

4/99

ANTIGUA & BARBUDA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 2 OF 2002

BETWEEN:

STANFORD FINANCIAL GROUP LTD.

Appellant

and

LESLIE HOFFMAN

Respondent

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Albert Redhead
The Hon. Mr. Ephraim Georges

Chief Justice
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. Justin Simon for the Appellant
Mr. Charlesworth Browne with Mr. Kendrickson Kentish for the Respondent

2002: November 14;
May 27.

JUDGMENT

- [1] **REDHEAD, J.A.:** Stanford Financial Group Limited, the Appellant, owns and publishes the "Antigua Sun" which is now a daily newspaper in Antigua. The Respondent, Leslie Hoffman, and her husband Robert Hoffman, were both employed by the Appellant on contract. Both the Respondent and her husband were recruited from California to work for the Newspaper.
- [2] Robert Hoffman was employed as Editor in Chief and General Manager of the Company. The Respondent was employed as Managing Editor and reported to her husband. By letter dated 17th day of September 1998, the Appellant

terminated Robert Hoffman's services for incompetence and gross mismanagement.

- [3] The Respondent's contract of service with the company was for a minimum term of five years. The contract document stipulates:

“ The company requires a minimum five year commitment from you.”

- [4] The Respondent took up her employment with the company in December 1996 at a salary of US \$35,000 per annum or US \$2916.67 (per month). At the Antigua Sun she supervised Louis Daniel, Mitzie Allen and Collin James, well known local journalists among others who were her subordinate. After Mr. Robert Hoffman's dismissal on 17th September 1998, a Mr. Vernon Khelawan was appointed Editor-in-Chief. The Respondent then reported to Mr. Khelawan.

- [5] On 7th October 1998 about 20 days after the dismissal of the Respondent's husband, her position as Managing Editor was purportedly eliminated and she was given the post of Barbuda Editor.

- [6] As Managing Editor the Industrial Court found that her duties were vital to the operations of the Newspaper. Without notice she was transferred from the post of Managing Editor to Barbuda Editor. She was asked to vacate her office which was taken over by Mr. Louis Daniel, a subordinate and to report to him.

- [7] However, the respondent was told that the position of Barbuda Editor was eliminated before she took up the position. The respondent's position with the company was terminated by letter of October 9, 1998 on the ground that the former position of Managing Editor was abolished. The Industrial Court found as a fact that the respondent's duties were not eliminated, but were divided between the new Editor-in-Chief and the News Editor.

- [8] In my considered judgment, the company having sacked the respondent's husband, the intention was to get rid of her any way. The offer of the post of Barbuda Editor to the respondent was a means by which to fulfill that intention.
- [9] On 22nd April 1999 the respondent filed a Memorandum in the Industrial Court claiming compensation for unfair dismissal. In that Memorandum the respondent contended, inter alia, that the appellant acted unreasonably in dismissing her and in the process treated her in a harsh and degrading manner.
- [10] The Industrial Court found in favour of the respondent and awarded damages as follows:-
- (1) **Basic award for loss of Protection:** \$5349.06,
 - (2) **Future loss:** \$30,000 less \$11,902.25 deducted as a result of which sum she had received as compensation for her years of service, Notice pay and Vacation pay.
 - (3) **Cost of travel to and from Antigua and accommodation:** US \$6000 making a total of \$29, 461.81 plus vacation pay \$2917.67.
- [11] The appellant is dissatisfied with this award and has appealed to this Court. Five grounds of appeal were filed on behalf of the appellant.
- (1) The respondent could not be entitled to any sum in respect of vacation pay in the absence of any such claim and her evidence that she had received a sum on her dismissal which included vacation pay due for her period of employment.
 - (2) The award of exemplary damages is so unreasonably large as to be excessive and with little or no consideration of the legal principles on which such an award is made.
 - (3) The award of the sum of US \$30,000.00 as exemplary damages constitutes approximately 10 months salary in the circumstances in

which compensation for manner of dismissal was nil and did not warrant additional punishment for any outrageous conduct

(4) That the court took into account irrelevant matters such as the events of September 11th, 2001 in the United States and the risk of air travel in determining both its award for exemplary damages and costs to the employee.

(5) That there was no mathematical basis or sufficient monetary evidence of expenses which would justify the sum of US \$6,000.00 as a proper award for costs or evidence of any exceptional circumstances as required by law to justify the award for costs.

[12] I deal with ground one of the appeal. There is evidence that the Appellant paid the respondent \$US 11,9202.25. She accepted under cross-examination that the money was paid to her. She also said:-

" I don't think I am owed any monies for vacation."

[13] The Industrial Court in making its award took this sum into consideration. Paragraph 39 of the judgment states:-

"At the time of her dismissal the employee was paid US \$ 11.902.25 as compensation for her years of service, Notice Pay and Vacation and this amount must be deducted from the award."

[14] The calculation does show that that sum was deducted from the figure awarded. The Industrial Court having said at paragraph 39 that at the time of the respondent's dismissal she was paid US\$11902.25 as compensation for her years of service, Notice pay and vacation pay, yet at paragraph 41 the Court went on to say that the dismissal was unfair, and the Employers shall pay to the Employee the sum of US\$29,446.81 plus vacation pay of \$2917.67. I have no doubt that the award of vacation to the Respondent must have been in error.

[15] Grounds 2 and 3 could conveniently be dealt with together. The Industrial Court gave as its reason for awarding exemplary damages that the dismissal was harsh, crude and without just cause and had a grave and damaging effect on the employer. I agree with the sentiments expressed by the Industrial Court. In my view not only was the dismissal harsh and crude but it was also meant to humiliate her, as she was made to report to a former subordinate.

