EASTERN CARIBBEAN SUPREME COURT
ANTIGUA & BARBUDA

IN THE HIGH COURT OF JUSTICE

(CIVIL)

Claim Number: ANUHCV 2015/0913

BETWEEN:

ANTIGUA COMMERCIAL BANK

Claimant/Respondent

AND

DENISE ARMSTRONG

Defendant/Applicant

Appearances:

Kamilah Roberts for the Claimant/Respondent
Justin L. Simon Q.C along with Kwame L. Simon for the Defendant/Applicant

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2016: February 19, April 14; July 12

APPLICATION FOR THE STAY OF THE COURT'S JURISDICTION

[1] **GLASGOW, M:** The applicant, Ms. Armstrong approached the Industrial Court by way of reference dated December 30, 2015 seeking relief for '*constructive unfair dismissal*' by her employer, the Antigua Commercial Bank, the respondent herein. On January 13, 2016, Ms. Armstrong forwarded to the Industrial Court a memorandum in aid of the said reference. Her employer, the Antigua Commercial Bank (hereinafter ACB), had previously, on December 15, 2015 filed the extant claim against her in the High Court. In the High Court claim, ACB asked the court for several declarations regarding a purported agreement between the parties to terminate the employment relationship. ACB also sought an order from the High Court that Ms. Armstrong do

execute a '*voluntary separation agreement*' evidencing the terms on which the parties apparently parted ways. Ms. Armstrong filed an acknowledgment of service to the ACB claim on January 4, 2016. Ms. Armstrong filed the present application on January, 12, 2016 and filed amendments thereto on February 3, 2016. On the application, she seeks to invoke the High Court's discretionary power to stay its general jurisdiction to try ACB's claim while her reference to the Industrial Court proceeds. The grounds on which the High Court ought to stay its jurisdiction are –

(1) The issues before the High Court are in respect of the employment relationship between ACB and Ms. Armstrong;

(2) Ms. Armstrong had previously approached the hearing officer for conciliation pursuant to the Labour Code further to which conciliation she referred her employment issues to the Industrial Court for determination;

(3) ACB was aware of Ms. Armstrong's intention to approach the Industrial Court prior to ACB's filing of this claim. The Industrial Court has specific jurisdiction in employment matters and more available remedies in respect of the issues between the parties.

BACKGROUND

[2] Some of the history of the parties is relevant to an understanding of their present disagreement. A detailed recital of the parties' relations is helpfully set out in Ms. Armstrong's memorandum to the Industrial Court. Ms. Armstrong was employed with ACB on September 2, 1991 after which date she served in several posts until her termination on August 10, 2015. At the date of her termination, Ms. Armstrong occupied the office of Assistant General Manager – Credit and Control. She had served in this latter office for over ten years.

[3] On November 8, 2010, ACB's board of directors took a decision to identify the successor to its then general manager. Ms. Armstrong was informed that she was identified as the successor. She was informed that ACB would monitor her performance and that it would provide the necessary training to enable her to occupy the post at such time as the then occupant demitted office. Indeed Ms.

Armstrong attended and participated in meetings of the board, undertook '*psychometric tests*' attended ACB's credit committee meetings and performed special assignments including acting as general manager. It is also revealed that subsequent to being informed that she was the named successor, Ms. Armstrong attended meetings with the chairman and vice chairman of the board to ascertain her competence and suitability to fill the post for which she was nominated.

[4] The evidence does not expose any adverse events after Ms. Armstrong's nomination to fill the post of general manager. However, on July 3, 2014, almost three years after the board's decision, Ms. Armstrong was verbally informed by the chairman that the board did not find her suitable to fill the post due to '*inadequate credit skills and a lack of aggressiveness*'. Ms. Armstrong was further advised that the board had taken the further step of advertising for persons to fill the pending vacant office of general manager. The chairman informed her that she may apply for the advertised post notwithstanding the fact that the deadline had passed. The chairman assured Ms. Armstrong that some accommodation would be made to adjust the deadline for applications to facilitate her application should she indicate a desire to apply for the post. The discourse with the chairman further revealed that ACB had taken the decision to eliminate Ms. Armstrong's office of assistant general manager in a proposed process of organizational restructuring. The saga continued on April 27, 2015 when Ms. Armstrong was informed by email from ACB's corporate secretary that she should only attend board meetings if she was invited to the attend the same or she was specifically required to do so.

[5] Ms. Armstrong decided to complain to the board about the situation. In a letter dated June 16, 2015 addressed to ACB's corporate secretary, Ms. Armstrong outlined several issues regarding duties within her remit from which she had been excluded. She took the opportunity to point out instances of hostility directed at her from the general manager. The general manager responded to the letter. In his response he stated that Ms. Armstrong's '*failures*' had led to loss of business and warned that ACB would consider disciplinary action against Ms. Armstrong if the alleged misconduct was repeated. Ms. Armstrong answered by way of letter to the general manager in which she, in detailed fashion, categorically repudiated his assertions. Ms. Armstrong then sought to invoke the bank's dispute resolution mechanism by making an official complaint to the board seeking its

intervention with regards to what she considered the general manager's unfair treatment as set out in his letter which she referred to as his '*warning letter*'.

