given to him by the COM. Clause 11 of the contract states that the CEO is primarily responsible to carry out the strategic plans and policies as established by the COM, and that the CEO is to report to the COM. Clause 11 also lists numerous duties of the CEO as can be seen from the contract in the appendix.
4. By letter dated 29th September, 2010 from the COM to the claimant, the defendant terminated the claimant’s contract with immediate effect. The letter of termination is very important to this case, and I quote it in toto:

“Mr. David Madrid
CEO
BSCFA

Dear Mr. Madrid.

After careful and deep consideration, the Committee of Management of the Belize Sugar Cane Farmers’ Association has decided to terminate your contract, paying you one month’s salary in lieu of notice. It was also decided that you be paid gratuity earned on salary received to date, and payment in lieu of vacation leave due.

The Committee has observed a general inability of your part to manage the affairs of the BSCFA in a timely and efficient manner, in the best interest of its members. This has led to improper actions and flawed decisions on your part that have directly and negatively resulted in undue tension and disruptions in the smooth running of the Association's affairs. Among these is the lengthy delay in implementing the fertilizer distribution program that became the source of severe hardship and disquiet for many cane farmers. We believe that recent related events were entirely avoidable had there been the necessary demonstration of sound leadership and timely action on your part.

Another example is your failure to follow up on the necessary steps to engage in negotiations on the matter of payment for bagasse by BSI/BELCOGEN Ltd. This has seriously affected progress in this important area to the disadvantage of cane farmers who should, by now, have been enjoying the benefits of payments for bagasse supplied to BELCOGEN. There is no good reason that action on this matter should have been delayed.

In a more recent instance there has been no follow up to the plan agreed by the Committee of Management to conclude arrangements for negotiation of new BSCFA/BSI agreement. Neither has the directive for notification to BSI of the appointment of the BSCFA negotiator been carried out.

There are other matters to do with administration shortcomings, and we cite as an example your failure to provide effective work, organizational development, and staffing improvement plans for the

Committee's consideration. These are taken as conclusive evidence that you are incapable of performing the duties of Chief Executive Officer."

The defendant in the defence said it terminated the claimant's contract for cause under clause V11 of the contract; and hence the payment of one month's salary in lieu of notice.

The Claim

5. On 17th January, 2011 the claimant filed a claim against the defendant alleging that the termination was without cause and claiming the following:

- “1. A Declaration that the defendants did not have cause to terminate the claimant as Chief Executive Officer of the Belize Sugar Cane Farmers Association;
2. Damages in the amount of \$155,700.00 for breach of contract of employment by the defendants in wrongfully terminating the claimant as Chief Executive Officer of the Belize Sugar Cane Farmers Association “with cause” pursuant to Clause vii of the Contract of Employment dated 15th January, 2010;
3. In the alternative, damages in the amount of \$155,700.00 for breach of an oral agreement entered into between the parties on the 17th November, 2010 for the settlement of the claim;
4. Interest at the statutory rate;
5. Costs.
6. Any further or other relief which this

Honourable Court deems just.”

Application

6. Before examining the claim in detail, I must divert a little and consider an application by the defendant “for a declaration that the court should not exercise its jurisdiction to try the claim,” to use the words of the application. The expressed grounds for the application are that clause X11 of the contract states that a claim or dispute relating to the interpretation or the execution of the contract, which cannot be settled amicably, shall be settled by binding arbitration, and that the claimant commenced this action before complying with the arbitration clause which states:

“XII SETTLEMENTS OF DISPUTES

Any claim or dispute relating to the interpretation or the execution of the present contract, which cannot be settled amicably, shall be settled by binding arbitration. The arbitration panel shall be composed of a person nominated by the Employee, a representative of the BSCF and a Chairman agreed to by the two of them.”

