

EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

ANTIGUA AND BARBUDA

ANUHCVP2015/0008

BETWEEN:

MILTON PRINGLE

Appellant

and

THE HON. MOWLYN JOSEPH

First Respondent

and

THE HON. ATTORNEY GENERAL

Second Respondent

and

SEAN DESCHAMPS

Third Respondent

Before:

The Hon. Mr. Davidson Kelvin Baptiste

Justice of Appeal

The Hon. Mr. Mario Michel

Justice of Appeal

The Hon. Mr. Reginald Armour

Justice of Appeal [Ag.]

Appearances:

Mr. Justin Simon, QC for the Appellant with him Mr. Kwame L. Simon
Mr. Anthony W. Astaphan, SC for the 1st and 2nd Respondents with
him Ms. Alicia Aska

2017: March 3;
July 24.

Civil Appeal – Resignation of Board Chairman of the Mount St. John Medical Centre – Section 4 of the Mount St. John Medical Centre Act, 2009 – Whether the judge erred in law in holding that non-receipt by the Minister of Health of an instrument in writing from the appellant indicating his resignation was unnecessary in determining whether he had in fact resigned – Whether the judge erred in law in holding that the appellant had abandoned his post – Whether the judge erred in law and in fact in treating email exchanges between the appellant and the Board Secretary as sufficient indication to the Minister that the appellant had resigned despite no direct communication to the Minister by the appellant

The appellant was appointed by the then Minister of Health to the office of Chairman of the Board of Directors of Mount St. John's Medical Centre for a three year term effective 2nd February 2012. The appointment was made pursuant to section 4(1) of the Mount St. John's Medical Centre Act, 2009.

The Antigua and Barbuda General Election held on 12th June 2014 resulted in the formation of a new government with Mr. Molwyn Joseph ("the Minister") being sworn in as the new Minister of Health. In emails between the appellant and Mr. Martin Camacho ("Mr. Camacho"), Secretary to the Board, it was indicated that the incoming administration requested the resignation of members of all Statutory Boards; that the appellant asked Mr. Camacho to prepare a letter for his signature addressed to the Hon. Prime Minister and copied to the Minister advising of the resignation of all members of the Board; that Mr. Camacho advised that each Board Member should submit his/her letter of resignation rather than a collective notice of resignation; that the relevant statutory provisions were quoted by Mr. Camacho for the guidance of all members along with a recommendation that each letter of resignation be given to the appellant for forwarding to the Minister; the appellant indicated that he was so guided and that all members should act accordingly; and that the appellant exhorted Board Members to have their letters of resignation presented to the Minister on 24th or 25th June 2014.

Despite the appellant's intimation to Mr. Camacho that he would resign, after reading the relevant statutory provisions and obtaining legal advice, he did not follow through with his intimation. On June 30th 2014, the appellant reported for work where he found the locks to the doors of his office changed and his security access and computer credentials revoked with immediate effect on the instructions of the Minister. On 15th July 2014, the Minister appointed a new Board Chairman.

The appellant brought a claim in the High Court against the respondents seeking declaratory and other relief. The appellant contended, among other things, that the Minister constructively revoked his appointment as Chairman of the Board, contrary to the provisions of the Mount St. Johns Medical Centre Act 2009; and the decision was arbitrary, in breach of natural justice, void and of no legal effect.

The learned trial judge found, *inter alia*, that despite the absence of the legislatively prescribed letter of resignation, the appellant showed an intention to resign and that his writings and actions led the Minister to believe that he had vacated the position of Board Chairman and had failed to communicate any subsequent change of heart to the Board or the Minister. The Minister was therefore justified in treating the appellant as having abandoned his post. Aggrieved by the decision of the learned judge, the appellant appealed to this Court.

Held: allowing the appeal, setting aside the decision of the learned judge, awarding damages of \$45,000.00 and prescribed costs in the court below and two-thirds on appeal, that:

1. The **Mount St. John's Medical Centre Act, 2009** does not support, and is inconsistent with any suggestion that the Chairman of the Board has to demit

office upon a change of Government. The Act clearly provides for the tenure of the Chairman – not less than three or more than five years; it provides eligibility for re-appointment; it provides the manner in which the Chairman is to resign, and specifies the circumstances under which the appointment can be revoked.

Section 4(2), (5), (6), (11) and (12) of the **Mount St. John's Medical Centre Act, 2009** applied.

2. The framers of the **Mount St. John's Medical Centre Act, 2009** clearly spelt out that resignation by the Chairman of the Board is effected by instrument in writing addressed to the Minister. The appellant never communicated to the Minister his intention to resign. There is no evidence which refutes the appellant's claim that he did not write or tender a resignation letter to the Minister. While it is true that in the emails between the appellant and Mr. Camacho the appellant had initially expressed an intention to resign and had encouraged members of the Board to do so, it is clear that upon apprising himself of the law and upon seeking legal advice, he had resiled from that position. In that regard, evincing an intention to resign could not be translated into a resignation. Therefore the learned judge erred in holding that the non-receipt by the Minister of an instrument in writing by the appellant indicating his resignation was unnecessary in determining whether he had in fact resigned.

