

**COMMONWEALTH OF THE BAHAMAS
2020/CLE/gen/00096
IN THE SUPREME COURT
Common Law and Equity Division
BETWEEN**

**BAHAMAS HOTEL MANAGERIAL ASSOCIATION
First Plaintiff**

AND

**KIRKLAND RUSSELL
(Vice President)
Second Plaintiff**

AND

**MICHAEL PINDER
(Secretary General)
Third Plaintiff**

AND

**SANDRA MILLER FERGUSON
(Trustee)
Fourth Plaintiff**

AND

**FAYE PICKSTOCK
(Trustee)
Fifth Plaintiff**

AND

**OLGA MAJOR
Sixth Plaintiff**

AND

**ALEXANDER WILLIAMS
Seventh Plaintiff**

AND

**KYLE ROLLE
Eighth Plaintiff**

AND

**RENARDO SWEETING
Ninth Plaintiff**

AND

**LISA BAIN-KARAGEORGIU
Tenth Plaintiff**

AND

**DENNIS FORBES
Eleventh Plaintiff**

AND

**KEVA MCINTOSH
Twelfth Plaintiff**

AND

**KASHALA BOWE
Thirteenth Plaintiff**

AND
WILTON BROOKS
Fourteenth Plaintiff
AND
YIU MAN LEUNG
Fifteenth Plaintiff
AND
BEATRICE LEVAUGHN DEAN
Sixteenth Plaintiff
AND
JERRY ALBURY
Seventeenth Plaintiff
AND
N. ADREA BURROWS
Eighteenth Plaintiff
AND
DEBBIE DELANCY-GREENE
Nineteenth Plaintiff
AND
MELISSHA ELLIS
Twentieth Plaintiff
AND
BARBARA GLINTON-BARTLETT
Twenty-First Plaintiff
AND
TRUDY WILSON
Twenty-Second Plaintiff
AND
L. IAN BROWN
Twenty-Third Plaintiff
AND
SCHERREAZ BULLARD
Twenty-Fourth Plaintiff
AND
AZURE MAJOR
Twenty-Fifth Plaintiff
AND
PRISCILLA POITIER-SAUNDERS
Twenty-Sixth Plaintiff
AND
CLARETA ROLLE
Twenty-Seventh Plaintiff
AND
KENRICK RUSSELL
Twenty-Eighth Plaintiff
AND
TANGERNIKA WILLIAMS
Twenty-Ninth Plaintiff

AND
LUCILE COOPER
Thirtieth Plaintiff
AND
MARSHA COOPER
Thirty-First Plaintiff
AND
KYLE ROLLE
Thirty-Second Plaintiff
AND
REGINALD HARVEY
Thirty-Third Plaintiff
AND
VERONICA STRACHAN-MADER
Thirty-Fourth Plaintiff
AND
EMMALINE RUSSELL
Thirty-Fifth Plaintiff
AND
ESTELLA TAYLOR
Thirty-Sixth Plaintiff
AND
DELCINE DORSETT
Thirty-Seventh Plaintiff
AND
HENDERSON ROBERTS
Thirty-Eighth Plaintiff
AND
DELORIS STUBBS
Thirty-Ninth Plaintiff
AND
JENNIFER ELLIS
Fortieth Plaintiff

AND

LUCAYAN RENEWAL HOLDINGS LTD.
First Defendant

AND

ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS
Second Defendant

BEFORE: The Honourable Petra Hanna-Adderley

APPEARANCES: Mr. Obie Ferguson for the 1st – 40th Plaintiffs

Mr. Robert Adams and Edward Marshall for the 1st Defendant

HEARING DATE: 13th November, 2020

JUDGMENT

Introduction

1. The 1st Plaintiff is the bargaining agent for the supervisory and managerial employees for the Grand Lucayan Hotel situate in Freeport, Grand Bahama ("**the Hotel**"). The 3rd – 6th Plaintiffs are officers of the 1st Plaintiff. The 2nd Plaintiff was the Head Chef of the Hotel and is Vice President of the 1st Plaintiff and the 7th – 40th Plaintiffs are members of the 1st Plaintiff. The 1st Defendant is the owner of the Hotel. The 2nd Defendant, the Office of the Attorney General, the party which would usually provide legal representation for an agency or entity in which the Crown has an interest, although served with the pleadings in this action, has not participated in these proceedings, undoubtedly because Counsel from the private Bar was retained to represent the 1st Defendant as is sometimes the case.
2. On September 11, 2018, the 1st Defendant purchased the Hotel which is situate in Freeport, Grand Bahama for the specific purpose of offering it for re-sale to a third-party purchaser. On March 2, 2020, the 1st Defendant and The Lucayan Beach Casino Hotel executed an Agreement for Sale in favor of Bahamas Port Investments Ltd. for the sale of the Hotel ("**the Agreement for Sale**"). These events are not in dispute.
3. Later during the month of March, 2020 the Government of The Bahamas ("**the Government**") declared a State of National Emergency which commenced on March 20, 2020 due to the COVID-19 pandemic. As a result, the Hotel was closed to the general public.
4. During the State of Emergency, specifically during the month of June, 2020, the 1st Defendant made the decision to dismiss the 2nd, 7th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiffs with notice. This decision, however, did not apply to the 3rd – 6th Plaintiffs as it is alleged by the 1st Defendant that they have never been employees of the 1st Defendant, nor did it apply to the 22nd, 24th and 30th Plaintiffs who, at the date of the hearing remained employed by the Hotel.
5. On June 24, 2020, the 1st Defendant commenced termination of the 2nd, 7th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiffs' individual contracts of employment, with notice, which it concluded on 11 September 2020. As of the date of hearing Plaintiffs 7th – 15th, 17th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiffs' who were issued termination letters have

all collected the same along with their severance packages and they have all executed Deeds of Release in favor of the 1st Defendant. As of the date of the hearing the only Plaintiff who has failed and/or refused to collect a termination letter and to execute a Deed of Release in favor of the 1st Defendant is the 2nd Plaintiff, who is also the same party as 16th Plaintiff; namely, Mr. Kirkland Russell.

6. The Plaintiffs by way of an Ex-Parte Summons filed the 3rd July, 2020 made an application pursuant to Section 83 of the Industrial Relations Act ("**IRA**") and Order 9, Rule 1 of the Rules of the Supreme Court ("**RSC**") 1978 and under the inherent jurisdiction of the Court for an injunction to restrain the Defendants, whether by itself, its Servants or Agents howsoever, from terminating any of the members of the bargaining unit without reference to the procedures laid down in Section 26(a) of the Employment (Amendment) Act, 2017 ("**the Amended Act**") and the relevant provisions of the Industrial Agreement pending the outcome and determination of the Originating Summons filed herein and other relief that the Court may deem just and costs. In support of the Plaintiffs application, the Plaintiffs relied on the 2nd July, 2020 Originating Summons, Certificate of Urgency and Affidavit of Mr. Kirkland Russell, Vice President of the 1st Plaintiff. The Plaintiffs subsequently filed an Amended Originating Summons on the 3rd July, 2020 to change the name of the 1st Defendant from Grand Lucayan Holdings Limited to Lucayan Renewal Holdings Ltd and filed the Supplemental Affidavit of Mr. Kirkland Russell on the 13th July, 2020.
7. The parties appeared before the Court on July 13, 2020 for the hearing of the Plaintiffs application for injunctive relief and the Court rendered its ruling on July 15, 2020 dismissing the Plaintiffs application.
8. The substantive hearing of this matter was heard on November 13, 2020 whereby the Plaintiffs seek by way of their Amended Originating Summons various forms of relief against the 1st Defendant and rely on the Affidavit of Kirkland Russell filed on July 2, 2020, Supplemental Affidavits of Kirkland Russell filed on July 13, 2020 and October, 29, 2020, the Affidavits of Alexander Williams, Kyle Rolle, Renardo Sweeting, Ian L. Brown, Kenrick Russell, Lisa Bain-Karageorgiou, Keva McIntosh, Kashala Bowe, Dennis Forbes, Levaughn Beatrice Dean, Jerry Albury, Adrea N. Burrows, Debbie Delancy-Greene, Barbara Ginton-Bartlett, Azure Major, Priscilla Poitier-Saunders, Lucille Cooper, Reginald Harvey, Emmaline Russell, Estella Taylor, Delcine Dorsett, Deloris Stubbs and Jennifer Ellis filed

October 29, 2020 and the Affidavit of Veronica Strachan-Mader filed November 6, 2020. The Plaintiffs also rely on their Skeleton Arguments filed November 9, 2020.

9. The 1st Defendant in opposition of the Plaintiffs application relies on the Affidavit of Michael Ross Scott, QC filed July 14, 2020 and Second Affidavit of Michael Ross Scott, QC filed October 8, 2020, Affidavit of Glyine Delancey filed October 6, 2020 and Affidavit of Veronica Clarke filed October 6, 2020. The 1st Defendant also relies on its Written Submissions. None of the Witnesses for the parties were cross examined.
10. The issues to be considered by the Court are (1) whether all of the Plaintiffs were employed by the 1st Defendant; (2) whether by the signing of the Deeds of Release the Plaintiffs or some of them are estopped from asserting their claims in this action against the 1st Defendant; (3) whether the employees were made redundant in March 2020 or temporarily laid off; (4) whether the termination of the Plaintiffs or some of them between June 24 and September 11, 2020 amounted to redundancy.
11. The 1st Defendant has satisfied the Court that:-
 - i. The 1st Plaintiff and the officers thereof acting in their official capacity therein were not employed by the 1st Defendant;
 - ii. Those Plaintiffs having executed Deeds of Release having failed to established any coercion on the part of the 1st Defendant are estopped from pursuing their claims against the 1st Defendant in this action;
 - iii. In March of 2020 the 7th -40th Plaintiffs were temporarily laid off and not made redundant. They were entitled to be paid in accordance with their respective contracts of employment and were not entitled to compensation pursuant to Section 47 of the Employment Act;
 - iv. The 2nd/16th Plaintiff, Mr. Kirkland Russell, was terminated with Notice as at July, 24, 2020 is not entitled to be reinstated pursuant to Section 43 of the Employment Act.
12. My reasons for coming to these decisions are as follows.

Statement of Facts

13. The Plaintiffs said Amended Originating Summons seeks the following:-
 - "1. A declaration that the defendant is legally bound to follow the redundancy procedures as outlined in section 26(a) of the Employment Amendment Act, 2017

(The Act) when an employer is contemplating the dismissal of employees as a result of redundancy and clause 13.1 of the contract of employment.

2. A declaration that the Defendant wrongfully and unfairly dismissed the plaintiffs by breach clause 17.8 of their contract of employment and 26A of the Act.

3. A declaration that the defendant breached the plaintiffs employment contract entitling them to damages and compensation pursuant to section 47 of the Employment Act;

4. A declaration that plaintiffs are entitled to be reinstated pursuant to section 43 of the Industrial Relations Act (IRA);

5. A declaration that the First Defendant is mandated to follow the redundancy procedures as outline in section 26A of the 2017 Act.

6. A declaration that the defendant's failure to pay wages to the plaintiffs for March, April, May, and June, 2020 is a fundamental breach of the plaintiffs' employment contract.

7. The plaintiffs seek an order from the court requiring the defendant to pay the plaintiffs for damages for wrongful dismissal and compensation for unfair dismissal and reinstatement as outlined in section 43 of the Employment Act;

8. An order that the defendant pay costs of associated with and incidental by the application to the plaintiffs;

INTERIM RELIEF SOUGHT

9. An injunction restraining the Defendant, whether by itself, its Servants or Agents howsoever, from terminating any of the members of the bargaining unit without reference to the procedures laid down in section 26(a) of the Act and the relevant provisions of the industrial agreement pending the outcome and determination of the Originating Summons filed herein;

10. And the Plaintiffs herein undertake to abide by any order that this Honourable Court may make as to damages in case the Court shall hereafter be of the opinion that any of the parties have sustained damages by reason of this Summons."

Deed of Release (executed by the 7th – 15th, 17th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiffs exhibited to the Affidavit of Veronica Clarke filed October 6, 2020)

14. The Deeds of Release signed by the 7th – 15th, 17th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiffs containing their respective severance sum, save for the 16th Plaintiff, provides as follows:

“(A)...

(B)...

