

EASTERN CARIBBEAN SUPREME COURT
TERRITORY OF ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2014/0188

BETWEEN:

PAUL SKINNER

Claimant

and

WEST INDIES CRICKET BOARD

Defendant

Appearances:

Ms. E. Ann Henry Q.C and with her Ms. Mandy Thomas for the Claimant
Mr. Kendrickson Kentish and with him Ms. Cherise Archibald.

2018: April 30th
November 19th

ORAL JUDGMENT

- [1] WILKINSON J.: Mr. Paul Skinner (Mr. Skinner) filed his Claim Form and Statement of Claim on 1st April 2014. The claim sought payment by the West Indies Cricket Board (WICB) for a number of matters consequent upon his employment, termination and repatriation/relocation to Barbados. The WICB filed its defence on 2nd July 2014, and therein denied the payments sought.
- [2] When the matter came on for trial, Counsel for the Parties informed the Court that they had achieved consent on all of the items save one, that being the WICB liability for US\$23,695.52 of the repatriation/relocation costs.

Issue

[3] The sole issue is whether the WICB is liable to pay the disputed sum of US\$23,695.52, this being import taxes and duties assessed at Barbados under the term of the employment contract which **provided that the WICB would pay “all reasonable relocation expenses” to and from Antigua.**

[4] The WICB is a professional body representing 6 cricket territories, namely Barbados, Guyana, Jamaica, the Leeward Islands, the Republic of Trinidad & Tobago and the Windward Islands.

[5] Mr. Skinner commenced his employment with the WICB on 5th January 2004, as sponsorship and events manager. At 12th September 2006, he was appointed the commercial manager sales/development department. He tendered his resignation on 11th March 2008. His last day with the WICB after the taking of vacation owed to him was 11th June 2008.

[6] A review of the 2006 contract of employment **on the change of Mr. Skinner’s position at the WICB**, finds that while it covers salary, commission, allowances, job description and reporting that it also provides:

“All terms and conditions as mentioned in previous employment letter remain the same.”

[7] While there was no executed contract/letter disclosed before the Court, there was disclosed an unexecuted **WICB’s offer of employment letter dated 9th December 2003**, and addressed to Mr. Skinner. Both Parties proceeded on the footing that the terms and conditions of the disclosed unexecuted employment letter were the terms and conditions applicable. The Court therefore proceeds in the same manner.

[8] In the offer letter dated 9th December 2003, the pertinent terms are:

“C. The Board will pay all reasonable relocation expenses to transfer you and your family from Barbados to Antigua and return.

D. As an officer of the Board you will be entitled to the duty free and other benefits granted under the Agreement with the Government of Antigua.”

[9] The total repatriation/relocation costs was US\$24,805.74 including Barbados import taxes and duties.

[10] According to Mr. Skinner on his departure from WICB, he, with the knowledge and approval of Mr. Barry Thomas, the chief finance officer of the WICB, shipped his motor vehicle, a 4 year old Nissan X-Trail and personal effects in a container to Barbados. The container arrived at Barbados at late April 2008.

[11] According to Mr. Skinner, his understanding was that all shipping charges, duties, taxes and associated clearance costs of his container would be paid by the WICB. He was unaware as to whether the WICB made any effort to secure a waiver of the assessed taxes and duties. On the WICB failure to pay the assessed import taxes and duties, Mr. Skinner made a direct request for the waiver to the then Prime Minister of Barbados, Mr. David Thompson. His request was denied. He

informed the WICB of the denial. He then made the decision to call upon the WICB to pay the assessed import taxes and duties as part of his repatriation/relocation claim.

- [12] The evidence of the WICB was in short that (a) while it would pay relocation expenses these never included taxes and duties assessed on importation of personal effects and motor vehicles at either the incoming of an employee to Antigua or on his repatriation/relocation to country of origin due to their arbitrary nature, (b) any waiver of import taxes and duties was in the absolute discretion of the State involved, and (c) payment of import taxes and duties would introduce a level of uncertainty into **the WICB's budget** that would be unfair and prejudicial.
- [13] Under cross-examination Mr. Barry Thomas admitted that the very first time he, as chief finance officer told Mr. Skinner that the WICB would not be responsible for payment of the import taxes and duties assessed at Barbados was in an email¹.

