

ABI JAOUDI & AZAR TRADING CORPORATION, by and thru its President,
ELIE J. ABI JAOUDI, Appellant, v. **NASSIM A. NASSIM**, Appellee.

APPEAL FROM THE NATIONAL LABOUR COURT, MONTSERRADO
COUNTY.

Heard: November 10, 1993. Decided: February 18, 1994.

1. When an agreement expires by its terms and, without a renewal, the parties continue to perform as before, an implication arises that they have mutually assented to a new contract containing the same provisions as the old, and ordinarily, the existence of such a contract is determined by the objective test, that is, where a reasonable man would think that the parties intended such a binding agreement.
2. A subsequent parol modification of a written contract upon a new consideration constitutes a new agreement.
3. To modify a written contract, an oral agreement must have the essential elements of a binding contract, although it may refer to and even embody the terms of the written contract.
4. Limitation runs from the time the right to assert the claim accrues.
5. All labor actions shall be commenced within seven years from the time the right for relief accrues, otherwise such action shall not be entertained by the Ministry of Labour.
6. The right to relief shall accrue on the day that the employee incurs a grievance.

The appellee, Nassim A. Nassim, was employed by appellee management under a written contract for a period of three years, from June 30, 1970 to June 30, 1973. After the expiration of the contract, the appellee continued to work for the defendant management until August 25, 1991, at which time his service was terminated by redundancy. The complainant rejected the termination of his service by redundancy, claiming that the contract was still in existence and that he should be paid for the unexpired period of the contract. Upon defendant management's refusal to honor this request, complainant filed a complaint before the Ministry of Labour, claiming US\$48,600.00 and LD\$83,700.00. Following a hearing, the hearing officer ruled in

favor of the complainant awarding him LD\$187,000.00 as compensation for the unexpired period of the contract.

Management filed a petition for judicial review with the National Labour Court, which then modified the ruling of the hearing officer by awarding respondent the sum of L\$41,500.00, holding that the contract expired on its own terms in 1973 and was never renewed. Both parties appealed.

On appeal, the appellant management, defendant at the Labour Ministry, contended that the contract expired on its own terms without any renewal, and that the appellant continued to serve under a new oral contract of indefinite duration. Additionally, the appellant averred that the action was barred by the statute of limitations because the action was not filed within seven years as required by statute, and that the modification of the written contract gave rise to a new contract. The appellee refuted this contention, asserting that his continual employment after the expiration of the written contract, was an automatic renewal of the written contract and that the modification of his salary, as well as other benefits, was an augmentation of the written contract. Also, appellant contended that the claim is not barred by the statute of limitations because seven years had not lapsed from the time he was terminated up to the institution of this action.

The Supreme Court held that the increment in appellant's salary and other benefits after the expiration of the written contract gave rise to a new oral contract of indefinite duration, and that the appellant served under the new oral contract from July 1, 1973, up to the termination of his services. Additionally, the Court held that the claim was barred by the statute of limitations because it was filed beyond seven years, contrary to the labor statute. Finally, the Court held that appellant should pay the appellee redundancy compensation because it voluntarily opted to place itself under Regulations No. 8 of the Ministry of Labour, and that it would be inconsistent to do otherwise. Hence, the Court affirmed the judgment with modification.

H Varney G. Sherman appeared for appellant. *Wynston O. Henriès* appeared for appellee.

MR. JUSTICE HNE delivered the opinion of the Court.

The appellee, Nassim A. Nassim, was employed by the Abi Jaoudi & Azar Trading Corporation, the appellant, by a written employment contract dated June 30, 1970 for a period of three (3) years.

The appellee worked with the appellant until August 25, 1991 when his services were terminated by redundancy. Hereunder is the letter of termination written to the appellee by the appellant:

"THE ABI JAOUDI & AZAR TRADING CORPORATION

August 25, 1991

Mr. Nassim A. Nassim

59 Ashmun Street

Monrovia, Liberia

Dear Mr. Nassim:

This refers to the discussions I had with you on August 24, 1991 in the presence of Mr. Joseph Alckary. As discussed with you, you left Monrovia in June 1990 on your own and also returned back to Monrovia on your own. We are not in a position to re-engage your services in view of the circumstances prevailing in Liberia.

In this connection, we wish to inform you as follows:-

1. To collect your redundancy benefit check from us immediately on receipt of this letter. It is ready with us.
2. To vacate the apartment No. 3 occupied by you at 59, Ashmun Street by December 30, 1991.
3. We are informing the Immigration authorities about your release and you may obtain on your own the necessary permits from them for your stay in Liberia.

Thank you.

