



[2020] JMSC Civ. 167

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2014HCV04356

BETWEEN	LIJYASU M. KANDEKORE	CLAIMANT
AND	JAMAICA CIVIL AVIATION AUTHORITY	DEFENDANT

OPEN COURT

Lord Anthony Gifford Q.C. and Ms. Marissa Wright for the Claimant

Mrs. Susan Reid-Jones and Ms. Latoya McIntosh for the Defendant

Heard: February 17 & 18 2020, July 24, 2020

CONTRACT LAW – BREACH OF CONTRACT – ELEMENTS OF A CONTRACT – WRITTEN OFFER – ORAL ACCEPTANCE – WHETHER LETTERS OF THE BOARD OF THE DEFENDANT CAN BE REGARDED AS EVIDENCE OF ORAL ACCEPTANCE – WHETHER AN ENFORCEABLE CONTRACT WAS CREATED

HENRY-MCKENZIE, J

BACKGROUND

[1] The claimant was employed to the defendant as a Legal Officer on a three-year contract starting 16th March 2009 and ending 15th March 2012, under firstly a letter of engagement dated 16th March 2009, and then later on, a written contract dated

18th February 2010. Under this contract of employment, the claimant was entitled to:

- i. A basic salary of \$4,250,400.00 per annum
- ii. Motor Vehicle Upkeep of \$420,000.00 per annum plus mileage
- iii. Meal Allowance of \$140,000.00 per annum
- iv. Laundry Allowance of \$33,120.00 per annum, and
- v. Clothing Allowance of \$69,000.00 per annum.

[2] This contract did not have a renewal clause, but prior to the end of the term of the contract, the claimant began indicating to his employer the desire to renew his contract. He expressed this desire in writing via email sent on 19th September 2011 to the defendant's Chairman and repeated this in another email to the defendant's Director General (DG) on 5th October 2011 and requested them to take steps to effect the renewal.

[3] The claimant indicated that following his emails, on several occasions he had inter-office conversations with the DG on this matter and the DG assured him that his contract would be renewed. He recalled two occasions in his evidence, one in a passage leading to both their offices and another occasion where they were coming from a meeting. He also mentioned letters written by the DG and the Chairman on behalf of the defendant to National Commercial Bank (the bank) where assurance was given to the bank in relation to the renewal of his contract upon the termination of the first contract.

[4] The content of these two letters is important to the determination of this matter and so will be repeated. The letter signed by the DG and dated December 1, 2011 addressed to the Assistant Manager, National Commercial Bank, Slipe Road reads:

“This serves to confirm that Mr. Lijyasu Kandekore is employed to the Jamaica Civil Aviation Authority (JCAA) as Legal Officer on contract. This contract ends March 2012 but will be renewed for another period.

The Jamaica Civil Aviation Authority would be very grateful if the usual courtesies were extended to Mr. Kandekore.”

On the other hand, the letter dated December 9, 2011 by the Chairman to the same recipient reads:

“This serves to inform that Mr. Lijyasu Kandekore is employed to the Jamaica Civil Aviation Authority (JCAA) as a Legal Officer on contract. This contract period ends March 2012 and we intend to renew it for another three (3) years.

- [5] However, later on, it became clear to the claimant that the authority was not offering another written contract, when on March 1, 2012, he received a letter from the Human Resource Department, indicating that his contract with the JCAA would not be renewed and that he should hand over any property belonging to the JCAA within his possession.
- [6] The claimant alleges that he has, since the non-renewal of his contract, been disadvantaged, as he had taken a loan from the bank on the existence of that contract of renewal and that he has also been unsuccessful in getting alternative employment. He eventually had to start his own practice, but still suffers from his expenses being more than his fees.
- [7] The claimant now seeks the court’s intervention in finding that there was a binding and enforceable contract between the parties for the renewal of his contract of employment on the same terms and conditions as the previous contract. He contends that the defendant repudiated its contract of employment with him, by failing to give effect to the renewed contract. He claims in damages the following:
- i. Basic salary for 3 years with emoluments and allowances of \$14,737,560.00
 - ii. Pension substitute for 3 years \$3,187,000.00

