

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2006/0266

BETWEEN

PREMIER BEVERAGE LIMITED

Claimant

AND

EDMEADE JOYCE

Defendant

Appearances:

Ms. C. Debra Burnette and Mrs. Shahida Ali-Schneider for the Claimant
Ms. E. Deniscia Thomas for the Defendant

.....
2008: November 18
2009: January 28
.....

JUDGMENT

[1] **Blenman J:** This is a claim for outstanding monies and a counter claim for damages for unfair dismissal and severance benefits.

[2] **Background**

Premier Beverages Limited (Premier Beverages or the company) sells wines, spirits and beverages. Mr. Edmeade Joyce is a former employee of the company. Premier Beverages states that based on the contract that it had with Mr. Joyce, he agreed to sell the beverages and wines that he was given, for cash or on credit, and to collect the debts due from the sales and to account for them. Premier Beverages further states that between December 2003 and November 2005, Mr. Joyce took beverages and wines, sold them, collected the debts due and in breach of the agreement; failed to give a true or full account of the debts that he has collected. In addition, Premier Beverages says further, that Mr. Joyce personally credited goods from the company and that he has failed to pay for them.

In addition, he took goods from the company on behalf of his mother, on credit, and has failed to liquidate the indebtedness. In addition, Mr. Joyce extended credit to cash customers and has failed to take all reasonable or proper steps to collect the debts or to exercise all due diligence in that regard. As a result, the company has suffered loss and damage. He also collected monies on behalf of the company and incorrectly reflected that the sales were on credit, thereby misappropriating the company's funds.

[3] Accordingly, the company claims from Mr. Joyce the sum of \$20,017.37 being monies had and received by him.

[4] In his defence and counterclaim, Mr. Joyce admits that he worked with the company from July 2002 in the capacity of salesman. As a salesman, he had control over the goods in the sales van and was responsible for the collection of debts and for giving an account of the day's activities. However, Mr. Joyce contends that in September 2005, he was demoted to the position of sales assistant with responsibility for assisting the salesman on his route. No reason was communicated to him for this demotion. As sales assistant, he had no responsibility for the collection of debts or for accepting customer's applications and further, he could not perform any function in relation to the goods on the sales van without the authority of the sales manager Mr. Samuel. At all times and up to the last day on which he worked as a sales assistant, his records of sales and collections were up to date. He never collected any monies owed to Premier Beverages since his demotion.

[5] Accordingly, Mr. Joyce denies that he has collected monies on behalf of the company or that he has failed to give a true and proper account. He disputes that he owes Premier Beverages any sums whatsoever. Further, he denies that the company has suffered any losses as a result of any act or omission by him.

[6] Mr. Joyce contends that in October 2005, he was informed one morning, on reporting to work, that Premier Beverages was closing the van sales portion of its operation effective immediately. His employment with Premier Beverages was terminated without adequate notice and he has not to date received any form of compensation. Further, shortly after his

dismissal, and that of others in the van sales department, Premier Beverages hired individuals to resume its van sales operations on the same route formerly operated by its former employees. Mr. Joyce says that the company unfairly dismissed him in October 2005, without giving him proper notice. Accordingly, he claims to be entitled to receive statutory severance payments in accordance with Section C41 of the Antigua and Barbuda Labour Code. Also, he seeks damages for unfair dismissal.

[7] Premier Beverages has filed a reply and defence to Mr. Joyce's counterclaim and takes issue with his contentions. Subsequently, the company filed a defence to the counterclaim and says that Mr. Joyce misconducted himself and it had good cause to terminate his services.

[8] **Issues**

The issues that arise for the Court to resolve are as follows:

- (a) Whether Mr. Joyce owes Premier Beverages the sum of \$20,017.37 or any sum at all;
- (b) Whether Premier Beverages has unfairly dismissed Mr. Joyce;
- (c) To what, if any, compensation Mr. Joyce is entitled.

[9] **Evidence**

Mr. Anthony Bento, the Managing Director of the Company, Mr. Edmeade Samuel, former Operations Manager and Ms. Deborah Samuel, who was the accounts/sales clerk, gave evidence on behalf of the company and they were cross examined. Mr. Joyce testified on his behalf and he was cross examined.

[10] **Mrs. Shahida Ali-Schneider submissions**

Monies outstanding

Learned Counsel Mrs. Ali-Schneider stated that Mr. Joyce was under a duty to collect those debts outstanding as evidenced in his contract dated the 24th June 2002. Learned Counsel Mrs. Ali-Schneider invited the Court to accept the evidence of the witness Mr. Samuel, which evidence is uncontroverted and demonstrates that the above mentioned

sum has not been collected by Mr. Joyce during the tenure of his employment. The contract puts an obligation on him to pay the said debts.

