THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO: CV2015-03699

BETWEEN

RODNEY PHILLIP

Claimant

AND

GE ELECTRIC INTERNATIONAL INC.

Defendant

Before the Hon. Madam Justice Eleanor J. Donaldson-Honeywell

Appearances:

Mr. Bissoondath Ramlogan QC and Mr. Alvin Shiva Pariagsingh Attorneys at Law for the Claimant

Mr. Gregory Pantin and Ms. Krystal Richardson Attorneys at Law for the Defendant

Delivered on May 26th, 2017

Judgment

A. Introduction

1. The Claimant, having graduated in 1995 from the University of the West Indies with 1st class honours in Chemistry and Business Management was the longest

serving employee of the Defendant when his service as Area Manager with responsibilities for Trinidad and Eastern Caribbean Territory was terminated. The Claimant's case is that he was summarily dismissed by an oral statement made to him at a meeting held on December 10, 2014.

2. His employment contract provides at Clause 8 for Termination with prior notice given in accordance with applicable law. It is only in the event of termination for cause that the notification period does not apply and termination can occur with immediate effect. According to the Claimant, there was no cause for termination properly determined and as such the Claimant seeks relief for breach of contract and/or wrongful dismissal.

3. The Defendant herein has not contended that there was sufficient cause for summary dismissal. Instead they insist that he was not terminated by them but resigned voluntarily. The fact that the Claimant was told that he was terminated is recorded in minutes of the December 10, 2014 meeting disclosed by the Defendant. However, the Defendant contends that the Claimant's termination was not a dismissal but rather that the Claimant chose to resign when at the meeting on the 10th he was faced with certain disciplinary allegations.

4. According to the Defendant having negotiated a separation package the Claimant voluntarily resigned by an email sent on December 15, 2014 with a resignation letter attached. The content of the email and the letter which were taken into account in consideration as to whether the resignation was in fact voluntary was as follows:

> "*Dave,*
> *As discussed and agreed to earlier this afternoon. Please find enclosed my resignation on the conditions that GE Water will pay 9 months severance benefit to me and GE agrees to accept my resignation from the company. My pension plan for the years vested with the company will be returned to me as well less any statutory deductions.*"

"*Mr. Dave Foster*
HR Manager
GE Water and Process Technologies
4636 Somerton Road
Trevose, PA
19053

Re: Resignation of Rodney Emerson Phillip

Mr. Foster,
It is with mixed emotions that I sent you this document to officially resign in my present position as Business Development Leader at GE Water & Process Technologies to pursue personal and private interests. It's has truly been a wonderful journey along the past eighteen years in the capacities of Account Representative, Account Specialist, Technical Specialist Account Manager, Area Manager and Business Development Leader that have all helped to shape my experience and allowed me to cultivate many great friendships along the way. These will always remain with me as I move along my new career path.

I sincerely thank GE for their investment and confidence in me over the many paths of my careers and wish the corporation the very best in their future endeavours. GE will always remain special to me as I have spent a notable part of my life and career with the corporation.

With kind regards
Rodney Emerson Philip".

5. The Claimant maintains that he was dismissed before he sent the December 15, 2014 email but goes further to say that even if he had not already been dismissed the said email was not a truly voluntary resignation. I have concluded that it was, as in the case of **T. Robertson and G.N.D. King v Securicor Transport Ltd London [IRLR] 70,** a dismissal. I make this finding because the email was written in a context where the Claimant was being given the~~o~~ option to resign in light of the allegations or be dismissed by his employer. I do not accept as alleged by the

Defendant relying on **McAlwane v Boughton Estates Ltd [1973]2 All ER 299** that the Claimant agreed to mutually terminate the employment contract with full knowledge of the implications it had for him.

