[2020] JMSC Civ. 173

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. SU202000914

BETWEEN	**KEVIN SIMMONDS**	**CLAIMANT**
AND	**MINISTER OF LABOUR & SOCIAL SECURITY**	**1ST DEFENDANT**
AND	**THE ATTORNEY GENERAL OF JAMAICA**	**2ND DEFENDANT**

Application for claims to be heard on same occasion or before same Judge – Civil Procedure Rules, 2002 ("CPR") Rule 26.1 (h) – Whether claims could conveniently be tried together – Similar issues of fact and law between claims.

Kwame Gordon instructed by Samuda and Johnson for the Applicant

Karen Freckleton- Cousins instructed by the Director of State Proceedings for the 1st and 2nd Respondents

Georgia Gibson Henlin and Stephanie Williams instructed by Henlin Gibson Henlin for the Claimant in Claim No. SU2020CV00031

Karen Freckleton-Cousins holds for Tamara Dickens instructed by the Director of State Proceedings for the 1st and 2nd Defendants to Claim No. SU2020CV00031

Kevin Powell and Shanique Scott instructed by Hylton Powell for the 3rd Defendant in Claim No. SU2020CV00031

Heard in Chambers on July 16, 2020 and July 27, 2020

CORAM: PALMER, J

Background

The Simmonds claim

[1] Kevin Simmonds, by fixed date claim form filed on March 11, 2020, seeks the following:

1. *A declaration that the Defendants have breached the Claimant's right to a fair hearing pursuant to subsection 16(2) of the Charter of Fundamental Rights & Freedoms ("the Charter").*

2. *A declaration that the Defendants have breached the Claimant's right to a fair hearing within a reasonable time pursuant to subsection 16(2) of the Charter…*

3. *A declaration that the Defendants have breached the Claimant's right to a fair hearing before an independent and impartial tribunal established pursuant to subsection 16(2) of the Charter ….*

4. *An injunction requiring the 1st Defendant to refer the dispute to the Industrial Disputes Tribunal without requiring the issue of any further proceedings or requiring the Claimant to engage in further conciliation.*

5. *Damages.*

6. *Costs.*

[2] Mr. Simmonds was employed to Red Stripe Limited ("Red Stripe") in the post of Business Analyst, and was advised by letter dated November 28, 2017 that his employment would be terminated on December 31, 2017 for reason of redundancy. He said that no prior meetings had been held with him regarding the pending redundancy and noticed in December 2017 that a 'new' post for a Senior Business Analyst was advertised; a post he regarded as very similar to the post being made redundant. He expressed the view that the new post required the same qualifications, financial acumen and skills as the post he then occupied. When enquiries were made of Red Stripe's agents, he said that he received no plausible explanation for advertising for this new but similar post.

[3] The matter was referred to the Ministry of Labour and Social Security ("the Ministry") for its intervention, and three (3) conciliation meetings held between November 2018 and February 2019 did not succeed in resolving the dispute. After the third meeting, Counsel for Mr. Simmonds requested that the matter be referred

to the Industrial Disputes Tribunal ("IDT"), but was informed that the matter would be referred to the Ministry's Legal Department for advice. The Ministry later directed that another conciliation meeting be held, which had a similarly unsuccessful outcome and Counsel for Mr. Simmonds once again requested that the matter be referred to the IDT. His claim before the court was brought when no referral to the IDT was made with continued assurances by the Ministry that it was still assessing the legal ramifications of the dispute.

[4] The Ministry in its defence states that in October 2018 it received a letter from Counsel for Mr. Simmonds regarding the dispute alleging the unjustifiable termination of his employment. Communication held with Counsel for Red Stripe revealed that Mr. Simmonds had fully participated in consultations prior to his termination and was made aware that the new post was materially different from the post he currently held. Counsel for Red Stripe further alleged that they were never made aware of the instant complaint with the process until Counsel for Mr. Simmonds contacted them a year after separation. Red Stripe contends that Mr. Simmonds signed a release, in full and final settlement, in November 2017 and that they were prepared to pursue legal action to enforce the terms of the agreement.

