

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**Commercial Law Division**

**2016/COM/lab/00054**

**BETWEEN**

**DESIREE TERRELL DAVIS**

**Plaintiff**

**-AND-**

**J.P. MORGAN TRUST COMPANY (BAHAMAS) LIMITED**

**Defendant**

**Before:** The Honourable Madam Justice Indra H. Charles

**Appearances:** Mr. Obie Ferguson Jr. of Obie Ferguson & Co. for the Plaintiff  
Ms. Camille Cleare of Harry B. Sands, Lobosky & Co. for the Defendant

**Hearing Dates:** 17 July 2018, 30 October 2018, 30 September 2020

**Employment Law – Termination of Employment – Termination with Notice – Section 29 Employment Act – Unfair Dismissal – Section 34 of the Employment Act – Quantum of damages**

**Pleadings – Purpose of pleadings – Plaintiff raised facts supporting claim for unfair dismissal in evidence and submissions but not in pleadings**

The Plaintiff commenced an action against the Defendant seeking damages for unfair dismissal pursuant to section 34 of the Employment Act, Ch. 321A of 2001 (“the Act”).

The Plaintiff did not particularize in her pleadings the facts that led to her unfair dismissal by the Defendant. However, in her evidence she suggests that her termination was connected to her performance probation in which she says she was not given an opportunity to be heard nor was there a review of the probation prior to her being terminated. The Plaintiff further suggested that her dismissal was also unfair because the Defendant made the collection of her entitlements at termination conditional upon the execution of a Deed of Release.

The Defendant denied that the termination was unfair or that the Plaintiff’s entitlements at termination were conditional upon the execution of a Deed of Release. The Defendant maintained that the termination was in accordance with her contract of employment and section 29 of the Act

and that they have made repeated attempts to give the Plaintiff her entitlement since termination but the Plaintiff refused to accept.

The Defendant also argued that there are no grounds pleaded by the Plaintiff that show the unfairness of her dismissal.

**HELD: Dismissing the Plaintiff's claim for unfair dismissal with costs to the Defendant of \$25,000 representing reasonable costs.**

1. The Plaintiff was lawfully terminated in accordance with the terms of the contract and section 29 of the Act.
2. Section 29 of the Act provides a means by which an employer may "properly and fairly" bring an employment contract to an end. **Wells v Snack Food Wholesale Limited** [2006] 1 BHS J. No. 59 and **Leon Cooper v Grand Bahama Power Company Limited** SCCivApp. No. 178 2017 relied upon.
3. On the evidence adduced, the Court preferred the evidence of the Defendant to that of the Plaintiff. I found that the Defendant made several attempts to pay the Plaintiff her entitlement since termination and the only precondition was that the Plaintiff signed an acknowledgment of receipt. Execution of the Deed of Release was an option.
4. There were no grounds or fact pleaded to support the Plaintiff's allegations of unfair dismissal. The Plaintiff sought to raise these issues for the first time in her evidence and in submission. The statement of claim is deficient and took the Defendant and the Court by surprise: see **Montague Investments Limited v Westminster College Ltd** [2015] CLE/gen/000845 and **Bahamas Ferries Limited v Charlene Rahming** SCCivApp & CAIS No. 122 of 2018.

## JUDGMENT

**Charles J:**

### Introduction

[1] This is an action for damages for unfair dismissal pursuant to section 34 of the Employment Act, 2001, Ch. 321A of 2001 ("the Act"). The key issue to be determined is whether Desiree Terrell Davis ("the Plaintiff") was unfairly dismissed or whether J.P. Morgan Trust Company (Bahamas) Limited ("the Defendant") lawfully terminated her with notice in accordance with her employment contract and section 29 of the Act.

### Background facts

[2] Some of the background facts are not in dispute and are gleaned from the documentation adduced and entered into evidence at trial. To the extent that some

of the facts may be in dispute, then what is stated must be taken as positive finding of facts made by me.

- [3] The Plaintiff commenced employment as Vice President/Fiduciary Manager of the Defendant on 31 December 2007. During her tenure with the Defendant she held various positions and appointments including the position of Executive Director which she was promoted to on 1 February 2011.
- [4] On 29 March 2016, the Defendant issued the Plaintiff with a written warning along with a document setting out management expectations. She was subsequently placed on a performance probation for a period of 60 days in which her management responsibilities were reduced and her job responsibilities adjusted.
- [5] On 14 June 2016, the Plaintiff was called to a meeting with representatives of the Defendant. She was informed that her employment with the Defendant was terminated effective immediately. She was offered pay in lieu of notice of termination.
- [6] The letter of termination from the Defendant to the Plaintiff was in the following terms:

“June 14, 2016

**STRICTLY PRIVATE & CONFIDENTIAL**

**Desiree Terrell-Davis  
47 Indigo Subdivision  
P.O. Box CR-55494  
Nassau, CR55494  
Bahamas**

Dear Desiree Terrell-Davis,

Please be advised that effective immediately, your services are no longer required and your employment with JPMorgan Trust Company (Bahamas) Limited has therefore been terminated.

