

**THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE**

ANGUILLA

AXAHCV2021/0010

BETWEEN:

JAMES BOYER

Claimant

and

**SOF 82 ANGUILLA HOLDINGS, LLC
dba FOUR SEASONS RESORTS
AND RESIDENCES ANGUILLA**

Defendant

Appearances:

Ms. Jean M. Dyer for the Claimant

Ms. Tara Carter for the Defendant

2021: July 19;
October 5.

RULING

- [1] **GILL, M.:** The claimant seeks an order for summary judgment or alternatively an order to strike out the defence as disclosing no reasonable ground for defending the claim.

Background

- [2] By an offer letter dated 18th July 2019, signed as accepted by the claimant ("Mr. Boyer"), the defendant ("Four Seasons") employed Mr. Boyer as its Director of Information Technology for a fixed term of two years commencing on 1st August 2019 automatically terminating on 1st August 2021 (date stated in offer letter). The parties accept the offer letter as Mr. Boyer's contract of employment with Four Seasons.
- [3] The contract made provision for the termination of Mr. Boyer's employment as follows:

- i by Four Seasons during a six-month probationary period (on first page);
and
- i by Mr. Boyer at any time, by providing at least two weeks' written notice to Four Seasons specifying the effective date of termination (Clause 16).

- [4] After the probationary period, Mr. Boyer was confirmed as Director of Information Technology.
- [5] By letter dated 4th November 2020, Four Seasons, through its General Manager, informed Mr. Boyer that he was being permanently laid off effective 10th November 2020 on the basis that his position had been impacted by the COVID-19 pandemic. Mr. Boyer was required to execute a separation and release agreement in order to qualify for severance pay.
- [6] On 11th November 2020, Mr. Boyer wrote to Four Seasons and challenged his early termination as well as the calculation of the termination package that was offered to him.
- [7] By letter dated 24th November 2020, Four Seasons notified Mr. Boyer that his position had been made redundant and that termination payments had been updated in accordance with the Labour (Relations) Act ("the Act").
- [8] On 11th March 2021, Mr. Boyer instituted these proceedings against Four Seasons seeking compensation for wrongful dismissal on the basis that Four Seasons was not entitled to terminate him before his employment contract had run its course on 1st August 2021. In the alternative, Mr. Boyer claims that even if Four Seasons could terminate him for redundancy, which is denied, he was entitled to three months' notice or three months' pay in lieu of notice in accordance with the Act.
- [9] Four Seasons filed a defence on 7th April 2021. Four Seasons asserts that the termination was valid under the Act, which permits Four Seasons to terminate Mr. Boyer on the grounds on which it did. Four Seasons maintains that all contracts of employment in Anguilla (including Mr. Boyer's) are subject to termination under the Act and may be terminated on the grounds on which Four Seasons relied on and on which it continues to rely.

- [10] Further, Four Seasons avers that Mr. Boyer's employment contract contemplates that his employment could be terminated sooner than its expiration date.
- [11] As regards the alternative relief sought, Four Seasons states that Mr. Boyer is not entitled to three months' notice because he was a bi-weekly paid employee. In order to be entitled to three months' notice or three months' pay in lieu of notice, Four Seasons maintains that Mr. Boyer had to be monthly paid, and part of management.
- [12] After filing a reply to Four Seasons' defence, on 25th May 2021, Mr. Boyer filed the instant application asking the court to enter summary judgment in his favour on the basis that Four Seasons' defence to the main issue raised on his claim (and also on his alternative claim) has no merit. In the alternative, Mr. Boyer asks that the defence be struck out.
- [13] Four Seasons submits that given the nature of the allegations in the statement of claim and the matters in dispute, this is not a matter proper for summary judgment determination, and further submits that there are no reasons why the court should strike out the defence as there are good and proper grounds disclosed therein.

Issues

- [14] The court must determine:
1. whether summary judgment should be granted on the basis that Four Seasons has no real prospect of successfully defending the claim;
 2. in the alternative, whether the defence should be struck out for failure to disclose any reasonable ground for defending the claim.