Section 4(6) of the **Mount St. John's Medical Centre Act, 2009** applied.

3. In order to satisfy the test for abandonment of office, 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. Given the facts of this case, there is no basis to say that the appellant had abandoned his office of Chairman of the Board. The appellant's initial reaction to the call for the resignation of all members of Statutory Boards was followed by his intentional failure to resign, based upon his subsequent reading of the Act; his understanding of which was confirmed by his legal counsel. The appellant performed his duties faithfully until 30th June 2014 when his physical and security access as well as his computer credentials were revoked with immediate effect. Given these circumstances, it cannot be said that the appellant had abandoned his office, but rather pointed to a constructive revocation of the appellant's appointment. Therefore, the learned judge erred in law in holding that the appellant had abandoned his post.

Section 4 of the **Mount St. John's Medical Centre Act, 2009** applied; **Huggins Neal Nicholas v The Attorney General and The Teaching Service Commission** HCVAP2008/018 (delivered 22nd March 2008, unreported) distinguished.

REASONS FOR DECISION

- [1] **BAPTISTE, JA:** On 2nd March 2017, the Court allowed the appellant's appeal against the orders of a judge dismissing his claim against the respondents that his appointment as Chairman of the Mount St. John's Medical Centre was wrongfully revoked by the Minister of Health. These are the reasons for the decision.
- [2] The appellant was appointed by the Minister of Health to the office of Chairman of the Board of Directors of Mount St. John's Medical Centre with effect from 2nd February 2012 for a term of three years. The appointment was made pursuant to the Minister of Health's powers under section 4(1) of the **Mount St. John's Medical Centre Act, 2009**.¹
- [3] Following the General Election in the State of Antigua and Barbuda on 12th June 2014, a new government emerged, with Mr. Molwyn Joseph ("the Minister") being sworn in as the new Minister of Health. There were email exchanges between the appellant as Chairman of the Board of Directors and Martin Camacho ("Mr. Camacho") as Secretary to the Board. These emails indicated that there was a publicly announced request by the new government for the resignation of members of all Statutory Boards; that the appellant asked Mr. Camacho to prepare a letter for his signature addressed to the Hon. Prime Minister and copied to the Minister advising of the resignation of all members of the Board; that Mr. Camacho advised that each Board Member should submit his/her letter of resignation rather than a collective notice of resignation; that the relevant statutory provisions were quoted by Mr. Camacho for the guidance of all members along with a recommendation that each letter of resignation be given to the appellant for forwarding to the Minister; the appellant indicated that he was so guided and that all members should act accordingly; and that the appellant exhorted Board Members to have their letters of resignation presented to the Minister on 24th or 25th June 2014.

¹ No. 2 of 2009, Revised Laws of Antigua and Barbuda, 1992.

- [4] On June 30th 2014, the appellant found the locks to the doors of his office changed and his security access and computer credentials revoked with immediate effect on the instructions of the Minister. By email dated 1st July 2014, the appellant was requested by the Chief Executive Officer to “arrange for the delivery of your hospital phone, badge, keys, cards or any other paraphernalia given to you by the hospital”. On 15th July 2014, the Minister appointed a new Board Chairman.
- [5] Despite indicating to the secretary of the Board an intimation to resign, the appellant did not follow through with his intimation. The appellant’s evidence is that upon reading the whole of section 4 of the **Mount St. John’s Medical Centre Act, 2009**, he formed the opinion that there was no statutory requirement for him to resign simply because there was a change in government, as the Board Members do not serve at the pleasure of the Minister; that having obtained legal advice, which confirmed his understanding of the law, he decided not to tender his resignation.
- [6] The appellant brought a claim in the High Court against the respondents seeking declaratory and other relief. The appellant contended, among other things, that the Minister constructively revoked his appointment as Chairman of the Board, contrary to the provisions of the **Mount St. Johns Medical Centre Act 2009**; and the decision was arbitrary, in breach of natural justice, void and of no legal effect.
- [7] The learned trial judge found that despite the absence of the legislatively prescribed letter of resignation, the appellant evinced an intention to resign and that by his writings and actions he led the Minister to believe that he had vacated the position of Chairman of the Board and had failed to communicate any subsequent change of heart to the Board or the Minister. The Minister was therefore justified in treating the appellant as having abandoned his post. The learned judge also found that the appellant was the author of his own misfortune in that it was his conduct and representation transmitted to the Minister at his behest and relied on by the Minister which prompted the appointment of a new chairman.

