JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 7 OF 2009

APPLICATION NO. 11 OF 2009

BETWEEN	**VANESSA MASON**	**APPELLANT**
AND	**UNIVERSITY OF THE WEST INDIES**	**RESPONDENT**

Lord Anthony Gifford Q.C. and Miss Fara Brown for the Appellant/Applicant instructed by Norman Manley Law School Legal Aid Clinic.

Stephen Shelton and Miss Lisa Russell instructed by Myers, Fletcher & Gordon for the Respondent.

IN CHAMBERS

4th, 8th and 18th February, 2009

HARRISON, J.A.

Introduction

1. This is an application for an injunction pending the hearing of an appeal. The substantive claim which was filed in the Supreme Court concerns a dispute between the University of the West Indies (the UWI) and Vanessa Mason (the applicant) a final year undergraduate at Mona Campus. She is a citizen of Trinidad and Tobago and has been enrolled as a student since September 2006. She has resided in Mary Seacole Hall by

virtue of a written contractual licence renewed from year to year. She was however evicted from her room as a result of an altercation between her and a fellow student.

2. The UWI has contended that it has sole jurisdiction over internal disputes arising on Campus. The applicant has contended on the other hand, that the jurisdiction of the court has not been ousted and therefore she has acted correctly within her rights to have instituted her claim for breach of contract in the Supreme Court.

The Background

3. The UWI is a corporate body, and is regulated by Royal Charter since April 2, 1962. Statutes have been made pursuant to this Charter. The Charter provides that Her Majesty Queen Elizabeth II is the Visitor of the UWI and therefore has Visitorial Authority over the institution. The term "Visitor" is peculiar to institutions of learning so when I come to look at the historical origins of this office, one will better understand the role and responsibility of that individual.

4. Section 3 of the Charter provides that the UWI shall have numerous powers including the power:

> "(o) To establish and maintain and to administer and govern institutions and places for the residence, recreation and study of the officers, staff, students and guests of the University..."

5. Section 6 of the Charter provides inter alia, that in the exercise of the Visitorial Authority, the Visitor may inspect "the University, its buildings, laboratories and general

work, equipment and also the examination, teaching and other activities of the University by such person or persons as may be appointed in that behalf".

6. The Applicant was a party to a "Halls of Residence Agreement" (the Agreement) which granted her a contractual licence in order for her to reside in Hall. There is a "Charter of Hall Principles and Responsibilities" (the Hall Charter) and it has been incorporated into the contract between the applicant and Hall. It provides for specified procedures in the event of any complaint of misconduct against a student who resides in the Hall.

7. Clause 2 of the said agreement states as follows:

> "2. The student acquires by this Agreement a licence to use, and not a tenancy of the room assigned by the University, and the possession of the premises is retained by the University subject to the rights created by this Agreement".

8. Clause 10 refers to the student observing Section IV (General Responsibilities) of the Charter of the Hall of Principles and Responsibilities. Clause 19 provides that the University may terminate this Agreement if the student is in breach of any of its terms or violates any of the rules or regulations of any Hall of Residence to which he/she is assigned. Clause 21 provides that "the student shall abide by all the rules and regulations of any Hall to which he/she has been assigned by the University, and such rules and regulations herein incorporated as terms of this Agreement." It is against the

rules and regulations for a student to use expletives or to make derogatory and inflammatory remarks.

9. There are 37 clauses dealing with the student's responsibility to the Hall of Residence. Section IV in my view makes it clear that if a student fails in carrying out his responsibilities, disciplinary action will be enforced by the University.

10. Appendix A of the Hall Charter provides that "behaviour contrary to accepted norms is subject to disciplinary action with appropriate steps for appeal if the student disagrees with the action taken by the appropriate authorities."