- iii. Loss of entitlements for insurance coverage
- iv. Interest at the rate of 9% or such rate the court shall deem fit
- v. Cost

THE ARGUMENTS

- [8] The claimant submitted that all the elements of an enforceable contract were present. Queen’s Counsel Lord Gifford on behalf of the claimant, argued that there was a written offer by the claimant and an oral acceptance by the defendant, which indicates an intention by both parties to be bound by their agreement for renewal. To reinforce this point, Lord Gifford relied on the case of ***L’Estrange v F. Graucob Limited*** [1934] 2 KB 394 and in particular the dictum of Maugham L.J at page 7, where he said “... *The Courts have held that the written offer and the acceptance, even though only verbal, together constituted a contract in writing which could not be altered by extraneous evidence*”. Lord Gifford argued further, that there was also consideration and certainty as to the terms of the contract. As it relates to the certainty of the terms, Lord Gifford submitted that where there is an existing contract which is clear and complete in its terms, a promise to renew the contract implies an agreement to make a new one on the same terms and conditions, unless the contrary is stated. He relied on the case of ***Paulette Richards v Trafalgar Travel Ltd*** [2012] JMISC Civ.61, in support of his contention, that a contract of employment may be renewed on the same terms by a simple offer made by one of the parties, accepted by the other.
- [9] He further submitted, that the letters written by both the DG and the Chairman on behalf of the defendant, are powerful evidence that a contract of renewal was concluded. He argued that the DG had the authority to act on behalf of the JCAA, as he was the most senior full time executive and the person who had signed the claimant’s letter of engagement, his contract of employment, and the letter to the bank.

[10] The defendant, on the other hand, maintains that the elements of a contract have not been made out. Counsel Mrs. Reid-Jones on behalf of the defendant, argued that there is no doubt that an offer was made by the claimant to have his contract renewed. However, all the elements of a binding and enforceable contract were not present, as there was no acceptance, no intention to create legal relations, nor was there any certainty of the terms.

[11] In relation to the certainty of the terms, Mrs. Reid-Jones submitted that the letters aforementioned, failed the test for certainty of terms, in that “*another period*” was vague and lends itself to different interpretation. Further, that though the term of years is mentioned in the letter written by the Chairman, it is also uncertain by virtue of the fact that the Chairman could only say that there was an intention to renew. He could not be certain the contract would be renewed. She argued that many people intend to do things but do not actually do them.

[12] Mrs. Reid-Jones relied to a large extent on a memorandum written by the DG dated March 15, 2012 addressed to the claimant, to indicate that there was no intention to create legal relations. In fact, the argument was made by her, that the memorandum shows that there was no acceptance of the claimant’s offer. Further, that the letter to the bank was specifically for the purpose of the claimant obtaining a banking facility, but it did not create a binding contract between the JCAA and the claimant. The memorandum states in part as follows:

“...I have consistently advised you that it was the policy of the JCAA Board to approve all contracts, and so I could not give you any assurances in that regard...”

“With respect to the letter that you requested to a financial institution, I made it clear... that while I could say you are likely to be renewed I could not give such an assurance.... The letter you drafted and signed by me was specifically for the purpose of obtaining a banking facility...”

[13] Mrs. Reid-Jones argued that this letter was an outright rejection of the claimant's offer and that the claimant ought to have realized there was no acceptance of his offer to continue working. Further, she submitted, that apart from there being no express contract, none should be implied by the court. Further, that in the circumstances of this case, there is no necessity to imply a contract because the defendant employer had made it plain, that there was no interest in the offer made by the claimant, and no interest in doing further business with him.

