DAVID LEE v AON RISK SERVICES (FIJI) LTD (HBC0186 of 1999)

HIGH COURT — CIVIL JURISDICTION

PATHIK J

23 June 2004

Employment — termination of employment — harsh, unjust or unreasonable — sickness and absenteeism — whether Plaintiff unlawfully dismissed — whether termination unfair, unjust or unreasonable — whether there was breach of ss 33(3) and 41 of the Constitution of the Republic of Fiji — whether employment terminated by mutual agreement — Constitution of the Republic of Fiji (Amendment) Act 1997 ss 28(2)(a), 33(3), 41 — Companies Act s 22(4).

The Plaintiff originally worked as accounts broker with Bain Hogg (Fiji) Ltd (Bain Hogg) when Bain Hogg was taken over by Aon Risk Services (Fiji) Ltd (the Defendant). As a result, the Plaintiff continued employment with the Defendant company as processing manager. In 1998, due to illness and while undergoing medical treatment, the Plaintiff was not able to report to work for 26 days. As a consequence, on 8 January 1999, he was advised of the termination of his employment because of his sickness and absence for 26 days.

By writ of summons, the Plaintiff sought the following declarations and orders against the Defendant: (a) that the Plaintiff's dismissal was unlawful and ultra vires under s 28(2)(a) of the Constitution (Amendment) Act 1997 (the Constitution); (b) that the Plaintiff was not given an opportunity to be heard; (c) that the termination constituted unfair labour practice and was unlawful under s 33(3) of the Constitution; (d) that the dismissal was grossly unreasonable, unconscionable, harsh and unfair; (e) an order for reinstatement; and (f) alternatively, an order for the payment of wages which he could have earned upon reaching the retirement age of 55 years. In its defence, the Defendant denied the various allegations of the Plaintiff.

Held — (1) There was a mutual termination of employment based on the following reasons: (a) the Plaintiff was paid more to end his employment after the Defendant's offer of payment; (b) the Plaintiff acknowledged the offer on his own volition; (c) the Plaintiff accepted the offer for reasons known to him; (d) the Plaintiff's contract of employment was frustrated in view of his illness. The Plaintiff's case was one of contractual doctrine of frustration applying to contracts of employment and that frustration occurs where the employee falls truly sick.

(2) There is no statutory provision known as unfair dismissal in Fiji. However, the decision of the Supreme Court in *Central Manufacturing Co Ltd v Yashni Kant* [2003] FJSC 5 (*Yashni Kant*) made the remedy of unfair dismissal available in the common law courts of Fiji. And in view of the *Yashni Kant* case, the court said that there was nothing wrong in the way the Plaintiff was paid off. The facts as found established that the dismissal was not unfair, unjust, harsh and unreasonable. Moreover, the Plaintiff's submission on the principles applicable to unfair dismissal was not supported by evidence.

(3) Further, while the Plaintiff cannot be blamed for his illness, he acknowledged and accepted full pay without him going to work and performing his duties as employee. Likewise, he did not even attempt to offer to use any of his annual leave. On his absences, the evidence established that the Plaintiff used to leave the office and did not report for work for a long period without reporting to his superiors. There was no breach of the provisions of ss 33(3) and 41 of the Constitution.

(4) Finally, although the Plaintiff was formerly employed by Bain Hogg, which later changed its name to Aon Risk Services, the change did not affect the Plaintiff's terms of employment. There was even a discussion between the Plaintiff and the Defendant and the Plaintiff agreed to the offer of mutual termination. Also, notwithstanding that there was

evidence that the Plaintiff testified that he accepted the offer under protest, he did not communicate it to the general manager. Instead, the next day the Plaintiff collected his final pay. In return, the Defendant paid him over 5 weeks' salary more than he would have been entitled to under his contract of employment. The Defendant also continued the Plaintiff's medical cover for a further 8 months which it was not obliged to extend.

Determination made.

Cases referred to

Central Manufacturing Co Ltd v Yashni Kant [2003] FJSC 5; *Diners Club (NZ) Ltd v Prem Narayan* [1997] FJCA 46; *Malloch v Aberdeen Corp* [1971] 1 WLR 1578; [1971] 2 All ER 1278; *Wallace v United Grain Growers Ltd* [1997] 3 SCR 701, considered.