11. Appendix B of the Hall Charter provides for the hearing of Appeals from a decision of the Hall Disciplinary Committee. This appeal must be lodged within seven (7) days of the decision complained of and must be directed in writing to the Director of Student Services. The appeal may be made on one or more of the following grounds: (1) lack of substantial basis in fact to support the findings; (2) sanction(s) inconsistent with the findings; or (3) unfairness in the proceedings. The appeal may be denied, granted in part, or other relief may be directed where appropriate. The student has the burden of proof and must show that there is no substantial evidence to support the Disciplinary Committee's decision.

12. Appendix D of the Hall Charter lists a number of penalties that may be imposed by the Disciplinary Committee.

13. On the 27th of September, 2008 there was a verbal altercation in a corridor in the Hall, between the Appellant and a fellow student. The matter was reported to the Student Services and Development Manager, (the Manager) who gave notice to the applicant that a disciplinary committee would meet on the 5th of October, 2008. It was alleged that the applicant had used several expletives whilst she was in Hall and that generally her language was extremely offensive.

14. The Disciplinary Committee met on the 5th of October, 2008 and on the 6th of October, 2008 she was informed that the Committee had decided to expel her from the Hall with effect from the11th of October 2008.

15. On the 9th of October, 2008 the applicant appealed the decision to expel her from Hall, as was her right under the Hall Charter.

16. On the 30th of October, 2008 the Manager wrote as follows to the applicant:

> "Dear Miss Mason
>
> The Mary Seacole Hall Disciplinary Committee having met on October 7, 2008 to hear the case involving an altercation between yourself and Miss Jodi Ann Grant and having found that you were guilty of misconduct found that you should have been expelled from the hall effective October 10, 2008.
>
> Following this decision and your subsequent appeal it was decided that this decision would be set aside and that the Disciplinary Committee would reconvene to reflect the stipulated composition as outlined by the Charter of Hall Principles and Responsibilities. The Disciplinary Committee will meet to hear the complaint again. The Notice of Complaint states that on Saturday September 27, 2008 in a

> verbal altercation with another student, Jodi-Ann Grant, you used a number of expletives on the corridor of H block.
>
> Please be advised therefore that the Disciplinary Committee will be convened on November 2, 2008 at 7 pm to hear the matter. As is stipulated by the Charter you can respond to this letter in writing within three days of its receipt. If you have to be absent you can be represented by a friend. If you choose not to appear before the Committee the matter will proceed in your absence.
>
> Yours sincerely
>
> Nadeen Spence (Miss)
> Student Services and Development Manager.

17. By letter dated 5th of December, 2008 the Director of Student Services and Development wrote to the applicant and she stated inter alia:

> "...in an effort to bring closure to the matter, you were invited to attend a meeting with the Hall Disciplinary Committee for the matter to be re-heard. You did not attend, but was represented by Ms. Fara Brown, Attorney at Law who stated that she was attending the meeting in the capacity as "a friend". It was reported that the meeting had to be aborted on account of unacceptable behaviour displayed by Ms/ Brown.
>
> Based on the advice of the Campus Legal Officer with respect to the above matters, it is agreed that you vacate the Hall as of Monday, December 22, 2008, pending further investigation of this matter. You are required to comply with this directive..."
>
> Sgd. Thelora Reynolds, PhD.
> Director, Student Services and Development.

18. The applicant who had returned to Trinidad for the Christmas holidays returned to Jamaica during January, 2009. On her return to the Campus she discovered that she

was locked out of her room by the University. Since then she has been staying temporarily with a friend outside the Campus.

19. The applicant filed a Claim Form in the Supreme Court. The Particulars of Claim alleged inter alia, that the expulsion was in breach of contract and was unlawful. On the 22nd of December, 2008 the applicant filed Notice of Application for Court Orders. She sought an injunction to restrain the UWI from expelling her from the Hall.

20. On the 19th of January, 2009 Anderson, J. gave judgment and refused the relief sought. He held that the court had no jurisdiction to hear an application for an injunction and that even if he had such jurisdiction this was not an appropriate case for the grant of injunctive relief.