- [11] Elaborating further, learned Counsel Mrs. Ali-Schneider said that Premier Beverages' claim against Mr. Joyce for the sum of \$20,017.37 consists of: (a) cash customers extended seven days credit, (b) monies collected by Mr. Joyce on behalf of Premier Beverages, but which monies were not paid into the company by Mr. Joyce, (c) credit extended to customers after September 19th 2005, (d) monies owed personally by him to Premier Beverages and (e) monies owed for credit he extended to his mother Gloria Simon.
- [12] Mrs. Ali-Schneider stated that in relation to (a) the cash credit sales, are monies uncollected by Mr. Joyce on the following customer accounts, namely Andrea Tonge, whose account shows a balance due of \$300.00, Cidy Lewis, whose account shows a balance due \$251.00, Elaine Bailey, whose account shows a balance due \$200.00, Gloria Martin, whose account shows a balance due \$85.00, Gold Eye, whose account shows a balance of \$240.00, Grape Tree Snackette, whose account shows a balance of \$625.00 and Kennedy's Bar, whose account shows a balance due of \$684.00.
- [13] Learned Counsel Mrs. Ali-Schneider invited the Court to examine the statement produced by Premier Beverages on the 11th November 2005. When the Court examines the statement, each of the customers was invoiced and required to pay the debt on the date in which the items were taken. The evidence shows that Mr. Joyce had the authority to extend a seven day credit line to his cash customers. Premier Beverages and Mr. Joyce had an employment contract dated the 24th June 2002, which was exhibited. Mr. Joyce was responsible for the collection of money for the C.O.D. (Cash on Delivery) invoices as well as money given to him from customers for payment on their account. Any money missing or not accounted for at the end of each day was to have been deducted from the Van Driver/Porter's remuneration.
- [14] In relation to (b) which refers to Premier Beverages' claim for monies collected by him but which were not paid into the company, Mrs. Ali-Schneider invited the Court to review the

evidence of Premier Beverages' statement relative to the accounts in debt, one of which is Big Chief Snack Bar, which was exhibited. The evidence shows that there are four outstanding invoices, namely 688611, 688619, 714209 and 714250A. Counsel said the payment history clearly indicates that Big Chief paid its debts regularly.

[15] Next, learned Counsel Mrs. Ali-Schneider invited the Court to look at the remaining invoices charged to Big Chief's account by Mr. Joyce and with regards to these four invoices, save for \$70.00 was paid on invoice 714250A and the balance remains outstanding. Accordingly, Counsel urged the Court to find that Mr. Joyce collected the outstanding monies but failed to account for them.

[16] Further, Mr. Joyce provided an invoice # 852532 to Brown and Associates, in the sum of \$388.80 on the 4th February 2005. Mr. Joyce collected monies on the 18th February 2005 on behalf of this customer in the sum of \$388.80 which should have paid off the invoices of 4th February 2005. However, Mr. Joyce wrote in the cash reconciliation report, dated 18th February that the sums were to be applied to the Brown and Associates account in increments of \$200.00, \$100.00 and \$88.80 to invoices 340611, 341142 and 71422 respectively. No money was applied to invoice 852532 for which the monies were intended. Learned Counsel asked the Court to infer this evidence that Mr. Joyce had received monies in the past and was using them for his benefit and sought to conceal the same, by paying amounts received for old invoices, which left balances on the new invoices payable, though monies had been received for both and should have been paid to the use of Premier Beverages, for which Mr. Joyce is liable to pay the company. Mr. Joyce again received monies and applied it to invoices other than those for which they were intended. Mrs. Ali-Schneider invited the Court to review the charge invoice, from which the cash reconciliation sheet demonstrates the manner in which the money received by Mr. Joyce was divided and applied to an account other than that for which it was originally intended. Mrs. Ali-Schneider asked the Court to infer from this evidence that Mr. Joyce received monies in the past and used the same for his benefit, which left the customers' accounts always showing a balance when all monies should have been paid into Premier Beverages immediately. Mr. Joyce is thus liable to pay the sums claimed.