[6] On June 29, 2015 the board met with Ms. Armstrong at her instance to discuss the then prevailing state of affairs. At the end of the discussions, the board requested that Ms. Armstrong provide some suggested recourse for the treatment allegedly meted out to her. A day later, June 30, 2015, ACB received a response from Ms. Armstrong in which two possible solutions were proposed –

(1) appoint her as general manager in keeping with the November 2010 board decision;
(2) release her from her present employment with full benefits to include –
    i. full severance;
    ii. full pension as if she had retired at age 60;
    iii. continued participation ACB's group health insurance scheme;
    iv. loss of benefits for six years at a monthly rate of $4280.00

[7] ACB answered by way of letter dated July 22, 2015 by informing Ms. Armstrong that it treated with her June 30, 2015 letter as a request to terminate her employment with the bank. The terms of her offer were countered with the bank's offer of full severance, three month's salary and continued group health insurance coverage for one year. Ms. Armstrong was asked to refer her request for full pension benefits to the bank's board of trustees which ACB advised was the entity responsible for determining pension entitlement. Ms. Armstrong followed suit with a letter dated July 27, 2015 accepting the offer and by letter dated July 29, 2015 she asked the board of trustees to consider her request for full pension benefits calculated at '*45% of my salary with no penalties applied*'. There was some back and forth between the trustees and Ms. Armstrong but ultimately nothing about pension benefits was resolved. Meantime, ACB took the view that relations were essentially at an end by consensus between the parties. Accordingly, it wrote to Ms. Armstrong informing her that *'by your acceptance dated July 27, 2015 of a voluntary separation arrangement, the Bank is of the position that all relevant matters within our purview have been satisfactorily handled.*[1]'

[1] Letter dated August 7, 2015

[8] Further to ACB's letter, a document titled '*Release and Final Settlement Agreement*' (hereinafter the release document) was sent to Ms. Armstrong for her signature. The document stated, among other things, that Ms. Armstrong accepted

> *" The sum of $693,096.55 and $57,927.00 (before tax) ... as full and final compensation and settlement of any and all claims I have and may have against the Bank for my services as an employee of the bank ... and hereby fully and finally release and discharge the Bank from any and all actions, contracts and covenants, whether express or implied, claims and demands which I may have, may now have or may have in any way related to my employment tenure at the Bank."*

[9] Ms. Armstrong refused to sign the release document since she argues that the issue of pension benefits has not been resolved. ACB argues the contrary. Its position is that it has done all in its power to actualize the agreement finalized by Ms. Armstrong's letter of acceptance dated July 27, 2015. ACB has not paid any of the money for severance based on its insistence that Ms. Armstrong sign the release document. Thereafter followed Ms. Armstrong's complaint to the labor department, the suit filed herein by ACB and Ms. Armstrong's reference to the Industrial Court in which she seeks relief for constructive dismissal that is '*unfair, harsh and oppressive*'. Ms. Armstrong, for the several reasons stated on her application for a stay urges the High Court to stay its proceedings so as to permit the parties' disputes to be ventilated and resolved in the Industrial Court. This court is asked to find that the Industrial Court is the appropriate forum to determine the contention between the parties.

The legal arguments

Ms. Armstrong's arguments

[10] Ms. Armstrong's position is uncomplicated. It is conceded that the High Court has wide and original jurisdiction to adjudicate on all matters of a civil nature. However, her view is that the court, in some cases, may refuse to engage this jurisdiction where it is appropriate that another court hears and determines the case. Ms. Armstrong submits **Spiliada Maritime Corp v Cansulex Ltd, The**

Spiliada[2] as authority for the proposition that the concept of forums non conveniens should apply under domestic law in the same manner that it applies in cases concerning the jurisdiction of a foreign court. On the specific issue of unfair dismissal, Ms. Armstrong submits that this concept prevails in Antigua by statutory imposition. While a claim for unfair dismissal can be adjudicated in the High Court, the court is confined to prescribing remedies defined by the common law. It is said that the Industrial Court is empowered to order reinstatement or reemployment, exemplary damages, compensation and damages where the dismissal is '*harsh and oppressive or not in accordance with the principles of good industrial practice*'[3]. The Industrial Court is given wide powers to make these sorts of orders. Section 10 (3) of the Industrial Court Act, Cap.214 (hereinafter 'the Act') is cited as authority for this view.