(C) Without the admission of liability being made by the Company to the Employee, the Employee has voluntarily agreed to release the Company and its successors from all claims arising out of the Employment or the Dismissal, including interest and legal costs, and all matters related thereto, or connected with, the Employment or the Dismissal under the laws of The Commonwealth of The Bahamas on terms that the Company pay to the Employee the sum of Fifty Four Thousand, Eight Hundred Twenty Dollars and Thirty Four Cents (B\$54,820.34) in the currency of the Commonwealth of The Bahamas upon the execution and delivery of this Deed by the Employee to the Company

NOW THIS INDENTURE WITNESSETH AS FOLLOWS:

- 1. In consideration of the said sum of Fifty Four Thousand, Eight Hundred Twenty Dollars and Thirty Four Cents (B54,820.340 in the aforesaid currency now paid by the Company to the Employee and other good and valuable consideration the sufficiency of which shall not hereafter be questioned by any of the parties to this Deed before any Court of otherwise (the receipt whereof the Employee hereby acknowledges), for and in full settlement as aforesaid the Employee hereby releases, discharges and dismisses the Company, its officers, directors, agents, affiliated and related companies, and its assigns, from all claims demands and liabilities and from each and every right and claim, manner of action and actions, cause of action, suits, debts, dues, sums of money, legal fees, accounts, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands which the Employee has or at any time hereafter may have had but for the execution of the Deed could or might have had in law or in equity anywhere in the world, against the Company in respect of any matter aforesaid or any matter comprised of the substratum thereof.**
- 2. The parties hereto agree that the terms of this Deed and the substance of all negotiations in connection with it, are confidential to the said**

parties and their advisers, who shall not disclose them to, or otherwise communicate them to, any third party without the written consent of the other party other than:-

- I. To the parties respective auditors, insurance and lawyers on terms which preserve confidentiality;**
 - II. Pursuant to an order of a court of competent jurisdiction or pursuant to any proper order or demand made by any competent authority or body where they are under a legal or regulatory obligation to make such a disclosure; and**
 - III. as far as necessary to implement and enforce any of the terms of this Deed.**
- 3. This Deed constitutes the entire understanding and agreement between the parties hereto in relation to the subject matter of the Deed. The parties hereto each acknowledge that they have not entered into this Deed in reliance wholly or partly on any representation or warranty made by or on behalf of the other party (whether orally or in writing) other than as expressly set out in this Deed and that any variation of this deed shall be in writing and signed by or on behalf of each party.**
- 4. The Employee hereby acknowledges that he has read the terms of this Deed and, that such terms are understood by him {her} and that he {she} has been provided with a reasonable opportunity to obtain legal advice prior to executing this Deed.**
- 5. The Employee understand that the release in this Deed releases any and all claims he [she] may have had against the Company in connection with the Dismissal and the Employee's former employment with the Company.**
- 6."**

15. The contents of the Deeds of Release are not disputed.

The Plaintiffs Evidence

16. It is not usually desirable to set out the evidence of the parties in decisions in civil cases "witness by witness", particularly where, as in this case, the Affidavit evidence can be accurately described as "boilerplate", but the Plaintiffs evidence as to what they were told

and what they did when presented by the 1st Defendant with Deeds of Release and their cheques is germane to the issue of the alleged "coercion" exerted on the Plaintiffs by the 1st Defendant, and ought to be keenly considered.

17. Mr. Russell's evidence is, in part, that the 1st Plaintiff is the bargaining agent for the supervisory and managerial employees of the Grand Lucayan. He further deposes that in or around 2007 it was determined that the 1st Plaintiff was the bargaining agent for the employees of Hutchinson Lucaya Limited (the previous owners of the 1st Defendant) and that an Industrial Agreement ("**the Industrial Agreement**") was executed between Hutchinson Lucaya Limited and the 1st Plaintiff on the 17th June, 2011. He maintains in his evidence that although the Industrial Agreement expired on the 17th June, 2014 the employees were advised via various letters that the pending sale of the Hotel in 2018 would not change the terms and conditions of their employment. Moreover, he states that via a communication from the Prime Minister in 2018 they were reassured that the union agreement and current employee contracts would continue. He also asserts that in October 2018 the Chairman of the 1st Defendant by way of a Defence submitted at the Bahamas Industrial Tribunal that:

"Respondent resist for the following reasons:

1. Company ownership is in transition as it has been agreed/accepted that prevailing conditions will remain until circumstances dictate otherwise.
2. Clause 34 of the honoured industrial agreement with BHMA stipulates that "if at expiration of this agreement (2011-2014) a new agreement is not consummated, the terms of this agreement (2011 2014) shall remain enforce until a new agreement is signed. Respondent continues to be guided by this language included in the last registered industrial agreement with the Association."

18. Mr. Russell deposes at paragraph 15 of the said Affidavit as follows:-

"15. That the chairman failed to follow the redundancy procedure as outlined in section 26A of the 2017 Employment Amendment Act. He failed to consult the BHMA which is the recognized bargaining agent for the supervisory and managerial workers at Lucayan Renewal Holdings Limited when he released the 40 managers/supervisors of the bargaining unit. There is now produced and shown to me a copy of the list of managers/supervisors marked Exhibit "KR 9".

19. Mr. Russell states that the 1st Defendant is owned by the Government of the Bahamas and is the employer of the 2nd – 40th Plaintiffs who were advised by the Prime Minister during his budget debate on Monday, the 22nd June, 2020 **“that all public servants are to resume work duties on Monday the 29th June, 2020.”** That the workers (including Mr. Russell) listed on the attendance list exhibited to his said Affidavit reported to work on June 29th, 2020. That there was a dialogue between himself and Mrs. Veronica Clarke, Hotel Manager as follows:-

“Kirk Russell: Good morning Ms Clarke we the employee of Grand Lucaya is here as instructed by the Most Honorable Prime Minister that all Government employees are to report to work at 9:00 a.m., Monday 29 June, 2020;

Veronica Clarke: Okay I understand what you are saying, in the meantime the hotel is still not open for business, there is no guest in the hotel, the borders does not open until 1 July so therefore what are you to do;

Kirk Russell: Ms. Clarke what are your instructions to the staff at Grand Lucayan this morning?

Veronica Clarke: Kirk, the instructions are the hotel is still not operational, therefore, um, I recommend, um, I say to you um, we will call the staff at a later date.

Kirk Russell: Ms. Are you asking us to leave?

Veronica Clarke: I did not know who invited you here.”

20. In his Second Supplemental Affidavit filed October 29, 2020 Mr. Russell states in part that the 1st Plaintiff filed a trade dispute pursuant to Section 68 of the IRA aimed at negotiating in good faith a new collective agreement following the expiration of the Industrial Agreement and that during the hearing on October 16, 2018, the Chairman, Mr. Scott, QC voluntarily agreed that the Respondent (i.e. the 1st Defendant) will continue to be guided by the language in the expired Agreement and that those terms shall remain in effect until a new agreement is signed. That on March 20, 2020 the 1st Defendant laid off 40 bargaining unit members without pay in breach of the terms of employment. That Mrs. Lisa Russell and Mrs. Martha St. John-Moses, agents for the 1st Defendant terminated himself and some members of the 1st Plaintiff’s employment contracts on June 24 and July 31, 2020 and for members of the 1st Plaintiff to receive their final cheque made it a conditions to sign a deed of release and this amounts to coercion of the will of the

members of the 1st Plaintiff and vitiates their consent. That he refused to sign the deed of release on July 31, 2020 therefore the 1st Defendant kept his cheque. He also states that he and the other members of the 1st Plaintiff were told that their vacation pay which is a statutory benefit would be sent to their bank accounts the following week. That on August 6, 2020 he was informed by Mrs. Lisa Russell that the second round of severance was ready and could collect his final cheque. That on August 10, 2020 he attempted to collect his final cheque from Mrs. Lisa Russell, was handed a deed of release to sign and signed the deed of release but had included a statement along with his signature. That on returning the deed of release to Mrs. Russell, she informed him that she was instructed not to hand over his cheque if he wrote anything on the deed of release other than his known signature.

21. Mr. Russell states that the members of the 1st Plaintiff have suffered damages due to their wrongful dismissal by the 1st Defendant's failure to pay them wages and benefits for the period between March 20 and June 24, 2020. He also states that the laying off of the 1st Plaintiff's members without pay is a breach of the common law and unfair dismissal and that due to the failure to give notice to the Minister in the case of redundancy pursuant to section 26A(4) of the Amended Act and the unfair dismissal, each member is entitled to compensation. That Mr. Michael Scott, QC admitted at paragraph 4(b) in his Affidavit filed July 14, 2020 that the loss sustained by members of the 1st Plaintiff as a result of not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional two weeks of time to be factored into their final pay for those members of the 1st Plaintiff who have already been terminated and the same amount for those members who have not yet been terminated.
22. Mr. Russell states that paragraph 6 of the Affidavit of Glyine Delancy confirms and verifies that he along with several members of the 1st Plaintiff reported to work on June 29, 2020 based on the Prime Minister's instructions to government workers and that Mrs. Clarke's instructions to us were that she would call the staff at a later date.
23. In response to the Supplementary Affidavit of Michael Ross Scott, QC filed October 8, 2020 Mr. Russell states in part:-
 - i. That in paragraphs 4 and 5, Mr. Scott, QC has told the Court that he knowingly decided the Tribunal of his intentions to prevent any negotiations for a new Industrial Agreement pursuant to Section 41 of the IRA and proceeded to violate

Section 72 of the Employment Act which allows for continuity of employment with the next employer;

- ii. That in paragraph 7, Mr. Scott, QC is aware that to have persons sign a deed of release when they pick up their cheques is inconsistent with the rule of law and natural justice, that the Courts have rules that unless that term is in the Industrial Agreement it is void and there is no evidence that persons were provided an opportunity to consult with their lawyer or the 1st Plaintiff prior to their signing.
- iii. That the 1st Plaintiff and the 1st Defendant had conducted a redundancy exercise in 2019 which was signed off by the Union, the employees and the employer.

24. In his Affidavit filed October 29, 2020, Alexander Williams states in part that as a member of the 1st Plaintiff he was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid him off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated him in contravention of his employment contract and told him that prior to receiving his final cheque, a deed of release must be signed and this amounts to coercion of his will. He was also told that vacation pay would be sent to his bank account. That as a member of the bargaining unit he suffered damages due to the wrongful dismissal by the company by failing to pay him wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to him is \$15,346.11. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, he is entitled to compensation. That he is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$55,971.40. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by me as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of

an additional 2 weeks of time to be factored into his final pay having been terminated which totals \$1,615.38.

25. In his Affidavit filed October 29, 2020, Kyle Rolle states in part that as a member of the 1st Plaintiff he was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid him off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated him in contravention of my employment contract and told him that prior to receiving his final cheque, a deed of release must be signed and this amounts to coercion of his will. He was also told that vacation pay would be sent to his bank account. That as a member of the bargaining unit he suffered damages due to the wrongful dismissal by the company by failing to pay him wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to him is \$. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, he is entitled to compensation. That he is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by him as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into his final pay having been terminated which totals \$.
26. In his Affidavit filed October 29, 2020, Renardo Sweeting states in part that as a member of the 1st Plaintiff he was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with

effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid him off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated him in contravention of his employment contract and told him that prior to receiving his final cheque, a deed of release must be signed and this amounts to coercion of his will. He was also told that vacation pay would be sent to his bank account. That as a member of the bargaining unit he suffered damages due to the wrongful dismissal by the company by failing to pay him wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to him is \$12,115.26. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, he is entitled to compensation. That he is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$48,873.14. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by him as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into his final pay having been terminated which totals \$1,346.14.

27. In his Affidavit filed October 29, 2020, Ian L. Brown states in part that as a member of the 1st Plaintiff he was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid him off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated him in contravention of his employment contract and told him that prior to receiving his final cheque, a deed of release must be signed and this amounts to coercion of his will. He was also told that vacation pay would be sent to his bank account. That as a member of the bargaining unit

he suffered damages due to the wrongful dismissal by the company by failing to pay him wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to him is \$15,576.84. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, he is entitled to compensation. That he is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$68,680.49. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into his final pay having been terminated which totals \$1,730.76.

28. In his Affidavit filed October 29, 2020, Kenrick Russell states in part that as a member of the 1st Plaintiff he was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid him off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated him in contravention of his employment contract and told him that prior to receiving his final cheque, a deed of release must be signed and this amounts to coercion of his will. He was also told that vacation pay would be sent to his bank account. That as a member of the bargaining unit he suffered damages due to the wrongful dismissal by the company by failing to pay him wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to him is \$13,500.00. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, he is entitled to compensation. That he is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay

and insurance for the period in the sum of \$22,194.00. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by him as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into his final pay having been terminated which totals \$1,500.00.

29. In her Affidavit filed October 29, 2020, Lisa Bain-Karageorgiou states in part that as a member of the 1st Plaintiff she was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid her off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated her in contravention of her employment contract and told her that prior to receiving her final cheque, a deed of release must be signed and this amounts to coercion of her will. She was also told that vacation pay would be sent to her bank account. That as a member of the bargaining unit she suffered damages due to the wrongful dismissal by the company by failing to pay her wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to her is \$7,140.00. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, she is entitled to compensation. That she is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$46,526.00. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into her final pay having been terminated which totals \$1,190.00.

30. In her Affidavit filed October 29, 2020, Keva McIntosh states in part that as a member of the 1st Plaintiff she was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid her off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated her in contravention of her employment contract. That as a member of the bargaining unit she suffered damages due to the wrongful dismissal by the company by failing to pay her wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to her is \$7,150.00. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, she is entitled to compensation. That she is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$40,723.00. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into her final pay having been terminated which totals \$1,100.00.
31. In her Affidavit filed October 29, 2020, Kashala Bowe states in part that as a member of the 1st Plaintiff she was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid her off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated her. That as a member

of the bargaining unit she suffered damages due to the wrongful dismissal by the company by failing to pay her wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to her is \$8,091.32. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, she is entitled to compensation. That she is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$12,034.64. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into her final pay having been terminated which totals \$951.92.

32. In his Affidavit filed October 29, 2020, Dennis Forbes states in part that as a member of the 1st Plaintiff he was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid him off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated him in contravention of his employment contract and told him that prior to receiving his final cheque, a deed of release must be signed and this amounts to coercion of his will. He was also told that vacation pay would be sent to his bank account. That as a member of the bargaining unit he suffered damages due to the wrongful dismissal by the company by failing to pay him wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to him is \$10,499.97. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, he is entitled to compensation. That he is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay

and insurance for the period in the sum of \$58,175.58. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by me as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into his final pay having been terminated which totals \$1,615.38.