6. There was very little in dispute as it relates to the factual matrix up to the December 15, 2014 email and in all the circumstances as will be set out in further detail herein it is patently clear that the Claimant was dismissed on December 10, 2014. The email he sent thereafter was not a voluntary resignation because he had already been dismissed. In the verbal termination no indication was given to him as to any Notice period. He was merely, without the benefit of independent advice, attempting to negotiate exit terms more favourable than the summary position as it stood then. My determination is in his favour that the said dismissal was effected without notice on December 10, 2014 in a manner that was not permissible within the contractual terms of his employment.

B. Issues

7. The primary issue addressed in this decision is as aforementioned whether the Claimant was dismissed or~~f~~ resigned voluntarily. Had my determination been that he resigned voluntarily and set his own terms which were agreed to by the Defendant then it would follow that he would be bound by his negotiated termination conditions as set out in the December 15th email.

8. Having determined, based on the undisputed facts set out hereunder, that the termination was a summary dismissal, additional issues for determination are as follows:
    a. What would constitute reasonable notice in the circumstances of the case?
    b. Whether the Claimant failed to mitigate his loss and if so whether such failure should affect the award?
    c. What should be the quanta~~ums~~ taken into account under each head of the Claimant's salary to be included in the calculation of notice pay?
    d. Is this an appropriate case for aggravated and/or exemplary damages to be awarded?

C. Undisputed Facts and findings on the issue of liability for wrongful dismissal

9. The Claimant had been employed with the Defendant in excess of eighteen years prior to his dismissal. As from 1st January 2011 the Claimant was promoted to the position of Area Manager with responsibilities for the Trinidad and Eastern Caribbean Territory.

10. The Defendant's duty of loyalty and confidentiality at Clause 10 of the employment contract, was as follows:

> *"Employee shall not disclose to any person, firm or company any information relating to the Company, the business of the Company or of any associate or customer of the Company of which the Employee gains knowledge, either during the term of employment or after the termination thereof, directly or indirectly, in any way or form whatsoever. Employee hereby confirms that he/she has no obligation towards any competing employer, and that he/she may not, without the Company's prior consent in writing, carry on competing professional activity during the term of his/her employment with the Company. The provisions of this Section 10 shall survive the termination or expiration of this Agreement.-*
>
> Clause 9 provides "*In performing his/her duties. Employee shall observe strictly the Company's rules, internal guidelines, instructions, policies, procedures, and in other manuals, as the Company management defines from time-to-time and to the extent such guidelines are applicable to local employees. Employees acknowledges that failure to comply with such rules and regulations may result in termination of this contract."*

11. On November 03, 2014 the Defendant's General Manager Scott Nalven, and HR Manager Dave Foster, visited the Defendant's offices in Trinidad. The Claimant was called into a meeting with them without any notice and told that certain allegations were being made against him including a potential breach of the Conflict of Interest policies of the Defendant. The Claimant was told that he was immediately suspended pending investigations. His work laptop, phone and other company issued items were taken from him and within an hour of him leaving the compound, his company issued Audi motor vehicle was collected from him. The

Claimant also asked for the allegations to be put into writing and that request was denied.

12. On December 10, 2014 the Claimant was called to a meeting at the Defendant's Port of Spain office. Matt Corbo, the Defendant's then Sales Director for Florida/Caribbean attended in person and Scott Nalven and Dave Foster attended by video conference. At the meeting certain information was presented to the Claimant in a slide presentation and he was asked to immediately respond to the said allegations on the spot. During that meeting the Claimant asked for copies of the material presented and he was refused.

13. From a document tendered in evidence by the defence representing minutes of the December 10 meeting, i.e. exhibit "DF3" to the witness statement of Dave Foster, (Page 83 of Trial Bundle 3) it is not in dispute that after the slide presentation the Claimant left the meeting room. The three Defendant representatives had a ten minute discussion and then the Claimant returned. At that time the Claimant was told in the meeting that he was terminated. The Defendant's document states *"RP (Rodney Phillip) returned to the room,* ***and Corbo told him he was terminated****".* The Claimant requested something in writing but was told that he would be sent something within a day or two because they hadn't made a final decision about his termination and had not prepared anything in advance. Immediately thereafter discussions commenced about what the Claimant's options were and inter alia "*Foster told him that it was his right to go to the labour court, that he could use the internal alternative dispute process, or- assuming no one wanted to drag things out – there could be another alternative*."