[11] Ms. Armstrong then distinguishes her action in the Industrial Court from ACB's claim in the High Court. ACB's claim is said to be centred on the several correspondence flowing back and forth between the parties which, in ACB's assessment, led to a voluntary parting of ways. ACB is asking the court to find that Ms. Armstrong has breached this voluntary agreement and order her to sign the release document. Ms. Armstrong says her reference to the Industrial Court goes much further than the High Court claim. She pursues a reference related to the long term employment relationship between the parties, her legitimate expectation to be appointed general manager, ACB's subsequent treatment of her and the alleged constructive or unfair dismissal that followed. Hearing the matter in the Industrial Court will afford a fuller ventilation of the underlying quarrels, save costs and allow for wider remedies if she is ultimately successful. Finally, a cautionary note is sounded that if the High Court does not stay the proceedings and ACB cannot show on its claim that there is a binding agreement between the parties, Ms. Armstrong will be left with no choice but to pursue a constructive unfair dismissal reference to the Industrial Court. Such belated recourse will add to the litigation costs and extend the period within which the present dispute could be resolved.

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[2] *[1986] 3All ER 843*

[3] Paragraph 4 of Ms. Armstrong's submission filed on February 23, 2016

ACB's arguments

[12] ACB accepts the proposition that the jurisdiction of the Industrial Court extends to complaints of unfair dismissal as was stated by our Court of Appeal in the case of **Universal Caribbean Establishment v James Harrison**[4]. The court in that case and in the case of **Farrell v Attorney General of Antigua and Barbuda**[5] ruled that that the Industrial Court is not a court of superior jurisdiction. The cases describe the Industrial Court as a creature of statute circumscribed by its statutory mandate. ACB's position on whether or not the High Court should stay the exercise of its jurisdiction is also fairly straightforward. The bank contends that its claim before the High Court touch and concern the '*formation, terms and effect of a voluntary separation agreement and ... does not fall comfortably within the specific jurisdiction of the Industrial Court.*'[6] ACB argues that '*the relevant terms of the Voluntary Separation Agreement*' (hereinafter the 'separation agreement') were agreed between the parties. The outstanding request for pension did not fit within what was agreed since Ms. Armstrong's pension request must be resolved with the board of trustees. The only matter remaining was the release document which Ms. Armstrong was obligated to sign. Her refusal to do so amounted to a breach of the separation agreement. She was in fact trying to reopen the negotiations between the parties after unequivocally signaling her acceptance of the terms of the separation agreement. The High Court retains its original jurisdiction to hear all claims arising from this employment contract.

[13] ACB concedes that there is an overlap between the proceedings in both courts as the factual contentions concern an employment relationship. But the bank draws a distinction between the nature of the two actions and the reliefs sought. It is said that the High Court action concerns a breach of contract claim which seeks declaratory relief and an order for specific performance while the Industrial Court reference seeks compensation for constructive unfair dismissal. ACB submits that it has a *'legitimate claim'*, and Ms. Armstrong must '*present strong and cogent reasons to justify a refusal by the High Court to exercise its jurisdiction...*'[7]

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[4] [1997] ECSCJ No. 29
[5] (1977) 27 W.I.R 377
[6] Paragraph 7 of ACB's submissions filed on April 4, 2016
[7] Ibid at paragraph 8

[14] In making that determination, the court is to consider all the circumstances. ACB relies on the factors highlighted in the cases **First Castle Electronics Limited v West**[8] , **Bowater plc (Appellants) v Charlwood (Respondent)**[9] and **Mindimaxnox LLP v Gover and another**[10] . In this regard, the court is to consider factors such as convenience, expedition, degree of overlap between the proceedings, complexity of the proceedings, potential prejudice to either party, financial value of the claim, the desirability of the application of strict rules of evidence, the nature and object of the respective proceedings and the potential for the findings of the Industrial Court to embarrass the High Court. Finally, recourse must be had to the overall interests of justice.

[15] ACB addresses Ms. Armstrong specific submissions regarding constructive dismissal, the appropriate forum for the resolution of what is termed '*mixed issues of contract law and unfair dismissal*', whether wider remedies are available in the Industrial Court, the priority of High Court actions and the timing of the conciliation proceedings and the Industrial Court reference.

[16] In respect of constructive dismissal, ACB says that the court must look to the merits of the assertion that Ms. Armstrong was constructively dismissed since it would be inconsistent with the overriding objective to deal with cases justly if this court is to decline its jurisdiction in favour of the Industrial Court when the proceedings before that court lack merit or have no realistic prospect of succeeding. ACB challenges the contention that Ms. Armstrong's reference has set out a valid complaint of constructive dismissal. ACB relies on the well-known test set out in **Western Excavating (EEC) Ltd v Sharp**[11] to argue that the employee has the right to treat himself as discharged from his employment only in the instances where the employer is guilty of repudiatory conduct which went to the root of the contract or which showed that the employer no longer wished to be bound by the essential terms of the employment agreement. Further, it is submitted that the court must look to section C58 of the Antigua and Barbuda Labour Code to ascertain whether sufficient facts exist to demonstrate an unfair dismissal. In this regard, the test under the section is whether the employer acted reasonably or unreasonably in terminating the employee's service.

