

COMMONWEALTH OF DOMINICA
DOMHCV2010/0021

BETWEEN:

MARIETTE WARRINGTON
and
Claimant

DOMINICA BROADCASTING CORPORATION
THE ATTORNEY GENERAL
Defendants

Before: The Hon. Justice Brian Cottle

Appearances:

Mr. David Bruney for Claimant
Mr. Alick Lawrence for Defendants

2012: June 26th
2013: January 23rd

JUDGMENT

- [1] **COTTLE J:** The claimant was employed as General Manager of the first defendant. Her employment contract was initially for 3 years. At the expiry of that contract she was re-engaged on a 5 year contract which ended on 31st December 2008. Under the terms of the latter contract she was entitled to notify the first defendant whether she wished another contract. She gave the required notice but no new contract between the parties was executed.
- [2] Despite the absence of a written contract the claimant continued to perform the duties of General Manager of the first defendant. She received remuneration at the rate which obtained under the contract which ended in 2008. By letter dated 18th April 2010 the services of the claimant were terminated.
- [3] The claimant thereupon issued the present claim. She avers that she has been wrongfully dismissed from the position of General Manager. It is contended on behalf of the claimant, that after 31st December 2008 she continued in employment under an implied contract under the same

terms of the previous contract. That contract provided for termination by the first defendant upon the giving of six months notice or the payment of 6 months' salary. The claimant asserts that she is entitled to damages equal to 6 months salary as she was summarily dismissed without notice.

- [4] The first defendant is a statutory corporation established under the Dominica Broadcasting Corporation Act chap 45:06 of the Laws of the Commonwealth of Dominica. Section 6 (6) of the Act requires the Board of Directors of the first defendant to appoint a manager upon the advice of the Prime Minister. The claimant accepts that the Board could not appoint her as manager without the advice of the Prime Minister.
- [5] At the trial evidence was given by a former board member, Joel Joseph. He says that the board received the advice of the Prime Minister at the meeting with the board on 17th February 2009. Mr. Joseph's evidence does not accord with the minutes of the board meeting. Another board member Mr. Aurelius Jolly gave evidence that the Prime Minister merely said he would await formal communication on the matter. No such formal communication was ever sent from the Board.
- [6] Counsel for the defendants submits that this is a hurdle the claimant cannot surmount. For there to have been any implied contract the Board must have agreed with the claimant. Without the advice of the Prime Minister, the Board had no authority to appoint a manager. Any such purported appointment is thus void and of no legal effect as it is ultra vires. He cites Wade Administrative Law 8th edition at page 36:
- "Any administrative act or order which is ultra vires or outside jurisdiction is void in law, i.e deprived of legal effect. This is because in order to be valid it needs statutory authorization, and if it is not within the powers given by the Act, it has no legal leg to stand on. Once the court has declared that some administrative act is legally a nullity, the situation is as if nothing had happened."***
- [7] Counsel goes on to argue that where a supposed contract is void ab initio no enforceable obligation is ever created. See Guinness Mahon & Co Ltd v Kensington [1998] 2 All ER 272 at 291. It is difficult to deny the logic of this argument. The written contract expired in 2008. The Board never had the legal authority to enter into a new contract with the claimant. It is not open to the court to imply the existence of a contract which would have the Board acting contrary to the statute.
- [8] It follows that the claimant had no contract of employment and thus no issue of breach of contract arises. The claim is dismissed. The defendants filed a counterclaim for certain funds which were received by the claimant as staff advances and payment on her behalf of certain expenses related to her further education. The claimant admits these advances and payments in the sum of \$35,963.75 and \$27,336.00 respectively. The defendants at the trial abandoned the counterclaim for any amount in excess of what the claimant admits.
- [9] Judgment is given for the defendants on the counterclaim for \$61,299.75 together with prescribed costs on this sum.

Brian Cottle
High Court Judge