IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2020/COM/lab/00050

B E T W E E N

COLYN HOLLINGSWORTH

Claimant

AND

THE BAHAMAS TELECOMMUNICATIONS COMPANY LTD

Defendant

Before the Honourable Justice Simone I Fitzcharles

Appearances:	Mr Sidney Cambridge with Ms Krystian Butler for the Claimant Mr Raynard Rigby KC with Ms Asha Lewis for the Defendant
Hearing/Submission Dates:	25 October 2022; 29 November 2022; 05 April 2023; 03 June 2025; 09 January 2026

JUDGMENT

FITZCHARLES, J

[1] This is a claim by a former employee of The Bahamas Telecommunications Company Ltd (then known as 'BaTelCo') for an alleged breach of contract. Mr Colyn Hollingsworth (the "Claimant" or "Mr Hollingsworth") claims that he was underpaid in respect of the compensation to which he was entitled upon his acceptance of a voluntary separation package from the Defendant (the "Corporation", "BTC" or the "Defendant").

[2] There are other claimants who have brought similar actions which were, by consent, consolidated with the present claim by the Order of Assistant Registrar E. S. Charlton given on 28 May 2014. (This is confirmed by the Assistant Registrar's handwritten note of that hearing which appears on the Court's file). Mr Hollingsworth's action (then FP/COM/lab/No. 20 of 2005) was slated to be the lead action for the purposes of determining the claims.

[3] Save for my discussion and findings on limitation in this judgment, which pertain solely to Mr Hollingsworth's claim, the additional Supreme Court cases affected by this judgment are: FP/COM/lab/No. 8 of 2005, FP/COM/lab/No. 9 of 2005, FP/COM/lab/No. 10 of 2005, FP/COM/lab/No. 11 of 2005, FP/COM/lab/No. 12 of 2005, FP/COM/lab/No. 13 of 2005, FP/COM/lab/No. 14 of 2005, FP/COM/lab/No. 15 of 2005, FP/COM/lab/No. 16 of 2005, FP/COM/lab/No. 17 of 2005, FP/COM/lab/No. 18 of 2005, FP/COM/lab/No. 21 of 2005, FP/COM/lab/No. 39 of 2004, FP/COM/lab/No. 40 of 2004, FP/COM/lab/No. 41 of 2004, and FP/COM/lab/No. 42 of 2004.

[4] In defence of the claim, the Defendant submits that it did not breach its agreement with the Claimant, and that in any event, the claim is statute-barred and/or the Claimant accepted, without coercion, the terms of the voluntary separation package and signed a deed of release which contained a waiver. As such, it is argued that the Claimant is estopped from bringing this claim and has waived his right to do so.

The Facts

[5] It is common to the parties that the Claimant worked for the Grand Bahama Telephone Company (formerly 'Contel') ("GBTC"). In or around 1986, the Defendant purchased GBTC.

[6] By a letter dated 27 May 1986, the Defendant offered employment to the Claimant effective 1 July 1986. The material terms of the offer of employment were:

(1) the Corporation would honour the employee's prior years of service with GBTC when computing vacation benefits;

(2) the Corporation would honour the employee's years of service with GBTC should it become necessary to compute involuntary termination pay, provided the termination is not a disciplinary action;

(3) the employee is to be included in the Corporation's pension plan and medical insurance plan effective on the date of employment.

[7] In April 1999, in the context of a privatization and workforce adjustment exercise, the Defendant offered a Voluntary Retirement and Disengagement Package (the "Voluntary Package") to the Claimant. The general terms of that offer were set out in a Staff Notice dated 1 April 1999 and signed by its (then) General Manager.

[8] Among other information, the Staff Notice dated 1 April 1999 set out the following:

"STAFF NOTICE

"As a result of the decisions made by the Government of the Bahamas to privatize the Corporation and to accept the recommendations made to adjust the workforce, Batelco's Management wishes to advise employees that new Voluntary Retirement and Disengagement Agreement packages are being offered to members of the BCPOU and BCPMU effective 31st March 1999. These packages will be available to employees until the 30th April 1999.

The Packages are as follows:

Category I

Persons 55 years of age as of 30th June 1999 to 58 years: An incentive payment of eighteen (18) months.

Persons 58.6 above as of the 30th June 1999 will receive an adjusted amount up to 60 years of age.

Category II

Persons between 50-55 years of age as of 1st July 1999: An incentive payment of twenty (20) months salary.

Consideration will be given to including in the package any person who will obtain the age of 50 by 31st December 1999.

