BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

Civil Suit No: CV1330 of 2011

BETWEEN

MARCIA GIBSON **CLAIMANT/APPLICANT**

AND

GRANTLEY ADAMS INTERNATIONAL AIRPORT INC. (GAIA INC.) **DEFENDANT/RESPONDENT**

Before The Honourable Madam Justice Pamela Beckles, Judge of the High Court

2016: May 20
2017: January 20

Appearances:

Ms. Veronica McFarlane, Attorney-at-law for the Claimant/Applicant

Mr. Larry A.C. Smith in association with Ms. Shanna C. Goddard, Attorneys-at-law on behalf of the Defendant/Respondent

DECISION

Introduction

[1] The Claimant/Applicant applies for summary judgment pursuant to Part 15 of the Supreme Court (Civil Procedure) Rules 2008 (CPR).

Background

[2] The Claimant/Applicant was employed by the Defendant/Respondent as a security officer for approximately four years (16 January, 2006 – 15 July 2010) but was dismissed due to an incident which occurred at her work place on or about June 7, 2010.

[3] On August 5, 2011 she filed a Fixed Date Claim Form, an affidavit in support thereof and an affidavit from her representative Mr. Caswell Franklyn in which she sought the following against the Respondent/Defendant – a declaration that the Defendant acted in breach of the rules of natural justice in respect of the Claimant when the Defendant failed and/or refused to allow the Claimant time to review the witness statements used against the Claimant to establish the Defendant's case; a declaration that the failure and/or refusal of the Defendant to allow the Claimant to be heard on her appeal was a breach of the rules of natural justice; a declaration that the termination of the Claimant's services without allowing her to be heard was a breach of natural justice; damages; interest; costs; such further relief and /or other relief as the Honourable Court deems fit.

[4] On September 27, 2011, the Defendant filed an Acknowledgment of Service indicating that it intended to defend the claim. A number of affidavits from

various employees of the Defendant were later filed on the Defendant's behalf.

[5] On October 5, 2012, the Claimant sought standard disclosure of certain documents in the Defendant's possession and on June 11, 2012 an order was made by **Kentish J.**, for disclosure of all documents to be relied on by the parties. It was further ordered that the parties meet, settle and file a statement of agreed facts and issues on or before October 31, 2012. The matter was set down for pre-trial review during the period 15 January to 14 February, 2013 and for trial in accordance with Part 27:10 of the CPR.

[6] On February 21, 2013 the Claimant filed her statement of facts and issues and the Defendant's facts and issues were filed on June 20, 2013.

[7] On January 30, 2014 the Claimant applied to the Court for summary judgment on a number of grounds and on February 27, 2014 the Defendant applied to have the Claimant's application struck out.

Issue(s)

[8] In determining whether the court should give summary judgment against the Defendant/Respondent on the Claimant/Applicant's claim two main issues have to be addressed:

1. Whether or not the Defendant/Respondent has a reasonable prospect of defending the claim herein; and

2. Whether there is any other reason way the case on issue should be disposed of at a trial.

Law

Summary Judgment

[9] The summary judgment principle is provided for in Part 15 of the Supreme Court (Civil Procedure) Rules, 2008 (the "CPR"). Rule 15.2 outlines the test as follows:

> "15.2. The court may give summary judgment against a party on the whole of a claim or on a particular issue if
>
> (a) it considers that
>
> (i) the claimant has no real prospect of succeeding on the claim or issue; or
>
> (ii) the defendant has no real prospect of successfully defending the claim or issue; and
>
> (b) there is no other reason why the case or issue should be disposed of at a trial"

[10] The applicable test as outlined in the CPR is a two-pronged test which firstly requires consideration of whether the party against whom the court is urged to enter summary judgment has a real prospect of success and thereafter, a determination of whether there is any other reason why the case or issue should be disposed of at trial.

Real Prospect of Success

[11] To quote **Lord Woolf MR** in *Swain v. Hillman [2001], All E.R. 91* –

> "The words 'no real prospect of succeeding' do not need any amplification, they speak for themselves. The word 'real' distinguishes fanciful prospects of success...they direct the

court to the need to see whether there is as 'realistic' as opposed to a 'fanciful' prospect of success".

[12] **Judge LJ** in the same case agreed with **Lord Woolf MR** adding the following:

> "To give summary judgment against a litigant on papers without permitting him to advance his case before the hearing is a serious step. The interest of justice overall will sometimes so require. Hence the discretion in the court to give summary judgment against a Claimant, but limited to those cases where, on the evidence, the Claimant has no real prospect of succeeding. This is simple language, not susceptible to much elaboration, even forensically. If there is a real prospect of success, the discretion to give summary judgment does not arise merely because the court concludes that success is improbable. If that were the court's conclusion, then it is provided with a different discretion, which is that the case should proceed but subject to appropriate conditions imposed by the court".

