



IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

G 208 of 2022

BETWEEN

ANDREW MILLER

Respondent/Plaintiff

AND

THE GOVERNOR OF THE CAYMAN ISLANDS
PORTFOLIO OF THE CIVIL SERVICE, CAYMAN ISLANDS
ATTORNEY GENERAL OF THE CAYMAN ISLANDS

Applicants/Defendants

IN CHAMBERS

Appearances: Mr. Andrew Miller in person
Mr. Jevon Alcock of The Attorney General's Chambers for
The Governor of the Cayman Islands and Ors.

Before: Hon. Margaret Ramsay-Hale, Chief Justice

Heard: 2 March 2023

Reasons Delivered: 11 July 2023

HEADNOTE

Civil procedure - pleading - striking out - Grand Court (Civil Procedure) Rules, r.41(1)(a) - whether pleading discloses a cause of action with a reasonable prospect of success.

REASONS FOR DECISION

Introduction

1. By Writ and Statement of Claim filed on 15 September 2022 the Plaintiff, Mr. Andrew Miller, commenced proceedings against the Defendants, The Governor of the Cayman Islands, the

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Portfolio of the Civil Service and the Attorney General, seeking to challenge the 2007 decision of the Commissioner of Police (the “CoP”) to dismiss him from the Royal Cayman Islands Police Service (the “RCIPS”).

2. The Court refused Mr. Miller’s application for leave to amend the Statement of Claim and for leave to substitute a fresh party for the named Defendants to the action and struck out the Writ and Statement of Claim on the application of the Deputy Attorney General as disclosing no reasonable cause of action.
3. I gave brief *ex tempore* reasons for my decision, promised to put fuller reasons in writing and ordered that the time for applying for leave to appeal would run from the date the written reasons were handed down. I apologise to the parties for the delay in providing those reasons.

Background

4. I have taken the background to these proceedings from the Statement of Claim. Mr. Miller joined the RCIPS in 1984. In January 1998, he was seconded to the Hampshire Constabulary in the United Kingdom. While there, he attended the Scientific Support College at New Scotland Yard where he completed advanced Certification as a Fingerprint Expert. He is registered with the Home Office as a Fingerprint Expert.
5. Between 1998 and 2007, a decision was made by the CoP and senior management of the RCIPS to convert the Scientific Support Branch, which included forensic experts like Mr. Miller, to a civilian agency supporting the work of the RCIPS to achieve certain efficiencies. When that conversion was complete, the officers who worked in the Scientific Support Branch would cease to be warranted officers.
6. Before his secondment, Mr. Miller asserts that he agreed with then Commissioner of Police, Mr. David Thursfield that at the relevant time, he would retire as a police officer and be re-hired on a fixed term contract by the RCIPS in a civilian capacity in the Scientific Support Branch.
7. In July 2000, Mr. Miller returned to the RCIPS and rejoined the Scientific Support Branch. He was promoted to the rank of Sergeant and appointed as Deputy head of the department. When the civilian unit was established, Mr. Miller, who was a permanent and pensionable member of the RCIPS, was not allowed to continue as a civilian fingerprint expert within the department. Rather, he was retired “*in the public interest*” by the CoP at the relevant time, Mr. Stuart Kernohan, and required to surrender his warrant card.
8. It would appear that Mr. Miller accepted his fate as he pursued his legal studies and by 2011, was undertaking the Legal Practice Course in the UK.
9. On a particular day in the Fall of 2011, while on campus, he overheard two of his fellow students talking about him. They then spoke to him to inquire whether a certain post on the Google website

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was written about him. He did a Google search himself and found a post which described him as “an expert from the Cayman Islands” who had been fired “for unknown reasons.” The post also stated that he had committed offences of dishonesty. He was prompted to search the Judicial website where he found his name in the criminal list for the Summary Court as appearing on a charge of theft.