- [17] In relation to the debt concerning Jackie's shop which stands at \$378.70, Premier Beverages' evidence at page 36, 37, 38, but specifically at paragraphs 43 of the witness statement of Mr. Samuel. All the cash reconciliation reports for that month were checked and no evidence of the \$200.00 from receipt number 089919". Mrs. Ali-Schneider invited the Court to accept that Mr. Joyce has received monies but failed to pay the same to the company and as such, he is liable to pay Premier Beverages the sum sought.
- [18] Counsel carried out similar exercises in relation to Karen Burton, McKinnon's Restaurant, P&B Snackette and Robbies Innovation, and asked the Court to infer that Mr. Joyce collected the monies but did not account for them.
- [19] In relation to (c) above, Mr. Joyce issued credit amounting to the value of \$3,880.31. The credits were extended to the customers after he was instructed not to do so on the 19th September 2005, by letter. In the letter, Premier Beverages' Sales and Marketing Manager stated to Mr. Joyce that, "As a result of your indiscriminate use of company facilities, you are barred from receiving or issuing credit". Mr. Joyce gave oral evidence at trial indicating that he did not receive the letter, but he indicated that he was "demoted" and as such Mrs. Ali-Schneider invited the Court to infer that he had knowledge of this new condition of employment, which forbade him from issuing credits, which he nonetheless gave to the detriment of Premier Beverages. Learned Counsel Mrs. Ali-Schneider stated that the invoices which comprised of debts attached to Mr. Joyce's statement account were invoiced by Mr. Joyce to the customer accounts after 19th September 2005, when he was instructed not to give any credit to customers. These sums were neither collected and/or paid to Premier Beverages by him, in breach of the terms of their contract, namely paragraph 6 of the employment agreement dated 24th June 2002, which stated, that Mr. Joyce was "responsible for all stock in the delivery vehicle. Any stock missing or otherwise not accounted for will be immediately deducted from the Van Driver/Porter's remuneration".

[20] In relation to (d) above, in which Premier Beverages seeks to recover the monies owed personally by Mr. Joyce to Premier Beverages, Mrs. Ali-Schneider invited the Court to review the evidence which will demonstrate that he owes the company the sum claimed. Mr. Joyce still owes these monies as the same was never fully deducted from his salary in accordance with the company's policy especially when he would take goods in value greater than his salary which was \$300.00 weekly. Developing the point further, learned Counsel Mrs. Ali-Schneider said Mr. Joyce admitted that there were times when the value of the goods taken by him were greater than his wages and as such an accommodation would be reached between himself and Mr. Samuel for him to take the goods on credit. It must necessarily be inferred by the Court that at all times, Mr. Joyce was liable to re-pay the company the costs of any goods taken by him. Learned Counsel Mrs. Ali-Schneider asked the Court to review the statement exhibited, which demonstrate the deductions which Premier Beverages made for Mr. Joyce's salary, which caused a balance to remain in the sum of \$7,236.80, which identifies that the entire debt included in this figure, owed personally by Mr. Joyce was not diminished and/or paid in satisfaction.

[21] Mrs. Ali-Schneider said that in relation to the sum of \$5,114.70 representing the costs of goods delivered by Mr. Joyce to Ms. Gloria Simon, his mother, he never paid the company the said sum. Premier Beverages' records reveal that the said total comprises numerous invoices made out to his mother and which remain outstanding.

[22] **Unfair dismissal**

Learned Counsel Mrs. Ali-Schneider said that Mr. Joyce's employment was terminated on the 11th November 2005, by way of letter dated on even date. His employment contract stated that, "If at any time during his employment by the company, the Van Driver/Porter shall be guilty of any grave misconduct or shall neglect to give his whole time and personal attention to the said business, or shall fail to keep such records as the company shall from time to time require, then in such cases, the company may terminate the Van Driver/Porter's employment without any payment in lieu". Despite this, Mr. Joyce was provided with two letters of warnings. Mrs. Ali-Schneider invited the Court to find that the letters are evidence of the misconduct which both by virtue of contract and common law

the company was entitled to dismiss him. See section C59 of the Antigua Labour Code, Chapter 27 of the Laws of Antigua and Barbuda.

[23] Mrs. Ali-Schneider submitted that Mr. Joyce's counterclaim should be dismissed. There is nothing to suggest that Premier Beverages acted contrary to good industrial practice or breached the terms of the agreement with him, relative to his termination. However, were the Court to find otherwise, learned Counsel Mrs. Ali-Schneider urged the Court to award nominal damages, taking into consideration that Mr. Joyce was in the employ of Premier Beverages for only three years and five months earning \$300.00 per week. Mrs. Ali-Schneider asserts that he would not be entitled to damages in excess of \$1,800.00, which amount must be set off against any sums found due by Mr. Joyce to Premier Beverages. In addition, Section C41 of the Labour Code provides that severance is calculated by one day's pay for each month the employee worked.