[14] Finally, Mrs. Reid-Jones sought distinguish the case of *L'Estrange v Graucob Limited* (supra) and *Paulette Richards v Trafalgar Travel Limited* (supra) on the basis that they are not applicable, as the facts in both are different from the facts in the instant case.

THE EVIDENCE

[15] The DG was taken to task in cross- examination on the truthfulness of the contents of his letter dated March 15, 2012. The DG indicated having lied to the bank on the true position of the claimant's contract, but stated that he did not free the bank of this deception, despite knowing how serious the situation was, or how reliant the bank would have been on his letter in determining whether or not to grant the loan. He also indicated under cross examination, that he was aware of the Chairman's letter to the bank after the fact, but still allowed the bank to be of the belief that the claimant's contract would be renewed. The Chairman did not give evidence at the trial.

[16] The DG denied any agreement oral or otherwise, to renew the claimant's contract. He also denied having any conversations with the claimant which assured him of the renewal of his contract of employment. He pointed out that it was only the JCAA that had the authority through its Board, to renew contracts and this would only be done on the recommendation of the claimant's immediate supervisor. He further

indicated, that if there was any such promise as alleged by the claimant, this in and of itself could not form the basis a contract.

[17] The DG's evidence is that upon receiving the email from the claimant requesting the renewal of his contract, he held a meeting with him in his office and informed him that such a request could only be made to him by the General Counsel to whom the claimant reported directly. However, in cross-examination, he showed a level of uncertainty as to whether the meeting that was held was in relation to the email the claimant had sent.

[18] The DG further denied that the letter signed by him, addressed to the bank, is evidence of this alleged contract of renewal. He indicated that he desired to assist the claimant with obtaining a loan from the bank, so he prepared a letter, but the letter which is before the court dated December 1, 2011, was not the letter he initially prepared. He stated that the letter written by him was found to be unacceptable by the claimant for the purposes of the bank. Out of a desire to assist the claimant, he allowed the claimant to draft a letter for him to sign. The claimant drafted a letter, but the DG said he found the words used unacceptable, as it was giving an assurance that the claimant's contract would be renewed for another three years. He said further, that eventually he signed the letter dated December 1, 2011, drafted by the claimant, for humanitarian reasons. He said he however warned the claimant that the letter should not be taken as an indication of a commitment to renew his contract. His evidence is that this was not the first time he was writing letters to financial institutions to assist his employees.

ISSUES

[19] The main issues to be determined are as follows:

- i. Whether a binding contract for the renewal of the contract of employment was made between the defendant and the claimant.

- ii. If there was a binding contract, was this breached?
- iii. Is the claimant entitled to the sums claimed?

ANALYSIS

[20] For a contract to exist, there must be offer, acceptance of that offer, consideration and an intention to create legal relations. The basic test for determining whether there is an agreement, is to ask whether there was an offer by one party which was accepted by the other. In this case, it is not the employer who made an offer for the renewal of the contract, as is customary, but the claimant who made an offer to have his contract of employment with the defendant renewed through written correspondence by way of the emails he sent to the Chairman on September 19,2011 and the DG on October 5, 2011, respectively. His letter to the Chairman reads:

[21] *Dear Sir,*

I write to bring to your attention the fact that in a few months my contract of employment with the Authority will come to an end and that I desire to continue working for the Authority.

I therefore kindly request that you cause my contract of employment to be renewed.

Your usual kind attention will be greatly appreciated.

[22] The claimant's letter to the DG was in similar terms:

Dear DG,

I write to formally advise you that in a few months my contract of employment will expire and I desire to have it renewed.

I therefore request that you be kind enough to take the necessary steps to give effect to a renewal of my contract of employment.

Your usual kind cooperation will be greatly appreciated.

[23] The main question which arises, surrounds whether there was acceptance of the claimant's offer and whether there was the intention by the defendant to enter into legal relations with the claimant.