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[8] [1989] ICR 72
[9] [1991] IRLR 340
[10] UKEAT/0225/10/DA
[11] [1978] 1ALL ER 713

[17] ACB's argument is that neither test assists Ms. Armstrong to show that there is a legal or factual basis for her protest that she was either constructively or unfairly dismissed. ACB repeats the factual matrix set out above to demonstrate that Ms. Armstrong willingly and unequivocally entered into the separation agreement to terminate her services with the bank. There is nothing to show that the bank acted unreasonably or that she was put in a position to treat with the employment contract as if she was discharged therefrom due to any act of the bank that went to the root of the said contract or due to any acts tending to show that the bank no longer intended to be bound by the essential terms of the agreement. As far as ACB is concerned, settling of pension benefits was the only issue that remained for Ms. Armstrong and this was a matter that was not within its remit. Ms. Armstrong is aware that the request for pension has to be resolved elsewhere and indeed has sought to pursue the trustees as was necessary. Therefore there could be no argument as to constructive or unfair dismissal. This indeed was a contract dispute of which the High Court was properly seised.

[18] In respect of Ms. Armstrong's argument that the Industrial Court is better seised of the joint issues of contract and unfair dismissal, ACB's response is that the High Court judges are reposed with '*a wealth of knowledge and experience in the application of contract law principles*'.[12] ACB casts the Industrial Court as a tribunal made up attorneys and lay persons who '*cannot be said to be better seised of contract law issues than a judge of the High Court.*'[13] ACB also posits that Ms. Armstrong may file counterclaim on the High Court claim to seek relief for constructive dismissal. As such there is not much merit in her submission that she would be left with no other choice but to return to the Industrial Court if ACB is unsuccessful on its action for breach of contract.

[19] ACB also refutes the view that the Industrial Court has a wider jurisdiction in terms of the relief it may award in cases of unfair dismissal. ACB cites the case of **Paulette Mathew v Antigua and Barbuda Port Authority**[14] for the view that the jurisdiction of the High Court to grant relief in such cases is as wide as the jurisdiction of the Industrial Court. It is said that *'there is nothing in the statute or in the common law which excludes the High Court from applying the same principles for*

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[12] *Supra, note 6 at para. 18*
[13] ibid
[14] [2008]ECSCJ No. 78

the award of damages in unfair dismissal claims as the Industrial Court.'[15] Ms. Armstrong's position is cast as limiting the powers of the High Court. Regarding situations where the two jurisdictions are said to 'overlap', ACB submits that it is preferable for the High Court proceedings to be concluded prior to the proceedings in the Industrial Court especially where the High Court proceedings were commenced first. The Industrial Court ought not to make findings factual or legal that tended to '*embarrass the High Court*'. Ceding jurisdiction to the High Court in cases of '*overlap*' operates as a compelling reason for refusing a stay. The case of **Mindimaxnox LLP v Gover** was cited as authority for this proposition. In any event ACB was not bound to follow Ms. Armstrong's path of seeking redress in the Industrial Court particularly where ACB was convinced that the Industrial Court was not the appropriate forum for ventilating the parties' grievances. ACB's right to seek vindication of its right were not diminished or extinguished by Ms. Armstrong's prior attempts at conciliation or reference to the Industrial Court.

Analysis and conclusion

The extent of the jurisdiction of the industrial court and the High Court in matters of constructive and unfair dismissal

[20] The principle is by now well established in Antigua and Barbuda that the Industrial Court is not a superior court of record but a court confined to its statutory mandate and jurisdiction as prescribed by its enabling Act. This was the ruling of our Court of Appeal since 1990 in the case of **Liat (1974) Ltd v Tomlinson**. [16] The Court of Appeal has also ruled on the question of whether the statutory jurisdiction of the court permits it to adjudicate on and grant appropriate remedies in cases of unfair dismissal. In **Universal Caribbean Establishment v James Harrison** the question arose as to whether the Industrial Court has jurisdiction to determine issues of unfair dismissal and to order the payment of compensation or whether its jurisdiction was limited to disposing of trade disputes as defined in the Antigua and Barbuda Labor Code. The court considered, in particular, sections 7 and 10 of the Act of which the relevant provisions state

[15] Supra, note 6 at para. 37
[16] ANUHCVAP 1990/0020

7. (1) The Court shall have jurisdiction -

(a) to hear and determine trade disputes referred to it under this Act;

(b) to enjoin a trade union or other organisation of employees or other persons or an employer from taking or continuing industrial action;

(c) to hear and determine any complaints brought in accordance with this Act as well as such matters as may from time to time be referred to it under this Act.

7. (2) The Court shall have power -

(a) to punish summarily with a fine any person who commits a contempt in the presence or hearing of the Court when sitting, but such fine shall in no case exceed two thousand dollars, and shall be payable within a definite time, being not less than fourteen days from the imposition thereof;

(b) to impose fines for a contempt consisting of failure to comply with its orders or awards but such fines shall not exceed ten thousand dollars and shall be payable within a definite time being not less than twenty-one days from the imposition thereof.