...

Personal letters will be sent to all persons in Category I and II on the 1st April 1999.

In addition to the incentive payment, employees opting to take advantage of the packages will receive the following payments:

Category I (55-60 years)

1. Gratuity for years of service as per the 1996 – 1999 Industrial Agreement
2. A Pension Lump Sum payment and a deferred monthly pension (minimum of 30% vested qualification)
3. Accrued Christmas Bonus
4. Accrued Vacation (if any)
5. Retirement gift (10 or more years of service qualification)

Category II (50-55 years)

1. Gratuity for years of service under the 1996 – 1999 Industrial Agreement
2. A Pension Lump Sum payment and a deferred monthly Pension (minimum of 30% vesting qualification)

3. Accrued Christmas Bonus
4. Accrued Vacation Bonus (if any)
5. Retirement gift (10 or more years of service qualification)

…

Employees who wish to consider taking a package may contact the Human Resources Department in order to receive a personalized accounting of the benefits they will be due to receive under the various categories."

[9] If an employee opted to reject the Voluntary Package, his or her employment would then be subject to normal redundancy procedures agreed between the relevant Union and the employer, provided the employee was identified for redundancy by the Corporation. It was accepted that the Voluntary Package payments were more generous than could be fetched under the normal redundancy formula prescribed by the Industrial Agreement.

[10] On or about 12 April 1999, the Claimant accepted the Voluntary Package. The parties' Agreed Statement of Facts records the package as effective 1 July 1999. Upon acceptance of the Voluntary Package, the Claimant also executed a Deed of Release in relation to the terms of the Voluntary Package. Materially, the Deed of Release contained, in part, the following provisions:

"WHEREAS:-

1. The Releasor is an employee of the Corporation and has accepted the voluntary disengagement package and the terms thereof offered by the Corporation to its employees.

2. The Releasor has confirmed with the Corporation and is satisfied that the package, details of which are set out in a letter dated 17th May, 1999 and attached hereto and accepted by the Releasor represents the complete amount to which the Releasor is legally entitled upon disengagement from the Corporation under any statute or otherwise.

NOW THIS DEED WITNESSETH:-

That in consideration of the monies now paid to the Releasor by the Corporation in full satisfaction of all entitlements due to the Releasor and the receipt of which the Releasor hereby acknowledges, the Releasor hereby releases and discharges the Corporation and its assigns and any and all agents or servants of the Corporation from all suits, causes of action, claims and demands whatsoever which the Releasor now has or at any time hereafter but for the execution of this deed could or might have had against the Corporation, its assigns, agents or servants for in respect of the said disengagement or for any matter or thing in anywise relating thereto."

[11] The Claimant signed the Deed of Release before a witness and also signed on 7 June 1999 a receipt clause at the foot of the Deed of Release, which provided:

"**I acknowledge that a disengagement payment amounting to $226,034.57 was made to me on the 7 day of June 1999 A.D. in full satisfaction of all monies due to me upon my disengagement from the Corporation.**"

The Pleadings

The Statement of Claim

[12] The Claimant's Statement of Claim sets out the essential points of agreement between the Corporation and GBTC employees as rehearsed above. He specifically emphasizes that the Corporation agreed to "honour all prior years of service with GBTC" if severance payments were ever to be made to the former GBTC employees. Further, he pleads his Union membership with the Bahamas Communication and Public Officers Union and /or the Bahamas Communication and Public Managers Union (the "Unions")

[13] Among other averments, the Claimant pleads that on or about April 1999, the Defendant offered the Voluntary Packages to employees "with the express warning to the Claimant that

> "Management wishes to invite you to give serious consideration to accepting this package. You should be aware, that if you opt not to avail yourself of this offer and are subsequently identified for disengagement, the terms of the Industrial Agreement in respect of redundancies will apply."

[14] The Industrial Agreement afforded less favourable terms. Further, the Claimant avers that although the Voluntary Package was published as "voluntary" there was an implied understanding by the Claimant and other staff members that if they did not sign to be disengaged they would have been made redundant by the Defendant under the less favourable terms than the Voluntary Package outlined in the Notice.

[15] By express terms agreed on 12 April 1999 by the Corporation with the Unions, for the purposes of computing the Claimant's entitlement under the Voluntary Package, it was agreed:

> "Credit will be given for years of service with CONTEL in respect of employees in Freeport; however, the 12 weeks for which they were previously paid will be deducted."