J. K. L. Maharaj for the Plaintiff

J. Apted and *F. Haniff* for the Defendant

Pathik J. By writ of summons David Lee (the Plaintiff) seeks a number of declarations and orders against Aon Risk Services (Fiji) Ltd (the Defendant) which are as follows:

(1) That the Defendant's action in terminating the Plaintiff's employment was unlawful and ultra vires under s 28(2)(a) of the Constitution (Amendment) Act 1997.

(2) That the termination was in breach of natural justice in that the Plaintiff was not given an opportunity to respond to complaints or grievance the Defendant may have had against him prior to unilaterally resolving to dismiss him from employment.

(3) It was unfair labour practice to dismiss the Plaintiff for 26 days' sickness and absenteeism from work and amounted to an inhumane treatment and unlawful under s 33(3) of the Constitution.

(4) Dismissing the Plaintiff was grossly unreasonable, unconsionable, harsh and unfair.

(5) An order that the Plaintiff be re-engaged by the Defendant on the same terms and conditions and paid all arrears of wages.

(6) *Alternatively*, an order that the Defendant pay the Plaintiff an amount for loss of wages he could have earned upon reaching the retiring age of 55 years amounting to $188,124.99 computed from 1 March 1999 until he would have reached 55 years of age making a total payment for 8 years and 9 months.

(7) Costs of this action.

Statement of claim

The *statement of claim* which is as follows sets out the facts from the point of view of the Plaintiff:

1. That he was employed as an accounts broker by a company known as Bain Hogg (Fiji) Limited (hereinafter referred to as "Bain") on or about the 7th day of November, 1996. The plaintiff has tertiary qualification in management from the Wellington Polytechnic, and this was one of the qualifications on the basis of which he was appointed.
2. That in or about the month of May, 1997, Bain was taken over by the Defendant company and the plaintiff began working for the defendant company as a processing manager on the same terms and conditions he had with Bain previously.
3. That the plaintiff's salary with the defendant up to the month of January, 1999, was $21,500.00.

4. That the plaintiff fell ill in 1998, and was away from work for 26 days whilst he sought medical treatment at the CWM Hospital. The plaintiff was entitled to 8 days sick leave per annum, and at the time he got ill in 1998, he was owed about 20 days annual leave by the defendant.
5. That the plaintiff had informed the defendant of his sickness and of the need to keep off work and the defendant had accepted the fact that the plaintiff was ill and would remain on an extended sick leave.
6. That on the 8th of January, 1999, the plaintiff reported for work but was told by the General Manager, Mr Paul Dunk, that the defendant company had terminated his appointment because of his sickness and because he was away sick for 26 days.
7. That the plaintiff's explanation that his sickness was of a temporary duration and that he was medically fit to resume work was summarily rejected by the defendant who proceeded to employ a Kellis Byrne two weeks after the termination of plaintiff's employment.
8. That the plaintiff says that he carried with him the expectation that he was employed with the defendant until the retiring age of 55 years.
9. That the defendant did not at any time inform the plaintiff of any irregularity in his work commitments nor did it complain to the plaintiff of any dissatisfaction it may have had with his having got ill in 1998, for which he had to be absent from work for 26 days out of which he was entitled to 8 days sick leave in any event.
10. The plaintiff says that in having terminated his appointment on the ground of illness, the defendant has acted unlawfully in that it has acted contrary to Section 28(2)(a) of the new Constitution of Fiji that prohibits discrimination on the ground of disability.
11. The plaintiff says that he was terminated from his employment because of his temporary disability for having been sick for 26 days in a row.
12. The plaintiff says that he has been treated unfairly and unreasonably and that his dismissal from employment on the ground of sickness and absenteeism due to sickness was harsh and unconscionable.

Defence

In its defence the Defendant denies the various paragraphs in the statement of claim. In regard to para 5 thereof it states that "except to state that it permitted the Plaintiff to stay away from work on sick leave for a term greater than the Plaintiff's 8 days' sick leave entitlement, it does not admit paragraph 5".

The learned counsel for the Defendant has traversed numerous aspects of the Plaintiff's claim in a very comprehensive and detailed manner refuting the claims. I consider them hereunder as I determine the issue which is before me.

The issue

The issue for court's determination is *whether the Plaintiff's employment was unlawfully terminated*. If the answer is in the affirmative then what damages accrue to the Plaintiff as a consequence of such a termination.