The Law

- [15] Part 15.2(b) of the Civil Procedure Rules 2000 as amended (CPR 2000) empowers the court to determine a claim or an issue summarily if the court considers that the defendant has no real prospect of successfully defending the claim or the issue. Under CPR 26.3(1)(b), the court may strike out a defence if it appears that it discloses no reasonable ground for defending the claim. Mr. Boyer's submissions focus on the summary judgment aspect of the application. The entering of summary judgment was addressed by George-Creque JA (as she then was) in **Saint Lucia Motor & General Insurance Co. Ltd. v**

Peterson Modeste¹ where Her Ladyship stated:

“Summary judgment should only be granted in cases where it is clear that a claim on its face obviously cannot be sustained, or in some other way is an abuse of the process of the court. What must be shown in the words of Lord Woolf in *Swain v Hillman* is that the claim or the defence has no “real” (i.e. realistic as opposed to fanciful) prospect of success. It is not required that a substantial prospect of success be shown. Nor does it mean that the claim or defence is bound to fail at trial. From this it is to be seen that the court is not tasked with adopting a sterile approach but rather to consider the matter in the context of the pleadings and such evidence as there is before it and on that basis to determine whether, the claim or the defence has a real prospect of success. If at the end of the exercise the court arrives at the view that it would be difficult to see how the claimant or the defendant could establish its case then it is open to the court to enter summary judgment.”

- [16] The decision whether to grant summary judgment is discretionary. The court should exercise this authority in cases that are not fit for trial. In doing so, however, the court ought not to conduct a mini-trial.² As stated by Saunders CJ [Ag.] (as he then was) in **The Bank of Bermuda Limited v Pentium (BVI) Limited and Another**:³

“A Judge should not allow a matter to proceed to trial where the defendant has produced nothing to persuade the Court that there is a realistic prospect that the defendant will succeed in defeating the claim brought by the claimant.”

Mr. Boyer’s submissions

- [17] Learned counsel for Mr. Boyer, Ms. Dyer, contends that the claim is suitable for summary determination because the issues that arise on the claim are of pure law and construction, which will not be affected by the provision of further evidence later. Mr. Boyer takes the statement of Roy Shanholtz at paragraph 16 of his affidavit in opposition to the application that the matters “relate to contract interpretation and the application of the *Labour (Relations) Act, 2018...*”, as a concession on this point by Four Seasons. Ms. Dyer submits that the main issue that arises is whether Four Seasons was entitled to terminate Mr. Boyer’s fixed term employment contract before the fixed term expired on 1st August 2021. That being the case, she states that the courts are willing to deal with questions of contractual interpretation on a summary basis in an appropriate case without the need for trial. To send this matter to be resolved by the trial judge, Counsel contends, would not be

¹ HCVAP 2009/008 at paragraph 21

² *Swain v Hillman* [2001] 1 All ER 91

³ Civil Appeal No. 14 of 2003 (British Virgin Islands) at paragraph 18

in furtherance of the overriding objective, and against a long line of cases. Ms. Dyer argues that there are no issues of fact to be investigated so that the main issue to be decided on the claim will not be affected by evidence. Counsel points out that whilst Four Seasons challenges Mr. Boyer's interpretation, it does not challenge the facts giving rise to his claim. It merely challenges the benefits and/or compensation Mr. Boyer seeks if this court finds that Four Seasons was not entitled to terminate his employment for redundancy. Ms. Dyer contends that Four Seasons' defence as filed puts forward no issues of fact to be investigated at trial. Counsel urges the court to further the overriding objective by deciding this matter without a trial and grant Mr. Boyer summary judgment with damages to be assessed. In making this submission, Counsel relies on the Privy Council decision in **Hallman Holding Ltd v Webster and another (Anguilla)**⁴ wherein Lord Hodge had this to say:

"...it will often be appropriate to determine a dispute about a short point of law or the construction of a simple contract by summary judgment, where the legal issue between the parties is straightforward and the court is satisfied that there is no need for an investigation into the facts which would require a trial: *Easyair Ltd v Opal Telecom Ltd* [2009] EWHC 339 Ch, para 15 propositions (v) – (vii) per Lewison J. Where, in the absence of any factual dispute, more complex legal issues arise, including difficult issues of contractual construction, they may be determined on an application for a preliminary issue..."