[16] Finally, the Claimant avers that the Defendant breached its contractual obligation under the agreements because, without the Claimant's consent, the Corporation refused or failed to take into consideration the Claiamnt's prior years of service with GBTC when calculating the Claimant's entitlement under the Voluntary Package and Pension Plan. Resultantly, the Claimant pleads that he has suffered loss and damage and claims damages for breach of contract, with interest and costs.

The Defence

[17] The Defendant firstly pleads that the action is statute-barred pursuant to Sections 5 and 12 of the Limitation Act 1995. The transfer of the Claimant's employment from GBTC to BaTelCo is pinpointed as taking place on or about June 1986.

[18] The Defendant, among other averments, denies it gave any such warning as is pleaded by the Claimant (see paragraph 12 above). However, the Defendant admits that in 1999 it was engaged in a Voluntary Disengagement exercise for its employees, which was carried out by BaTelCo (now BTC) at the material time. The Defendant denies and puts the Claimant to strict

proof of the allegation that the Claimant and other staff members understood by implication that if they did not take the Voluntary Packages, they would be made redundant under less favourable terms.

[19] The Defendant denies that it agreed to take the Claimant's years of service at GBTC into consideration for the purposes of calculating severance pay. Further, it is denied that the Defendant varied the Claimant's contract of employment without his consent in refusing to consider the GBTC years of the Claimant when calculating payments under the Voluntary Package and the Pension Plan.

[20] The Defendant avers that the Claimant executed the Deed of Release Upon Voluntary Disengagement and set out its essential terms (which are reflected in paragraph 9 above). It is specifically denied that the Claimant made requests for the Defendant to "honour its obligation ... and pay ... the correct sums". Breach of contract as alleged is denied.

[21] The Defendant avers, inter alia, that by virtue of the Claimant's execution of the Deed of Release:

(1) he agreed not to pursue any further claims against the Defendant;

(2) he is estopped from taking such action in light of the clear terms of the Deed of Release;

(3) the Claimant's actions are akin to accord and satisfaction, particularly by his acceptance of the payment from the Defendant which was tendered with the Deed of Release; and

(4) together with the Claimant's acceptance of the payment:

(i) the Defendant effectively satisfied and discharged any claim the Claimant had arising from any alleged computation for years of employment at GBTC, Contel and/or BaTelCo; and

(ii) the Claimant waived any further rights, interests or claims arising from his previous employment. The Defendant acted in reliance on such conduct of the Claimant, and it would now be inequitable for the Claimant to seek to alter his position.

[22] The Defendant therefore submits that the Deed of Release prevents the Claimant from pursuing a further claim concerning the calculation of the separation payment, whether it is characterized as a release, accord and satisfaction, estoppel or waiver.

[23] The Defendant pleads that no breach has been proved. The 1986 terms required that the employees be credited for their GBTC years of service when calculating vacation benefits, and if necessary, involuntary termination payments.

The Issues

[24] The questions for the Court's determination are set out below.

(1) Was the Claimant coerced or pressured to agree and sign the Deed of Release?

(2) If not, what is the effect of the Deed of Release, properly construed?

(3) Has the Claimant proved the alleged breach of contract and resulting loss?

(4) Is the claim statute-barred?

The Evidence

[25] The essential contents of the agreements between the Claimant and the Defendant have been enumerated above. The Court reviewed the Bundles of Documents used at trial. I also had the benefit of the witness statements in support of the parties' cases. For the Claimant, the Court reviewed the witness statement of Colyn Hollingsworth filed on 28 February 2022 and that of another former employee of GBTC and the Defendant, Kirkland Russell, also filed on 28 February 2022. For the Defendant the Court considered the witness statement of Helene Ferguson, Human Resources Manager, filed on 17 February 2022. These three witnesses appeared at trial, put their respective witness statements into evidence, and were thereafter cross-examined and re-examined.

<u>Testimony of Colyn Hollingsworth</u>

[26] Mr Hollingsworth gave evidence as the representative Claimant. He had worked for GBTC from 1973. He said that when BTC acquired GBTC in 1986, GBTC's management encouraged him to continue his employment with BTC on the basis that his prior GBTC service would be fully considered for continuous service purposes. He accepted BTC's 27 May 1986 employment offer. He said that in light of BTC's position as the sole telephone service provider on Grand Bahama, and the specialized nature of his work, he had no realistic choice of employment.