[24] Finally, Mrs. Ali-Schneider invited the Court to give judgment in favour of Premier Beverages and dismiss Mr. Joyce's counterclaim with costs.

[25] **Ms. E Deniscia Thomas' submissions**

Monies outstanding

Learned Counsel Ms. Thomas said that it is accepted that it was an implied term of the employment contract that Mr. Joyce would take all reasonable and proper steps and exercise all due diligence to collect debts and to render a true and full account of such debts collected by him to Premier Beverages. Learned Counsel Ms. Thomas said that the evidence of all the witnesses in this claim is consistent in that Mr. Joyce's sale of goods and collection of credits was subject to a reconciliation process at the end of each day. Therefore, learned Counsel Ms. Thomas submitted that the first point in determining whether Mr. Joyce was in breach of his contract of employment is to examine the reconciliation process as it relates to him.

[26] As regards the implied term of the employment contract, it is accepted that credits issued by Mr. Joyce dating back to 2004 remained uncollected at the date that his employment

was terminated. However, Mr. Joyce contends that he was directed by Mr. Samuel to continue to extend credit to these customers notwithstanding their indebtedness to the company. In at least one instance, namely the account of Andrea Tonge, Mr. Joyce is adamant that Mr. Samuel told him that he had made alternative arrangements for collection of the outstanding debt directly from the customer.

[27] Learned Counsel Ms. Thomas submitted that Mr. Joyce's evidence should be accepted by the Court because the approval, denial, and by extension, the withdrawal of credit, was within Premier Beverages' power at all times. The witness statement of Anthony Bento, the General Manager of Premier Beverages states that the application for credit was "subject to Edmeade Samuel's approval". The customers listed in the particulars were still credit customers of Premier Beverages at the time that Mr. Joyce's services were terminated. As such, learned Counsel Ms. Thomas submitted that it was Mr. Samuel and/or Mr. Bento, rather than Mr. Joyce who facilitated the delinquency of customers by overriding the system and allowing for continued credit to these customers. In this regard, Mr. Joyce did not breach the terms of his employment and he cannot be liable for any loss that Premier Beverages might have been suffered on account of the outstanding credits.

[28] Premier Beverages presented evidence that there was an obligation on the part of Mr. Joyce to collect the outstanding credits, even after he had been demoted and this was no longer part of his duty. The evidence of both Mr. Joyce and Mr. Bento is that Premier Beverages offered to pay Mr. Joyce money to collect the debts outstanding after his employment was terminated. Learned Counsel Ms. Thomas stated that from the moment Mr. Joyce was demoted in September 2005 to the position of van sales assistant, the collection of outstanding credits issued by him became the responsibility of Premier Beverages and Mr. Joyce is not liable for the credits that remained uncollected.

[29] As to the invoices listed under the heading Edmeade Joyce, learned Counsel Ms. Thomas asked the Court to accept that items that were personally credited by him were paid for by way of deductions from his salary. Ms. Thomas drew the Court's attention to pages 101-109 of the core bundle of documents. This is the transaction sheet for Mr. Joyce. It is to be

noted that up to October 2005 when the van sales department was closed, the balance on Mr. Joyce's account was zero. Essentially, at the time of his termination he was not personally indebted to Premier Beverages.

[30] The balances listed under Mr. Joyce's name and under the heading van 2 represents a collection of sundry invoices and also copies of receipts that were issued to customers and which are marked as paid and for which Premier Beverages allege that no payments had been received. Mr. Joyce stated that he did not deal with some of the items placed against his name.

[31] Finally, learned Counsel Ms. Thomas submitted that the daily cash reconciliation reports, without the reconciliation report for stores, only indicates the amount of money collected on a particular day but it is not conclusive as to how much money was received from cash sales and how much was received from customers for payment on their credit account. Without this aspect of the reconciliation, it is not possible to say that the monies were never paid over to Premier Beverages. The Court is asked to consider the reconciliation process again, specifically, that all sales, credit and receipt books were handed over to Premier Beverages. These books were collected not just daily, but also, it was Mr. Joyce's evidence that when the books were finished; these books were handed over to Premier Beverages and a new book; cash, credit or receipt as the case may be, was issued to the van salesman by the accounts clerk. For these reasons, Ms. Thomas stated that the mere presentation of sundry receipts and invoices does not support the allegation that Mr. Joyce received monies for which he failed to give account. Ms. Thomas submitted that there is no evidence that Mr. Joyce received any monies on behalf of Premier Beverages for which he had not rendered a true account during his employment.

