EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA

IN THE HIGH COURT OF JUSTICE
(CIVIL)

CLAIM NO. SLUHCV2012/0628

BETWEEN:

[1] **MARGARETTA FRANK**
[2] **WALTER LOUISY**
[3] **RAPHAEL FELIX**
[4] **JOHN HENRY**
[5] **TREVOR NICHOLAS**
[6] **JOHN LEONIE**
[7] **THERESA EMILIEN**
[8] **RUFINA PAUL trading as Rufina's Cleaning Services**
[9] **CHRISTINA BRETNEY trading as Bretney's Dynamic cleaning Services**
[10] **THOMAS HAYNES**
[11] **PAUL CELESTIN**
[12] **CHRISTOPHER JULIAN**
[13] **JOHN JEAN**
[14] **PETER JN. BAPTISTE**
[15] **FERGUS SANITOLE**

Claimants

and

CASTRIES CONSTITUENCY COUNCIL

Defendant

Before:
Ms. Agnes Actie — Master

Appearances:
Ms. Renee St. Rose of counsel for the defendant
Ms. Lydia Fessale for the claimants

2016: April 6; 11.

JUDGMENT

[1] **ACTIE, M.:** The matter before the court is an application for summary judgment filed by the claimants on 27th May 2015. The application is refused with costs in the cause for the reasons listed below.

Background Facts

[2] The facts as stated in the statement of case giving rise to the application before this court are succinctly stated as follows. On 1st September 2011, the claimants, except for the tenth (10th) claimant, entered into a partly oral and partly written contract for the provision of maintenance services to the Mayor and Citizens of Castries for a fix term of 5 years. The tenth claimant having entered into a similar contract commencing on 7th March 2011. By letter dated 23rd May 2012 the Acting Town Clerk, terminated the services of all the claimants. The salient part of the termination letter, for the purposes of the application, is reproduced as follows:

> "pursuant to the appointment of the new Counsel and an initiative taken to review existing contracts, a policy to restructuring the operations of Castries City Council has been adopted.
>
> In light of the forgoing, we regret to inform you that a decision has been taken to terminate your cleaning contract for the specified area…"

[3] The claimants, on 12th July 2012, filed a statement of claim and an amended claim on 12th February 2015 seeking special and general damages for breach of contract and other reliefs.

[4] By notice of application filed on 27th May 2015 the claimants seek an order of court for summary judgment together with costs and interests. The application states as follows that:

1. The defendant has no real prospect of successfully defending the claim;

2. The entirety of the defendant contains no allegation of fault against the claimants.
3. The defendant is in breach of section 129 of the **Labour Act** of Saint Lucia

Alternatively the claimants seek an order striking out the defence pursuant to CPR 26.3(1)(b)(c) and (d) with damages to be assessed.

[5] Counsel for the claimants avers that the parties entered into fixed term contracts for a 5 year period and as a result the contracts could not have been terminated before the expiration of the term, except for gross misconduct or by mutual agreement. Counsel in support cites **Selwin's Law of Employment**[1] where it is stated:

> "A fixed term contract is a contract of employment for a specified period of time. i.e. with a defined beginning and a defined end(**Wiltshire County Council V National Association of Teachers in Further and Higher Education and Guy** (1978) 77 LGR 272). As a general rule such a contract cannot be terminated before its expiry day except for gross misconduct or by mutual agreement. **(Lyritizis v Inmarsat- unreported)**. However a contract can still be for a fixed term if contains within it a provision enabling either side to terminate it on giving notice before the term expires(Allen v National Australia Group Ltd.[2004] IRLR 198,CA.)

Counsel contends that the termination letter did not contain any allegation of fault, gross misconduct neither was there any mutual agreement to terminate.

[6] Counsel contends that applying the authority as stated to the fact leads to the ineluctable conclusion that a fixed date contract is a contract of service and not a contract for services. Counsel avers that the claimants were employees of the

[1] 18th Edition by Astra Emir, published by Oxford University Press. Para 2. 127.

defendant and not independent contractors as alleged by the defendant. As employees, the claimants were protected by section 129 of the **Labour Act of Saint Lucia**[2] and could not have been terminated by a standard letter form. Counsel is of the view that the narrow issues in determining the application for summary judgment are whether the defence complies with CPR 10.5 and whether the termination of the contracts was in accordance with section 129 of the **Labour Act**.