The learned judge had also stated that ‘in mature democracies political appointees routinely offer their resignation whenever there is a change of administration.’

[8] The main issues arising on the appeal are whether the learned judge erred in law in holding that the non-receipt by the Minister of an instrument in writing by the appellant indicating his resignation as Chairman of the Board was unnecessary in determining whether the appellant had in fact resigned; whether the judge erred in law in holding that the appellant had abandoned his post as Chairman; and whether the judge erred in law and in fact in treating the email exchanges between the appellant and the Board Secretary as a sufficient indication to the Minister that the appellant had vacated his post as Chairman of the Board, notwithstanding the absence of any direct communication to the Minister by the appellant.

[9] In considering this appeal, it would be useful to begin with a consideration of the statutory framework. The prevailing legislation is the **Mount St. John’s Medical Centre Act, 2009**. Section 4(2) provides that: ‘subject to subsection 11, a member of the Board shall hold office for a period of not less than three nor more than five years from the date of his appointment, and shall be eligible for re-appointment’. Section 4(5) ordains that: ‘[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’. Section (4)(6) states: ‘[t]he Chairman may at any time resign his office by instrument in writing addressed to the Minister’. Section 4(12) enacts that ‘[t]he Minister may, at any time, revoke the appointment of the Chairman or the Deputy Chairman on any of the grounds specified in subsection (11).’

[10] The grounds of revocation provided for in sub-section 11 are:

- (a) if the member is permanently incapable for any reason of performing his functions as a member;
- (b) if the member has been absent from three consecutive meetings of the Board other than by reason of leave of absence granted under

subsection (9);

(c) if the member fails to disclose his interest in accordance with section 6;

(d) if the member is an undischarged bankrupt;

(e) if the member has been convicted of an indictable offence.

[11] The statutory framework does not support, and is certainly inconsistent with any suggestion that the Chairman of the Board has to demit office upon a change of Government. The Act clearly provides for the tenure of the Chairman – not less than three or more than five years; it provides eligibility for re-appointment; it provides the manner in which the Chairman is to resign, and specifies the circumstances under which the appointment can be revoked. None of the above speaks to a change of Government.

[12] It is clear from the affidavits of the appellant and Mr. Camacho and their respective evidence that a letter of resignation was neither prepared nor dispatched by the appellant to the Minister. The appellant sought legal advice which confirmed his understanding of the law. There is no evidence which refutes the appellant's claim that he did not write a resignation letter or that he did not tender a resignation letter to the Minister. In fact, the Minister's evidence is that 'he was advised by the Board's Secretary and verily believe that the claimant had resigned as Chairman of the Board', and further that it was his understanding 'that the Board of the Mount Hope Medical Centre including [Appellant] made a decision to resign their positions on the Board ...'.

[13] In the absence of the statutorily required method of resignation, was the Minister legally correct to assume that the appellant had resigned as Chairman of the Board? Mr. Simon, QC accepted that there was an initial indication on the appellant's part to Mr. Camacho that he would resign; in fact, he had suggested a

collective resignation. The appellant acknowledged receiving Mr. Camacho's advice that each Board Member should individually resign, and that he subsequently requested the resignation of each member accordingly. Mr. Simon, QC submitted, however, that that was insufficient, in the absence of a resignation letter from the appellant, for the Minister to act as though he had in fact resigned; nor could that correspondence indicate that the appellant had abandoned his duties as Chairman. Mr. Simon, QC also pointed out that the evidence is clear and admitted by the Minister, that the appellant was not the only Board Member not to resign his position.

[14] Mr. Astaphan, SC argued on behalf of the respondents that the evidence established a clear intention by the appellant to resign, and that he in fact resigned or relinquished and/or abandoned his position as Chairman of the Board. In these circumstances, the Minister was justified in appointing a new Chairman of the Board. This is demonstrated by the letter dated 23rd June 2014 from the appellant to one Wencia Brodie who had written to the Board upon some issues. The appellant indicated in the letter that the Government had changed and a new Board of Directors would be appointed shortly and that Board would address her issues. Further, the appellant never communicated to the Minister or the Secretary of the Board that he wished to retract his decision to resign as Chairman of the Board, and therefore was willing and ready to continue as Chairman. The Minister had a duty and responsibility to act on the appellant's expression of his intention to resign and ensure that the Board was always functional and operational.

[15] In developing that theme, Mr. Astaphan, SC submitted that the Chairman could legitimately resign without a letter of resignation as long as his action is unequivocal. Mr. Astaphan, SC posited that if the Chairman expressly declares his possible intention to resign and that is conveyed to the Minister, the Minister is entitled to act on that intention to resign, unless it is brought to his attention that the member does not want to resign. Mr. Astaphan, SC also submitted that a

letter of resignation was not mandatory in all the circumstances. Mr. Camacho's evidence was that he had indicated to the Minister the content of the appellant's email and that he expected the letter of resignation to come. Mr. Astaphan, SC stated that the Minister was consistent in cross-examination that a resignation was made and all that he expected was the administrative step of a letter. Mr. Astaphan, SC submitted that there were unequivocal expressions of intent on the basis of which the Minister could legitimately act.

