

JAMAICA

IN THE COURT OF APPEAL

**BEFORE: THE HON MISS JUSTICE STRAW JA
THE HON MRS JUSTICE FOSTER-PUSEY JA
THE HON MRS JUSTICE V HARRIS JA**

PARISH COURT CIVIL APPEAL COA2021PCCV00034

BETWEEN	JENNIFER CLARKE	APPELLANT
AND	ICOLYN ANDERSON	RESPONDENT

Steven Jackson for the appellant

Rodain Richardson instructed by Neco Pagon for the respondent

8, 13 February and 21 June 2024

Civil procedure – Claim for breach of Contract – The power of a judge of the Parish Court to amend defects and errors in any proceedings - Whether a judge of the Parish Court can substitute the cause of action in a plaint - Sections 76, 184, and 190 of the Judicature (Parish Courts) Act

STRAW JA

[1] I have read the judgment of my sister, V Harris JA and agree with her reasons for the disposition of the appeal.

FOSTER-PUSEY JA

[2] I, too, have read, in draft, the judgment of my sister V Harris JA. I concur with her reasons for the disposition of the appeal.

V HARRIS JA

[3] The appellant, Ms Jennifer Clarke (the 2nd defendant in the court below), is challenging the decision of a judge of the Parish Court for the Corporate Area, Civil Division (‘the learned judge of the Parish Court’) given on 16 December 2019, wherein

she entered judgment in favour of the respondent, Ms Icolyn Anderson (the plaintiff in the court below), in the following terms:

“Although this action is framed as a breach of contract, the evidence bears out that on a balance of probabilities the 2nd Defendant is liable to the Plaintiff for the tort of deceit.

Judgment for the Plaintiff against the 2nd Defendant in the sum of \$131,800 plus exemplary damages of \$26,000 plus costs of \$1176.[sic] Exemplary Damages calculated at 20% of sum awarded for compensatory loss of Plaintiff using as a guide the recent case of **AXA Insurance UK plc v Financial Claims Solutions Ltd and others** [2018] EWCA Civ 1330.” (Emphasis as in original)

[4] Having heard and considered the submissions of counsel for the parties and the material before us, on 13 February 2024, we made the following orders:

- “1. The appeal is allowed.
2. The decision of Her Honour Ms Amina Maknoon given on 16 December 2019, is set aside.
3. Judgment is entered for the appellant.
4. Costs of \$75,000.00 to the appellant.”

At the time of our decision, we promised that short reasons would follow. This is a fulfilment of this promise.

Background

[5] The plaint was filed on 4 May 2018 against Ms Lisa Spencer (the 1st defendant in the court below, who was not served and hence not before the court) and the appellant, seeking to recover damages for breach of contract. The particulars of claim alleged that “the [respondent] had an agreement with the [appellant] whereas [Ms Spencer] would provide a job for the [respondent] overseas”. Further to this agreement, the respondent was to pay US\$2,000.00 to secure the job. The respondent deposited the sum of \$131,800.00 in Ms Spencer’s account in November 2017, but up to the date that the

proceedings commenced, the respondent maintained that “[Ms Spencer] fail [sic] to provide the said overseas job for the [respondent] and or return the sum of \$131,800 despite numerous request [sic] by the [respondent]. The [respondent] is seeking the court [sic] assistance to recover the said sum due and owing”.

[6] At the trial, the respondent gave evidence that she was informed that the appellant “ran or organized a programme” or was “an agent” for an overseas work programme (‘the programme’). According to the respondent, she contacted the appellant, who told her that Ms Spencer was “the other person involved in the programme”. The respondent testified that the appellant made herself out to be Ms Spencer’s agent and not only assured her of the programme’s legitimacy but also encouraged her to enrol in it. Based on those assurances, she decided to participate in the programme. The respondent stated that the appellant gave her relevant information about the programme and provided her with Ms Spencer’s bank account details, to which she deposited the sum of \$131,800.00. The respondent also said she paid the appellant \$5,000.00 as the agent for Ms Spencer. Following delays with certain processes, the respondent demanded the return of her deposit. However, she could not contact Ms Spencer directly by telephone, and despite several messages purportedly from Ms Spencer via WhatsApp, she has not received a refund of her money. The respondent also reported the matter to the Fraud Squad.