14. According to the Defendant's meeting minutes the Claimant ask them to be more specific and they felt he was "*fishing for a payout option*". Foster expressed confidence to the Claimant that the Defendant had more than enough to terminate his employment but they would explore the possibility of a mutual agreement if the Claimant was open to it. The Claimant asked for 18 months' notice and the Defendants felt that was a '*non-starter'*. The meeting ended with Foster saying to the Claimant "*we'll see you in Court*" but he asked Corbo to get correct contact

information from the Claimant and asked the Claimant to "*feel free to reach out*" If he wanted to rethink what he felt was "*a reasonable settlement amount to settle the dispute.*"

15. According to the Defendant given the outcome of the investigations, the Claimant and the Defendant entered into without prejudice discussions which culminated with an agreement between the Claimant and the Defendant that *inter alia:*
    - The Defendant will accept the Claimant's resignation from the Company; and
    - Defendant will pay to the Claimant nine (9) month's severance benefit.

    The Claimant thereafter obtained advice and refused to accept payment based on these terms. The Defendant asks the Court to find that the Claimant provided his letter of resignation which was accepted by the Defendant, and the Claimant is estopped from advancing his claim for a payment based on a longer period of notice.

16. Contrary to the position advanced by the Defendant it is my finding that the actions of the Claimant after December 10 had to be viewed in the context of the impact that the discussions at the meeting would have had on him. Although there had not been due process to establish cause it would have been clear to him that the Defendant had dismissed him summarily but was willing to negotiate a "*payout*" to keep the matter out of Court.

17. It is my finding that when the Claimant sent the email on December 15, 2014 suggesting 9 months' notice instead of 18 he was not thereby resigning voluntarily. He was doing so because he had no choice. His employment had been terminated. His employers acknowledged that he could take the matter to the 'labour' Court and they were only willing to negotiate an agreed "*payout*" so as to avoid having the matter dragged out in Court.

18. My findings above are premised on the fact that the Claimant was dismissed on December 10, 2014 when Corbo told him so. The Defendant says he was not dismissed so it is not necessary to consider whether there was cause for dismissal.

For completeness however I would add that had the Defendant's been relying on the meeting and the statement of termination as a lawful dismissal with cause my finding would also been in favour of the submissions of Counsel for the Claimant at paragraphs 27 to 32 as filed on April 20, 2017.

19. Counsel submitted that the burden of proof rests on the employer to establish just cause for dismissal. This was stated by J. Popplewell in the case of **Cable and Wireless v Hill and others (1982) 30 WIR 120** "*…the burden of proof was on the company, to show 'just cause' for dismissing the employees and that since summary dismissal constituted a strong measure, the standard of proof should be strict, persuasive and convincing…notwithstanding…this is a matter of a civil nature requiring proof on the balance of probabilities, since the matters to be proved were of a grave and weighty nature, it would expect the evidence to be correspondingly cogent and weight in nature and content*".

20. In the instant case I agree with Counsel for the Claimant that the Defendant "*has not provided any or sufficient evidence to the Court to establish that it acted reasonably in prematurely dismissing the Claimant having considered the ……. allegations of breach of confidentiality made against him at an abrupt meeting on the 10th December 2014 which consisted of slides that were not clearly visible …….. Further, these emails showed no supporting evidence to establish that the Claimant was guilty of breaching confidentiality between the Claimant and the Defendant. Therefore, the Defendant has failed to show just cause for dismissing the Claimant and has provided no convincing and persuasive evidence before the court to justify its unlawful decision to terminate the Claimant in breach of the terms of his contract of employment*."