[27] The Claimant stated that he accepted the 1999 Voluntary Package only because he was told that he would otherwise be dismissed and receive only the less favourable redundancy benefits. In his oral evidence, he attributed that verbal message to Leon Williams, whom he identified as the Freeport General Manager, acting upon the advice of the Chairman, Albert Miller. He maintained that he was forced into early retirement, despite the written characterization of the package as voluntary.

[28] Even so, in cross-examination Mr Hollingsworth accepted that he had seen the Staff Notice before signing the Deed of Release. He further accepted that the Staff Notice addressed voluntary retirement and disengagement packages, and that he applied in writing to be considered for one of those packages. Additionally, Mr Hollingsworth accepted that he received a letter setting out the benefits upon retirement, although he disputed that he received a

calculation or explanation showing how the figures were derived. (See pages 25, 30 and 45 of the Trial Transcript, Day 1).

[29] Mr Hollingsworth's case was that he was required to sign the Deed of Release before being informed of the amount payable, and that the Deed of Release, cheque and related documents were all presented at the same time. He said that he resultantly had no opportunity to study the payment, challenge its calculation or seek independent legal advice.

[30] The Claimant's substantive complaint was that the Defendant did not give him credit for his GBTC / Contel years of service. However, he accepted that he did not know the formula applied to his payment and did not know whether his GBTC service had in fact been considered. He could not identify what particular component ought to have been paid apart from a general contention that all matters based on years of service should have been included. (See pages 52, 54 and 56 of the Trial Transcript, Day 1).

[31] Mr Hollingsworth stated that he made inquiries with BTC's Human Resources and Mr Williams only after he left BTC. He could not identify the Human Resources individual to whom he first spoke or provide a date for his inquiry. (See page 55 of the Trial Transcript, Day 1).

<u>Testimony of Kirkland Russell</u>

[32] Mr Kirkland Russell was another former GBTC employee and a claimant in the consolidated proceedings. He said that he began employment with GBTC in 1963, and in 1986, accepted BTC's offer of employment. He said he relied upon the understanding that his GBTC years of service would be completely honoured. He also said that, because GBTC was the only telephone service provider in Grand Bahama, and his work was specialized, there was no comparable employment available to him.

[33] Mr Russell said that he was disengaged in 1999 and received a voluntary separation package. He said that he first learned that the package did not include compensation for GBTC service after he signed the Deed of Release and received his payment by cheque. He said that he was required to sign the Deed of Release to obtain payment and that he had not received independent legal advice. He stated that he later made requests for payment for GBTC service.

[34] Mr Russell testified that in 1986, he had to accept the arrangement offered by BTC to retain employment. He stated that an employee named Sheila Martin who allegedly did not sign, lost her job. He further stated that his vacation benefit was calculated only on his BaTelCo service, and that Ms Ferguson told him BTC was only paying him for his BaTelCo years (12 ½ years).

[35] On cross-examination Mr Russell admitted that he left BTC before the general exercise for voluntary retirement / disengagement took place; he left, in fact, in 1998. He admitted that he opted for retirement on his own. He stated he is receiving a pension but not full pension, and he got vacation benefits up to the date of his retirement. His gratuity was based on his years of service at BaTelCo. But Contel did not pay him a gratuity in 1986.

Testimony of Helene Ferguson

[36] Ms Helene Ferguson was BTC's sole witness. She had worked at BaTelCo / BTC from 1982, and was a manager in the Human Resources department in 1999. Her evidence was based both on her Human Resources role in the 1999 exercise and on her review of the relevant 1986 letter.

[37] Ms Ferguson said that the 1999 voluntary early retirement package was not an involuntary termination scheme. It formed a part of BTC's work-force downsizing process in anticipation of privatization. Employees were free to accept or refuse it, and participation required a written application. She stated that Staff Notices gave employees the criteria and terms of the package and that, to her knowledge, no employee was forced or coerced to take it.

[38] Ms Ferguson stated that the 1986 terms required prior GBTC service to be honoured for vacation benefits and involuntary termination pay. She said that those conditions were honoured. Her evidence was that the 1999 voluntary package did not trigger an entitlement to a separate payment for GBTC years because it was voluntary, not involuntary.

[39] The witness described the Deed of Release as a standard deed to provide a full release and acknowledgement of the disengagement payment tendered by the Defendant. She said that BTC understood that the employees' execution of the Deed of Release and acceptance of payment would settle employment matters between BTC and the employees.