7. The defendant argued that there had arisen a dispute as to whether the defendant had cause to terminate the contract and the amount of compensation payable. Therefore there was a dispute under the arbitration clause and the claimant was bound to go to arbitration before approaching the Supreme Court by the claim. A careful reading of the arbitration clause would reveal that the word “dispute”

is modified to relate only to a dispute on the interpretation or the execution of the contract. In this case, there is no claim by the claimant for a declaration as to the meaning or interpretation of the word “cause” or the words “without cause” in the contract. The claimant makes a claim for damages for breach of contract for allegedly wrongful termination of his contract “with cause.” The claimant’s case is that the termination was not done for “cause” and the defendant is saying the opposite. The court is asked by the claim to determine whether the termination was done with or without cause, which would depend on the evidence in the case including the dismissal letter above. Moreover, the applicant approached the court by notice of application for a declaration that the court should not exercise its jurisdiction to try the claim. As framed, the application seems to be an application for an administrative order under Rule 56 of the Supreme Court (Civil Procedure) Rules 2005. Applications for administration orders have to be made by fixed date claim which was not done by the applicant. I therefore refused the application to decline jurisdiction to try the claim.

8. We may now return to the main dispute between the parties. It is this: Whether the termination of the claimant’s contract was for cause or without a cause under clause V11 above of the contract. For the defendant, it was submitted that the termination was for cause including the causes stated in the letter of termination as shown above.

9. The letter and the evidence of the defendant, give the alleged causes for the termination of the claimant's employment, which are (i) general inability of the claimant; (ii) delays and other problems in implementing a fertilizer programme (the delays point); (iii) failure to take necessary steps to engage in negotiations concerning payment for bagasse to the disadvantage of cane farmers (the bagasse point); (iv) failure to carry through a plan agreed to by COM for a new agreement between the defendant and Belize Sugar Industry (the BSI point); (v) failure to provide effective work and staff improvement plans for the defendant's consideration (the staff point); (vi) failed to present to the COM a detailed work plan within sixty days of the signing of the contract as he had agreed; (the work plan point) (vii) failed to prepare and present to COM an annual budget (the budget point); (viii) failed to provide, as he was required to do, monthly accounts of the affairs of the defendant to the COM, the Sugar Industry Control Board (SICB) and the Government of Belize (the accounts point); (ix) that an emergency general meeting was called by the defendant in July 2010 for farmers, but days before the meeting the claimant went on television on a programme called "Despierta Belize" where he unilaterally outlined his own fertilizer plan, without the knowledge or consent of COM. (the fertilizer point); (x) that the claimant told the said general meeting of 25th July, 2010 that a stipend paid to elected members including members of COM should be discontinued and the meeting agreed that the stipend of 18 branch chairmen should be suspended (the stipend point); that an oversight committee was established by the general meeting and the claimant told the staff of the defendant not to pay attention to COM but to the oversight

committee with regard to certain programmes of the defendant (oversight committee point); (xii) that the claimant went on television and accused members of COM as being corrupt because they went to a company named Belagro to learn how the company dealt with herbicides and agrochemicals in their sugar cane fields and the claimant alleged publicly that members of COM went to get money from Belagro (the corruption point); and (xiii) that the claimant in his behaviour with the COM treated the COM and its members as if he were the boss (the boss point).

Delays Point

10. The claimant states that at all times he pressed the COM to implement the fertilizer plan and he exhibited a letter dated 26th April, 2010 which he sent to the COM in which he requested COM to carry out certain tasks in relation to the fertilizer plan or programme “within this week” to use his own words. This is, according to the claimant, evidence of urgency on his part not delays in carrying out the fertilizer programme, as is alleged. The defendant in turn used this letter signed by the claimant to show that the claimant failed to perform his duties under his contract, but attempted to pass those duties to COM. The letter states as follows:

“Our Ref: COM 0137/10
April 26th, 2010
Mr. Eric Ek
Chairman
Committee of Management
Dear Mr. Ek and CoM members,

Through this medium I would like to inform the CoM members that yesterday on the Special General Meeting resolutions were passed by the membership thus it is the duty of the CoM to execute them accordingly.

