

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2016-04160

BETWEEN

RICARDO WELCH

Claimant

AND

UPWARD TREND ENTERTAINMENT LIMITED
U97.5 FM ("HOT LIKE PEPPER")

Defendants

BEFORE THE HONOURABLE MR. JUSTICE K. RAMCHARAN

Appearances:

For the Claimant: In person

For the First Defendant: Mr. Anthony Manwah

REASONS FOR DECISION

1. This is an application filed on behalf of the Claimant on the 3rd April 2017, in which he seeks summary judgement on the ground that the First Defendant has no reasonable prospect of success, or that the Defence be struck out on the basis that it discloses no ground for defending the claim. He contends further that the

Defence does not comply with the Civil Proceedings Rules 1998 as amended as it does not comply with rule 10.5(4). The application further seeks an interim payment in the sum of \$1,921,854.00, which is the sum claimed in the Claim Form as damages for the breach of contract.

2. The action, commenced by Claim Form and Statement of Case filed on the 18th November 2016 surrounds the 'firing' of the Claimant from the employ of the First Defendant as a radio presenter on the First Defendant's morning programme aired on 97.5fm. The Claimant contends that he was terminated because of allegations made by one Inshan Ishmael, described in the Statement of Case as a local TV show host, to the Managing Director of the First Defendant against the Claimant, and further, threats made by Mr. Ishmael to "pull all Indian advertisers from the radio station".
3. It is to be noted that the Statement of Case which is some 60 paragraphs long, goes into great detail of the facts alleged and the evidence to support the facts. Whether this is consistent with the tenor of rule 8.6(1) which states that a party must include "**a short statement of all the facts on which he relies**" (emphasis supplied) is questionable, but it is not in issue, and the court notes that there is a growing trend in the civil jurisdiction to treat Statements of Case more like witness statements in the third person, rather than the traditional pleading.

4. The First Defendant filed its defence on the 16th December 2016. In it, the First Defendant denies that the reason set out in the Statement of Case was the reason for the Claimant's dismissal and sets out what it alleges are the circumstances behind the termination of the Claimant. The First Defendant also denies the averments by the Claimant with regard to the contract between the parties, and sets out what it alleges were the terms of the agreement, including that the Claimant was not an employee, but an independent contractor. It is averred that the reason for the termination of the contract was the breach of the express terms of the agreement by the Claimant, therefore, allowing the Defendant to terminate for cause.
5. The Claimant filed substantial submissions in support of the application on the 27th July 2017, and the Defendant filed submissions in response on the 16th October 2017.
6. The duty of the Defendant under rule 10.5 is to state which paragraphs it admits, denies or does not admit or deny on the ground that it does not know whether or not it is true. Further, where the Defendant denies any allegation in the statement of case, he must state the reason why, and if he wishes to prove a different version of events, he must set it out. It is the Court's view that the Defendant has complied with the provision of rule 10.5 of the CPR. The defence clearly sets out those

paragraphs which are denied, admitted or neither admitted or denied, and further, succinctly sets out its version of events.

7. In order to comply with rule 10.5, the Defendant does not have to reply to each paragraph and state its version of events individually, it can be done collectively, once the defence adequately addresses all of the allegations. In the instant case, the version of events which the First Defendant has put forward is diametrically opposed to the version set out by the Claimant, and there can be no question of an implied admission by the First Defendant. There is no bare denial by the First Defendant.

8. In his submission, the Claimant submitted that because the Defendant had not filed any affidavit in opposition, it must be deemed to have admitted the contents of the affidavits filed in support of the application. This is a misunderstanding of the law. Firstly, the issue of whether a defence discloses a reasonable defence or not is a question of law on the face of the Defence, not fact, and therefore, no evidence is needed to establish that. Secondly, whether a Defence complies with Rule 10.5 is also a question of law on the face of the Defence itself.

9. It is to be noted that in pleadings it is not necessary to plead evidence, just facts, and while, unlike under the Rules of the Supreme Court 1975, the pleading of

evidence is not expressly prohibited, it is still unnecessary, and in this court's view it is undesirable to congest the Statements of Case with evidence.

10. While an application for summary judgement requires the court to consider the evidence, the court must consider all the evidence that would be available at trial. In other words, the court must consider what would be the evidence of the parties at the trial of the action, therefore the lack of any affidavit in response to the affidavit in support of the Claimant's application is not fatal to the application.

11. In an application for summary judgement, the court must consider firstly, whether even if the facts alleged by the respondent to the application are proved to be true, he would be unsuccessful, in the case of a defendant then, that the claimant would still succeed on the claim. Secondly, the court must consider whether on the evidence likely to be available at trial, the facts alleged could be proven.

12. On the first limb, if the facts pleaded are found to be true, then the Defendant would be able to successfully defend the claim against it, as it raises a defence of a breach of contract, as well as denying a contract of employment, but rather, a monthly contract of an independent contractor.

13. On the second limb, when one considers what evidence is likely to be able to be available at the trial, the court cannot say that this is a matter which is suitable for

summary judgement. The evidence as to the agreement between the parties and the reason for the termination would likely be the viva voce evidence of the witnesses. The parties both agree that the agreement was an oral one, therefore, evidence of its terms and conditions must necessarily be led via viva voce evidence. It would therefore come down to the credibility of the witnesses. This is something that must be dealt with at trial, and not in an application for summary judgement.

14. In the circumstances, the court is of the view that this is not a matter suitable for summary judgement. Further, the as the defence complies with rule 10.5 and does disclose a reasonable defence, the defence ought not to be struck out.

15. With respect to the application for an interim payment, under part 17.5(1), an order for an interim payment can only be made under certain circumstances. The only one which could possibly apply to the instant case is Rule 17.5(1)(d) which states: **“except where paragraph (3) applies, it is satisfied that if the claim went to trial, the Claimant would obtain judgement against the defendant from whom he is seeking an order for interim payment for a substantial sum of money or for costs;”**

16. In light of what has been held above, the court cannot be satisfied that if the claim went to trial the Claimant would obtain such an order. It is only when the claim

is tried, and the evidence tested that the court can properly determine whether the Claimant is entitled to judgement against the Defendant. In the circumstances, the application for an interim payment must also fail.

17. In the circumstances, it is ordered that the application filed on the 3rd April 2017 be dismissed with costs. Costs to be assessed by a Registrar if not agreed, certified fit for counsel.

Dated the 20th November 2017

**Kevin Ramcharan
Judge**