COMMOWEALTH OF THE BAHAMAS **2018/CLE/gen/00374**

IN THE SUPREME COURT

COMMON L.AW AND EQUITY DIVISION

BETWEEN:

DEYVON JONES

PLAINTIFF

AND

FML GROUP OF COMPANIES LTD.

DEFENDANT

BEFORE: **The Honourable Mr. Justice Keith H. Thompson**

APPEARANCES: **Mr. Charles Mackay of Counsel for the Plaintiff**

Mr. Wayne Munroe Q.C. of Counsel for the Defendant

DATES OF HEARING: **September 20th, 2018**

October 2018

November 29th, 2018

April 01st, 2019

November 22nd, 2019

December 09th, 2019

January 27th, 2020

February 25th, 2020

[1] This matter commenced by way of Specially Indorsed Writ of Summons ("WOS") filed March 26th, 2018. The Statement of Claim ("SOC") claims the following:

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law Side

2018/CLE/gen/00374

BETWEEN

DEYVON JONES

Plaintiff

AND

FML GROUP OF COMPANIES LTD

Defendant

ELIZABETH THE SECOND, by the Grace of God, of the Commonwealth of the Bahamas and of her other realms and territories, Head of the Commonwealth.

TO: FML GROUP OF COMPANIES LTD.
c/o Registered Office,
Sears & Co. Law Chambers,
10 Market Street North,
Nassau, N.P., Bahamas.

WE COMMAND YOU that within Fourteen (14) days after service of this writ on you, inclusive of the date of such service, you do cause an appearance to be entered for you in an action at the suit of DEYVON JONES whose addresses for service is Commercial Law Advocates, Chambers, Suite 1, Mosko Bldg., Trinity Place, Nassau, Bahamas.

AND TAKE NOTICE that in default of any of you so doing, the Plaintiff or any of them may proceed therein, and judgment may be given against you in your absence even where other Defendants have entered appearances.

WITNESS, His Lordship The Honourable Sir Stephen Isaacs, Our Acting Chief Justice of the Commonwealth of The Bahamas the 26th day of March in the year of Our Lord Two Thousand and Eighteen.

REGISTRAR

NB: This Writ may not be served more than 12 calendar months after the above date unless renewed by the Order of the Court.

DIRECTIONS FOR ENTERING APPEARANCE

The Defendants or any of them may enter appearance personally or by their respective Attorneys either by handing in the appropriate forms, duly completed, at the Registry of the Supreme Court Annex at Ansbacher House, Bank Lane, in the City of Nassau in the Island of New Providence, or by sending to them to that office by registered post.

STATEMENT OF CLAIM

1. The Plaintiff is a citizen of the said Commonwealth who was, on 10th June 2015, engaged by the Defendant herein, FML Group of Companies Ltd. *("FML")*, as its Chief Operations Officer *("COO")*.

2. The Defendant is a Bahamian Company incorporated under the laws of the said Commonwealth and is still subsisting under registered number 55,244-C with the Companies Department of the Office of the Registrar General.

3. FML is licensed under the **Gaming Act, 2014** *("GA-2014")* as a Gaming House Operator. It's license number is WST0005.

4. As a pre-condition of the Plaintiff being engaged, the Plaintiff was required to and did obtain authorization and approval from the Bahamas Gaming Board in accordance with **Section 24(a)** of **GA-2014**. Accordingly, the Plaintiff was issued by the Gaming Board with Key Employee Licence Number 4149.

5. Upon and since his engagement, FML executed divers Compensation Agreements for the benefit of the Plaintiff, the last being that dated 1st May 2017 by which FML is required, inter alia, to pay the Plaintiff a monthly salary of Thirty Thousand Dollars ($30,000.00).

6. In breach of his contract of employment, FML discontinued paying the Plaintiff his monthly salary in November 2017 although the Plaintiff continued with his duties as COO for FML under the belief that said unpaid salary were, none-the-less, forthcoming.

7. Alternatively, the actions and antics of FML of discontinuing the payment of the Plaintiff's salary along with the following, amounted to the Plaintiff being **constructively dismissed** from his employment as COO:

   (a) Beginning 23rd February 2018, FML locked out the Plaintiff from the computer system, an absolute necessity for the Plaintiff to carry out the job for which he was engaged, thereby preventing him from having any dealings whatsoever with FML in his capacity as COO; and

   (b) FML's said actions along with its recent inability to pay all winnings to the gaming public in full whenever presented, has led to the Plaintiff losing the necessary trust and

confidence he considers himself to be reasonably entitled for his satisfaction that FML is sufficiently solvent for him to be able to carry out his normal duties as COO which includes giving the gambling public comfort that their winnings will be fully paid by FML; and

(c) FML's said actions are inconsistent with **Sections 24(a), 24(b)(iv)** and **24(b)(v)** of the **GA-2014**; and

(d) Commencing on or about 19th February 2018, FML started an unsubstantiated rumor that the Plaintiff, in his capacity as COO, was engaged fraudulent activities against FML without any evidence or otherwise verifiable belief that any such activity had occurred. Such rumor, coupled with non-payment of salaries, without anything more, potentially placed the Plaintiff within the ambit of the disqualifying clause of **Section 25(1)(g)** of the **GA-2014** preventing him from being able to be licensed as a Key Employee for any other Gaming House Operator; and

8. As such, the Plaintiff treats the employment relationship as between the Plaintiff and FML as at an end, effective 23rd February 2018 when the Plaintiff was locked out of FML's computer system.

9. The result of the conduct of FML in terms of its treatment of the Plaintiff, the Plaintiff considers his continued employment as COO to be intolerable.

10. Other relevant terms of the engagement of the Plaintiff with FML as its COO duly licensed as a Key Employee, are as follows:

(i)	Contract Commenced:	10th June 2015	
(ii)	Term of Contract:	2 years (9 months)	
(iii)	Date of Termination:	23rd February 2018	
(iv)	Number of Months employed:	33	
(v)	Annual Salary:		$ 360,000.00
(vi)	Hourly Salary Rate:		$ 187.50
(vii)	Monthly Salary:		$ 30,000.00

11. By reason of the matters complained of aforesaid, the Plaintiff has suffered AND continues to suffer loss and damage as follows:-

PARTICULARS OF LOSS & DAMAGE

(a)	Unpaid Salary *(November 2017 to February 2018)*:		$ 120,000.00
(b)	Accrued Vacation *(9 weeks)*:		$ 67,500.00
(c)	Three Months Termination Notice:		$ 90,000.00
(d)	Basic Award:		$ 60,750.00
(e)	Compensatory Award-Employment Act, 2001 *(24 months)*:		$ 720,000.00
	• Unpaid NIB:	$	
	• Legal Fees *(Labour Dispute)* to Messrs. Commercial Law Advocates:	$ 30,000.00	
(f)	Opportunity Costs 4.25% 2017 prime rate on Interest on 5% Option Purchase of Nassaugame.com *($12,750 x 2.75 year) (estimated value of 5% shares as at 2015 is $300,000.00)*:		$ 35,062.50
(g)	False criminal accusation/defamation:		

12. The Plaintiff claims interest pursuant to the **Civil Procedure (Award of Interest) Act, 1992** on that amount determined by the Court is due to the Plaintiff at such rate and for such period as the Court deems fit.

AND THE PLAINTIFF CLAIMS:

(A) An Order for damages for breach of contract or alternatively, constructive dismissal from the FML; and

(B) An Order for aggravated and/or exemplary damages; and

(C) An Order for interest as pleaded; and

(D) An Order for all costs of and occasioned by the bringing of this action; and

DATED this the **26th** day of **March, AD 2018.**

Commercial Law Advocates

COMMERCIAL LAW ADVOCATES,
Chambers, Suite 1, Mosko Bldg.,
Trinity Place,
Nassau, Bahamas
(Attorneys for the Plaintiff herein)

[2] The only claim is one for Constructive Dismissal (No compensatory award as there is no claim for Unfair Dismissal.)

[3] The Defendant filed a Defence and Counterclaim May 04th, 2018. It is of special note that the Counterclaim states;

COMMONWEALTH OF THE BAHAMAS 2018

IN THE SUPREME COURT CLE/gen/00374

Common Law Side

BETWEEN

DEYVON JONES
Plaintiff

AND

FML GROUP OF COMPANIES LTD
Defendant

DEFENCE

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1. The Defendant admits paragraphs 1 to 4 of the Statement of Claim.
2. The Defendant admits paragraph 5 of the Statement of Claim save that the Defendant says that the compensation Agreement of the Plaintiff was changed orally effective 1st November, 2017.
3. The Defendant denies paragraph 6 of the Statement of Claim and avers that from the 1st November, 2017 the Plaintiff was compensated under the new arrangement then in place.
4. The Defendant denies constructively dismissing the Plaintiff as pleaded in paragraph 7 of the Statement of Claim or at all.
5. The Defendant repeats paragraph 3 of the Statement of Claim and says further:-
   (a) Paragraph 7(a) of the Statement of Claim is admitted. The Defendant says that the Plaintiff along with at least three other employees of the Defendant had their access restricted in order to facilitate an investigation of irregularities involving the operation of the Defendant's Express Stores.

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(b) The factual assertions, as opposed to statements of the Plaintiff's state of mind, contained in paragraph 7(b) are denied.

(c) The Defendant will reserve its legal submissions in answer to the assertion of law in paragraphs 7(c) of the Statement of Claim to trial.

(d) The Defendant says in reference to paragraph 7(d) of the Statement of Claims that its investigation disclosed unauthorized behavior and internal fraud taking place at the Defendant's Express stores that would benefit the Plaintiff under the new compensation arrangement. The Plaintiff was expressly responsible for managing those stores.

6. As to paragraph 8 of the Statement of Claim the Defendant says that except for restricting the Plaintiff's access to the computer system during its investigation, the Defendant never required the Plaintiff to not attend his workplace with the Defendant. The Plaintiff never returned to his workplace to work after the commencement of the Defendant's investigation. The Defendant accepts that the date stated in paragraph 8 is the date that the Plaintiff abandoned his job without notice to the Defendant.

7. The Defendant makes no admission as to paragraph 9 of the Statement of Claim

8. The Defendant admits paragraph 10 of the Statement of Claim save that the annual and monthly salary of the Plaintiff are denied. It is denied that the Plaintiff ever had a hourly salary rate. The Defendant repeats paragraph 3 of this Defence.