21. The Applicant has by leave, appealed the judgment of Anderson J. She has filed this Notice of Application for Court Orders and has sought the injunction pending the hearing of the appeal. The application came before me on February 4, 2009 and after hearing submissions from both sides, I reserved my decision.

The Visitor's Jurisdiction

22. I begin first, by looking at the historical development of the Visitor's jurisdiction. The decision of Holt CJ in **Philips v Bury** (1694) Holt KB 715, 90 ER 1294, is considered to be the locus classicus on the law of visitors. In that case, the visitor of Exeter College, Oxford, had deprived Bury of his office as rector. The new rector appointed in his place had leased a house to the plaintiff Philips, who had been evicted

by Bury. Philips brought an action in ejectment against Bury. Accordingly, the issue in the case was whether the removal of Bury by the visitor was valid or not. Holt CJ held that two questions arose: first, did the visitor have jurisdiction to remove Bury; if so, second, was the visitor's decision correct? He held that the visitor did have jurisdiction and that 'having that power, the justice thereof is not examinable in a Court of Law, upon any action concerning the [visitor's] power'. He contrasted private charitable bodies with public corporations and said (Holt KB 715 at 723–726, 90 ER 1294 at 1299–1300):

> 'And I think the sufficiency of the sentence is never to be called in question, nor any enquiry to be made here into the reasons of the deprivation. If the sentence be given by the proper visitor, created so by the founder, or by the law, you shall never enquire into the validity, or ground of the sentence. And this will appear, if we consider the reason of a visitor, how he comes to be supported by authority in that office ...
>
> But private and particular corporations for charity, founded and endowed by private persons, are subject to the private government of those who erect them; and therefore if there be no visitor appointed by the founder, I am of opinion that the law doth appoint the founder and his heirs to be visitors. The founder and his heirs are patrons, and not to be guided by the common known laws of the kingdom. But such corporations are, as to their own affairs, to be governed by the particular laws and constitutions assigned by the founder ...
>
> But you'll say, this man hath no Court. It is not material whether he hath a Court or no; all the matter is, whether he hath a jurisdiction; if he hath conusance of the matter and person, and he gives a sentence, it must have some effect to make a vacancy, be it never so wrong. But there is no appeal, if the founder hath not thought fit to direct an appeal; that an appeal lieth in the Common Law Courts, is certainly not so. This is according to the government settled

> by the founder; if he hath directed all to be under the absolute power of the visitor, it must be so ...
>
> As to the matter of there being no appeal from an arbitrary sentence; it is true, the case is the harder, because the party is concluded by one judgment, but it doth not lessen the validity of the sentence, nor doth it in any way prove that you shall find out some way to examine this matter at law in a judicial proceeding.'

23. The case law has revealed that the decision in **Bury** (supra) has been repeatedly applied for the last 300 years, and was firmly established by the House of Lords in **Thomas v University of Bradford** [1987] 1 All ER 834, [1987] AC 795. **Thomas** case has held that the courts have no jurisdiction to entertain internal disputes which exist within the University and that they must be decided by the visitor. Their Lordships decided that the visitor's jurisdiction is 'exclusive'. See also **Patel v University of Bradford Senate** [1978] 3 All ER 841 and **Page v Hull University Visitor** [1993] 1 All ER 97. In the latter case, the majority of the House of Lords held:

> "Because a university was an eleemosynary charitable foundation and the visitor was the sole judge of the law of the foundation, which was its peculiar or domestic law rather than the general law of the land, the visitor had exclusive jurisdiction to determine disputes arising under the domestic law of the university and the proper application of those laws to those persons within his jurisdiction. Accordingly, the court had no jurisdiction to determine those matters or to review a decision made by the visitor on questions of either fact or law, whether right or wrong, provided his decision was made within his jurisdiction (in the narrow sense of acting within his power under the regulating documents to enter into the adjudication of the dispute) and in accordance with the rules of natural justice. However, judicial review would lie against the visitor if he acted outside his jurisdiction (in the narrow sense) or if he abused

> his powers in a manner wholly incompatible with his judicial role or acted in breach of the rules of natural justice. It followed that the Divisional Court had had no jurisdiction to review the visitor's construction of the university statutes".

