

Basse v Societe Des Bains De Mer Ltee

2023 IND 54

CN152/19

THE INDUSTRIAL COURT OF MAURITIUS
(Civil Side)

In the matter of:-

Mr Laval Denie Claude Basse

Plaintiff

v/s

Societe Des Bain De Mer Ltee

Defendant

JUDGMENT

By way of *Proecipe*, the Plaintiff is claiming from the Defendant Company **the total sum of Rs1 279 807. 75/- representing Severance Allowance with Interest as from the date of termination of employment up to the date of determination of the present Claim and such amount to compensate for loss of wages and expenses incurred to attend Court, with Costs, for the termination of his employment by the Defendant Company without justification.**

The Defendant Company has denied the said Claim in its Plea and has moved for the present Plaint to be set aside, with Costs.

Each Party was assisted by Learned Counsel throughout the Proceedings.

The Proceedings were held partly in English and partly in Creole.

Case for the Plaintiff

It was the case for the Plaintiff that the Defendant Company had terminated his employment without justification, when it terminated his employment on 23-03-18, as he had denied the charges at the Disciplinary Committee.

Case for the Defendant Company

It was the case for the Defendant Company that the Plaintiff had relinquished all his claims against the Defendant Company, his having signed the Transaction (Doc. P4), and hence the Plaintiff could not proceed with the present matter.

It was also the case for the Defendant Company that the termination of the Plaintiff's employment was justified in view of the fact that the Plaintiff had accepted the chronology of events presented to him by the Defendant Company at the Disciplinary Committee of 20-03-18 and given it was not satisfied with the explanations provided by the Plaintiff, and hence it considered that the link of Trust and the good working relationship it had to have with the Plaintiff had been irrevocably severed.

Analysis

The Court has duly analysed all the evidence on Record and all the circumstances of the present matter, and the Court has given due consideration to the Submissions and to the Written Submissions of each Learned Counsel.

The Court has duly considered all the documents produced in the course of the Proceedings.

The applicable Law

It was common ground between the Parties that the Plaintiff last worked for the Defendant Company on 23-03-18, and the applicable Law at the relevant time was the **Employment Rights Act as amended (hereinafter referred to as the ERA)**.

Not in dispute

It was not in dispute that:

- 1) The Plaintiff had been in the continuous employment of the Defendant Company as Barman between 03-01-95 and 23-03-18;
- 2) The Plaintiff had a basic monthly salary of Rs14 252/-;
- 3) The Plaintiff was convened to a Disciplinary Committee on 20-03-18; and
- 4) The Plaintiff's employment was terminated by the Defendant Company on 23-03-18.

Transaction (Doc. P4)

There is no averment in the Plaintiff's Pleadings as to his having signed the Transaction (Doc. P4) without his having been explained same, and hence without his knowing its contents.

Given, however, the said issue was raised in the course of the Proceedings, the Court proceeds to determine the said issue.

The mere fact that the said document is titled "Transaction" does not necessarily make it so. The form and contents of the said document are to be examined to determine whether the said document satisfies the relevant requirements of **Arts. 2044, 2052 and 2053 of our Civil Code**.

The said document (Doc. P4) was in writing, and therefore satisfies the requirement that a Transaction be in writing as per **Art. 2044 of our Civil Code**.

There was no dispute that the said document (Doc. P4) emanated from the Defendant Company, it being on its letterhead, and the Plaintiff confirmed having signed same.

The Identity of the Parties to the said document is therefore not in dispute, and there is therefore no *erreur dans les personnes* (**Art. 2053 of our Civil Code**).

It is also beyond dispute, in light of the circumstances of the present matter and the express wording of document (Doc. P4), that there was a *contestation* between the Parties, as to the Plaintiff's employment with the Defendant Company.

The Court has noted that it was advanced on behalf of the Plaintiff that it was not clear who had written the said document, given for instance it starts with "I, the undersigned" and then contains "your monthly salary" at the second paragraph.

That may be so, but the Court is of the considered view that the purport of the said document is self-evident, and that in fact, the Plaintiff did not put in doubt the subject matter of the said document (Doc. P4), and conceded having signed same.

There is therefore no *erreur sur l'objet de la contestation* (**Art. 2053 of our Civil Code**).

From the wording of the said document (Doc. P4), the Court is satisfied that the intention of the Parties was for the said document (Doc. P4) to put an end to the said *contestation née*, (**Thanacoody v New Dairy Co Ltd [1973 SCJ 4]** cited with approval in **Soocheeta & Ors v Bundun & Ors [2021 SCJ 302]**).

By accepting to have his employment terminated, and by paying the Plaintiff his dues and one additional month of salary, the only logical conclusion is that the Parties intended for an end to be put to the *contestation*.

This being said, the essence of a Transaction lies in the fact that the Parties are making reciprocal concessions (**Soocheeta (supra)**).

The Plaintiff was clearly making concessions, by having his employment terminated and his, in effect, giving an absolute discharge to the Defendant Company.

The Defendant Company was paying the Plaintiff his dues, but given the Defendant Company was under an obligation to pay to the Plaintiff what he was entitled to, this payment cannot amount to a *concession réciproque*.

By choosing to pay to the Plaintiff one additional month of salary in lieu of notice, albeit as an *ex gratia* payment, in the words of the Defendant Company represented by Mrs Patima Gopee, or on humanitarian grounds, the Defendant Company was going beyond what the Plaintiff was entitled to, given the Defendant Company's decision was to terminate the Plaintiff's employment for gross misconduct (Doc. P3), bearing in mind also the Plaintiff's Final Severe Warning (Doc. D3).