[32] **Unfair dismissal**

Learned Counsel Ms. Thomas argued that Premier Beverages' closure of the entire van sales department was effectively a blanket dismissal of all the staff in that department. Counsel referred the Court to **The Epicurean Limited and Madeline Taylor (2004) Civ App. No.4 of 2003 Antigua and Barbuda**. In that case, His Lordship Rawlins JA stated

that in order to justify a blanket dismissal, the employer had to prove to the satisfaction of the Court that:

- (a) it carried out a sufficiently thorough investigation;
- (b) as a result of such an investigation, it reasonably believed that more than one person could have committed the act that caused the loss to the claimant;
- (c) it acted reasonably in identifying the group of employees who could have committed the act that caused the loss;
- (d) the belief that it held that they were responsible was based on solid and sensible grounds.

[33] The evidence before the Court was that the investigation commenced after the department was closed. The evidence of Mr. Bento suggests that some cursory investigation was done prior to the closing of the department, but this was well below the requirements of the law. Further, as previously stated, there is no identifiable loss to Premier Beverages that can be attributable to Mr. Joyce. Learned Counsel Ms. Thomas therefore said that Premier Beverages failed to meet the criteria for a blanket dismissal and as such, they did not act reasonably in closing the department.

[34] The issue of unfair dismissal is governed by the Antigua and Barbuda Labour Code Cap 27 of the 1992 Revised Laws of Antigua and Barbuda, specifically section C 58(1) which outlines "good causes for dismissal" which would justify termination. Further, section C 10(1) provides that every employee is to be furnished with a reason for his dismissal at the time that he is dismissed or within 7 days thereafter. The letter of termination should not be considered at all as having provided the reasons for Mr. Joyce's termination. The evidence before the Court is that Mr. Joyce left Premier Beverages' premises on the day the van sales department was closed and returned twice thereafter, once in October with Mr. Wrigley George, the Union Representative, and the next in February of the following year, to confront Mr. Bento about certain accusations that he had heard made against him. The termination letter, dated November 2005, was never given to him on any of these occasions. He was only made aware of the reason for his dismissal by way of the defence

to counterclaim which was filed almost one year after the closing of the van sales department and thus the termination of Mr. Joyce's services. Learned Counsel Ms. Thomas submitted that this should be the end of the matter, and that the Court should find that no reasons were given for the termination of his employment and that his services were terminated unfairly.

[35] Counsel referred the Court to Section C. 59 of the Labour Code which provides:

- "(1) An employer may terminate the employment of an employee where the employee has been guilty of misconduct in or in relation to his employment so serious that the employer cannot reasonably be expected to take any course other than termination. Such misconduct includes, but is not limited to situations in which the employer has
 - (a) conducted himself in such a manner as to clearly demonstrate that the employment relationship cannot reasonably be expected to continue;

- (2) Where an employee is guilty of misconduct in or in relation to his employment that is not sufficient to permit his employer to terminate his employment under subsection (1) but is such that the employer cannot reasonably be expected to tolerate a repetition, the employer may give the employee a written warning which shall describe the misconduct in respect of which the warning is given and state the action the employer intends to take in the event of
 - (a) A repetition of the misconduct; or
 - (b) The commission of another misconduct which is as serious as the one in respect of which the written warning was given."

[36] Learned Counsel Ms. Thomas emphasised that Premier Beverages' lack of communication with Mr. Joyce regarding the allegations of misconduct against him is fatal. The main witnesses for Premier Beverages referred to warning letters being given to Mr. Joyce, however, both witnesses admitted that they did not personally give these letters to M. Joyce and they also admitted that they did not personally speak with him about their

concerns prior to his termination. Ms. Thomas maintained that Mr. Joyce's services were unfairly terminated and he is entitled to be compensated.

[37] The guiding principle behind the compensation of employees for breaches by the employer of the employment relationship is set out in C. 2(6) of the Labour Code which provides:

“C. 2 – It is hereby declared that the following expressions of public policy underlie and shall be used in the interpretation of the various provisions of this Division-

(6) As an individual works at a job he gradually earns an equity therein above and beyond his periodic wages, privileges, and allowances, and the maintenance of this equity requires protection.”