7. (3) Proceedings for contempt for failing to comply with an order or award of the Court shall be commenced by an application by the person or organisation for whose benefit the order or award was made, and shall be in such form as may be prescribed. The application shall be served on the person who will be affected thereby not less than three clear days before the hearing thereof.

7. (4) Where it has come to the knowledge of the Court that any person bound by an order made under section 21 (1) is, or has been in breach thereof, the Court may summon such person to appear before it to answer for his contempt.

10. (1) The Court may in relation to any matter before it -
(a) make an order or award (including a provisional or interim order or award) relating to any or all of the matters in dispute or give a direction in pursuance of the hearing or determination;
(b) without prejudice to and in addition to its powers under section 7 (2), award compensation on complaints brought and proved before it by a party for whose benefit the order or award was made regarding any breach or non-observance of an order or award or any term thereof (other

than an order or award for the payment of damages or compensation).
10. (2) The Court shall make no order as to costs in any dispute before it, unless for exceptional reasons the Court considers it proper to order otherwise, and the Court of Appeal shall in disposing of any appeal brought to it from the Court make no order as to costs, unless for exceptional reasons the Court of Appeal considers it proper to order otherwise.

10. (3) Notwithstanding anything in this Act or in any other rule of law to the contrary, the Court in the exercise of its powers shall -
(a) make such order or award in relation to a dispute before it as it considers fair and just, having regard to the interests of the persons immediately concerned and the community as a whole;
(b) act in accordance with equity, good conscience and the substantial merits of the case before it. Having regard to the principles and practices of good industrial relations and, in particular, the Antigua and Barbuda Labour Code. [Cap. 27.]

10. (4) Notwithstanding any rule of law to the contrary, but subject to subsections (5) and (6), in addition to its jurisdiction and powers under this Part, the Court may, in any dispute concerning the dismissal of an employee, order the re-employment or re-instatement (in his former or a similar position) of any employee, subject to such conditions as the Court thinks fit to impose, or the payment of compensation or damages whether or not in lieu of such reemployment or re-instatement, or the payment of exemplary damages in lieu of such re-employment or re-instatement.

10. (5) An order under subsection (4) may be made where, in the opinion of the Court, an employee has been dismissed in circumstances that are harsh and oppressive or not in accordance with the principles of good industrial relations practice; and in the case of an order for compensation or damages, the Court in making an assessment thereon shall not be bound to follow any rule of law for the assessment of compensation or damages and the Court may make an assessment that is in its opinion fair and appropriate.

10. (6) The opinion of the Court as to whether an employee has been dismissed in circumstances that are hersh and oppressive or not in accordance with the principles of good industrial relations practice and any order for compensation or damages including the assessment thereof made pursuant to sub-section (5) shall not be challenged, appealed against, reviewed, quashed or called in question in any court on any account whatever.

10. (7) Where, in any proceedings for the non-observance of an order or award or the interpretation or application of a collective agreement, it appears to the Court that an employee of the employer has not been paid an amount to which he is entitled under such an order or award or such an agreement the Court, in addition to any other order, may order the employer to pay the employee the amount to which he is entitled and any such amount shall be deemed to be damages and be recoverable in the manner provided by section 13

[21] Byron CJ writing for the Court of Appeal stated that the provisions of section 7(1) of the Act were sufficiently expansive to empower the Industrial Court to hear matters other than trade disputes. Regarding the court's power to deliberate on complaints of unfair dismissal, his Lordship stated the following after specifically considering the terms of sections 7(1), 10(4) to 10(6) of the Act,

> *" The powers conferred on the Industrial Court by these subsections, while they can be used in trade disputes, are not limited in any way to such matters. For example, the provision on 10(4), giving the court power to order compensation in 'any trade dispute concerning the dismissal of an employee' is not limited to those disputes which can lead to a strike or lockout. Similarly, although the dismissal of an employee in circumstances that are harsh and oppressive may lead to a strike, Sections 10(5) and 10(6) contain no limitation of application. These sub-sections empower the court in any case where the dismissal of an employee is accompanied by the circumstances therein described. In my view these subsections are not capable of an interpretation which limits them to trade disputes. I would therefore hold, that these provisions clearly indicate that the individual access to the court is not limited to matters of the determination of trade disputes under section 7(1)(a).*
>
> *The natural result of that view is* ***the jurisdiction conferred by section 7(1)(c) empowers the court to hear any disputes concerning the dismissal of an employee...***
>
> *I would therefore conclude that section 7(1)(c) gives jurisdiction to hear cases for unfair dismissal in cases other than trade disputes".* (Bold emphasis mine)

[22] The above cited extract from the Court of Appeal's explanation of the terms of the Act advises that the jurisdiction of the Industrial Court not only includes the right to hear matters of unfair dismissal but '*any dispute concerning the dismissal of an employee'*. This interpretation of the remit of the industrial court would, by obvious inference, include the jurisdiction to consider references on the grounds of alleged constructive dismissal. In terms of remedies, the Court of Appeal found that in granting relief, the Industrial Court is empowered to consider the equity that the employee has acquired by virtue of his employment and the various factors set out in section 10(3) of the Act to arrive at a fair outcome.