Accordingly, we hereby give you pay in lieu of notice of termination as per the Employment Act and your Contract of Employment.

Your termination cheque is comprised of the following:

1 month salary in lieu of notice:	\$ 15,384.60
1 month salary pro-rated for each year of employment:	\$123,076.80
Accrued and Unused Vacation:	\$ 9,230.76
6 mos. Mortgage Subsidy:	<u>\$ 1,368.00</u>
<b>Sub-Total:</b>	<b>\$149,060.16</b>
<b>Less:</b> 6 mos. Insurance Premium	(1,066.80)
<b>Less:</b> 6 mos. NIB Contributions	<u>( 628.74)</u>
<b>Total Payment:</b>	<b>\$147,364.62</b>

Your group medical/dental/vision insurance coverage and NIB contributions will continue until December 13, 2016, should you agree to pay your portion of the premium in the amount of \$177.80/month and \$104.79/month.

We wish you success in your future employment.

Yours truly,

**Acknowledging Receipt:**

**Donna A. Bosfield  
VP/Human Resources"**

**Desiree Terrell-Davis/Dated**

[7] Unhappy with the decision of the Defendant to terminate her employment, the Plaintiff, on 17 August 2016, instituted the present action alleging that the Defendant unfairly terminated her contract of employment against her right not to be unfairly terminated as provided by section 34 of the Act.

[8] In paragraph 8 of her claim, the Plaintiff set out her damages and entitlement as follows:

**Particulars of Special Damages**

Calculated in accordance with sections 46, 47 and 48 of the Employment Act, 2001 relating to damages for unfair dismissal.

Basis award (3 weeks pay for each year of service – 8.54 yrs) \$90,984.75

Compensatory award (21.00 wks)	74,556.14
Accrued vacation owed to date of termination	9,230.14
Accrued vacation owed for term of total award period	15,917.39
Group medical/dental/vision insurance by company per month	7,652.63
Mortgage subsidy for period of basic & compensatory award	2,453.32
Yearly bonus to end date of period to basic & compensatory award	<u>134,901.86</u>
Total basic award plus compensatory award plus other benefits	<u>\$335,696.85</u>

- [9] The Plaintiff did not set out any further facts or particulars in her Statement of Claim to support the allegation of unfair dismissal.
- [10] On 6 June 2018, the Defendant filed an Amended Defence. In paragraph 4, the Defendant denied that the Plaintiff's termination was unfair or that it was against her right not to be unfairly terminated and puts her to strict proof of her claim. The Defendant averred that the amount of money tendered to the Plaintiff at termination was her full entitlement in accordance with both her contract of employment and section 29 of the Act.

## The Law

### Unfair dismissal

- [11] Section 34 provides that every employee shall have a right not to be unfairly dismissed by his employer, as provided in sections 35 to 40.
- [12] Section 35 states that "*Subject to sections 36 to 40, for the purposes of this Part, the question whether the dismissal of the employee was fair or unfair shall be determined in accordance with the substantial merits of the case*".
- [13] The case of **B.M.P. Limited d/b/a Crystal Palace Casino v Yvette Ferguson** IndTribApp App No. 116 of 2012 gives a broad overview to what may constitute unfair dismissal. The Court of Appeal held, among other things, that (i) the Employment Act does not contain an exhaustive list of instances of what could be considered to be unfair dismissal; (ii) sections 35 to 40 contain what may be regarded as "statutory unfair dismissal" and section 35 provides for the determination of the question whether the dismissal of an employee is fair or unfair.