[38] Learned Counsel Ms. Thomas stated that generally, there are four head of damage under which compensation is awarded for unfair dismissal; (1) immediate loss of earnings; (2) loss by reason of the manner of dismissal; (3) future loss of earnings; (4) exemplary damages. See **Antigua Village Condo Corp v Jennifer Watt; Civ. App. No. 6 of 1992**. Counsel said that Mr. Joyce having failed to lead evidence in support of these heads of damage can only be compensated nominally. The recent decision of this Court in **Paulette Matthew v Antigua Port Authority Board of Commissioners (2008); Claim No: ANUHCV 2005/0129** places the amount of the nominal award at 3 months wages for each head of damage. However, given Mr. Joyce's celebrated achievements during his tenure, it is suggested that this particular defendant's equity in his job and the justice of the case, given the manner of his termination, warrants an award of twice times that amount. Mr. Joyce was employed from June 2002 to October 2005 at a basic wage of \$300.00 per week. In addition, he is entitled to receive his severance benefits.

[39] **Court's analysis and conclusions**

I have listened to the evidence adduced on behalf of Premier Beverages and that adduced on behalf of Mr. Joyce, and have also paid due regard to the closing submissions of learned Counsel. The Court observes that this case was particularly interesting, not least of which was due to the fact that based on the pleadings and witness statement, it was not readily apparent which of the debts fell into the categories to which learned Counsel for

Premier Beverages referred. However, it bears noting that as the evidence unfolded, it became somewhat clear as to which aspects of the claim Premier Beverages was alleging that Mr. Joyce had owed personally, as distinct from which part represented monies that he had collected on behalf of the company but had failed to account for.

[40] The difficulty was compounded by the quality of evidence adduced by Mr. Bento. Mr. Samuel struck me as a fairly straight forward and honest gentleman who simply told the Court exactly what he knew. He had no interest to serve. I am afraid that Ms. Samuel was not a very honest and straight forward witness; she painted a very poor picture, she was unreliable. Mr. Bento obviously had very little, if any, personal knowledge of the matter and his evidence attracted very little, if any weight. Mr. Joyce was not a very straight forward witness. In fact he gave the impression of being very canny and was not as candid with the Court as he could have been. I did not find him to be very credible. He was not a compelling witness.

[41] These are the Court's findings. Premier Beverages had originally employed Mr. Joyce as a van driver/porter. He was authorised to sell the company's beverages and wines on a cash or credit basis. It was his responsibility to collect the outstanding cash from the customers to whom he had sold the goods. From time to time, he also took several items for his personal use and that of his mother's, on credit. His salary was \$300.00 weekly and on occasion, this exceeded the credit he took. Initially, he was permitted to extend credit to his cash customers for a maximum period of 7 days. There is no doubt that some of the customers to whom he had extended credit were dilatory in liquidating their indebtedness. Mr. Samuel warned him about extending credit to some of his customers. He was eventually prohibited from extending any credit. Despite several requests of him to discontinue extending credit, he persisted to extend credit to customers and as a result the company responded by demoting him in September 2005. This did not prevent him from continuing to sell goods on credit. Premier Beverages continued to hemorrhage due to the relatively high outstanding collectables. He also credited goods for his mother and did not pay for them.

[42] With no resolution in sight, Premier Beverages ultimately closed the entire van sales department and terminated his employment without giving him any notice or payment in lieu of notice. Subsequent to the termination of his employment, the company offered to retain him, as the need arose, to collect the outstanding monies, but he refused. After his termination, and through Mr. Samuel's efforts, Premier Beverages was able to collect some of the outstanding monies that customers owed; however, there are still customers who are indebted to the company.

[43] It is imperative that I have regard to clause 7 of the contract dated the 24th June 2002, which states that Mr. Joyce:

"was responsible for the collection of money for cash on delivery, invoices as well as money given to them from customers for payment on their account. Any money missing or not accounted for at the end of the day will be deducted from the van driver/porter's remuneration".

[44] Lord Bingham of Cornhill stated in **Bank of Credit and Commerce International S.A. (in liq.) v Ali (No.1) [2001] UKHL 8; [2001 2 WLR 735:**

"In construing any contractual provision, the object of the Court is to give effect to what the contracting parties intended. To ascertain the intention of the parties the Court reads the terms of the contract as a whole, giving the words used their natural and ordinary meaning in the context of the agreement, the parties' relationship and all the relevant facts surrounding the transaction so far as known to the parties. To ascertain the parties' intentions the Court does not of course inquire into the parties' subjective states of mind but makes an objective judgment based on the materials already identified".