[5] Mr. Simmonds disputed that consultations were held and that his acceptance of the redundancy package regularized any breach by his former employer. Conciliation meetings were held in November 2018, January 2019 and February 2019, which failed to resolve the dispute. Thereafter, Counsel for Mr. Simmonds requested that the matter be referred to the IDT, a request for which the Ministry indicated that it would seek legal advice. Due to administrative delay at the Legal Services Unit of the Ministry, there was also a delay in the receipt of that advice, which has now been provided and handed to the Minister.

[6] Mr. Simmonds contends:

- There was no legitimate redundancy;

- His former employer had breached the Labour Relations Code;
- There were issues relative to his termination by redundancy prior to his departure.

[7] Red Stripe contends:

- There was consultation with Mr Simmonds in adherence to the Labour Relations Code;
- Mr. Simmonds signed an agreement in full and final settlement;
- The release was executed by Mr. Simmonds after he raised a complaint, which was addressed by Red Stripe, without further issue;
- The new post was filled;
- There was no complaint until September 2018.

The Allen claim

[8] Catherine Allen, Actuary and former employee of Guardian Life Limited ("Guardian Life"), by fixed date claim form filed on January 7, 2020 (claim no. SU2020CV00031), seeks the following:

> 1. *A declaration that the Defendants have breached the Claimant's right to a fair hearing under section 16(2) of the Charter …*
> 2. *A declaration that the Defendants have breached the Claimant's right to a fair hearing within a reasonable time under section 16(2) of the Charter …*
> 3. *A declaration that the Defendants have breached the Claimant's right to a fair hearing before an independent and impartial tribunal established by law under section 16(2) of the Charter ...*
> 4. *A declaration that the 1st Defendant's decision to adjourn the conciliation proceedings on the application of the Employer*

and without hearing from the Claimant is a breach of her right to a fair hearing.

5. *A declaration that the 1st Defendant's decision to adjourn the conciliation proceedings on the application of the Employer and without hearing from the Claimant is a breach of her right to a fair hearing before an independent and impartial tribunal established by law.*

6. *A declaration that the 1st Defendant's decision to stay the conciliation proceedings on the application of the Employer and without hearing from the Claimant is a breach of her right to a fair hearing.*

7. *A declaration that the 1st Defendant's decision to stay the conciliation proceedings on the application of the Employer and without hearing from the Claimant is a breach of her right to a fair hearing before an independent and impartial tribunal established by law.*

8. *An injunction requiring the 1st Defendant to refer the dispute to the Industrial Disputes Tribunal without requiring the issue of any further proceedings or requiring the Claimant to engage in further conciliation.*

9. *Damages.*

10. *Costs.*

11. *Such further and/or other relief as this Honourable Court deems just including, if necessary, orders under r. 56.7 of the Civil Procedure Rules, 2002.*

[9] She states that by letter dated August 15, 2018, she was advised by Guardian Life that her employment was to be terminated by way of redundancy, as the duties she performed would be outsourced. She alleges this letter was preceded by a disagreement with Guardian Life's president regarding a request for the reduction of its reserves. The signed the letter, deleting the words "full and final settlement" and, as part of the termination process, her work computer was taken. She regards

these events as signalling the end of her employment and an indication that she was no longer permitted to return.

[10] On October 18, 2018, she received a letter from Guardian Life indicating that further to investigations conducted on her work computer, Guardian Life was considering terminating her employment for cause, based on a breach of the confidentiality clause in her employment contract. She stated that before she could respond she was informed by letter dated November 1, 2018 that her employment would be terminated for cause and that she would not be paid any of the *ex gratia* payments or otherwise as stated in the August 2018 letter. She expressed that Guardian Life acted in bad faith in issuing the termination letters to her.

[11] Guardian Life filed a claim in the Commercial Court regarding the alleged breach of contract and Ms. Allen filed her defence and a counterclaim seeking remedies for wrongful dismissal and defamation of character, among others. It also seems that she instituted proceedings similar to the proceedings in the instant claim as well. Also, by letter of December 17, 2018, Ms. Allen's Attorneys-at-law wrote to the Ministry invoking the jurisdiction of the Minister in accordance with the Labour Relations and Industrial Disputes Act ("LRIDA").