[24] It is not in dispute that there would have been consideration present in a contract of employment, that is, the claimant would provide consideration in the form of work in exchange for the payment of salary by the defendant. The contention of the claimant however, is that there was oral acceptance by the defendant of his offer in numerous inter-office conversations that he had with the DG. On the two occasions that the claimant detailed in his evidence that he had conversations with the DG concerning the renewal of his contract, he said the DG assured him that he was not to worry as his contract would be renewed.

[25] It is a matter of credibility whether such conversations did in fact occur between the claimant and the DG. The DG has denied these conversations. In determining whether there was in fact any conversation where promises were made to renew the claimant's contract of employment, all the circumstances of the case must be looked at, as well as all the evidence presented before the court. I had the opportunity of hearing viva voce evidence from the claimant and from the DG and of assessing their demeanour. I found the claimant to be credible in his account to the court and his evidence reliable. I accept his evidence over that of the DG. I think he spoke the truth about these conversations he had with the DG in relation to the renewal of his contract of employment.

[26] I accept the claimant's evidence that when he had the conversations with the DG in relation to the renewal of his contract, the DG indicated to him that his contract would

be renewed. I find that what was said by the DG in these conversations, amount to an oral acceptance of the claimant's written offer to have his contract renewed.

[27] The claimant has also relied on the letters dated the 1st December 2011 from the DG to bank, and that of the 9th December 2011 from the Chairman to the bank, as further evidence that an agreement was made between the defendant and himself for the renewal of his contract.

[28] I find that the oral assurances given by the DG, was buttressed by his letter to the bank, which I consider compelling evidence of an agreement between the DG and the claimant for a renewal of the claimant's contract. I also consider the letter written by the Chairman as an indication that these assurances were made. It does not matter that these letters were addressed to a third party and not the claimant.

[29] The DG indicated in his viva voce evidence that he lied to the bank on behalf of the claimant, only out of humanitarian reasons, in an attempt to assist the claimant in his business with the bank. I, however, find that it is improbable that a man of his stature, would deliberately mislead the bank that he knew would rely on the information he provided, in determining whether or not to do business with the claimant. He was a senior executive member at the JCAA at the rank of the Director General/CEO and one who was placed in a position of trust and confidence. This was not the first time he had done a letter relating to the employment of his staff, and would know that when taking on the feat of preparing job letters to financial institutions confirming the status of his employees, he is placed in a position where the utmost truth is required of him.

[30] If I were to accept the DG's evidence that he lied to the bank, it was not only he who would have been misleading the bank, but also the Chairman of the Board, who also gave a similar assurance to the bank. I am of the opinion that when the DG and the Chairman wrote to the bank they were speaking the truth. There was obviously a previous oral agreement to renew the claimant's contract.

[31] Though, I find that the DG gave oral assurances of the renewal of the contract, it is incumbent on me to decide whether he had the authority to do so on behalf of the JCAA. The defendant's case is that for a contract to be renewed, it required certain administrative steps to be taken which would involve the board of the JCAA. The DG's evidence is that it was the responsibility of the claimant's direct supervisor to make recommendation to him for the renewal, which would then require the approval of the Board. He indicated that the renewal could not be done by him alone.

[32] It was mentioned earlier that the DG is the most senior full time executive of the JCAA. He was the person who signed off on the Claimant's letter of engagement and eventually his contract of employment. He also indicated being one of the officers who was able to assign tasks to the claimant. When it came around for the claimant to receive a job letter confirming his contract to the bank, it was the DG who did this, showing his level of authority to act on behalf of the JCAA. I accept that an engagement such as this may require certain formalities and in fact the approval of the Board. I take comfort in the fact however, that it was not only the DG who gave these assurances to the claimant, but also the Chairman of the Board, another high ranking member of the JCAA who endorsed the DG's position. With both high ranking officials agreeing to renew the claimant's contract, I accept that this was done on behalf of the JCAA and their word therefore binds this entity.