[18] Similarly, in **ICI Chemicals & Polymers Ltd v TTE Training Ltd**,⁵ Moore-Bick LJ opined:

"It is not uncommon for an application under Pt 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the Respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the Applicant's case is bad in law, the sooner that is determined, the better."

[19] Mr. Boyer's case is that Four Seasons had no right under the express terms of his contract to terminate him for redundancy or for any other reason before his contract ran its course. Citing the case of **Caribbean Commercial Bank (Anguilla) Limited v Starry Benjamin**,⁶ learned counsel Ms. Dyer submits that the authorities establish that where a contract is for

⁴ [2016] UKPC 3 at paragraph 17

⁵ [2007] EWCA Civ 725 at paragraph 12

⁶ AXAHC VAP 2014/0009 at paragraph 19

a fixed term, it can only be terminated before it has run its course by any method specified in the contract of employment. This is because, Counsel says, such early termination is not an inherent feature of this kind of contract and accordingly requires specific stipulation. Counsel directs the court to the judgment in the consolidated cases of **Robert K. Allen v Attorney General** and **Deon Pascascio v Attorney General**⁷ in which the Belize Supreme Court usefully summarised the principle as follows:

“...a contract for a determinate period, as the ones before the court, end at the last day specified therein. Unless there is some provision for earlier termination, whether by notice or otherwise, within that contract, the contract will continue until the fixed term expires. In the absence of such a specific clause, the employer has no right to terminate and purporting to terminate under these circumstances would constitute a breach.”

[20] Learned counsel Ms. Dyer states that this position is reflected in section 9(1) of the Act, which reads:

9(1) *A fixed term contract must be in writing and must state when or how the employment will end and the reasons for ending the employment in that way.*

[21] Counsel considers this “a knockout punch” as there is no provision in Mr. Boyer’s employment contract that allows Four Seasons to terminate him for redundancy or any other reason before it runs its course.

[22] Mr. Boyer’s contract of employment states that the laws of Anguilla will govern all other provisions and conditions not specified therein. Ms. Dyer points out that Clause 16 makes provision for termination. It gives Mr. Boyer the right to terminate the contract. Counsel argues that it matters not that such right was only given to Mr. Boyer, and that it is entirely permissible for the right to terminate to be given, as in this situation, to only one party. Further, Counsel says, the authorities establish that there is a general presumption against implying terms into written contracts.⁸ In the decision of the Privy Council in **Attorney General of Belize v Belize Telecom Ltd**,⁹ Lord Hoffman’s pronouncement of the law in relation to implying contractual terms is instructive. At paragraph 17 of the judgment, His Lordship stated:

⁷ Claim No. 138 of 2015 and Claim No. 153 of 2015 (Belize), per Young J at paragraph 14

⁸ See Ministry of the Public Service Information and Broadcasting and the Attorney General of Saint Lucia v Vincent Marcel SLUHCVP2017/0006, per Webster JA [Ag] at paragraph 26

⁹ [2009] UKPC 10

“The question of implication arises when the instrument does not expressly provide for what is to happen when some event occurs. The most usual inference in such a case is that nothing is to happen. If the parties had intended something to happen, the instrument would have said so. Otherwise, the express provisions of the instrument are to continue to operate undisturbed. If the event has caused loss to one or other of the parties, the loss lies where it falls.”