[12] According to the said affidavit, the first conciliation meeting was convened but called off when Counsel for Guardian Life indicated that the relevant documentation was not provided. A second conciliation meeting was scheduled but called off when Counsel for Guardian Life indicated that no local level efforts were made to resolve the dispute, prior to invoking that process. A third conciliation meeting was scheduled but was objected to by Guardian Life's Counsel because of Ms. Allen's pending action. Ms. Allen stated that she instructed her Counsel to discontinue that claim (the claim that sought constitutional redress) in the interest of saving costs and time, but the meeting was postponed due to Guardian Life changing Counsel, who needed time to take instructions.

[13] On October 2019 the another meeting was convened, which was once again called off by Guardian Life's Counsel, this time on the ground that there was serious concern regarding the duplication of legal process by Ms. Allen with other Court proceedings still pending. Ms. Allen states that the last word she has received on the matter was that the Ministry was awaiting legal advice on the matter.

[14] Ms. Allen expressed the view that Guardian Life has no genuine interest in the conciliation meetings being held and have only been engaged in delaying tactics that have deprived her of her right to a fair trial within a reasonable time and before an independent and impartial tribunal established by law. She stated that the action of the Minister is prejudicial to her and obstructs her from seeking an available remedy in relation to her rights and interests regarding her employment termination.

[15] In its defence, Guardian Life denies that there was a dispute regarding reducing the reserves as contended, and that the termination of her employment had nothing to do with the reduction of the reserves. The decision to outsource her functions and to make her position redundant was consistent with industry practice, Guardian Life says, and it was established practice to have her accompanied to her to her office to retrieve the assigned property, to include laptops. Ms. Allen received a termination letter, Guardian Life contends, which she signed and on which she drew a line through the words "full and final settlement". It informed Ms. Allen via email that the letter could not be acted on with the alteration, to which no response was received.

[16] Subsequently, according to the affidavit filed, Ms. Allen's laptop was examined and a determination made that confidential information was disseminated to a competitor and other persons not entitled to receive certain information, in breach of the terms of Ms. Allen's employment contract. When a response to the allegation of the breaches was sought from Ms. Allen, Guardian Life says that none was received, and proceedings were commenced in the Commercial Court relating to the matter, which remain pending. Guardian Life denies that the termination letters

were issued in bad faith or that it has acted to delay proceedings related to the referral to the Minister or to the IDT.

[17] The Ministry in its defence indicates that a complaint was received from Ms. Allen's Attorneys-at-law in December 2018 contending that she was unfairly and unjustly dismissed and that the intervention of the Ministry was being sought. In May 2019, Ms. Allen filed a claim naming the Ministry as a defendant and the Ministry communicated later that it had determined that the Minister has jurisdiction to intervene. After several written communications between the parties in June 2019, a conciliation meeting was convened but ended prematurely as Counsel for Guardian Life was not served documents to aid in their preparation.

[18] The parties met again in July 2019 but the meeting concluded without a resolution as the Judicial Review proceedings were extant, and accordingly rescheduled to September 2019. Guardian Life changed Counsel who requested a postponement of the September meeting to October in order to obtain instructions. The October meeting was also adjourned when Guardian Life's Counsel raised the concern that Ms. Allen was seeking overlapping remedies in the Courts as well as before the IDT. The Ministry in November informed Counsel for Guardian Life of its earlier position to intervene and that this had not changed. Between November 2019 and January 2020, according to the Ministry, it has made efforts to convene conciliation meetings, which it reiterates are voluntary and which Guardian Life expressed a reluctance to participate in due to the related pending Court actions. The Ministry maintains that it made all reasonable efforts to facilitate the meetings and that the Minister remained prepared to have the matter referred to the IDT once all the conditions precedent to such referral were satisfied. It took all reasonable steps to advance the matter through conciliation and denies the breaching of Ms. Allen's rights under the Charter.

The Application

[19] The Court has, as part of its case management powers under rule 26.1(2)(h) of the Civil Procedure Rules, 2002 ("CPR") the power to try two or more claims on the same occasion, but it does not prescribe the consideration for that determination. Counsel submitted that the Court's overriding objectives under the CPR to deal with cases justly provides a guide, along with case law, to determine the issue. It was submitted that in dealing with cases justly, the Court ought to save expense and to allot to cases an "appropriate share of the court's resources, while taking into account the need to allot resources to other cases".

