

2. The Defendant has denied that the Claimant was constructively dismissed from her job and alleges that the Claimant abandoned her employment before the expiry of her contract. The Defendant has counterclaimed for the sum of \$214,000.00, or in the alternative, damages for breach of contract, interest and costs.

3. This matter began on July 25th, 2012 and concluded on July 31st, 2012 immediately prior to the court vacation in August. The Court ordered that written submissions were to be filed on September and Reply if any by September 24th, 2012. The Claimant filed its submissions on September 19th, 2012 and also relied on earlier submissions filed by the Claimant in this matter on April 18th, 2012. The Defendant filed its submissions on September 19th, 2012 and the Claimant filed its Reply on September 24th, 2012. Those are all the submissions considered by this Court in reaching this decision.

THE FACTS

4. On the 28th January 2002, Mrs. Karen Longworth, the Claimant, was employed as a Manager of a company that was not yet incorporated but that was to carry on business as an international financial service provider in Belize which would also provide registered agent services.

This company, Bay Trust International Limited (hereinafter called BTIL) was incorporated on February 1st, 2002 and eventually became known as Bay Trust Corporate Services Limited (BTCSL), the Defendant Company. Mrs. Longworth was employed to manage BTIL under a written contract of employment dated January 28th, 2002. In keeping with the terms of her contract, three months later she was appointed a Director of BTIL in 2002. After renegotiating the terms of her employment in 2011, a supplemental agreement to the original contract was signed by Mrs. Longworth and the Defendant Company, BTCSL, whereby the Claimant was employed as a Managing Director of the company on January 3rd 2011.

5. All the capital for the company was provided by Glen Wilson in January 2002, the majority shareholder in the company, while the Claimant's home was used as a temporary office space until a suitable alternative was found about three or four months later. From 2002 to 2008 Mr. Wilson was initially based in Europe where he was managing the sister company of Bay Trust International Ltd. in Geneva, Switzerland. It appears from the evidence of all witnesses that during this period he relied very heavily on Mrs. Longworth to manage BTIL in Belize. In or around 2008 Mr. Wilson moved to

Belize and transferred his trust business in Geneva to BTIL. He became more physically present at the BTIL office and more active in the day to day management of the company.

6. Mrs. Longworth was issued with shares of the company on various occasions between 2002 and 2010 eventually resulting in her holding 30% of the company's shareholding and Mr. Wilson holding 70%.
7. It is the Claimant's evidence that between 2002 and 2010 the Defendant Company's business flourished and the company was able to have a Corporate Department, a Trust Department, an Accounting Department and a Compliance Department. Mrs. Longworth states that she was managing a staff of ten persons for the Defendant Company including a Receptionist, a Quality Control/Compliance Officer, a Senior Trust Officer, an Assistant Administrative Trust Officer and an Executive Coordinator.
8. According to Mr. Wilson's evidence a more detailed job description for Mrs. Longworth was yet to be agreed upon as the list attached to the original contract was not sufficiently detailed. He testified that he continued to have ongoing discussions with Mrs. Longworth in order to finalize her job description.

9. The Claimant states that her working relationship with Mr. Wilson was that of a mentor and a friend until March 2010 after she told him she was pregnant. She states that he became cold and indifferent to her and told her that he feared that the pregnancy would affect her ability to manage the Defendant Company. It is Mrs. Longsworth's evidence that the working relationship between Mr. Wilson and herself gradually and steadily deteriorated.

10. Three witnesses were called by the Claimant in large part to bolster Mrs. Longsworth's evidence that the climate in the workplace at BTIL became increasingly hostile from the time of her pregnancy in 2010. Gina Sutherland, Kendra Garbutt and Tricia Saunders all testified that Mr. Wilson's behavior towards the staff in general and towards Mrs. Longsworth in particular became very insulting and unpleasant from the time of Mrs. Longsworth's announcement that she was pregnant in 2010. I do not find any merit in these assertions. While I accept that Mr. Wilson may have had some reservations about Mrs. Longsworth's ability to manage the company with a pregnancy and consequently a young infant to take care of, and that he may have expressed his concern to Mrs. Longsworth about that, I do not believe