21. It is my further observation that cause for summary termination was not established because:
    a. "Cause" for purposes of summary termination is not defined at Clause 8 of the employment contract.

b. Clause 9 provides for termination on breach of contract terms but does not specify in what circumstances the termination will be without notice.

c. Clause 10 on the duty of Loyalty and Confidentiality does not state that breach thereof amounts to cause for summary dismissal. Accordingly the common law on establishment of cause for dismissal as explained in submissions of the Claimant must be applied.

d. The slide presentation shown to the Claimant at the dismissal meeting comprised email information from his laptop and the Defendant's interpretation thereof. Per se it was not sufficient to establish the Defendant's findings if any of breach of Clause 10, a basis for termination or that there should be termination without notice.

e. Even if the slide presentation had included sufficient basis for such findings by the Defendant, those findings could only have been preliminary until a proper opportunity was given for the Claimant to respond. That was not done as the Claimant was not provided with the information prior to the meeting.

D. <u>Analysis and findings on the issue as to what constitutes reasonable notice for the Claimant's termination.</u>

22. The Claimant seeks 24 months' severance benefits in lieu of notice. As cited by Counsel for the Claimant in closing submissions, it was explained as a general principle in the case of **Lynch, Vincent v Public Transport Service Corporation CV 2011-02123** that reasonableness of notice on termination is determined having regard to:
    a. The character of the employment;
    b. The length of service (seniority);
    c. The age of the employee;
    d. The availability of similar employment;

e. The experience, training and qualifications of the employee;
f. The rate and periodicity of pay.

23. This is supported by several decisions thereafter, including the decision of **Rogan-Gardiner v Woolworths Ltd. [2012] WASCA 31**. In that case the Court made reference to the fourth edition of **Macken, McCarry and Sappideen, the Law of Employment (1997)**. At paras. 116-168, the authors had set out the factors that may be relevant for the determination of the period of reasonable notice. The Court stated:

> *"In the fourth edition of Macken, McCarry and Sappideen, the Law of Employment, (1997) 116-168, the authors state that the considerations which may be relevant to the determination of the period of reasonable notice include the 'high grade' and importance of the position; the size of the salary; the nature of the employment; the employee's length of service; the professional standing, age, qualifications, experience, and job mobility of the employee; the expected period of time it would take the employee to find alternative employment; and the period that, apart from the dismissal, the employee would have continued in the employment. The authors note that the factors which are relevant in any particular case must, of course, depend upon the particular facts of the case."*

24. The statement of Sir John Donaldson in **Yorkshire Engineering and Welding Company Limited v Burnham [1973] 3 AER 1176** is also helpful:

> *"The essence of the cause of action for wrongful dismissal is that the employee is dismissed prematurely. If it is a fixed term contract, he is dismissed before the end of the term. If it is a running contract, his contract is terminated without notice or with less notice than that to which he is entitled under the contract. The damages to which he is entitled consist of the net loss flowing from the premature nature of the dismissal. Prima facie the measure of damage is what the employee would have earned between the time of dismissal and the earliest moment at which he could properly have had his contract terminated less any*

benefits which he has received and which he would have received if he had been properly dismissed…"

25. The Claimant has related these factors to the present case as follows:
    - That the claimant was employed continuously on a permanent basis for 18 years preceding his termination.
    - He held increasingly elevated managerial positions throughout his employ at the Defendant Corporation as Business Development Leader and occupied the most senior position of responsibility in this jurisdiction.
    - He possessed a high level of training, qualifications and experience and was of advanced age (43).
    - He was forced into the open, competitive labour market and would be likely to encounter challenges in securing an available similar/comparative employment, given the current economic realities of finding alternative employment.

26. The Claimant cites the following Canadian cases as comparable cases to the present circumstances and asks this Court to make an award of 24 months' salary:
    - **Wallace v United Grain Growers Ltd. [1997] 3 R.C.S.** where the Claimant was awarded 24 months' salary in the lieu of notice. The Claimant was employed as a salesman and was employed for 14 years;
    - **Gillespie v Bulkley Valley Forest Industries (1973) 30 DLR (3d) 586** – where in an action for wrongful dismissal of a plaintiff employed for 5 years as the Production Coordinator of the defendant company, reasonable notice was held to be 12 months.