[20] Counsel for Mr. Simmonds acknowledged that while there are clear differences between the Simmonds and Allen claims, there are also important similarities. Reliance was placed on the authority of ***Dr. Sandra Williams-Phillips v University Hospital Board of Management*** [2014] JMSC Civ. 117, a decision of Anderson J, which offers some guidance on the approach of the Court in such an application. While Anderson J refused the application, he highlighted the distinction between the hearing of matters together and the consolidation of matters. The application was refused because the issues were materially different and not a matter for which a remedy in the Supreme Court was suitable but instead one at the IDT. The primary similarity that would support a trial together, Counsel argued, is that fact that both Claimants contend that there was failure on the part of the Minister to act within a reasonable time.

[21] Trial at the same time or before the same judge, it was contended, relying on the dicta in ***Insurance Corp. of British Columbia v Inderjit Singh*** 2017 BCSC 111, would save time and resources. Counsel submitted that there a real reduction in the number of days the trial would take up, would be realised and thereby result in a cost and time saving to the parties.

[22] While it is acknowledged that there several factual contentions, Counsel posited that there are a number of legal issues central to both Ms. Allen's claim and Mr.

Simmonds' claim. It was submitted that there would be a saving in time in relation to any expert as well.

[23] Both Claimants seek remedies pursuant to section 16 (2) of the Charter of Fundamental Rights and Freedoms and seek an injunction to compel the referral by the Minister of their respective matters. Counsel submitted further that the substantive legal issues to be determined in both matters are in the Constitutional Court and the matters are at the same stage. There is also a risk, Counsel argued, that to put the matters before different tribunals could lead to inconsistent results and based on the ***Insurance Corp. of British Columbia*** case, distilled the following as the relevant considerations:

i. Will consolidation create a saving in pre-trial procedures;

ii. Will there be a real reduction in the number of trial days taken up by the actions heard together;

iii. What is the potential for a party to be seriously inconvenienced by being required to attend a trial in which they only have a marginal interest;

iv. Will there be a real saving in experts' time and witness fees;

v. Is there a common issue or fact or law that makes it desirable to dispose of all actions at the same time;

vi. Will consolidation avoid a multiplicity of proceedings;

vii. What are the relative stages of the actions;

viii. Would consolidation delay the trial and prejudice one or some of the parties;

ix. Would there a risk of inconsistent results.

[24] Counsel surmised that separate trials could have the following outcomes:

a) There will not be a just allocation of the Court's resources in disregard to the overriding objectives;

b) The resources of the AG would not be properly allocated as they would have to be stretched between separate hearings although the core issues are the same between the matters;

c) Expense associated with expert witnesses;

d) Risk of irreconcilable and inconsistent judgments;

[25] Counsel for the Ms. Allen concurred with the submissions and submitted further that delay defeats justice and the primary issue between the matters is the unreasonable delay on the part of the Minister in commencing conciliation and the ultimate referral to the IDT. Counsel argued, that the Ministry is, on the one hand, saying that parties cannot be compelled to engage in conciliation while on the other hand, in the absence of such conciliation, the Minister is failing to make the referral as requested.

[26] In Ms. Allen's claim, a distinguishing feature from Mr. Simmonds' claim is the fact that there is a private company joined and against whom remedies have been sought. It was submitted by Counsel that Guardian Life has been joined because they have occasioned the delay in the conciliation process and have been complicit in the denial of access by Ms. Allen to the dispute resolution process. A trial together, it was contended, will ensure a consistent decision on the core disputed issue of law.

[27] Counsel for the Ministry and the Attorney General argued that the matters cannot be heard together as the facts, employers and timelines are different, and there is no risk of inconsistent judgments. Counsel submitted that while there was a similarity in the fact that the Claims are against the Ministry and the Attorney General in both matters, this was not enough, as Guardian Life in the Allen claim has no interest in the Simmonds claim. She explained, that while there is the complaint of a delay on the part of the Minister to make a referral of the dispute to the IDT, the Minister has a discretion to make such referrals, which in each case may be impacted by the circumstances that occasioned such perceived delay.

[28] Counsel submitted that there was a likelihood of additional delay and expense to the parties in having to attend for all days of the hearing. Contrary to the submission of Counsel for the Applicant, she submitted that it was likely that Counsel in the respective matters would have to attend for all days, though they might have little interest in the result of the other respective matter.