[7] The appellant’s case at trial was that the respondent contacted her regarding the programme. The appellant said she informed the respondent that she was neither the organiser of the programme nor Ms Spencer’s agent and merely assisted her with certain details and processes regarding the programme for which the respondent paid her \$5,000.00. The appellant’s evidence was that she and her son were also participants in the programme, and receipts of the payments she made to Ms Spencer’s account formed part of her evidence. She denied holding out herself to the appellant as Ms Spencer’s agent. The appellant also testified that she had been questioned by police officers from the Fraud Squad. That questioning occurred after the respondent had reported the matter to them following a demand for a refund of the sum she had paid, which was not forthcoming. When asked by the respondent what she was doing to recover the monies

she had paid to Ms Spencer, the appellant stated that she had reported the matter to the Fraud Squad and had teamed up with other persons on the programme to try and locate Ms Spencer.

[8] This, in summary, was the evidence before the learned judge of the Parish Court, on which she made the order set out at para. [3] above. The appellant, being dissatisfied with that order, filed a notice of appeal setting out the following two grounds of appeal:

“(i) The learned parish judge erred in law / or misdirected herself by ignoring fundamental facts and principles of law hence arriving at a flawed decision.

(ii) insufficiency of facts found to support the judgment.”

Submissions on behalf of the appellant

[9] Learned counsel for the appellant, Mr Steven Jackson, forcefully submitted that there were no bases in fact and law that could support the learned judge of the Parish Court’s decision. He pointed out that the claim before her was for breach of contract, and the evidence presented by the respondent at trial was in keeping with that cause of action. Counsel further submitted that this was the case that the respondent met. Yet, the learned judge of the Parish Court found the appellant liable for the tort of deceit, an entirely different cause of action not pleaded in the summons to the plaint, the plaint or particulars of claim. It was, therefore, not fair to the appellant, who was never informed at any point during the trial by the learned judge of the Parish Court that she was to answer a case of deceit. Additionally, counsel argued that there was no evidence before the court to support her findings. He relied on section 76 of the Judicature (Parish Courts) Act (‘JPCA’) to support these submissions.

[10] Mr Jackson also submitted that section 190 of the JPCA, which was relied on by the respondent, did not give the learned judge of the Parish Court the power to convert a claim for breach of contract to an entirely new cause of action at the stage of delivery of the judgment and without any notice to the appellant who was self-represented at trial.

Submissions on behalf of the respondent

[11] Counsel for the respondent, Mr Rodain Richardson, submitted that the learned judge of the Parish Court, in accordance with section 190 of the JPCA, had the power to amend all defects and errors in any proceedings and that by finding the appellant liable for the tort of deceit on a claim for breach of contract, she did so within the ambit of that provision. He submitted further that the amendment made by the learned judge of the Parish Court was one of form as there was no interference with the substantive nature of the matter. Counsel also contended that the averments in the particulars of claim and the evidence at trial were sufficient to establish the tort of deceit. Reliance was placed on the case of **Connolly Limited v Bellway Homes Limited** [2007] EWHC 895 (Ch) to support these propositions.

Discussion

Ground (i) - The learned parish judge erred in law / or misdirected herself by ignoring fundamental facts and principles of law hence arriving at a flawed decision.

[12] At the outset, it is essential to note that the learned judge of the Parish Court did not provide any written reasons for her decision. In the absence of reasons, this court is required to determine whether it was open to her as a matter of law to find the appellant liable for the tort of deceit in an action for breach of contract. The remit of this court is set out in section 251 of the JPCA:

“Subject to the provisions of the following sections, an appeal shall lie from the judgment, decree, or order of a Court in all civil proceedings, upon any point of law, or upon the admission or rejection of evidence, or upon the question of the judgment, decree, or order being founded upon legal evidence or legal presumption, or upon the question of the insufficiency of the facts found to support the judgment, decree, or order; and also upon any ground upon which an appeal may now be had to the Court of Appeal from the verdict of a jury, or from the judgment of a Judge of the Supreme Court sitting without a jury.