[40] In oral evidence, Ms Ferguson expanded upon the process for calculating the Voluntary Packages. She said that PricewaterhouseCoopers audited a spreadsheet before cheques were issued. Further, individual preliminary worksheets were prepared to show total vacation days and to permit employees to decide whether to take the package. The Union required provisional worksheets. She could not, however, produce an individual worksheet for Ms Gray (another employee who made a claim similar to that of Mr Hollingsworth) or documentary evidence that it had been delivered to her.

[41] She also said that Staff Notices had been issued from April 1999. Employees could receive a provisional calculation. Further, financial planners and dozens of information sessions were made available to employees before the final Voluntary Packages were presented. Additionally, the Union had a copy of the Deed of Release in advance and took members through it. Ms Ferguson's evidence was that some employees refused to sign and did not receive cheques, some later chose to accept it and others opted to remain with BTC.

[42] On the treatment of the GBTC / Contel service, Ms Ferguson maintained, under cross-examination, that such years were considered in relation to vacation entitlement, but that the 1999 separation was not regarded as involuntary. She accepted that the written benefits letter did not itself refer to Grand Bahama service and explained that the detail appeared in the prepared worksheets rather than in the summary letter.

[43] Finally, Ms Ferguson testified that she recalled no verbal or written allegation that any employee had signed under duress before the legal action was brought. She also noted in her statement, the long lapse of time from the signing of the Deeds of Release to the bringing of this

action. She noted that there are very few remaining employees at BTC who were employed in 1999.

The Claimant's Submissions

[44] Counsel for the Claimant, Mr Sidney Cambridge (appearing with Ms Krystian Butler), submits that the 1986 employment arrangement obliged the Defendant to honour the Claimant's GBTC / Contel service. He contends that this obligation became relevant when the Claimant was separated from the Corporation in 1999. It is argued that, although described as voluntary, the Voluntary Package was accepted in the context of a verbal ultimatum. The ultimatum, it is argued, was that employees who did not accept the Voluntary Package would be dismissed and receive the less favourable redundancy terms negotiated by the Unions as embodied in the Industrial Agreement. Counsel submits that this pressure, along with a dearth of time to review the Voluntary Package or seek legal advice, nullifies any apparent consent of the Claimant to the Deed of Release.

[45] It is further contended that the Defendant has not established that he was given an individual calculation showing how his Voluntary Package was comprised, or that the same included a credit for his GBTC / Contel years of employment. The Defendant's own witness said that spreadsheets and preliminary benefits worksheets had been prepared and supplied through the Freeport Office but could not produce the Claimant's worksheet or evidence it had been delivered. Counsel submits that the missing documents were material and little or no weight should be placed on the Defendant's assertion that the GBTC / Contel service was in fact considered.

[46] Counsel argues that the Claimant's case is not defeated by the Deed of Release because upon signing the Claimant did not have an informed understanding that the Voluntary Package included credit for his GBTC / Contel service. Mr Cambridge for the Claimant therefore invites the Court to find that the Defendant breached its obligation to credit the Claimant's GBTC / Contel years of service, and to direct an assessment of damages.

The Defendant's Submissions

[47] Counsel for the Defendant, Mr Raynard Rigby KC (appearing with Ms Asha Lewis), submits, firstly, that the claim is statute-barred. The claim is one for breach of contract arising from the acceptance by the Claimant of the Voluntary Package payment in 1999. Pursuant to the Limitation Act 1995, actions for breach of contract must be brought within six years from the date of the accrual of the cause of action. It is contended the Claimant failed to file this action within that prescribed time.

[48] Secondly, it is argued that that the Claimant freely chose to participate in the voluntary retirement/disengagement package offered by the Defendant. The Staff Notice, circulated before the Voluntary Packages were accepted, described the offering as voluntary. Each employee, including the Claimant, had to apply in writing if they wished to avail themselves of the Voluntary Package. The Defendant states that the Claimant accepted that he applied for and was admitted to the Voluntary Package. Counsel contends that the Claimant did not plead duress and,

in any event, the evidence does not establish that he was coerced so as to nullify his consent. BTC relies on Ms Ferguson's evidence that the employees (including Mr Hollingsworth) had information in advance of the signing exercise, preliminary calculations of their Voluntary Package payments, access to Union representatives and advisors, and the ability to either decline the release or remain with BTC.

[49] Thirdly, Counsel submits that the Deed of Release is clear and effective. By acceptance of it, the Claimant confirmed three material facts, namely:

(1) that the package represented his complete entitlement upon disengagement;
(2) he accepted the payment in full satisfaction of all to which he was entitled; and
(3) he released the Defendant from all claims relating to his disengagement.