that Mrs. Longworth's pregnancy was the cause of his behavior. Having read the extremely acrimonious email exchanges between Mrs. Longworth and Mr. Wilson which took place in the year immediately before she left the company, it is clear to me that this was a power struggle which ensued where Mr. Wilson as the Owner/ Majority Shareholder of the company sought to exert daily control over the daily affairs of the company with a view to ensuring, above all else, that the company made a financial profit. He clashed with Mrs. Longworth as Managing Director of the company who, while her commitment to striving towards the financial success of the company was undeniable, sought to nurture the staff in the belief that a happy well funded staff with sufficient resources to accomplish their tasks will be motivated to work harder and in turn yield greater productivity for the company. One example of this conflict is an email dated Thursday April 11th, 2011 where Mr. Wilson tells Mrs. Longworth that *"Your main task, apart from controlling the Trust and Corporate Departments, is the collection of money"* and that of Wednesday April 13th, 2011 where he tells her, *"We cannot afford to have all these funds outstanding."* On April 27th, 2011 he sent an email to Mrs. Longworth stating *"I am the majority shareholder and*

have laid down a policy that ALL employees will copy me on ALL emails that leave the company. Before you went away on maternity leave, we agreed that ALL employees would copy me. This has not changed. If you do not take direct instructions from your employer, the shareholders, then you are in breach of your contract.”

To illustrate Mrs. Longsworth’s style of management, I refer to an email of June 20th, 2011 in which she tells Mr. Wilson that “As Managing Director, I do not agree with the daily time sheets. I believe staff is working to the best of their abilities. They are human beings and at the end of the day mistakes and human error will be made. It is with continuous support from Management that we understand and ask the right questions to solve problems...” There is also the email of June 27th, 2011 where Mrs. Longsworth tells Mr. Wilson, “I have told you that I believe that there is need for more staff in the Trust Department and that department would benefit from time management training and you have time and again said no... I think that I should mention that the stance you take in relation to the staff gives the impression that you have no confidence in your staff. While I appreciate the need to keep our clients content, I do not believe that it is enough to apologize to them for what they deem as shortfalls and

not take appropriate steps to improve the cause... The increase in the amount of work being handled by Gina and Tricia alone accounts for the slow turnaround time, yet you have disagreed with my belief that there is a need to increase staff to meet the demands of the increased work. You choose instead to demand that Gina and Tricia move faster when you have been told repeatedly that the work is too much for them.”

11. I am fortified in this view that Mrs. Longsworth’s pregnancy was not a major determining factor in this crisis as the witnesses for the Claimant contend by the simple fact that Mrs. Longsworth left on maternity leave in October 2010 and on January 3rd, 2011 she signed a contract with the Defendant Company to continue in its employment as Managing Director for an additional five years. Clearly any misgivings Mr. Wilson may have had at that point in time about her ability to carry out her duties efficiently **due to her pregnancy/ motherhood** were negligible. In my view, the conflict between Mr. Wilson and Mrs. Longsworth arose and escalated due to a clash of their respective management styles.

Issues

12. (1) Did the re-designation of her duties and appropriation of responsibilities as Managing Director by Mr. Glen Wilson amount to a breach of contract?

(2) Was the Claimant Mrs. Karen Longworth constructively dismissed from her job by the Defendant Company or did she abandon her employment?

Issue 1

Did the Redesignation amount to a Breach?

The ponderous email evidence reveals that from around March 2011 to July 2011 disagreements erupted continuously between Mrs. Longworth and Mr. Wilson over various issues including the use of the company vehicle, charges to company credit card, outstanding invoices, debt collection, contentious clients and many other matters. Their work relationship disintegrated to the point where there were shouting matches between them in the workplace in front of staff. Before she left for vacation, Mrs. Longworth emailed Mr. Wilson on June 27th, 2011 detailing what she perceived as unfair treatment and asking that he desist from obstructing her management of the

company. In response Mr. Wilson emailed her on that same day saying that he had every right to involve himself in company matters and that he was having doubts about certain abilities within the company and that she should stop complaining and get on with preparing a business plan for approval of the Board of Directors of BTCSL. It is against this volatile background that on July 16th, 2011 Mr. Wilson sent Mrs. Longsworth an email entitled "The Way Forward." In this email Mr. Wilson declared that he had in his capacity of Majority Shareholder and Chairman/President of both BTCSL and BTIL taken over the management of both companies. He went on to state that the Claimant would "change her designation to General Manager Trusts and become part of the Trust Department with responsibility for Public Relations, Marketing and Trust Business Development ...". Mrs. Longsworth wrote Mr. Wilson an email questioning his ability to take over management of the Defendant Company when her primary duty as Managing Director was to manage the Defendant Company. In response Mr. Wilson stated that her position as Managing Director had never been officially reconfirmed after the re-election of directors at the last Annual General Meeting. He went on to state that he would be taking over