[45] In **Reardon Smith Line Ltd v Hansen-Tangen [1976] 3 All ER 570 p 574 c-h** Lord Wilberforce stated:

"No contracts are made in a vacuum: there is always a setting in which they have to be placed. The nature of what is legitimate to have regard to is usually described as "the surrounding circumstances" but this phrase is imprecise: it can

be illustrated but hardly defined. In a commercial contract it is certainly right that the Court should know the commercial purpose of the contract and this in turn presupposes knowledge of the genesis of the transaction, the background, the context, and market in which the parties are operating. When one speaks of intention of the parties to the contract, one is speaking objectively; the parties cannot themselves give direct evidence of what their intention was, and what must be ascertained is what is to be taken as the intention which reasonable people would have had if placed in the situation of the parties. Similarly, when one is speaking of aim, or object, or commercial purpose, one is speaking objectively of what reasonable persons would have in mind in the situation of the parties'.

[46] Following on from Lord Wilberforce's statement in **Reardon Smith Line Ltd v Hansen-Tangen** *ibid*, Lord Steyn in **Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd** [1997] 3 All ER 352 at 369 c-e advanced three propositions:

"Relying on the reasoning in Lord Wilberforce's speech in **Reardon Smith**, at 996D to 997D, three propositions can be formulated. First, in respect of contracts and contractual notices the contextual scene is always relevant. Secondly, what is admissible as a matter of the rules of evidence under this heading is what is arguably relevant. But admissibility is not the decisive matter. The real question is what evidence of surrounding circumstances may ultimately be allowed to influence the question of interpretation. That depends on what meanings the language read against the objective contextual scene will let in. Thirdly, the enquiry is objective: the question is what reasonable persons, circumstanced as the actual parties were, would have had in mind.

[47] Lord Hoffman in **Investors Compensation Scheme Ltd v West Bromwich Building Society** [1998] 1 All ER 98 at 114e-115d stated the principles of construction of commercial contractual documents that is now to be adopted:

"I think I should preface my explanation of my reasons with some general remarks about the principles by which contractual documents are nowadays construed. The principles may be summarized as follows:

- (1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.
- (2) The background was famously referred to by Lord Wilberforce as the “matrix of fact”, but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes the language of the document which would have been understood by a reasonable man.
- (3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.
- (4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning of the document is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax.

See (**Mannai Investments Co Ltd v Eagle Star Life Assurance Co Ltd. [1997] 2 WLR 945.**

- (5) The “rule” that words should be given their “natural and ordinary meaning” reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to attribute to the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in **The Antaios Compania Neviera S.A. v Salen Rederierna A.B. [1985] A.C. 191, 201:**

“If detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business commonsense, it must be made to yield to business commonsense”.

[48] Based on the course of dealings between the parties, the Court has to determine the effect of that clause 7 of the contract, the Court has to determine what the parties’ intention was, that is, what a reasonable person would conclude was their intention. Applying the above principles, it is clear that the intention of the parties was that Mr. Joyce was financially responsible for any credit issued to customers and which is outstanding.

[49] Premier Beverages has presented credible evidence in relation to the monies owed by customers to whom Mr. Joyce had extended the seven days credit that satisfies the Court, on a balance of probabilities that customers have monies outstanding to the company. It is apparent on the evidence that Mr. Joyce is liable to pay the sums that are owed by those customers. Therefore, the Court accepts learned Counsel Mrs. Ali-Schneider’s submissions on this aspect of the case. In addition, the Court is of the view that Premier Beverages has proven that Mr. Joyce extended credit to customers after he was advised not to do so. Even if the Court were to accept that Mr. Joyce did not receive the letter of

September 19th 2005, preventing him from extending credit, there is no doubt that he was told verbally and knew that he was debarred from issuing credit but that he still persisted. Accordingly, he is liable to compensate Premier Beverages for the monies outstanding by persons to whom he extended credit, after he was told not to do so. The Court accepts the evidence adduced by the company on this aspect of the case.

[50] **Monies owed personally**

I do not accept Mr. Joyce's evidence that he paid for all of the items that he took personally. His credits, for several weeks, were far more than his salary. Also, I believe that the company granted him several indulgences and did not deduct all of the monies that he owed the company. The Court has no doubt, as stated earlier, that Mr. Joyce is liable to liquidate the debts that he personally incurred and for which he has not paid; the total balance amounts to \$7,236.80.

[51] **Monies owed by Gloria Simon**

The Court has reviewed the evidence in the matter, including the documentary evidence produced by Premier Beverages and is satisfied that Mr. Joyce extended credit to his mother over the years. The Court is equally satisfied that he failed to liquidate this indebtedness and that he is liable to the company in the sum of \$5114.70, which represents the costs of goods that he sold to his mother on credit and which she has not paid.

