

1 IN CHAMBERS  
2 IN THE GRAND COURT OF THE CAYMAN ISLANDS

3  
4 CAUSE NO: 17 OF 2006

5  
6 BETWEEN:

7 ALEXA THOMAS

8 Plaintiff

9  
10 AND:

11 CAYMAN ISLANDS NATIONAL INSURANCE

12 COMPANY

13 Defendant

14  
15 BEFORE: The Honourable Madam Justice Levers

16  
17 APPEARANCES:

18 Counsel for the Plaintiff: Mr. Scott Wilson of Diamond Law Associates

19 Counsel for the Defendant: Ms. Rowena Lawrence of Turner & Roulstone

20  
21 HEARD: May 10, 2006

22  
23  
\_\_\_\_\_  
JUDGMENT  
\_\_\_\_\_



24  
25  
26 Levers, J.

27  
28  
29 This an application by the Defendant Cayman Islands National Insurance

30 Company for the following Orders:

31  
32 1. That the Plaintiff's claim against the Defendant be dismissed pursuant

33 to Order 14, rule 14(1); and

1 2. Costs in the cause.

2

3 **Background**

4

5 The Plaintiff Alexa Thomas filed a Writ of Summons on the 13<sup>th</sup> January,  
6 2006 claiming:

7 (1) A salary payment of \$65,000 for the period of January 1,  
8 2006 to December 31, 2006;

9 (2) Further or alternatively damages for breach of contract; and

10 (3) Costs.

11

12 Subsequently, before the hearing of this Summons, I was advised by the  
13 Plaintiff's new attorney Mr. Scott Wilson instructed by Diamond Law  
14 Associates, that the Plaintiff intended to amend the Statement of Claim and  
15 that the Defendant has consented thereto. Accordingly, a Consent Order  
16 was filed giving leave to amend the Statement of Claim.

17

18 For purposes of this application, the Amended Statement is the material  
19 document. Despite the amendment, the Defendant alleges the relief sought  
20 in the Summons is still a valid request.

21

1 **The Facts**

2  
3 The Plaintiff is a Non Caymanian and in accordance with the usual  
4 regulations in the Cayman Islands, applied for a work permit to be  
5 contracted to the Defendant for a year, in or around July 2004. That  
6 Contract stated:

7  
8 “That the employer will employ you from the date  
9 of receipt of a valid work permit or the 2<sup>nd</sup> day of  
10 August 2004 until the 31 December 2006. Three  
11 months prior to the date of expiration, the  
12 employee may be given notice by CINICO of  
13 CINICO’s intension to renew this contract. If  
14 mutually acceptable terms are not reached between  
15 employee and CINICO within 1 month of the date  
16 of expiration then this Contract shall expire.”  
17

18 Another relevant condition in the Contract was that:

19 “This offer of employment is conditional upon and  
20 subject to the Employer obtaining a work permit  
21 for you. In the event that the Immigration Board  
22 does not grant a work permit for you the Employer  
23 will not be able to employ you and this contract of  
24 employment will lapse.”  
25

26 It then goes on to speak of a probationary period and further states:

27 “The Employer may terminate this contract of  
28 employment by giving to you not less than the  
29 following notice.  
30 4 years or less – 1 month’s notice.”

1 A two year work permit was applied for but a one year permit was granted  
2 and in accordance with the usual practice when the one year lapsed, the  
3 Defendant advertised the position, and advised the Immigration Board that  
4 they had done so. What was being applied for was a renewal of the  
5 Plaintiff's work permit despite having several Caymanian applicants. In  
6 particular one of the applicants was considered more suitable than the others.

7

8 The Immigration Board despite knowing that there was a Caymanian  
9 suitable granted the Plaintiff another year's work permit. For some reason  
10 however, the Defendant then turns round and decides that one Mark Frye,  
11 the Caymanian whom they always knew was suitable even prior to the  
12 renewal application was suitable and therefore gave the Plaintiff one  
13 month's notice. It is alleged and I quote from a representative of the  
14 Defendant's affidavit:

15

16 "The Defendant then decided that Mark Frye was  
17 suitable for the position and therefore had to offer  
18 the position to him being a Caymanian with  
19 status."  
20

21 Upon his acceptance of the role, the Defendant had to terminate the  
22 employment of the Plaintiff. The Defendant was not keen to terminate the

1 employment of the Plaintiff but in order to comply with Immigration  
2 regulations had to offer the position to the applicant with Cayman status.  
3 Those are the facts that lead to the Writ being filed against the Defendants.

4  
5 The Defendant's lawyer argues that under Order 14, Rule 1 of the Grand  
6 Court Rules, which reads:

7  
8 "Where in an action to which this rule applies a  
9 statement of claim has been served on a defendant  
10 and that defendant has given notice of intention to  
11 defend the action, the plaintiff may, on the ground  
12 that the defendant has no defence to a claim  
13 included in the writ, or to a particular part of such  
14 a claim, or has no defence to such a claim or part  
15 except as to the amount of any damages claimed,  
16 apply to the Court for judgment against the  
17 defendant."  
18

19 The Summons is brought under the wrong section. However, I believe it  
20 must be Order 14, rule 12, that the Defendant's attorney should have bought  
21 this Summons under, but in order not to waste administrative costs, I will  
22 deal with the issue of whether there is a triable issue. The Contract is a  
23 contract for a fixed period of time. There is, indeed, a notice provision  
24 which allows the Defendant to give one month's notice. However in this  
25 case, the Defendant has given a reason for the notice and the reason for the

1 notice is clear that the Defendant wishes to be in compliance with the  
2 Immigration Laws. The Immigration Board despite knowing of the  
3 Caymanian's availability granted an extension of a further year to the  
4 Plaintiff and in those circumstances, it is clear that had the plaintiff been  
5 retained in the employment, the Defendant would not have been in breach of  
6 the Caymanian Immigration Laws because the decision was that of the  
7 Immigration Board and not the Defendant. If the Defendant for some other  
8 reason had given notice without cause then it may have thrown a different  
9 light on the matter and the notice period could have been one month but the  
10 Defendant has given a reason which on examination is misleading. In any  
11 event, the notice period must be reviewed against the question of a fixed  
12 term of contract and I agree with Mr. Wilson entirely when he says:

13

14 "The construction of the contract, in particular the  
15 construction of the break clause and its effect on  
16 the fixed term nature of the contract set against the  
17 frame work of our law should be determined by  
18 the Courts."  
19

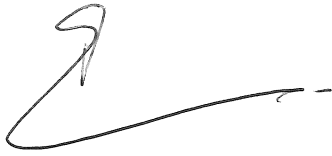
20 In the circumstances, I feel that this is a matter that should go to trial. I  
21 dismiss the application of the Defendant and order costs in favour of the  
22 Plaintiff, to be agreed or taxed.

23



1 Dated this 23<sup>rd</sup> day of May 2006

2

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a long horizontal stroke that tapers to the right.

3

4 Judge of the Grand Court