[50] It is therefore argued for the Defendant that the Deed of Release prevents the Claimant from pursuing a further claim concerning the calculation of the separation payments, whether on the basis of release, accord and satisfaction, waiver or estoppel.

[51] Lastly, Mr Rigby KC submits that no breach has been proved by the Claimant. The 1986 employment terms required that credit be given for employees' GBTC years of service when calculating vacation benefits and, if necessary, involuntary termination pay. They did not provide for GBTC service to be credited in a voluntary retirement exercise. The Claimant did not identify the calculation said to have been applied, or any alternative calculation, the amount alleged to be due, or indeed, any shortfall.

Discussion

<u>History and Record</u>

[52] The Court takes note of the unusual history of these proceedings. The underlying events occurred in 1999, and the present action was brought in 2005. The matter thereafter experienced substantial delay. Some years of the delay are attributable to a lull in the claimants' prosecution of the case. Subsequently, on 24 July 2017, the Court in Grand Bahama delivered a decision to strike out the matters, but on 27 May 2019, the same was overturned on an oral decision of the Court of Appeal in SCCivApp & CAIS No. 198 of 2017. The file was transferred from Grand Bahama to New Providence and allocated the present file number in 2020, to undergo case management and a fresh trial.

[53] Following the trial there was a delay in obtaining a full transcript. The approach to dealing with this was that where a verbatim record was unavailable or incomplete, the Court considered the parties' respective contemporaneous notes as reflected in their submissions. I found these to be materially consistent with the Court's own notes.

[54] The Court was advised that before the transfer of this case to New Providence, the original court file was largely destroyed in Grand Bahama during Hurricane Dorian. These circumstances necessarily affect the availability of some contemporaneous documents and the precision of recollection available at trial. I have considered the evidential consequences of those matters even-handedly in relation to the parties' cases. On the basis of what is before me, the

absence of a historical record does not establish either that a document was never created or provided, or that it was deliberately withheld or destroyed to the disadvantage of either party. I consider that the Court must determine the issues on the evidence that remains available. Further, I bear in mind that the burden of proving the pleaded breach and loss on the balance of probability rests upon the Claimant.

Duress

[55] I will first deal with the issue whether the Claimant has established that his consent to the Deed of Release was vitiated by duress. I reiterate briefly the Claimant's case that despite the written description of the Voluntary Package, he was in substance compelled to accept it. He testified that Mr Leon Williams, said to be the Freeport General Manager, acting on the advice of Mr Albert Miller, the Chairman, told him that he must take the package or be fired and receive only the benefits provided in the Industrial Agreement. The Claimant also says that he signed the Deed of Release, cheque documentation and related papers at the same time and had no opportunity to study the calculation or obtain legal advice.

[56] The meaning of the term 'duress' and the material inquiries which a court should make in determining the existence of such coercion were set out in the Privy Council decision of **Pao On v Lau Yiu Long** [1979] 3 All ER 65. The relevant passage was referenced in the decision of *Winder J* in **Ferguson and another v West Bay Management Limited (t/a Sandals Royal Bahamian Spa Resort and Offshore Island)** [2019] 1 BHS J. No. 3. In the ***West Bay*** case, the plaintiffs who had signed releases and accepted separation packages from the defendant subsequently brought an action for wrongful dismissal, claiming inter alia that they had signed the releases under duress. Having found no evidence of duress, *Winder J* dismissed the action, and in his judgment stated:

> "22 As to the question of signing the documents under duress, I rely on the dicta of *Osadebay JA* in Bahamas Electricity v Smith [2007] 5 BHS J. No. 244 at paras 47-52. *Osadebay JA* relied on the Privy Council decision in **Pao On and Ors v Lau Yiu Long** where Lord Scarman delivering the decision of the Board stated:
>
>> '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 The "Siboen" and the "Sibatre" [1976] 1 Lloyd's Rep. 293 at p. 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": *loc. cit.* This conception is in line with what was said in this Board's decision in Barton v Armstrong [1976] AC 104 at p. 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 recognized in Maskell v Horner [1915] 3 KB 106, relevant in determining whether he acted voluntarily or not.'

> "23 I find that there is no evidence from which any conclusion can reasonably be drawn that either of the plaintiffs were coerced into executing the Deed of Release or that duress in any form was exerted on either of them to cause them to execute the deed of release. There was no evidence or outcry as to the requirement to execute the deed either at the time of execution or thereafter. The evidence of Williams, which was not contested, was that the first time the defendant became aware that there was a problem was the receipt of the Writ of Summons commencing this action."