27. The Defendant has submitted that the Claimant, if successful in proving wrongful dismissal, should only be entitled to nine months' salary in compensation but has not cited any comparable cases. The Defendant's submissions are focused upon the failure of the Claimant to prove the allowances and incentives claimed, as well as the failure of the Claimant to mitigate his loss.

28. However, given the court's duty to consider generally the state of the law, the following cases have also been found to be useful comparators to the present case:

- **Edgar Lum Wai v Alstons Building Enterprises Limited HCA 5957 of 1989** - where the plaintiff, who was employed for 40 years and 2 months with the defendant, had his employment terminated with immediate effect. It was held that a reasonable period of notice in the circumstances of that case was 18 months, although the court accepted that for a manager 12 months is usually reasonable.
- **Lynch, Vincent v Public Transport Service Corporation CV 2011-02123** – which involved a claimant who had devoted a large part of his working life to the defendant company, occupying senior executive and supervisory positions of responsibility. The court awarded 12 months' notice, taking into account the fact that the Claimant was dismissed at age 68 and the fact that he could hardly be expected on his abrupt release into the competitive labour market to easily find suitable employment or that which would equate reasonably with the duties, responsibilities and benefits to which he was entitled, while in the employ of the Defendant company.
- **Owen Colley v Alstons Building Enterprises Limited C.V. No. 5954 of 1988** - the plaintiff commenced employment with the defendant company when he was age 18 and continued without a break in service for 28 years and 9 and three- quarter months. The Court took into consideration the fact that the Plaintiff was 48 years when he was dismissed from his employment and that he had progressed to the post of General Manager. This was considered as harsh and oppressive conduct that was not in accordance with the principles of good industrial relations practice. The Court found that reasonable notice for the determination of the Plaintiff's services ought to have been a period of 12 months.

29. The guidance in **Edgar Lum Wai v Alstons Building Enterprises Limited** suggests that a reasonable award for managerial positions is 12 months although 18 months were awarded due to the extended length of service.

30. In the present case, the Claimant is 43 years of age and still has many years before retirement age. Further, he does appear to be employable or at least capable of managing his own business as evidenced by his admitted involvement in various business ventures. In the present circumstances, therefore, due to the Claimant's senior position, qualifications, years of devotion, advanced age upon termination and the likely difficulty to obtain comparable employment in an international corporation, a period of 15 months' would justly constitute reasonable notice.

E. <u>Analysis and findings as to whether there was failure by the Claimant to mitigate his loss and how this affects the claim for relief.</u>

31. The Claimant pleaded in his Statement of Case that he had been unable to obtain alternative employment since being dismissed. However he failed to plead or present any evidence as to efforts made to secure employment. Furthermore, the Claimant did not disclose to the Court, until it arose during cross examination, that in fact the company the Claimant formed at a time when facing prior disciplinary action and he considered his future uncertain, was being progressed becoming the sole representative in Trinidad and Tobago for the STAHL range of products for industrial use for the petrochemical industry.

32. The Claimant was further challenged as to his testimony at paragraph 33 of his Witness Statement that as a result of the dismissal he had to stay home all day without doing anything. Under cross-examination the Claimant accepted that he had been pursuing business opportunities through his company Emerson Technologies Limited. In these circumstances the Defendant contends that the Claimant failed to prove that he mitigated his loss by seeking employment and that he was not forthright with the Court in failing to disclose that he was earning money from his business ventures. The Defendant therefore asks that strong inferences be drawn by the Court against the credibility to of the Claimant's entitlement to the number of months' notice he claims.

