

IN THE SUPREME COURT OF BELIZE, A.D. 2008

ACTION NO. 624 OF 2004

	(FRANK LOPEZ	PLAINTIFF
	(	
BETWEEN (	AND	
	(	
	(ATTORNEY GENERAL	DEFENDANT
	(Ministry of Natural Resources	

Before: Hon Justice Sir John Muria

17 October 2008

*Mr. O. Twist* for Claimant

*Ms A. M. McSweeney* for Defendant

**J U D G M E N T**

***Contract – contract of employment – three months termination notice required – only two months notice given – employee requested extension of notice period – employee continued working for further one month – employer ceased to employ the contractor at the end of the three months – notice of termination varied with consent of employee – termination of employment valid***

**MURIA J.:** This action began in 2004 as Action No. 624 of 2004 by which the plaintiff (whom I shall now call “the claimant”) claimed as follows:

“The plaintiff’s claim is for the sum of \$210,204.65 being money due as commission to the plaintiff from the 2<sup>nd</sup> defendant for the breach of a one year contract entered between the plaintiff and

the 2<sup>nd</sup> defendant on the 8<sup>th</sup> December, 2003 whereby the plaintiff was to collect Land Taxes on behalf of the 2<sup>nd</sup> defendant at a commission of 15%. On 25<sup>th</sup> March, 2004 the plaintiff received a letter from the 2<sup>nd</sup> defendant terminating the contract w.e.f. 24<sup>th</sup> May, 2004.”

The particulars of the claim are set out in the statement of claim.

Pursuant to the Agreement dated 8th December 2003 between the Government of Belize (“GOB”) and himself (the contractor) he agreed to collect revenue for and on behalf of the Government on commissions at the rate set out in Clause 5 of the Agreement. Those rates are as follows:

- “(a) For revenues due over one (1) year and up to two years, ten percent (10%) of total collected.
- (b) For revenues due over two (2) years and up to five (5) years, fifteen percent (15%) of total collected.
- (c) For revenues more than five (5) years, twenty percent (20%) of total collected.”

By a letter dated 25th March, 2004 the defendants terminated the claimant's contract with effect from 24th May, 2004. The defendants, however, later conceded that the termination notice was short of the required written notice of three months.

Having realized that the required notice was not given, the defendants did not terminate the claimant's contract on 24 May 2004. Instead they continued to engage the services of the claimant and paid him up to the end of June 2004. Thus, the defendant's case is that no breach of the contract had occurred.

Following the filing of the defendant's defence, the claimant filed an application by way of Notice of Motion seeking judgment against the defendants based on the admissions made by the defendants in paragraphs 4 and 5 of the Defence. That application has never been dealt with.

The case was then brought to a case management conference which was, after some delays, dealt with on 21 December, 2005. Among other things, the case management order include the direction that

the application for Judgment on Admission be heard on 22nd February, 2006. That has never been done.

### ***Issues***

Having ascertained the background circumstances of the dispute between the parties, it would be necessary to deal with the issues raised in this case. At the Pre-trial Review Conference, it was ordered that the parties prepared and filed statements of agreed issues for the Court's determination. Consequently, the parties agreed to two (2) issues for the Court's determination, namely:

1. Whether the written contract entered between the Claimant and the Defendant on the 8th December, 2003 was lawfully terminated by the Defendant by letter written on March 25, 2004; and
2. If the contract was not lawfully terminated, what damage is payable to the Claimant?

It is the Claimant's case that the defendants were in breach of the contract entered into between GOB and the Claimant. The alleged

breach arose from the fact that the defendants, by a letter dated 25 March 2004, sought to terminate the Claimant's service on 24 May 2004 which was only two (2) months' notice instead of three (3) months as required under the contract.

Consequently, the Claimant claims damages in sum of \$210,204.85 based on 15% of \$1,401,365.68 (the amount to be collected on 55 Accounts of Land Tax arrears on behalf of the Government). The Court notes that in the Skeleton Argument, the Claimant is now claiming \$168, 216.87 based on 15% of \$1,121,445.84 representing 35 Accounts of Land Tax Arrears to be collected on behalf of the Government.

The percentage relied upon by the Claimant is a measure of compensation to him for the collection of revenues due to the Government over two (2) to five (5) years, as set out in Clause 5 of the Agreement.

The defendant's case on the other hand is that no breach of contract has been committed by them, despite the letter of termination of

service dated 25 March 2004. The defendant accepted that the termination notice dated March 25, 2004 did not comply with the required notice under the agreement. The defendant, however, rectified the error by allowing the Claimant to continue with his contractual service up to the end of June 2004, so as to comply with the three (3) months notice requirement for termination of the contract. This was in accord with the understanding reached between the parties following the issue of the letter of 25 March 2004 and discussion between them.

### ***Determination***

The Agreement allows for the termination of the Claimant's services either by three months' written notice or by unilateral and summary termination by the Government of Belize where reasonable grounds exist for believing that the contractor was being fraudulent or dishonest. In this case the defendant chose to give the Claimant written notice. However, instead of giving the Claimant three months notice, the defendant gave only two month's written notice which lapsed on 24 May 2004. It should be noted that had the three months notice been given in the letter of 25 March 2004, it would have

expired on 24 June 2004. The Claimant, however, was not terminated on 24 May 2004 since the defendant allowed him to continue working to the end of June 2004 after the Government of Belize realized that the notice period stated in the letter was an error since it was only two months notice. The Claimant's service was then terminated at the end of June 2004 and not 24 May 2004, as stated in the letter.