And the Court of Appeal may either affirm, reverse, or amend the judgment, decree, or order of the Court; or order a nonsuit

to be entered; or order the judgment, decree or order to be entered for either party as the case may require; may assess damages and enter judgment for the amount which a party is entitled to, or increase or reduce the amount directed to be paid by the judgment, decree or order; or remit the cause to the court with instructions, or for rehearing generally; and may also make such order as to costs in the court, and as to costs of the appeal, as the Court of Appeal shall think proper, and such order shall be final ...”

[13] The approach of the appellate court, when no reasons are provided, was addressed in the Privy Council decision of **Smith (Personal Representative of Hugh Smith (Deceased) and others v Molyneaux (British Virgin Islands)** [2016] UKPC 35 (**Smith v Molyneaux**), which held:

“37. If an appellate court cannot deduce the judge’s reasons for his conclusion in a case, it will set aside the conclusion and either direct a retrial or make findings of fact itself: see *English v Emery Reimbold* [[2002] 1 WLR 2409] at para 26.”

[14] The discussion will be commenced by considering section 76 of the JPCA, which states:

“76. No evidence shall be given by the plaintiff on the trial of any action, of any demand or cause of action, except such as shall be specified in the summons hereinafter directed to be issued.”

[15] This provision mandates that the evidence the plaintiff presents at trial should be confined to the cause of action before the court. Having reviewed the evidence, I believe the respondent complied with this section. The question which naturally arises is whether a judge of the Parish Court could use that evidence to ground liability in a defendant for a totally unrelated cause of action not specified in the summons (as has happened in this case).

[16] It seems to me, given the clear and mandatory language of section 76, that this question must be answered in the negative. That section sets out, in precise terms, the jurisdiction of a judge of the Parish Court, during the trial of any civil matter, to only

receive evidence from a plaintiff concerning the cause of action specified in the summons. This is perfectly reasonable and understandable since the summons notifies a defendant of the case that he or she must meet at trial, and the evidence to be received by the court must be relevant to the claim before it. Therefore, it is difficult to envision any circumstance (and I have located no authority to the contrary) where a judge of the Parish Court could use evidence presented in a claim specified in the summons and plaintiff to arrive at a decision for an entirely different cause of action, not similarly particularised.

[17] In fact, an authority from this court, **George and Branday Limited v Lee** (1964) 7 WIR 275, illustrates the opposite. In that case, the respondent, Lee, had sued the appellant company for detinue. The resident magistrate (as judges of the Parish Court were then designated) found for the respondent in conversion based on the facts that the resident magistrate said he accepted during the trial. Waddington JA, writing for the court, stated, "... the respondent's claim was in detinue and not in conversion, and, without an amendment, it would not have been open to the resident magistrate to have found a conversion" (page 279C of the judgment).

[18] The respondent's position is that the finding of the learned judge of the Parish Court that the appellant was liable in the tort of deceit was an exercise of her discretionary powers under section 190 of the JPCA to amend all defects and errors in the proceedings. Section 190 of the JPCA provides:

"190. The Judge of the Parish Court may at all times amend all defects and errors in any proceeding, civil or criminal, in his Court, whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not; and all such amendments may be made, with or without costs, and upon such terms as to the Judge of the Parish Court may seem fit; and all such amendments as may be necessary for the purpose of determining the real question in controversy between the parties shall be so made."

[19] It is beyond debate that this provision allows a judge of the Parish Court at all times to amend defects and errors in criminal and civil proceedings. The purpose of this

section is to facilitate the determination of the real question in controversy between the parties. However, in **Metalee Thomas v The Assets Recovery Agency** [2010] JMCA Civ 6 (**Metalee Thomas**), this court stated that it was “plain” that section 190 of the JPCA is “... of relevance when there are defects or errors **in form rather than substance**” (per Harrison JA at para. [38] applying **Rowe v Levy** (unreported), Court of Appeal, Jamaica, Resident Magistrate Civil Appeal 31/2000, judgment delivered 16 May 2002 (emphasis added)).

