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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. 1995/E.125

BETWEEN	JENNIFER EVANS	PLAINTIFF
A N D	CHARTERMAGNATES LIMITED	DEFENDANT

Mr. E. Witter instructed by Gaynair & Fraser for Plaintiff

Miss D. Gentles instructed by Livingston, Alexander & Levy for Defendant

HEARD: 24th June and 1st, 13th July, 1998

C.A. BESWICK (Master Ag.)

In March 1993, the defendant contracted with the plaintiff to employ her for three (3) years on specified terms and conditions.

One such was an express provision concerning termination of employment which read,

> "22. Termination of Employment - If for any reason the three (3) year contract period has to be terminated by either side, then three (3) calender months notice will be applicable. This notice is to be exclusive of vacation leave. Notwithstanding the above, your services may be terminated without notice for any act/acts of grave misconduct."

In a letter dated August 31, 1994 the defendant informed the plaintiff that she was thereby given three (3) months notice from September 1, 1994 to terminate her employment, and cited reasons for that action.

On 5th December 1995 the plaintiff filed suit against the defendant claiming damages for breach of contract in that the three (3) year term of the contract had not expired when the defendant "purported to dismiss" her. She maintained that the reasons given for her dismissal were, inter alia, untrue and were designed to deny her payments under the contract.

The defendant is now seeking to have the Writ of Summons and Statement of Claim struck out or the Action dismissed as showing no cause of action, being frivolous, vexatious and an abuse of the process of the Court and under the inherent jurisdiction of the Court.

Counsel for the defendant submitted that the cause of action was not sustainable.

She maintained that where a contract of employment was terminated in accordance with the agreed notice period or if there were payment in lieu thereof, the employer need not specify the reasons for the termination. Here, the employer had nonetheless given reasons for the dismissal, which reasons Counsel described as being "reasonable."

It was her argument therefore, that the action had little or no chance of success and ought to be struck out as being unsustainable.

Counsel for the plaintiff's response, was that the Court's discretion was being invoked and that such discretion could only be exercised in plain and obvious cases which this matter was not.

He submitted that the plaintiff's pleadings showed that she alleges wrongful dismissal, i.e., dismissal without sufficient cause.

It was his view that the only interpretation of the contract under dispute, was that where the employment was being terminated with notice, it must be for cause.

The use of the words "for any reason" in the contract, he submitted, showed that the parties clearly contemplated that dismissal must not be whimsically done but must be for a reason based on fact.

In support of this he said, inter alia, that the notice given to the plaintiff detailed the reasons for the termination of the contract.

Counsel submitted that there was an arguable issue, rather than none at all and further, that the issue should not be tried on affidavits, but should be fully ventilated at trial. The fact that the defendant's Counsel spoke of the action as having little or no chance of success meant that she was admitting some chance of success, albeit small.

By virtue of S. 238 of the Judicature (Civil Procedure Code) Law and also under its inherent jurisdiction, the Court may strike out a pleading if it discloses no reasonable cause of action, and may also dismiss an action shown to be frivolous or vexatious.

The situations in which the power may be used have been described variously as "plain and obvious cases that are clear beyond doubt " **DRUMMOND-JACKSON v B.M.A.** [1970] 1 All E. R., 1094, or where the cause of action was "obviously and incontestably bad" or was "wantonly brought without the shadow of an excuse" **DYSON v. A.G.** [1911] 1 KB 410.

Further, where differences of law are involved these are normally to be decided by trial after hearing in Court and the action ought not to be otherwise dismissed. **DYSON v. A.G.** (supra).

Plaintiff's Counsel described defendant Counsel's submissions as containing the seeds of its own destruction in that she had referred to the plaintiff's case as having "little or no chance of success." He submitted that it is the law that a litigant with even the slightest chance of success must not be driven from the seat of judgment - only one with no chance of success. Therefore, once Counsel conceded that the defendant had some chance of success, albeit little, the proceedings should not be terminated.

The defendant relies on an interpretation of the contract as allowing its termination by a three (3) month notice period, regardless of the reason for the notice. Such notice having been given, the defendant's view is that the proceedings should be stopped as being unsustainable.

However the plaintiff joins issue on both the factual basis of the termination as well as the reasonableness of the grounds and thereby seeks to interpret the termination clause of the contract differently, saying, inter alia, that the matter of reasonableness must be examined.

The question now is whether the action is obviously, incontestably bad or brought without the shadow of an excuse, without even the slightest chance of success. Is the action unsustainable?

The answers to these in my view must be in the negative.

Whereas the defendant argues that the pertinent applicable law and interpretation are clear, the plaintiff would seek to introduce what amounts to implied conditions for the termination of the contract and an issue of interpretation and has sought to support this approach with various facts. This argument is novel and could possibly be decided in the plaintiff's favour though it may also be considered to have a low probability of success.

However, whether or not the plaintiff must, or is likely to, succeed in this argument is irrelevant. The important factor is the presence of a chance of success.

It is my view that differences of law and indeed of facts are evident between the parties and must be resolved at a trial.

The law is replete with admonitions to Courts to proceed with extreme caution in exercising the power to terminate proceedings before trial.

This matter in my view should be fully ventilated at trial and what has been described as the "draconian power of the Court" to terminate proceedings prior to trial should not be exercised.

Summons dismissed with costs of the application to the Plaintiff to be agreed or taxed.