9. Paragraph 11 of the Statement of Claim is denied.

COUNTERCLAIM

10. The Defendant repeats the Defence herein.

11. The Plaintiff's responsibility from November, 2017 was to ensure that the proper operations of the Defendant's Express Stores were in compliance with relevant gaming laws and regulations.

12. Pursuant to his new compensation arrangements, the Plaintiff's compensation was effected by the volume of deposits and payouts by the Express Stores.

13. That during the period 5th January, 2018 to 15th February, 2018 a scheme was run by account holders at the Express Stores involving the account holder depositing money on their gaming accounts in the morning and withdrawing that same amount of money in the evening.

(b) The factual assertions, as opposed to statements of the Plaintiff's state of mind, contained in paragraph 7(b) are denied.

(c) The Defendant will reserve its legal submissions in answer to the assertion of law in paragraphs 7(c) of the Statement of Claim to trial.

(d) The Defendant says in reference to paragraph 7(d) of the Statement of Claims that its investigation disclosed unauthorized behavior and internal fraud taking place at the Defendant's Express stores that would benefit the Plaintiff under the new compensation arrangement. The Plaintiff was expressly responsible for managing those stores.

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12. Pursuant to his new compensation arrangements, the Plaintiff's compensation was effected by the volume of deposits and payouts by the Express Stores.

13. That during the period 5th January, 2018 to 15th February, 2018 a scheme was run by account holders at the Express Stores involving the account holder depositing money on their gaming accounts in the morning and withdrawing that same amount of money in the evening.

14. This scheme was a breach of the policy of the Defendant.

15. This scheme improved the compensation of the Plaintiff.

16. The Defendant has investigated and made a report to the Gaming Board of the Commonwealth of The Bahamas with regard this scheme.

17. The Plaintiff in breach of his employment permitted this scheme to take place either deliberately or negligently.

18. As a result of the Plaintiff breach of his employment contract as aforesaid in paragraph 6 of the Defence and in this Counterclaim, the Defendant has suffered loss and damage.

PARTICULARES OF SPECIAL DAMAGES

i.	Costs of addressing scheme with the Gaming Board (legal and accounting)	$50,000.00 to date and continuing
ii.	Overpayment to the Plaintiff	Being assessed by accountant

19. The Plaintiff claims interest pursuant to the Civil Procedure (Award of Interest) Act on such sums found due at such rate and for such period as the Court deem just.

AND THE DEFENDANT CLAIMS:

(1) Special Damages;

(2) Damages;

(3) Interest; and

(4) Costs.

Dated this 3rd day of May, A.D., 2018

MUNROE & ASSOCIATES
Chambers
83 East Bay Street
Nassau, The Bahamas

Attorneys for the Defendant

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COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

B E T W E E N

DEYVON JONES
Plaintiff

AND

FML GROUP OF COMPANIES LTD.
Defendant

DEFENCE ND COUNTERCLAIM

2018

CLE/gen/00374

MUNROE & ASSOCIATES
Chambers
83 East Bay Street
Nassau, Bahamas

Attorneys for the Defendant

WRM/tm

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[3] In response, the Plaintiff filed a Reply and Defence to the Counterclaim on May 18th, 2018.

COMMONWEALTH OF THE BAHAMAS **2018/CLE/gen/374**
IN THE SUPREME COURT

Common Law Side

BETWEEN

DEYVON JONES

Plaintiff

AND

FML GROUP OF COMPANIES LTD

Defendant

PLAINTIFF'S REPLY & DEFENCE TO COUNTERCLAIM

REPLY

1. As to paragraph 2 of the Defence & Counterclaim ("D&CC") of the Defendant herein ("FML") filed on 4th May 2018, the Plaintiff states that any oral agreement between the Plaintiff and FML which had the effect of altering or otherwise supplanting his employment as FML's Chief Operations Officer ("COO"), had to be previously approved by the Gaming Board. There was no such agreement, or at all, whether prior to, contemporaneously with or after the execution of the Compensation Agreement of 1st May 2017.

2. At all material times, up to the filing of the Plaintiff's Writ of Summons on 26th March 2018, he continued to be employed with FML in the capacity of its COO actively engaged with special projects of the company, spearheading several of FML's projects including those related to the Cable Bahamas Partnership, Flowerball, Daily Live Lottery Drawing, Christmas Promotion, Sales and Marketing for FML.

3. The Plaintiff shall also rely:

   3.1 the parole evidence rule with respect to FML's claim of the existence of an oral agreement that replaced the written agreement of the Plaintiff and FML; and

3.2 on the fact that at no time between 1st November 2017 and the filing date of the Plaintiff's Writ of Summons on 26th March 2018 was he notified by FML or the Gaming Board that he was no longer the COO of FML, or in jeopardy was disqualified or in jeopardy of being disqualified as a Key Employee under Section 24(a) of the Gaming Act, 2014.

4. As to paragraph 3 of the D&CC and generally, there are no particulars pleaded by the Plaintiff in its D&CC in relation to the supposed new compensation arrangement for the Plaintiff in his capacity as FML's COO. In fact, the Plaintiff avers that under his Compensation Agreement of 1st May 2017, his monthly salary of $30,000.00 would have remained unchanged for the ensuing period if a new written Compensation Agreement was not agreed to and executed by them.

5. In relation to paragraph 4 of the DD&C, the Plaintiff shall rely on the viva voce evidence of past and existing employees of FML to show that in relation to his access to the system being blocked, Directors of FML advised staff at all material times that the Plaintiff was:

5.1 no longer with the company; and

5.2 not permitted to enter the cashier's booth or offices in the stores where, previously, he had access as a part of his tasks as COO; and

5.3 not allowed to have keys to the new locks to its head office and stores throughout the country.

6. In relation to Paragraph 5 of the D&CC, the Plaintiff repeats Paragraph 5 hereinabove and state that:

6.1 he was never informed by FML or any of its Directors that his access to the operating system of FML was done so as "...facilitation investigation of irregularities involving the operation of the Defendant's Express Stores...", and

6.2 as COO of FML, he was, inter alia, responsible for the following tasks respect of all of FML's stores, namely:

6.2.1 Day to day operation of Stores; and

6.2.2 Customer Service; and

6.2.3 Marketing and Promotions; and

6.2.4 Strategic partnerships; and

6.2.5 Coordinate repairs and renovations; and

6.2.6 Communicate and otherwise liaise with CEO and owners on all matters concerning the company.

7. Save as is stated in Paragraph 7 hereinabove in relation to Paragraph 5 of the D&CC, the Plaintiff shall require FML to show the relevance of what is pleaded therein to the issues to be determined by this action.

8. Save that Plaintiff denies that he abandoned his job as pleaded by KML in Paragraph 6 of the D&CC, or at all, the Plaintiff repeats and asserts his reliance on the legal precept of constructive dismissal in relation to FML's action as pleaded in the Plaintiff's Statement of Claim and in the foregoing paragraphs hereof.

DEFENCE TO DEFENDANT'S COUNERCLAIM

9. Paragraphs 1 to 8 above is repeated here.

10. Save that what is expressly stated in Paragraph 7.2 above reflects the duties of the Plaintiff as FML's COO, Paragraphs 10 and 11 of the D&CC are not admitted and FML is put to strict proof thereof inclusive of but not limited to what FML refers to as "...the Defendant's Express Stores...".

11. Save that the Plaintiff denies that he was in breach of his employment during the period referenced in Paragraph 13 of the D&CC, or at all, Paragraphs 12 through 19 of the D&CC are not admitted and FML is put to strict proof thereof, particularly, but not limited what FML means by the use of the word "scheme".

12. Save as is hereinbefore specifically admitted the Plaintiff denies each and every allegation contained in the D&CC as if to same were herein set out and specifically traversed seriatim.

DATED this 17th day of **May, 2018.**

Commercial Law Advocates

COMMERCIAL LAW ADVOCATES,
Chambers, Suite 1, Mosko Bldg.,
Trinity Place,
Nassau, Bahamas
(Attorney for the Plaintiff herein)

BACKGROUND:

[4] This is an action filed by the Plaintiff specifically claiming:

1. Breach of contract and/or
2. Constructive Dismissal

[5] The Plaintiff claims that the instant proceedings were commenced to recover losses suffered by the Plaintiff as a result of the termination of his employment or the breach of his employment contract by the Defendant.

CASE FOR THE PLAINTIFF:

[6] The Plaintiff alleges that he entered into the employment of the Defendant in June 2015 and his employment was terminated on or about February 23rd, 2018. The action was filed on the 26th March, 2018. The Plaintiff alleges that the terms of his contract of employment are set out in paragraph 10 of the S.O.C.

10. "Other relevant terms of the engagement of the Plaintiff with FML as its Coo duly licensed as a Key employee, are as follows:

(i) Contract commenced – 10th June, 2015

(ii) Term of Contract – 2 years (9 months)

(iii) Date of Termination – 23rd February, 2018

(iv) **Number of months employed – 33**

(v) **Annual Salary - $360,000.00**

(vi) **Hourly Salary Rate - $187.00**

(vii) **Monthly Salary - $30,000.00**

EVIDENCE OF THE PLAINTIFF:

[7] The Plaintiff swore a Witness Statement which was filed March 27th, 2019.

COMMONWEALTH OF THE BAHAMAS **2018**

IN THE SUPREME COURT **CLE/gen/00374**

Common Law and Equity Division

B E T W E E N

DEYVON JONES

Plaintiff

AND

FML GROUP OF COMPANIES LTD

Defendant

WITNESS STATEMENT OF DEYVON JONES

1. I am **DEYVON JAMAIME JONES** and I reside at 189 Seaglass, Road Charlottesville in the Western District of the Island of New Providence and I am now self-employed and this has been the state of affairs since my relationship with the Defendant ceased on 23rd February, 2018.

2. I joined FML as of 1st May, 2015, as the Company's Chief Operating Officer (COO) and performing such duties as are shown in the Compensation Agreement at **TAB -1** one of the Plaintiffs bundle of documents. The unique circumstances of my employment was the fact that I was previously an Operator operating under the Gaming Board's Traditional License. In this instance I was operating 14 stores that were still able to be licensed under the Gaming Act 2014.

