



In The Supreme Court of Bermuda

CIVIL JURISDICTION

2013: No 153

BETWEEN:-

DR. CHRISTOPHER L. JOHNSON

Plaintiff

-and-

BERMUDA HOSPITALS BOARD

Defendant

REDACTED JUDGMENT

(In Chambers)

Date of hearing: 15th April 2014

Date of judgment: 15th May 2014

Mr Gordon Woolridge Jr, Phoenix Law Chambers, for the Plaintiff

Mr Ben Adamson, Conyers Dill & Pearman, for the Defendant

Introduction

1. This is a redacted judgment. The full judgment will be made public at a later date.

2. By a summons dated 29th October 2013, the Plaintiff, Dr Christopher Johnson (“Dr Johnson”) alleges that the Defendant, the Bermuda Hospitals Board (“the Board”), breached the terms, spirit and intent of a consent order between the parties dated 6th June 2013 (“the Consent Order”) and thereby caused him loss and damage.
3. The hearing was concerned solely with the question of breach and not with damages or other legal consequences of any such breach.
4. I have read affidavit evidence from both parties. I have also heard oral evidence from Dr Johnson to elucidate one or two points in his affidavits.

The Consent Order

5. The Consent Order was a *Tomlin* order. It compromised two actions brought by Dr Johnson: (i) the present action for judicial review, in which he challenged the suspension by the Board of his hospital privileges for want of malpractice coverage; and (ii) an action for breach of contract in which he claimed damages of \$1.2 million.
6. The Consent Order provided that the action was dismissed on the terms of the Compromise Agreement, which formed a Schedule to the Order. The terms included:

“b. [The Board] will grant [Dr Johnson] temporary privileges pending the determination of the application to grant full privileges. [Dr Johnson] will have to apply for full privileges in accordance with [the Board’s] procedures and will provide the necessary documentation and information required in accordance with [the Board’s] bye-laws and procedures to apply for full privileges.

c. For the avoidance of doubt ... the granting of temporary privileges is not intended to in any way compromise or pre-empt [the Board’s] bye-laws and procedures which are in place with respect to the grant of full privileges or the decisions of any of the relevant bodies involved in that process.”

7. Dr Johnson submits that based on the terms of the Compromise Agreement his application for the restoration of full privileges should have been a formality. It has turned out to be anything but that.

The issues

8. Dr Johnson alleges four breaches of the Compromise Agreement:
 - (1) The Board has failed to grant him temporary privileges pending the determination of the application to grant full privileges.
 - (2) The Medical Staff Committee (“MSC”) has considered his extant application for full privileges rather than wait for him to file a fresh application.
 - (3) The MSC has treated his application as a new appointment not a reappointment.
 - (4) The Board has failed to apply its Bye-Laws and procedures fairly.

The outcome

9. [The Court heard detailed submissions with respect to each of Dr Johnson’s allegations.]
10. The allegations of breach of the Compromise Agreement are resolved as follows:
 - (1) The Board has breached the Compromise Agreement in that it has failed to grant Dr Johnson temporary privileges until such time as his application for full privileges has been determined.
 - (2) The MSC was entitled under the Compromise Agreement to consider Dr Johnson’s extant application for full privileges rather than wait for him to file a fresh application.

- (3) The MSC was entitled under the Bye-Laws and therefore the Compromise Agreement to treat Dr Johnson's application as a new appointment not a reappointment. However that decision should make no difference to the procedural safeguards afforded him.
 - (4) I am satisfied that Dr Johnson's then attorneys wrote to the Board's attorneys to request a hearing within the 30 day time limit imposed by the Bye-Laws. I am therefore satisfied that Dr Johnson remains entitled to a hearing before the Board.
 - (5) The Compromise Agreement contains an implied term that when considering Dr Johnson's application the Board will apply its Bye-Laws and procedures fairly. However, the allegation that the Board has failed to do so falls to be considered in the context of the appointment procedure as a whole. I shall therefore adjourn this limb of Dr Johnson's complaint, with liberty to restore once the Board has considered the adverse recommendation made by the MSC and Dr Johnson's challenge thereto, and rendered a decision.
 - (6) It will be clear both from the Bye-Laws and the observations made earlier in this judgment that, notwithstanding the adverse recommendation, the Board should not treat the decision as a mere formality.
11. I shall hear the parties as to the relief appropriate to these findings and as to costs.

DATED this 15th day of May, 2014

Hellman J