33. In her Affidavit filed October 29, 2020, Patrice Levaughn Dean states in part that as a member of the 1st Plaintiff she was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid her off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated her in contravention of her employment contract and told her that prior to receiving her final cheque, a deed of release must be signed and this amounts to coercion of her will. She was also told that vacation pay would be sent to her bank account. That as a member of the bargaining unit she suffered damages due to the wrongful dismissal by the company by failing to pay her wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to her is \$6,879.08. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, she is entitled to compensation. That she is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$12,975.26. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into her final pay having been terminated which totals \$1,058.32.

34. In his Affidavit filed October 29, 2020, Jerry Albury states in part that as a member of the 1st Plaintiff he was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid him off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated him in contravention of my employment contract and told him that prior to receiving his final cheque, a deed of release must be signed. That as a member of the bargaining unit he suffered damages due to the wrongful dismissal by the company by failing to pay him wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to him is \$9,316.32. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, he is entitled to compensation. That he is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$26,914.70. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by him as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into his final pay having been terminated which totals \$1433.28.

35. In her Affidavit filed October 29, 2020, Adrea N. Burrows states in part that as a member of the 1st Plaintiff she was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid her off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa

Russell accompanied by Mrs. Martha St. John-Moses terminated her in contravention of her employment contract and told her that prior to receiving her final cheque, a deed of release must be signed and this amounts to coercion of her will. She was also told that vacation pay would be sent to her bank account. That as a member of the bargaining unit she suffered damages due to the wrongful dismissal by the company by failing to pay her wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to her is \$5,145.66. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, she is entitled to compensation. That she is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$27,884.72. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into her final pay having been terminated which totals \$791.64.

36. In her Affidavit filed October 29, 2020, Debbie Delancey-Greene states in part that as a member of the 1st Plaintiff she was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid her off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated her in contravention of her employment contract and told her that prior to receiving her final cheque, a deed of release must be signed and this amounts to coercion of her will. She was also told that vacation pay would be sent to her bank account. That as a member of the bargaining unit she suffered damages due to the wrongful dismissal by the company by failing to pay her wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to her is \$6,500.00. That laying off without pay is a breach

of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, she is entitled to compensation. That she is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$28,166.00. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into her final pay having been terminated which totals \$1,000.00.

37. In her Affidavit filed October 29, 2020, Barbara Glington-Bartlett states in part that as a member of the 1st Plaintiff she was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid her off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated her in contravention of her employment contract and told her that prior to receiving her final cheque, a deed of release must be signed. She was also told that vacation pay would be sent to her bank account. That as a member of the bargaining unit she suffered damages due to the wrongful dismissal by the company by failing to pay her wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to her is \$7,735.00. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, she is entitled to compensation. That she is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$32,683.00. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in

monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into her final pay having been terminated which totals \$1,190.00.

38. In her Affidavit filed October 29, 2020, Azure Major states in part that as a member of the 1st Plaintiff she was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid her off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated her in contravention of her employment contract and told her that prior to receiving her final cheque, a deed of release must be signed. That as a member of the bargaining unit she suffered damages due to the wrongful dismissal by the company by failing to pay her wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to her is \$10,080.00. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, she is entitled to compensation. That she is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$19,820.00. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into her final pay having been terminated which totals \$1,120.00.

39. In her Affidavit filed October 29, 2020, Priscilla Poitier-Saunders states in part that as a member of the 1st Plaintiff she was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to ~~to~~ Lucayan Renewal Holdings, which is owned by the Government of the

Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. ~~Scott QC~~ laid her off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated her in contravention of her employment contract and told her that prior to receiving her final cheque, a deed of release must be signed and this amounts to coercion of her will. She was also told that vacation pay would be sent to her bank account. That as a member of the bargaining unit she suffered damages due to the wrongful dismissal by the company by failing to pay her wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to her is \$13,709.34. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, she is entitled to compensation. That she is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$46,094.54. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into her final pay having been terminated which totals \$1,523.26.

40. In her Affidavit filed October 29, 2020, Lucille Cooper states in part that as a member of the 1st Plaintiff she was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid her off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited-Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated her in contravention of her employment contract and told her that prior to receiving her final cheque, a deed of release must be signed. That as a member of the bargaining unit she suffered damages due to the wrongful dismissal by the company by failing to pay her wages and benefits

for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to her is \$9,522.00. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, she is entitled to compensation. That she is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$22,530.70. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into his final pay having been terminated which totals \$1,058.00.

41. In her Affidavit filed October 29, 2020, Marsha Cooper states in part that as a member of the 1st Plaintiff she was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid her off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated her in contravention of her employment contract and told her that prior to receiving her final cheque, a deed of release must be signed. That as a member of the bargaining unit she suffered damages due to the wrongful dismissal by the company by failing to pay her wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to her is \$5,798.00. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, she is entitled to compensation. That she is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$11,458.00. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss

sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into her final pay having been terminated which totals \$892.00.

42. In his Affidavit filed October 29, 2020, Reginald Harvey states in part that as a member of the 1st Plaintiff he was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid him off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated him in contravention of my employment contract and told him that prior to receiving his final cheque, a deed of release must be signed. That as a member of the bargaining unit he suffered damages due to the wrongful dismissal by the company by failing to pay him wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to him is \$12,132.00. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, he is entitled to compensation. That he is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$23,876.00. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by him as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into his final pay having been terminated which totals \$1,348.00.

43. In her Affidavit filed October 29, 2020, Emmaline Russell states in part that as a member of the 1st Plaintiff she was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were

transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid her off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated her in contravention of her employment contract and told her that prior to receiving her final cheque, a deed of release must be signed. That as a member of the bargaining unit she suffered damages due to the wrongful dismissal by the company by failing to pay her wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to her is \$8,028.00. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, she is entitled to compensation. That she is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$34,057.00. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into her final pay having been terminated which totals \$904.00.

44. In her Affidavit filed October 29, 2020, Estella Taylor states in part that as a member of the 1st Plaintiff she was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid her off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated her in contravention of her employment contract and told her that prior to receiving her final cheque, a deed of release must be signed. That as a member of the bargaining unit she suffered damages due to the wrongful dismissal by the company by failing to pay him wages and benefits

for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to him is \$9,774.00. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, she is entitled to compensation. That she is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$45,657.00. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into her final pay having been terminated which totals \$1,086.00.

45. In her Affidavit filed October 29, 2020, Delcine Dorsett states in part that as a member of the 1st Plaintiff she was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid her off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated her in contravention of her employment contract and told her that prior to receiving her final cheque, a deed of release must be signed and this amounts to coercion of her will. She was also told that vacation pay would be sent to her bank account. That as a member of the bargaining unit she suffered damages due to the wrongful dismissal by the company by failing to pay her wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to her is \$6,764.00. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, she is entitled to compensation. That she is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$39,189.60. That the chairman of the

company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into her final pay having been terminated which totals \$1,056.00.

46. In her Affidavit filed October 29, 2020, Deloris Stubbs states in part that as a member of the 1st Plaintiff she was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid her off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated her in contravention of her employment contract and told her that prior to receiving my final cheque, a deed of release must be signed and this amounts to coercion of her will. She was also told that vacation pay would be sent to her bank account. That as a member of the bargaining unit she suffered damages due to the wrongful dismissal by the company by failing to pay her wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to her is \$9,882.00. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, she is entitled to compensation. That she is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$40,750.41. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into her final pay having been terminated which totals \$1,099.94.

47. In her Affidavit filed October 29, 2020, Jennifer Ellis states in part that as a member of the 1st Plaintiff she was required to pay regular dues as mandated by Section 47A of the

IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid her off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated her in contravention of her employment contract and told her that prior to receiving her final cheque, a deed of release must be signed and this amounts to coercion of her will. She was also told that vacation pay would be sent to her bank account. That as a member of the bargaining unit she suffered damages due to the wrongful dismissal by the company by failing to pay her wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to her is \$8,750.05. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, she is entitled to compensation. That she is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$23,666.45. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into her final pay having been terminated which totals \$1,346.16.

48. In her Affidavit filed November 6, 2020, Veronica Strachan-Mader states in part that as a member of the 1st Plaintiff she was required to pay regular dues as mandated by Section 47A of the IRA. That the terms and conditions of the expired contract of employment was honored by Hutchinson Lucayan Limited until September 10, 2018 and the terms were transferred to Lucayan Renewal Holdings, which is owned by the Government of the Bahamas with effect from September 11, 2018. That on March 20, 2020, Lucayan Renewal Holdings Limited Chairman Mr. Scott QC laid her off without pay in breach of the terms of employment. That Lucayan Renewal Holdings Limited Human Resource Manager Mrs. Lisa Russell accompanied by Mrs. Martha St. John-Moses terminated her in contravention of

her employment contract and told her that prior to receiving her final cheque, a deed of release must be signed and this amounts to coercion of her will. She was also told that vacation pay would be sent to her bank account. That as a member of the bargaining unit she suffered damages due to the wrongful dismissal by the company by failing to pay her wages and benefits for the period between March 20, 2020 and June 24, 2020 and the total wrongful damage owed to her is \$6,032.00. That laying off without pay is a breach of the common law and unfair dismissal and due to the failure to give notice to the Minister in the case of redundancy pursuant to Section 26A(4) of the Amended Act and the unfair dismissal, she is entitled to compensation. That she is owed for the unfair dismissal 30 days for not informing the Minister and 3 weeks' pay for each year of service with notice pay and insurance for the period in the sum of \$36,543.00. That the chairman of the company, Mr. Scott QC admitted in paragraph 4(b) of his Affidavit filed July 14, 2020 that the loss sustained by her as a result of the Minister not being afforded consultation is entirely quantifiable in monetary terms, mainly a sum equivalent to 30 days' pay and the value of an additional 2 weeks of time to be factored into her final pay having been terminated which totals \$928.00.

The 1st Defendant's Evidence

49. Mr. Scott Q.C.'s evidence in his first Affidavit is, in part, that following the purchase of the Grand Lucayan Hotel in September, 2018 the employees were advised via letter that there would be no change in the terms and conditions of their employment. He states that on the 2nd March, 2020 the 1st Defendant entered into an Agreement for Sale with Bahamas Port Investments Ltd. and that a conditions of the agreement was that all of the contracts relating to the operation, upkeep, repair and maintenance was to be terminated by the 1st Defendant.
50. He continues in his evidence that due to the COVID-19 Pandemic, the Government of the Bahamas declared a state of National Emergency and as a result the Hotel closed and the 2nd – 40th Plaintiffs were deemed to be temporarily laid off. Mr. Scott, Q.C. further asserts that the parties of the Agreement for Sale intended to continue with the said sale and as a result of this re-commitment the 1st Defendant's decision to terminate the employment contracts of all existing employees inclusive of the 2nd – 40th Plaintiffs was done to comply with the obligations agreed upon in the Agreement for Sale.

51. Mr. Scott, Q.C. deposes that the termination exercise of the employees inclusive of the 2nd – 40th Plaintiffs began on the 24th June, 2020 and is expected to end on or before July, 2020. He also states that only 17 of the 40 named Plaintiffs (excluding the 1st Plaintiff) have been issued termination letters which he states have not been collected by those employees and only 4 of the 17 dismissed employees collected the same.
52. In addition to his evidence regarding the termination exercise, Mr. Scott, Q.C. refutes the claims and assertions as outlined in the first Affidavit of Mr. Kirkland Russell at paragraph 12. He states that the employees are not being dismissed as a result of redundancy but they are dismissed with notice in accordance with the provisions of Section 29 of the Employment Act or the past practice of the Hotel; as the employees were dismissed with notice there was no need to consult with the 1st Plaintiff or its agents pursuant to Section 26A of the Employment Amendment Act, 2017 or under the terms of the expired industrial agreement and they have not breached clause 13.1 or 17.8 or any such term under the said agreement; that the decision to dismiss the employees was not a result of the COVID-19 Pandemic and the Government's mandated closure or temporary layoffs as a result of the pandemic; that 4 of the 17 employees who collected their termination letters executed Deeds of Release; that the loss sustained or to be sustained by the members of the 1st Plaintiff can be quantified in monetary terms for the 1st Defendant's failure to consult with the 1st Plaintiff and that the 1st Defendant is in a position to pay any damages that may be awarded to the 2nd – 40th Plaintiffs as the Government of The Bahamas has allocated a sum in excess of \$3,300,000.00 for the termination exercise.
53. In his Second Affidavit, Mr. Scott, QC states that the 1st Defendant's indication on the Form E Defence filed in the Industrial Tribunal on October 19, 2018 that the 1st Defendant would continue to be 'guided by' the terms of the expired Industrial Agreement was not an acceptance by the 1st Defendant that it remained bound, in law, by the terms and conditions of the expired Industrial Agreement as asserted by the Plaintiffs. He further states that on each occasion when discussing the expired Industrial Agreement with Counsel for the Plaintiffs, he has insisted that the Agreement had expired and was not saved by any statutory intervention. Mr. Scott, QC states that to his understanding the role of the 1st Defendant's Board was designed exclusively to facilitate a sale of the Hotel as a transitional stewardship and as such had no intention of negotiating another Industrial Agreement with the 1st Plaintiff during the transitional period.