The Court is therefore of the considered that this additional payment amounts to a *concession réciproque* as envisaged by our **Civil Code**, given that the Defendant Company did, in fact, give up part of its Rights to pay only his dues to the Plaintiff (**Note 4 - Dalloz, Rep. Pratique Vo Désistement** referred to in **Soocheeta (supra)**), it choosing to pay to the Plaintiff such additional amount.

In light of all the above, the Court is of the considered view that the said document (Doc. P4) can, and does, amount to a Transaction.

That being said, in the course of the Plaintiff's Examination-In-Chief, it was advanced that the Transaction (Doc. P4) had not been explained to the Plaintiff, his attempting thereby to rescind the said Transaction (**Art. 2053 of our Civil Code**).

Learned Counsel for the Defendant Company objected to that line of questioning, as the said issue had not been averred in the Plaintiff's Pleadings.

It is trite Law that the Parties are bound by their Pleadings, and the Court is of the considered view that in the absence of any specific averment in the Pleadings in relation to the Plaintiff not having been explained the said document when he was asked to sign same, there is no need for the Court to consider the said issue, but the Court does so for the sake of completeness.

The Plaintiff deponed to the effect that he had signed (Doc. P4) without having been explained the contents thereof.

The Plaintiff stated that he was not very literate, but nevertheless confirmed having signed same just to take his money, which was also the version put to Mrs Poornima Ramdewar (hereinafter referred to as the Plaintiff's Witness).

The Plaintiff having signed the said document without having been explained same is not the same as the Plaintiff having signed the said document just to take his money.

The Plaintiff stating he had signed the said document just to take his money suggests that he was more interested in getting his money than anything else.

Further, had it been the case that the Plaintiff had signed the said document without having been explained same or either due to pressure, force, or intimidation, the Plaintiff ought to have mentioned same at the time of his said Complaint at the Labour Office.

The Plaintiff's Witness however confirmed not only that the Plaintiff had made no such Complaint at the Labour Office, but also that at no stage had the Plaintiff complained at the Labour Office that he did not know what he was signing.

And Mrs Shayam Mamraj (hereinafter referred to as the Defendant Company's Witness No. 1) confirmed that the Plaintiff had been explained the said (Doc. P4) and had signed same voluntarily in her presence.

This was also confirmed by Mrs Arianne Tossé (hereinafter referred to the Defendant Company's Witness No. 2).

The Court has watched the demeanour of the Plaintiff with care, and is of the considered view that the Plaintiff was trying to portray himself as a Victim of the situation, who signed the said document without having been explained same. From the Plaintiff's answers, it appeared the Plaintiff was trying to evade the consequences of his own actions.

On the other hand, the Court has watched the demeanour of the Witnesses who deponed on behalf of the Defendant Company, and is satisfied that they deponed in a straightforward manner, and corroborated each other.

The Court has noted that the Defendant Company's Witness No. 1 was questioned as to whether she was aware of the legal implications attached to a Transaction, and conceded she was not.

It is however to be noted that at no stage was it established that the Defendant Company's Witness No. 1 had any legal training, and hence the Court finds her said admission in no way undermines her testimony, she maintaining having explained the said document (Doc. P4) to the Plaintiff when the Plaintiff was asked to sign same.

The Court therefore finds that it can safely act on the testimony of the Witnesses for the Defendant Company as to the fact that the Plaintiff had been explained the said document before signing same.

In light of all the above, the Court is of the considered view that there is no merit to the Plaintiff's said contention that he had not knowingly signed the said document (Doc. P4), and there is no evidence on Record to justify the said Transaction (Doc. P4) being rescinded.

And at no stage was it the Plaintiff's case that violence was exercised on him to sign the said document (Doc. P4).

In light of all the evidence on Record, all the circumstances of the present matter, and for all the reasons given above, the Court finds that the said document (Doc. P4) amounts to a Transaction, and that the Plaintiff has placed on Record no evidence justifying same being rescinded.

The Court therefore further finds that the said document (Doc. P4) has *l'autorité de la chose jugée* (**Art. 2052 of our Civil Code**) *entre les Parties* and it is not open to the Court to *heurter l'autorité de la chose jugée attachée à la* ¹ Transaction (Doc. P4), and hence the Court is of the considered view that the present matter cannot stand.

Miscellaneous

Names

The name of the Plaintiff and that of the Defendant Company have been copied exactly as they appear in the heading of the *Proecipe*.

The name which appears on (Docs. P1, P2, P3, P4, D1, D2, D3, D4, D5) is that of Denis Claude Basse, as per (Docs. P5, P6), it is the name of Laval Denie Claude Basse which appears, the name of Laval Denis Claude Basse appears on (Doc. D6), and the name of Denis appears on (Doc. D7).

Further, the name of Societe Des Bains De Mer Ltee appears on (Docs. P1, P2,) and the name of Societe Des Bain De Mer Limitee appears on (Doc. P6).

And the name of 20° Sud appears on (Docs. P3, P4, P5, D1, D3, D4) and the name of 20 Degrés Sud appears on (Docs. D2 and D5).

That being said, at no stage of the Proceedings either the Identity of the Plaintiff or of the Defendant Company put in issue.

Further, the Plaintiff confirmed in Examination-In-Chief that the Hotel 20° Sud belonged to Societe Des Bains De Mer Ltee.

¹ Cass. soc., 16 septembre 2009, n° 08-42.273

Conclusion

In light of all the evidence on Record, all the circumstances of the present matter, and for all the reasons given above, **the Court finds that the Plaintiff has not proven his case on the Balance of Probabilities, and the present matter is therefore dismissed.**

No Order as to Costs.

[Delivered by: D. Gayan. Ag. President]

[Intermediate Court (Financial Crimes Division)]

[Date: 30 June 2023]