3. Prior to joining FML my record has been well documented in the Bahamian Gaming Industry as an accomplished operator and creative marketer. Once building a company to the size of FML in 24 months. The reason for me joining FML was the fact that I had parted ways with some of my former partners for different reasons, and my thought was to joining up with a larger operator to help them accomplish success in the new market once the licensing period was completed

4. This arrangement began from a conversation Craig Flowers and I had about the way forward in the Gaming industry. He complemented me on my accomplishments in the industry and expressed his admiration for my aggressive nature and ingenuity. He expressed that he was getting old and no longer had the energy to run the business, and that his sons had no interest in running the business, nor do they live in The Bahamas. Mr. Flowers invited me to join FML in the capacity of COO and he told me that he would stay on for 6 months as the CEO and turn the reigns over to me to move the company forward.

5. It was agreed that my compensation would be based on my assignment of those stores to the FML brand to which they would be able to take full advantage of the existing stores, the outfitting, leasehold improvements, and the customer base that FML would immediately benefit from.

6. The stores that I brought were outlined in my employment agreement dated 10th June 2015 **(TAB-1)** as the compensation was based on their productivity. With the addition of the 8 stores. FML's footprint immediately grew by 50%, from 16-24 stores. FML experienced an immediate uptick in their revenue, to which the stores represented approximately 21% of the overall network revenue.

7. It was agreed that I would earn a base salary of $15,000.00 per month and I would receive 20% of any revenue over a pre determined amount. That pre-described amount was 1.5 million dollars NET GENERATED REVENUE (NGR) per month. It was agreed that anything over that takes account of the contribution of the Fantasy Stores which I would have brought into the business of the Defendant, and hence I would be due a profit share.

8. This amount (1.5. mill) was reached bearing in mind, FML was only enjoying an average monthly NGR of 1.2 mill per month. Nonetheless we proceeded with the agreement. Within the first quarter of my employment, I proceeded to created cost saving items and create promotions and products that would increase the revenue.

9. We started running promotions rather regularly, the first one being the Summer Cruizin Promotion, where we gave away a free car every week in conjunction with automall. After the first quarter, the rev-share dividend was over 150,000.00. This was all in accordance to what was agreed.

10. To my surprise instead of seeing the Board at FML happy that they beat their threshold and was able to hit these new figures, where their average rose to over 1.7 million dollars per month, the sons of Craig Flowers complained amongst themselves that I was receiving too much from the agreed deal, at least that was what I was told by Craig Flowers.

11. In addition, I provided FML with two Slot gaming platforms that I had exclusive rights to in the Bahamas, namely Parlay Games, and Games Media Works. Prior to this, FML had a slot gaming provider who was not certified to operate in the regulated jurisdiction and would have not been able to support them in a licensed environment. I co-chaired along with Ian Hepburn (Craig's Son) the deployment of a new Gaming platform that was GLI certified and approved by the gaming board, where we moved all clients and balances from one platform to the next overnight and seamlessly.

12. As the months ensued I continued to implement new initiatives in the FML group, to grow the Revenues and profits. We held the company's first ever home giveaway where two brand new homes were given away in conjunction with Arawak homes.The entire project was conceptualized, negotiated, and executed under my leadership. It culminated with the first ever televised giveaway show for a gaming house, with a performance by Grammy award artist 2Chainz performing. FML hit a revenue of approximately 2 million in that month. To everyone in the industry at the end of 2015. FML was Back!

13. The following year after the assessment of the Defendant's performance. The Board headed by Craig Flowers voiced that they felt that the compensation I was receiving was too much after additional discussions about my compensation package, it was agreed by me **(TAB-3)** to raise the threshold to 1.8 million and agree to a flat salary of $30,000.00 per month, this was done in good faith as my expectation was to see the company grow and reach new heights.

14. I worked in that capacity for 3 years, where during that time FML had reached several significant thresholds in a very aggressive market. They were numerous instances where the Directors would take money from the cashroom without notifying anyone, and paying exhorbatant personal bills on the company's account. I witnessed several of these arguments and I warned them that it must come under control, or they will hurt themselves in the long run.

15. During this time, I noticed a significant deficit of cash flow, which was perplexing to me as the revenues being yielded were sufficient to support the business. It was evident that uncontrolled spending with no transparent cash controls was the problem. At FML the operation Budget to Operate the stores on a monthly basis was approximately $800,000.00. In the year 2015 and 2016. FML was enjoying an monthly NGR average of about 1.3mil per month. Thus showing an EBITA of about $500,000.00 per month.

16. As time progressed, Craig Flowers sought at several points to restructure our deal, as some members of the FML Board of Directors expressed concern that the compensation was not equitable, thus in April 2017, the deal was restructured to a flat salary of $30,000.00 per month (**TAB-2**- this is the one in force when I was terminated). The Company was having severe cash flow problems, and was demonstrated by late payment processing on a regular basis. **TAB-9**. refers to National Insurance contributions made by the Defendant as my employer. **TAB-10** shows the receipt of my salary and particularly it shows that I was last paid on 30th October 2017: therefore I am owed for the months of November, December, January and February. The contract entitles me to receive 3 months notice pay. I was fired in February 2018 and all access to the business premises of the Defendant was discontinued. Having regards to the Defendant's policy the executives of the Executives of the Defendant took four weeks vacation; therefore; I would have been entitled the same. During my employment with the Defendant I took a total of 3 weeks vacation leaving 9 weeks vacation outstanding.

17. In attempt to help stabilize/subsidize the business, the company then unsuccessfully sought to raise capital funding from external sources (e.g. Banks and institutional investors). Craig Flowers went to Bank of the Bahamas to apply for a loan of 1 million dollars and was denied. I was then asked to assist if I can identify an individual (s) to assist with a loan of 1 million dollars. I prepared a 15- page document for potential investors/Lenders to consider doing the deal with FML.

18. The response I got from everyone to whom I spoke, who had the cash to invest was "what did they do with all of that money? and what are they doing wrong now?" There was zero confidence from anyone that Craig Flowers was a trustworthy candidate for a loan, seeing that they would have squandered millions of dollars to now be shopping for a loan of 1 million.

19. It got to the point where the company's airplane had to be sold which yielded about 1 million dollars, which for the most part was consumed by outstanding debt due to our programmers and other creditors. This is a plane that was bought just a few years prior for about three times that.

20. In addition to the poor cash management, FML's state was due to a number of ill-advised investments throughout the Caribbean, namely Bermuda, Haiti, Turk & Caicos and St. Maarten, all of which have been bleeding the Nassau-based FML. They also invested 1.5 million in a defunct Music TV station called Tempo, which does absolutely nothing for the Defendant. All of these items together, also require funds to be directed to them to keep them all afloat. and the Nassau-Based company, simply could not carry it all.

21. As FML's COO, I continued to express my concern with the company's ability to support it current gaming obligation and manage the business effectively. Admittedly. the Defendant embarrassingly had periods where on multiple occasions we were experiencing utility disconnections, 'bounced' cheques and instances of late payroll processing. There were several occasions when customers had to be turned around to collect their winnings, and when that started, FML's revenue started to decline.

22. Further to this. I made a presentation to the FML Board in October 2017 concerning the above as I strongly felt that the company was moving totally in the wrong direction. We were running an operation with no transparent cash controls, customers were not able to receive their winnings in a prompt manner, and were losing market confidence and I could not continue to idly standby and watch this company that still had the potential to do well fall apart because of arrogance and indiscipline.

23. While Mr. Craig Flowers is rightly recognized for pioneering the transition of the industry into the modern age, for years he felt that the best option for FML would have been to reduce its store footprint to just 10-12 stores. I told him that in this highly competitive climate, this would make the brand that much weaker and if anything he should be looking to expand the footprint and not to reduce it, reducing the footprint would only drastically shrink the cash flow and make the financial situation of the company even worse.

24. The stark reality of the situation is that at this point in time (my presentation), the company owed significant funds to the Gaming Board that they desperately needed to pay, and the company simply did not have it, as evidenced by payment extension request letters that are already in the

Gaming Board's possession. In this regard I arranged a loan in the amount of $450,000 in order for the Defendant to pay its debts especially the amount owed to the Gaming Board. The loan had to be repaid.

25. Craig Flowers saw the new injection of cash as a way to redeem the company's name, as it had gotten a reputation for not having money and he wanted to grow customer confidence.

26. I developed a Christmas promotion where we would give $1,000.00 per day to one lucky customer. Where all customers spending $20 or more would get a stub and at the end of the day there is one lucky winner. Craig thought they he would go bigger than that an offer $11,000.00 per day for a period of 21 days, but he made it available to all ticket as low as $5. I advised him that it was not smart as there was no incentive for customer to spend more.

27. He insisted and proceeded with the promotion. December turned out to be the worse month FML ever had, posting an NGR of about $750,000.00. With that revenue number that's an instant loss of $100,000.00, plus gaming tax which would be about $80,000.00, and the promotion cash that was spent at $11,000.00 per day for 21 days, totaling $231,000.00. With this, FML's loss in the month of December 2017 alone was about $400,000.00.

28. The next month January was another rough month, with NGR at about $900,000.00 therefore once again after paying taxes the company was at a loss. At this point the entire cash injection that would have been made in November had been exhausted. Then the pressure for cash started to build again with Craig, as the operation in Turks was recovering from a Hurricane so there was no revenue coming from there and they needed cash to get back open, desperately.

29. On February 17th 2018, I received a call from Craig Flowers expressing concern that it seems that people would have been depositing funds into a number of the stores and withdrawing the funds out right after. This was a feature I had asked several times to be addressed, as based on the compliance rules under the Gaming Board, this is not permitted.

30. I was at a sport function for my son at the time of this call, however understanding the urgency. I made my way uptown by 2:00 pm to be met with Craig Flowers and one of the Managers who had apparently been looking at these transactions for about 3 weeks without reference to me. I was totally blind-sided by all of this and asked how we can quickly correct this. It was clear his

intent was not to correct it but to instead use it as a means to severe the agreement I had with the Defendant.

31. I asked Mr. Flowers to give me a few days to get to the bottom of what was going on, as I am sure there had to be a logical explanation. At the surface and to be absolutely clear, there is no win or loss to FML group as a whole as no funds would have been gained or lost in this exercise.