54. Mr. Scott's evidence in part is that his comments on the Form E Defence were made on October 19, 2018 over 4 years after the expiration of the Industrial Agreement between the Hotel and the 1st Plaintiff. He also states that since his 1st Affidavit all of the named Plaintiffs to this action save for the 1st and 2nd Plaintiffs have executed Deeds of Release in favour of the 1st Defendant in relation to the subject matter of this claim and are now precluded from continuing this action against the 1st Defendant for that reason and to do so would be an abuse of process. Lastly, he states that the 2nd to the 40th Plaintiffs were all dismissed from their employment with payment in lieu of notice, a right which the Hotel enjoyed both under the express terms of the expired Industrial Agreement and pursuant to Section 29 of the Employment Act, 2001.
55. In his Affidavit filed October 6, 2020, Glyine Delancey states in part that he holds the position of Operations Manager at the Grand Lucayan Hotel. It is his evidence that on June 29, 2020, the 2nd Plaintiff along with various members of the 1st Plaintiff assembled in front of the Manor House round-about circle, that Jerry Davis and himself proceeded to the entrance gate and upon the 2nd Plaintiff's arrival asked why he was at the property and requested that he not enter the property unless he had an appointment with the Hotel manager. That the 2nd Plaintiff asked if he was in charge of the property to which he responded 'no'. The 2nd Plaintiff then instructed his members to follow him to the Executive office to see Mrs. Clarke, the 2nd Plaintiff was told on several occasions that she was unavailable but he continued to the office. That he physically blocked the group at the lower level of the stairwell from entering the Executive office and as they assembled in the foyer, the 2nd Plaintiff continued to speak with Mr. Terrence Roberts and Mrs. Veronica Clarke. That he heard the 2nd Plaintiff tell the other members of the 1st Plaintiff that when the Hotel was sold to the 1st Defendant in 2018 it became either a "quasi corporation", "direct corporation" or "entity" of the Government of The Bahamas and as a result the 2nd Plaintiff and all the other members of the 1st Plaintiff were now employees of the Government. That the 2nd Plaintiff said that on the instructions of the Prime Minister of The Bahamas, he and other members of the 1st Plaintiff were reporting for duty. That the 2nd Plaintiff demanded to speak to Mrs. Clarke or Mr. Roberts or whomever was in charge and attempted to make his way up to the Executive offices of the Hotel at which time he stopped the 2nd Plaintiff and told the 2nd Plaintiff that the 2nd Plaintiff was invading his personal space. That he repeatedly told the 2nd Plaintiff that Mrs. Clarke was not in office

at which point the 2nd Plaintiff called him an “intruder” and that he told the 2nd Plaintiff that Mr. Roberts was not available and asked the 2nd Plaintiff to step outside. That after the exchange between himself and the 2nd Plaintiff, he called Mrs. Clarke and informed her of the situation. That Mrs. Clarke then came to the Executive offices of the Hotel and told the 2nd Plaintiff in his presence that the Hotel was still not open for business, there were no guests in the Hotel and that the borders did not open until the 1st of July, she then asked the 2nd Plaintiff what were they going to do in those circumstances. That the 2nd Plaintiff responded by asking Mrs. Clarke what were her instructions to the employees of the Hotel at 9:30 that morning to which Mrs. Clarke replied that the her instructions were that the Hotel is still not operational and that she would call the staff at a later date. That the 2nd Plaintiff asked if they should leave the property to which Mrs. Clarke said that she did not know who invited them there. The 2nd Plaintiff responded that it was the Prime Minister of The Bahamas who invited them and then he and the other members of the 1st Plaintiff that were with him left the premises.

56. In her Affidavit filed October 6, 2020, Mrs. Veronica Clarke states in part that she is the Hotel Manager of the Hotel and currently holds that position. That in 2011, the 1st Plaintiff entered into an Industrial Agreement with Hutchinson Lucaya Limited d/b/a Our Lucaya Beach & Gold Resort, the former owner of the Hotel which was registered on April 16, 2011 and expired on June 17, 2014 according to clause 34.1 of the same. That according to clause 16 of the expired Industrial Agreement, when it was in full force and effect, the employment of the members of the 1st Plaintiff was always determinable upon the Hotel providing them with notice in accordance with the provisions of the Section 29 of the Employment Act, i.e. giving them at least one month’s notice or one month’s pay in lieu of notice and one month’s basic pay, or part thereof on a pro-rated basis, for each year up to a maximum of 48 weeks. That although the Industrial Agreement expired on June 17, 2014 the Hotel still remained guided by the terms of the same insofar as they relate to the employment of the members of the 1st Plaintiff and in particular, its obligations to them when dismissing them with notice or payment in lieu of notice.

57. Mrs. Clarke states that the 1st Defendant’s purchase of the Hotel became effective on September 11, 2018 however on September 10, 2018 she sent a letter to all of the then employees informing them of the Hotel’s purchase by the 1st Defendant indicating to them that there would be no change in the terms and conditions of their employment as

the 1st Defendant agreed to continue their employment. That the said letter was specific to the purchase only and not to any other or subsequent transfer of ownership and that the contents of the said letter was not intended to be an admission that the 1st Defendant considered itself bound to the terms of the expired Industrial Agreement or that its terms remained in full force or effect. That her letter was only intended to communicate to the employees that the Hotel would maintain the status quo regarding their terms and conditions of employment after the purchase of the Hotel by the 1st Defendant and over the period the 1st Defendant was seeking a new purchaser.

58. It is also her evidence that on March 2, 2020 the 1st Defendant and The Lucayan Beach Casino Hotel entered into an Agreement for Sale for the Hotel with Bahamas Port Investments Ltd. However on March 20, 2020 the Government of The Bahamas declared a State of National Emergency, the effect of which was to close all business to the general public and to prevent persons within The Bahamas from leaving their home except for certain approved circumstances which did not include to attend work at the Hotel. That as a consequence of the above, the Hotel was closed temporarily, until such time it would be allowed to reopen and could do so safely and it was for this reason alone that the employees of the Hotel and in particular the members of the 1st Plaintiff were temporarily laid-off from their employment as were many other employees within the hospitality industry in The Bahamas. That during the temporary closure of the Hotel, the decision was made by the Board of the 1st Defendant to dismiss all employees from their employment with notice, and to pay them either in accordance with Section 29 of the Employment Act or in accordance with established past practices which exceeded the requirements of Section 29 of the Employment Act and the termination exercise commenced on June 24 and concluded by September 11, 2020.

59. Mrs. Clarke states that the 3rd to 6th Plaintiffs are not employees of the Hotel, that none of the 2nd, 7th – 21st, 23rd, 25th - 29th and 31st – 40th Plaintiffs were dismissed for redundancy as alleged by the Plaintiffs and the 22nd, 24th and 30th Plaintiffs are still employees of the Hotel and were not issued terminations letters at all. That the 7th – 15th, 17th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiff have executed Deeds of Release in favor of the 1st Defendant further to their dismissals with notice and cessation of their employment with the Hotel and have been advised by the attorneys for the 1st Defendant that they are now estopped from continuing this action against the 1st Defendant in light of the above.

60. In response to Mr. Russell's recollection of events from June 29, 2020 he gave in his 1st Affidavit, Mrs. Clarke states that on the same date Mr. Russell and members of the 1st Plaintiff attended the Executive Offices of the Hotel where they demanded to speak with both herself or Terrance Roberts. As she was not present at the Hotel at the time she was advised by Mr. Glyine Delancy that Mr. Russell informed the other members of the 1st Plaintiff who were with him that when the Hotel was sold to the 1st Defendant in 2018 it became either a "quasi corporation", "direct corporation" or "entity" of the Government of The Bahamas and as a result, he and all the other members of the 1st Plaintiff were employees of the Government. That Mr. Delancy also advised her that Mr. Russell indicated that it was on the instructions of the Prime Minister of The Bahamas that he and the other members of the 1st Plaintiff with him were reporting for duty. That after being informed by the same by Mr. Delancy she went to the Hotel to discuss the matter with Mr. Russell personally. That upon her arrival to the Hotel she met with Mr. Russell at the Executive Offices and Glyine Delancy and Jeremiah Davis were at the bottom of the stairs preventing Mr. Russell from coming up to her office. That at this time she informed Mr. Russell that the Hotel was still not open for business, there were no guests in the Hotel and the borders did not open until July 1, 2020 and asked Mr. Russell what he and the other members of the 1st Plaintiff with him were going to do in the circumstances. That Mr. Russell responded what were her instructions to the employees of the Hotel at 9:30 a.m. to which she stated that the Hotel was still not operational and management would call the staff at a later date. That Mr. Russell asked if they should leave the property and she responded that she did not know who invited them in the first place. Mr. Russell replied that it was the Prime Minister and he and the other members of the 1st Plaintiff left the Hotel without further incident. That based on the nature of the exchange with Mr. Russell and his demeanor it is her opinion that the entire encounter was contrived and/or designed to elicit certain responses from management; namely an instruction sending the members of the 1st Plaintiff home in circumstances where they knew the Hotel was not operational and open to the general public as a result of the emergency orders issued by the Government due to the COVID-19 pandemic.

Issues

61. The issues to be determined by the Court are:

- (1) whether the 3rd-6th Plaintiffs were employed by the 1st Defendant and whether the 3rd-6th, 22nd, 24th and 30th Plaintiffs have been dismissed from that employment;
- (2) whether the deeds of release signed by the 7th – 15th, 17th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiffs prevent them from continuing to assert their claims in this action;
- (3) whether the employees were terminated and thereby made redundant in March 2020 or whether they were temporarily laid off;
- (4) whether the 1st Defendant was entitled to terminate the employees between June 24 and September 11, 2020 with notice in the usual course or whether the said termination amounted to redundancy.

Whether the 3rd-6th Plaintiffs Were Employed By the 1st Defendant & Whether the 22nd, 24th and 30th Plaintiffs Have Been Dismissed From That Employment

62. Mr. Adams submits in part that the Plaintiffs must first establish that they were employed by the 1st Defendant at the material time and that they have been dismissed from that employment. He refers the Court to **Ferguson v Bahamas Air Holdings Ltd.** [2015] 3 BHS J. No. 37. Additionally, he submits that it is plain and obvious that the 3rd – 6th Plaintiffs are unable to satisfy the Court that they were employed by the 1st Defendant at the material time as they were only members of the 1st Plaintiff's Board of Directors and not employees of the 1st Defendant. He further submits that an employer and employee relationship did not exist between them and the 1st Defendant which could give rise to their claims. Mr. Adams submits that the 22nd, 24th and 30th Plaintiffs are unable to satisfy the Court that they were terminated from the 1st Defendant's employment as they were never issued termination letters and as at the time of the hearing of the matter before the Court they remained employed by the 1st Defendant.

63. Mr. Ferguson submits in part that the executives of the Plaintiffs' Union are always a part of an action. Additionally, he submits that the 22nd, 24th and 30th Plaintiffs were three employees that were called back to work by the 1st Defendant.

Analysis and Discussion

64. There is no evidence before the Court that the 22nd, 24th and 30th Plaintiffs were given termination letters and subsequently terminated by the 1st Defendant nor was any Affidavit evidence filed on their behalf by Counsel for the Plaintiffs. Further, as submitted by Mr. Ferguson, the 22nd, 24th and 30th Plaintiffs as at the date of the hearing were still employed by the 1st Defendant. Therefore, I accept the submissions of Mr. Adams and find that the 22nd, 24th and 30th Plaintiffs' claims as against the 1st Defendant ought to be dismissed.
65. There is no dispute that the 1st Plaintiff is the bargaining agent for 7th - 40th Plaintiffs. Further, Mr. Ferguson has not provided any evidence in support of his submission that it is common practice that executives of a Union are always a part of an action. I therefore find that the claims against the 1st Defendant by the Plaintiffs, in particular breach of the employment contract, wrongful and unfair dismissal and compensation can only lie against a party with whom a contract of employment has been entered with. Consequently, I find that the 3rd - 6th Plaintiffs cannot be and are not entitled to the Declarations or compensation sought in this action.

Whether the Signed Deeds of Release by the 7th – 15th, 17th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiffs Prevent Them From Continuing Their Action Against the 1st Defendant

66. It is not disputed between the parties that the Plaintiffs, namely, Alexander Williams, Kyle Rolle, Renardo Sweeting, Lisa Bain-Karageorgiou, Keva McIntosh, Kashala Bowe, Wilton Brooks, Dennis Forbes, Yiu Man Leung, Levaughn Dean, Jerry Albury, Adrea Burrows, Melissha Ellis, Barbara Ginton, Ian Brown, Azure Major, Priscilla Poitier-Saunders, Clareta Rolle, Kenrick Russell, Lucille Cooper, Marsha Cooper, Reginald Harvey, Veronica Strachan-Mader, Emmaline Russell, Estella Taylor, Delcine Dorsett, Henderson Roberts, Deloris Stubbs and Jennifer Ellis signed Deeds of Release between June 24 and July 24, 2020. However, the parties differ on the effect of the Deeds of Release after being signed by the above named Plaintiffs and the circumstances under which they were signed.
67. Mr. Ferguson, submits that the 1st Defendant is in breach of Clause 17.8 of the expired terms of the Industrial Agreement and as such the Deed of Release is also contrary to law. Mr. Ferguson refers the Court to paragraph 17 in the case of **Cheryl Smith et al v First Caribbean International Bank Ltd.** 2011/CLE/gen/01354 whereby then Chief

Justice Michael Barnett stated that the Plaintiffs in that action were entitled to receive their monies **without being obliged to sign any release to the Defendant**. He also submits that the Plaintiffs were advised that they had to sign a deed of release to receive their payments and further submits the Plaintiffs signing of the same was done under duress. Mr. Ferguson refers the Court to **PAO-ON and Others v LAU YIA Long and Others** [1980] AC 614 in support of his submission.

