



# The Court of Appeal for Bermuda

CIVIL APPEAL No. 3 of 2018

**B E T W E E N:**

**HAMILTON PROPERTIES LIMITED**

Appellant

**-v-**

**DAVID LEE TUCKER**

Respondent

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**Before: Baker, President  
Bell, JA  
Clarke, JA**

**Appearances:** Matthew Godfrey, Appleby (Bermuda) Ltd, for the Appellant  
Ryan Hawthorne and Sara Tucker, Messrs Trott & Duncan  
Ltd, for the Respondent

**Date of Hearing: 12 March 2018**  
**Date of Judgment: 12 March 2018**

## **REASONS**

*Appeal from ruling on strike out application.*

**BELL, JA**

### **Introduction**

1. This morning we dismissed the application seeking leave to appeal parts of the Registrar's ruling of 11 December 2017, and we now give our reasons.

2. The three grounds of appeal were categorised by the Registrar under the headings A, B and C. I will deal with them as did the Registrar, “A” and “B” first and then I will deal with “C”.

### **Grounds A and B**

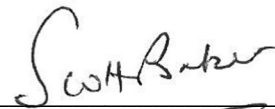
3. The first of the grounds of appeal arose from paragraph 39 of the Registrar’s ruling of 11 December 2017. In that paragraph the Registrar said that “*Section 28(d) of the Employment Act 2000 excludes an employee’s trade union activity as a valid reason for dismissal or the imposition of disciplinary action.*”
4. However, she continued that “*...it is arguable that this claim for breach of contract is separable for the dismissal claims. Put another way, it is not obvious to me that this complaint can only co-exist with a dismissal claim. I, therefore, leave the contractual claim for breach of Article 9 of the CBA for determination by a trial judge.*”
5. In the re-amended Statement of Claim, there is a claim for “hurt feelings” in respect of which the Plaintiff claims \$7,000.00. During the course of arguments, Mr Godfrey accepted that these damages were not in fact sought as damages for wrongful dismissal. It therefore followed that his argument under the Employment Act 2000 (“the Act”) that such a cause of action could only proceed before an employment tribunal, was not applicable to a claim under this head. Mr Godfrey accepted that while the damages might be small, it was clear that the claim was indeed severable, so that that is a matter which the Plaintiff remains free to argue at the substantive trial.
6. The second matter turned on the original claim based on freedom of association. I confess that there is some confusion in my mind, at this stage, as to the order in which the various matters were dealt with. But the claim for freedom of association is between paragraphs 89 and 94 of the Registrar’s ruling, and at

paragraph 99 in the summary. By reference to the transcript it was clear that the Registrar had been mistaken in her view that those matters remained live. This was something which was quite clear from the transcript when Ms Tucker for the Plaintiff had said in clear terms that the Plaintiff was no longer seeking to rely on that claim, and that it had been abandoned and she had no reason to address Madam Registrar on that point any further. That was the point that was accepted by Mr Godfrey for the Plaintiff. Therefore, it follows that there is no ground of appeal which can be pursued, and Mr Godfrey similarly accepted the position in that regard.

### **Ground C: The Renewed Application for Leave to Appeal**

7. The last of the matters arose from paragraph 65 of the Registrar's ruling, in which she said *"The Defendant's Counsel argued that Mr. Tucker failed to report any grievances for bullying and discrimination at the time of the alleged acts. Mr. Godfrey submitted that the discrimination allegations are baseless allegations of fraud. Counsel further argued that such allegations should be, but are not, supported by prima facie evidence on the face of the documents before the Court. Mr. Godfrey suggested that such allegations are, therefore, a breach of the Bar code and are also scandalous, frivolous and vexatious and a clear abuse of process."*
8. The Registrar in dealing with that aspect of matters on the application for leave before her, referred to the terms of paragraph 65 and then referred to the Intended Appellant's skeleton argument and particularly to paragraph 26 thereof in which he had said that references to fraud made by counsel in these submissions were in respect of allegations made by the Plaintiff in the affidavit of David Tucker dated 4 October 2017 at paragraph 14. The Plaintiff makes allegations regarding documentary evidence submitted by the Defendant, and attacked the affidavit of Allan Trew dated 14 September 2017, which he said was manipulated, that is to say fraudulent.

9. The Registrar carried on to say in her Ex Tempore Chambers Ruling when considering the application for leave to appeal, that she had taken this ground at its highest and found that even if the Court of Appeal finds that she had mischaracterised the Defendant's submission on the fraud allegation, it would have no likely impact on the merits of the appeal beyond Grounds A and C. She found that this is not an arguable ground of appeal and it stands more so as a passing point for correction than a meritorious ground of appeal. For these reasons, she refused leave to appeal on this ground.
10. The point was canvassed during the course of Mr Godfrey's submissions and Mr Godfrey accepted that his ground of appeal did not make complaint against any finding by the learned Registrar. We would take the same view as did the Registrar, namely that it is not a matter that is likely to impact the merits of the appeal, and so like her we would dismiss that ground of appeal.
11. Costs to the Respondent.



**Baker P**



**Bell JA**



**Clarke JA**