[23] Ms. Armstrong has expressed concern that the High Court is limited in its jurisdiction to consider the underlying issues and especially remedies for unfair dismissal as opposed to the Industrial Court which is conferred with the wide statutory powers set out both in the Act and the Labour Code. No authority is provided by Ms. Armstrong for this proposition. However, I cannot but agree with ACB that there could not be a more definitive response to Ms. Armstrong's view than Harris J's exposition of the law in the **Paulette Mathew**[17] case. This is what Harris J had to say on the matter

> *"The Industrial Court Act Cap. 214 provides at S.10 that the Industrial Court in awarding damages can be guided by certain principles which I note are peculiar to the industrial relations environment and relationships, within that environment.*
>
> *The Claimant contends that the High Court is guided by the same principles in awarding damages as the Industrial Court in matters arising out of the Labour Code. That is, that damages are awarded on the basis of four (4) established heads. The claimant submits that the breadth of the Heads of Damages in these matters is influenced primarily by the policy considerations of the Labour Code, buttressed by S.10 of the Industrial Court Act and the Act as a whole and industrial practice and convention in Antigua and Barbuda. The relevant policy consideration of the Labour Code is set out in C2(6) of the Labour Code (Cap 27) and reads as follows:*
>
> *C2. 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.*
>
> *The Defendant on the other hand contends that the court is bound by the ordinary principles of award of damages for breach of contract.*
>
> *The High Court is a court of unlimited jurisdiction and unless expressly or by necessary implication excluded from applying the same principles for the award of damages in matters arising out of the Labour Code, I am inclined to the view that I can apply the four (4) heads of damage to this matter as would the Industrial Court.*
> *To hold otherwise would be (i) to pare down the powers of the High Court of Justice where no clear statutory intent to that end is evident and (ii) to deprive a litigant of his legitimate expected entitlements under the law and the practice and conventions in relation to*

[17] [2008]ECSCJ No. 78

Industrial matters merely by his opting to pursue his case in this constitutionally protected court of unlimited jurisdiction."

[24] The short answer to Ms. Armstrong's complaint on the High Court's jurisdiction to grant relief is that the High Court is reposed with the authority to deal with all aspects of her complaint about the manner in which the employment relationship ended with ACB. While, as was found by Byron CJ in **Universal Caribbean Establishment,** the Industrial Court is empowered to deal with all cases touching and concerning the manner of the dismissal of an employee, there is no basis for saying that the High Court is not well placed to hear and determine those very matters and offer the precise remedies as the Industrial Court or even greater recompense as the occasion may warrant. As Harris J correctly pointed out in the **Paulette Mathew** case there must some expressed warrant of restriction on the High Court's unlimited jurisdiction in such cases.

ACB's distinction between the nature of the claim in the two courts

[25] As is the case with Ms. Armstrong, ACB has expressed its own reservations about what the two proceedings represent and the ability of the Industrial Court to consider the contract issues outlined in the proceedings filed in the High Court. ACB's view extensively set out above can be shortly repeated as proposing that the Industrial Court cannot hear matters of mere breach of contract. ACB's argument is that its claim in the High Court is that Ms. Armstrong voluntarily entered the separation agreement. All that it seeks to do is to have the High Court assess the terms of that agreement and find that Ms. Armstrong is obliged to comply with its expressed or implied requirements, in particular the implied requirement to sign the release documents. I have some strong reservations about this posture and I must, with all deference to the dexterity with which it was presented, find against ACB on this point. The entire foundation of the present controversy between the parties is underpinned by the complaint about the manner in which their relationship came to an end. This much is conceded by ACB. But it says that the manner in which the parties ended the employment agreement is about a contract and not about unfair or constructive dismissal.

[26] It is pellucid that Ms. Armstrong agreed that the parties must part ways in the manner stated on the separation agreement. But two matters stand out in that regard. One, as far as Ms. Armstrong is concerned the relationship could not be dissolved without the resolution of her pension benefits.

ACB agrees but says that it sent her elsewhere to resolve this issue. Ms. Armstrong takes the view that, on her interpretation of things, the bank cannot adopt this approach to what she views as a critical aspect of her ability to satisfactorily conclude a voluntary separation from her employment. If I may be permitted to interpolate, I think that any rational employee would adopt this very approach to termination benefits. Evidently, ACB would take the view that the question of pension benefits is a done deal once it had sent Ms. Armstrong to pursue the board of trustees. For my part, I have formed the view that whether or not Ms. Armstrong or the bank is correct on their respective positions about which entity is to consider the retirement benefits is indeed a live factual issue and brings into sharp focus all the complaints about the manner in which the employment relationship was terminated.