[14] At paragraph 36 of the judgment, Conteh JA stated:

**“The expression “unfair dismissal” itself is not defined in the Act. What it provides for, in our view, is to itemize instances of what can be called “statutory unfair dismissal” such as provided for in section 36 (dealing with dismissal for trade union membership and activities of an employee); section 37 (dealing with dismissal on ground of redundancy); and section 40 (dealing with dismissal in connection with lock-out, strike or other industrial action).**

[15] At page 12, paragraph 39, the learned Justice of Appeal continued:

**“Section 35, in our view, is the touchstone for the determination of whether in any instance of the dismissal of an employee outside of the provisions of sections 36, 37, 38 and 40, is fair or unfair. And this question shall be determined in accordance with the substantial merits of the case. All sections 36 to 40 do is to categorize instances which the Legislature deemed to be unfair cases of dismissal, and s. 34 provides that every employee has the right not to be unfairly dismissed as provided for in those sections. We do not think it was intended to foreclose the categories of unfair dismissal. Given the heterogeneity of circumstances in the workplace that could lead to the dismissal of an employee, it would, we think, be rash to spell out in advance, by legislation, what is or is not unfair dismissal of an employee. Can it seriously be said that an employee who is dismissed by his employer for no reason other than his or her appearance will not found a claim for unfair dismissal because that instance is not listed in Sections 36, 37, 38 and 40 of the Act?” [Emphasis added]**

### **Termination with notice**

[16] The law relating to termination of employment with notice is set out in section 29 of the Act. It provides:

**“29. (1) For the purposes of this Act, the minimum period of notice required to be given by an employer to terminate the contract of employment of an employee shall be –**

**(a) where the employee has been employed for six months or more but less than twelve months –**

**(i) one week’s notice or one week’s basic pay in lieu of notice; and**

**(ii) one week’s basic pay (or a part thereof on a pro rata basis) for the said period between six months and twelve months;**

**(b) where the employee has been employed for twelve months or more-**

**(i) two weeks' notice or two weeks' basic pay in lieu of notice; and**

**(ii) two weeks' basic pay (or a part thereof on a pro rata basis) for each year up to twenty four weeks;**

**(c) where the employee holds a supervisory or managerial position –**

**(i) one month's notice or one month's basic pay in lieu of notice; and**

**(ii) one month's basic pay (or a part thereof on a pro rata basis) for each year up to forty eight weeks.” [Emphasis added]**

[17] In **Wells v Snack Food Wholesale Limited** [2006] 1 BHS J. No. 59 Lyons J, at paragraphs 25 to 30, explained the nature of section 29 of the Act. He stated:

**25 The history behind the Employment Act and in particular, section 29, is that it arose from the General Conference of the International Labour Organisation in Geneva 1982.**

**26 As the preamble to its convention says: -**

**"Noting that since the adoption of the Termination of Employment Recommendation, 1963, significant developments have occurred in the law and practice of many member States on the questions covered by that Recommendation, and considering that these developments have made it appropriate to adopt new international standards on the subject, particularly having regard to the serious problems in this field resulting from the economic difficulties and technological changes experienced in recent years in many countries, having decided upon the adoption of certain proposals with regard to termination of employment at the initiative of the employer, which is the fifth item on the agenda of the session, and having determined that these proposals shall take the form of an international Convention; adopts this twenty-second day of June of the year one thousand nine hundred and eighty-two the following Convention, which may be cited as the Termination of Employment Convention, 1982".**

**27 As relates to section 29, Article 12 of the Convention states: -**

"1. A worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to -

(a) a severance allowance or other separation benefits, the amount of which shall be based inter alia on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or

(b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or

(c) a combination of such allowance and benefits.

2. A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in paragraph 1, subparagraph (a), of this Article solely because he is not receiving an unemployment benefit under paragraph 1, subparagraph (b).

3. Provision may be made by the methods of implementation referred to in Article 1 of this Convention for loss of entitlement to the allowance or benefits referred to in paragraph 1, subparagraph (a), of this Article in the event of termination for serious misconduct.

28 Being a member state, the Parliament passed the Act to give effect to this Convention. (Section 29 refers to Article 12). It was meant by Parliament to provide a code to which both employer and employee could refer to Parliament's view on what could be said to be a means of calculating a fair severance pay. Section 29 is expressed as only the minimum. That section attempted thereby (and did achieve in the Parliament's view) a codification of a common law position.

29 It is only if the contract between the employer and the employee made specifically for a greater provision on severance or if some other law (not the general common law), arrangement or custom similarly made for greater provision that section 4 could be called upon.

30 The long and the short of it is that an employer on terminating an employee (other than for justifiable summary dismissal or unfairly) pays the employee's severance pay calculated in accordance with section 29, then the contract has been properly and fairly terminated and the employee has no cause for complaints. The employer has complied with the law." [Emphasis added]

[18] In **Leon Cooper v Grand Bahama Power Company Limited** SCCivApp. No. 178 2017, the Court of Appeal found that section 29 of the Employment Act provides a minimum code to facilitate termination without cause. **Once an employer complies with the provision to bring an employment to an end, there is no unfair dismissal claim that would lie unless the employee has better terms under his contract of employment for termination without cause** (paragraph 33).

