COMMONWEALTH OF THE BAHAMAS

IN THE COURT OF APPEAL

SCCivApp & CAIS No. 40 of 2011

(1) Anthony Pratt
(2) Everette Williams
(3) Alicia Russell
(4) George Nottage
(5) Keva Major
(6) Alice Mae Farrington
(7) Esau Farrington
(8) Shanirre Dames
(9) Jeffrey Gomez
(10) Andrew Williams
(11) John Taylor
(12) Raymond McKenzie
(13) Judy Minnis
(14) Trevor Edgecombe
(15) Garith Stubbs
(16) Lerone Knowles
(17) Anthony Riley

Appellants

And

West Bay Management Limited
(d.b.a. Sandals Royal Bahamian)

Respondent

(Substantive Appeal)

Before: The Hon Mr Justice Blackman, JA
The Hon Mr Justice John, JA
The Hon Mr Justice Conteh, JA

Mr Obie Ferguson, Jr, Counsel for Appellant
Mr Ferron Bethel, with Ms Camille Cleare, Counsel for Respondent

14 May 2012

The oral judgment of the court was delivered by

Conteh, JA:

This is the judgment of the court:

This is an appeal from the Supreme Court pursuant to a claim by the appellant that monies deducted from their salaries, payable by the respondent, should be refunded.

The case as argued before the learned judge in the Supreme Court is now different from that being pursued before us. The issues about the existence of an industrial agreement or a registered trade union were not taken before the learned trial judge. Both sides operated on the assumption that there was an industrial agreement pursuant to which the deductions were made and the union itself was in existence. Accordingly, the learned trial judge in the Supreme Court ruled that, as a result, it lacked jurisdiction pursuant to section 53 of the Industrial Relations Act and therefore non-suited the appellants.

Before this court Mr. Obie Ferguson for the appellants filed several grounds in addition to the amended grounds, but at the last hearing on 20th April, 2012, he withdrew the amended ground and pursued his original grounds of appeal.

In our view, the issue for determination was whether the appellants were entitled, since the notice to the employer to stop deducting from their salaries, to have the monies held

back refunded to them. The total sum is in the amount of $8,691.43.

Mr. Bethel for the respondent has argued and submitted that the respondent was entitled to deduct the monies pursuant to the industrial agreement between the parties and that, since receiving the notification to cease deduction, it has stopped doing so.

We do not think that this is a case where we can go into the arcane issues of an industrial agreement of a registered union. The plain fact of the matter is that the appellants had a falling-out with their then-union and they are no longer members, and the unavoidable fact is that the respondent had in its possession monies that had been deducted, representing contributions by the appellant to the then-union which they had authorised.

In the circumstances, therefore, we see nothing to disturb the learned trial judge's ruling on the assumption that there was an industrial agreement and a registered union, the court lacked jurisdiction, they should have gone to the tribunal. However, on the facts that have emerged in argument before us, we think that the sum representing the deductions since the date when instructions were received by the respondent in the sum of $8,691.43 should now be handed over to the individual workers out of whose salaries that sum represents. Accordingly, we so order.

Therefore, in the light of this, we do not feel that we should make any orders as to costs. Each side will bear its own costs.

The appeal is allowed to that limited extent. The monies should be paid back, but the judgment of the Supreme Court is not disturbed.

Dated this 14th day of May, 2012

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CONTEH JA