[27] This leads me to the second matter. Ms. Armstrong submits that this is not a bare contract dispute since all her complaints regarding how the parties got to this point demonstrate that she was being unfairly and constructively removed from office. ACB says that there is no constructive dismissal since Ms. Armstrong cannot sustain a claim that she was put in a position to treat with the employment contract as if she was discharged therefrom due to any act of the bank that went to the root of the said contract or due to acts tending to show that the bank no longer intended to be bound by the essential terms of the employment agreement. Added to the foregoing is the assertion that there is no evidence that the bank acted unreasonably so as to ground any action for unfair dismissal. I would say for my part that the very fact that Ms. Armstrong has raised these issues makes them a source of contention. ACB is fixated on the end of the parties' journey when Ms. Armstrong said, in essence, that she agreed that the parties must part ways in the manner proposed. But I cannot see that she is precluded from saying that the manner of parting ways was arrived at in a way that was unfair and amounted to constructive dismissal based on all that transpired previous to her making that declaration.

[28] Having looked at all the material presented, I would also find that the entire course of dealings between the parties does not indicate that this was an amicable or straightforward parting of the ways. Without deciding the issues of whether Ms. Armstrong was unfairly or constructively removed from office, my view is that an employee cannot be said to be making spurious or vapid or frivolous claim of unfair or constructive dismissal if it is proved that that his or her termination was a culmination of the series of events identified by Ms. Armstrong. I am impressed that, if proven, the

series of events that led to the termination, can establish a claim for constructive or unfair dismissal. As I have found above, the High Court has the authority and the jurisdiction to consider all these matters when deliberating on the issues before it on the breach of contract claim. For that reason while I disagree with ACB's view that the nature of its High Court claim is limited to remedies for a breach of contract, I would agree with its argument that the High Court is well placed to deal with all disputes about the manner in which the employment relationship was terminated. Certainly, Ms. Armstrong can plead on her defence, all issues concerning how the separation agreement arose and whether indeed the circumstances exposed facts showing that the termination of her employment was procured unfairly or that she constructively dismissed. Alternatively, as was accurately posited by ACB, it is open to her raise these causes of action on a counterclaim.

Should the High Court stay its hearing while the Industrial Court reference proceeds?

[29] Having found that –

(1) The disagreement between the parties centres on the manner in which their employment relationship ended, more particularly, whether the separation agreement that acknowledged the termination was arrived at in manner suggesting unfair or constructive dismissal; and

(2) That the High Court and the Industrial Court are individually enabled with the jurisdiction to adjudicate on the roots causes of the present discord, it remains to determine whether the High Court ought to stay its jurisdiction while the reference to the Industrial Court proceeds.

[30] The parties have each proffered their views on the applicable authorities. For Ms. Armstrong it is submitted that the **Spiliada** and forums non conveniens principles will suffice to demonstrate that the reference to the Industrial Court ought to proceed before the High Court claim is concluded. She concedes that forums non conveniens arguments are more properly suited to a case where the court is considering whether to stay its proceedings in favour of a foreign court deemed a more

appropriate forum. However it is said that the principles are applicable to this situation. No basis has been provided for this contention[18]. ACB has provided the court with the cases of cases of **First Castle Electronics Limited v West[19]** , **Bowater plc (Appellants) v Charlwood (Respondent)[20]** and **Mindimaxnox LLP v Gover and another[21].** These are decisions emanating from the appellate jurisdiction of a United Kingdom industrial tribunal where those industrial courts had to decide whether to stay their own proceedings while claims previously filed, concurrently filed or later filed in the high court were being conducted. The guidelines set out in those cases are quite reasonable but I have not been presented with any authority for the view that the High Court should, without more, adopt those guidelines when deliberating on whether it should stay its proceedings in favor of proceedings in the Industrial Court.

The High Court's power to stay its jurisdiction

[31] Halsbury's Laws of England describes the High Court's jurisdiction to grant a stay thusly

> *"A stay of proceedings arises under an order of the court which puts a stop or 'stay' on the further conduct of the proceedings in that court at the stage which they have then reached, so that the parties are precluded thereafter from taking any further step in the proceedings. The object of the order is to avoid the trial or hearing of the claim taking place,* ***where the court thinks it is just and convenient to make the order,*** *to prevent undue prejudice being occasioned to the opposite party or to prevent the abuse of process.*
>
> *The court's power to stay proceedings may be exercised under particular statutory provisions, or under the Civil Procedure Rules or under the court's inherent jurisdiction, or under one or all of these powers, since they are cumulative, not exclusive, in their operation.[22]"*

[32] In terms of the inherent jurisdiction , Lord Collins said the following in **Texan Management Limited et al v Pacific Electric Wire & Cable Company Ltd et al[23]**