Findings and Analysis

- [14] This issue calls for the Court to determine whether the import taxes and duties assessed at Barbados fall to be included in the phrase **"all reasonable relocation expenses"**.
- [15] Mr. Thomas admitted under cross-examination that the first time he told Mr. Skinner that WICB would not be paying the import taxes and duties assessed at Barbados was in an email. This was a few weeks after **Mr. Skinner's** departure from Antigua.
- [16] It is common knowledge that on passage through any of the airport terminals of the 6 cricket territories represented by the WICB, that there is an assessment made on whether or not import taxes and duties applies on personal effects and other things coming into the territories by a customs officer. This being the reality, the fact that Mr. Skinner might be exposed on his repatriation/relocation to Barbados to import taxes and duties would have been no, or ought not to have been, a surprise to anyone.
- [17] **For a definition of "reasonable", Black's Law Dictionary² defines "reasonable" as meaning: "1. Fair, proper, or moderate under the circumstances <reasonable pay>".**
- [18] The case of Bowman v Bowman³ is also instructive. It concerned an application for the reimbursement of relocation expenses to Canada for 2 minor children on the breakdown of the **Parties'** marriage. The earlier judge in the matter, Joseph J. had ordered that the Parties were to meet the relocation expenses of the children in equal shares. Henry J on the application was called upon to determine what constituted **"relocation" expenses** and whether it included Canadian customs duties. Henry J cited the Merrian-Webster dictionary definition of **"relocation" as being to establish a new place, and said that applying the golden rule of interpretation, that the expression "relocation**

¹ Front page of the email is missing; it is disclosed at page 32- 37 – item #7 at p. 34 of core bundle on documents.

² 8th Edition

³ Saint Vincent & The Grenadines Suit No. 128 of 2009 Gregory Keith Anthony Bowman v Marleise Clare-Wen Jacqueline Bowman nee Liverpool.

expenses” would be given the ordinary meaning i.e. “expenses associated with and reasonably incidental to establishing oneself in a new place.” Having come to that conclusion Her Ladyship then went through a list of it items which included customs duties at Canada in the sum of CDN\$172.62, and determine that the phrase **“relocation expenses”** covered the one-half of the customs duties and ordered payment of same.

[19] There are 2 general principles that are applicable to this case. They being, (i) that that the burden of proof lies on he who alleges, and so it is the burden of the WICB to prove that the assessed taxes **and duties ought not to be included as “reasonable relocation expenses”**; (ii) **a contract term in the context under discussion ought to be interpreted against benefitting the drafter of the contract who is deemed to hold the power over drafting of the contract terms to a large extent.**

[20] In Chitty on Contracts on the General Rules of Construction⁴ it is stated:

“12- 043- Intention of the parties. The task of ascertaining the intention of the parties must be approached objectively: the question is not what one or other of the parties meant or **understood by the words used, but “the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contact.”** The cardinal presumption is that the parties have intended what they have in fact said, so that their words must be construed as they stand. That is to say the meaning of the document or of a particular part of it is to be sought *in the document itself*. **“One must consider the meaning of the words used, not what one may guess to be the intention of the parties”**. However, this is not to say that the meaning of the words in a written document must be ascertained by reference to the words of the document alone. In the modern law, the courts will, in principle, look at all the circumstances surrounding the making of the contract which would assist in determining how the language of the document would have been understood by a reasonable man.”

[21] It is a fact the offer letter of 9th December 2003, to Mr. Skinner fails to circumscribe what is to be **included in the “reasonable relocation expenses” and neither did it exclude any expenses.** At the same time, the Court observes that at clause D, Mr. Skinner was informed of the waiver of similar taxes and duties on his relocation to Antigua.

[22] The Court is of the view, that given the long existence of the WICB which had a predecessor, and its apparent position of non-payment of repatriation/relocation importation taxes and duties, then there was a burden on the WICB to set out the same in the employment letter. Having not done so, and given the nature and application of import taxes and duties common even amongst the 6 territories that are part of the WICB, that it was not unreasonable for Mr. Skinner to interpret the phrase **“reasonable relocation expenses” as including** import taxes and duties levied on repatriation/relocation to Barbados. Of course the Antigua situation was clarified.

⁴ Chitty on Contracts, 29th Ed. Vol 1- General Principles- paragraph 12-043

[23] As the drafter of the contract, the burden was on WICB to bring clarity **as to its limits on “reasonable relocation expenses.” The phrase must therefore be interpreted against the limitation which the WICB now seeks to bring to it.**

[24] The Court further feels supported in its view by Henry J in Bowman v. Bowman as to the matters that can be included in reasonable relocation expenses.

[25] The Court will order the payment of US\$23,695.52.

[26] **Court's order:**

- i. The WICB is to pay Mr. Skinner the sum of US\$23,695.52 as part of his incurred relocation expenses.
- ii. Mr. Skinner is awarded pre-judgment interest of 5 percent per annum from the date of assessment of the customs duties and taxes at Barbados, and 5 percent post judgment until all sums due are paid in full.
- iii. Prescribed costs is awarded.
- iv. All sums due are to be paid within 30 days of judgment.

Rosalyn E. Wilkinson
High Court of Justice

By the Court

Registrar