Plaintiff's submission

The Plaintiff's case is as set out above in his statement of claim. He said that he was dismissed from employment because of sickness which was some form of skin abnormality necessitating his confinement to CWM Hospital. The Plaintiff produced a medical report from a Dr Omen in Suva which refers to the skin illness and its severity upon the Plaintiff. Counsel says that the Plaintiff's absences were 26 days in December 1998 and 7 days in January 1999 making a total of *35 days*. He said that the illness was something beyond the Plaintiff's

control and required medical treatment of an "intense nature". He said that he was eventually cured and was fit for duty on 8 January 1999 that is the day he said he saw Mr Dunk who dismissed him from work.

Mr Maharaj (now deceased) the learned counsel for the Plaintiff submitted that the employer was required to give 2 weeks' notice of termination of employment. He said that it was "not lawfully sufficient for the Defendant to make advance or extra payment to the Plaintiff as a substitute for the required period of notice".

He therefore submits that on this ground alone, the Plaintiff's termination was wrongfully effected without proper notice and for this reason it was null and void.

Mr Maharaj submits that in this case the grounds of termination of employment are not spelt out. He says that it often remains within the perimeters of the common law to resolve when a person could be sacked for a cause and the type of cause warranting termination.

Counsel further submitted that the "issue of sickness is never a ground of dismissal unless the sickness prevents an employee from being gainfully employed, or is contagious or life threatening". The Plaintiff "was on his way to recovery, at the material time and is now fully recovered".

He said that where an employment is of a permanent nature a person can be sacked only for misconduct of sufficiently grave nature.

Counsel concludes on this aspect by saying that the Plaintiff getting ill too frequently (as the Defendant contended) did not warrant a summary dismissal of the Plaintiff.

Mr Maharaj submits that "it is clear that both at common law and the 1997 Constitution, the Defendant's action in terminating the employment of the Plaintiff was *unjust*, *harsh*, and *unreasonable*. By virtue of s 33(3) of the Constitution, it constituted an *unfair labour practice* making the purported termination null and void for which the Defendant is liable to the Plaintiff for the payment of damages".

Counsel submitted that the court will have to interpret the termination clause in the Plaintiff's letter of appointment as being applicable only to cases of misconduct or other good cause that would have justified the termination on notice. Because the Plaintiff's employment was of a permanent nature it had to be terminated upon retirement at the appropriate age of the Plaintiff. Mr Maharaj considered the Court of Appeal case of *Diners Club (NZ) Ltd v Prem Narayan* [1997] FJCA 46 and *distinguished* it from the present case.

Defendant's submission

In his written submission Mr Apted the learned counsel for the Defendant states how essential it is for its employees, on its behalf, to maintain a close and immediate relationship with clients so that it can respond in a timely way to its clients' needs because of the nature of the Defendant's business.

The Defendant operates as an insurance broker and *risk* consultants in Fiji. In essence its business is to act as the agent of persons and business who wish to procure insurance.

Until 7 February 1997 AON (Fiji) was known as Bain Hogg (Fiji) Ltd (hereafter referred to as Bain Hogg). It is an agreed fact that the Plaintiff was originally employed by Bain Hogg on or about 7 November 1996, and in the month of May, 1997 the Plaintiff was absorbed in the employment of the Defendant which had taken over Bain Hogg as an account broker.

Mr Apted submits that for legal purposes, under s 22(4) of the Companies Act, the change of name of the Fiji Company did not affect any rights or obligations of the company. As such its various contracts, whether with employees, such as the Plaintiff, or with clients, remained unaffected. There is no dispute about that.

The Plaintiff's contract of employment came about when on 7 November 1996 he was offered a position as an accounts broker by Bain Hogg (Fiji) as the Defendant was then still known. The Plaintiff accepted the offer of employment on 15 November 1996 by signing the acceptance-slip at the end of the acceptance letter. The effect of this was that a contract of employment was entered into between Bain Hogg, as AON (Fiji) was then known, and the Plaintiff. He commenced his employment under that contract on *3 December 1996*. Subsequently, when the company became AON (Fiji) the same contract remained in force between the company and the Plaintiff.

As far as his *terms of employment* are concerned in so far as it is relevant to the issue before the court, he was entitled to *8 days* per year from 3 December 1997 for sick leave. As far as his *salary is concerned*, his starting salary was $21,000 but this was later increased to *$21,600.* The Plaintiff was paid bi-monthly. At the time his employment with Defendant ended his bi-monthly take home pay was *$670* gross.