management forthwith and that it was his prerogative to do so. He also said that she would remain a director with the same benefits. Mrs. Longworth then wrote to Mr. Wilson on July 18th, 2011 stating that *“Upon seeking legal advice I was advised that your taking over management of the companies amounts to a breach of my contract. Also I am not interested in accepting the offer to be General Manager of Trusts. My lawyers will be contacting you shortly.”* Mr. Wilson replied, *“Further to my earlier response, I made no offer for you to be General Manager of Trust. This is a re-assignment/ re-designation.”* The following day July 18th, 2011 this action was filed and served on the Defendant Company. The Claimant never returned to work and has since started her own international financial services company providing services similar to those offered by the Defendant Company.

13. In determining this first issue, I find it helpful to refer to the definition of constructive dismissal as set out by ***Gonthier J*** in the Supreme Court of Canada’s decision of ***Farber v. Royal Trust Co*** [1997] 1 S.C.R. 846 referred to in the Defendant’s written submissions as cited by ***Honorable Justice Kevin Coady*** in ***Gillis v. Sobeys Group Inc.*** 2011 NSSC 443:

“Where an employer decides unilaterally to make substantial changes to the essential terms of an employee’s contract of employment and the employee does not agree to the changes and leaves his or her job, the employee has not resigned, but has been dismissed. Since the employer has not formally dismissed the employee, this is referred to as ‘constructive dismissal.’ By unilaterally seeking to make substantial changes to the essential terms of the employment contract, the employer is ceasing to meet its obligations and is therefore terminating the contract. The employee can then treat the contract as resiliated for breach and can leave. In such circumstances, the employee is entitled to compensation in lieu of notice and where appropriate, damages.

To reach the conclusion that an employee has been constructively dismissed, the court must therefore determine whether the unilateral changes imposed by the employer substantially altered the essential terms of the employee’s contract of employment. For this purpose, the judge must ask whether, at the time the offer was made, a reasonable person in the same situation as the employee would have felt that the

essential terms of the employment contract were being substantially changed. The fact that the employee may have been prepared to accept some of the changes is not conclusive, because there might be other reasons for the employee's willingness to accept less than what he or she was entitled to have."

Applying this test to the case before me, I ask myself: Was this proposed redesignation of Mrs. Longsworth's duties by Mr. Wilson a breach of contract? The evidence shows that she had been serving as Managing Director of the company from its inception in 2002 and she had signed a contract to continue working as Managing Director in 2011. The list of duties attached to the 2011 contract clearly states that as Managing Director she was responsible *inter alia* for managing the Accounts Department, Trust Department, and Companies Department. The Job Description attached to her Contract of January 3rd, 2011 reads as follows:

"Managing Director BTIL & BTCSL

i) Reported to Glen Wilson on company matters for both BTIL/BTCSL

- ii) Managed both BTIL & BTCSL in its entirety as Managing Director
- iii) Supervised and ensured smooth running of the Accounts Department, Trust Department, and Companies Department
- iv) Liase with auditors, lawyers, external advisors and bankers and other financial intermediaries
- v) Internal administration of both BTIL and BTCSL
- vi) Personnel recruitment and training
- vii) Assisted in the development of systems and procedures
- viii) Issued invoices for BTIL and BTCSL
- ix) Recovery of debts
- x) Marketing at trade shows”

Clause 1.4.1 of her 2011 contract refers to her duties and states as follows:

“The Employee shall diligently and faithfully perform the duties of Managing Director as set out in the Job Description attached hereto and such other duties as may be required of her from time to time between the hours of 8:00 am and 5:00pm...”

While it is clear that Mrs. Longworth’s main duties included the management of the company, her duties were not limited to what was stated in the job description, and as her contract stated, she could have been called upon by the company to perform “*such other duties as may be required of her.*” I find that management of the company was an essential term of her contract with BCSTL as stated in her job

description. So while it is clear that other duties could have been added on to those duties that were listed, it appears to me that those duties that were specifically set out in her job description formed the core of her contract. I also find that in proposing to take over the management of the company Mr. Wilson was in effect planning to divest Mrs. Longworth of the major role she had played in the company ever since its inception in 2002. Despite the fact that the proposed reassignment did not involve a diminution in her salary or benefits, and the fact that she would remain a Director of the company, this plan of action entitled "The Way Forward" was designed to strip her of her management of the company. In my view, it went to the root of her contract.