[29] Counsel from Guardian Life opposed the application and submitted that in exercising its discretion the Court should consider all the circumstances and determine whether the matters can be conveniently tried together. Counsel noted one commonality between the claims, in that they both seek constitutional redress for breaches to their right to a fair trial within a reasonable time. The application was opposed primarily because, apart from the fact that one party seeks remedies against a private entity who is unconcerned with the other claim, the determination of the legal issues will vary based on the facts of each case, which are very different.

[30] He noted that in the Simmonds claim, he has not joined his former employer as a defendant and that conciliation meetings were conducted in that matter with the Ministry. In addition, the Minister had not yet made a decision regarding a referral to the IDT and was awaiting legal advice on the matter. Conversely, Counsel argued, Ms. Allen were actively in contested Court proceedings, even at the time that conciliation meetings were being canvased. Her former employer objected to the meetings and the Ministry seemed ready to make an indication regarding whether there would be a referral, when the instant claim was filed.

[31] Another example of the factual difference, he posited, is whether there was a stay of the conciliation process by the Ministry. This factor does not arise in the Simmonds claim, where the conciliation process seems to have been exhausted. Also in the Allen case, allegations were made of bad faith against the former employer, which may require the attendance of witnesses for cross-examination, an issue that does not arise in the Simmonds claim.

[32] There is also the legal issue, Counsel sought to point out, of whether Ms. Allen can simultaneously pursue a claim for wrongful dismissal in the Supreme Court while pursuing the dispute with the Ministry. In addition, Guardian Life contends, that Ms. Allen's current claim is an abuse of process in view of the fact that she had already commenced similar proceedings, which were discontinued.

[33] Finally, Counsel for Guardian Life argued that even if there was a risk of irreconcilable judgments, this alone would not be the basis on which to try the matters together. He relied on the authority of ***Ixis Corporate and Investment Bank v WestLB AG and others*** [2007] EWHC 1748 (Comm) where on an application to consolidate proceedings with two (2) other proceedings, the Court refused the application. This application was made by WestLB to consolidate the existing proceedings with two (2) others in which WestLB brought claims against Nomura International Plc ("Nomura"). The application was opposed by all parties in the existing proceedings and by Nomura. The learned judge stated at paragraph 26 of the judgment that his starting point was that in order to grant the application he would have to be satisfied that:

> *(a) there were significant issues of fact in the IXIS proceedings in relation to which the court would have to make findings which would be relevant to Nomura's alleged liability in either the First or Second West LB proceedings; and*
>
> *(b) it was possible to ensure that Nomura could fairly be ready to take part in any enlarged trial in January 2008 or at any subsequent stage during the proposed trial period. I said that even if I was satisfied as to those matters, there was still a question of trial management and discretion to be considered before I would grant the order that West LB sought.*

[34] The Court however in refusing the application noted the following:

> *41. I accept, as I have demonstrated in the analysis above, that there is a significant degree of overlap in issues of fact and law in the IXIS proceedings and the Second West LB action. There will therefore be a significant overlap in the evidence of witnesses of fact…*

> *42. Despite this overlap, I concluded that it would not be fair and just to consolidate the IXIS proceedings and the Second West LB proceedings. This is for reasons of case management and fairness to Nomura…*
>
> *…*
>
> *44. In all these circumstances, despite the fact that there may be a risk of irreconcilable findings as a result of there being two different trials, that risk is outweighed by the other factors I have set out above which are against consolidation or hearing the two matters together. Accordingly, I reached the firm conclusion that the application of West LB must be dismissed.*

[35] Counsel for Guardian Life argued that trial together will only result in a longer trial, increased costs and the dedication of more judicial time to the proceedings. The respective legal arguments in each matter will have no bearing on the other matter with the result of Counsel and possibly the parties having to contend with issues that that are irrelevant in their respective claims. Counsel submitted that in the event that Guardian Life is successful in defending the matter, it may well be prejudiced in the recovery of its costs as Ms. Allen could contend that it was incurred in the unrelated claim.

[36] Counsel submitted that there was no risk of irreconcilable judgments as the matters were sufficiently distinct and do not arise from the same industrial dispute. Different judgments would be justified however, he argued, because of the differences in the legal and factual issues. Finally, he submitted, it would not be in the interest of justice to try the claims together.