[33] I must now turn to the issue of the intention of the parties. The question of the requisite intention to create a binding contract is essentially one of fact. In the case ***RTS Flexible Systems Ltd. V Molkerei Alois Muller GmbH & Co. KG UK (Productions)*** 2010 3 ALL ER 1 Lord Clark set out the applicable test at paragraph 45 of the judgment to be as follows:

“whether there is a binding contract between the parties and, if so, upon what terms depends upon what they have agreed. It depends not upon their subjective state of mind, but upon what was communicated between them by words or by conduct, and whether that leads objectively to a conclusion that they intended to create

legal relations and had agreed upon all the terms which they regarded or the law requires as essential for the formation of legally binding relations.”

[34] The principle that can be extracted from this case, is that in order to satisfy the court that there is an intention to create a legally binding contractual relationship, there needs to be an agreement on all the essential terms. There needs to be certainty of contract. The defendants argue that the terms of the contract were uncertain.

[35] There is no evidence of the details of what was discussed in the conversations with the DG, but again the letters can shed light on what these discussions may have entailed. For ease of reference, I will repeat the important contents of the letters. The letter by the DG dated December 1, 2011 states that the claimant, *“is employed to the Jamaica Civil Aviation Authority as Legal Officer on contract. This contract ends March 2012 but will be renewed for another period.”* The letter dated December 9, 2011 by the Chairman states that the claimant, *“is employed to the Jamaica Civil Aviation Authority as Legal Officer on contract. This contract period ends March 2012 but we intend to renew it for another three (3) years.”*

[36] The letters refer to “this contract”. My interpretation of these words, is that the contract spoken of to be renewed, is the contract dated February 18, 2010, under which the claimant was employed. All the terms and conditions which were a part of that contract, were to be incorporated in the renewed contract. The contract under which the claimant was employed, was a detailed and professionally drafted document, and thus uncertainty of the terms under which the parties were to be bound was not an issue. Indeed, the letter signed by the DG mentions “another period” and not another three years as the letter signed by the Chairman. However, the reference point for both, is the original contract of employment, which sets out the duration of the contract. Having accepted that the letters are evidence of previous oral discussions on the renewal, I find that there was certainty of the terms of the renewed contract.

[37] The case of *Paulette Richards v Trafalgar Travel Ltd* (supra) referred to by Lord Gifford is instructive and seems to be in line with my reasoning. That case dealt with whether there was a dismissal of an employee by reason of redundancy, so as to entitle the employee to redundancy payments. Though it deals with a different issue from the present case, the principle is applicable. It was indicated by Edwards J that there was an offer of re-engagement on the same terms and conditions as the original contract and as such, there was no dismissal of the claimant, but a voluntary termination on her part. Having so ruled, Edwards J seemed to have made the point, that a renewal of the contract on the same terms and conditions, allows for continuance of the contract, once acceptance has been given to the offeror and not a dismissal, thereby putting an end to the original contract.

[38] Having found that there was certainty of the terms of the renewed contract, I also conclude that there was an obvious intention on the part of both parties for the contract to be renewed on the terms and conditions of the previous contract.

[39] Therefore, I accept the account of the claimant, that the DG did enter into binding contractual arrangements on behalf of the JCAA for the renewal of his contract, which in turn is enforceable by the court.

[40] I will now turn my attention to the memorandum written by the DG to the claimant dated March 15, 2012. I note that it was written the very day the claimant's contract ended. I do not place much emphasis on this memorandum, which the defendant says is an outright rejection of the claimant's offer to have his contract renewed. I note that this memorandum would have been sent to the claimant months after the claimant indicated his desire to have his contract renewed. Prior to this, there was no written response in relation to the claimant's written offer to renew, from the DG. This may well be because the DG knew that he had already given the oral assurances of the renewal of the contract to the claimant, followed by his letter to the bank, indicating this. This letter written by the DG was only in response to the claimant's letter to him dated March 2, 2012, in which the claimant expressed his

displeasure with the manner in which he was being treated. The DG's memorandum therefore bears little or no weight in my determination of this matter.