33. The Defendant in submitting that the Claimant should be found not to have acted reasonably to mitigate his loss cites **Lavarack v Woods of Colchester Limited (1967) 1 QB 278** per Lord Denning MR at 287 as follows,

> *"In assessing damages for wrongful dismissal, the Court… has to make two calculations. First, the Court has to consider what the position would have been if his old employment had run its full course. It must calculate the sums which he might have reasonably have expected to receive in his old employment. Secondly, the Court has to consider what the plaintiff had done since the dismissal. If he has acted reasonably and obtained new employment the Court must calculate the sums which he had received from his work in his new employment during the run-off period. If he has not acted reasonably, the Court must calculate the sums which he might reasonably have been expected to receive if he had acted reasonably. The damages then are assessed by giving him the sum which he would have received in his old employment, less the sum to be deducted in mitigation of damages." [Emphasis added]*

34. The question of whether the Plaintiff has taken reasonable steps to mitigate his loss is a question of fact and not of law, see **Payzu Limited v Saunders [1919] 2 KB 581, 89 LJKB 17, CA** per Bankes LJ at 588-9. In **Fyfe v Scientific Furnishings [1989] ICR 648, [1989] IRLR 331, EAT**, it was said at page 650:

> *"the plaintiff must take all reasonable steps to mitigate the loss. . .and cannot recover damages or any. . . loss which he could have . . . avoided but has failed through unreasonable action or inaction to avoid. It is important to emphasise that the duty is only to act reasonable and the standard reasonableness is not high in view of the fact that the defendant was the wrong-doer".*

35. Further, according to **Hudson on Building Contracts Eleventh Edition, Volume 1** at paragraph 8 - 173 at page 1071:

> *"Very importantly, the duty to mitigate damage may mean that, in times when profitable work is plentiful in the market, the contractor will have to give credit for his ability to earn profits elsewhere on work which he has now become free*

to accept as a result of the termination. In recessionary times, however, this defence will clearly be more difficult for the owner to establish, as also if, even in profitable times, the contractor's resources were not fully committed in the project, so that he was in any case free to take on any additional work on offer..."

36. In **Edsel Reid v Trinidad Aggregate Products Limited HCA 3023 of 1995**, the Plaintiff was close to age 65 at the time of the purported dismissal and his exclusion from the company. The Court considered that it would not have been reasonable to have expected the Plaintiff to have obtained alternate employment at that age especially since his field of expertise was a specialized one without wide scale market applicability. It therefore did not consider it apt to reduce the award for failure to mitigate especially in light of the dearth of evidence.

37. However, in **Raghunath Singh & Co. Ltd v National Maintenance Training and Security Co. Ltd CV2007-02193** the Court considered that the Claimant had not produced sufficient evidence of accounts and documents to show whether it has mitigated its loss or not. The Claimant did not disclose any financial information about itself or bring evidence of their accounts to show the type of work that they were engaged in. The Court therefore determined that it lacked vital information/evidence which should have been led by the Claimant. However, the issue was left undetermined as the Claimant had failed to prove its losses and only nominal damages were awarded.

38. In the present case, the Defendant has succeeded in eliciting from the Claimant evidence of other sources of income during the period of unemployment. However, the Claimant has not particularised these earnings and therefore there is insufficient evidence before the court of the actual losses of the Claimant. A negative inference must be drawn in light of the Claimant's failure to sufficiently explain his financial position. I will therefore reduce the award by 3 months to take this into account. This would bring the period of notice awarded to 12 months. This is three months more than the Defendant was prepared to pay prior to commencement of the action. Accordingly interest will be awarded on that part of the award.

F. <u>What should be the amounts taken into account under each head of the Claimant's salary to be included in the calculation of notice pay?</u>

39. The Claimant's salary and benefit heads under which he seeks relief were as follows:

- Annual salary of approximately USD $121,299.96 at the time of employment and continuing at USD$10,108.33 per month;
- A leased maintained Audi A4 company car and gas benefits at USD$1,500 per month;
- Business entertainment allowance at USD $1000 per month;
- Monthly pension plan contributions at USD $1,100 per month;
- Health plan benefit at USD $500 per month
- Commission incentives up to at time USD $40,000.00 annually extra.