Therefore, I hereby request that the following proceedings be carried out by the CoM within this week:

1. To write policies and standards for the 2 million dollar that will be provided for fertilizer.
2. To develop a shortlist & have the interviews for the accounts clerks be carried out and the hiring to be done immediately after.
3. To review the kill to Mill proposal & further give inputs to develop a more comprehensive plan and budget.
4. To write policies for the branch offices operations so it can be implemented within 30 days.
5. To have the CoM impose a sanction those directors that refuse to sit in the stage for the general meetings.

Please make an effort to have completed these tasks within this week.

Thanks for your continued assistance and look forward for better management of the BSCFA.

Yours truly,

Mr. David Madrid

CEO

BSCFA”

11. According to the contract, the duties of the claimant include that he “develops and provides appropriate policy recommendations for consideration by the Committee of Management.” It was the claimant’s duty according to the contract to “write policies” and the

letter shows that the claimant was requesting the COM to carry out paragraphs 1 to 5 of the letter which included writing policies in relation to the fertilizer plan. This is evidence, says the defendant, of the claimant not performing in accordance with his contract. In relation to the letter, the claimant states that it is the COM who is mandated to write policies mentioned in the letter, not by themselves but by establishing a committee chaired by one of the members. The intention of the letter was to expedite the process because there were allegations that the COM was not doing its work. Apart from the claimant's evidence to this effect, there is no other evidence that the subjects in the letter were to be done by COM. In fact, the said subjects would seem to fall under Clause N of the claimant's duties under his contract.

Fertilizer Point

12. The claimant states that he pressed the COM to hire individuals with the skill to prepare a plan for the fertilizer programme. The claimant said that the then project officer, Ms. Estelia Sosa wrote a plan for fertilizer distribution, but she did not have the expertise required, and the COM rejected the plan but refused to hire a person with the required skills to prepare the plan. He said he decided to write a plan for the COM. He said he did submit a proposed fertilizer programme plan to the COM dated 20th July, 2010. He said he formed a committee called Project Implementation Committee to attempt to deal with fertilizer distribution. He said in September a fertilizer programme commenced. He said at all times he tried to the best of his ability to proceed with the fertilizer programme. In relation to the

complaint that the claimant went on television on the programme “Desperta Belize” and outlined his fertilizer plan without the permission of the COM, which had a previous fertilizer programme in place since November 2009, the claimant agreed he went on the television programme and that there was a previous fertilizer plan since November 2009. But he denied that he did not have approval of COM to go on television with the plan. He said he had approval to market the fertilizer programme from the COM and going on television was marketing the fertilizer programme. He said that the November 2009 agreement was for the farmers to pay 50% of the value per bag of fertilizer. But the claimant accepted that his proposal of television was only ten cents per bag of fertilizer. On it being suggested to him that the fertilizer programme he promoted on television changed the November 2009 agreement of 50% of the value per bag, he said his proposal did not change anything because his proposal was not approved or accepted by the farmers in general meeting. The farmers wanted, according to him, the fertilizer free as occurred in the past. On it being suggested to him that his contract did not authorize him to prepare any fertilizer programme, he agreed, but said that the COM authorized him to do so, and moreover,, part of his duties at paragraph (p) in his contract states that he must “implement plans.” The claimant states that the farmers had submitted that they wanted the Committee of Management to include in its agenda for meetings, free fertilizer and free herbicides.