- [16] In my judgment, the framers of the Act clearly spelt out in section 4(6) the manner in which the Chairman of the Board is to resign. There is no reason to regard the procedure set out therein as a mere administrative formality. Resignation is effected by instrument in writing addressed to the Minister. It is not disputed that this was never done. The appellant never communicated to the Minister his intention to resign. The appellant never wrote to the Minister indicating that he had resigned. The appellant did not have any communication with the Minister on the issue of his resignation. In short, the appellant did not resign.
- [17] While it is true that the appellant had initially expressed an intention to resign and had encouraged members of the Board to do so, it is clear that upon apprising himself of the law and upon seeking legal advice, he had resiled from that position. In that regard, evincing an intention to resign could not be translated into a resignation. While the appellant could be justly criticised for not communicating to Mr. Camacho his change of mind, it must be noted that this was a case where all parties were seized of the provisions of the Act pertaining to resignation by the Chairman of the Board. I agree with Mr. Simon, QC that the email exchanges were internal office communication and could not form a basis for the Minister coming to a conclusion that the appellant had resigned, particularly in light of section 4(6) of the Act.
- [18] Likewise, the learned judge's conclusion on the issue of abandonment cannot be sustained. The respondents submitted that on the basis of the principles stated in

Huggins Neal Nicholas v the Attorney General and The Teaching Service Commission,² the appellant had in fact abandoned his position as Chairman of the Board. In the **Huggins Nicholas** case, the Court of Appeal utilised the definition of abandonment of office as stated in **Black's Law Dictionary**,³ where it said that:

“abandonment of a public office is a species of resignation, but differs from resignation in that resignation is a formal 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-user, but non-user 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.”

[19] Given the facts of this case, there is no basis to say that the appellant had abandoned his office of Chairman of the Board. The appellant's first reaction to the call for the resignation of all members of Statutory Boards was followed by his intentional failure to resign, based upon his subsequent reading of the Act; his understanding of which was confirmed by his legal counsel. As the appellant stated in his affidavit evidence, he performed his duties faithfully until 30th June 2014 when the locks to his office were changed on the instructions of the Minister and/or the third respondent. On that very day, an email was circulated to members of staff by Sean DesChamps, the Chief Executive Officer of the Board, revoking 'all access/computer credentials of the appellant with immediate effect', further to discussions with the Minister. On 1st July 2014, the appellant was asked to deliver all paraphernalia given to him by the Medical Centre. Given these circumstances it cannot be said that the appellant had abandoned his office. The circumstances pointed to a constructive revocation of the appellant's appointment. In my judgment, nothing in the appellant's conduct remotely goes towards satisfying the test of abandonment. For all of the reasons given, the appeal was

² SLUHC VAP2008/018 (delivered 22nd March 2008, unreported).

³ (14th edn., Thomson West 1951).

allowed.

[20] The appellant claimed damages for loss of remuneration, exemplary damages on the **Rookes v Barnard**⁴ principle and damages for diminution of the reputation, plus costs of this appeal and in the court below. Mr. Simon, QC submitted that the object of an award of exemplary damages would be to punish or deter the Minister, given the fact that his conduct as a senior government official was intimidatory, arrogant, oppressive, arbitrary and unlawful. Mr. Astaphan, SC submitted that the appellant ought not to be awarded any damages as he led or misled the respondents to believe that he would resign or had resigned. Alternatively, the appellant ought to mitigate his loss and ought not to be awarded more than 3 to 6 months in lieu of notice.

[21] This is not a case where it is appropriate to award exemplary damages. I am not of the view that the facts of this case amount to “oppressive, arbitrary or unconstitutional action by the servants of government” so as to satisfy the relevant category giving rise to exemplary damages as defined by Lord Devlin in **Rookes v Barnard** and approved in **Broome v Cassell**.⁵ The appellant is however entitled to loss of remuneration. The appellant’s evidence was that as Chairman of the Board he received a monthly sum of \$5,000.00 and that he had a legitimate expectation of receiving that monthly sum for the period July 1st 2014 to March 31st 2015. The appellant is awarded damages of \$45,000.00 and costs both on the appeal and in the court below.

⁴ [1964] AC 1129.

⁵ [1972] AC 1027.

[22] It is ordered that the appeal is allowed. The decision of the learned judge is set aside. The appellant is awarded damages of \$45,000.00 and prescribed costs in the court below and two thirds on appeal.

I concur.
Mario Michel
Justice of Appeal

I concur.
Reginald Armour
Justice of Appeal [Ag.]

By the Court

Chief Registrar