68. As I understand the case of **Cheryl Smith et al v First Caribbean International Bank Ltd. (supra)** the Plaintiffs claimed that they were entitled to redundancy payments as set out in Article 20.7(a)(i) of the Industrial Agreement; redundancy payments as set out in Article 20.7 (a)(ii) of the Industrial Agreement; notice pay as specified in Article 20.1 of the Industrial Agreement; notice pay as specified in Article 20.4 of the Industrial Agreement; all other financial benefits (i.e vacation pay) as specified in Article 20.6 of the Industrial Agreement and Section 28 of the Employment Act following the Defendant's decision to reduce its staffing and make redundant certain employees in November 2010.
69. The Defendant's evidence was contained in the Affidavit of Siobhan Lloyd whereby she stated she had communicated to the Union the Bank's intention and this evidence was not disputed by the Plaintiffs. In particular she exhibited a letter dated May 13, 2011 addressed to the 1st Plaintiff (a similar letter was written to all of the other Plaintiffs) advising of the Bank's decision to eliminate her position. Additionally the letter stated that upon returning the signed copy of the letter signifying the acceptance of the terms and providing a duly executed original of a Deed of Final Settlement and Release, the Bank will provide the severance payment. The letter also outlined various terms on behalf of the Bank. It is noted that one of the terms outlined stated that it was recommended that the Deed of Final Settlement and Release be reviewed carefully by the employees and if they wished to seek independent legal counsel before signing it would be at their own cost.
70. The Plaintiffs however refused to accept the letters claiming that the insistence upon a release was unacceptable and did not receive any money. The Court in the instant case determined that Section 28 of the Employment Act did not apply as the Plaintiffs entitlements under the provisions of their Industrial Agreement were better than those set out in Section 28 of the Employment Act. While the Court determined that the Plaintiffs were entitled to the better provisions in the Industrial Agreement, they were not entitled

to those better conditions in the Industrial Agreement **AS WELL AS** the provisions in the Employment Act (**emphasis mine**). The Court also determined that the Plaintiffs' entitlement to monies under Articles 20.1 (obligation to consult with Union and give prior notice of impending redundancies) and Article 20.4 (obligation to tell employees concerned immediately after Defendant advised the Union) of the Industrial Agreement resulting from a breach of the obligations contained therein did not give rise to any monetary claim as they would not have suffered any loss as a result of such breach. Former Chief Justice Michael Barnett determined that, the Plaintiffs right to payment was limited to the redundancy payments under Article 20.7 of the Industrial Agreement and any accrued vacation entitlement. Lastly, Michael Barnett, CJ at paragraph 17 stated that, which is relied upon by Mr. Ferguson, the Plaintiffs were entitled to receive their monies without being obliged to sign any release to the Defendant as was required by the Defendants May 13, 2011 letter.

71. As I understand the case of **PAO-ON and Others v LAU YIA Long and Others (supra)** the Court's determination was two-fold, firstly whether past consideration of a promise to perform a pre-existing contractual obligation to a third party amounted to good consideration and whether the contract was obtained as a result of duress. The facts are the plaintiffs were the owners of the issued share capital of a private company whose principal asset was a building under construction. The defendants were the majority shareholders of a public company which wished to acquire the building. In February 1973 the plaintiffs agreed in writing with the public company (the main agreement) to sell their shares in the private company to the public company. The parties agreed that no money was to pass under the agreement but that the price of the shares was to be satisfied by an issue to the plaintiffs of shares in the public company. So as not to depress the market for the public company's shares the plaintiffs undertook at the defendants' request to retain 60 per cent of their newly acquired shares until after April 30, 1974. The plaintiffs and the defendants agreed orally that the plaintiffs should be protected against any loss from a possible fall in the value of those shares between the date of acquisition and April 30, 1974, and, accordingly, they entered into a subsidiary agreement by which the plaintiffs agreed to sell and the defendants agreed to buy 60 per cent of the allotted shares on or before April 30, 1974~~5~~ at \$2.50 a share.

72. In April 1973 the plaintiffs realised that in protecting themselves by the subsidiary agreement against a possible fall in share prices they had in effect also agreed to forgo any profit from a possible rise in the market in respect of 60 per cent of their holding. They refused to complete the main agreement with the public company unless the defendants agreed to a cancellation of the subsidiary agreement and its replacement by the defendants' entering into a guarantee by way of indemnity. The defendants, fearing the delays of litigation and that if completion did not take place forthwith the public would lose confidence in the public company, decided to accede to the plaintiffs' demands and signed a written contract of guarantee which stated that in consideration of the plaintiffs having agreed to sell their shares in the private company the defendants agreed to indemnify the plaintiffs (in the event of the closing market price of the shares on April 30, 1974, falling below \$2.50 a share) for any loss in respect of 60 per cent of their holding.
73. The sale under the main agreement took place and the plaintiffs retained 60 per cent of their shares in the public company. Before April 30, 1974 the share prices dropped, and the plaintiffs sought to rely on the contract of indemnity. The defendants refused to indemnify them. The plaintiffs successfully brought an action based on the indemnity in the High Court but, on appeal, the decision was reversed. The plaintiffs appealed to the Judicial Committee.
74. Firstly, on the issue of past consideration, it was held that the consideration for the guarantee was the promise to perform according to the other contractual agreement signed by the parties. Lord Scarman set out the test for determining whether past consideration can be valid consideration, namely: the act must have been done at the promisor's request; the parties must have understood that the act was to be compensated by payment or some other benefit; and the payment of benefit must have been legally enforceable had it been promised in advance.
75. Secondly, on the issue of duress Lord Scarman stated in part on page 635:-
"Duress, whatever form it takes, is a coercion of the will so as to vitiate consent. Their Lordships agree with the observation of Kerr J. in *Occidental Worldwide Investment Corporation v. Skibs A/S Avanti* [1976] 1 Lloyd's Rep. 293, 336 that in a contractual situation commercial pressure is not enough. There must be present some factor "which could in law be regarded as a coercion of his will so as to vitiate his consent. This conception is in line with what was said in this Board's decision in *Barton v.*

Armstrong [1976] A.C. 104, 121 by Lord Wilberforce and Lord Simon of Glaisdale - observations with which the majority judgment appears to be in agreement. **In determining whether there was a coercion of will such that there was no true consent, it is material to inquire whether the person alleged to have been coerced did or did not protest; whether, at the time he was allegedly coerced into making the contract, he did or did not have an alternative course open to him such as an adequate legal remedy; whether he was independently advised; and whether after entering the contract he took steps to avoid it.** All these matters are, as was recognised in *Maskell v. Horner* [1915] 3 K.B. 106, relevant in determining whether he acted voluntarily or not." (**emphasis mine**)

76. The Board ultimately found in favour of the Plaintiff and determined that past consideration is valid once the three considerations were met. Moreover, the Board determined that based on the evidence before it, the defence of economic duress as put forward by the Defendant was not established, it was simply commercial pressure.
77. Mr. Adams submits that as a result of the 7th – 15th, 17th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiffs executing Deeds of Release in favour of the 1st Defendant between June 24 and September 11, 2020 they are now estopped from continuing to assert their claims. He refers the Court to **Adderley and others v Bahamas Oil Refining Company International Limited (Trading as Vopak Terminal Bahamas)** [2014] 1 BHS J No. 97 in support of his submission and also refers the Court to **Kargail v Baha Mar Development Company Ltd. and another** [2012] 3 BHS J. No. 36. Mr. Adams submits that paragraph 39 of **Adderley and others v Bahamas Oil Refining Company International Limited (Trading as Vopak Terminal Bahamas) (supra)** outlines the Court's approach to Deeds of Release and their effect in law which he submits is highly instructive.
78. As the Court understands the case of **Adderley and others v Bahamas Oil Refining Company International Limited (Trading as Vopak Terminal Bahamas) (supra)** the Plaintiffs brought a claim against the Defendant Company for specific performance of a contract between them and the Defendant dated April 24, 2009, damages and the setting aside, wholly or in part, of deeds of release signed by each of the Plaintiffs in 2009 with respect to their former employment with the Defendant on the ground of fraudulent misrepresentation. The Defendant denied the Plaintiffs' claim for fraudulent

misrepresentation and stated that the disputes between the plaintiffs were compromised on or about June 12, 2009 whereby the Defendant agreed to pay a certain sum to each Plaintiff in exchange for being released and discharged from any and all further claims, demands and liabilities connected to the Plaintiffs respective employment, that the Plaintiff executed releases in favour of the Defendant and the Defendant was not obligated to pay health and life insurance premiums for them. During the trial the Plaintiffs gave evidence that during a June 2009 meeting the Defendant said that if they wished to receive their money they needed to sign something which would allow the money to be released to them and that they signed the paper which they understood to be a release. However, under cross examination they admitted that they read the release before signing it and agreed that the Defendant's then Human Resources Manager did not do or say anything that would have led them to believe that they were going to suffer physical harm if they did not sign the release. They also agreed that they could have turned down the Defendant's offer to settle the dispute and consulted a lawyer before signing the release. The Court in its decision stated at paragraph 39 that as a general rule, an aggrieved party is estopped from pursuing a remedy at law once he has executed a deed of release in favour of the other party and referred to the case of **Russia Gazette and Trade Outlook Ltd.** [1933] ALL ER 320 at p.320. The Court also referred to the case of **The Hotel Corporation of the Bahamas v Reverend Michael Pinder** Civil Appeal No. 65 of 2000 in support of its decision. The Court at paragraphs 49 to 51 ultimately determined :-

"49 Each of the plaintiffs admits to having received and accepted the sum proposed in the said letter and each of them admits to having signed a deed of release in which each acknowledged receipt of the amount therein stated, which amount was identical to the amount in the said letter of 12 June 2009. Further, although the plaintiffs say in their witness statements, as I understood them, that they did not realize the import or effect of the releases that they had signed, each of them admits to having read the terms of the release prior to signing the same and each admitted under cross-examination, that he/she knew that it was open to him or her to seek independent legal advice if he or she so chose prior to signing the release and accepting the funds from the defendant.

50 In the circumstances, I accept the submission of counsel for the defendant that the plaintiffs have failed to prove that there was any fraudulent misrepresentation on the part

of the defendant by which the plaintiffs or either of them was induced to sign the aforesaid release, and there is, therefore, no basis for setting aside the said releases, wholly or in part.

51 I find further that by signing the said releases, the plaintiffs, and each of them, thereby expressly released and discharged the defendant, its parent Company, subsidiaries, affiliates, directors, officers and agents from all actions, proceedings, claims, demands and liabilities whatsoever which the plaintiffs had or anytime thereafter may have or but for the execution of the said release would or might have had against the defendant for or in respect of their respective employment with the defendant and for or in respect of any matter or thing in any way relating thereto.

52 In my judgment, the plaintiffs, and each of them, as former employees of the defendant, are, by virtue of the deeds of release signed in June 2009, estopped from asserting a claim for further compensation from the defendant in relation to their former employment with the defendant.”

79. It is Mr. Adams' submission that similar to the claimants in **Adderley and others v Bahamas Oil Refining Company International Limited (Trading as Vopak Terminal Bahamas) (supra)** the 7th – 15th, 17th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiffs are all members of the 1st Plaintiff Union which is the Hotel's managerial and supervisory union and submits that they were represented by Counsel when the Deeds of Release were executed and therefore had the benefit of legal advice if they wished to obtain the same prior to the signing of the Deed of Release.

80. Additionally, Mr. Adams submits that similar to the claimants in **Adderley and others v Bahamas Oil Refining Company International Limited (Trading as Vopak Terminal Bahamas) (supra)** there is no evidence that the 7th – 15th, 17th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiffs were compelled to execute the Deeds of Release under duress and in the absence of the same, the Court cannot properly make a finding that they were executed by the Plaintiffs under duress. It is also his submission that the payment of the severance packages set out in the individual termination letters to the 7th – 15th, 17th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiffs was not conditional on the execution of the Deeds of Release and it would be misleading and inaccurate to suggest otherwise. Mr. Adams further submits that the releases executed by the 7th – 15th, 17th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiffs are on terms substantially similar to the

terms of the release upheld in **The Hotel Corporation of The Bahamas v Reverend Michael Pinder (supra)** and **Kargail v Baha Mar Development Company Limited and another (supra)** and as such the said releases are similarly valid and effective in law thus estopping the 7th – 15th, 17th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiffs from continuing this action against the 1st Defendant.