Yours sincerely

For: The Abi Jaoudi & Azar Trading Corporation

Ellie J. Abi Jaoudi

President"

The appellee rejected the termination of his employment by redundancy. He claimed that his employment contract continued to exist and that he should be compensated for the unexpired period of his contract. The two parties could not reconcile their positions and so the appellee filed a complaint with the Ministry of Labour against the appellant on April 7, 1992. The following is the appellee's complaint to the Ministry of Labour:

Law Offices of White and Associates
Liberia Industrial Development Corporation
70 Ashmun Street
P.O. Box 3813, Tel. 225110
Monrovia, Liberia
April 7, 1992
Mr. Cyrenius N. Forh
Minister of Labour
Ministry of Labour
Monrovia, Liberia

Mr. Minister:

I have the honor to bring a complaint against the Abi Jaoudi and Azar Trading Corporation represented by its President, Mr. Elie J. Abi Jaoudi, for the illegal dismissal of our client, Mr. Nassim A. Nassim.

Our client, Mr. Nassim was employed by the corporation on a written contract on June 30, 1970 and imported to Liberia by the defendant and remained in such employment until August 25, 1991 when he received a letter from his employer to collect his redundancy check which our client has refused to accept because the said letter violates several provisions of the contract; self explanatory copies of the contract together with the letter of termination are hereto attached.

It might be of interest to also complain to you, Mr. Minister, that Mr. Abi Jaoudi is attempting to evict our client from the premises provided him as living quarters without the matter being finally resolved. We will be pleased that you advise Messrs Abi Jaoudi to refrain from such action until the labor matter has been finally determined.

As our client has been placed in a very embarrassing situation, it is our humble prayer that your Ministry would take such appropriate action in this matter so as to relieve our client from such embarrassment he is now facing in post war Liberia.

Kind regards, Very truly yours,
Moses K. White
Counsellor-at-Law"

On May 5, 1992, the appellee wrote another letter as a follow up to his complaint, claiming a total of L\$48,600.00 (Forty Eight Thousand Six Hundred Liberian Dollars).

After the hearing at the Ministry of Labour, the hearing officer ruled in favor of the appellee awarding him a sum of L\$187,000.00 (One Hundred Eighty Seven Thousand Liberian Dollars). He determined that the contract had not been terminated and, therefore, the appellee was entitled to compensation for the unexpired period of the contract.

The appellant appealed from the ruling of the hearing officer and sought a judicial review thereof at the labour court. Upon such review, the labour court set aside and modified the ruling of the hearing officer, awarding the sum of (L\$41,500.00) Forty One Thousand Five Hundred Liberian Dollars). He held that the contract expired by its own terms and was not renewed.

Both the appellant and the appellee appealed from the ruling of the labour court. As such, they are cross appellants. The appellant will be hereinafter referred to as the "appellant management" and the appellee as "appellant/complainant". Both parties completed the appellate steps for the hearing of the appeal now before us.

The appellant/complainant contends that the employment contract of June 30, 1970 continued until August 25, 1991 when he was declared redundant. The appellant/management assumes a contrary position, that the contract expired by its own terms on June 30, 1973 and was never renewed.

A further contention of the appellant/management is that the claims made by the appellant/complainant are time barred under limitations of seven (7) years set for labor cases.

The issues before us for determination are therefore the following:

1. Whether the employment contract of June 30, 1970 expired by its own terms on June 30, 1973, or was renewed automatically for an additional three-year period thereafter?
2. Whether the statute of limitations bars the claims of the appellant/complainant?
and

3. Whether the appellant/complainant is entitled to redundancy compensation?

The appellant/complainant says that he continued to serve the appellant/management in the position of salesman after the expiration of the employment contract of June 30, 1970. In view of this, he claims that the contract underwent automatic renewals of three (3) years each until the termination of his services on August 25, 1991. He relies on the case: *Francis vs. Liberian French Timber Co.*, 22LLR 168 (1973).

The appellant/management does not disagree with this principle of an implied contract and that the new contract so formed is to contain "the same provisions as the old". (Emphasis ours). Its position however is that the contract of June 30, 1970 expired by its own terms on June 30, 1973 without any renewal, and that the appellant/complainant continued to serve thereafter under a new oral contract of indefinite duration, under new terms.