32. At the end of my investigation, Jamaal Stubbs, FML's Business Development Manager said that he takes responsibility for the oversight as he thought he should have caught and reported this.

33. Craig Flowers then sought to coerce several members of the stores that were previously operated by me to say that I had something to do with the matters referred to in paragraph 29 above.

34. As regards Cindy Williams who was the General Manager and responsible for training the new operating team at FML, the Defendant also blocked her access and notified staff that she was no longer with the company and they have refused to pay her termination pay. They told her if she wants a job, she would have to tell them and go on record that I had something to do with what transpired in February; Mrs. Williams advised that I was not a part of any the alleged collusion. Cindy Williams had since taken FML to the gaming board and they have ruled that FML must pay here severance and to date they still have refused to do so.

35. Additionally, Jamaal Stubbs, an exemplary employee by all accounts, and was relied on for critical reports and analyses on many levels, was pressured to suggest that I had something to do with what happened, Jamaal Stubbs likewise advised that I was not a part of any collusion or scheme.

36. On February 23rd, I came to a meeting where I was given a letter summarily severing the relationship with the entity which provided the Defendant with a loan of $450,000.00, thereby immediately cancelling the contract. At that time I said, "This cannot be done as you just took in over $450,000.00 of someone's money and you think they will allow you to just walk away and not pay them their money back?" When you think about it, it's like the Defendant in effect got a free loan to support its business and was seeking to not to pay back the loan.

37. There was a meeting convened to discuss the matter and how it would be resolved. It was verbally agreed to repay the $450,000.00. I expressed in that meeting that we can address whatever concerns there are amicably, Craig Flowers then said that he had no desire to work with me anymore. So I then said, so if you terminate me you will have to pay me. he said. "no I Don't think so". Wayne Munroe who was present at the meeting then told him "No Mr. Flowers you would still have to pay Mr. Jones as he is your COO and registered as such with the Gaming Board. and he is gainfully employed with the Defendant under the Employment Act".

38. The following day, Mr. Flowers had his attorney, Wayne Munroe write a letter to agree to repay the $250,000.00. This amount has yet to be returned.

39. After this. all of my access to the software back office and actual entrance to the building were disabled. I was unable to access email and company files, and staff were advised that I was no longer with the company. All of this was news to me, because I had never been formally terminated as COO of FML. I then spoke at length with the other Board members Ian Hepburn and Jason Flowers, both of whom agreed that we should just agree on a settlement amount and move on.

40. At that point it became very clear to me what Craig Flowers' intent was all along. to lure me into FML to bring my stores, energy, and ideas. Along the way, he constantly tried to move the goal post so that I would receive less and less. As the funds got tight, try and find a way to get me out and keep the stores. Essentially right now, the Defendant has benefited from not paying my salary for a period of 16 months, and has all of the stores and the revenue that I brought with the original employment arrangement. In addition it received $450,000.00 through a loan arranged by me.

41. To this date, we had several discussions (Hepburn and J. Flowers) back and forth on the amount however Craig Flowers continues to insist on not paying me anything with his lasting words being; "who do you think they will believe, Deyvon Jones or Craig Flowers?"

42. It's exactly that attitude that has the Defandant in the state that it is now in, completely lost and rudderless. No energy, no ideas, extremely low morale and suppressive management as though you are 'serving in a kingdom' as oppose to just normally working at a company as regular people do.

43. In summation, it was my intent to settle this matter privately and as quietly as possible to avoid the obvious public spectacle that might be created. I am seeking assistance from the court to see that I receive compensation for the amounts set out in the statement of claim for unpaid salary, vacation pay and termination pay.

Dated this 25th day of March, 2019

DEYVON JONES

[8] The Plaintiff had no additions or deletions to his WS and was tendered for cross-examination.

[9] Under Cross-examination a number of questions were put to the Plaintiff.

[10] The salient questions and issues are centered around the claim. The Plaintiff is claiming that he was terminated by the Defendant. In support of this he says that he was, prior to his employment relationship with the Defendant part owner of a chain of web shops called "FANTASY". At some point and time, he and his partner decided to join the Defendant's gaming operation.

[11] The Plaintiff's partner never joined the Defendant. The Plaintiff and the Defendant functioned under several agreements. The first agreement became effective May 01st, 2015 and came to an end April 30th, 2017.

Deyvon Jones

Compensation Agreement

Chief Operations Officer | NASSAUGAME.COM

1. TERM OF AGREEMENT

Description	Details	Value
Effective Date	-	1 May 2015
Completion Date	-	30 April 2017

2. SALARY

Description	Details	Value
Annual Salary	Paid Monthly | $15,000/mth	$180,000.00

3. REVENUE SHARE

Description	Details	Value
NGR Growth	• 20% of the Increase in the Net Generated Revenue (NGR) of NASSAUGAME.COM above $1.5 Million (M) • NGR = Total Bets LESS Total Winnings.	20% NGR > $1.5M
Net Profit	5% overall Net Profit of NASSAUGAME.COM	5% Net Profit

4. PAYMENT TERMS

a) **FML GROUP OF COMPANIES** agrees to pay **DEYVON JONES** all Revenue Share earnings (clause 3) within thirty (30) days of the end of each three (3) month period from the Effective Date of this agreement.

b) All Revenue Share earnings shall be calculated using the verified tax filings submitted to The Gaming Board of the Bahamas.

5. FANTASY STORES

During the term of this agreement, the following eight (8) stores shall be known collectively as the Fantasy Web Café Stores:

a) Marlborough Street (Downtown)
b) Elizabeth Avenue
c) Nassau Village
d) Sea Grapes Shopping Plaza
e) Soldier Road (VIP)
f) Bahama Avenue
g) Farrington Road
h) Independence Drive

6. **REIMBURSEMENT**
FML GROUP OF COMPANIES agrees to reimburse **DEYVON JONES** for the following Lease and Security Deposits paid for the Fantasy Web Café Stores:

Description	Details	Value
Lease Deposits	Last Month and Security Deposits	$26,285.32
Cable Bahamas Deposits	Cable Bahamas Security Deposits	$1,100.00
BTC Deposits	BTC Security Deposits	$750.00
	TOTAL REIMBURSEMENT:	**$28,135.32**

7. **SHARE OPTION**
   a) Within ninety (90) days from the signing date of this agreement, the purchase price for five percent (5%) of the shares of NASSAUGAME.COM shall be established by **FML GROUP OF COMPANIES. DEYVON JONES** shall then be given eighteen (18) months to exercise the option to purchase five percent (5%) of the shares of NASSAUGAME.COM in full at the established price.
   b) The shares of NASSAUGAME.COM purchased by **DEYVON JONES** shall be non-transferable and may only be sold to existing shareholders of NASSAUGAME.COM or sold back to the company at fair market value.
   c) Upon the purchase of the five percent (5%) of the shares of NASSAUGAMES.COM by **DEYVON JONES,** the Net Profit payment of the Revenue Share (clause 3) shall cease.

8. **TERMINATION**
   a) This agreement may be terminated by either party at any time provided ninety (90) days' notice is provided in writing.
   b) If this agreement is terminated by **FML GROUP OF COMPANIES** prior to the completion of the TWO (2) YEAR term, **FML GROUP OF COMPANIES** agrees to pay **DEYVON JONES** the remainder of the Salary (clause 2) due under this agreement in full.
   c) If this agreement is terminated by either party prior to the completion of the TWO (2) YEAR term, **FML GROUP OF COMPANIES** agrees to return full control of the Fantasy Web Café Stores to **DEYVON JONES** provided **DEYVON JONES** repays **FML GROUP OF COMPANIES** Three Hundred Thousand Dollars ($300,000) in full for the Store License Fees paid to The Gaming Board of The Bahamas for the Fantasy Web Café Stores, along with the total REIMBURSEMENT amount (clause 6) received from **FML GROUP OF COMPANIES.**

Kindly sign below to confirm your acceptance of these terms.

FML GROUP OF COMPANIES	DEYVON JONES
10/Jun 2015	10 - June, 2015
DATE	DATE

[12] The second compensation agreement commenced May 01st, 2017 and ended April 30th, 2018.

Deyvon Jones

Compensation Agreement

Chief Operations Officer | EVERYBODYWINSLIVE.COM

1. **TERM OF AGREEMENT**

Description	Details	Value
Effective Date	-	1 May 2017
Completion Date	-	30 April 2018

2. **SALARY**

Description	Details	Value
Annual Salary	$30,000/Mth | Paid Monthly	$360,000.00

3. **REVENUE SHARE**

Description	Details	Value
New Products NGR	Four Percent (4%) of the Net Generated Revenue (NGR) on ALL New Products**	4% NGR New Product ONLY
Net Profit	Not Applicable	-

** - Excludes Lotto (2/3/4Ball, 5/6Ball, Triple Play, Roulette), Casino (Game Media Works, Parlay, SpinGames, Tropical Games), 3D-3D (Parlay)

4. **PAYMENT TERMS**
   a) FML GROUP OF COMPANIES agrees to pay DEYVON JONES all Revenue Share earnings (clause 3) within Thirty (30) Days of the end of each Month from the Effective Date of this agreement.
   b) All Revenue Share earnings shall be calculated using the verified tax filings submitted to The Gaming Board of the Bahamas.

5. **TERMINATION**
   This agreement may be terminated by either party at any time provided Ninety (90) Days notice is provided in writing.

Kindly sign below to confirm your acceptance of these terms.

FML GROUP OF COMPANIES

5-15-17
DATE

DEYVON JONES

15.5.17
DATE

The FML Group of Companies

[13] The Third document is entitled "COMPENSATION AGREEMENT ADDENDUM"

Deyvon Jones
Chief Operations Officer
EVERYBODYWINSLIVE | NASSAUGAME

Compensation Agreement Addendum

1. **ADDENDUM**

This document is an Addendum to the Compensation Agreement (**Agreement**) signed 10 June 2015 between **FML Group of Companies** and **Deyvon Jones**. All provisions set forth in the **Agreement** shall remain intact except for section 2 (**Salary**) and section 3 (**Revenue Share**) as detailed in this document.