81. As I understand the case of **Kargail v Baha Mar Development Company Limited and another (supra)** the Appellant sought two declarations, namely: that her contract of employment was breached by her employer by failing to pay her wages earned for a certain period in 2008; that her wages included all forms of remuneration including gratuities and overtime pay; an order for an accounting of all gratuities earned for six years of her employment; and an order for the payment of all benefits for the period of notice, interest, damages and costs. The 1st Respondent's defence was that it never employed the Appellant and the Statement of Claim made no allegations against it that could constitute a cause of action. The Second Respondent's defence was that the Appellant was estopped from bringing the claim as she had signed a Deed of Release dated September 11, 2008, releasing and forever discharging the Second Respondent from all claims, demands and liabilities and all causes of action with respect to her employment on its termination. The lower Court struck out the Appellant's claim against the Respondents on January 10, 2010 following an application by the Respondents. The Court of Appeal determined that the Judge's ruling striking out the Appellant's action was, in light of the pleaded case, correct and responsive to the application. Additionally, Conteh, JA stated at paragraph 16 that "No where in the Statement of Claim did the appellant impeach the Deed of Release. This she could not do as the judge found she voluntarily signed it. Indeed she did not plead that she did not sign it, or was coerced into signing it." The Court of Appeal determined that the Appellant's appeal lacked any merit in the face of the learned judge's ruling striking out the action and dismissed the appeal.

Analysis and Discussion

82. Counsel for both parties have helpfully referred the Court to cases to which I find to be instructive in determining this issue.
83. The evidence before the Court is that 7th – 15th, 17th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiffs signed releases as found exhibited to the Affidavit of Veronica Clarke. The Affidavit evidence of Alexander Williams, Kyle Rolle, Renardo Sweeting, Ian L. Brown,

Kenrick Russell, Lia Bain-Karageorgiou, Keva McIntosh, Kashala Bowe, Dennis Forbes, Patrice Levaughn Dean, Jerry Albury, Adrea N. Burrows, Debbie Delancy-Greene (no release exhibited to Affidavit of Veronica Clarke), Barbara Glinton-Bartlett, Azure Major, Priscilla Poitier-Saunders, Lucille Cooper, Marsha Cooper, Reginald Harvey, Emmaline Russell, Estella Taylor, Delcine Dorsett, Deloris Stubbs, Jennifer Ellis, and Veronica Strachan-Mader was that agents of the 1st Defendant told them that to receive their cheque a deed of release must be signed. Additionally, the Affidavit evidence of Kirkland Russell, the 16th Plaintiff was that when he attempted to collect his cheque on July 31, 2020 he was told that to receive his cheque a deed of release must be signed but he refused to sign the same and that on August 10, 2020 when he attempted to collect his cheque he signed the deed of release but included a handwritten statement on the same. However, he states that he was told by the 1st Defendant's agent that she was instructed not to release his cheque if he wrote anything other than his known signature on the deed of release. It is also noted that there is no Affidavit evidence before the Court for the 14th -15th, 20th, 27th and 38th Plaintiffs (Wilton Brooks, Yiu Man Leung, Melissha Ellis, Clareta Rolle and Henderson Roberts) whereby they allege coercion on the part of the 1st Defendant and therefore there can be no finding of coercion on their behalf.

84. Mr. Russell is the only Plaintiff who has not received his cheque following receiving a termination letter from the Defendant.
85. The 1st Defendant's evidence as it relates to the deeds of release as contained in the Affidavit of Veronica Clarke and the second Affidavit of Michael Scott, QC is that the 7th – 15th, 17th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiffs have all executed deeds of release in favour of the 1st Defendant and after being advised from their attorney the Plaintiffs are now estopped from continuing their action against the 1st Defendant.
86. As with any action before the Court, he who asserts must prove. The above named Plaintiffs have all asserted that their signing of the deeds of release were as a result of coercion or duress. Although Mr. Ferguson refers to the case of **Pan On and others v Lau Yin Long** (supra) on the issue of duress, the Court is unable to see how the case is helpful to the Plaintiffs.
87. The test identified by Lord Scarman in **Pan On and others v Lau Yin Long (supra)** requires the Court when determining whether the person alleged to have been coerced of his/her will such that there was no true consent is to inquire (i) whether the above named

Plaintiffs did or did not protest; (ii) whether at the time the above named Plaintiffs were allegedly coerced into signing the release had or did not have an alternative course open to them such as an adequate legal remedy; (iii) whether they were independently advised; and (iv) whether after signing the deeds of release they took steps to avoid it.

88. The Deeds of Release are very clear and unambiguous. Recital C clearly speaks to the reason why the parties are entering into the Deed of Release. Of note is the statement that the Employee has voluntarily agreed to release the Hotel and its successors from all claims arising out of their employment or dismissal on terms for the payment of monies due to the Employee upon the execution and delivery of the Deed of Release by the Employee to the Hotel. Clause 1 sets out the legally required consideration passing both ways between the parties, that is, payment of monies by the Hotel to the Employee for and in full settlement of the claim and the release, discharge and the dismissal of the Hotel, its offers and assigns by the Employee of any and all claims that could be brought in connection with his or her employment or dismissal. Subject to the condition of confidentiality as regards third parties, Clause 2 provides that the Employee may disclose the terms of the Release with, among other persons its lawyers. By Clause 3 the Employee acknowledges that he has not entered into the Release upon reliance on any representation of or on behalf of the Hotel other than what is expressly contained in the Deed of Release. By Clause 4 the Employee acknowledges that he has read and understood the terms of the Deed and has had an opportunity to obtain legal advice prior to executing it. Clause 5 provides that the Employee recognizes that by signing the Release he releases any and all claims against the Hotel in connection with his employment and dismissal.

89. There is no evidence on behalf of the 1st Defendant refuting the above named Plaintiffs allegations as to what they were told by representatives of the 1st Defendant when signing the releases. I accept therefore that they were told that to receive their cheques a Deed of Release had to be signed. But, does this establish coercion or duress? Without more I think not. The evidence on behalf of the above named Plaintiffs relative to this issue is scant at best. Additionally, while Mr. Adams submits that the above named Plaintiffs were represented by Counsel when the deeds of release were executed and had the benefit of legal advice if they wished to obtain it prior to signing the same, once again there is no

evidence before this Court that those Plaintiffs who signed the Deeds of Release received legal advice prior to the filing of the Originating Summons on July 2, 2020.

90. The Oxford Dictionary defines duress as compulsion, especially illegal threats or violence (under duress); imprisonment. The evidence on behalf of the above named Plaintiffs did not rise in my view to this standard.
91. Considering the evidence before the Court relative to the signing of the deeds of release and the relevant authorities I do not find that the above named Plaintiffs have satisfied the test laid down by Lord Scarman in **PAO-ON and Others v LAU YIA Long and Others (supra)**. The above named Plaintiffs did not lead any evidence as to any outcry or protest as to the requirement to execute the deed either at the time of execution or shortly thereafter. The only evidence as to their protest is found in their Affidavits filed several months later after this action was commenced. More so, one of the Plaintiffs, Kirkland Russell, attempted to collect his cheque on two different occasions, refused to sign and was not given his cheque. To my mind, this was an option available to the other Plaintiffs if they were of the opinion that they should not have to sign a release to receive their monies. A similar finding was made by Evans, J in **Adderley and others v Bahamas Oil Refining Company International Limited (Trading as Vopak Terminal Bahamas) (supra)**. There was nothing preventing the above named Plaintiffs from seeking redress in the Courts before executing the Releases. They could have sought a determination by the Court as to whether they were bound in law to sign the Releases before obtaining their monies. The Plaintiffs were represented by the 1st Plaintiff and there was nothing preventing them from seeking legal advice from a lawyer. The final limb of the test in **PAO-ON and Others v LAU YIA Long and Others (supra)** is whether the Plaintiffs after signing the Releases took any steps to avoid them. The Plaintiffs gave no evidence in this regard. Moreover, similar to the case of **Kargail v Baha Mar (supra)** the above named Plaintiffs did not plead any allegation of coercion or duress or seek to impeach the deeds of release in their Amended Originating Summons. They cannot now do so by way of Affidavit evidence.
92. Therefore, I do not find that there is any evidence from which the Court can reasonably conclude that the above-named Plaintiffs were coerced into executing the deeds of release or that any duress in any form was exerted on them to cause them to execute the same

and the 7th – 15th, 17th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiffs are estopped from continuing this action against the 1st Defendant.

Whether the employees were terminated and thereby made redundant in March 2020 or whether they were temporarily laid off

93. I now turn to the issue of the 16th Plaintiff's termination by the Defendant as his qualified Deed of Release was not accepted by the 1st Defendant.

Findings of Fact

94. None of the Affiants were cross-examined and so in considering the evidence adduced before the Court my findings of fact are based on the undisputed evidence of the parties and is as follows:-

- i. That on September 11, 2018 the 1st Defendant purchased the Grand Lucayan Hotel and as a result letters were sent to all employees informing them of the purchase and indicating that there would be no change in the terms and conditions of their employment as the 1st Defendant agreed to continue the employment of all staff.
- ii. That on March 2, 2020 the 1st Defendant and the Lucayan Beach Casino & Hotel entered into an agreement for sale for the Hotel with Bahamas Port Investments Limited.
- iii. That according to Clause 3.2 of the said Agreement for Sale one of the closing obligations was that "all contracts and agreements relating to the operation, upkeep, repair or maintenance of the Resort (collectively, "the Operating Agreements") have been terminated..." by the 1st Defendant.
- iv. That according to Clause 4.3.1 of the said Agreement for Sale it states "Prior to the Completion Date, the First Vendor shall terminate the employment contracts of all employees of the Resort and share copies of termination notices or letters as well as an affidavit from the First Vendor confirming this status."
- v. That on or about March 20, 2020 the Government of The Bahamas declared a State of National Emergency.

- vi. There being no evidence before the Court that the closure of the Hotel following the declaration of the State of National Emergency was permanent, I find that the Hotel was closed temporarily.
- vii. That between June 24 and September 11, 2020 the 1st Defendant conducted a termination exercise of the 7th – 21st, 23rd, 25th – 29th, 31st – 40th Plaintiffs.
- viii. That on June 29, 2020 the 16th Plaintiff along with other members of the 1st Plaintiff attended the executive offices of the Hotel whereby they demanded to speak to Veronica Clarke, Hotel Manager of the 1st Defendant; that the 16th Plaintiff informed persons who were there that they were Government employees and were reporting to work on the instructions of the Prime Minister of The Bahamas; that Mrs. Clarke informed the 16th Plaintiff and the other members that the Hotel was still not open for business; there were no guests in the Hotel and the borders did not open until July 1, 2020, that the 16th Plaintiff asked what were the instructions to the staff that morning; that Mrs. Clarke responded that the Hotel was still not operational and Management would call the staff at a later date, that the 16th Plaintiff asked if her instruction was for them to leave; that Mrs. Clarke responded that she did not know who invited them there.

95. Mr. Ferguson submits in part that there is a dispute as to whether the dismissal of the Plaintiffs which, in my determination, now only relates to the 16th Plaintiff amounts to redundancy pursuant to the provisions of the Amended Act or the terms and conditions of the expired Industrial Agreement. Additionally, he submits that the issue is whether Section 29 of the Employment Act or Section 26A of the Amended Act was the correct section to terminate the Plaintiffs. He further submits that Section 26A of the Amended Act provides the procedure for conducting dismissals resulting in redundancy and refers the Court to paragraphs 34 and 105 of the judgment in **Kayla Ward et. al v The Gaming Board for the Bahamas** 2017/CLE/gen/01506.

96. Mr. Ferguson also submits in part that there is a dispute between the parties as to whether the terms and conditions of the expired Industrial Agreement are binding on the 1st

Defendant. He submits that the evidence of the 16th Plaintiff found in his Affidavit filed July 2, 2020 relating to an action before the Industrial Tribunal in October 16, 2018 by Chairman Michael Scott is evidence that he (i.e. Mr. Scott) accepted the expired terms as contractual and enforceable terms of the Plaintiffs contract of employment. Mr. Ferguson further submits that the 1st Defendant honoured those terms up to March 19, 2020 and sought to rely on them as some Plaintiffs' compensation was paid pursuant to the same. Additionally he submits that the letters from the two top executives on September 10, 2018 to each member of the 1st Plaintiff and the President of the 1st Plaintiff confirms the same.

