

SUPREME COURT OF SEYCHELLES

Reportable

[2020] SCSC

CS 88/2018

In the matter between:

HAROLD LABLACHE

(rep. by Bernard Georges)

Plaintiff

and

BANQUE FRANCAISE COMMERCIALE

OCEAN INDIEN

1st Defendant

THE MAURITIUS COMMERCIAL BANK

(Seychelles) LIMITED

(rep. by Oliver Chang-Leng)

2nd Defendant

Neutral Citation: *Lablache v Banque Francaise & Anor* (CS 88/2018) [2020] SCSC

[06 February 2020]

Before: Burhan J

Summary: The pension plan agreement applicable specifies that employees of the First Defendant are entitled to pension after retirement at the age of 60. The plaintiff had resigned very much earlier and received all his benefits. He was not entitled to a pension as he had not reached the age of 60 but resigned very much earlier as per agreement dated December 2000. Further the Plaintiff was time barred from claiming any further benefits from this agreement.

Heard: [25 July and 26 July 2019]

Delivered: [06 February 2020]

ORDER

Plaint dismissed with costs.

JUDGMENT

BURHAN J

[1] The First Defendant, Banque Française Commerciale Océan Indien (BFCOI) was a commercial bank formerly licensed to operate in Seychelles and was eventually taken over by the Second Defendant, Mauritius Commercial Bank (MCB). The First Defendant had contracted a pension plan with ‘*La Société Suisse d’Assurances Générales sur la Vie Humaine*’ (Swiss Life) in 1996 for the staff members of the BFCOI. The said contract was tendered by the plaintiff in his evidence as exhibit P1 (herein after referred to as the pension plan). The evidence of the plaintiff Mr. Lablache reveals that he was employed by the First Defendant at the time the pension plan was introduced and a notice was issued to the employees of BFCOI referred to as *Note au Personnel* (Note to Staff) exhibit P2, informing them of the pension plan and the terms and conditions thereof. The Plaintiff was an employee of the First Defendant until February 2000, at which time, he signed an agreement terminating his employment P3. Having turned 60 years old in May 2016, he now claims a pension from the retirement fund set up by BFCOI and seeks the following reliefs in his plaint dated 2nd July 2018 from this Court i.e.

1. *Instituting the pension to which the Plaintiff is entitled with retrospective effect from May 27th 2016.*

2. *Granting the Plaintiff the option to take a pension in instalments, or as a lump sum.*
3. *Ordering the Defendant to pay the costs of this suite.*

[2] The Defendants counter in their defence that the plaintiff's action should have been filed in the Employment Tribunal and is prescribed by law (Article 2271) of the Civil Code and that no pension is owed to the Plaintiff by virtue of the pension plan P1 which specifically excluded claims where an employee has resigned or been terminated. Article 2 and 3 of the said plan states that a pension would be payable at the earliest upon an employee of the First Defendant attaining the age of 60. However the plaintiff had resigned prior to reaching 60 and therefore was not an employee of the First Defendant at the material time. Further the Defendants contend that the Plaintiff, signed the agreement dated 12th February 2000 exhibit P3 , wherein the Plaintiff accepted a sum of money from the First defendant as full and final settlement of all claims and therefore is now precluded from claiming any pension dues.

[3] At the very outset, this Court will hold that this is not a matter coming within the purview of the Employment Tribunal as this is a matter dealing with pension of an individual based on a contract and not relating to issues in respect of terms of employment, unlawful termination, wages or salary, disciplinary procedures in employment or grievance procedures and therefore this court holds that Learned Counsel for the Plaintiff has picked the correct forum to hear this case i. e. the Supreme Court of Seychelles.

[4] I further hold that the action is not time barred as the issue to be decided in respect of the pension arose only when the Plaintiff reached the pensionable age of 60 which according to the evidence was in the year 2016. The Plaintiff is not claiming any further benefits from the Defendants by virtue of the agreement P3 dated 12 December 2000 that he and the First Defendant signed upon his resignation.

[5] It would be pertinent to refer to the relevant law at this stage. Article 1165(1) of the Civil Code provides –

Contracts shall only have effect as between the contracting parties; they shall not bind third parties and they shall not benefit them except as provided by Article 1121.

[6] Article 1121 of the Civil Code reads as follows:

1. A person may stipulate for the benefit of a third party. Such stipulation shall not be revoked if the third party has declared that he wants to take advantage of it. Provided that that party has a lawful interest.

2. However, claims by third parties are enforceable, even without any need of a declaration by a third party, if the event which gave rise to the claim occurred before the revocation, and even if the third party was unaware of the existence of the benefit conferred upon him.

