

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMERCIAL DIVISION

2016/COM/lab/00069

BETWEEN

CHRISTINE MALARD

Plaintiff

AND

EDMOND de ROTHSCHILD (BAHAMAS) LTD.

Defendant

Before Hon. Mr. Justice Ian R. Winder

**Appearances: Camille Cleare for the Plaintiff
Tara Cooper-Burnside for Defendant**

Written Submissions 3 March 2020 (Plaintiff) and 6 March 2020 (Defendant)

RULING ON COSTS

WINDER, J

1. This is my brief decision on the question of costs arising from my judgment in this action and for which I gave a written decision on 18 October 2019. At the conclusion of my judgment I invited the parties to lay over submissions on the proper order for costs. Those submissions were received from the Plaintiff (Malard) and the Defendant (the Bank) on 3 March 2020 and 6 March 2020 respectively and have been considered.
2. The proceedings were commenced by the Malard by generally endorsed Writ of Summons filed on 21 October 2016 arising from the termination of Malard's employment as Vice President of the Bank on 14 March 2016. Upon the termination the Bank sought to pay Malard, who was due to retire on 31 December 2016, payment in lieu of notice. Malard's contract of employment with the Bank spoke to numerous allowances which the bank determined were not convertible on termination.
3. In the action Malard claimed to be entitled to compensation for:
 - (1) housing allowance;
 - (2) 2 round trip business class trips to Geneva;
 - (3) return travel costs to Switzerland;
 - (4) incorrect deductions made on her pension sickness and accident insurance; and
 - (5) bonuses for 2015 and 2016, to be assessed.
4. In determining the matter the court found that Malard's entitlement to housing allowance was a convertible benefit that should have been taken into account in determining her salary and therefore paid to her as part of the termination package. All other claims by her were dismissed.
5. Whilst the bulk of the claims of Malard were dismissed and considerable the legal arguments focused on the claims she lost, the Bank did not protect itself with either a Calderbank letter or a payment in. The Bank took the position that having regard to

what it considered to be the generous payment given to Malard at termination, her claim was entirely meritless. Malard nonetheless had to pursue the claim, recovering her housing allowance, albeit unsuccessfully on all of her other claim.

6. In the circumstances I find that the fair and just order to make in the exercise of my discretion on costs would be for each party to bear their own costs. I so order.

Dated the 7th day of April AD 2020

Ian R. Winder

Justice