[41] The argument has been made by the defendant that a contract of this nature would not have commenced on the basis of an oral agreement, given the details of the first contract of employment. However, I have taken note of the fact that the claimant had commenced his employment with the JCAA in 2009 on the basis of a letter of engagement signed by the DG and the claimant, which was dated March 16, 2009. It was agreed by the DG in cross-examination, that the claimant would have commenced his employment with the JCAA one week before he signed this letter of engagement on March 23, 2009. Notably, the written contract was signed on the 18th of February 2010, some eleven (11) months after the claimant commenced working with the JCAA. Given all of this, there is higher probability than not, that the renewed contract may have followed along similar lines. This argument, therefore, is not very compelling.

CONCLUSION

[42] In light of the finding of a binding and enforceable contract, it is obvious that there was a repudiation on the part of the defendant, when on March 1, 2012, they informed the claimant of the decision not to enter into a new contract with him. In the circumstances, the claimant is entitled to damages for breach of contract. The claimant has proved his case on a balance of probabilities.

DAMAGES

[43] The appropriate damages to be awarded must now be dealt with. In contract law, the measure of damages is to place the injured party in the position he/she would have been in, had the contract been performed. In the instant case, the claim is for

salary and benefits which would have been received under the new contract of employment. The headings are set out above and will be looked at in turn.

[44] The claim for basic salary with allowances for three years will be awarded. This sum would naturally arise under the contract. These are monies the claimant would have received and would have been automatically entitled to. The claim is for \$4,912,520 x 3. Statutory deductions would have to be made from this figure for the period.

[45] The claimant also claims a pension substitute which he referred to as being called a gratuity in the contract. The claimant's case is that he was unable to participate in the then pension scheme of the company, so he was to be paid this gratuity. However, the evidence before the court suggests otherwise. The DG's evidence (supported by the contract of employment) is that this gratuity was not a pension substitute, but in fact a reward for satisfactory performance of duties. Not only did it depend on one's performance, but also if funds were available. It was, however, accepted by the DG that funds being available did not affect whether an employee gets a gratuity payment, but when the payment would be made. The claimant submitted that the JCAA, not having any comments of unsatisfactory performance under his previous contract, on a balance of probabilities, it would be the same under the renewed contract. As such, he would have again received gratuity. This argument does not find favour with the court. I cannot speak to what might obtain in the future. There is no certainty that complaints would not have been made of the claimant's performance during the new contract period. This is not a right. In the circumstances, I will not make an award for a gratuity payment or, as described by the claimant, a pension substitute.

[46] It is the duty of the claimant to take reasonable steps to mitigate his loss. The claimant stated that he has made attempts to seek alternative employment. He has exhibited application letters as proof of his attempts. He has indicated that he was not successful in even securing an interview. He stated that eventually, he had to start his own practice to meet his needs. Though there is no evidence that the exhibited application letters were sent out, I accept the claimant's word that they

were. I have also considered that at the relevant time, the claimant was 62 years old and so might have found it difficult to find alternative employment, hence he had to start his own practice. In my opinion, there is sufficient evidence that he took the necessary steps to mitigate his losses.

[47] Insurance coverage is for persons employed to the organization who pay monthly sums to obtain the coverage. There is no certainty the claimant would have paid the sums and if not paid, he would not be entitled to this coverage. There will be no award for insurance entitlement in the circumstances.

[48] I therefore make the following orders:

ORDERS

1. Judgment for the claimant
2. Damages in respect of salary and allowances for 3 years from 16th March 2012 to 15th March 2015, in the sum of Fourteen Million Seven Hundred and Thirty-Seven Thousand Five Hundred and Sixty Dollars (14,737,560.00)

(Statutory deductions are to be made from this figure)

3. Interest at the rate of 6% from the 16th March 2012 to the date of judgment, being the 24th July 2020.
4. Costs to the claimant to be taxed if not agreed.

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Hon. G. Henry-McKenzie
Puisne Judge