[7] The pension plan referred to herein is essentially an external plan between the BFCOI and Swiss Life. It was not signed by the employees of BFCOI. Therefore, the employees of BFCOI were not parties to the actual contract with Swiss Life. They are, however, third party beneficiaries under the contract, as the pension plan provides for pension payments for BFCOI employees.

[8] The Plaintiff's case rest on documents produced i.e. P1 to P6. The agreement P1 (pension plan) however exists between BFCOI and Swiss Life, under which the Plaintiff was a beneficiary, but had no negotiating power whatsoever. The only document relating to such pension plan between BFCOI and its employees is the *Note au Personnel* P2 (note to staff).

[9] The said *Note au Personnel* (P2) was put to the attention of the employees of BFCOI Seychelles, notifying them of the Plan de Retraite (retirement plan) and the conditions thereunder. This *Note* specifically states that –

« En cas de départ de l'agent de la BFC OI avant 60 ans quel qu'en soit le motif décès, invalidité permanente, démission, licenciement, les cotisations versées pour son compte par la BFC OI restent acquises au

compte collectif et aucune somme ne sera due à l'intéressé en rente ou en capital »

Which translates to –

In the event of the departure of the BFCOI officer/agent before the age of 60, regardless of the cause: death, permanent disability, resignation or dismissal, the contributions paid on his behalf by CFO OI remain acquired in the collective account and no sum will be due to the interested party in annuity or capital.

[10] The above provision makes it clear that there was never any intention on behalf of the employer to pay out a pension to employees who resigned from the company before attaining the age of 60. The pension plan was set up by the First defendant as a means to encourage its employees to stay on until the age of 60, at which point they could retire and benefit from the pension. In the present matter, the Plaintiff resigned from the company well before the age of 60 and his departure was not in the form of retirement as the agreement P3, specifically refers to the resignation of the Plaintiff (Paragraph number 1 specifically refers “will resign”). It is the considered view of this Court therefore, that the Plaintiff has no claim to the benefits under the pension plan which is applicable to individuals who retire at 60 and not resign well before the age of 60.

[11] While the pension plan agreement P1 was between BFCOI and Swiss Life, once the employees – the Plaintiff included - were made aware of the plan, they were also made aware that leaving the company before attaining the age of 60 would result in them forfeiting their right to claim the pension. Furthermore, the Plaintiff was fully aware of the said plan and the *Note au Personnel*, as not only had he had sight of the *Note*, but, by virtue of his position within the company, the Plaintiff was personally involved in the negotiation of the pension plan as borne out by his evidence.

[12] Whilst the pension plan was set up between BFCOI and Swiss Life for the benefit of the employees, there was also an undertaking by the bank for the said pension to be paid out to their employees upon turning 60, and the employees were made to understand that they would only benefit if they retired from BFCOI at that age. The Plaintiff, therefore, did not fulfill its obligation to continue employment with BFCOI until the age of 60. As such, this Court is of the view that the Bank was not obligated to pay out the pension to him. The pension plan set up for the employees of BFCOI clearly and specifically excluded departure from the company prior to attaining the age of 60 and for any reason other than retirement at that age. The action should fail for this reason.

[13] Further, the Plaintiff has also signed agreement with BFCOI upon terminating his employment (P3), which states –

“In consideration of the foregoing, the Bank will pay to Mr Lablache in full and final settlement of all claims, whether arising from the employment of Mr. Lablache with the Bank, or from the discharge by either of their respective duties or functions, or from his resignation, or from whatever cause, by Mr. Lablache against the Bank, or by the Bank against Mr. Lablache (...)”

[14] It is the Plaintiff’s contention that this agreement makes no reference to the pension plan and that therefore it was not envisaged at the time that he was forfeiting his right to claim his pension. This reasoning is incorrect, since the above clause envisages all potential claims arising by virtue of his employment, or from his resignation, “or from whatever cause”.

[15] The Plaintiff also contends that the Defendants have paid out the pension to another employee who retired before attaining the age of 60. It has come out through the evidence that the said employee retired before the age of 60 for medical reasons and special consideration was given by the employer for that reason. In the case of the

Plaintiff, he did not *retire* from employment when he left the bank, but it appears that he resigned on his own free will. His evidence that he retired from the bank in the year 2000 at page 10 of the proceedings of 25th July 2019, cannot be accepted in lieu of the findings of this Court in paragraph [10] of this judgment and the contents of document P3. Further, one cannot reasonably assume that the Plaintiff, in the absence of any proven incapacity or infirmity, would ‘retire’ from employment altogether sixteen years before his 60th birthday – had he left the company under such similar circumstances to the other employee, he might have had a stronger argument in this context.

[16] For all the aforementioned reasons, the Plaintiff has failed to establish his claims on a balance of probability and this Court therefore proceeds to dismiss the Plaintiff’s case with costs.

Signed, dated and delivered at Ile du Port on 06 February 2020.

Burhan J