

B.A. MALLAL MOOT 2022

**PRELIMINARY ROUNDS
&
QUARTER FINAL ROUNDS**

**IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE**

HC/OC 45678910/2022

LOUIS G. WARREN LABORATORIES LTD

vs

JULIA ALEC SANDER

Coram: Dmitri Riboflavin J.

Adam Smith for the Claimant

Karl Marx for the Defendant

DECISION

1. Employment rights address the balance of power between the individual and the corporate entity, by granting rights to employees that employers cannot contract out of. An employee contributes time, skills, energy, and expertise to an employer in return for remuneration, and recognition, and it is the rare employee who would contract to enter into a situation of known danger to himself or his family, without additional recompense.
2. The Defendant was a talented and valued employee of the Claimant pharmaceutical company. Over the past three decades of working for the Claimant, the Defendant led teams to make significant innovations in immunology and virology, with a focus on the origin of zoonotic viruses, those that jump from animals to humans.
3. On 2 July 2022, the Defendant's son, Pol Alec Sander, accidentally ingested a toxin which caused him to have severely compromised lung functions. As a result, Pol had to be placed on long term mechanical ventilation. On 4 July 2022, the Defendant sent an email to the Claimant, resigning from her employment without notice. On the same day, the Claimant issued a letter from their solicitors to the Defendant, rejecting her resignation, and informing her that she had been placed on leave for 2 weeks until she was able to make the necessary arrangements for her son, and return to work. In the same letter, the Claimant informed the Defendant that, pursuant to their generous employment benefits, all of Pol's medical expenses would be covered as long as the Defendant remained employed with the Claimant.

4. The Defendant did not respond to the Claimant's letter.
5. On 20 July 2022, after the Defendant failed to return to work, the Claimant filed an originating claim against the Defendant for wrongful resignation. The Claimant alleges that by failing to abide by the 6 months' notice requirement in her employment contract, and other contractual requirements upon resignation, including a complete handover of all research materials and up-to-date progress reports of any laboratory experiments, the Defendant had caused significant loss and damage to the Claimant, with damages to be assessed.
6. At the first Case Conference for the matter, parties agreed and jointly applied under Order 9 Rule 19(1) of the Rules of Court 2021 that a preliminary question of law, which could potentially dispose of the matter, be decided without a trial or hearing on the facts: whether the Defendant was entitled to rely on section 15 of the Employment Act 1968. I agree that this is a question that can be decided without a trial or hearing on the facts and would proceed to do so.
7. Section 15 is entitled "Termination by employee threatened by danger" and states

An employee may terminate his or her contract of service with his or her employer without notice where the employee or the employee's dependant is immediately threatened by danger to the person by violence or disease that the employee did not by his or her contract of service undertake to run.
8. In arguments before me, neither counsel were able to cite any authorities that had considered section 15. Nor were counsel able to educate me on the provenance of section 15, and the parliamentary intention behind section 15. As parties have appealed my decision (save as to my decision to decide the question without a trial or hearing on the facts), there arises an opportunity for counsel dealing with the appeal to do the sorely missing research.
9. Instead, I was presented with arguments relating to the Tripartite Guidelines on Wrongful Dismissal, applicable to Covid-19, but not, in my view, applicable to the current situation. The Tripartite Guidelines do not have the force of law, and any reliance by any court on the guidelines is a disregard of the duty of the Court in statutory interpretation, which is to discern the intention of Parliament, and to give effect to the plain meaning of the words of a statute.
10. The breach of obligations under a contract of service generally gives rise to a basis for a lawful termination of contract, pursuant to which neither party is liable to the other for damages. However, when an employee purportedly breaches her obligations in respect of the procedures for resignation, can the employee be liable for damages arising from the breach? There is no reason why an employment contract should not be treated like any other contract, such that the employee should be liable for damages that naturally flow from her breach of contract.
11. The intriguing question that I had to consider was, what is the purpose of section 15, and is this a situation that falls within its purpose? There are two parts to the question. The first is the meaning of "immediately threatened by danger", and the second is, is this a situation where there was a danger posed by violence or disease which the Defendant can be said to have not had contracted to run.

12. I was intrigued by the question of immediate danger. I therefore posed the question to parties as to the source of the toxin that affected Pol. The Defendant's position is that, at present, she did not have sufficient proof that the toxin emanated from the Claimant's laboratories. There is no direct source in her workplace that the toxins could be traced to. The Defendant has a number of ongoing investigations and analyses, and depending on the how the question of law is determined, has reserved the right to present more evidence. In the current analysis, her resignation was based on the fact that Pol's compromised lung functions placed him in immediate danger from any other virus or disease that she may bring back from the Claimant's laboratories.
13. The Claimant argues that there is no increased danger, merely increased vulnerability, and that does not fall within the meaning of section 15. It flatly denies that the toxins that harmed Pol could have emanated from its laboratories, and assert that if they did, the source could only have been the Defendant's own negligence.
14. Evidentiary matters aside, parties agreed that having a pronouncement on the question of law, particularly on the construction of section 15, would be an essential pre-cursor to the disposition of the case, and the gathering of evidence. I therefore proceeded on the basis that there is no evidence that the source of the toxins was from the Defendant's workplace.
15. In my view, section 15 should be construed narrowly. I can conceive of no situations of employment where an employee would be justified in terminating the employment without notice because of a danger posed. Any danger that is posed to an employee would be something that the employee could escape from. In any other situation of danger, an employee would have contracted to be faced with danger, such as a fireman, or a medical professional, or any person who works in hazardous jobs.
16. The Workplace Health and Safety Act 2006 ("WHS") was not cited to me, but is certainly the source of protection for employees. When asked, counsel for the Defendant took the position that, for the purposes of answering the question of law posed to this Court, there was no breach of WHSA.
17. A scientist in a laboratory enters a contract of service knowing full well the risks of working in that laboratory. The risks are lessened by the use of safety protocols, equipment, measures, and education. In my view there was no immediate threat, nor was there any danger that the Defendant had not contracted to run. The risk which the Defendant had contracted to run did not change upon her son, Pol, unfortunately ingesting the toxin by accident.
18. I find that the Defendant had breached the contract of employment.
19. I understand that parties intend to appeal my decision, to seek an interpretation of section 15 from an appellate Court. I will accordingly reserve the question of assessment of damages until the resolution of the legal question.

Dmitri Riboflavin J.

2nd September 2022