2. **SALARY**

Description	Details	Value
Annual Salary	Paid Monthly ($30,000/mth)	$360,000/annum

3. **REVENUE SHARE**

Description	Details	Value
Net Generated Revenue (NGR) Growth	• 20% of NGR of EVERYBODYWINSLIVE | NASSAUGAME ABOVE $1.8 Million • NGR = Total Bets LESS Total Winnings.	20% NGR > $1.8M

4. **ONE-TIME PAYMENT**

A one-time payment of **Forty Five Thousand Dollars ($45,000)** shall be made to **Deyvon Jones** in lieu of the **5% Net Profit** revenue share for the August – October 2015 quarter.

5. **EFFECTIVE DATE**

This Addendum shall take effect on **1 November 2015** and shall remain in effect until **1 May 2016**.

Kindly sign below to confirm your acceptance of these terms.

FML GROUP OF COMPANIES	DEYVON JONES
1 DEC 2015	12.1.15
DATE	DATE

The FML Group of Companies

[14] For clarity I take special note that the first compensation agreement ("The agreement (s)") was for $15,000.00 monthly or $180,000 annually. The Second agreement was for $36,000.00 per month with an annual value of $360,000.00, an addendum to the first agreement. The Third agreement is an addendum to the First agreement for $30,000.00 per month with an annual value of $360,000.00. Then came a document called a "LETTER OF UNDERSTANDING" ("The Letter")

Letter of Understanding

This letter of understanding is made this 1st day of **November, 2017** with the following Employees **(Deyvon Jones, Cindy Williams, Jamaal Stubbs & FML Group of Companies LTD)** These Employees has ask and was granted permission to join a Company known as (**Blue Star Holdings Limited)** a registered company in the Bahamas, for the purpose of operating and managing nineteen (19) of **FML Group of Companies LTD Stores,** known as **The Express Stores.**

Blue Star Holdings Limited, undertakes to the following but not limited to:

Pay any and all salaries associated to these staff

Pay all National Insurance fees associated with their salaries

Pay all fees to the Bahamas Gaming Board associated to these Employees

By signing below all Employees have read and agree to contents of this understanding.

Deyvon Jones

witness

Cindy Williams

Witness

Jamaal Stubbs

witness

FML Group of Companies LTD

Witness

[15] This letter seems to be one of the factors if not the "factor" which will determine the outcome of this action. There were many questions put to the Plaintiff. However, many of those questions lend little to no support to the advancement of the case. I do believe that they came about as a result of what was set out in the Plaintiff's WS.

[16] The Plaintiff's evidence is that some of his utilities were paid by the Defendant during the transitional period. NIB, staff and whatever utilities remained were close to current. All Landlords were paid except one during the transitional period.

[17] When the Plaintiff joined FML he was located at Wulff and Village Roads along with Cindy Williams, Flandena Walker, Jamaal Stubbs and Tonya Williams. Subsequently, the Plaintiff moved to the main office building on West Bay Street. The Plaintiff did agree that his compensation increase was based on net generated revenue which came from a lot of expenses which arose from promotions. The Plaintiff simply put that as being the cost of doing business. He however disagreed that although the net generated revenue was increasing the profit of FML was not. When asked how he would know not having access, he said they were given financial statements.

[18] The Plaintiff's further evidence was that Mr. Flowers told him that he was giving him the business. Counsel put to him that it was foolishness and that all employees including the Plaintiff were told that Mr. Flowers was handing over the day to day operations of his business to his sons Jason and Damian Flowers and Ian Hepburn and he, Mr. Flowers would concentrate on developing the gaming operations in Haiti, Turks & Caicos and Bermuda, while being a reference point to advise them on any problems they may encounter. The Plaintiff did admit that his former partner, Albert Rahming complained about him striking up some illicit deal with Mr. Flowers, which involved Fantasy, and resulted in a legal action being filed against

the Plaintiff, FML and the Gaming Board. The Plaintiff was not aware that the Gaming Board was also sued.

[19] The Plaintiff conceded that when he applied for a key employee licence in 2015, he did not receive it. At around this point counsel for the Defendant explained to the court, after having put to the Plaintiff some of the issues surrounding the Plaintiff not obtaining a key employee licence that as a result of that in his WS, outlining every detail of his relationship with the Defendant, he was instructed to simply focus on the alleged termination. In this regard, I agree with Mr. Munroe that the real issue here is the alleged termination. Counsel also advised that his client was not relying on anything with the Gaming Board relative to the alleged termination.

[20] After having this discourse, I was satisfied that all was in order as it relates to the Gaming Board. There is no need to go into what transpired. The Plaintiff received his key employee licence.

[21] The Plaintiff's duties as Chief Operating Officer included the day to day transactions in the system, training of staff, hiring, development of initiatives, marketing, store out fitting, co-ordination of operations, security and pretty much the entire operation on a day to day basis. This included identifying the potential new gaming platforms and foot prints. Other duties included supervising the cashiers, their supervisors and the store managers.

[22] In November 2017, the Plaintiff presented a proposal for the consideration of the Board of FML. The proposal was for the Plaintiff to have management of what was referred to as the "EXPRESS STORES". The Plaintiff explained that it wasn't him in this personal capacity but a company called BLUE/STAR, which is owned by

him. The other owners of the company is a company called "ACID" along with Jamaal Stubbs who also has shares. According to the Plaintiff, the company route was suggested because money was changing hands.

[23] I am aware of the company Blue Star as it had commenced an action against FML, but had no standing to do so due to the fact that it was not formed at the relevant period. That action was withdrawn. However, the Plaintiff was the only one who signed the letter on behalf of Blue Star on the 01st November, 2017. No evidence was given as to whether Jamaal Stubbs was an officer of Blue Star as he also had signed along with Cindy Williams.

[24] The Plaintiff is the President of Blue Star. Blue Star actually finds itself in somewhat of a quandary

. The management agreement proposed, is dated 01st November, 2017 as is the Letter of Understanding. The Plaintiff however, says that the Letter was not the 01st, November, it was a few weeks later. However, the parties continued to operate according to the Letter of Understanding.

[25] There is no disagreement that the parties continued to operate according to the letter of understanding. The evidence of the Plaintiff confirmed this as did the evidence of the defendant's witnesses.

[26] Mr. Maksims Terehovics gave evidence as to the accuracy and functionality of the Defendant's computer gaming system. I am satisfied as to the accuracy and functionality based on his evidence.

[27] Mr. Phillip Galanis also gave evidence for the Defendant. I also accept his evidence as to the gush of deposits and withdrawals at the express stores which at the time were being operated by the Plaintiff based albeit on the terms set out in the letter of understanding.

[28] I wish to clarify that the Court does not accept that there was any legally binding agreement between Blue Star and the Defendant. What the Court does accept is that certain terms and conditions identical to those set out in the letter of understanding which was unsigned and which was null and void due to the fact that at the time of the letter of understanding the company Blue Star was not incorporated. (See the case of ROLLE FAMILY and COMPANY LIMITED V. ROLLE [2017] UKPC 35).

[29] This is an employment action and what needs to be decided is whether in fact and in law the Plaintiff was employed by the Defendant or subsequently by some other entity or arrangement and was terminated.

[30] Initially the Plaintiff was employed by the Defendant by way of several "Compensation Agreements" as Chief Operating Officer. ("COO".) The first agreement's duration was May 01st, 2015 to 30th April, 2017 and dated 10th June, 2015. An addendum to this first agreement dated December 01st, 2015 increased the compensation from $180,000.00 to $360,000.00 per annum.

[31] On the 01st November, 2017, a Letter of Understanding was executed and I am of the view that it should be set out in full so as to analyse the language used.

LETTER OF UNDERSTANDING:

Letter of Understanding

This letter of understanding is made this 1st day of **November, 2017** with the following Employees **(Deyvon Jones, Cindy Williams, Jamaal Stubbs & FML Group of Companies LTD)** These Employees has ask and was granted permission to join a Company known as (**Blue Star Holdings Limited)** a registered company in the Bahamas, for the purpose of operating and managing nineteen (19) of **FML Group of Companies LTD Stores,** known as **The Express Stores.**

Blue Star Holdings Limited, undertakes to the following but not limited to:

Pay any and all salaries associated to these staff

Pay all National Insurance fees associated with their salaries

Pay all fees to the Bahamas Gaming Board associated to these Employees

By signing below all Employees have read and agree to contents of this understanding.

Deyvon Jones

witness

Cindy Williams

Witness

Jamaal Stubbs

witness

FML Group of Companies LTD

Witness

[32] I hasten to point out that the Letter of Understanding produced, is made between FML Group of Companies and Three employees namely Deyvon Jones, Cindy Williams and Jamaal Stubbs. Further, it sought to facilitate a request made by those employees. Permission was granted. The issue with the letter is the undertaking, "BLUE STAR HOLDINGS LIMITED UNDERTAKES .... TO." That when interpreted literally, implies that Blue Star is already a company formed under the Companies Act 1992 when in fact it was not. Therefore at that point and time Blue Star could not undertake to do anything.

[33] However, the parties themselves, namely the three employees and FML carried out their employment relationship pursuant to the undertakings set out therein as if Blue Star was incorporated at the time. The evidence shows that Blue Star was eventually incorporated November 20th, 2017, a period of some Nineteen (19) days.

[34] Mr. Mackay puts the position as being that the Blue Star Compensation Agreement is void, being a gaming related contract not submitted to the Gaming Board for approval in accordance with Section 54 of the Gaming Act which provides:

> **54. "Approval of gaming-related contracts.**
>
> **(1) Every holder of a licence referred to in section 23(1)(a), (b) or (f) shall, prior to entering into any gaming-related contract with any person other than the holder of a licence or certificate of suitability issued under this Act, furnish the Board with a written submission stating –**
>
> **(a) the nature of the proposed contract;**

(b) the value or projected value of such contract;

(c) the identities of all parties to such contract;

(d) the date of the proposed conclusion of the contract and the proposed period, and

(d) full details of any terms, conditions or similar provisions therein in terms of which the performance by the licenced holder, or any aspect of such performance is directly based upon, linked to or in any respect contingent upon, turnover or profits generated by the gambling operations of such licence holder.

(2) Within fourteen days of receipt of a submission referred to in subsection (1), the Board may require the licence holder to submit a copy of any such contract to it for approval in the manner prescribed.

(3) In the event that the Board has not, within the fourteen day period referred to in subsection (2), required the licence holder to submit a contract referred to in subsection (1), the contract will be deemed to have been approved.