Analysis

[37] Rule 26.1 (2) (h) of the CPR provides:

> *(2) Except where these Rules provide otherwise, the court may –*
>
> *…*
>
> *(h) try two or more claims on the same occasion;*

[38] All parties made reference in their submissions to the dicta of Anderson J in the ***Dr. Sandra Williams-Philips*** case, and though that application was for a consolidation of claim, I agree that the Court ought properly to give consideration to whether the claims can be conveniently tried together. While of persuasive value, ***Insurance Corp. of British Columbia*** referred to by the Applicant was of assistance in determining the criteria that I would consider in ruling on this application. They are subsumed, in their substance, under requirements of the the overriding objectives of the CPR - to deal justly with cases. I gave particular regard to CPR rules 1.1 (2) (b), (d) and (e), as they seem most relevant to the circumstances of this application, and read as follows:

> *(2) Dealing justly with a case includes -*
>
> *(a) …*
>
> *(b) saving expense;*
>
> *(c) …*
>
> *(d) ensuring that it is dealt with expeditiously and fairly; and*
>
> *(e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases where he further argued that "consolidation" in the judgment could be read to include trial together:*

[39] From the authorities, the factors to be considered in granting an application for a joint trial will in large part depend on the circumstances of each particular case. While not exhaustive, I have distilled the following seven (7) factors that the Court should consider as to whether the cases can be conveniently tried together:

> *i. Is there a common issue of fact or law that makes it desirable to have the matters heard together;*
>
> *ii. Is there a real risk that trial together would prejudice or cause serious inconvenience to a party to the claim even if there are factual and legal similarities;*

iii. *Will trial together save in court time or resources;*

iv. *Will trial together add expense or result in savings to a party to the claim;*

v. *At what stage is each respective matter;*

vi. *Is there a real risk that trial together will result in undue or inordinate delay;*

vii. *Is there is a real risk of inconsistent or irreconcilable verdicts with separate trials.*

Common issues of fact and law

[40] There is a similarity between the matters primarily on the issues of law that surround whether there was a sufficient delay on the part of the Minister on either case to justify a declaration that there was breach to Claimants right to a fair trial within a reasonable time and before an independent and impartial tribunal. There is also a similarity that the respective disputes emanate from a decision to make their respective posts redundant. In the Allen claim this was at least initially the case. However, there is significant divergence between how the matters progressed, and this factual difference would impact on the ruling of a Court as to whether there was undue delay and if in the circumstances this ought to affect the exercise of the Minister's discretion.

[41] Some significant factual differences that could impact on the Court's findings include:

- Guardian Life in the Allen claim says that instead of being made redundant her employment was terminated for cause. Ms. Allen contends that the determination of her employment by redundancy was unfair;

- Guardian Life contends that the fact of the pending legal actions brought by the parties have acted to delay conciliation meetings. Ms. Allen says Guardian Life is the cause if this delay;

- Guardian Life has a claim brought involving facts that are similar to or overlap with issues that would be raised at the IDT, and Ms. Allen has counterclaimed against them, These issues do not concern the Simmonds claim;

- Mr. Simmonds had several conciliation meetings and had accepted his termination package until he raised these concerns the year after he left;

- While in the Simmonds claim he has exhausted the conciliation process and said he has no further interest in that route, there has yet to be a completed conciliation meeting in the Allen matter. The extent of conciliation seems to be a factor in determining the exercise of the Minister's discretion.

[42] While there is a clear line at which the factual and legal issues intersect, the genesis, parties and circumstances of each claim, present sufficient factors that militate against the granting of the application for them to be heard together.

Prejudice or inconvenience to a party

[43] The ***Ixis Corporate and Investment Bank*** case is very persuasive authority for the contention that a risk of prejudice or serious inconvenience are important considerations even where there are factual and legal similarities in the case. It is clear that the greatest prejudice or inconvenience would be to Guardian Life, named Defendant in the Allen claim. Apart from some of the factual and legal differences that are likely to arise in each case, though Counsel suggests that one matter could be fixed for a certain period and the other to commence right afterwards before the same tribunal, practically it is likely that all parties would have to attend both trials.