### **The evidence**

[19] The Plaintiff gave evidence on her own behalf and the Defendant called two witnesses namely Donna A. Bosfield and Charles Watson.

[20] The Plaintiff filed a witness statement on 27 October 2017 which stood as her evidence in chief at trial. In summary, the Plaintiff testified that she commenced employment with the Defendant on 31 December 2007 in the position of Vice President and Team Leader for Latin America. The team was comprised of approximately eighteen (18) trust officers and trust analysts and she was responsible for client management. She was appointed by the Board of Directors of the Defendant as a member of the Trust and Investment Committee and had responsibility for decision making and oversight of all discretionary structures.

[21] The Plaintiff further testified that, from August 2010 to March 2016, she held the position of International Trust Team Leader and her responsibilities increased to include management of the Asia, Europe and Middle East Teams as well as the Geneva based trust officers. Sometime in the year 2010 she was promoted by the Defendant to Executive Director and from November 2013 to February 2015 she held the position of Interim Head. In 2014, she was appointed to serve on the Board of Directors of the Defendant.

[22] She also testified that Ms. Martha Leighton was appointed Head of International Fiduciary Services and she was her direct boss. Sometime in February 2015, Ms. Leighton relocated to the Bahamas and she (the Plaintiff) organized a welcoming

party event for her. Sometime in late January 2016, Ms. Leighton informed her that she was being awarded a salary increase and bonus in connection with her performance for the year 2015. She stated that Ms. Leighton was very pleasant and thanked her for her contribution to the Defendant.

- [23] The Plaintiff stated that during February 2016, Ms. Leighton informed her that she was invited to a leadership offsite but shortly after, she received a phone call from Ms. Leighton advising her that Mrs. Frommer instructed her to disinvite her (Plaintiff) from the meeting as she did not consider that her participation was necessary.
- [24] Then, on 31 March 2016, she was asked to meet with Ms. Leighton at 9 in the morning. At the meeting with Ms. Leighton, she saw Mr. Eamon Kelly, Human Resources representative based in New York on the teleconference screen. She further testified that Ms. Leighton advised her that there was a survey conducted and it was determined that she (Plaintiff) had “favourites” in the company and it resulted in “low staff morale”. The Plaintiff asked Ms. Leighton whether she had any specific examples to which Ms. Leighton replied that they would be forthcoming. She further stated that Ms. Leighton indicated that she (Plaintiff) needed to engage business partners, namely the control and compliance functions more proactively so as to “broaden the circle” on day to day matters and that this would result in her (Plaintiff) moving out of trust administration wherein “my people management responsibility” was significantly reduced.
- [25] Notwithstanding, Ms. Leighton informed the Plaintiff that she would be placed on probation for a period of sixty days and that the organization “*valued my contributions and felt that I would be successful in this new role*”. She recalled several conversations with Ms. Leighton during this period when she inquired about her probation. Ms. Leighton’s response was “not to worry about it”.

- [26] The Plaintiff testified that on 23 May 2016, at the request of Ms. Leighton, she met with The Central Bank of The Bahamas at a “Discovery Meeting” where she was instructed to speak on various topics, at Ms. Leighton’s request. Ms. Leighton commented that “*Desiree was principally responsible for the successful transfer of business from Geneva and reviewed and approved every client*”.
- [27] On 25 May 2016, the Board of Directors of the Defendant met. Ms. Leighton informed the board of her return to the United States.
- [28] After her probationary period ended on 31 May 2016, Ms. Leighton did not have any follow up conversation or written correspondence to that effect. She stated that in the early part of June 2016, Ms. Leighton called a meeting with the managers to inform them that she will be leaving the company and her position would be advertised in the local paper.
- [29] Then, on 14 June 2016, Ms. Leighton advised her that she needed to speak with her. They met in the conference room with Mrs. Donna Bosfield, HR representative and someone on the telephone that Ms. Leighton referred to as Alisson. She further stated that it was at this time that Mrs. Bosfield produced a letter of termination in lieu of notice. The Plaintiff informed them that she would not sign it until she sought legal advice.
- [30] The Plaintiff further testified that she asked both Ms. Leighton and Mrs. Bosfield what led to the decision. They both declined to respond. She then gave them her access card and keys to the building and was escorted from the conference room to the ground floor by Mrs. Bosfield.
- [31] The Plaintiff alleged that the Defendant unlawfully deducted six months of NIB contributions from her damages and failed to recognize that her compensation ought to be based on sections 46, 47 and 48 of the Act in that she was unfairly terminated. She further testified that the Defendant ought to have known that it is unlawful and unfair to require her to sign a Deed of Release in order to get what she was entitled to.