(4) The Board may, within the fourteen day period referred to in subsection (2), revert to the licence holder, and –

(a) may require the submission of a copy of the gaming-related contract; and

(b) shall within thirty days of the date of submission of such contract to it –

(i) approve such contract; or

(ii) require the third party to apply for a certificate of suitability, unless the Board, during such period, notifies the licence holder in writing that it requires a further period, which it shall stipulate and which shall be reasonable in the circumstances, to consider the matter.

(5) A contract entered into by a licence holder in respect of which the provisions of subsection (1), and, where applicable, subsection (2), are not complied with, shall be void.

(6) Nothing in this section shall derogate from the power of the Board –

(a) to request that it be furnished with a copy of any gaming-related contract of the nature specified in subsection (1) entered into between a licence holder and any third party, at any time;

(b) to request from the licence holder or the third party such further information as it may require pertaining to the suitability of the third party; and

(c) to require the third party to submit an application for a certificate of suitability referred to in section 55, which shall apply, with the necessary changes.

[35] In regards to the above section, I accept that the alleged Blue Star arrangement was void pursuant to S. 54. Not only was it void pursuant thereto, but it was also void due to the fact that the company was not incorporated when the attempt was

made to put the arrangement in place. This being the case makes it a NON-ISSUE as it relates to any infraction or breach of the Gaming Act S. 54.

THE LAW:

[36] Mr. Craig Flowers swore a Supplemental Affidavit which was filed April 01st, 2019. Of special note are paragraphs 19 – 31:

19. That the Plaintiff would repeatedly suggest ways that he might be compensated based on his performance. Being mindful of the previous experience the Defendant only agreed to the formulation that was embodied in the agreement with Blue Star Holdings 2017 Limited ("the Blue Star compensation agreement"). The Plaintiff had his wife document the agreement which we executed. We were subsequently advised that the agreement could not be acted upon unless and until it was approved by the Gaming Board. We nonetheless agreed to compensate the Plaintiff based on this agreement.

20. The Plaintiff was in fact compensated based on the Blue Star compensation agreement from November, 2017.

21. The basis agreement was that the Plaintiff would operate the Express stores of the Defendant and in effect keep as compensation the lionshare of the profits generated after paying the expenses of those stores. This was felt to be equitable as if the Plaintiff increased revenue without increasing profits his compensation being based now on profit would act as a control.

22. As a part of this arrangement the platform of the Defendant had to be altered to permit the system to recognize the revenue and expenses related to the Express and Premium stores. As the Plaintiff had to alter its system to accommodate the Blue Star compensation agreement the Plaintiff agreed to pay the sum of $250,000.00 to cover the changes to the system and other expenses required. This was expressed as non refundable fee.

23. As customers of the Defendant could redeem their winners at both Express and Premium stores regardless of where they were customers it was agreed that the profits for a day would be apportioned based on the volume of deposits in each type of stores. The result was that the higher the deposits at the Express Stores the higher the percentage of daily profit the Plaintiff would be entitled to.

24. This explains why deposits at Express Stores that are not used for gaming but just withdrawn the same day would unfairly benefit the Plaintiff. The basis of the deposit totals was based on deposits used for gaming transactions.

25. That I was called to be involved in an investigation of deposits at only Express Stores that were followed the same day by withdrawals. The content of the witness statements filed on behalf of the Defendant herein sets out the terms of the investigations carried out on behalf of the Defendant.

26. That after the meeting with the Plaintiff referred to in paragraph 10 of my witness statement and the Plaintiff was still after two days unable to demonstrate a coherent understanding of the situation or provide an insight. It was decided to prevent access by the Plaintiff and his staff who were located at the premises across from Dunkin Donuts to the computer platform and the premises while investigations continued. A report was also made to the Gaming Board. We had sought to speak directly with Jamal Stubbs without success to this day.

27. It is not accurate that the Gaming Board ruled that the Defendant must pay Cindy Williams any sums as severance. Cindy Williams made a report to the Labour Board. At the conciliation hearing it was pointed out that Cindy Williams was not terminated but simply locked out of the system during an investigation and that another employee who had also been locked out had returned to work. The conciliator indicated to Cindy Williams that she was not terminated and could go back to work. Cindy Williams indicated she would think about it but never returned to work.

28. That the Plaintiffs account of the meeting involving the Defendant's Counsel is inaccurate.

29. The meeting was set up on the intervention of Donovan Gibson who is a Member in the firm of Munroe & Associates and said to be a relative of the Plaintiff. Present at the meeting was Jason and Damian Flowers, Wayne Munroe, Q.C., Donovan Gibson, the Plaintiff and I. Jason Flowers chaired the meeting.

30. At the beginning of the meeting Wayne Munroe advised that the meeting was without prejudice and that as both lawyers were from the same firm it was simply a meeting to seek to see if a way forward could be worked out.

31. The Plaintiff then proceeded to advance claims on behalf of Blue Star Holdings Limited and for purported termination. It was explained that at that point he had not been terminated but if he was to claim he had to choose between a claim on the Blue Star compensation agreement as an employment claim or a company claim. The

[37] As this is an employment matter, the Court must necessarily seek to determine the terms and conditions of the employment of the Plaintiff.

[38] The Plaintiff started out with several compensation agreements. His duties were not specifically set out in any document but he and the Defendant operated on unwritten terms. In essence, the parties functioned on an oral contract.

[39] In 2017, the parties agreed to abide by certain terms which were set out in an agreement which for legal reasons was void. I hasten to point out that this is not an impediment to parties having a contract of employment as they did.

[40] The real question is whether a contract of service existed or whether it was a contract for services. The Plaintiff has not raised or addressed any of the sections of the Employment Act ("The Act").

[41] In the "Act" employee is defined as:

> **"Employee" means any person who has entered into or works under (or, in the case of a contract which has been terminated worked under) a contract of employment, , whether the contract is for manual labour, clerical work or otherwise and whether it is a contract of service or apprenticeship, and any reference to employment shall be construed accordingly."**

[42] It is trite law that what is referred to or called a contract of employment is "a contract of service", which is totally different than a contract for services. An employee is employed under a "contract of service" or a contract of employment and is

distinguished from an independent contractor or a self-employed person, who works under a contract for services. In the Book **"THE LAW OF TERMINATION OF EMPLOYMENT"** by Robert Upex, Seventh Edition it states at 1.01 page 7:

> **"In essence the distinction between them lies in the nature of the obligation undertaken. Both may be engaged to achieve a particular result but the independent contractor may have far greater latitude than the employee in the way he or she achieves that result for example in hours of work and use of sub-contractors."**

[43] The question is whether the arrangement agreed between the Plaintiff and the Defendant created such a relationship.

[44] The Plaintiff claims to have been constructively dismissed. Constructive dismissal is a term which is commonly applied to a resignation by an employee in circumstances such that he or she is entitled to terminate the contract without notice because of the employer's conduct.

[45] In the case of **WESTERN EXCAVATING (ECC) Ltd. v. SHARP [1978] ICR 221,** Lord Denning in the Court of Appeal affirmed that the question whether an employee is entitled to terminate without notice should be answered according to the rules of the law of contract. He said:

> **"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment, or which shows that the employer no longer intends to be bound by one or more of the essential terms of contract, then the employee is entitled to treat**

himself as discharged from any further performance .... The conduct must .... be sufficiently serious to entitle him to leave at once."

[46] Several factors need to be clarified. The Plaintiff at paragraph 36 of his WS says that on February 28th, 2018 "he was given a letter summarily severing the relationship with the entity which provided the Defendant with a loan of $450,000.00 thereby immediately cancelling the contract.

[47] The Defendant in paragraph 26 of the WS of Craig Flowers says:

"That after a meeting with the Plaintiff referred to in paragraph 10 of my Witness Statement and the Plaintiff was still after two days unable to demonstrate a coherent understanding of the situation or provide an insight. It was decided to prevent access by the Plaintiff and his staff who were located at premises across from Dunkin Donuts to the computer platform and the premises while investigations continued. A report was also made to the Gaming Board. We had sought to speak directly with Jamaal Stubbs without success to this day."

[48] Paragraph 13 of the WS of Craig Flowers filed March 28th, 2019 states:

"13. On the 23rd February, 2018, after having sought legal counsel, Nassau Games BOD advised Mr. Jones that his performance – based incentive agreement was considered terminated due to gross negligence."

[49] I hasten to point out that the Plaintiff nor the Defendant in either of their evidence say anywhere that the Plaintiff was terminated from his job as COO. The undisputed evidence is that the incentive-based agreement was terminated.

[50] Was the Defendant wrong to lock the Plaintiff and his staff out of the system while carrying out an investigation? I think not. In fact Section 33 of the Employment Act requires an employer to follow a certain process. It provides:

> **"33. An employer shall prove for the purposes of any proceeding before the Tribunal that he honestly and reasonably believe on a balance of probability that the employee had committed the misconduct in question at the time of the dismissal and that he had conducted a reasonable investigation of such misconduct except where such an investigation was otherwise unwarranted."**

[51] There are some questionable paragraphs in the Plaintiff's WS e.g. Para 38 where he states:

> **"38. The following day, Mr. Flowers had his attorney, Wayne Munroe write a letter to agree to repay the $250,000.00. This amount has yet to be returned."**

[52] However, no such letter has been produced, it is certainly not in the Plaintiff's bundle of documents.

[53] Of even greater interest is paragraph 39 where the Plaintiff states:

"39. After this, all of my access to the software back office and actual entrance to the building were disabled. I was unable to access e-mail and company files, and staff were advised that I was no longer with the company. All of this was news to me, because I had never been formally terminated as COO of FML. I then spoke at length with the other Board Members, Ian Hepburn and Jason Flowers, both of whom agreed that we should just agree on a settlement amount and move on."

[54] This would seem to be correct since the Defendant says the Plaintiff was never told that he was terminated only that the incentive-based agreement was.

[55[The critical question is:

"WHAT WERE THE TERMS AND CONDITIONS OF EMPLOYMENT?"

Was it those terms which were initially in the Blue Star Agreement or other terms? The evidence strongly suggests that it was the terms enshrined in the Blue Star Agreement. Let me state right away that no consideration will be given to the Blue Star Agreement as an agreement which was legally binding. Blue Star was not and could not be a party to any agreement. (See Privy Council Case of ROLLE FAMILY and COMPANY LIMITED V. ROLLE [2017] UKRC 35).