[20] The flaw in the respondent’s reliance on section 190 of the JPCA is revealed in the glaring light of these authorities. In my view, similar to the case of **George and Branday Limited v Lee**, there was no amendment to the respondent’s claim for breach of contract in the present case. Additionally, section 190 was never engaged by the learned judge of the Parish Court, as suggested by counsel for the respondent, to amend any defects or errors in the proceedings for the purpose envisioned by that section (as outlined in **Metalee Thomas**). What the learned judge of the Parish Court did was find the appellant liable for the tort of deceit at the time she delivered her decision, which had the effect of substituting a new cause of action (and giving a decision on that new claim) at the point of judgment, in place of the claim that was before her. She made no finding regarding the cause of action before the court for breach of contract. Section 190, in any event, cannot be utilised in this manner since what was done by the learned judge of the Parish Court was not (borrowing Harrison JA’s words in **Metalee Thomas**) “a mere matter of form; it was a matter of substance which amounted to [a decision that was unfavourable to the appellant being given in] an entirely [different] claim” that was never before her for determination.

[21] Consequently, when the respondent’s cause of action and the defence that the appellant advanced at the trial are evaluated against the context of the learned judge of the Parish Court’s decision, it would be fair to say that the parties were deprived of their right to have “the real issue in controversy” between them determined at trial. This was a fatal error in law on the part of the learned judge of the Parish Court, which provides a justifiable basis for this court to disturb her decision.

[22] Also, it is trite that in the interests of justice and fairness, where a judge chooses to make a decision of his or her own volition, the parties to the claim are to be notified of that decision and be afforded the opportunity to be heard on the matter. This principle is of added importance where, as in this case, the parties (particularly the appellant, the party adversely affected in this case) are self-represented. In accordance with section 184 of the JPCA, before the trial commenced, the appellant stated her defence to the plaint, which was for breach of contract. By finding her liable for the tort of deceit, the learned judge of the Parish Court deprived her of the opportunity to properly defend herself in respect of that tort. Regrettably, given the circumstances of this case, I am propelled to the view that the learned judge of Parish Court's decision failed to do substantial justice between the parties.

[23] On account of the conclusion that the decision of the learned judge of the Parish Court cannot be sustained, and in the absence of reasons for her decision, I will adopt the approach set out by the Board in **Smith v Molyneaux**, and next, consider whether the evidence before the court was capable of supporting the respondent's action for breach of contract.

[24] The significant aspects of the evidence are outlined in paras. [6] and [7] above. It is clear to me that the evidence did not support the respondent's assertion that the appellant was either the organiser or agent of the organiser of the programme. For instance, I note that it was the respondent who approached the appellant to enquire about the programme after "hearing" from someone else that she "ran" the programme. Yet, later in her evidence, she stated that the appellant was "the agent for the programme". Then there was the undisputed evidence that the appellant had paid over monies to Ms Spencer to participate in the programme. This facet of the evidence was supported by documentary evidence in the form of receipts that showed deposits made by the appellant to Ms Spencer's account. There was also the appellant's unchallenged evidence, when asked by the respondent what she was doing to recover the monies she had paid to participate in the programme, that she too had reported the matter to the Fraud Squad and, with the assistance of other participants in the programme, had

searched for Ms Spencer at an address where they were informed she resided. Furthermore, given the state of the evidence, the respondent failed to establish, on a balance of probabilities, that there was a legally binding contract between herself and the appellant regarding her participation in the programme.

[25] As a result, I believe that this is an appropriate case for the invocation of the powers of this court under section 251 of the JPCA to “order the judgment, decree or order to be entered for either party as the case may require”; and rule 2.14(b)(b) of Court of Appeal Rules to “give any judgment or make any order which, in its opinion, ought to have been made by the court below”, so that an order may be made awarding judgment to the appellant.

[26] The analysis of the issue raised by this ground is dispositive of the appeal. Consequently, it is unnecessary to consider the arguments that were advanced by counsel for the parties in respect of ground (ii).

Conclusion

[27] In light of the preceding discussion, there is merit in the appeal. The learned judge of the Parish Court lacked the jurisdiction to use the evidence presented during the trial of a claim for breach of contract to arrive at a finding, by virtue of section 76 of the JPCA, that the appellant was liable for the tort of deceit. Additionally, she erred when she made no finding on the cause of action for breach of contract that was before her for consideration and instead determined that the appellant was liable for the tort of deceit, an entirely different claim that was never before the court. It was for these reasons that we made the orders indicated at para. [4] above.