Bagasse Point

13. The claimant states that it was not his responsibility to enter into negotiation with respect to the sale of bagasse to BSI and Belcogen. Bagasse is a by product of sugar cane, and it was found that it could be used for the production of steam and electricity which can be used for sugar milling purposes and electricity to the national electricity grid. The defendant wanted to sell bagasse to BSI and Belize Cogeneration Energy Ltd. (Belcogen) and therefore assembled a team to negotiate on its behalf. The claimant states that under the agreement dated March 2010 the defendant made a contract with Oscar Alonzo as a consultant to lead a negotiating team with respect to bagasse agreements, in which he, the claimant, and the chairman of Orange Walk and Corozal division of the defendant and two chemists were members. Mr. Alonzo contract was for the period 8th April, 2010 to 31st December, 2010 at \$500.00 a day. Mr. Alonzo, according to the claimant, carried the title of lead negotiator for Sugar Cane Bagasse Commercial Agreement and had several duties under the agreement including to negotiate the proposed agreement with BSI/Belcogen with the support of the negotiating team, and to provide reports on the progress of the negotiation to the Management Committee of the BSCFA. The claimant states that negotiations broke down in August 2010 due to BSI's decision not to negotiate any longer due to revenue concerns. From the evidence, I do not accept that the claimant was delinquent in the negotiations nor do I accept that at any time he was the sole negotiator with respect to the bagasse agreement.

BSI Point

14. Once again for purposes of negotiating a new agreement with Belize Sugar Industries Ltd. (BSI) for the supply of sugar cane for the production of sugar and molasses, the defendant had put in place the same negotiating team headed by Mr. Alonzo. As with bagasse, no agreement was finalized for the reasons above. The responsibility for an effective agreement fell on the negotiating team and not on the claimant or any individual on the team as the defendant seems to suggest.

Work Plan and Staff Points

15. Another cause for termination advanced by the defendant was that the claimant did not, as provided for in his contract, prepare an effective work and staff improvement plans. The claimant disagreed and testified that there was a work plan for the years 2009 to 2013 prepared by a consultant employed by the COM, Dr. Bedran; and he, the claimant, submitted that plan to the COM. But. According to the claimant, the plan was not implemented because of financial reasons. According to the claimant, the defendant was insolvent and this is the reason why the work plan was not implemented. But yet the claimant proceeded to testify that he complied with paragraph (u) of his contract and did submit a work plan in sixty days. Yet again in paragraph 28(1) of his witness statement he said he was never requested or directed to personally write a work plan within sixty days of his contract. The claimant's duties under his contract include paragraph (u) which states: "within sixty days of contract signature to present a detailed work plan to address the objectives for approval

after consultation by the Committee of management and the Board of Directors of the BSCFA.” The claimant seems to be saying that under that paragraph, he submitted the work plan prepared by Dr. Bedran and therefore he complied with that paragraph in that he presented a work plan by someone else. But certainly paragraph (u) could not have intended that the claimant merely present a plan made by someone else, but that he himself should prepare the work plan by his own efforts, rather than being a medium through which the plan prepared by another is presented to the COM. I think the intention of paragraph (u) of his contract is that he would prepare and present a work plan, which on the evidence was not done by him.

Accounting Point

16. According to the claimant’s contract at paragraph q, he was required to ensure that the COM, the Government of Belize and the SICB have sufficient and up to date information of accounting on a monthly basis. The claimant states that he complied with this paragraph on the first month of his contract but he admitted after the first month he did not comply with it because, according to him, he was directed by the COM not to do that because only the secretariat could do so. The defendant says further that the claimant failed to supply detailed reports to COM every six months. The claimant denied this, saying that he submitted oral and written reports, monthly, quarterly and bi-yearly. He said he presented two bi-yearly reports, though he could not remember the dates. It was then suggested to him that since he was employed from January 2010 to September 2010 as CEO he could not during that nine month period submitted two bi-yearly

reports, he answered that he was the interim CEO six months before he was appointed, and this would explain the two bi-yearly reports he submitted.

Budget Point

17. The defendant alleged that the claimant exceeded its budget without approval from the COM. The claimant explained that the budget is prepared by the CEO, the Financial Officer and the Accountant, and it had to be approved by the COM and presented to the general meeting of farmers for their approval. All the CEO does, according to the claimant, is make recommendations to the COM. The approval is done by the COM and general membership, so the CEO cannot exceed the budget without approval. It is also said that the claimant bought a vehicle without permission of the COM. In answer, the claimant states that there is a tendering procedure in place and nothing can be bought without going through the procedure, and a representative of COM sat on the tendering process and directed him to go to the seller – Landy & Sons – and sign for the vehicle which he did. The COM, according to him, authorized the purchase of the vehicle.