Because of the nature of the Defendant's business and the requirements of clients, it was Mr Dunk's evidence and admitted by Mr Lee "a very hands on position".

Consideration of the issue

I have before me for my determination of the issue lengthy but useful written submissions from both counsel which will be dealt with under the various heads as hereafter appearing.

(i) Duties of Plaintiff

I find as fact and there is no doubt that the nature of Defendant's business, as already stated hereabove, was such that the Plaintiff's *regular attendance* at work was essential. The Plaintiff was well aware of this. As stated in Mr Apted's written submissions the Plaintiff's *duties*, under the terms of his contract, were as follows:

> to assist the Regional Director Mr Dunk and Mr Asim Mohammed, AON (Fiji)'s General Manager in the processing of clients' policies and claims, look after major clients in the absence of Mr Dunk and Mr Mohammed from the office, act as accounts broker to a list of designated clients, assist in new business procurement, negotiate with underwriters, and other duties as and when required.

(ii) Plaintiff's attendance

The Plaintiff's irregular attendance at work or long absences from work was a crucial factor in leading to his termination as far as the Defendant is concerned whether due to sickness or otherwise.

A complete picture of his *attendance* as evinced from the evidence before the court has been well-stated in *pp 4–7* of Mr Apted's written submission and I do not think it necessary to reiterate them here suffice it to say, in a nutshell, that the attendance at work was such that no employer in the position of the Defendant would be able to tolerate for long given the nature of the Plaintiff's work and the nature of the Defendant's business. In short it is this that the Defendant was greatly concerned about his absences and rightly so and as a consequence its business suffered.

The Plaintiff was away in what was the most crucial week of the business year for the Defendant. As the Defendant says his *service* was urgently needed for the reasons: *first*, 31 December was the close of the financial year for the company with very strict reporting requirements to the parent company in the following week; *second*, 40% of the business is done in this period; *third*, demand for leave from staff for annual leave is high at this time of the year; and *finally*, the need to complete the larger than usual workload with fewer staff is exacerbated by the fact that with the public holidays, there are also fewer working days available at this time of the year. In cross-examination the Plaintiff admitted that this period was the most crucial business period for the Defendant.

The evidence which I accept are that the Plaintiff went to see Mr Dunk when his absenteeism without reporting for long period at crucial times was discussed as the Defendant was greatly concerned about this and as Mr Dunk testified he "could not continue to employ him on the basis of him not being available regularly".

I also accept as fact and Mr Dunk also emphasised in his evidence that his concern was not just the most recent illness but the whole pattern of continuing absences, often without notification in breach of his contract and the instructions to notify Mr Dunk or Mr Mohammed.

On the evidence I further accept as fact that while Mr Dunk was aware that he could terminate the Plaintiff's employment unilaterally by giving 2 weeks' notice without the need to give any reason, he decided not to do so. Instead he tried to find out the Plaintiff's problem and to see how he can be accommodated looking at the interests of both parties.

Mr Lee had also asked Mr Dunk if he could take 6 months leave without pay to sort his health problem out. This request is contrary to Mr Maharaj's assertion that the Plaintiff was cleared of his skin disease otherwise why would he ask for such long leave.

There was a lengthy discussion between the Plaintiff and the Defendant (Mr Dunk) in regard to his "absences". In view of the Plaintiff's response that he was unable to commit himself fully to his work because of his continuing sickness Mr Dunk sought Mr Lee's agreement that it would be in the best interests of the Defendant and Plaintiff to end the employment contract.

(iii) Terms of employment — Termination clause

It is clear on the evidence and agreed that the Plaintiff was formerly employed by Bain Hogg (Fiji) Ltd but on 28 January, 1997 it changed its name by Special Resolution to Aon Risk Services (Fiji) Ltd (the Defendant). This change of name was registered on 7 February 1997 by the Registrar of Companies (Ex D1) and nothing has changed in regard to the Plaintiff's terms of employment.

The letter of appointment is dated *7 November 1996* and Ex I sets out the terms and conditions of the Plaintiff's employment.

In regard to "*termination of employment*" Ex PI states: "*either party may terminate your employment (ie the employee's employment) by giving the other party two (2) weeks notice*".