97. Mr. Ferguson refers the Court to the case of **Leon Cooper v Grand Bahama Power Company SCCiv App No. 178 of 2017** and submits that that case can be distinguished from the instant case regarding the issue of the continuation of the terms and conditions of an Industrial Agreement upon the expiration of the same. He further submits that in **Leon Cooper v Grand Bahama Power Company (supra)** the continuation provision in the expired Industrial Agreement if implemented would have taken that Agreement beyond the statutory five year period. However it is his submission that in the instant case the 1st Plaintiff as bargaining agent had reached an impasse in negotiating a new Industrial Agreement as the impasse had been referred to the Industrial Tribunal to begin the process of a hearing aimed at completing the Industrial Agreement. He also refers the Court to **Bahamasair Holdings Limited v Omar Ferguson SCCiv App No. 16 of 2016** at paragraph 53 in that that case is to be contrasted with the instant case. Additionally he submits that in **Hutchinson Lucaya Limited v Commonwealth Union of Hotel Services & Allied Workers et al. SCCiv App No. 61 of 2014** it was stated that unless there was some evidence that the parties agreed as to honouring the terms and conditions of the expired Industrial Agreement outside of the agreement then it continues but in the absence of the same those terms and conditions expire when the agreement does. It is his submission that the admissions by Mr. Scott, QC on October 16, 2018 in his Form E Defence before the Industrial Tribunal ("that he would be guided by the terms of the expired Industrial Agreement) is binding on the members of the 1st Plaintiff and the 1st Defendant.
98. Mr. Ferguson submits that the 1st Defendant terminated the 16th Plaintiff on March 20, 2020 without pay as no notice was given and no notice pay was offered in breach of his

employment contract amounting to wrongful dismissal. He refers the Court to page 142 of **Labor Law in the Bahamas** whereby the late Osadebay, JA as he then was stated that as a general rule there is no general right of an employer to lay off employees at common law without pay. The late Osadebay, JA as he then was stated "There is no general right in an employer to lay-off employee at common law without pay. Lay-off practice occurs when an employer can send an employee home without pay for a period of time on the ground that the business is not making enough money to support the employee's wages or salary. At common law an employer is not obliged to provide work for an employee to do provided that the employee receives his salary or wages. It follows that unless the Court puts a seal of approval on the practice within that industry as an accepted custom or unless provided for in a contract, the employer would find that he still has to pay the employees wages during the period of the lay-off. If an employer chooses to send an employee home on a lay-off common law provides that such an employee is still an employee and must receive or continue to receive his wages or salary during the period of lay-off." Mr. Ferguson submits that the 1st Defendant wrongfully and unfairly dismissed the 16th Plaintiff by breaching clause 17.8 of his contract of employment and Section 26A of the Amended Act.

99. It is also his submission that Section 43 of the IRA (the Employment Act) provides an entitlement to the 16th Plaintiff to be reinstated for breach of an implied statutory term not to be unfairly dismissed and it is an implied term that an employer when exercising his/her power to dismiss an employee should be exercised fairly and in good faith. He refers the Court to paragraphs 53, 54 and 55 in **Bahamasair Holdings Limited and Omar Ferguson** SCCiv App No. 16 of 2016. Mr. Ferguson also submits that the 1st Defendant failed to produce any evidence as to how the 2nd/16th Plaintiff was chosen to be made redundant and referred the Court **Oilfield Workers' Trade Union v PCS Nitrogen Trinidad Limited** TT 2008 IC 22 whereby Mahabi, M said "Consultation is one of the pillars of modern industrial relations practice and requires an employer to be candid and forthright with his employees". He further refers the Court to paragraphs 205 and 206 in **Kayla Ward et al v The Gaming Board for the Bahamas (supra)**.

100. Mr. Ferguson further submits that even if it is considered that lay-off without pay is not termination, Section 28C (1) of the Amended Act refers to redundancy. Moreover, he submits that the evidence of the 1st Defendant (Michael Scott, QC) was that the 1st

Defendant knew from October 16, 2018 that it was in transition and as such anticipated a sale of the property. Therefore, upon becoming aware of the date of the sale there was an obligation to terminate all employment contracts before the end of July 2020, thus Section 26A of the Amended Act made it mandatory for the 1st Defendant to follow the redundancy procedures outlined in that provision. He refers the Court to paragraph 34 of **Kayla Ward et. al v The Gaming Board of The Bahamas (supra)** in support.

101. It is his submission that Section 26A of the Amended Act imposes a statutory obligation on the 1st Defendant to consult, in particular the selection process with the Union which he states is necessary. He also submits that the said section required the 1st Defendant to have consulted the Minister of Labor in writing however, neither was done prior to terminating the 16th Plaintiff. Mr. Ferguson further submits that the 1st Defendant cannot resile from complying with the provisions of Section 26A of the Amended Act and refers the Court to **Bahamasair Holdings Limited v Omar Ferguson (supra)** in support and submits that the Court determined that the employer failed to recognize the overarching scope of Section 34 of the Employment Act.

102. Mr. Ferguson submits that the 16th Plaintiff is also entitled to be reinstated pursuant to Section 43 of the Employment Act as the 1st Defendant failure to follow the procedures in Section 26A of the Amended Act, clause 13.1 and 17.8 of the expired Industrial Agreement amounts to unfair dismissal and as such the remedies at Sections 42 and 43 of the Amended Act are available to the 16th Plaintiff. He refers the Court to paragraphs 178 and 179 of the ruling in **Kayla Ward et. al. v The Gaming Board of The Bahamas (supra)**. Additionally, he submits that the 1st Defendant breached the 16th Plaintiff's contract of employment thus entitling him to damages and compensation pursuant to the Section 47 of the Employment Act and the expired terms of the Industrial Agreement. **See Bahamasair Holdings Ltd v Omar Ferguson (supra)**.

103. Additionally, he submits that the 1st Defendant's failure to pay the 16th Plaintiff's wages from March to June 2020 is a fundamental breach of the 16th Plaintiff's contract of employment and such a breach entitles the 16th Plaintiff's damages and compensation to which he says amounts to unfair dismissal.

104. Mr. Ferguson refers the Court Section 35 to 40 of the Employment Act and relies on the ruling of Conteh, JA at paragraphs 53 to 55 in **B.M.P. Limited DBA Crystal Palace Casino v Yvette Ferguson** IndTrib App No. 116 of 2012.

105. Mr. Adams submits, in part, that the terms of clause 13.1 dealing with redundancy would not be of any assistance to the 1st and 2nd Plaintiffs because the expired Industrial Agreement is no longer in force and its terms are not legally binding on the parties. He refers the Court to **Cable Beach Resort Limited v Bahamas Hotel Catering and Allied Workers Union [2015]** 2 BHS J No. 51 per Jones J. at paragraphs 71-76 and affirmed by the Court of Appeal in **The Bahamas Hotel Catering and Allied Workers Union v Cable Beach Resort Limited and another [2017]** 2 BHS J. No. 111 and **Grand Bahama Telephone and Communication Workers Union v Grand Bahama Telephone Co. [1987]** BHS J. No. 121 per Georges C.J. at paragraph 76 in support of his submission. Additionally, Mr. Adams submits that upon the expiration of the Industrial Agreement the provisions of the Employment Act kicks in therefore in the instant case the provisions contained in Section 28 of the Amended Act which gave the employers throughout the country the right to lay off without pay or place on short-time without automatically incurring liability for redundancy kicked in.

106. Mr. Adams submits that clause 13.1 of the expired Industrial Agreement and Section 26(2) of the Amended Act contains the same definition of redundancy which provides that an employee shall be deemed to be dismissed for redundancy if his dismissal is wholly or mainly attributable (attributed) to (a) the fact that his employer ceased, or intends to cease, to carry on the business for the purpose of which the employee was employed by him, or has ceased or intends to cease to carry on business in the place where the employee was so employed; or (b) the fact that the requirements of that business for employees to carry out work of a particular kind in the place where he was so employed, have ceased or diminished or are expected to cease or diminish; Provided that an employee shall not be deemed to be dismissed for redundancy where such employee is required to carry out work for a fixed term of less than two years in respect of a specific construction project and such term has come to an end. Mr. Adams also refers the Court to Section 26A of the Amended Act and submits that in order for clause 13.1 of the expired Industrial Agreement and/or Section 26A of the Amended Act to operate, the 1st and 2nd Plaintiffs (also the 16th Plaintiff) must establish by way of credible evidence that the 16th Plaintiff's dismissal was wholly or mainly attributable to either (i) the fact that the Hotel ceased, or intended to cease, to carry on the business for the purpose of which the 16th Plaintiff was employed by it or has ceased or intends to cease to carry on that

business in the place where the 16th Plaintiff was so employed or (ii) the fact the requirements of the Hotel's business for the 16th Plaintiff to carry out work of a particular kind or for the 16th Plaintiff to carry out work of a particular kind at the Hotel, has ceased or diminished or was expected to cease or diminish.

107. Additionally, Mr. Adams submits that following the execution of the Emergency Orders by the Governor General of The Bahamas on March 17, 2020, the Government issued a series of regulations and restrictions aimed at slowing the spread of COVID-19 in The Bahamas and protecting public health. He submits that one of the regulations issued by the Government, the Emergency Power (COVID 19) (Special Provisions) (Amendment) (No. 6) Order, 2020 made on May 26, 2020 amended the provisions of the Amended Act 2017, in particular suspending Section 28C of the Amended Act (which referred to the lay-off provisions) for the duration of the period of the state of public emergency and 30 days thereafter. He submits that the Hotel ceased operations as a result of the COVID-19 pandemic which was during the period the State of Public Emergency was declared and therefore Section 28C of the Amended Act applies to the 16th Plaintiff's employment with the 1st Defendant by virtue of the provisions of the Emergency Power (COVID 19) (Special Provisions) (Amendment) (No. 6) Order, 2020. Mr. Adams further submits that the legal effect of the above was to render the 16th Plaintiff as an employee "laid-off" and not an employee made "redundant." He refers the Court to Section 28(2)(a)(i) and (ii) of the Amended Act which provides the statutory definition of an employee 'laid-off'. Moreover, Mr. Adams submits that by virtue of Section 28C(2) of the Amended Act, the 16th Plaintiff as an employee in the hospitality industry who was laid off due to the temporary cessation of the 1st Defendant's business operations during and by reason of the State of Emergency cannot claim 'redundancy' after the elapse of 12 weeks. Furthermore he submits that even if the 12 week period applied to the 16th Plaintiff by virtue of Section 28C of the Amended Act, paragraph 2 of the Emergency Powers (COVID 19) (Special Provisions) (Amendment) (No. 6) Order, 2020 (and further paragraph 8 of the Emergency Powers (COVID 19) (Special Provisions Order, 2020) made on 30 June, 2020 would apply. Therefore, it is Mr. Adams' submission that the 16th Plaintiff cannot properly assert that by reason of the temporary cessation of the Hotel's operations during the period of the declared State of Public Emergency, he has been dismissed by reason of 'redundancy'.

108. Mr. Adams submits that the 1st Defendant terminated the 16th Plaintiff's contract of employment with notice and elected to pay compensation in lieu of notice and referred the Court to the 16th Plaintiff's termination letter exhibited at "VC.4" in the Affidavit of Veronica Clarke. He submits that the right of an employer to dismiss an employee 'with notice' is recognized in Section 29 of the Act and stands separate and apart from the right of an employee to dismiss an employee for 'redundancy'. He refers the Court to paragraphs 17-34 of **Leon Cooper v Grand Bahama Power Company (supra)**. It is his submission that at all times the 1st Defendant, as employer was entitled to exercise its right to dismiss the 16th Plaintiff with notice and that the 16th Plaintiff's contract of employment did not contain any clause prohibiting the 1st Defendant from exercising the same even during the State of Public Emergency period or before a change in the ownership of the Hotel given that the 1st Plaintiff had previously agreed with the Hotel that it had a right to do so at clause 21 of the expired Industrial Agreement. Therefore, the 1st Defendant's dismissal of the 16th Plaintiff as an employee was lawful.

109. Mr. Ferguson in response submits in part that the 1st Defendant signed the Agreement for sale on March 2, 2020 and on March 17, 2020 the Government of The Bahamas announced the Emergency Orders. He states that on March 20, 2020 the 1st Defendant laid off approximately 40 out of 63 staff and on June 24, 2020 the 1st Defendant terminated 40 workers. Mr. Ferguson submits the Emergency Orders (and the subsequent regulations) made by the Governor General was not gazetted at the time of the termination on June 24, 2020 and as such did not make the Act (i.e. the Emergency Orders) valid as it was gazetted on June 30, 2020.

110. He also submits that the termination letter does not make reference to Section 29 of the Employment Act but instead only references the dismissal and compensation being done in accordance with past practices. He states that the past practices referenced by the 1st Defendant in the termination letters is what had transpired in June 7, 2019 whereby a similar termination exercise occurred with reference to the expired Industrial Agreement.

111. Mr. Ferguson submits in response that in the instant case the Plaintiffs are not asking for the Court to accept the provisions in the expired Industrial Agreement as continuous and that it is accepted that the Industrial Agreement is expired (See Transcript November 13, 2020, page 70, lines 24 to 32).

Analysis and Discussion

112. The 16th Plaintiff's initial claim was for redundancy, wrongful and unfair dismissal pursuant to the provisions of the Employment Act and the Amended Act, the expired Industrial Agreement and breach of the individual employee contracts. As I understand his case, Mr. Ferguson's position now is that the 16th Plaintiff is not asking for the Court to accept the provisions in the expired Industrial Agreement as continuous and he accepts that the Industrial Agreement is expired. All along Mr. Adams has argued that clause 13.1 of the expired Industrial Agreement dealing with redundancy is no longer in force as the terms of the expired Industrial Agreement are not legally binding on the parties. This I accept because the case law supports this position. Additionally, Mr. Adams submits that upon the expiration of the Industrial Agreement the provisions of the Employment Act kicked in therefore in the instant case the provisions contained in Section 28 of the Amended Act which gave the employers throughout the country the right to lay off without pay or place on short-time without automatically incurring liability for redundancy kicked in. The Court accepts Mr. Adams' submission save that I am not satisfied that he has provided authority for the proposition that Section 28 of the Amended Act gives the employer the right to lay off an employee **without pay.(emphasis mine)**
113. Therefore, as the 16th Plaintiff does not dispute that the Industrial Agreement expired and the Court having accepted Mr. Adams' submission that the terms of the expired Industrial Agreement were not binding on the 1st Defendant and also that the terms and conditions of the same were not incorporated into the individual employment contracts (**The Bahamas Hotel Catering and Allied Workers Union v Cable Beach Resort Limited and another [2017] 2 BHS J. No. 111 ; Leon Cooper v Grand Bahama Power Company (supra)**), the 16th Plaintiff could only be subject to the provisions of the Employment Act and the Amended Act.
114. Mr. Ferguson's submission as I understand it to be is that the 16th Plaintiff was terminated on or around March 20, 2020 when the Government of The Bahamas declared a state of National Emergency and the closure of the Hotel as a result amounted to the termination of the 16th Plaintiff without pay or notice, in breach of his employment contract

and also made him redundant. His submission is not supported by the evidence before the Court and the relevant case law and legislation. It was not disputed between the parties that the State of Emergency was declared by the Government of The Bahamas and as a result of such declaration the Hotel was closed. Additionally, as I have made a finding of fact that such closure by the Hotel in March 2020 was done on a temporary basis and not permanently (See para 8 of Affidavit of Veronica Clarke and para 6 of Affidavit of Michael Scott filed July 14, 2020), I conclude that the 16th Plaintiff was deemed a "laid off" employee pursuant to Section 28(3) of the Amended Act (see also evidence of 16th Plaintiff, para 6 of Second Supplemental Affidavit of Kirkland Russell). Therefore, I find that the provisions relative to redundancy as found in Section 26 of the Amended Act are not applicable.