- [32] The Plaintiff was cross-examined by Ms. Cleare who appeared as Counsel for the Defendant. Under cross-examination, the Plaintiff indicated that at termination she was provided with a termination letter dated 14 June 2016 from Mrs. Bosfield along with another document said to be a Deed of Release. She confirmed that Mrs. Bosfield took her through the letter and explained its contents.
- [33] During further cross-examination, the Plaintiff was shown a copy of the termination letter and indicated that that was the first time she was seeing an acknowledgment of receipt with her name and date. She confirmed that she was shown a Deed of Release but denied that she was told that it was optional. She stated that she was told that she would have to sign the Deed of Release in order to receive her cheque. She confirmed that she took the termination letter with her after the meeting and showed it to her lawyer. She accepted that the termination letter does not state that her payment was conditional upon signing another document.
- [34] The Plaintiff further confirmed under cross-examination that she received a letter from Harry B. Sands, Lobosky & Co. which responded to her letter to the Defendant dated 17 June 2016. She acknowledged that the second paragraph of that letter indicates that her cheque was available for collection from the bank upon request.
- [35] Under cross-examination, the Plaintiff accepted that following a review of a letter from the Defendant to her dated 22 November 2007, that she was not entitled to an incentive bonus upon termination.
- [36] Under re-examination, the Plaintiff reiterated that the condition that was attached to her receiving the cheque was that she had to sign and date a Deed of Release.
- [37] Mrs. Bosfield was the first witness to testify on behalf of the Defendant. She filed a witness statement on 1 November 2017. She testified that she joined the Defendant in February 1980 and was appointed Vice President of Human Resources in 1997. She stated that an executive management decision was taken sometime in June 2016 to terminate the Plaintiff and provide her with her notice and severance entitlement in accordance with her contract of employment, the

Defendant's Severance Policy and the Employment Act. She prepared the termination package and letter. The Plaintiff never collected or signed acknowledgment of receipt for her final cheque as itemised in her termination letter.

[38] Mrs. Bosfield stated that in making up the termination package she scrupulously followed the Severance Policy of the Defendant which had been in effect for almost 10 years. She produced and exhibited a copy of the Severance Policy which is dated 1 July 2006.

[39] She further testified that she along with Ms. Martha Leighton and Ms. Alissa Shecaskus was present at the meeting when the Plaintiff was terminated. Ms. Leighton told the Plaintiff that it was management's decision to terminate her service effective immediately. Mrs. Bosfield said that she then gave the Plaintiff an envelope that contained the [termination] letter, a cheque and also a Release Deed. She explained to the Plaintiff the breakdown of what the firm was paying her and the Release Deed which was optional in that she may sign it or leave it but that she would need her to sign the letter acknowledging receipt of the cheque.

[40] Mrs. Bosfield testified that the Plaintiff then asked for a reason for her termination and no-one responded because no reason was stated in the letter.

[41] Mrs. Bosfield further testified that the Plaintiff did not sign the Deed of Release and indicated that she will not accept the cheque as she would prefer to seek legal advice. She further stated that the Plaintiff turned over the company's keys and her access badge. She escorted her out of the building.

[42] Mrs. Bosfield stated that sometime later, she received a call from the Plaintiff requesting a number of items and she explained that she will not be able to release those items without approval from management. She stated that she instructed legal counsel for the Defendant to draft a letter to the Plaintiff advising that her request was denied and also, that she is still eligible to receive her stock and to collect her cheque.

- [43] Mrs. Bosfield testified that there were further attempts to communicate with the Plaintiff and that their legal counsel also made attempts to reach out to the Plaintiff to sign and collect the cheque.
- [44] During cross-examination, Mrs. Bosfield confirmed that, at the time of termination, she did not read the Deed of Release to the Plaintiff but made it clear to her that she may sign or opt not to sign it. She stated that “*some employees sign it [deed of release], some don’t, but that it is not a condition of her receiving her payout. We made that very clear*”.
- [45] Mr. Charles Watson also testified on behalf of the Defendant. He is a retired police officer and a process server. He explained that, on or about 26 August 2016, he attempted to serve a letter and cheque on the Plaintiff. He knows her personally.
- [46] Under cross-examination, Mr. Watson could not say whether the “*accompanying documents*” that he referred to in his letter was a Deed of Release. Mr. Watson stated that “*I can’t be certain of that at this point. All that I had was a letter and a cheque at that time*”.