[44] Arguments and rulings that affect one matter may well have bearing on the similar issues on the other matter and at least it would be prudent of Counsel to attend both. Even in this application, the matter in which Guardian Life had an interest had its first hearing date subsumed by this instant application, in which it also participated fulsomely. I am of the view that there is a real risk of serious inconvenience to Guardian Life to have the matters heard at the same time, as it

would incur addition legal costs for involvement in a matter that does not directly concern it

Court resources

[45] It is true that the time of the Court comes at a significant premium, and especially where there is a strong focus towards increasing trial certainty, dates for hearings must be considered with that at the forefront. It is possible that the joinder could create a saving in pre-trial procedures especially where there are few disputed issues. With the significant factual issues however, it may have the opposite effect, for example where one matter may require the involvement of an expert while the other does not, it might require additional applications that require all to attend but do not concern all parties.

[46] Notwithstanding the foregoing, I do not regard as high, the likelihood that the joinder of the matter will result in much if any increase in the Court's resources. An extension of the trial period would be based on the need of each respective case and if heard by a single tribunal would be a saving in terms of the fact that a single judge or panel would be deployed to hear the matter over that extended time.

Increased savings or expense to parties

[47] Though this issue was addressed above, it bears repeating that the joining of the trials will likely increase the legal costs of the parties with the need to contend with issues that do not concern the other respective claim. Counsel from the Director of State Proceedings raised the point that though she held for her colleague in this application and could conceivably make similar arrangements for any case management/ pre-trial hearings, that at least two (2) Counsels from her Chambers are deployed to represent the 1st and 2nd Defendants in each matter. Practically, if the matters were joined each assigned Counsel would have to attend for any longer trial, while otherwise they would only have had to be deployed for the shorter trial in each case, saving time for them to be deployed to other duties for the remaining time. It is clear that an extended trial period would adversely affect the

parties in trial preparation and ultimate legal expense and make for inefficient deployment of staff resources.

Stage of the matters

[48] As to the relative stages of the matters, the submission opposing the application is that the different stages of the claimant's dispute could affect the outcome. Mr. Simmonds was terminated by redundancy, a fact not in dispute. Ms. Allen regards her employment as being terminated by redundancy while Guardian Life regards her employment as terminated for cause. The dispute process acknowledges the need for local level discussions and conciliation meetings before the discretion of the Minister is exercised. For Mr. Simmonds both the local level discussions and conciliation have occurred and while such meetings have been attempted, Ms. Allen's dispute has not progressed in the same way. There are also other pending court proceedings in the Allen case, that could have a bearing on the progress of her dispute. This issue of the stage as which each respective dispute has reached, militates against the convenient trial of these matters together.

Undue delay

[49] There has been no submission presented that supports a conclusion that trial together will likely result in any greater delay for any party than if heard separately.

Inconsistent or irreconcilable decisions

[50] There is always a risk with a separate trials that one tribunal will interpret the law or facts differently than another in apparently similar circumstances. I can see no real risk of a divergence in the interpretation of the application of the law, and any difference is accounted for by the significant factual differences of each case. The ruling for each matter will turn on their own peculiar facts and could result in a prejudice to one or the other Claimant where factors are considered in one that do not apply to the other or vice versa.

[51] It is true that there is some overlap in the legal issues, to include whether there has been undue delay on the part of the Minister and where it exists, there are remedies open to the respective Claimants. I do not accept that even where there is likely to be inconsistent decisions that they cannot be reconciled by the fact that they turn on their peculiar facts. I concur with the view expressed in ***Ixis Corporate and Investment Bank*** that even if such a risk exists, that when one considers the other factors in this case, primarily the risk of serious inconvenience and legal costs to Guardian Life, this outweighs that risk.

[52] I do not accept that the matters can be conveniently tried together and believe the risk of prejudice to one or the other Claimant outweighs any benefit, real or perceived, to be derived from hearing them together or by the same judge. I accordingly refuse the application.

[53] Based on the foregoing, the following are my orders:

(i) Mr. Simmonds' application filed on June 17, 2020, for Claims SU2020CV00914 and SU2020CV00031 to be heard together is refused;

(ii) Costs to the Respondents to be taxed if not agreed;

(iii) Leave granted to the Applicant to appeal;

(iv) 1st hearing of the FDCF for SU2020CV00914 is adjourned to Wednesday, July 29, 2020 at 2 pm for half an hour;

(v) 1st hearing of the FDCF for SU2020CV00031 is adjourned to Thursday, July 30, 2020 at 2 pm for half an hour;

(vi) Applicant's Attorney's-at-law to prepare, file and serve the orders herein.