115. As I have made a finding of fact that the 16th Plaintiff was laid off following the declaration of the State of National Emergency, the provisions of Section 28 of the Amended Act must be further examined. Section 28(1) of the Amended Act prohibits an employer from laying off an employee unless one of the reasons specified in subsection (3) of the Amended Act is satisfied and that Section 28A of the Amended Act is complied with. Section 28(3)(a) and (b) of the Amended Act provides that the employer may lay off employees "where the employer has temporarily ceased or intends to temporarily cease to carry on the business for the purposes of which the employee was employed for or to carry on the business in the place where the employee was employed and that the requirements of the business for the employees to carry out the work of a particular kind in the place where the employee was employed have temporarily ceased or diminished or are expected to temporarily cease or diminish".

116. Section 28A(1) of the Amended Act places an obligation on the employer in the event of layoffs or intended layoffs to consult with the Minister and to include the method of selecting employees, the period over which the lay off or short time is to take place and any measures the employer might be able to take to find alternative employment. There is no evidence that such consultation took place either immediately before the layoffs or shortly thereafter. In reviewing these provisions I find that the 1st Defendant had an obligation to carry out the consultations as provided for by Section 28A of the Amended Act prior to laying-off the 16th Plaintiff. I am of the view however, that the failure to consult does not vitiate the layoff and as the Amended Act does not impose a penalty

on the employer for such failure I find that it does not give rise to any monetary claim (unlike in the case of redundancy).

117. Section 28B provides that the period of lay-off shall not be treated as interrupting the continuous employment of that employee. In the Second Supplemental Affidavit of the 16th Plaintiff filed October 29, 2020 he exhibits a schedule setting out his entitlements and indicates therein that he was laid off on March 28, 2020 and was terminated, he says on July 31, 2020. His termination letter is however dated July 24, 2020. It is the 1st Defendant's case that the Hotel was closed on March 20, 2020. The 1st Defendant has not lead any evidence to rebut the assertion that the 16th Plaintiff ceased working on March 28, 2020. It is open to the Court on this evidence to conclude that he was not paid from the March 28, 2020 to the date of his termination by the Hotel.

118. Halsbury's Laws of England, Volume 39 under the chapter dealing with employment at paragraph 28, under the rubric "Payment of wages during lay-off or short time" provides:

"Whether an employer has a right to lay off an employee or shorten his hours, and, if so, on what terms, will often be governed, in a trade where it is particularly relevant, by a collective agreement or by express terms in the contracts of employment of the employees affected. As in the case of the payment of wages during sickness, there are no general rules of law and the matter depends ultimately on the terms of the contract. If there is no express term, an employer may seek to establish an implied term permitting lay-off or short-time working; and, in reaching its decision, a court may, in particular, look at custom and practice in the trade at previous dealings and at the nature of the work in question. If, however, there is no term, express or implied, allowing the employer to lay off or shorten hours, then, as long as the employee remains ready and willing to work the normal hours, he may bring a claim for his normal wages, since there is no inherent power at common law for an employer to suspend an employee without pay".

119. Mr. Ferguson drew the Court's attention to page 142 of Labour Law in The Bahamas by the late Osadebay, JA which I agree outlines the position in The Bahamas in connection with lay off. There has been no evidence adduced before the Court that the

contract of employment contained a term relating to lay off without pay nor has there been evidence that the same is a custom in the industry. But I do not agree with Mr. Ferguson's assertion that the 1st Defendant terminated the 16th Plaintiff in March 2020. The 16th Plaintiff's pleaded case is that the failure to pay him wages during the lay off period is a fundamental breach of his employment contract. I disagree as I find that although the failure to pay wages during the layoff was a breach of contract it was not a fundamental breach that went to the root of the contract of employment. Therefore I accept that Section 28B of the Amended Act treats the period of lay-off as the continuous employment of that employee and as such the 16th Plaintiff's wages for the period of lay-off to the termination exercise less any National Insurance Board of The Bahamas unemployment benefits for that period should be paid to the 16th Plaintiff.

120. Mr. Adams has submitted that the Emergency Powers (COVID 19) (Special Provisions) (Amendment)(No.6) Order 2020 made on May 26, 2020 suspended Section 28C of the Amended Act and as a result the 16th Plaintiff cannot claim redundancy after the elapse of 12 weeks. Mr. Ferguson's submission that the Emergency Orders (and the subsequent regulations) made by the Governor General was not gazetted at the time of termination on June 24, 2020 is not in my view correct. The Emergency Powers (COVID 19) Regulations, 2020, which was deemed to come into force on March 17, 2020 at Section 21(3) states "Notwithstanding the provisions of section 31 and 32 of the Interpretation and General Clauses Act (Ch. 2), an order made under these Regulations shall have effect notwithstanding that the order has not been published in the gazette or laid before the House of Assembly". Therefore, I do not accept Mr. Ferguson's submission that the Emergency Powers (COVID 19) (Special Provisions) (Amendment) (No. 6) Order 2020 made on May 26, 2020 which amended the provisions of the Amended Act, suspending Section 28C is invalid.

Whether the 1st Defendant Was Entitled to Terminate the Employees Between June 24 and September 11, 2020 With Notice or Whether the Said Termination Amounted to Redundancy

121. Reviewing the pleadings, in particular the Amended Originating Summons, the Plaintiffs seeks several declarations however, these declarations (that the 1st Defendant was bound to follow redundancy procedures before dismissal pursuant to Section 26A of

Amended Act and clause 13.1 of contract of employment) presupposes or presumes that the dismissal exercise that occurred between June and July 2020 was as a result of redundancy and not termination with notice. The Plaintiff also seeks various other declarations from which they claim wrongful and unfair dismissal under the presumption that the dismissal exercise was a result of redundancy.

122. Section 26 of the Amended Act deems an employee redundant if the dismissal is wholly or mainly attributable to the fact that his employer has ceased or intends to cease to carry on the business for the purpose of which the employee was employed or the work required to be carried out by the employee where he was employed has ceased, diminished or are expected to cease or diminish. The qualifying proviso says that 'cease' and 'ceased' means to come to an end permanently and 'diminish' and 'diminished' means to be reduced. As I have made a finding of fact that the closure of the Hotel in March 2020 was as a result of the declaration of the State of National Emergency and such closure was done on a temporary basis, I do not accept that the 1st Defendant's operation came to an end permanently. Additionally, in finding that the 1st Defendant's operation did not come to an end permanently, I do not find that the position held by the 16th Plaintiff as Head Chef was a position that ceased or diminished, i.e. that it was a position that the 1st Defendant was no longer seeking to be fulfilled permanently.

123. Mr. Ferguson has relied on the case of **Kayla Ward et. al v the Gaming Board (supra)** as instructive to the instant action. In that case the Plaintiffs brought an action against the Gaming Board seeking damages for breach of contract, wrongful dismissal, unfair dismissal and reinstatement following the termination of their employment between October 2017 and February 2018. The Plaintiffs that had managerial/supervisory status and those who were a part of the Bahamas Public Services Union alleged that their dismissal amounted to redundancy and not termination with notice pursuant to Section 29 of the Employment Act and as such the appropriate procedures had not been followed. The termination letters received stated that the Plaintiffs dismissals was a result of a restructuring exercise aimed at achieving organizational efficiency (i.e. the regulatory needs of the industry had become more techno-centric than labour intensive). On the issue relating to whether the Plaintiffs termination amounted to redundancy, the Court determined that based on the uncontroverted evidence by the Plaintiff, the Gaming Board had "embarked on a restructuring exercise in an effort to decrease its staffing because it

became more tech-centric than labour intensive". Additionally, Counsel for the Plaintiffs in that case referred Justice Charles to page 452 of *Commercial Finance Co Ltd (in liquidation) v Ramsingh-Mahabir* (1994) 45 WIR 447 whereby Lord Slynn of Hadley stated "*It is plain that the term 'retrenchment' means termination for the reason of redundancy, and redundancy means the existence of surplus labour in an undertaking for whatever cause. It does not apply to the termination of employment simply because the business has ceased to exist. Retrenchment contemplates that the business will continue in existence but that there are too many workers for the purposes of the business so that some have to be made redundant*". Justice Charles determined at paragraph 46 of her ruling that the Gaming Board had an "existence of surplus labour" and the requirements of the Gaming Board for employees to carry out a work of a particular kind, had diminished and/or was expected to diminish. In making that finding, Justice Charles also determined that the Gaming Board failed to follow the redundancy procedure as outlined in S. 26A of the Amendment Act; awarded the Plaintiffs damages for their unfair dismissal pursuant to Section 37 of the Act, found that the Gaming Board was in breach of the Industrial Agreement by failing to follow the proper redundancy procedure and awarded the Plaintiffs damages for wrongful and unfair dismissal, that the Plaintiffs were to be reinstated or entitled to damages in accordance with Section 42 of the Act and entitled to compensatory damages in accordance with sections 37, 46, 47 and 48 of the Act.

124. Mr. Adams's submission in respect of the employer's right to terminate with notice are set out above at paragraph 108.

125. While the case of **Kayla Ward et. al v The Gaming Board (supra)** is instructive, the particular kind of work the Plaintiffs in that case had previously carried out was to be diminished, i.e. the Defendant sought to move away from more labor-intensive roles and recognized that the industry had become more techno-centric. However, in the instant case, there is no evidence before the Court that (i) the operations of the Hotel was to cease permanently as provided for in Section 26(2)(a) of the Amended Act or (ii) the particular kind of work in which the 16th Plaintiff was engaged had ceased or diminished or was expected to cease or diminish. The 16th Plaintiff's evidence as found in his Affidavit filed July 2, 2020 is that he was the Head Chef for the Grand Lucayan. It is reasonable to infer that a part of the operations of a hotel would require a chef and in particular a Head Chef to manage and maintain line staff that falls under his department. I do not find that

the 1st Defendant's termination exercise between June and September 2020 of the 16th Plaintiff amounted to redundancy. As a result of this finding Section 26A of the Amended Act to consult the Union and the resulting provisions in respect of compensation do not apply.

126. Therefore, I accept the position by Mr. Adams that the 1st Defendant had a right to terminate the 16th Plaintiff with notice during the termination exercise between June 24 to September 11, 2020 pursuant to Section 29 of the Employment Act.

Disposition

127. Having therefore reviewed and considered the aforesaid Affidavits, having heard Counsel on behalf of the parties, having read and considered the submissions of Counsel for the Plaintiffs and the 1st Defendant and the authorities referred to and primarily for the reasons advanced by Counsel for the 1st Defendant, I make the following orders that:-

- i. The 1st-6th Plaintiffs were not employees of the 1st Defendant and as such were not entitled to any of the relief sought and their claims are dismissed;
- ii. The 7th – 15th, 17th – 21st, 23rd, 25th – 29th and 31st – 40th Plaintiffs are estopped from pursuing this action against the 1st Defendant and as such their claims are dismissed;
- iii. The 14th -15th, 20th, 27th and 38th Plaintiffs having adduced no Affidavit evidence is not entitled to any of the relief sought and their claims are dismissed; and in any event having signed deeds of release they are also estopped from pursuing a claim against the 1st Defendant;
- iv. The 16th Plaintiff is entitled to his wages less any NIB unemployment benefits received between March 29, 2020 to July 24, 2020;
- v. The 16th Plaintiff is entitled to his notice pay pursuant to Section 29 of the Employment Act;
- vi. The 16th Plaintiff is not entitled to compensation pursuant to Section 47 of the Employment Act;
- vii. The 16th Plaintiff is not entitled to be reinstated pursuant to Section 43 of the Employment Act; and
- viii. The 16th Plaintiff's claim for declaratory relief sought in the Amended Originating Summons is hereby dismissed.

Costs

128. Counsel for the Plaintiffs claim an order for costs against the 1st Defendant and Counsel for the 1st Defendant submits that costs should follow the event. The general rule is that costs should follow the event and I see no reason to depart from that general rule. The 1st Defendant is awarded its costs herein to be taxed if not agreed.

This 3rd day of June, 2021


Petra M. Hanna-Adderley
Justice