On "*sick leave*" it states:

> *All sick leave is to be reported; sick leave for a period in excess of two days is required to be confirmed by a medical certificate. Paid sick leave in the first year is 8 days, thereafter as regulated by Government.*

It has come out in evidence which I accept that in the discussion on his future with Mr Dunk the Plaintiff agreed to the offer of "*mutual termination*" but although he testified that he accepted it "under protest" he did not communicate that to Mr Dunk.

Thereafter the next day the Plaintiff collected his final pay. It is to be noted that by agreement the Defendant paid him *over 5 weeks' salary* more than he would have been entitled to under his contract of employment if the Defendant had exercised its right to terminate his contract of employment unilaterally by giving the required notice. The Defendant also *continued his medical cover* for a further 8 months which it was not obliged to extend.

(iv) Was dismissal "grossly unreasonable, unconscionable, harsh and unfair"?

In short, the Plaintiff's case, inter alia, is that he was "unfairly dismissed". On "*unfair dismissal*" in other jurisdictions Counsel submitted:

> Unfair dismissal is a cause of action that exists in some jurisdictions such as the United Kingdom, Australia and New Zealand. Unlike the traditional common law cause of action known as "wrongful dismissal" (or sometimes "unlawful dismissal") (which is discussed further below), unfair dismissal is concerned with the justification, fairness and reasonableness of a dismissal. Wrongful dismissal on the other hand, is a purely contractual action which is concerned only with whether there has been a breach of contract.
>
> In Australia, the "unfair dismissal" jurisdiction is exercised in terms of whether a challenged dismissal was "unjust, harsh and unreasonable".

I agree with Mr Apted with his submission on "*unfair dismissal*" that in Fiji there is no statutory provision establishing cause of action known as "unfair dismissal". This proposition is supported by Court of Appeal in *Diners Club (NZ) Ltd v Prem Narayan* [1997] FJCA 46 where the court stated:

> *Fiji does not have legislative provisions protecting employees from arbitrary or unjustified dismissal as is the case in England, Australia and New Zealand. Accordingly, the rights and liabilities of the parties in the present case fall to be determined in accordance with the proper construction to be based on the termination clause.*

However, recent Supreme Court decision in *Yashni Kant* (below) has thrown a new light on "unfair dismissal" by making this remedy available in the common law courts of Fiji according to my understanding of the case.

In the case of *Central Manufacturing Co Ltd v Yashni Kant* [2003] FJSC 5 (*Yashni Kant*) the court decided that payment in lieu of notice "is accepted as a statutory right in relation to oral contracts, and an employer does not commit a breach of contract by exercising that statutory right". The court went on to say that "if that interpretation of s 25 (of Employment Act) be incorrect, we would none the less hold that there is now an *implied term* at common law that an employer can make payment in lieu of notice" (emphasis added).

The Supreme Court said that on this aspect the reasoning of the Supreme Court of Canada in *Wallace v United Grain Growers Ltd* [1997] 3 SCR 701 at [65]–[66] "seems to us to be persuasive". There Iacobucci J said:

> In the absence of just cause, an employer remains free to dismiss an employee at any time provided that reasonable notice of the termination is given. In providing the employee with reasonable notice, the employer has two options:
>
> > Either to require the employee to continue working for the duration of that period or to give the employee pay in lieu of notice …

> In the event that an employee is wrongfully dismissed, the measure of damages for wrongful dismissal is the salary that the employee would have earned had the employee worked during the period of notice to which he or she was entitled …
>
> The fact that this sum is awarded as damages at trial in no way alters the fundamental character of the money.

In view of the decision above there was nothing wrong with the manner in which the Plaintiff was paid off in the present case. Hence there was no breach of the termination clause on the part of the employer.

The question of "procedural fairness" was raised in *Yashni Kant*. Although in *Malloch v Aberdeen Corp* [1971] 1 WLR 1578 at 1581; [1971] 2 All ER 1278 at 1282 Lord Reid has said that "an employee who may be dismissed without cause is not entitled to demand reasons from his employer, nor, in the ordinary course, is he entitled to a hearing or any of the normal incidents of natural justice", the Supreme Court in *Yashni Kant* said that "it does not follow that there is no implied term requiring an employer to deal fairly with an employee when dismissing that employee".