The Stipend and Oversight Committee Points

18. The defendant says that at a general meeting of farmers held on 25th July, 2010 the claimant provided information at the meeting which resulted in the stipend or allowance paid to members of COM, and twelve directors of branches of the defendant, being suspended. At that said meeting, a committee, named the Oversight Committee was

established to support, monitor and implement Fair Trade programmes, plans and projects of the defendant. The defendant alleges that the claimant took the position that COM should step aside in relation to Fair Trade Programmes, leaving the oversight committee to handle the programmes, and he began working with the committee and informed the staff of the defendant to pay attention to the committee and not to COM, and thus created problems between COM and the Committee, conduct which violated his contract.

19. The evidence, however, is that the farmers at the said meeting of 25th July, 2010 made several resolutions including suspending the stipend or allowances; establishing the oversight committee, and immediately relieving six members of COM from all responsibilities in relation to Fair Trade programmes. Fair Trade is an international body based in the USA that assists small farmers in third world countries with funds, skills and training to develop their industries. Fair Trade, prior to 2008, had contributed to Belize approximately ten million dollars for the development of the Belize sugar industry, and it required its standards and rules to be followed. The defendant was suspended from Fair Trade in 2009 for breach of fair trade standards. In January 2010 when the claimant was acting CEO the suspension was removed and the defendant was admitted back in Fair Trade. The re-admission came about because of the work of the then COM, other persons and the claimant who was acting CEO at the time. The suspension of the stipend and the establishment of the oversight committee to handle Fair Trade programmes were not done by the claimant, but by the decision of the farmers at the general meeting of the defendant. It is

not accurate to blame the claimant for decisions taken by the farmers at a general meeting.

Corruption Point

20. It was also alleged by the defendant that members of COM went to visit a company that sells fertilizer named Belagro, and that the claimant had given an interview on television where he said that the members of COM went to Belagro to collect rewards. Belagro was a tendering company for fertilizer among other companies. At the time of the trip, an award of the contract to Belagro had already completed. The implication is that the claimant went on television and accused the members of COM as corrupt. The claimant strongly denied this allegation.

The Boss Point

21. It is further the case for the defendant that the claimant treated the COM as if he were the superior in the organization to the COM. Evidence of this would be the letter above dated 26th April, 2011 telling the COM duties that they are to carry out. In the words of the witness Rodriguez, a member of COM, the claimant “tried to become our boss, and it shouldn’t be that way.” This alleged behaviour, according to the defendant, caused friction between the parties and was contrary to clause 1 of the contract mentioned above. But the claimant denies that he acted in the way alleged; but stated that he was trying to get the COM to carry out its duties, because there were criticisms against the COM by farmers that COM was not performing as it should. But the type of language used in the letter, as distinct

from the contents of the letter, surely gives credence to the evidence of Ortega and Rodriguez, two COM members, that the claimant was treating COM as if he believed he could direct and give orders to the COM.

Dismissal for Cause?

22. The above points and allegations are the defence of the defendant that the claimant was dismissed for cause. But in spite of these points and the allegations, yet the letter of termination shows a decision of the COM to pay the claimant a gratuity. For convenience, I repeat the part of the termination letter showing the decisions to pay the gratuity –

“Mr. David Madrid
CEO
BSCFA

Dear Mr. Madrid.

After careful and deep consideration, the Committee of Management of the Belize Sugar Cane Farmers’ Association has decided to terminate your contract, paying you one month’s salary in lieu of notice. It was also decided that you be paid gratuity earned on salary received to date, and payment in lieu of vacation leave due.”