10. In 2012, he engaged a firm of solicitors in the UK to assist him in removing this post from the Google website on the grounds that it was defamatory.
11. On the 11 August 2021, some 9 years later, and 15 years after he ceased to be employed by the RCIPS, Mr. Miller wrote what may be construed as a letter before action¹ to the Premier, the Hon. Wayne Panton copied to His Excellency, the Governor, the Hon. Attorney General and the Deputy Governor and head of the Civil Service, Mr. Franz Manderson among others, asserting a claim for “Unfair/Constructive dismissal and abuse of Public Office.”
12. A year later, he commenced these proceedings in which he seeks damages related to the loss of his employment with the RCIPS and for defamation.

The Application to Strike Out

13. The application to strike out the Statement of Claim was advanced on all grounds under GCR O.18 r. 19 and under the inherent jurisdiction of the Court to protect its process from abuse.
14. Rule 19 provides that the Court may at any stage of the proceedings order to be struck out any pleading on the ground that,
 - (i) it discloses no reasonable cause of action, or
 - (ii) it is scandalous, frivolous and vexatious, or
 - (iii) it may prejudice or embarrass or delay the fair trial of the action; or
 - (iv) it is otherwise an abuse of the process of the court.
15. No evidence is admissible in support of the first ground, which is only concerned with determining whether the allegations in the pleading disclose a cause of action with some chance of success: see *Bank of Butterfield (Cayman) Ltd v Crang* 1992-93 CILR 409

The Claim

Loss of Employment

16. Although Mr. Miller studied law, he is not a lawyer. The unhappy consequence of his choosing to settle his own pleadings is that the pleaded case is riven with errors which are patent on the most cursory reading of the Statement of Claim.

¹ Exhibited to the Writ as Appendix 1

17. The claim, which I have summarized rather than setting out in full because the pleading is prolix and is that the CoP's March 2007 decision to retire Mr. Miller but then not to reinstate him as a civilian fingerprint examiner in the Scientific Support Branch, was "*procedurally unfair, unreasonable and oppressive*" in that the CoP failed to take section 20(2) of the **Police Act** into account. That section provides as follows:

"A non-gazetted officer who has served for 21 years in the Force may retire on pension without prejudice to his being accepted for such further period or periods of service as may be fixed by contract."

18. No facts are pleaded to support the allegation that the CoP's decision was flawed. Rather, the pleading at paragraphs 8 through 19 is a trawl through various cases in administrative law, comment and submissions on the law, including the submission that the decision not to retire him was unlawful with the result that he remained employed by the RCIPS.
19. Relying on the principle established in *McLaughlin v HE The Governor of the Cayman Islands* 2007 CILR 21, which he pleads at paragraph 2 of the prayer for relief, Mr. Miller claims his salary from 2007 to a retirement date in 2032 at age 65 - a period of 25 years extending into the future - for a total of \$1,475,000 with interest.
20. The *McLaughlin* case was an application for judicial review of the Governor's decision to retire Dr. McLaughlin, who was at the time employed in the Ministry of Agriculture, from the public service on the basis that his office had been abolished. Dr. McLaughlin contended that in law his engagement was never determined. He was successful before the Privy Council which enunciated the principle at [17] that, if a public authority purports to dismiss the holder of a public office in excess of its powers, or in breach of natural justice, or unlawfully, the dismissal is, as between the public authority and the office-holder, null, void and without legal effect and held at [24] that the purported dismissal of Dr. McLaughlin was ineffective to determine his tenure in office and that he was accordingly entitled to recover arrears of salary from the date of his purported dismissal until he resigned or was lawfully terminated.
21. Mr. Miller's reliance on the *McLaughlin* case led him into error in instituting these proceedings against the named Defendants, as the proper defendant would have been the CoP who made the decision which he seeks to challenge. The claim against the named Defendants therefore had no prospect of success.
22. As he modelled his pleaded case on *McLaughlin*, the claim sounds in judicial review. Judicial review requires permission from the court: see GCR O.53 r.3. Mr. Miller did not seek leave to move for judicial review of the decision of the CoP. No permission could now be sought or granted because any such application would be hopelessly out of time and no application to substitute the CoP for the named Defendants could be entertained. The proceedings were a nullity and fell to be struck out on that basis.