[56] The Plaintiff's position is that since the Blue Star Agreement was not legal, it should follow that the last compensation agreement which would have expired 30th April, 2018 is the operative agreement. The relevant terms set out therein, and there were few, are:

"1. Effective date - 1st May, 2017
Completion date - 30th April, 2018

2. Salary -
Annual - $30,000.00 (monthly)
[$360,000.00 - Annually

3. Revenue Share - 4% of the net generated revenue on all products **(Excludes lotto etc.)

4. Payment terms:

(a) FML Group of Companies agrees to pay Deyvon Jones all revenue share earnings (clause 3) within (30) Days at the end of each month from the effective date of this agreement.

(b) All revenue share earnings shall be calculated using the verified tax filings submitted to the Gaming Board of the Bahamas.

5. TERMINATION:

This agreement may be terminated by either party at any time provided Ninety (90) Days notice is provided in writing."

[57] The agreement is executed by FML Group of Companies and the Plaintiff. The Plaintiff included a Compensation Addendum in his bundle of documents dated 1st December, 2015, which increases the Net Generated Revenue entitlement to 20%and a one-time payment of Forty-Five (45,000.00) Thousand Dollars in lieu of the 5% Net Profit revenue share for August – October, 2015. I fail to see what or how this Addendum factors into any calculation as it preceded the last agreement.

[58] **THE TERMS WHICH WERE INITIALLY A PART OF THE BLUE STAR AGREEMENT BUT VERBALLY AGREED TO BE FOLLOWED AS AN**

AGREEMENT BETWEEN THE PARTIES BUT NOT AS A BLUE STAR AGREEMENT.

[59] The Plaintiff, like Cindy Williams and Jamaal Stubbs were all registered and licensed as key employees at FML. They had to be licensed to be engaged in a contractual arrangement with FML.

[60] The parties agreed to a certain way of performing the tasks associated with the purpose of the employment arrangement and how the Plaintiff would be remunerated.

[61] I am not open to the question as to whether the Plaintiff was an independent contractor as he did not have that level of control over the operation, despite the fact, that he had agreed to operate the express stores in a certain way, thereby affording himself the opportunity to increase his income inclusive of paying himself, Cindy Williams and Jamaal Stubbs. In fact the agreement was that all outgoings related to the express stores would have been paid by the Plaintiff from income generated in the express stores.

[62] The Plaintiff has claimed:

A. An order for damages for breach of contract or alternatively, constructive dismissal from FML; and

B. An order for aggravated and/or exemplary damages; and

C. An order for interest as pleaded; and

D. An order for all costs of and occasioned by the bringing of this action.

[63] The evidence in this case is pretty clear. Certain transactions were taking place which came to the attention of the principals of the Defendant. The Defendant then commenced an investigation. However, before doing so the Plaintiff was called in and notified.

[64] The Plaintiff was never told that his employment with the Defendant was terminated. That was his evidence. In my view, it was proper in the circumstances to not have the Plaintiff accessing the system while such an investigation was ongoing.

[65] During the hearing, the Plaintiff raised the issue of a loan, however, nothing has been placed before the Court to support such a claim. In this regard, I cannot consider that issue. The Plaintiff also testified that a letter was written by counsel for the Defendant indicating that the Defendant agreed to repay $250,000.00. No such letter was produced at trial. The Plaintiff also testified that some staff were told that he was no longer employed with the company. However, there has been no corroboration of that either.

[66] The Plaintiff agreed to restructure his compensation agreement. Included in that agreement was the fact that whatever was generated at the express stores, the Plaintiff would pay himself, Cindy Williams and Jamaal Stubbs, including their NIB contributions.

[67] This agreement was initially set out in another agreement with a company as a party but not incorporated legally. Let me state right away that there is absolutely nothing wrong with parties agreeing terms upon which they will function in a contractual relationship, either orally in writing or by conduct.

[68] The evidence does not disclose that the Defendant terminated the Plaintiff. What it does disclose is that an extremely thorough investigation was carried out by the Defendant once the suspicious activities were brought to its attention. This is borne out by the evidence of Mr. Phillip Galanis and his documented report which was put in evidence. Another factor which arose was that some of the persons involved in the suspicious transactions were related to the Plaintiff and because of the structure of the compensation agreement, the Plaintiff, Cindy Williams and Jamaal Stubbs would have benefited financially from the suspicious activities. No evidence was provided by the Plaintiff to show that he was terminated from the employment of the Defendant.

[69] In the transcript of 1st April, 2019 at page 68 lines 15 – 23 the evidence was:-

Pg. 65 – Lines 15 – 23:

"15. Q. You were never told that you were terminated,

16. correct?

17. A. No.

18. Q. And what you were told is that they were

19. cancelling the Blue Star Agreement?

20- A. Yes.

21. Q. Not that they were terminating you; isn't that

22. so?

23. A. Yes. The Blue Star Arrangement was cancelled."

[70] Further, in a letter dated February 23rd, 2018 at Tab 5 of the Defendant's bundle of documents, the Plaintiff was advised of certain happenings.

Friday, February 23, 2018

BY HAND
Blue Star Limited,
Trading As FLMX
Nassau, Bahamas.

Attention: Mr. Deyvon Jones

Dear Sir,

I refer to the meeting between our respective parties yesterday, February 22, 2018, with reference to Management Agreement dated 1st November 2017.

As you are aware my Company, FML Group of Companies Limited, agreed terms and conditions with your Company operating as FLMX, to manage certain terms and conditions set out in the abovementioned Agreement.

The Agreement was developed and put into operation on the explicit understanding that both parties would faithfully perform according to the terms and conditions of the Agreement.

It has come to my attention that there has been a falsification of the accounting system operating under the **1Click Platform** which handles the day to day operation. Further, that based on this falsification, percentages have been manipulated to benefit FLMX. Furthermore, your Company has admitted to and acknowledged that this has occurred.

As you are aware, Clause 6.2 clearly states: ***"It is understood and agreed to and acknowledged by the Parties hereto that neither Party will commit any deliberate acts calculated to harm, diminish or sabotage the Store Network or FML so as to cause losses and damages"***

Obviously, the defalcation for which your Company has admitted responsibility is directly in breach of Clause 6.2 of the Agreement and that it has harmed FML so as to cause damage and loss.

Further, should FML not act immediately to address this situation, Clause 8.1of the Management Agreement could be invoked by yourselves as constituting a waiver of the defalcation and therefore bar us from taking any steps to recover our losses.

It is therefore with regret that this serves as NOTICE with immediate effect that the Management Agreement is terminated.

Finally, we undertake to meet with you and devise the exit strategy for the distribution of any financial assets due to either of our Companies.

Yours faithfully
FML GROUP OF COMPANIES

Jason Flowers

[71] It is clear that it was only the management agreement which was terminated, not the Plaintiff's employment. The Plaintiff never returned to work after the investigation into the suspicious transactions was commenced. In fact, the Plaintiff himself said that a very thorough investigation had been carried out. The Plaintiff also testified that after having been provided with the thorough investigation in the form of a lengthy document, he asked Mr. Flowers to give him a few days to get to the bottom of it. In paragraph 32 of his witness statement, the Plaintiff said:

> **"32. At the end of my investigation, Jamaal Stubbs, FML's Business Development Manager said he takes responsibility for the oversight as he thought he should have caught and reported this."**

[72] This would be the very same Jamaal Stubbs for whom and with whom the Plaintiff accepted responsibility for under the management agreement, regarding express stores. The evidence of the Plaintiff disclosed that he still had access to the system after being provided with the lengthy document from Mr. Galanis. On page 67, lines 9 – 30 of the transcript the Plaintiff testified:

Page 67 – Lines 9 – 30:

> **"9. Q. So, you had an investigation, according to**
>
> **10. you.**
>
> **11. A. Right**
>
> **12. Q. What did that entail?**
>
> **13. A. Well, the same level of the assessment of all**
>
> **14. of the transactions that took place. And I said to**

15. Jamaal and I said to Cindy that this thing was

16. happening, were not aware of it. Jamaal said that when

17. he saw a - -

18. Q. Sir, I just want to know what was your

19. investigation. Was it just talking to these two people?

20. A. No. I looked into the system because on the

21. surface of it, obviously with a deposit and withdrawal,

22. there is no harm to the company, there is no - - it

23. doesn't affect the net generated revenue or anything.

24. Q. That's your assessment, sir. My point is, you

25. looked into the system so you were not blocked out of

26. the system then?

27. A. No, not then.

28. Q. So, you had ability, you were given ability to

29. check that big bunch of paper they gave you?

30. A. Yes."

[73] Counsel for the Plaintiff cites the case of **INGRAHAM V. RUFFINS CRYSTAL PALACE HOTEL CORP No. 808 of 1997 (2000) BHS J. No. 23** where he says in his submissions that:

> **"- it appears that the rule emanating from this case is that before dismissal on the ground of job abandonment can be implemented or applied the employee should be informed about the outcome of the**

investigations carried out and certainly he must be invited or instructed by the employer to return to his employment. While the position of the Plaintiff is that neither of these took place the evidence of the Plaintiff himself is that he was provided with the "thorough investigation report". He also testified that he was never told he was terminated".

[74] The Plaintiff claims to not have been paid for the months November and December 2017 and January and February 2018. However, no evidence of proof of working has been produced by the Plaintiff. Therefore, it is virtually impossible for the court to decide that issue.

[75] The Plaintiff claims to have been constructively dismissed. I agree with the Plaintiff that the correct test for a finding of constructive dismissal is to be found in the case of **WESTERN EXCAVATING (ECC) LIMITED V. SHARP (1978) Q.B. 761** and adopted in the case of **DEAN V. CAVALIER CONSTRUCTION COMPANY LTD. (92010) 4 BHS J. No. 168,** wherein **LORD DENNING in WESTERN EXCAVATING** opined.

"If the employer is guilty of conduct which is a significant breach going to the root of the contract of employment or which shows that the employer no longer intends to be bound by one or more of the essential terms of the contract, then the employee is entitled to treat himself as discharged from any further performance..... The conduct must be .... Sufficiently serious to entitle him to leave at once."