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[18] The parties were permitted to file additional submissions on this issue. Further submissions were received on June 29, 2016. Valiant and as impressive as those efforts were, I do not believe that the further submissions carried matters much further.
[19] [1989] ICR 72
[20] [1991] IRLR 340
[21] UKEAT/0225/10/DA
[22] Halsbury's Laws of England, 5th Edition, para.1039
[23] [2009] UKPC Case Ref 46

"As early as 1823 Sir John Leach V-C said that "Courts of Equity have an inherent jurisdiction to stay the proceedings in any cause and in any stage of the cause ...": Praed v Hull (1823) 1 Simons & Stuart 331, at 332. The inherent jurisdiction to stay proceedings was expressly preserved by the Judicature Act 1873, section 24(5) and later by the Supreme Court of Judicature (Consolidation) Act 1925, section 41, and now by section 49(3) of the Supreme Court Act 1981. Section 49(3), like its predecessors, provides that nothing in the Act affects the power of the court to stay any proceedings. West Indies Associated States (Supreme Court) Act 1969, section 18, is in the same terms.[24]"

At paragraph 54 of **Texan Management** his Lordship stated the following quoted from **Rockware Glass Ltd v MacShannon** , *'the courts would never stay an action lightly but only if convinced that justice required that it be stayed.'*

[33] The CPR also recites the High Court's power to grant a stay in fit cases. CPR 9.7A and 26.2(q) state

9.7A (1) A defendant who contends that the court should not exercise its jurisdiction in respect of any proceedings may apply to the court for a stay and a declaration to that effect.

26.1(2) Except where these rules provide otherwise, the court may –
(q) stay the whole or part of any proceedings generally or until a specified date or event

[34] In determining whether the justice of the case dictates that the High Court exercises its discretion to stay a matter, it would seem to me that the court must ultimately determine what is fair and just in all the circumstances giving due regard to such matters as convenience, expedition and costs. In this context, the deliberate establishment of an Industrial Court in Antigua and Barbuda with a specific mandate dictated to adjudicating in cases of industrial relations disputes including any disputes surrounding the termination of the services of an employee can only lead me to conclude that the process of that court is uniquely positioned to produce a speedier and more costs efficient result in matters of this nature. Indeed the policy considerations underlying the establishment of the court were commented on by Byron CJ in this manner

[24] Section 18 of Eastern Caribbean Supreme Court CAP. 143 of the laws of Antigua and Barbuda

> " *giving every employee access to a Court, for speedy and effective resolution of employment disputes is a socially important development which would seem more amenable to national policy initiatives...*[25] "

[35] The facts of this case also propel me to the conclusion that I have formed. As I have found above, all the issues in this case are concerned with the manner in which Ms. Armstrong was terminated from her job. It cannot be correct for ACB to separate the issues and focus solely on the end of that journey with an argument that these proceedings are about a contract. Ms. Armstrong is not disputing the contract; she is proposing that the Industrial Court's examines at all that transpired, including the separation agreement, to ascertain whether there was constructive and/or unfair dismissal.

[36] There resides in Antigua and Barbuda, a comprehensive and functional machinery to manage most, if not all aspects of the industrial relations landscape. The Industrial Court stands as part of the holistic industrial relations system and it is well placed and properly facilitated with the powers to consider and resolve contentions and disputations that may arise from to time within that industrial relation sphere. As I have found above, the Industrial Court's processes can be engaged and a resolution can evidently be achieved with greater dispatch in matters falling within its remit than if those very issues were placed before the High Court for the simple reason that the jurisdiction of the Industrial Court is more singularly focused. The costs of pursuing a reference in the Industrial Court are also markedly less than the costs of pursuing the same issues in the High Court. There can be no universal rule that all claims of this sort ought to be tried in the Industrial Court and the High Court retains the jurisdiction to hear all cases properly engaging the halls of justice. However, in fitting cases where it is found that the justice of the matter so indicates, the High Court ought to stay the hearing of matters in favor of the proceedings instituted before the Industrial Court on the very issues. There can also be no denying the fact that the High Court will not lightly stay a matter that is brought before it. However, I find that, for all the reasons set out herein above, the justice of these proceedings dictates that the claim in the High Court is stayed pending the outcome of the reference to the Industrial Court.

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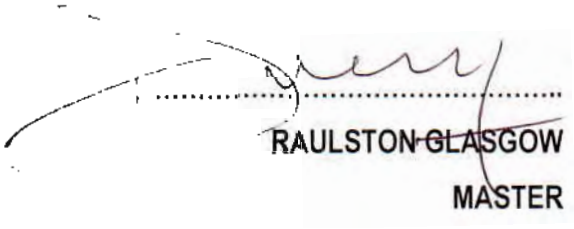
[25] Universal Caribbean Establishment v James Harrison [1997] E.C.L.R 350

[37] The applicant is therefore granted a stay of these proceedings pending the outcome of the reference to the Industrial Court. The parties will each bear their own costs on this application. I thank counsel for their well-presented arguments.



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