[57] I accept that the prospect of redundancy in the context of a workforce reduction exercise could be a matter of real concern to an employee, and I have not overlooked the Claimant's evidence that he felt compelled to act. However, commercial pressure or a difficult choice is not, alone, duress sufficient to vitiate consent. The question is whether the alleged pressure overpowered the Claimant's will such that his agreement was not voluntary. Based on the authorities cited, in determining the question, the Court may have regard to the presence or absence of protest, any reasonable alternative course, independent advice, and any subsequent step to avoid the transaction.

[58] Considering these factors, I do not find that the Claimant has established duress. The alleged verbal ultimatum was not pleaded as a freestanding basis for setting aside the Deed of Release. More importantly, Mr Leon Williams was not called as a witness, and there is no written record of the alleged threat. The evidence must be weighed against the contemporaneous document and the Claimant's own admissions. He accepted that he received and read the Staff Notice before signing the Deed of Release. He agreed that it offered voluntary retirement and disengagement packages and that he applied in writing to be considered for the package.

[59] The Staff Notice had been issued in April 1999 and expressly stated that an employee considering the package could contact Human Resources for a personalized accounting of benefits. I accept Ms Ferguson's evidence that the package was part of a voluntary early retirement exercise in preparation for privatization, that employees could accept or refuse it, and that a written application was required from those who wished to participate.

[60] I further take into account the evidence that information sessions, financial planners and provisional calculations were made available in connection with the exercise, and that some employees did not sign the release and either remained with the Corporation or later chose to accept the package. I am mindful that Ms Ferguson could not produce the Claimant's particular worksheet or evidence of its delivery. For the reasons explained at paragraph [53] I do not draw from that absence an adverse inference against either party. It does not displace the evidence that the voluntary disengagement process made information and an opportunity to consider participation generally available to employees.

[61] There is no contemporaneous evidence that the Claimant protested, asked for further time, sought clarification of the package or stated that he wished to take legal advice before

deciding whether to execute the deed. I weigh that absence against his later account that he had no meaningful opportunity to do so.

[62] The Claimant's evidence was that he made inquiries after he left the Corporation, but he could not identify the Human Resources officer to whom he spoke or state when that inquiry was made. I therefore find that he has not proved that his consent to the Deed of Release was vitiated by duress.

The Deed of Release

[63] I turn next to the Deed of Release, its construction and effect. The Claimant signed the deed, which records that he accepted the voluntary disengagement package and confirmed that the package represented the complete amount to which he was legally entitled upon disengagement. In consideration of the payment, he released and discharged BTC from all claims which he then had or might otherwise have had "in respect of the said disengagement or for any matter or thing in anywise relating" to it.

[64] On 7 June 1999, the Claimant also signed the receipt at the foot of the deed, acknowledging payment of $226,034.57 in full satisfaction of all monies due to him upon disengagement. The Claimant does not deny executing the deed or receiving payment.

[65] The Court must give the deed its ordinary meaning in its contractual context. The scope of a release depends upon the language used, construed objectively in the factual setting and by reference to the subject matter of the transaction. (See **Bank of Credit and Commerce International SA v Ali (No 1)** [2001] UKHL 8 (at para [8]-[9] and [22]-[30]). The present claim concerns the amount allegedly due to the Claimant as part of his 1999 disengagement package. It is, therefore, a claim "in respect of" the disengagement and plainly falls within the release. I have rejected the Claimant's case that his consent was vitiated. I accordingly find that the Deed of Release provides a complete contractual answer to his claim.

[66] The Defendant pleaded estoppel, waiver and accord and satisfaction as well as release. It is unnecessary to make separate determinations on each of those alternative labels. In my view, the direct and sufficient basis for the conclusion is the Claimant's executed Deed of Release and acknowledged receipt of the agreed payment. The parties thereby settled and released claims arising out of his disengagement.

The Alleged Breach and Loss

[67] If I am wrong on the effect of the Deed of Release, in my judgment, the claim also fails on its merits. The Claimant's case assumes that the 1986 employment arrangement required BTC to treat his GBTC/Contel service as service with BTC for all purposes in calculating his 1999 Voluntary Package. The contemporaneous terms of that arrangement do not support that argument. They provided that GBTC service would be honoured when computing vacation benefits and, if necessary, when computing involuntary termination pay, provided the termination was not disciplinary.