Upholding the Court of Appeal on this aspect, the Supreme Court said "that there is an *implied term* in the modern contract of employment that requires an employer to deal fairly with an employee, even in the context of dismissal. Each case must depend upon its own particular facts" (emphasis added).

In all the circumstances of this case in view of the facts as I have found them and for the reasons stated such dismissal was not unfair, unjust, harsh and unreasonable as alleged by the Plaintiff.

Therefore, bearing in mind what is stated in *Yashni Kant* case, the Plaintiff's submission on principles applicable to unfair dismissal are not supported by evidence.

Was there unfair labour practice and contravention of Constitution?

In law and on evidence I do not see any unfair labour practice so as to amount to a breach of the provisions of s 33(3) of the Constitution.

Apart from that I do not find on the evidence that the Defendant is guilty of breaching the Plaintiff's right to fair labour practices. Although he cannot be blamed for his sickness, he expected and accepted full pay without performing the *services* he had contracted to provide in exchange for that pay. At no time he made any attempt to offer to use any of his annual leave for this purpose. On his absences as already stated, the Plaintiff used to leave the office and absent himself for long periods without reporting to his superiors as he had agreed in his contract and had also been instructed to do.

I accept Mr Apted's submission that there is *no constitutional cause* of action in this case and if there was any unfair practice it is doubtful if s 41 is available against a private employer such as the Defendant.

(v) Was the Plaintiff's dismissal wrongful?

The issue for determination as agreed was whether the Plaintiff was *unlawfully dismissed.*

On the evidence as already stated hereabove and for the reasons for dismissal given above the answer is in the negative.

It was not a unilateral termination of employment but a "mutual" one as stated already. He was paid more to terminate the contract by agreement. He accepted the offer of his own volition.

In this case on the evidence before me I agree with Mr Apted and I find that there was no actual "dismissal" that is, a unilateral termination by the employer but by "mutual termination". This is clearly borne out by the evidence before me. He was paid more to terminate the contract by agreement. He accepted the offer for reasons known to him. The Plaintiff was indeed in a weak bargaining position as Mr Apted says "because of his own inability to perform his contract in the manner he had agreed to, his consistent misconduct in failing to report his absences, and most importantly, his agreement that he and AON (Fiji) could both end the contract on 2 weeks' notice. All of these factors meant that he could not insist on more than 2 weeks' notice but he was certainly free if he wished to seek to negotiate for more relying on, AON (Fiji)'s wish to be a good employer".

Also on the evidence it is abundantly clear that the Plaintiff's contract of employment was *frustrated* because of his illness.

This is a case of *contractual doctrine of frustration* applying to contracts of employment and that frustration can occur where the employee falls seriously ill. The principle as stated in Chitty at [3499] under the caption "*Illness frustrating the contract*" is as follows:

> If the illness is of such a nature, or if it appears likely to continue for such a period, as to defeat the purpose or object of the employment, the contract of employment will be frustrated. The effect of the expected period of illness must depend upon the period and nature of the employment. In *Marshall v Harland & Wolff Ltd*, the test was formulated as follows, "Was the employee's incapacity, looked at before the purported dismissal, of such a nature, or did it appear likely to continue for such a period, that further performance of his obligations in the future would either be impossible or would be a thing radically different from that undertaken by him and accepted by the employer under the agreed terms of his employment"? (1972 1 WLR 899 — National Industrial Relations Court)

Alternatively, for these reasons, I agree with Mr Apted that the Plaintiff's contract of employment had in any event become frustrated by his illness and was no longer in force. Evidence shows that immediately prior to termination on 8 January 1999 the Plaintiff was still not cured of his skin disease and did not know when he would be. He had asked Mr Dunk for 6 month's leave without pay to sort out his problem.

Conclusion

In the outcome, in summary I find that: (a) the Plaintiff was not unlawfully dismissed, (b) termination of his employment was not unfair, unjust or unreasonable, (c) there was no breach of the provisions of ss 33(3) and 41 of the Constitution and (d) his employment was terminated by mutual agreement and in any event the contract was frustrated.

To conclude on the evidence before me and on the authorities, for the reasons given hereabove the Plaintiff has not proved his case on the civil standard. Hence he does not hope to succeed in any of the reliefs sought in his statement of claim.

The Plaintiff's action is therefore dismissed with costs in the sum of *$450* (*Four hundred fifty dollars*) payable to the solicitors for the Defendant.

Determination made.