Counsel for appellant/management points out that the employment contract of June 30, 1970, paragraph 2 thereof, provides that the appellant/complainant would be paid a monthly salary of \$350.00 for the first year and \$400.00 monthly for the second and third years. That the appellant/complainant admitted during the hearing at the Ministry of Labour that in 1978 he received a salary of \$850.00 monthly; from 1982 to 1989 he was paid a monthly salary of \$1,300.00 and in 1990 a salary of \$1,550.00 per month. Further, after the expiration of the contract in 1973 the appellant/management provided the appellant/ complainant a rental allowance of \$100.00 monthly and subsequently, in 1980, provided him an apartment to live in, a benefit not provided in the contract of June 30, 1970. He maintains that these are a subsequent parol modification of a written contract upon a new consideration which constitutes a new contract.

The appellant/complainant for his part states that these changes were an augmentation of the June 30, 1970 contract which was renewed by implication for three successive (3) three-year period after June 30, 1973.

In *Francis v. Liberian French Timber Co.*, 22LLR 168 (1973), text at 175, 176, this court held that the contract between the parties was renewed by implication for the same terms and conditions, relying on 17 AM JUR 2d., *Contracts*, § 520. "The doctrine has been advanced that where an agreement expires by its terms and, without a renewal, the parties continue to perform as before, an implication arises that they have mutually assented to a new contract containing the same provisions as the old; and

ordinarily the existence of such a contract is determined by the objective test, that is, whether a reasonable man would think that the parties intended such a binding agreement.

In the present, it does not appear that as of July 1, 1973 the appellant/complainant continued to work under the same provisions as the contract of June 30, 1970. The salary increments, which are substantial, the payment of rent allowance, and the subsequent provision of living accommodation after the expiration of the contract of June 30, 1970 are terms indicative of a new agreement.

"It has been said that a subsequent parol modification of a written contract upon a new consideration constitutes a new agreement. To modify a written contract, however, an oral agreement must have the essential elements of a binding contract, although it may refer to and even embody the terms of the written contract " 17 AM JUR 2d, *Contracts*, § 466.

We are not convinced by the argument of the counsel for appellant/complainant that the change in the employment conditions after the expiration of the contract of June 30, 1970 was an augmentation of that contract. The fact set forth in this case, in our opinion, do not support the principle in *Francis vs. Liberian French Timber Co.* We therefore sustain the position of the appellant/management that the contract of June 30, 1970 expired on June 30, 1973; that a new oral contract of indefinite duration arose thereafter and that the appellant/complainant served under that new oral contract from July 1, 1973 up to the termination of his service on August 25, 1991.

As to the second issue, the counsel for appellant/management urges that the claims of the appellant/complainant are time barred under the limitation of seven years prescribed for labor cases under the statute. The complainant, he said, raises claims growing out of a contract entered June 30, 1970 which expired on June 30, 1973.

Counsel for appellant/complainant however stresses the point that computation of limitation should commence from the time that the employment terminated.

Limitation, to our mind, runs from the time the right to assert the claim accrues. "All labor actions shall be commenced within seven years of the time the right to relief accrues, otherwise such actions shall not be entertained by the Ministry of Labour. The right to relief shall accrue on the day that the employee incurs a grievance..." INA Decree No. 21, Section 6. The claims raised by the appellant/complainant growing out of the contract of June 30, 1970, according to the law just cited, cannot

be countenance once interposed beyond seven (7) years from the time the right to relief accrued. This holds true also for claims which arose during the oral indefinite contract subsequent to the expiration of the written contract of June 30, 1970.

Consonant with this, the amount of \$1,200.00 awarded the appellant/complainant by the labour court as "extra three (3) months salary promised the respondent as per the 1970 contract" cannot be upheld as the same is time barred by the seven (7) years limitation for labor claims. The said amount is therefore disallowed.

As to the issue of redundancy compensation to the appellant/ complainant the question is no longer whether he should be paid redundancy compensation because that question has become moot by the offer of the redundancy compensation made to the complainant by the appellant/management. The appellant/ management had opted to place itself under Regulation No. 8 of the Ministry of Labour on Redundancy and so that regulation should be followed in paying the complainant redundancy compensation of one (1) month for each year of service. Although counsel for appellant/management tells us that the offer was withdrawn because of its rejection by the appellant/ complainant, this would be inconsistent with the position in appellant/management's bill of exceptions, which conceded in count four (4) thereof that redundancy payment (though computed on the basis of a less period than ruled by the labour court) would be a fair compensation to the appellant/complainant.

In view of all that we have said above, the award made in the ruling of the labour court is hereby affirmed with modification, in that the sum of L\$1,200.00 as stated above is disallowed so that the total amount awarded the appellant/complainant becomes L\$40,300.00 (Forty thousand Three Hundred Liberian Dollars).

The Clerk of this Court is hereby ordered to send a mandate to the labour court in keeping with this opinion; and it is so ordered. Costs are ruled against the appellant/management.

Judgment affirmed with modification.