[52] In view of the totality of circumstances, Premier Beverages has proven on a balance of probabilities that Mr. Joyce is liable to pay the sum claimed, namely \$20,017.37.

[53] **Counterclaim**

Unfair dismissal

On the counterclaim, the Court is of the view that when Premier Beverages terminated Mr. Joyce's services it was because there was a large sum of money outstanding. There is no doubt that the company closed the entire department out of frustration. The Court has no doubt that the company gave him no notice. This can hardly be acceptable. Premier

Beverages ought to have put the allegations to Mr. Joyce and given him the opportunity to respond. See Rawlins JA in **Epicurean Limited v Madeline Taylor** *ibid*.

- [54] C 56 of the Labour Code Cap 27 Laws of Antigua and Barbuda states that no employer shall dismiss any employee without just cause.
- [55] C 9 of the Labour Code empowers an employer, without advance notice, to terminate the employment of any person who has engaged in misconduct related to his work, within the limitation of C 59(1) or (2).
- [56] C 58(1) (a) of the Labour Code states that a dismissal shall not be unfair if the reason assigned by the employer therefore relates to misconduct. C 58 of the Labour Code states that a dismissal shall be unfair if the reason assigned by the employer therefore relates to misconduct by the employee on the job, within the limitations of section C 59(1) and (2). C 58(2) of the Labour Code provides the test for determining whether a dismissal was unfair.
- [57] C 59(1) (a) of the Labour Code provides that an employer may terminate the employment of an employee where the employee has been guilty of misconduct in or on relation to his employment, so serious that the employer cannot reasonably be expected to take any course other than termination.
- [58] Accordingly, there is no doubt that an employer may lawfully dismiss an employee for good cause. It is for the employer to prove the reasons for the dismissal. Not only must the employer prove the reason for the dismissal, but the employer has the obligation to satisfy the Court that a proper and thorough investigation was carried out prior to the termination of the employee's services. I find the principles stated in **Epicurean Limited v Madeline Taylor** *ibid* and **Antigua Village Condo Corp v Jennifer Watt** *ibid* very instructive. I can do no better than apply them to the case at bar.
- [59] The Court has no doubt that Mr. Joyce's services were summarily terminated without any proper investigation being carried out. In fact, it was only after his services were terminated

that the company sought to investigate his performance and learnt that he had acted improperly. Further, what is of concern is that prior to the investigation, Mr. Joyce was not told that his performance was under review and more importantly he was not given any opportunity to proffer any explanation for his actions. In a word, he was not provided with a hearing before his services were terminated. Also, of great significance is the fact that he was given no reason for the termination of his services.

[60] In view of the totality of circumstances, there is no doubt that Premier Beverages has unfairly dismissed Mr. Joyce and that he is entitled to compensation. It is the law that a claimant who is unfairly dismissed is entitled to compensation under four distinct heads of damages namely: (a) immediate loss of earnings, (b) loss by reason of the manner of dismissal, (c) future loss of earnings and (d) exemplary damage. Mr. Joyce has not provided the Court with any evidentiary basis on which to make such an award. I agree with Counsel therefore, that he is only entitled to receive nominal compensation. See **Antigua Village Condo Corp v Jennifer Watt** *ibid*.

[61] Taking into account the totality of circumstances, including his length of service, the Court is of the view that the compensation in the sum of \$7,000.00 is fair and just for his unfair dismissal.

[62] C 40 of the Labour Code Cap 27 Laws of Antigua and Barbuda provides that severance pay shall consist of at least one day's pay, at the employee's basic wage, for each month of his term of employment.

[63] The evidence is that Mr. Joyce was employed from June 2002 to October 2005 and earned \$300.00 per week. Therefore, he is entitled to receive severance which is calculated at one day's pay for each month he worked. This amounts to the sum of \$2,050.00.

[64] **Conclusion**

In view of the foregoing reasons, there would be judgment for Premier Beverages against Mr. Edmeade Joyce in the sum of \$20,017.37 together with prescribed costs, unless otherwise agreed.

[65] It is further ordered that on the counterclaim, there will be judgment for Mr. Edmeade Joyce against Premier Beverages Limited in the sum of \$9,050.00 together with prescribed costs, unless otherwise agreed.

[66] The Court gratefully acknowledges the assistance of learned Counsel.

Louise Esther Blenman
High Court Judge