### **Analysis and findings**

- [47] This is a civil case wherein the standard of proof is based on a balance of probabilities. Having had the opportunity of seeing, hearing and observing the demeanour of the witnesses and analyzing the documentary evidence, specifically the employment contract letter dated 22 November 2007, the written warning and management expectation document dated 29 March 2016 as well as the termination letter dated 14 July 2016, I prefer the evidence adduced by the Defendant to that of the Plaintiff.
- [48] I found both Mrs. Bosfield and Mr. Watson to be credible witnesses. I also found the Plaintiff to be a credible witness with some degree of hesitancy especially with respect to the issue of the cheque.

[49] I further found that the Defendant made several attempts to pay the Plaintiff her severance and the only stipulation or condition of the Defendant was that the Plaintiff acknowledge receipt of the cheque. I accept the evidence of the Defendant that the execution of the Deed of Release was optional.

[50] Counsel for the Defendant, Ms. Cleare also submitted that there are no grounds pleaded to show the unfairness of the dismissal nor is there any mention of a Deed of Release in the Statement of Claim. She also observed that these issues were not even raised in the Statement of Facts and Issues filed in the action. In my opinion, these matters including the circumstances surrounding the performance probation which the Plaintiff now says in her evidence led to her unjust dismissal ought to have been set out in her pleaded case. As this was not done, it has, to an extent, taken the Defendant and the Court by surprise. No doubt, if pleaded, the Defendant would have led further evidence.

[51] Time and again, the courts have emphasised the need for proper pleadings and its purpose. On 31 March 2020, this very Court in **Montague Investments Limited v Westminster College Ltd** [2015] CLE/gen/000845 reiterated the importance of pleadings. As paragraphs 15 to 18, I stated:

**“[15] The purpose of pleadings in civil cases is to identify the issue or issue that will arise at trial. This is in order to avoid the opposing parties and the court taken by surprise. The pleadings must be precise and disclose a cause or causes of action. Evidence need not be pleaded, because that will come from the affidavits and cross-examination thereon or by oral evidence.**

**[16] In *Bahamas Ferries Limited v Charlene Rahming* ScivApp & CAIS No. 122 of 2018, our Court of Appeal held that the starting point must always be the pleadings. At para. 39 of the judgment, Sir Michael Barnett JA (as he then was) stated:**

**“The starting point must always be the pleadings. In *Loveridge and Loveridge v Healey* [2004] EWCA Civ. 173, Lord Phillips MR said at paragraph 23:**

**“In *McPhilemy vs Times Newspaper Ltd.* [1999] 3 All ER 775 Lord Woolf MR observed at 792-793:**

**‘Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular that are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader.’**

[17] At paragraph 40 of the Judgment, Sir Michael went on to state:

**“It is on the basis of pleadings that the party’s decide what evidence they will need to place before the court and what parameters are necessary for trial.”**

[18] **Thus, pleadings are still required to mark out the parameters of the case that is being advanced by each parties so as not to take the other by surprise. They are still vital to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader and the court is obliged to look at the witness statements to see what are the issues between the parties.** [Emphasis added]

[52] That being said, in my considered opinion, the Plaintiff was not unfairly dismissed but was in fact “properly and fairly” terminated in accordance with the terms of her employment contract and the provision of section 29 of the Act.

[53] My understanding of section 29 of the Act is that no reason need be given for the termination of a contract of employment. In other words, an employer has the right to terminate the employment of an employee without cause. However, what the employer must do, as the Defendant has done, is to fairly and properly pay the employee severance pay in accordance with section 29.

[54] In terms of damages, as documented in their letter dated 14 June 2016, the Defendant has calculated payment in lieu of notice in the sum of \$147, 364.62. My own calculation coincides with that of the Defendant.

**Costs**

[55] The Defendant is the successful party to the action and is entitled to costs. Ms. Cleare submitted a Bill of Costs in the amount \$34,232.25. As this was not a complex matter and given the parties involved – a former executive director and her employer - I will scale down costs to \$25,000 which I consider to be reasonable. Such costs are to be paid on or before 31 December 2020.

**Dated this 30<sup>th</sup> day of September, A.D., 2020**

**Indra H. Charles  
Justice**