[68] Ms Ferguson's evidence was that the 1999 exercise was voluntary rather than involuntary, and that the 1986 undertaking was honoured in the calculation of vacation benefits. I accept that the 1999 scheme was presented and administered as a voluntary retirement and disengagement exercise. The Claimant has not established that it was, in substance, an involuntary termination to which the particular 1986 provision concerning involuntary termination pay applied. Further, the Claimant has not established the Defendant failed to honour the 1986 undertaking in respect of vacation benefits.

[69] I have also considered the April 1999 statement (set out in paragraph 14 above) that credit would be given for Contel service in respect of Freeport employees, subject to deduction of the twelve weeks for which they were previously paid. The Claimant relies on that statement as creating a broader entitlement applicable to the 1999 Voluntary Package. In light of my conclusions on the Deed of Release and limitation, it is unnecessary to determine definitively whether that statement, properly construed, created an entitlement to an additional payment in Mr Hollingsworth's circumstances.

[70] Even assuming in the Claimant's favour that the April 1999 statement created an entitlement relevant to his Voluntary Package, he has not proved that BTC failed to give the required credit or that he received less than the sum properly due. He has not identified the component of the Voluntary Package to which the asserted credit should have applied, the formula by which it should have been calculated or the resulting shortfall.

[71] The Claimant submits that, if liability is proven, the exact amount of the shortfall could be determined upon the assessment of damages. I accept that an assessment may be appropriate where breach and compensable loss are established but the exact amount of the loss remains to be calculated. However, that does not relieve a claimant from first proving: (1) the contractual entitlement he asserts, (2) the relevant non-performance of his opponent, and (3) an adequate factual basis for finding that loss for which he can be compensated was caused. This reflects the compensatory principle explained in **Morris-Garner v One Step (Support) Ltd** [2018] UKSC 20 as follows:

> "95 (9) Where the claimant's interest in the performance of a contract is purely economic, and he cannot establish that any economic loss has resulted from its breach the normal inference is that he has not suffered any loss. In that event he cannot be awarded more than nominal damages."

[72] The Claimant's evidence was that he did not know the formula and could not say whether GBTC service had in fact been taken into account. That may explain why he wanted to obtain further information, but it does not prove a breach or a loss. Further, I do not consider that the absence of the individual worksheet for Mr Hollingsworth fills that evidential gap or reverses the burden of proof.

[73] Now, I recognize that a proven breach can in some circumstances justify an award of nominal damages, even where substantial loss is not proven. But in my view that does not apply to this case. The Claimant has not established the contractual entitlement or non-performance on which the alleged shortfall in payment depends. In my judgment, the Claimant has failed to

prove, on a balance of probabilities, either a breach of the 1986 or 1999 arrangements or any recoverable loss.

Limitation

[74] The Defendant also relies on **section 5(1)(a)** of the **Limitation Act, 1995**, which provides that an action founded on simple contract may not be brought after the expiry of six years from the date on which the cause of action arose.

[75] The claim is that BTC failed to pay the full sum allegedly due under the Voluntary Package. The cause of action, if it existed, accrued when the allegedly deficient payment was made and accepted. The Claimant's signed receipt records such payment on 7 June 1999. It is also the Claimant's evidence that he first became aware of the alleged omission only after he signed the release and was presented with the payout cheque. Mr Russell said the same. In other words, on the Claimant's own case, the alleged breach was complete and known, at the latest, on 7 June 1999.

[76] I therefore find that in Mr Hollingsworth's case, any cause of action accrued, at the latest, on 7 June 1999. Whether the formal date on which the Claimant's disengagement took effect was 31 May or 1 July 1999 does not alter that conclusion. The Writ is dated 15 June 2005. It was issued after expiry of the six-year limitation period. No case based on fraud, mistake, or deliberate concealment was pleaded to postpone time under section 41 of the Act. The claim is accordingly statute-barred.

Disposition

[77] Based on my findings and in all the circumstances, it is my judgment that:

(1) the Claimant has not established that he executed the Deed of Release under duress or that his consent was otherwise vitiated;

(2) the Deed of Release, on its proper construction, releases the Defendant from the present claim, which concerns the calculation and payment of the Claimant's 1999 disengagement package;

(3) in any event, the Claimant has not proved that the Defendant breached the relevant employment arrangements or that he sustained any recoverable loss; and

(4) in any event, the claim is barred by **section 5(1)(a)** of the **Limitation Act, 1995**.

[78] The claim is dismissed. The Defendant shall have its costs, to be taxed if not sooner agreed.

Dated 18 September 2026

Simone I Fitzcharles
Justice