Mr. Dyer contends that the parties intended that nothing should happen in a situation as the instant where, according to Four Seasons, the resort was impacted by the COVID-19 pandemic, so that if Four Seasons has suffered loss, “the loss lies where it falls”. Counsel asserts that Four Seasons cannot with hindsight seek to rewrite Mr. Boyer’s employment contract because it views Clause 16 as being deficient.

[23] Ms. Dyer submits that the incorporation of Part 7 of the Act (which deals with termination of an employment contract other than dismissal, and provides for termination by redundancy) into Mr. Boyer’s employment contract would collide with section 9 of the Act, which makes it clear that no terms as to how Mr. Boyer’s employment will end are to be implied into his fixed term contract. Counsel contends that by virtue of section 9(1), there is no room to invoke Part 7. She maintains that the fixed term contract cannot be terminated early unless the express terms of the contract give the employer that right.

[24] Ms. Dyer also cites section 9(4) of the Act as being of some relevance. It provides:

(4) Where an employer fails to comply with this section the employer is barred from relying on any term agreed to under subsection (1) –

(a) to end the employee’s employment if the employee elects, at any time, to treat that term as ineffective; or

(b) as having been effective to end the employee’s employment, if the former employee elects to treat that term as ineffective.

[25] Counsel asserts that Four Seasons has no arguable case on the material before the court. The defence taken at its highest shows a distinctly improbable defence, Counsel states, and it is appropriate for this court to enter summary judgment against Four Seasons and order that damages be assessed at a later stage.

Four Seasons' submissions

- [26] Learned counsel for Four Seasons, Ms. Carter, contends that in order for Mr. Boyer to argue successfully that Four Seasons could not terminate his contract by reason of redundancy, he will have to establish that the Act did not apply to his employment. Ms. Carter points out that interestingly enough, Mr. Boyer seeks to apply some of the provisions of the Act, yet he rejects the applicability of the termination provisions of the same legislation. Learned counsel asserts that on the pleadings, Four Seasons can persuade the court that it has a reasonable prospect of success on defending the claim.
- [27] Four Seasons relies on the Act to base its position that every contract, fixed term or otherwise, is terminable on the grounds provided for in law. To argue counter to this, Counsel submits, would mean that an employee could commit a gross act or offence and, once under a fixed term contract, he or she could not be terminated prior to the expiration of the term. Counsel directs the court to section 98 of the Act, which provides that a contract of employment may be terminated by redundancy, and section 105(4), which states that an employer has the right to terminate a contract of employment for reasons due to redundancy. Counsel highlights the relevant parts of Section 106 giving reasons for redundancy as follows:
- 106. Redundancy may occur when an employer decides that the job performed by an employee has diminished or would no longer be available because –*
- ...
- (e) *the employer's need for employees in a particular category has ceased or diminished;*
- (f) *it has become impossible or impracticable for the employer to carry on his business at its usual rate or level or at all, due to a shortage of material, a mechanical breakdown, a force majeure or an act of God; or*
- (g) *a reduced operation in the employer's business has been made necessary by economic conditions including a lack of or change in markets, contraction in the volume of work or sales, reduced demand or surplus inventory.*
- [28] In addition, Ms. Carter draws the court's attention to the fact that, as pleaded in the defence, it is an express term of Mr. Boyer's contract that the laws of Anguilla will govern all other provisions and conditions not specifically set out. Counsel asserts that matters of

termination are detailed in the legislation and are available to any employer to apply to its business. Counsel informs that Four Seasons will defend at trial on the basis that any employer under the law has the right of termination in accordance with the law and upon notice or pay in lieu of notice provided for in law. Counsel is careful to point out that this was a termination by redundancy, not notice, but once an employer decides to terminate for redundancy, the employer must go to sections 99 and 100 of the Act to determine the notice period or pay in lieu of notice.