[13] Where there are disputes of facts, a court is unlikely to grant an order for summary judgment. In *Lyle v Lyle (2005) Supreme Court, Jamaica, No. HCV 02246/2004* **Sinclair-Haynes J** emphasized that summary judgment is inappropriate where there are important disputes of facts, and that accordingly, on an application for summary judgment, the Claimant must satisfy the court of the following:

(a) all substantial facts relevant to the Claimant's case, which are reasonably capable of being before the court, must be before the court,

(b) those facts must be undisputed or there must be no reasonable prospect of successfully disputing them,

(c) there must be no real prospect of oral evidence affecting the court's assessment of the facts.

[14] *Bolton Pharmaceutical Co. 100 Ltd. v Doncestion Pharmaceutical Groups Ltd. and Others [2006] All E.R.(D) 289 (May)* is an English Court of Appeal authority for the proposition that summary judgment is inappropriate where there are reasonable grounds for believing that a fuller investigation into the facts would add to or alter the evidence available to a trial judge and so affect the outcome of the case. At paragraph 17, **Mummery LJ** warned that:

> "It is well settled by the authorities that the court should exercise caution in granting summary judgment in certain kinds of cases. The classic instance is where there are conflicts of fact or relevant issues, which have to be resolved before a judgment can be given (see Civil Procedure Vol. 24.2.5). A mere 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".

[15] Even more to the point is the UK decision in *Munn v. North West Water Limited and Another – All England Official Transcripts (1997 – 2008); (2000 LTL 18/7/2000)*. There the Defendant applied for summary judgment in a negligence claim and was successful at first instance. In reversing the decision on appeal, **Mantell LJ.** observed that:

> "10. I well understand the thinking behind the recorder's decision but, in my view, with respect to the recorder – although the rule contained in Part H para. 2 is draconian in extent – it was never intended to drive a Claimant from the judgment seat where there were issues of facts which if

determined in the Claimant's favour, might result in a successful outcome. That seems to be the position here on all the evidence which has been carefully reviewed in the argument presented to court today".
So that where there are issues of facts which if decided in the Respondent's favour would result in judgment for the Respondent, it is inappropriate to enter summary judgment, even if there is substantial evidence in support of the Applicant's case". – *Blackstone Civil Procedure, Part H, Chapter 34 at p. 388.*

[16] In the local case of *Cox v National Housing Corporation (Carilaw) BB 2014 HC5, Suit 519 of 2011*, **Kentish J.**, had to contend with a similar question of issues of fact in the context of a summary judgment application.

At paragraph 58 of her judgment she reasoned that:

> "In order to give summary judgment in this case I must first determine whether the NHC had no real prospect of successfully defending the claim for specific performance. It seems to me, having regard to the Claimant's statement of case and the defence of the NHC there are issues of fact to be determined. For example (1) when and how was the Claimant informed of the pleaded policy of the NHC; (2) was that policy expressly or implied incorporated into the letter of 25 October, 2004; and (3) when did the NHC become aware of the alleged breach of the Claimant? These are issues which in my judgment should go to trial on the evidence. Accordingly, the application for summary judgment is dismissed".

No other reason why the matter should proceed to trial

[17] As stated earlier the test for summary judgment under the Civil Procedure Rules in Barbados is two-limbed. Accordingly a party seeking to successfully invoke summary judgment must satisfy both aspects of the test. Thus it follows that even where there are no reasonable prospects for

success, it will still need to be shown that there is no other compelling reason why the case or issue should be disposed of at trial.

While there is little commentary or case law on the meaning of this phrase it is the opinion of this court that the words speaks for themselves and needs no further clarification. It appears to be a deliberately wide provision.

Conclusion and Disposal

[18] In this case, the basic facts are not in dispute. The Claimant/Applicant was employed with the Defendant/Respondent's company for four years and as a result of an incident, which occurred on June 7, 2010 whilst on the job, she was dismissed.

[19] What is in dispute however, is what took place at the meeting on July 14, 2010. The Claimant allege that the Defendant acted in breach of the principles of natural justice as it failed and/or refused to allow her time to review the witness statements used against her to establish the Defendant's case.

[20] The Defendant contends that the Claimant was given an opportunity to be heard at the meeting but in fact failed to take advantage of the opportunity to put her case when she walked out of the meeting with her representative.

[21] This particular case is more than a contract of employment case but rather involves complex issues of law relating to the principles of natural justice

and employment law, which are issues of facts to be determined and which should proceed to trial on the evidence.

[22] Even though affidavits were produced, the evidence would be better tested under cross-examination where the court would have the opportunity to observe the witnesses.

[23] It is the opinion of the court that to grant on order for summary judgment would result in a mini-trial and accordingly, the application for summary judgment is dismissed. The Defendant/Respondent is entitled to its costs arising out of this application to be agreed or assessed.

PAMELA A. BECKLES
Judge of the High Court