

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2019 – 00962

Between

PATRICIA URQUANT

Claimant

And

THE INCORPORATED TRUSTEES OF THE

ANGLICAN CHURCH IN THE DIOCESE OF

TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr Justice Ronnie Boodoosingh

Appearances:

Mr David Craig for the Claimant

Mr John Lee and Ms Suella Raci for the Defendant

Date: 8 September 2020

REASONS

1. Before the court is the defendant's application for summary judgment and / or dismissal of the claimant's case.
2. The claimant ran a cafeteria at schools operated by the defendant. She says her contract was not renewed. Based on this she claims damages. She also claims for the defendant's failure to pay her under a "profit sharing" arrangement under the previous contract.

3. The nub of the claim is contained at paragraph 5 of the Amended statement of case. It says:

“In or around December 2015, while discussing the claimant’s bonus entitlement, Ms Jenifer Doyle, Director of Bishop Anstey (sic) High School East promised that the claimant’s three (3) year contract would be renewed.”

4. At paragraph 6 she alleged that “in reliance on the statements of Ms Jennifer Doyle... entered into a loan arrangement to her detriment... True copies of the claimant’s loan agreement dated November 3rd 2015 together with her statement of indebtedness... are attached”.
5. The claimant received a letter on 27 January 2016 that the contract was not renewed. She stated that her “legitimate expectation” / breach of the oral contract occurred.

6. Mr Craig filed an affidavit on the claimant's behalf in respect of this application. He refers to evidence to come in the witness statements relating to a promise of the bursar earlier. However, this was a material fact and it was not pleaded so no evidence can be given of it. Second, the fact that the claimant continued on after August 2015 – she must have done so on a month to month basis – this cannot have given rise to any expectation of renewal.

7. No other facts are pleaded to sustain the claim in the statement of case. There are no particulars of the oral contract. She refers to a promise. She refers to no more.

8. Based on these pleadings it appears that three possible causes of action are contemplated. These are promissory estoppel; breach of a legitimate expectation; breach of an oral contract.

9. The second of these can be disposed of immediately. This is a claim in private law. A legitimate expectation sounds in public law. There is nothing which suggests that any public law remedy is applicable here.

10. Summary judgment may be given on part or the whole of a claim if there is no realistic prospect of success. As applies to this case, there must be sufficient facts pleaded to support a claim or cause of action. The court can also strike out a claim in the exercise of case management powers if there is little likelihood of success of the claim. When considering if to strike out a claim, there must first be a cause of action before we can get the particulars.

11. Promissory estoppel arises where: (1) there is a promise; (2) the party relied on the promise to her detriment; (3) it is unconscionable to permit the other party to act in a manner inconsistent with the promise.

12. Assuming there was a promise as pleaded in paragraph 5, the claimant's case stops thereafter dead in its tracks. The detriment claimed is a loan agreement entered into on 3 November 2015. The problem for the claimant is that the promise was alleged to have taken place in or around December 2015, after the loan agreement. How could she have relied on the promise before it was made? The claim as pleaded is therefore bound to fail.

13. The next possible cause of action is the breach of an oral contract. This too, in my view, is bound to fail. First, there is no particularity of the oral contract, merely that a promise was made. A promise, without more, does not progress to the point of the formation of a contract without other elements. A promise can be equated with an offer. There is no pleading that this was accepted. There is no pleading of the terms upon which this renewed contract would be formulated. There is no pleading of what the consideration was. Was it on the same terms as previously? This is not pleaded or particularised. The elements of a contract are simply not there.

14. It cannot be inferred that the contract would continue on the same terms as before, as suggested by Mr Craig in his affidavit.

15. There was, finally, a claim based on the non-payment under the previous contract of what was due under a profit based incentive scheme. She claimed that 50% of the claimant's profit based incentive was not paid. She relies on the defendant's letter dated 29 January 2016, where a 50 % payment was made.

16. The defendant, at paragraph 9 of the amended Defence answered this. The payment of \$3,154.50 was paid based on a figure before an audit was done. It was based on an estimated profit. The Audit Report for the period up to 31 August 2015, however, showed a loss of \$22,069.00. Thus no profit share was payable.

17. There was no reply to this pleading. From the documents placed before the court the profit based incentive was to be 10% of net profit. No

profit (after audit) being realised, the claimant was not entitled to a payment. In fact she probably was given an advance not due to her. But there is no counterclaim.

18. The claim, therefore, for these reasons is bound to fail in its entirety.

The defendant is therefore entitled to summary judgment. The claimant's claim is struck out.

19. The claimant is to pay two-thirds of the prescribed costs calculated at the Defence stage of 45% based on the sum claimed of \$328,954.50 in the sum of \$16,318.00.

Ronnie Boodoosingh (E-signed)

Ronnie Boodoosingh

Judge