24. In **Clark v University of Lincolnshire and Humberside** [2000] 3 All ER 752, C brought proceedings for breach of contract against the University, contending that its appeals board had misconstrued the meaning of plagiarism. Her claim was struck out by the judge who held that breaches of contract by Universities were not justiciable by the courts. On appeal it was held:

> "(1) Although the arrangement between a fee-paying student and a higher education corporation was a contract, disputes suitable for adjudication under the contract's dispute resolution procedures might be unsuitable for adjudication in the courts. There were issues of academic or pastoral judgment which the university was equipped to consider in breadth and in depth, but on which any judgment of the courts would be jejeune and inappropriate. That class of issues included such questions as the mark or class to be awarded to a student or whether an ægrotat was justified. Although that distinction had no bearing on the availability of recourse to the courts in an institution which had a visitor, it constituted, where there was no such visitor, a sensible allocation of issues capable and not capable of being decided by the courts. Thus issues such as the award of a gold medal or a party's academic competence would not be susceptible of adjudication as contractual issues in cases involving higher education corporations. In the instant case, C's claim as originally pleaded travelled deep into the field of academic judgment. For that reason, rather than on the ground of non-justiciability of the entire relationship between student and university, the judge had been right to strike out the claim. However, the allegations pleaded by amendment fell outside the class of non-justiciable issues. While capable, like most contractual issues, of domestic resolution, they were allegations of breaches of contractual

> rules on which, in the absence of a visitor, the courts were well able to adjudicate".

25. It is thus clear on the basis of the above authorities that at the present time, universities can create a jurisdiction for the visitor which excludes the concurrent and appellate jurisdiction of the courts.

The Submissions

26. Lord Anthony Gifford Q.C. for the appellant, submitted in his written submissions that on a proper construction of the Halls of Residence Agreement and the Hall Charter:

(1) A student may not lawfully be disciplined for alleged misconduct unless the relevant authority has observed the disciplinary procedures set out in the Hall Charter.

(2) A student may only be expelled from Hall by a decision of the Disciplinary Committee, subject to a right of appeal to the Director of Student Services.

(3) The use of expletives and offensive language is not an offence which is sufficiently serious to warrant a hearing before the Disciplinary Committee.

(4) The Disciplinary Committee must make findings of fact based on evidence which was received at the hearing.

(5) There is no provision for expulsion pending the carrying out of the disciplinary procedures. There is a provision for suspension for not more than 14 days.

27. In his oral submissions, Lord Gifford Q.C. underscored the following points:

1. The expulsion of the applicant from Mary Seacole Hall was carried out in clear breach of the contract with the University by which she was given a licence to occupy her room.

2. The normal and proper remedy in a case where a contractual licence has been unlawfully terminated is the grant of injunctive relief.

3. It is at least highly arguable that the respondent's claim namely that the court has no jurisdiction to hear this matter is wrong. The line of authority on which the respondent relies may be appropriate in relation to academic matters but it is inapplicable to the case of a breach of a contract to reside in a hall. The normal jurisdiction of the court would not be ousted.

4. This is an eminently appropriate case for relief to be granted pending the determination of the appeal.

28. Lord Gifford Q.C. also submitted in his written submissions, that neither the Charter nor the Statutes provide any guidance or procedure as to how the authority of the Visitor may be invoked or exercised. He argued that it may seem startling to the court that in a matter such as the present case, where a student has been unlawfully given less than three weeks notice of her expulsion from Hall, she may not obtain relief from the court, but is required to address her grievance to Her Majesty the Queen in England. He submitted that the court should not accept the ouster of its jurisdiction in such a case unless compelled by clear authority. He submitted that the authorities relied on by Anderson, J. did not compel such a conclusion and that all of them concerned issues concerning the status of a student or teacher, or the correctness of examination grades. He said that they did not concern the personal contracts made between organs of the University and students.