[29] Ms. Carter seeks to distinguish the instant situation from the cases cited by Mr. Boyer and submits that those cases speak to the method of termination by notice, not redundancy. **Starry Benjamin**, Counsel indicates, is a pre-Act case involving a termination by notice clause in the employee's contract, and not applicable to the redundancy principle being dealt with here. The court, in the Belize case of **Robert Allen**, dealt with the issue as to whether termination by notice or payment in lieu of notice by an employer could be implied into a fixed term contract. Ms. Carter argues that in the circumstances of this case, it is not necessary to imply conditions into Mr. Boyer's contract. The Belize legislation identified the ways by which a contract of employment could be terminated. Counsel submits that the statutory framework in Belize is not applicable or relevant here, and that the Belize provisions are very different from those in the Act.

[30] In addition, Ms. Carter posits that clause 17 Mr. Boyer's offer letter contemplates that the contract could be terminated. It reads in part as follows:

*"In the event of retirement, death, layoff **or in the unlikely event that it becomes necessary for us to terminate your employment** with Four Seasons, the Resort will bear travel and relocation expenses...as per policy."* (Emphasis added)

[31] In stark contrast to Mr. Dyer's 'knock-out punch' point in relation to section 9 of the Act, Ms. Carter counters that section 9 does not restrict terminations under the Act. The Act applies, she maintains, and Four Seasons was within its rights to terminate Mr. Boyer under the redundancy provisions therein.

[32] Regarding Mr. Boyer's alternative claim, Four Seasons is of the view the facts are in dispute as to what Mr. Boyer was entitled.

[33] Four Seasons contends that the matters raised on the pleadings overwhelmingly lean towards the matter proceeding to trial though the normal course of and urges upon the court that there are no compelling or persuasive reasons to deal with a contested matter in the manner advocated by Mr. Boyer. Four Seasons submits that this is not an appropriate case for the court to strike out the defence or to enter summary judgment.

Mr. Boyer's reply

[34] Ms. Dyer retorts that Ms. Cater has raised a red herring in making a distinction between termination for redundancy and termination by notice. Mr. Boyer says it does not matter, and that the same trite general principles set out by our Court of Appeal in **Starry Benjamin** and the Belize Supreme Court in **Robert Allen**, in relation to the termination of a fixed term contract, apply in either case, redundancy or notice. Ms. Dyer maintains that Mr. Boyer's contract could be ended early by the methods contained in his contract and redundancy is not one of them. She insists that section 9 of the Act makes it clear what is to be included in the contract. If it is to be ended early, it must expressly say that the employer has the right to terminate in these circumstances, Counsel reiterates. The principle applies, she says, to any type of fixed term contract.

[35] Mr. Dyer makes it clear that she is not saying that section 98 cannot apply, but for section 98 to apply, a contract under section 9 must be specific to redundancy. The general cannot override the specific, Counsel argues. Counsel contends that nothing turns on the fact that the legislation in Belize is different.

Analysis

[36] There is no doubt that the Act applies to Mr. Boyer's contract of employment. Mr. Boyer does not contend otherwise. He is arguing that Four Seasons' power of termination of an employee pursuant to section 98 of the Act does not apply to him because that exercise of authority is not given to Four Seasons in his fixed term contract. He relies on several authorities to show that a fixed term contract cannot be lawfully terminated by an employer before it runs its term for any other reason than specified in the employment contract. The contract clearly states that it will automatically terminate on 1st August 2021.

[37] The contract provides for termination by Four Seasons during his probationary six-month

period, and by Mr. Boyer at any time during the period of employment, by two weeks' notice to Four Seasons. On the authority of cases such as **Robert Allen**, it is entirely acceptable that the option to terminate by notice was given to Mr. Boyer only.

[38] The crux of this matter is whether section 9(1) of the Act is a bar to Four Season's termination of Mr. Boyer's employment by reason of redundancy under section 98(d). In compliance with section 9(1), Mr. Boyer's fixed term contract states how and when his employment will end. With no specification within the contract for termination by redundancy, Mr. Boyer is confident that the case law is on his side that Four Seasons could not legally end his employment for redundancy as provided for in the Act or for anything else not spelled out in the contract.