Despite the forceful argument pressed on behalf of the Claimant by Mr. Twist, I am inclined to accept the submission by Ms. McSweeney on behalf of the defendants that the Claimant's service was lawfully terminated at the end of June 2004. Principally, the Claimant was fully aware that the letter of notice of termination dated 25 March 2004 only afforded him two months notice. Subsequently, he entered into a discussion with the defendant with a view to requesting that he continued to work beyond 24 May 2004, and most importantly, *"requesting that the termination date be extended"* or that he be compensated. This is borne out by the Claimant's letter of April 14, 2004 which states:

Ms. Patricia Mendoza  
Chief Executive Officer  
Ministry of Natural Resources & Environment  
Belmopan  
Cayo District

Dear Madam:

Pursuant to our discussion of April 5, 2004, I am attaching a listing of the various accounts I have for collection purposes along with their current status. In the process I am requesting your permission to proceed with auctioning the properties of land tax debtors (numbered 1 to 23) on the listing. I am also requesting your permission to proceed with legal action on the remainders (items 24 to 53) on the same list. Please note that your letter providing me with of your intent to terminate the contract has a termination date of May 24, 2004. However, collection of some of these debts on which I had to do substantial research and forward letters of demand, may be protracted as most debtors who attend court will request a periodic payment plan from the judge.

The ones that still require court action will also be protracted, as a date has to be arranged with the magistrate and if the defendant does not show in the first instance it will be adjourned, sometimes for more than a month. Under the circumstance I am requesting that the termination date be extended or that I be compensated. (*Underlining supplied*)



In the case where you asked us to stay collection proceedings for a six month period for the Nova Group which includes Nova Toledo, Snelco and Bootsstrap Int'l Incl., please advise on how we will be handling the situation.

A speedy response on these matters would greatly appreciated.  
Yours truly,

F.B. Lopez

Cc: Ms. Minerva Pott – Finance Officer, Land Tax Dept.

The argument for the Claimant is that the defendant's letter of termination was only for two months and must stand as such. Further it is argued that the extended one month period was added on by the defendants alone, which they could not do without the Claimant's agreement under Clause 9 of the Agreement.

The Claimant's letter of April 14, 2004, clearly shows that following the defendant's letter of termination dated 25 March 2004, the Claimant and defendant had some discussions and that the Claimant

had requested an extension of the termination date or be compensated.

In my view, the defendant's action subsequent to the letter of 25 March 2004 clearly emanated from discussion between the defendants and Claimant on April 5, 2004. The extension of time for termination was requested by the Claimant and the defendants were glad to accede to it, having already realized the error in their letter of 25 March 2004. This is not a question of an amendment to the Agreement. Rather it is a question of ascertaining what the parties did following the letter of 25 March 2004.

In this regard, it is worth to remember that like in any contractual dispute, it is always a question of what the parties did and said about their contractual relationship. As Philip J said in ***Tunnel Holdings Ltd v Woolf*** [1976] ICR 387, after referring to other previous cases, including ***McAlwane –v- Boughton Estates Ltd*** [1973] 2 All E.R. 299 and ***Glacier Metal Co. Ltd –v- Dyer*** [1974] 3 All E.R. 21:

“What they show is that, once the employer has given notice terminating the contract, and there is, before the notice expires, some form of discussion between employer and employee about the employee’s going earlier, it is always a question of precisely what is done and said, as to whether the true view is that by agreement a new date has been substituted for the date in the notice, or whether the employee is to be taken to have served a unilateral notice terminating his employment”

In the present case, having considered what the parties did and said since the defendant issued the letter of notice on 25 March 2004, the only sensible conclusion that one can come to is that the parties had agreed to vary the notice period of termination. See also the case of **Lees -v- Arthur Greaves (Lees) Ltd** [1974] 2 All E.R. 393 where, as in **McAlwane** and **Glacier**, an employee already under notice of termination requested to leave earlier than required in the notice. The Court held that in such a case, it was not a case of mutual termination replacing the original notice, but rather it was a case of the parties agreeing to vary the notice period. In my respectful view the position is the same, whether the agreed variation of the notice is for the employee to leave earlier or later than that stated in the notice. Thus, the new date upon which the notice expired, as in this case,

was the end of June 2004. As the Court held in *I.W. Palfrey –v- Transco PLC* (15 March 2004) EAT Appeal No. UKEAT/0990/3/ILB:

“When there is a variation of the notice, the notice expires on the new date, as does the contract of employment”.

In those circumstances, the answer to the first issue raised for the Court’s determination must be that the Claimant was terminated by the letter dated 25 March 2004, albeit the date upon which the notice takes effect was varied to the end of June 2004. That variation came about, not only by the wish of the defendant so as to comply with the notice requirement, but also came about following some discussion between the parties themselves, as well as at the request of the Claimant contained in his letter dated 14 April 2004.

In my judgment, the Claimant’s contract was lawfully terminated in this case.

The second issue is depended upon the answer to the first issue. Thus having found that the contract was lawfully terminated, the second issue does not arise for consideration.

For the above reasons, the claim by the claimant in this case cannot succeed and must be dismissed with costs to be taxed, if not agreed.

Justice Sir John Mura