[16] I am also of the view that when the respondent was told that the company had created the position for her as Barbuda Editor, that was only a ploy to get her out of her position as Managing Editor and then to get rid of her finally. Even before she took up the position of Barbuda Editor it was announced that that position no longer existed and that the position of Managing Editor was eliminated. The Industrial Court found that the position of Managing Editor existed and her duties were transferred to others within the establishment.

[17] The burden placed on an Appellant in asking a Court of Appeal to interfere with an award for damages made by a trial Judge is indeed a heavy one. As Singh J.A. said:

“The mere fact that the Judge's award is for a larger or smaller sum than we would have given is not of itself a sufficient reason for disturbing the award.” See (**Martin Alphonso et al v Deadat Ramnath**).¹

[18] With that I am entirely in agreement. It cannot be said in my judgment, that this award was out of all proportion and unjustifiable so as to cause this Court to interfere with the discretion of the Industrial Court when it awarded US\$30,000.00 as exemplary damages.

[19] This ground of appeal is therefore dismissed.

[20] Grounds 4 and 5 of this appeal could also be dealt with together. Learned Counsel Mr. Simon argued, that the Industrial Court took into account irrelevant matters

¹Civil Appeal No. 1 of 1996 British Virgin Islands at page 11

such as events of September 11, 2001 in the United States and the risk of air travel in determining both its award for exemplary damages and costs to the employee. Learned Counsel also alleged that there was no mathematical basis or sufficient monetary evidence to justify the sum of \$6000.00 as a proper award of costs.

[21] The Respondent testified:-

"In order to attend Court here it has cost me approximately US\$30,000.00 I presently reside in California and my air fare, hotel expenses and loss of earnings cost me about US\$1800.00. When I was residing in St. Croix I made two trips here for about US\$1200.00"

[22] It seems to me, although the evidence is not clear, that the respondent was saying that her total expenses in coming to Antigua was US\$3,000.00. I do agree that there was no mathematical basis to justify the sum of US\$6,000.00. Unless of course the Court was engaged in double counting. I understand the Respondent to have said that the costs for attending the trial were US\$3,000.00. Then she attempted to explain how she arrived at that figure.

[23] It is also true that it appears from the record that the respondent provided no supporting documentation. But of course it is quite obvious that she gave the evidence and the Court having seen and heard accepted her evidence as truthful. The Court in awarding costs took into account, "the present disturbing atmosphere of aircraft hijacking. She had to suffer the risk of air travel to Antigua and back to California."

[24] I agree with Mr. Simon that could not have been a relevant consideration in awarding costs. This may very well explain why the amount awarded for costs was US\$6,000.00 and not US\$3,000.00.

[25] The appeal is varied to the extent that the costs awarded is reduced by US\$3,000.00 and the sum of US\$2917.67 awarded as vacation pay is disallowed.

[26] There will therefore be judgment for the Respondent in the sum of US\$23,529.14.

[27] The Respondent is entitled to costs. She should have been awarded US\$3000.00. She is entitled 2/3 of this sum as prescribes costs.

[28] Costs to the Respondent in the sum of \$2000.00

Albert Redhead
Justice of Appeal

I concur

Sir Dennis Byron
Chief Justice

I concur

Ephraim Georges
Justice of Appeal [Ag.]

ANTIGUA AND BARBUDA
IN THE INDUSTRIAL COURT
Reference No. 4 of 1999

LESLEY HOFFMAN Employee

- And -

STANFORD FINANCIAL GROUP LIMITED
Employer

CONSENT ORDER

LAKE & KENTISH

Attorneys-at-Law.

ANTIGUA AND BARBUDA
IN THE INDUSTRIAL COURT

Reference No. 4 of 1999

BETWEEN:

LESLEY HOFFMAN

Employee

- And -

STANFORD FINANCIAL GROUP LIMITED

Employer

BEFORE:

HIS HONOUR CYRIL L. MAUNDY - J., LL.M.,
BARRISTER-AT-LAW

President

MR. CHARLESWORTH W. EDWARDS, BA. (Hons)
(Econ) O.B. E.

Member

EDWARD T. HENRY, O.B.E

Member

DATED THE 09th DAY OF AUGUST, 1999

ENTERED THE 12th DAY OF AUGUST, 1999

UPON THE APPLICATION of the Employee made ex parte herein and dated 11th February, 1999

AND UPON READING THE AFFIDAVITS OF LESLEY HOFFMAN filed herein on the 11th day of February, 1999, and 07th June, 1999, respectively in support of the said Application

AND UPON HEARING Mr. CHARLESWORTH O. D. BROWN Counsel on behalf of the Employee and MR. JUSTIN L. SIMON Counsel on behalf of the Employer Mrs. NELEEN ROGERS-MURDOCH appearing with him

BY CONSENT IT IS ORDERED:

1. The Employer shall pay direct to the Airline or travel Agent the travel costs for the Employee and her husband from Miami to Ontario /California but shall not be liable for any extras if these costs are more than if travel was from Miami to Big Bear Lake.
2. The Employee shall pay to the respective forwarding company or agents the costs of

shipping the personal effects of the Employee and her husband from Antigua to Big Bear Lake, California.

3. The Employer shall pay directly to the forwarding company or agents the costs incurred for the storage of the said personal effects.
4. The foregoing payments shall be made by the Employer not later than 17th August, 1999.
5. The consent of the Employer is given without prejudice to the Employer's defence to the Employee's claim for unfair dismissal.
6. No order as to costs.

BY THE COURT