[39] Four Seasons' reliance on the said Act to ground its position to distinguish Mr. Boyer's case from those cited by him requires a brief examination of those decisions on the point.

[40] In **Starry Benjamin**, the respondent's employment was summarily terminated just over one year into her three-year fixed term contract with the appellant bank ("the Bank"). Her contract provided for termination by the Bank by three months' notice, and upon such termination, she would be entitled to compensation and gratuity calculated for the term of the contract. Pursuant to emergency powers granted to the Eastern Caribbean Central Bank ("the Central Bank"), by the Eastern Caribbean Central Bank Agreement Act ("the ECCBA"), the Central Bank took control of the Bank. The Bank relied on a clause in the ECCBA (which allowed the Central Bank to terminate the services of the employees of a financial institution when it took control of that institution) to deny the respondent any compensation on the basis that her contract was nullified or frustrated by the Central Bank's termination of her employment under the relevant clause. The Court of Appeal ruled that the power of the Central Bank to terminate under the ECCBA did not extend nor was it capable of being read to nullify the terms of the employment contract. The ECCBA did not provide that on the exercise of the power of the Central Bank, the Bank would be released from its obligations under the contract. It was held that the respondent was entitled to compensation for the unexpired term of the contract. Learned counsel for Four Seasons, Ms. Carter, who appeared in that case for the successful respondent, considers

it not relevant or applicable here since, although it is a case from this jurisdiction, it was decided before the passage of the Act and had nothing to do with redundancy thereunder. Equally, Counsel dismisses the issue of Part 7 of the Act, including redundancy, being incorporated or implied into Mr. Boyer's contract.

- [41] The claimants in **Robert Allen** were dismissed with one month's salary also just over one year into their two-year employment contracts. The contracts provided for termination by the claimants by one month's notice or paying one month's salary in lieu of such notice. They made no provision for termination by this method by the employer. The court ruled that the claimants were wrongfully dismissed as the employer was in breach of the employment contracts. Being satisfied that the contracts contained detailed and explicit terms relating to both or either party, the court refused to imply into the contracts a clause allowing the termination of the contracts by the employer by notice or payment in lieu of notice. It appears that the court appreciated the difficulty faced by an employer in such a situation and "highly recommended that employers include a clause for termination by notice or payment in lieu in fixed term contracts. Such a clause should be carefully and precisely drafted. It ought not to be left to possible implication".¹⁰
- [42] The Labour (Amendment) Act of Belize provided three ways by which a contract of employment could be terminated – expiry of period, death of the employer or worker and mutual agreement between the parties. There was no issue of redundancy. The Act in the instant case provides four ways, in addition to dismissal, by which a contract of employment may be terminated – notice of termination, agreement or mutual consent, by the operation of law or supervening event, and redundancy.
- [43] Part 7 of the Act does not expressly exclude its application to fixed term of any other contract of employment. By virtue of section 2, the Act applies to all employers and employees, and fixed term employees are listed in section 6 under the rubric "Classification of employees". The Act stipulates that a fixed term contract must state how and when it will end but it also gives the employer the right to terminate any contract of employment for redundancy. To my mind, this is not a common law concept to be implied.

¹⁰ Supra at note 7 at paragraph 23

It is specified by the legislation. Further, it is stated quite clearly on the first page of Mr. Boyer's contract that the laws of Anguilla govern all other provisions and conditions not specified in the offer letter. This brings Part 7 of the Act squarely within the four corners of the contract. The situation created by the catastrophic effects of the COVID-19 pandemic on the economic survival of entities such as Four Seasons, surely constitutes an unlikely event making it necessary to terminate Mr. Boyer's employment (as provided in the contract at clause 17) for reasons for redundancy set out in section 106 of the Act. It appears to me, therefore, that Four Seasons was within its rights under the Act to terminate Mr. Boyer's fixed term contract of employment by reason of redundancy.

