

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**COMMON LAW & EQUITY DIVISION**

**2010/COM/LAB/00024**

**B E T W E E N**

ANYA DORSETT

**Plaintiff**

**AND**

PICTET BANK & TRUST LIMITED

**Defendant**

**Before: The Hon. Sir Michael Barnett, Chief Justice**

**Appearances:** Mr. Rawson MacDonald for Plaintiff  
Mr. Sean Moree for Defendant

**Hearing Date:** 12<sup>th</sup> April & 16<sup>th</sup> June, 2011

**J U D G M E N T**

**Barnett, C.J.:**

1. This is an action for wrongful dismissal.
2. The facts are really not in dispute.
3. The Plaintiff had been in the employ of the Defendant bank (the Bank) for 24 years. She had achieved the level of Deputy Vice President.

4. In December, 2009 she wanted to purchase a television from Master Technicians. She wanted to finance the purchase with Master Technicians and needed a letter from the Bank confirming her employment and her salary.
5. She prepared a letter using the usual format of the Bank. She said that she sought her immediate supervisor, Mrs. Marilyn Cambridge, to sign the letter for her however, it was the day of the Bank's Christmas party which was being held at Mrs. Cambridge's home and Mrs. Cambridge had left for the day. Although the letter could be signed by any member of the Executive Team, the Plaintiff instead of procuring the signature of another member of the Executive Team, placed the Bank's stamp on the letter and sent the letter to Master Technicians as being a letter from the Bank confirming her employment and her salary.
6. The Plaintiff in her evidence admits that there were other members of the Executive Team (specifically Mr. Eric Messmer) who were in the office at the time who could have signed the job letter. At the party, she did not tell Mrs. Cambridge of her actions a few hours earlier. She said: "*With all the thrill and excitement at the party, I failed to mention to her the letter that was sent two hours earlier*".
7. The following morning the Plaintiff did not inform Mrs. Cambridge or any member of the Executive Team or any person in the Human Resources Department of her actions. It was not until Master Technicians called the Bank to confirm the authenticity of the letter did the Bank become aware of the letter. The Plaintiff explained that the reason Master Technicians was concern was because the letter was not the Bank's 'letterhead'. No doubt, the fact that the letter was not signed and only had the Bank's

stamp on it may also have caused Master Technicians to make further inquiry.

8. The Plaintiff was called upon to explain her actions. She said *"that the urgency of the matter requires the action I had taken and that a job letter was a routine matter."*
9. The Bank then determined to terminate the Plaintiff's employment. They gave the Plaintiff the opportunity to resign instead of being summarily dismissed for her actions. The Plaintiff did not accept that opportunity to resign *"because I had no reason to resign"* and the Bank terminated her summarily.
10. It is against that factual background that the Plaintiff brings this action for wrongful dismissal. In a nutshell she states that her conduct was not so egregious as to warrant summary dismissal. She said *"I believe that my termination by the bank was harsh. All I did was to provide Master Technicians a routine job letter with the same information that was provided by my immediate supervisor to a bank that I was employed at Pictet Bank & Trust Limited since August 1985 in the Security Administration Department as Deputy Vice President and earned an annual salary of \$50,000.00"*.
11. In my judgment, the Plaintiff still does not appreciate the gravity of her actions. What she did was not simply to provide Master Technicians with a routine job letter. What she did was to give to Master Technicians a letter which she purported to be a proper letter from the Bank which she knew had not been signed by Mrs. Cambridge or any proper officer of the Bank and had not been authorized by the Bank. She did so intending for Master Technicians to act upon it. She only informed the Bank of the existence of the letter after Master Technicians refused to act upon the letter without it

being otherwise authenticated. Moreover, the letter was false inasmuch as it did not correctly state her salary (albeit that her actual salary was more than as stated in the letter).

12. This is dishonesty.

13. Section 31 of the Employment Act, Chapter 321A provides that:

**An employer may summarily dismiss an employee without pay or notice when the employee has committed a fundamental breach of his contract of employment or has acted in a manner repugnant to the fundamental interests of the employer.**

14. Section 32 of that Act includes examples of conduct which may constitute a fundamental breach of a contract of employment or may be repugnant to the fundamental interests of the employer and they include acts of dishonesty.

15. It is settled law that there is an implied duty of trust and confidence owed by employers and employees to each other. It is an implied term of every contract of employment. Each party owes to each other a duty that each should not without reasonable and proper cause conduct themselves in a manner calculated to destroy or seriously damage the relationship of confidence and trust between them. See **Malik and Mahoud v BCCI [1998] A.C. 20**. Where an employee has so conducted himself as to destroy that confidence, an employer is entitled to summarily dismiss that employee.

16. Whilst it may have been open to the Bank to impose a less severe punishment on the Plaintiff having regard to her many years of service, I cannot find that the Bank was not within its rights to determine the conduct to be such that it no longer had confidence in the Plaintiff. What the Plaintiff did was simply wrong and the assertion that the need to buy the television was so urgent that it excused sending out the forged letter is in

my judgment without merit. Regrettably, the Plaintiff did not seem at that time or even at the trial to accept that she did anything that was grievously wrong.

17. In the circumstances, the Plaintiff's claim is dismissed.

Dated this 29<sup>th</sup> day of June, A.D., 2011

A handwritten signature in black ink, consisting of several stylized, connected loops and curves.

Michael L. Barnett  
Chief Justice