[76] However, in order for the Defendant to put itself in a reasonable position, an investigation had to be carried out. Having been made aware of suspicious

transactions and in compliance with Section 33 of the Employment Act, the Defendant commenced an investigation which from all accounts was a thorough investigation. Section 33 provides:

[77] In this regard, the Defendant didn't just conduct a reasonable investigation but instead a thorough investigation, which was reasonable in the circumstances. The Plaintiff was provided with a copy of this thorough investigation and admitted to being in possession of it. In fact, his evidence was that after receiving it, he carried out an investigation himself having been put in possession of the documented evidence.

[78] I can find no evidence that the Plaintiff was constructively dismissed. In fact the evidence suggests that it was the Plaintiff who put himself in the awkward position he finds himself.

[79] In the case of **LONDON TRANSPORT EXECUTIVE V. CLARKE [1981] ICR 355, LORD DENNING** opined:

> **"THE EMPLOYEE TERMINATES IT**
>
> **The first group is when the misconduct of the employee is such that it is completely inconsistent with the continuance of the contract of employment. So much so that the ordinary member of the tribunal would say to him. "He sacked himself." In these cases it is the employee himself who terminates the contract. His misconduct itself is such as to evince an intention himself to bring the contract to an end. Such as when an employee leaves and gets another job, or when**

he absconds with money from the till, or goes off indefinitely without a word to his employer. If he comes back and asks for his job back, the employer can properly reply.

"I cannot have you back now." There is no election in that case. The man dismisses himself. In the words of SHAW L. J. in GUNTON V RICHMOND-UPON-THAMES LONDON BOROUGH COUNCIL [1980] I.C.R. 755, 763, there is a complete and intended withdrawal of his service by the employee."

[80] In the **CLARKE** case, DUNN L.J. opined:

"I entirely agree for the reasons given by Templeman L.J. and with his conclusion that the finding of the industrial tribunal cannot be supported and in the exceptional circumstances of this case should be overruled. All the facts seem to me to lead to the opposite conclusion to that arrived at by the industrial tribunal, and – IF THE EMPLOYERS HAD WAITED UNTIL THE EMPLOYEE'S RETURN BEFORE DISMISSING HIM I CANNOT THINK THAT THEIR DECISION WOULD HAVE BEEN DIFFERENT."

[81] The fact is that there was no termination of the Plaintiff by the Defendant. The Plaintiff just never returned to his employment right up to the time of trial.

[82] In the **INGRAHAM** case Osadebay Sr. J. opined at paragraphs 23 – 27:

"23. In their respective submissions Counsel on both sides in this matter differed as to the conclusion that could be drawn from

the facts which I have stated above. It is the submission of Mr. Munroe, Counsel for the Plaintiff that the Plaintiff has established that he was wrongfully dismissed. He submitted that after the Plaintiff was suspended from his duty he was never informed of the result of the investigation conducted by the Defendant and was never instructed to return to his duty Although the Plaintiff did not attend the alleged meeting on Tuesday, 1st, July, it should not be construed as an intention to abandon his employment. He submitted that the Plaintiff's employment was not subject to the terms and conditions stated in the Employee Handbook as this was not brought to the Plaintiffs attention at the time his contract of employment was entered into and there was no evidence that it was. Counsel refers me to three cases but relies mainly on the case of S.O.S. Kinder of International Vs. Bittaye 919960 4 L.R.C. In that case the employee went on an approved leave when certain matters concerning him was being investigated. His leave expired on the 14th. October, 1986, but the employee did not return to his employment with the employer, nor did the employer ask him to do so. Their Lordships said that the proper inference must be that the employer did dismiss the employee on the 14th, October, 1986, even though they never formally notified him of that. The employee commenced his action against the employer in December, 1990, about 4 years after he had failed to return to his employment. The issue thereafter was whether the employer had any reasonable cause for so dismissing the employee. In this case the dismissal of the Plaintiff is not in issue. By a letter dated 11th, July, 1997, (Exhibit P. 5) the Defendant dismissed the Plaintiff giving his reason as "job abandonment." If that letter did terminate the Plaintiffs employment, such termination would have been effective from

1st July, 1997, when it was alleged that Plaintiff was due to report for duty. The question is whether having regard to the events which occurred between the 26th, June 1997, and the 11th July, 1997, between the parties it is reasonable to draw the conclusion that the Plaintiff had abandoned his employment. The decision in each case will rest on the particular facts in the particular case. As Lord Loreburn L.C. once put it.

> **"Decisions are valuable for the purpose of ascertaining a rule of law... but it is an endless and unprofitable task to compare the details of one case with the details of another in order to establish that the conclusion from the evidence in the one must be adopted in the other also. Given the rule of law, the facts of each case must be independently considered, in order to see whether they bring it within the rule or not."**
>
> **M'Cartan Vs. Belfast Harbour Commissioners (1911) 2 Ir. Reports 143 at 145.**

24. **Counsel for the Defendant submitted that on the facts the Court ought to rule in the Defendant's favour that the Plaintiff did abandon his employment and therefore the Defendant rightly took the step to terminate the employment. His submission is predicated on his premise that the Plaintiff was asked to report for duty but he failed to do so.**

25. **I shall concentrate on those areas of the Plaintiff's claim in respect of which evidence in support was adduced. Since it was the Defendant who terminated the Plaintiff's contract of employment, the burden rests on the Defendant to prove its**

case on balance of probabilities: See: sections 82, 83 and 84 of the Evidence Act 1996.

26. In order for the Defendant to succeed with regard to "job abandonment" it is necessary for the Defendant to show that the Plaintiff through his words and/or actions evinced an intention not to return to his employment notwithstanding, as it is alleged by the Defendant in this case, that he was instructed by the Defendant to return to his duty on Tuesday, 1st, July, 1997. Street, Chief Justice of New South Wales in Australia explained the principle of "job abandonment" in the following words:

> **"To refuse to obey lawful and proper orders in the course of the service might or might not establish an intention on the part of the employee to repudiate his obligations as such. But an announced intention to leave the employer, without giving the proper notice, followed by an actual forsaking of that employment by the employee, can only be regarded as such a breach of his obligations as to amount to misconduct in the sense in which that term would properly be used in relation to the service and duties owed by an employee to his employer. That wrongful repudiation, however, did not in itself terminate the contract, but it gave the defendant the choice of keeping the contract on foot or accepting that repudiation and terminating the contract. The employer was entitled then to put an end to the contract by dismissing the plaintiff who had committed this breach, and such dismissal was properly described as dismissal for misconduct."**

27. In General Billposting Co. Ltd. Vs. Atkinson (1909) A.C. 118 the House of Lords accepted and applied the test laid down by Lord Coleridge C.J. in Freeth Vs. Burr as follows:

> **"the true question is whether the acts and conduct of the party evince an intention no longer to be bound by the contract." Again, "in every case the question of repudiation must depend on the character of the contract, the number and weight of the wrongful acts or assertions, the intentions indicated by such acts and words, the deliberation or otherwise with which they are committed or uttered and on the general circumstances of the case."**

[83] The authorities therefore speak to an acceptance of a repudiation, in this case by the Plaintiff an employee.

[84] At paragraph 15 of the Witness Statement of Mr. Craig Flowers he states:

> **"That on the 27th February, 2018 Nassau Games was advised by counsel that Mr. Jones had abandoned his job as he had failed to return to work following termination of his performance based compensation agreement. Counsel further advised that due to the nature of the infractions, Mr. Jones should be summarily dismissed should he return to work."**

[85] Mr. Craig Flowers executed a Supplementary Witness Statement of which several paragraphs shed more light on certain events and issues. Those paragraphs are 19 – 27 and 31:

> **"19. That the Plaintiff would repeatedly suggest ways that he might be compensated based on his performance. Being mindful of the previous experience the Defendant only agreed to the formulation that was embodied in the agreement with Blue Star Holdings 2017 Limited ("the Blue Star compensation agreement"). The Plaintiff had his wife document the agreement which we executed. We were subsequently advised that the agreement could not be acted upon unless and until it was approved by the Baming Board. We nonetheless agreed to compensate the Plaintiff based on this agreement.**
>
> **20. The Plaintiff was in fact compensated based on the Blue Star compensation agreement from November, 2017.**
>
> **21. The basis of the agreement was that the Plaintiff would operate the Express stores of the Defendant and in effect keep as compensation the Lionshare of theprofits generated after paying the expenses of those stores. This was felt to be equitable as if the Plaintiff increased revenue without increasing profits his compensation being based now on profit would act as a control.**
>
> **22. As a part of this agreement the platform of the Defendant had to be altered to permit the system to recognize the revenue and expenses related to the Express and Premium stores. As the Defendant has to alter its system to accommodate the Blue Star compensation agreement the Plaintiff agreed to pay the sum of $250,000.00 to cover the changes to the system and other**

expenses required. This was expressed as a non refundable fee.

23. **As customers of the Defendant could redeem their winnings at both Express and Premium stores regardless of where they were customers it was agreed that the profits for a day would be apportioned based on the volume of deposits in each type of stores. The result was that the higher the deposits at the Express Stores the higher the percentage of daily profit the Plaintiff would be entitled to.**

24. **This explains why deposits at Express Stores that are not used for gaming but just withdrawn the same day would unfairly benefit the Plaintiff. The basis of the deposit totals was based on deposits used for gaming transactions.**

25. **That I was called to be involved in an investigation of deposits at only Express Stores that were followed the same day by withdrawals. The content of the witness statements filed on behalf of the Defendant herein sets out the terms of the investigations carried out on behalf of the Defendant.**

26. **That after the meeting with the Plaintiff referred to in paragraph 10 of my witness statement and the Plaintiff was still after two days unable to demonstaate a coherent understanding of the situation or provide an insight, it was decided to prevent access by the Plaintiff and his staff who were located at the premises across from Dunkin donuts to the computer platform and the premises while investigations continued. A report was also made to the Gaming Board. We had sought to speak directly with Jamal Stubbs without success to this day.**

27. **It is not accurate that the Gaming Board ruled that the Defendant must pay Cindy Williams any sums as severance.**

[87] In light of the facts, evidence presented and the authorities and in consideration of all the circumstances I find that all reliefs claimed by the Plaintiff fail.

[88] I also order costs to be paid to the Defendant such costs to be taxed if not agreed.

I so order.

Dated this 20th day of April A.D., 2021.

Keith H. Thompson

Justice