[44] In relation to termination due to redundancy, the Act provides for the employee to be compensated for service rendered.¹¹ Section 99 sets out the requirements for notice to terminate where the employer or employee wishes to terminate the contract of employment. Mr. Boyer's alternative claim is that if he could be terminated for redundancy he was entitled to receive three months' notice or three months' pay in lieu of notice in accordance with section 99(c). Mr. Boyer was employed as the Director of Information Technology. His contract states that his position was at a managerial position with responsibility for "managing the Information Technology operation". Four Season's defence is that Mr. Boyer was paid the correct notice pay as set out in section 99(a)(ii). Four Seasons pleads that Mr. Boyer was a bi-weekly paid employee and submits that he is only entitled to 2 weeks' notice or payment in lieu of notice for that period.

[45] The required notice periods under section 99 are as follows:

(a) for an employee paid at intervals of less than one month who has –

- (i) less than one year's service, one week,*
- (ii) one year or over and less than 5 years' service, 2 weeks, and*
- (iii) 5 years' service and over, 4 weeks;*

(b) for an employee paid at monthly intervals and who has –

- (i) less than one year's service, one month,*
- (ii) one year or over and under 5 years' service, 2 months, and*
- (iii) 5 years' service and over, 3 months; and*

(c) for an employee who is paid at monthly intervals and who is a supervisor,

¹¹ s. 105

manager or where the employee concerned is at the professional, higher technical or managerial level, the period of notice shall not be less than 3 months irrespective of length of service.

[46] Whereas it is clear that Mr. Boyer was employed at the management level, to be entitled to three months' notice under section 99(c), he would have to be a monthly paid employee as well. There is no stipulation that a manager must be monthly paid. In order for Mr. Boyer to have the benefit of three months' notice or three month's pay in lieu of notice, he must satisfy the conjunctive requirements of being a manager and being monthly paid. Therefore, in my view, in his circumstances, on the termination of his contract, Mr. Boyer was entitled to two weeks' notice or payment for lieu of notice for two weeks.

[47] If I am wrong on any of the issues, then this is certainly not a case where the court can safely find that the defence has no real prospect of success. Whereas the issue as to whether Mr. Boyer's fixed term contract could be terminated by redundancy appears to constitute a short point of law which the court should "grasp by the nettle and decide it", in my view, it does not admit a straightforward answer.

[48] The court in **Robert Allen** described the provisions for termination in the claimants' employment contracts as 'detailed and explicit' and 'quite adequate' so that there was no need to imply a clause allowing the employer to terminate by notice or payment in lieu of notice. This begs the question whether the termination provisions in Mr. Boyer's contract can fit a similar description and if not, whether the Belize court would have considered a different approach had the provisions not been so detailed and explicit. Having considered the reasoning in the case out of Belize and of the Court of Appeal in **Starry Benjamin**, I am of the view that this case raises a different element with respect to legislation applicable to the fixed term contract of employment providing for termination by redundancy.

Conclusion

[49] Given the nature of the legal issues in dispute, in particular, whether Mr. Boyer's fixed term contract was wrongfully terminated for redundancy, I am of the view that this is not a matter fit for summary determination in favour of Mr. Boyer. I do not find that the defence is unmeritorious or fanciful. On the contrary, Four Seasons has demonstrated that it has a

very real prospect of defending this claim, and it appears to this court that the defence discloses reasonable grounds for defending the claim. In addition to the contentious legal issues, the pleadings raise several factual matters that are in dispute, and which will turn on evidence to be ventilated at trial. Having stated that, it is my strong view that this is an appropriate case to be referred to mediation. I urge the parties to give serious consideration to this approach in furtherance of the overriding objective.

Order

[50] It is hereby ordered as follows:

- 1) The application for summary judgment or to strike out the defence is dismissed.
- 2) Mr. Boyer shall pay Four Seasons costs of the application in the sum of US\$750.00.

[51] Finally, I thank learned counsel on both sides for their assistance in this matter.

Tamara Gill
Master

By the Court

Registrar