

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2017/CLE/gen/00685

IN THE MATTER OF THE ESTATE OF JULIAN OUTTEN

BETWEEN

ELECIA VERNETTA OUTTEN and EDWIN BURROWS

(As Personal Representatives of the Estate of the late Julian G. Outten)

Plaintiffs

AND

THE ATTORNEY GENERAL

1<sup>st</sup> Defendant

AND

THE COMMISSIONER OF POLICE

2<sup>nd</sup> Defendant

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Travette Pyfrom for the Plaintiffs

No appearance for the Defendants

18 May 2023

JUDGMENT

## WINDER, CJ

This is the claim of the Plaintiffs, as personal representatives for the late Julian Outten (the deceased) seeking salary payments and other emoluments alleged to be due and owing to the deceased.

[1.] At the time of his death the deceased was a Police Constable in the Royal Bahamas Police Force having joined the force on 28 January 1998. The deceased, having been charged with a criminal offence in the Supreme Court was placed on interdiction on 8 March 2007. He remained on interdiction until his death on 4 February 2015. The criminal case was discontinued following the death of the deceased.

[2.] Counsel for the Defendant, Mr Keith Cargill, did not attend court for trial when the action was called on 18 May 2023, notwithstanding the matter had been adjourned at his request and in his presence on 14 April 2023.

[3.] The Defendants filed an affidavit of Chief Superintendent Patrona Bethel on 19 September 2018 in their defence to the claim and suggested that the deceased's contract came to an end on 28 January 2009. They rely on a letter written by the then Commissioner of Police, Reginald Ferguson QPM, dated 22 September 2009. The letter began by advising the deceased that the Commissioner was in the process of considering whether he should be re-engaged or discharged. The letter invited the deceased to submit in writing "any matters [he] may wish the Commissioner to consider in reaching a decision on the status of [his] re-engagement".

[4.] I did not accept this evidence as to the deceased's contract coming to an end. Firstly, the letter of the Commissioner was written some 9 months after the purported expiry of the contract, signifying clearly that the contract continued to be in existence as he had not been discharged as a police officer. The deceased was never discharged as a police officer during his lifetime. Secondly, the affidavit of Chief Superintendent Patrona Bethel cites clearly that the deceased "*was engaged as a contracted member of the [Royal Bahamas Police Force] from 28 January 1998 until 4 February 2015*". Thirdly, notwithstanding it is now claimed as a mistake, the deceased continued to be paid at the

interdicted rate of pay until the date of his death on 4 February 2015. Payment of salary is a primary indicator of employment. Fourthly, on 6 November 2014 the Royal Bahamas Police Force issued a letter certifying that *"the deceased was a member of the Royal Bahamas Police Force who is presently on interdiction"*.

[5.] Section 63(2) of the Police Act 2009, provides as follows:

(2) Any police officer who has been interdicted under the provisions of subsection (1) shall, during the period of interdiction, receive one-half of his salary together with the full amount of any other allowances and other emoluments to which he may be entitled. If the proceedings do not result in any conviction or punishment against any such member of the Force, he shall be entitled to receive the full amount of his salary which he would have received if he had not been interdicted. If any conviction or punishment is recorded or awarded, such member of the Force shall not be entitled to any part of his salary stopped under this subsection.

[6.] The criminal case against the deceased ended at the date of his death and was thereafter formally discontinued. As the proceedings did not result in any conviction or punishment against the deceased, he (and now his estate) shall be entitled to receive the full amount of his salary which he would have received if he had not been interdicted.

[7.] In the circumstances I give judgment to the Plaintiffs for the payment of all sums withheld as  $\frac{1}{2}$  of the salary of the deceased which was retained during the period of the interdiction. The Plaintiffs shall have their reasonable costs.

[8.] The amount of costs falls to be calculated under the new regime of prescribed costs under the Supreme Court (Civil Procedure) Rules 2022 and should be calculated based upon the sums found to be due to the Plaintiffs.

Dated the 21<sup>st</sup> day of June 2023



Sir Ian R. Winder

Chief Justice