23. As shown above in clause v(a) of the contract, the defendant agreed that the claimant would be eligible to receive the gratuity where his services have been appraised as satisfactory. The COM decided to pay the gratuity to the claimant for his services. The chairman of

COM in his evidence, after some vacillation on his part, finally admitted in his evidence that there was a verbal appraisal which was done in respect of the claimant services. So after an appraisal of the claimant's services the COM made a decision that he was to be paid a gratuity. It was submitted that that was evidence that the COM considered the claimant's services as satisfactory, since gratuity is based on his work performance. There is therefore no merit, says the claimant, in the defence that he was dismissed for the causes or points above. His performance was satisfactory and that was the reason for the decision to pay him the gratuity, it was submitted.

24. The letter of termination is inconsistent and ambiguous for, on the one hand, it gives causes for the termination, and one month's pay in lieu of notice; while on the other hand, it states that the claimant is to be paid a gratuity thereby showing based on the contract that the claimant's services were appraised as satisfactory. Because of this inconsistency of the defendant, there are grave doubts about the truthfulness of the defendant's defence that there were causes for the claimant's dismissal. Cause for dismissal occurs where an employee has committed gross misconduct or some other serious breach of his contract of employment, such as dishonestly, disobedience or serious incompetence. An employer has a cause to dismiss an employee on the ground of the employee's gross misconduct, which seems to be conduct so undermining the trust and confidence which is inherent in the particular contract of employment, that the employer should no longer be required to retain the employee in his employment: see Halsbury Laws of England Fourth Edition volume 19 paragraph 447

quoting *Neary v. Dean of Westminster 1999 IRLR 288, at page 291* per Lord Jauncey of Tullichette.

25. The above doubts are increased by the fact that on 17th November, 2010 after the claimant was dismissed, the COM entered into settlement discussions with the claimant concerning paying him his salary for the rest of the term of his contract. Why enter into such discussions, if the COM believed that he was dismissed for cause entitling him to receive one month's salary in lieu of notice? The defendant admitted there was such a meeting concerning the settlement, but the COM never made a decision to settle the matter. The claimant is the sole witness that there was an oral agreement to settle the matter, but the defendant's witnesses denied any settlement. I am not satisfied that there was an oral agreement to settle the claim. But the question arises again why enter into discussions on settlement to pay the claimant's salary for the remaining period of his contract, if he was truly dismissed for cause as the defendant states in the defence.

26. It is also to be noted that the claimant states, which is denied by the defendant, that the real reason for his dismissal was because it was felt by members of COM that because of information which the claimant gave to the general meeting of the farmers, that was the reason why their allowances or stipend were suspended. The question keeps returning: why did the COM make a decision to pay gratuity to the claimant, if he was in fact dismissed for cause. And why proceed to discuss the payment to him for the unexpired term of his contract, if

he was in fact dismissed for cause? These questions raise grave doubts of the defendant's case or claim that the claimant was dismissed for cause. For the above reasons, I do not accept the case for the defence that the claimant was dismissed for cause. The burden is on the claimant to prove, on a balance of probabilities, that there was no cause for his dismissal, that his dismissal was without cause. Considering the evidence discussed above, I am satisfied, on a balance of probabilities, that the claimant has proven that he was dismissed without cause.

Damages

27. Clause vii states that where the services of the claimant are terminated without cause he is to be paid all the remaining term of his contract. The claimant's contract was for 36 months and it was accepted by the defendant that the claimant worked for 8 ½ months leaving a period remaining of 27 ½ months. Learned counsel for the defendant has, as he often does, assisted the court by providing information as to payment for the remaining term of the claimant's contract as follows:

“Salary: 27 ½ x \$4,500 per month	= \$123,750.00
Gratuity: 10% of total salary	= \$16,200.00
Holiday pay (36 months x 1.67 = 60 days)	= \$9,000.00
Total	=\$148,950.00

28. But learned counsel for the defendant has submitted that since there is no evidence that the claimant took action to mitigate his loss of his employment, nominal damages should, if it is found that he was

dismissed without cause, be granted to him representing no more than one year's salary. For this submission reliance is placed on the Supreme Court of Belize decision of *Sandra Perez v. Commonwealth Freezone Management Agency 4 BZ LR 195*. In this case by a written agreement made between the parties the defendant agreed to employ the plaintiff as marketing and customer service manager for a period of five years from 15th January 1996. They agreed to an annual salary of \$25,000,00, an annual increment of 5 percent and an annual gratuity of 20 percent. It was expressly agreed that if the services of the person engaged are discontinued after three months, the CEO shall pay the person engaged the full value of the contract. The case for the plaintiff is that the defendant terminated her employment by first suspending her on 26th August 1996 and thereafter by excluding her from her place of employment.

