

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2018/CLE/gen/0026

BETWEEN

MELISA HALL

Plaintiff

AND

THE BRIDGE AUTHORITY

Defendant

Before Hon. Mr. Justice Ian R. Winder

Appearances: Obie Ferguson Jr for the Plaintiff

Ferron Bethel with Camille Cleare for the Defendant

6 February 2019

RULING

WINDER J

This is the defendants application for a setting aside of the judgment in default filed in this matter.

1. A brief chronology of events in this matter may prove a useful starting point.

- 14 Dec 12 Plaintiff (Hall) then a board member, was appointed General Manager of the Defendant (the Authority) by written contract. The contract did not have a fixed term and provided for 30 days notice of termination by either party.
- 20 Apr 17 By an addendum to the contract, Hall says that the board agreed that the contract could be terminated by the giving of no less than three(3) years notice.
- 2 Feb 18 Hall's employment terminated.
- 19 Apr 18 Claim instituted by Hall claiming breach of contract in that she alleges that the Authority has failed to provide the agreed notice.
- 30 Apr 18 The Authority served with the Writ of Summons.
- 8 May 18 The AG enters appearance on behalf of the Authority.
- 8 July 18 Hall applies for leave pursuant to Order 14 for judgment on the grounds of default.
- 16 Oct 18 At the hearing of the Hall's Summons the Unless Order made giving the Authority 21 days to enter a defence to the action, failing which Hall had leave to enter judgment. Keith Cargill of the AGO appears on behalf of the Authority.
- 9 Nov 18 Hall entered judgment, purportedly pursuant to Order 69 rule 6(1)(3), in the aggregate sum of \$593,071.72.
- 19 Nov 18 AGO enters a Defence on behalf of the Authority, post judgment.
- 21 Nov 19 AGO applies by Summons for the setting aside of the judgment on the grounds that the Defendant has an arguable defence, that there was good reasons for the delay and that the Plaintiff has suffered no prejudice.

30 Jan 19 Notice of Change of Attorney.

1 Feb 19 Summons issued to have judgment in default set aside on the grounds of irregularity and seeks leave to enter an amended defence.

2. The Authority contends that the judgment entered is irregular as a final judgment was entered when Hall ought to have entered an interlocutory judgment with damages to be assessed with respect to some of the items which made up the aggregate sum of \$593,071.72. According to the evidence of Gregory Bonamy, which was not challenged by Hall, the contract did not make provision for:

(a) An annual gratuity of 15%;

(b) Fuel allowance;

(c) Meal allowance;

(d) Pension; or

(e) Liquidated annual sum for the use of the company vehicle.

3. The Authority says that these are not special damages as even if provided for in the contract, the determination of the appropriate amount must necessarily be assessed by the Court. I agree, the nature of these claims do not permit Hall to unilaterally place her own assessment as to the value of these benefits under the contract, they must necessarily be a function of the Court's decision making process.

4. In *DKS Motors Limited et al v The International Sewing Center Limited, Civil Appeal 98 of 1999* the Court of Appeal accepted that the entry of a default judgment in a liquidated amount with respect to a claim for unliquidated damages was irregular. In those circumstances the Court of Appeal found that the judgment entered was a nullity and ought to be set aside *ex debito justitiae*.

5. In the circumstances therefore I set aside the judgment in default. Having regard to my earlier unless order, I make no order as to costs.

6. I give leave to the Authority to amend the defence filed on 19 Nov 18. Costs associated with the amendment of the defence to Hall.

Dated the 2nd day of April 2019


Ian Winder
Justice