23. It appeared from Mr. Miller's letter before action and was suggested by the pleaded case that Mr. Miller was seeking to claim for unfair dismissal on the grounds that the CoP had retired him, and thus terminated his permanent and pensionable contract, without giving reasons why his retirement was in "the public interest". This alternative construction of the claim could not assist Mr. Miller as unfair dismissal is not a claim which this Court can entertain: see *Thomas v. Cayman Islands National Insurance Company* 2007 CILR 9.
24. In the event his claim was for breach of his contract of employment, as alleged but unparticularized in paragraph 20 of the Statement of Claim, any such claim would be hopelessly out of time.

Defamation

25. Having overheard his fellow students talking about him, Mr. Miller searched the Google site. He pleads at paragraph 21 of the Statement of Claim that he discovered that:
- "Someone or some group acting together posted contents [sic] stating that I was an expert from the Cayman Islands and was fired for unknown reasons. The postings went so far as stating that I committed dishonesty offences in the Cayman Islands."*
26. In his Prayer for Relief, Mr. Miller claims against the Defendants "general and aggravated damages and exemplary damages for libel and or [sic] slander for malicious falsehood for publishing words of dishonesty on Google and the worldwide web (www)."
27. The pleaded case does not identify the persons who posted the defamatory content and fell to be struck out as disclosing no reasonable cause of action against the Defendants.

Application For Leave to Amend

28. The issues with the pleaded claim were pointed out to Mr. Miller by the Court at the Directions Hearing. He was invited to consider what course he wished to take in the circumstances where the Deputy Solicitor General had indicated that, if Mr. Miller accepted the steer from the Court and withdrew his claim, the Crown would not seek its costs.
29. The Defendants' application to strike out was set down for hearing and was met on the day with an application by Mr. Miller for leave to amend the claim to add a new cause of action for personal injury arising from the intentional infliction of mental suffering on him by the then CoP and to substitute the CoP for the named Defendants.
30. Mr. Miller asserted that he had only discovered in the months before he filed suit in 2022, that the "mental torture" he had been suffering was the result of the CoP's unlawful decision to retire him. He submitted that the proposed claim for personal injury was not time-barred as the **Limitation Act** at section 13 (4)(b) provided that time only runs from the date of knowledge of the person injured. He asked that he be given time to assemble the evidence to show that his mental suffering

was due to the COP's action which would allow the Court to better assess whether his claim fell within the proviso.

31. His application was refused. Although the Court has a discretion pursuant to GCR O. 20 r. 5 to allow a plaintiff to amend his pleadings to add a new cause of action or add a new defendant, what Mr. Miller was proposing to plead was a new case of a substantially different character to the original action against a new defendant. I considered that any such case should be the subject of a fresh action.
32. The claim was dismissed with costs to the Defendants, to be taxed if not agreed.
33. Although it was not necessary to refer to the evidence adduced by Dr. Alcock in order to dispose of the application, I note for completion that it showed that any claim based upon the allegation that Mr. Miller had been retired by the CoP was unsustainable.
34. The evidence was of an earlier letter dated 28 January 2021 from Mr. Miller to the Honorable Premier and others in which Mr. Miller stated that *he had submitted his application for retirement on 19 December 2016 as he was entitled to do pursuant to section 20(2) of the Police Act, effective on 31 March 2007*. Although he asserted that he did so in the expectation that, upon commencement of his retirement, he would resume employment with RCIPS in the Scientific Support Branch as a civilian, he was told, sometime between 15 December 2006 and 31 March 2007, that an open recruitment process was mandated, that the position had to be advertised and he would have to apply. He duly applied and was interviewed on 30 March 2007. A follow-up interview was conducted on 17 April 2007. He did not get the job and expressed the view that he was not hired because those interviewing him were biased. It was for that reason the process was unfair. [emphasis mine]
35. It was clear from that letter that Mr. Miller had voluntarily retired and there was, therefore, no prospect of him succeeding on any contrary assertion.

DATED 11 JULY 2023



Hon. Margaret Ramsay Hale
Chief Justice