29. After a careful analysis of the evidence, the judge came to the conclusion that the plaintiff was speaking the truth, and that the defendant had excluded the plaintiff from the place of employment and therefore wrongly terminated her employment. The court instead of awarding to the plaintiff damages in accordance with the expressed term above, the court held that since the plaintiff did not prove that she took reasonable steps to mitigate her loss of employment as a result of the wrongful termination, she would be awarded nominal damages. With the greatest respect, I have difficulty in understanding how the common law principle of mitigation can be used to defeat an expressed term of a contract which states that in breach of the contract the defendant "shall pay the person engaged the full value of this

contract,” which was interpreted by the court to mean “pay salary for the remaining of the contract period.” The court did not implement this term of the contract, but by the process of mitigation ordered nominal damages instead. There was evidence before the court of the annual salary of the plaintiff – \$25,000 – and the unexpired portion of the contract, – 4 years and 4 months – making a total loss of salary due to the breach in an amount of \$108,333.30 which is, a definite sum of money agreed by the parties in the event of a breach of the contract. This sum became a debt to the plaintiff on the defendant’s breach. There is difference between a claim for payment of a debt and a claim for general damages for breach of contract in that rules on damages do not apply to a claim for a debt. Where a claimant claims payment of a debt, the claimant’s duty to mitigate his loss does not generally apply: see *White and Carter (Councils) Ltd. v. McGregor 1962 AC 413*. For the reasons above I am not persuaded to follow *Sandra Perez*.

30. Even if the claimant in this case before me, on the facts, had a duty to mitigate his loss – to take all reasonable steps to mitigate his loss as a result of the breach by the defendant, – the onus of proof is on the defendant to show that the claimant ought, as a reasonable man, to have taken reasonable steps to mitigate his loss: *Strutt v. Whitnell 1975 1 WLR 870*. The defendant did not produce evidence that the claimant took no reasonable steps to mitigate his loss. The defendant has failed to discharge this onus of proof.

31. The claimant claims the specific amount of \$155,700 being the amount of salary due to him for the unexpired remaining term of his contract. I am not clear on the evidence how this amount was arrived at. The contract commenced on 15th January, 2010. The contract was terminated on 29th September, 2010. The claimant therefore worked eight and a half months of his thirty-six months contract leaving an unpaid term of twenty-seven and a half months. I therefore accept the calculation of the defendant above of \$148,950. From this sum, I would imagine an amount has to be deducted based on the provisions of the Income and Business Tax Act, Chapter 55 and the Social Security Act, Chapter 44.

Conclusion

32. The claimant was dismissed without cause and is therefore entitled to his salary for the unexpired term of his contract and gratuity and holiday pay in the sum of \$148,950. From this amount must be deducted an amount for income tax and social security payments.

33. I therefore make the following orders:

- (1) A declaration is granted that the defendant dismissed the claimant without cause.
- (2) The defendant shall pay to the claimant on or before 1st June, 2012 the sum of \$148,950, less deductions for income tax and Social Security payments.
- (3) The alternative claim in clause 3 of the claim form is dismissed.
- (4) The defendant shall pay to the claimant prescribed costs in the

amount of \$22,342.50.

- (5) The defendant shall pay interest to the claimant at the rate of 6% per annum on the above sum in clause (2) from 17th January, 2011 until the sum is fully paid.
- (6) The defendant may apply to the Supreme Court for an extension of time to comply with clause (2) above.

Oswell Legall
JUDGE OF THE SUPREME COURT
19th March, 2012

APPENDIX

Clause 3 Employment Contract

P.T.O.