29. Learned Queen's Counsel submitted that the issue on appeal concerned inter alia, the applicant's contract of residence, and whether the UWI were in breach of the agreement between the parties. Lord Gifford Q.C. also argued that a critical issue for

consideration in the appeal, will be whether a contract between the UWI and a student which does not concern his or her educational career or academic status, can be determined according to the ordinary law by the ordinary courts.

30. Mr. Stephen Shelton, for the respondent has submitted on the other hand that the applicant has no right to bring a claim in the Supreme Court since the matters complained of are in the exclusive jurisdiction of the University's Visitor. In his written submissions he stated as follows:

> "10. The relationship between the Appellant and the Respondent though contractual, involves as well a further contract governing her residence on the Hall. However, her contract of residence incorporates its own binding procedures for discipline and dispute resolution. The resolution of the dispute between the Appellant and the Respondent is a domestic matter falling within the internal management of the Respondent. The provision of hall of residence on the Respondent's campus is a University activity, as much as examination and courses of learning are University activities. The provision of lodging on campus is inextricably bound to the University activities of academic courses and examination which members, such as the Appellant, pursue. The Respondent is well equipped with its own long standing procedures to adjudicate and resolve this dispute. This dispute is a domestic one and within the exclusive jurisdiction of the Visitor since it involves questions relating to the internal laws of the Respondent and rights and duties derived from those laws".

Conclusion

31. The rationale behind the establishment of the Visitor has been explained in the case of **Patel v University of Bradford Senate and Another** [1978] 3 All E. R. 841 at 862 b. Megarry V.C has summarized the law on this subject and has said:

> "...[T]here is much to be said in favour of the visitor as against the courts as an appropriate tribunal for disputes of the type which fall within the visitatorial jurisdiction. In place of the formality, publicity and expense of proceedings in court, with pleadings, affidavits and all the apparatus of litigation... there is an appropriate domestic tribunal which can determine the matter informally, privately, cheaply and speedily . . ."

32. Lord Gifford Q.C. had submitted quite forcefully that the court should intervene in a matter such as this in order to see that justice is done. He argued that unlawful procedures had been carried out by the disciplinary committee and that the justice of the case required that the interim relief should be granted. I respectfully disagree with learned Queen's Counsel and say that the matter in dispute between the parties is of the type which falls within the visitorial jurisdiction of the University.

33. There is a school of thought that seems to suggest that the exclusive jurisdiction of the visitor in domestic matters has outlived its usefulness, but I beg to differ on this. I would say that if changes are to be made in respect of the existing University Statutes that this would be a matter strictly for Parliament to consider. I am reminded of what Lord Scarman said in **Duport Steels Ltd and Others v Sirs and Others** [1980] 1 All ER 529 at page 551:

> "But in the field of statute law the judge must be obedient to the will of Parliament as expressed in its enactments. In this field Parliament makes and unmakes the law the judge's duty is to interpret and to apply the law, not to change it to meet the judge's idea of what justice requires".

34. There is merit indeed, in the submissions of Mr. Shelton. I am therefore not persuaded by the submissions of Lord Gifford Q.C. that Anderson, J., was wrong in declining jurisdiction to deal with the matter. The courts have no jurisdiction to entertain internal disputes which exist within the University. They must be decided by the Visitor who has exclusive jurisdiction over those matters. If perchance, I am considered wrong in so deciding, I agree with Mr. Shelton that damages would be an adequate remedy in the matter. The application for court orders is accordingly dismissed. Costs of this application to be costs in the appeal.