[7] Counsel for the defendant on the other hand referred the court to the definition of employee in the **Labour Act** as follows:

> "employee" means a person who offers his or her services under a contract of employment, whether written, oral or implied, including a managerial employee, a dependent contractor, an apprentice, a part time employee, a casual worker, a homeworker, a temporary worker, a seasonal employee and a person who is remunerated by commission where that person is not an independent contractor and where appropriate, a former employee".

[8] Counsel avers that the contracts on which the claimants have presented their claims all contain a provision at paragraph 9 which reads as follows:

> "**STATUS OF CONTRACTOR**
> The **CONTRACTOR** is at all times and for all intents and purposes under this Agreement an independent **CONTRACTOR** and is not in any sense an agent, employee or servant of **COUNCIL**."

Consequently the claimants were not employees but independent contractors and cannot therefore rely on section 129 of the **Labour Act** which clearly contemplates the dismissal of employees. Counsel avers that the claimants' contention that the defendant must show fault or blame to terminate the contract is misguided.

[9] Counsel contends that the claimants were not at any time or at all employees of the defendant and as such the claimants cannot rely on section 129 of the **Labour Act.** Counsel avers that section 129 of the Act relates to the dismissal of an

[2] No. 37.

employee. Termination of a contract of employment under the section can only be undertaken where there are valid reasons for dismissal. Counsel avers that the provision is not applicable as the contracts on which the claimants presented their claim defined the contractors as independent contractors. In relation to CPR 10.5 counsel avers that the defendant in its defence contends that the written contracts were not validly existing as they were incomplete, vague and indeterminable. It is the pleading that that the contract did not (i) adequately identify the claimants,(ii) provide terms of payment to the claimants and (iii) did not identify the areas of the designated work by the claimants. It is the defence, among other things, that the contract was frustrated, void and unenforceable.

Law and Analysis

[10] CPR 15.2 provides that the court may give summary judgment on a claim or on a particular issue if it considers that the:-

(a) Claimant has no real prospect of succeeding on the claim or the issue or

(b) Defendant has no real prospect of successfully defending the claim or the issue

Rule 26.3 gives the court power to strike out the whole or part of statement of case if it discloses no reasonable ground for bringing or defending the claim.

[11] The Court of Appeal In **Saint Lucia Motor & General Insurance Co. Ltd. v Peterson Modeste**[3] states that summary judgment should only be granted by a court in cases where it is clear that a claim or (**defence**) on its face obviously cannot be sustained or is in some other way an abuse of the process of the court.

[12] Pereira C.J then George-Creque JA, at paragraph 21 stated:

[3] HCVAP2009/008 delivered on 11th January 2011.

> "[21] The principle distilled from these authorities by which a court must be guided may be stated thus: Summary Judgement should only be granted in cases where it is clear that a claim on its face obviously cannot be sustained, or in some other way is an abuse of the process of the court. What must be shown in the words of Lord Woolf in Swain v Hillman is that the claim or the defence has no "real" (i.e. realistic as opposed to a fanciful) prospect of success. It is not required that a substantial prospect of success be shown. Nor does it mean that the claim or defence is bound to fail at trial. From this it is to be seen that the court is not tasked with adopting a sterile approach but rather to consider the matter in the context of the pleadings and such evidence as there is before it and on that basis to determine whether, the claim or the defence has a real prospect of success. If at the end of the exercise the court arrives at the view that it would be difficult to see how the claimant or the defendant could establish its case then it is open to the court to enter summary judgment."

[13] The rule granting the court jurisdiction to enter summary judgment is designed to deal with cases which are not fit for trial. It is a discretionary power which the court must exercise when properly assessing the prospects of success of the relevant party. The court is not to conduct a mini trial in order to establish whether a summary disposal was appropriate[4].

