

THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV2014/0460

BETWEEN:

MILTON PRINGLE

Claimant

AND

[1] HON. MOLWYN JOSEPH
[2] THE HON. ATTORNEY GENERAL
[3] SEAN DESCHAMPS

Defendants

Appearances:

Justin Simon QC and Kwame Simon for the Claimant

Alicia Aska and Carla Brooks Harris for Defendants 1 and 2

No appearance for Defendant 3

2015: February 17
March 09

JUDGEMENT

[1] **Cottle, J.:** The third defendant was never served. He took no part in the trial and the matter proceeded against defendants 1 and 2.

[2] The claimant was chairman of the Board of Directors of a statutory corporation, the Mount St. Johns Medical Centre. He was appointed to that position by the Minister of Health for a three year term beginning 2nd February, 2012. In his affidavit in support of his fixed date claim form, he swears that he performed his duties until 30th June, 2014 when the locks of his office were changed without his prior knowledge or consent.

[3] A little background is useful to place this claim in context. General Elections were held in Antigua and Barbuda. These resulted in a change in government. The incoming administration requested the resignation of all the directors of government statutory corporations who had been appointed by the previous government.

The Facts

[4] Against this backdrop the claimant wrote to secretary of the Board of Directors of Mount St. Johns Medical Centre. He instructed the secretary to write to the Prime Minister and the Minister of Health advising them that the entire Board of Directors were resigning with immediate effect. This correspondence was sent by electronic mail on Friday 20th June, 2014. On the following day the secretary responded to the claimant. He advised that as each board member had been individually appointed, each should submit a letter of resignation to the new Minister of Health. The claimant wrote back to the secretary indicating that he would be guided by the advice. Later on the 21st June, 2014 the secretary again wrote to the claimant. He enclosed the relevant statutory provisions, sections 4(5) and 4(6) of The Mount St. John's Medical Centre Act, 2009, which read:

“(5) A member of the Board, other than the Chairman, may at any time resign his office by instrument in writing addressed to the Minister and transmitted through the Chairman.”

“(6) The Chairman may at any time resign his office by instrument in writing addressed to the Minister.”

- [5] The claimant responded on 22nd June, 2014. He again said he would be guided by the advice he had received and hoped the other Board members would also be guided by the recommendation of the secretary.
- [6] The claimant then forwarded the email exchange to the other Board members. He added "Team let's endeavor to present these letters to the Minister by Tuesday Wednesday this week."
- [7] Several Board members, including the secretary, acted as agreed and submitted letters of resignation. On the other hand, the claimant says he thought the matter over, sought legal advice and was been told that the call for the resignation of the board was based on convention and the resignation would have to be voluntary. The claimant then decided not to resign. He discussed his position with only one other Board member. That member nonetheless was content to submit a letter of resignation. The claimant did not communicate his change of heart to the other members of the Board or its secretary.
- [8] The secretary had in fact advised the Minister that the entire Board of Directors would be resigning. He did so as he had received the claimant's written assurances of his firm intent to demit office. When he was cross examined, the first defendant said he relied on the assurances emanating from the claimant that he and the entire board would be resigning with immediate effect. He accepted that he did not receive written correspondence from the claimant that he had resigned but expected that the formal letter would follow in due course. The Minister then appointed a new chairman and Board.
- [9] It is this unhappy state of affairs that caused the claimant to issue the present claim. He now seeks declarative relief as well as damages for the loss of remuneration for the unexpired period of his contractual employment.
- [10] The claimant was appointed by the Minister of Health. His appointment has not been revoked by the Minister as provided by the Act. He has not submitted a resignation in the manner provided by the Act. The Minister has appointed a new chairman and the claimant has been prevented from

performing the duties of chairman. The position of the claimant as outlined in the written submissions of his counsel is that he has been “unlawfully dismissed”.

[11] Counsel for the defendants dispute this. They say the claimant has abandoned his duties as chairman of the Board of Directors. They point to the actions of the claimant. He indicated in writing his intention to resign forthwith. He did not write to say that he had changed his mind. He performed no duties as chairman between 23rd June, 2014 and 30th June, 2014 when he says he discovered that the locks to the chairman’s office had been changed. He made no effort to get keys to the new locks as an indication that he was ready to perform. He wrote to one Wencia Brodie on 23rd June, 2014 indicating that “with the change of governance a new Board will be appointed shortly.” And the concerns of Ms. Brodie “will be referred to the new board for its consideration and action.”

[12] In all the circumstances, counsel submit, the Minister was justified in concluding that the claimant was no longer prepared to perform as chairman and so he was free to appoint a new chairman. They cite the decision in Huggins Neal Nicholas v Attorney General and The Teaching Service Commission (HCVAP2008/018) from St Lucia where the Court of Appeal adopted the following definition of abandonment of office:

“abandonment of a public office is a species of resignation, but differs from resignation in that resignation is a formal relinquishment, where abandonment is voluntary relinquishment through non-use. It is not wholly a matter of intention, but may result from complete abandonment of duties of such continuance that the law will infer a relinquishment. It must be total, and under such circumstances as clearly to indicate an absolute relinquishment and whether an officer has abandoned an office depends on his overt acts rather than declared intention. It implies non-users, but not non-users do not itself constitute abandonment. The failure to perform the duties pertaining to the office must be with actual or imputed intention on the part of the officer to abandon and relinquish the office.”

Discussion

- [13] In mature democracies, political appointees routinely offer their resignation whenever there is a change of administration. The electorate has given a mandate to a new government who must be permitted to design and execute its own policies. They must have confidence that those at the head of state entities changed with carrying out the chosen policies will act in accordance with the new political direction. It is no doubt considerations such as these that would have prompted the claimant to indicate that he and the rest of the Board of Mount St. John's Medical Centre appointed by the previous government would be resigning forthwith to allow the new government a *tabula rasa*.
- [14] After decades of independence, Caribbean states must be considered mature democracies.
- [15] Despite the absence of the legislatively prescribed letter of resignation I conclude that the claimant evinced an intention to resign. He was aware that his intent was communicated to the Minister. He was also aware that the Minister would act to appoint a new Board of Directors. In the peculiar circumstances of this case I conclude that the Minister was justified in treating the claimant as having abandoned his post.
- [16] The business of dealing with the public health is too important to allow the failure of the claimant to submit his promised letter of resignation to stymie the work of the Mount St. John's Medical Centre, the nation's main public hospital.
- [17] The position might have been different had the claimant taken the trouble to indicate the Minister or even the secretary of the Board and his fellow Board members that he had changed his mind. Instead, by his writings and actions he led the Minister to believe that he had left vacant the position of Chairman of the Board. It would now be inequitable to permit him to rely on the strict legal position after he has permitted the Minister to act on his representations and appoint a new chairman.

[18] I have arrived at the conclusion that this claim must fall on these two bases- firstly that the claimant, by his words and conduct, has clearly evinced his intention to abandon the position of chairman and has failed to communicate any subsequent change of heart to the Board or the Minister. I guide myself by the decision in the Huggins Neal Nicholas case as I must. The second reason for finding against the claimant is that he is the author of his own misfortune in that it is his conduct and representations transmitted to the Minister at his behest and relied on by the Minister, which prompted the appointment of a new chairman. It would be inequitable to allow him now to resile from his expressed position after the minister has acted in reliance on those representations. I therefore decline to grant the claimant the relief he has prayed and I dismiss the claim. As is usual in matters of this kind I make no order as to costs under CPR 2000 part 56.13(6).

Brian Cottle
High Court Judge