40. The Defendant in closing submissions disputes the amounts stated for entertainment and commission incentives as those would be variable. As underscored by counsel for the Defendant in his submissions in Reply however, there was merely a bare denial in the Defendant's pleaded case as to these quanta which were set out at paragraph 18 of the Statement of Case under Particulars of Damage.

41. The information as to how the figures should be adjusted forms part of the Defendant's records and accordingly ought to have been pleaded in the Defence in order to provide a basis for the Court to reject the Claimant's proposed quantum. However, as it relates to Entertainment allowance the evidence of the Claimant under cross-examination was that there was no allowance as such but that he had use of a credit card for company purposes. I accept the submission of Counsel for the Defendant that the Claimant being no longer employed by the Defendant had no company related purposes. Accordingly, the figures stated in the Claimant's particulars of Damages for entertainment allowance will not be included in the assessment of damages herein.

42. In addition I will include the sum for loss of pension plan contributions but **this must be set-off against any entitlement the Claimant may have to receive pension from Pan American Health so that he does not collect his entitlement twice**. Liberty to apply will be included in the order so as to allow for any clarification in this regard.

G. Aggravated and/or Exemplary damages?

43. The Claimant submits that generally if an employer engages in illegal discrimination when terminating an employee, that employer should pay compensatory damages related to that termination. Moreover, if the employer acted maliciously in conducting the termination, this can result in the award of aggravated and/or exemplary damages to the employee.

44. Aggravated and/or exemplary damages which are awarded to an employee are an exception to the general rule that damages are meant to compensate the plaintiff, it is intended to punish the employer and deter similar behavior by others in the future- **Wallace v United Grain Growers Ltd. [1997] 3 R.C.S.**

45. The object of exemplary damages however is to punish and includes notions of condemnation or denunciation and deterrence- **Rookes v Barnard [1964] 1 ALL E.R. 367, 407)**. Exemplary damages are awarded where it is necessary to show that the law cannot be broken with impunity, to teach a wrongdoer that tort does not pay and to vindicate the strength of the law- **Rookes v Bernard,** supra 411). An award of exemplary damages is therefore directed at the conduct of the wrongdoer. It is conduct that has been described in a variety of ways such as harsh, vindictive, reprehensible, malicious, wanton, wilful, arrogant, cynical, oppressive, as being in contempt of the plaintiff's rights, contumelious, as offending the ordinary standards of morality or decent conduct in the community and outrageous.

46. Although the hasty termination of the Claimant at a meeting where the Claimant was shown slides, asked questions and then the Defendant's officers deliberated for ten minutes was in breach of contract, it is not my finding that such high-handed

conduct was displayed as would justify aggravated or exemplary damages. The Defendant did make some effort to allow for mutually agreeable exit conditions. Although they did not provide an even playing field for the discussions I do not see this as an appropriate case for the Defendant to be further penalised.

H. Decision

47. The Claimant is awarded damages for wrongful dismissal and breach of his employment contract plus interest at 9% on 25% of the salary quantum and interest at 9% on the entire quantum of all other sums from November 4, 2015 to the date of this Judgment to be paid by the Defendant as follows:

- 12 months' salary at USD$10,108.33 per month –USD$121,299.96
- The value of a leased maintained Audi A4 company car and gas benefits at USD$1,500 per month for 12 months - USD$18,000.00
- Monthly pension plan contributions at USD $1,100 per month – USD$ 13,200.00
- Health plan benefit at USD $500 per month for 12 months - USD$6000.00
- Commission incentives - USD40, 000.00.
- TOTAL - USD$198,499.96

48. The Defendant was successful in persuading the Court in relation to two of the issues determined. Accordingly the Defendant is to pay the Claimant's costs of the Claim on the prescribed costs basis as calculated on 50% of USD$198,499.96

49. Liberty to apply.

50. Stay of execution 28 days.

……
Eleanor Joye Donaldson-Honeywell

Judge

Assisted by: Christie Borely
Judicial Research Counsel