14. Before I deal with the second issue, I want to briefly address the point raised by Learned Counsel for the Defendant that the Claimant should have filed a complaint to the Labor Department for redress pursuant to Section 203 of the Labor (Amendment) Act 2011 which provides as follows:

"(1) Within twenty-one days of the date of dismissal or wrongful termination, an employee shall have the right to file a complaint

to the Tribunal, through the Commissioner whether notice has been given or not.”

I fully agree with the submissions of Learned Counsel for the Claimant that while this section gives the Mrs. Longworth the right to bring a complaint to the Tribunal, it does not mandate that she must do so. I agree that the section provides the aggrieved employee with the additional right to lodge a complaint with the Labor Tribunal but it does not abolish the common law right to bring an action for damages for wrongful dismissal.

Issue 2

15. Was this a case of Constructive Dismissal or Abandonment of Employment?

It is trite law that Mr. Wilson and BTCSL are two separate persons in law. I agree with the submissions of Learned Counsel for the Defence that there is no resolution of the Board of Directors of BTCSL/BTIL before this Court to either adopt the redesignation proposed by Mr. Wilson or to dismiss the Claimant. Such a resolution is required by Clauses 79 to 82 of the Articles of Association of BTCSL when dealing with Managing Directors as follows:

“Managing Directors

- 79.** *The Directors may from time to time appoint one or more of their numbers to be a Managing Director of the Company, and may fix his or their remuneration either by way of salary or commission, or by conferring a right to participate in the profits of Company or by a combination of two or more to those modes.*
- 80.** *Every Managing Director shall be liable to be dismissed or removed **by the Board of Directors**, and another person may be appointed in his place. **The Board** may, however, enter into any agreement with any person who is or about to become a Managing Director with regard to the length and terms of his employment, but so that the remedy of any such person for any breach of such agreement shall be in damages only, and he shall have no rights or claim to continue in each office contrary to the will of the Directors, or of the Company in General Meeting.*

81. *A Managing Director shall be subject to the same provisions a regards removal and disqualification as the other Directors, and if he ceases to hold the office of Director from any cause, he shall ipso facto cease to be a Managing Director.*

82. *The Directors may from time to time entrust to and offer upon a Managing Director all or any of the powers of the Directors (not including the power to borrow money or issue debentures) that they may think fit. But the exercise of all powers by the Managing Director shall be subject to all such regulations and restrictions as the Directors may from time to time make and impose, and the said powers may at any time be withdrawn, revoked or varied.”*

I find that Mrs. Longworth acted prematurely in walking away from her job after this proposed redesignation was put to her by Mr. Wilson. I am certainly not saying that she had to stay there indefinitely and tolerate an increasingly hostile, disrespectful and abusive atmosphere. But she could have served notice on the company in keeping with the terms of her contract of January 3rd, 2011 as follows:

Clause 1.3 Terms of Employment

*“The Employee shall be employed (subject to termination as provided below) for a further period of five (5) years from the date hereof, and shall continue from year to year thereafter **until either shall give to the other six months notice in writing.**”*

The contract is what governed the relationship between Mrs. Longsworth and the Defendant Company. Mr. Wilson had no authority *on his own* to change the terms of her contract. He personally had no authority to dismiss her, constructively or otherwise. The contract clearly states the Employer is BTCSL and the Employee is Mrs. Longsworth. A resolution had to have been passed by BTCSL before any such change could take place. A company is governed by its constitution, that is, its Memorandum and Articles of Association. The company carries out its actions through its resolutions in general meetings and extraordinary meetings. If, for example, Mr. Wilson had gone on to convene a meeting and use his votes as majority shareholder and Chairman of the Board to strong arm a resolution of the Company and go on to confirm his proposal, then that would amount to constructive dismissal **by the company.**

As it stands, this is merely a proposal for a redesignation from a majority shareholder and cannot be attributed to any action by the Defendant Company against whom this claim has been brought. On this evidence, I am constrained to find that the Claimant abandoned her employment and breached her contract. Her claim therefore fails.

15. Judgment on the Counterclaim awarded to the Defendant Company to be paid by the Claimant in the sum of BZ\$214,000 for the 4 years, 5 months and 2 weeks remaining under her contract.
16. Costs awarded to the Defendant to be taxed or agreed.

Michelle Arana
Supreme Court Judge

Dated this 19th day of February, 2013