[14] In **Bolton Pharmaceutical Co 100 Ltd. v Doncaster Pharmaceuticals Group Ltd and Others**[5]Mummery LJ stated:

> "17. It is well settled by the authorities that the court should exercise caution in granting summary judgment in certain kinds of case. The classic instance is where there are conflicts of fact on relevant issues, which have to be resolved before a judgment can be given (see Civil Procedure Vol 1 24.2.5). A mini-trial on the facts conducted under CPR Part 24 without having gone through normal pre-trial procedures must be avoided, as it runs a real risk of producing summary injustice.
>
> 18. In my judgment, the court should also hesitate about making a final decision without a trial where, even though there is no obvious conflict of fact at the time of the application, reasonable

[4] Swain v Hillman [2001] 1 All ER 91, CA
[5] [2006] EWCA Civ 661,

> grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case."

[15] Counsel for the claimant avers that the determination of this application turns on the narrow issue of whether the termination of the contracts was in breach of section 129 of the **Labour Act** and whether the defence complies with CPR 10.5.

[16] I am in agreement with counsel for the claimant that the claim before the court revolves on whether the claimants were the employees of the defendant or independent contractors in order to determine whether the termination was unlawful or otherwise as alleged. Counsel for the claimants contends that it was erroneous to have described the parties as independent contractors in the written contract as the parties by conduct were employees of the defendant. I am of the view that it is first necessary to make a determination whether the claimants were "employees"' or "independent contractors"'. However, I am of the considered view that this issue cannot be determined summarily at this point. This is determination to be made at trial as it appears from the pleadings that the employment contract did not form the entire contract between the parties. It is the claimants' pleadings that the contract was partly oral and partly written. Evidence will have to be advanced in order to assist the court in making a determination of the nature of the relationship which existed between the parties. .

[17] Cases relying on inferences of facts and cases with issues involving mix question of law and fact are inappropriate for summary judgment. In **I-Way Ltd v World Online Telecom Ltd**[6], the claimant sued to recover benefits it alleged were due under an oral variation of a written contract. The defendant resisted the claim relying on a clause of the written contract that there was to be no addition or amendment to the contract unless it was in writing and signed by both parties. An

[6] [2002] EWCA Civ 413.

application by the defendant for summary judgment was dismissed because there was no direct authority on the issue whether the parties could prevent oral variations of a contract.

[18] In **Lee Ting Sang v Chung Chi-Keung**[7] Lord Griffiths, delivering the judgment of the Board, said that the question whether or not a person is employed under a contract of service was often said to be a mixed question of fact and law. There might be exceptional cases where, because the relationship was entirely dependent upon the true construction of a written document, it is regarded as a question of law. But must be taken as firmly established that, where it had to be determined by an investigation an evaluation of the factual circumstances in which the work was performed, it was to be regarded by an appellate court as a question of fact to be determined by the trial court

[19] The issues to be determined in the present case comprise a mixture of facts and law which according to the authorities cannot be determined summarily. The facts before this court are not compelling to make a summary determination of the issues raised in the pleadings. The common law has developed tests to determine whether a person is employed under a contract of service or a contract for services in order to ascertain whether employees are 'servants' or 'independent contractors' in the traditional vocabulary of the law. Written contracts are the principal sources of information as to the nature of the contractual relationship between the parties. However a determination does not depend solely upon a construction of the written contracts but sometimes also requires an investigation and evaluation of the factual circumstances in which the work was performed. The court may decide to look at other factors to make a determination either towards a contract of service or an independent contractor to determine the applicability of Section 129 of the **Labour Act**. I am of the view that the issues in this case take

[7] [1990] 2 AC 374 at p 384E-385A.

the matter out of realm of summary judgment as contemplated by CPR 15.2. Summary judgment should be refused where the point requires protracted argument[8]. An application for summary judgment is not appropriate to resolve complex issues of facts and law, the determination of which necessitates a trial having regard to all the evidence.

[20] Accordingly applying the principles to the facts in this case I refuse the application for the summary judgment and consequently also dismiss the application to strike out the defence.

[21] The court notes that the claim was filed since 2012 but its advancement has been stultified by interlocutory applications and other extenuating circumstances. The parties should be given an opportunity to ventilate their cases in court.

[22] Accordingly it is hereby ordered as follows:

(1) The application for summary judgment and to strike out the defence is refused with costs in the cause.

(2) The matter is transferred to the Commercial Division for further case management directions for trial.

[23] I wish to thank counsel for their very helpful submissions.

Agnes Actie
Master

[8] Home and Overseas Insurance Co. Ltd. v Mentor Insurance Co. (UK) lt (19990) 1 WLR153.