

**INDUSTRIAL TRIBUNAL**

**NEW PROVIDENCE**

In the Matter of the Industrial Relations Act, Chapter 321

And

In the Matter of the Industrial Relations (Tribunal Procedure) Rules 2010

**BETWEEN:**

**LESLIE EDGECOMBE**

**APPLICANT**

v

**PERFECT LUCK EMPLOYER NO. 1 LTD.**

**RESPONDENT**

**APPEARANCES:** Mr. Errol McKinney on behalf of the Applicant

Kimberly Miller on behalf of the Respondent

**BEFORE:** Her Honour, President Indira N. Demeritte-Francis

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**ORDER**

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- (1) By Certificate of Referral dated 9<sup>th</sup> March, 2020 the Minister referred the subject dispute to the Industrial Tribunal; and
- (2) In accordance with Rule 3 (1) of the Industrial Relations (Tribunal Procedure) Rules, 2010 a Notice for an Originating Application – Form A was sent on 23<sup>rd</sup> June, 2020 by the Secretary, to the Tribunal, to the Applicant; and
- (3) Upon receipt by the Applicant of the Notice for an Originating Application the Applicant filed an Originating Application in the Tribunal on 2<sup>nd</sup> July, 2020; and
- (4) A Notice of Application to the Respondent – Form C and a Notice of Appearance - Form D was sent to the Respondent on the 6<sup>th</sup> July, 2020; and

- (5) That a Notice of Appearance - Form D was filed on 14<sup>th</sup> July, 2020 and no Defence – Form E was filed in the Tribunal by the Respondent; and
- (6) Pursuant to Rule 15(1) of the Industrial Relations (Tribunal Procedure) Rules 2010, the Industrial Tribunal set a fixture for the Case Management Hearing for Directions on the 9<sup>th</sup> November, 2020; and
- (7) The Applicant's Representative and the Attorney for the Respondent appeared on the day of hearing, and sought an adjournment for settlement discussions; and
- (8) That the parties returned on the 7<sup>th</sup> December, 2020 and informed the Tribunal that the matter has been settled; and
- (9) The Applicant submitted an executed Deed of Release outlining the terms of settlement, the same is now exhibited here:

COMMONWEALTH OF THE BAHAMAS  
NEW PROVIDENCE

SEPARATION AND RELEASE AGREEMENT

THIS SEPARATION AND RELEASE AGREEMENT (the "Release") is made and entered into this 9th day of December 2020 (the "Effective Date") between Leslie Edgecombe ("Employee") and Perfect Luck Employer (No. 1) Limited, a company incorporated under the laws of the said Commonwealth ("Company") of the other part. Each signatory hereto is sometimes referred to in this Release collectively as the "Parties" or individually, as a "Party".

RECITALS:

- A. WHEREAS, Employee was terminated on or about January 17, 2017;
- B. WHEREAS, Employee applied to the Industrial Tribunal for a decision on a trade dispute referred by the Minister of the said Commonwealth; and
- C. WHEREAS, the Parties have agreed to a full and final settlement of all claims in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree to be legally bound by the following terms and conditions which constitute full settlement of any and all disputes between them:

1. **Payment/Benefits to Employee:** In full consideration of the Employee's execution of this Release, the Company shall pay to the Employee the sum set forth in Exhibit A which is attached hereto. But for Employee's willingness to sign this Release, Employee would not otherwise be entitled to receive the payment set forth in Exhibit A. Employee shall immediately notify all creditors who have been receiving salary deductions from the Company on account of pending balances owed by Employee and ensure that Employee's creditors are fully aware that the Company has ceased all such deductions as of the Effective Date.

2. **Confidentiality:**

A. **Regarding Company's Business:** The Employee, Employee's attorneys, agents, employees, heirs and assigns agree to keep confidential and not to disclose any information or other material of a secret, confidential and/or proprietary nature relating to the Company, its clients, affairs or business ("Confidential Information") which was disclosed to the Employee in any form whatsoever (including without limitation, electronically, pictorially or orally) during the course of Employee's employment save where such disclosure is required by law or pursuant to an order or direction of a court of competent jurisdiction. The Employee further agrees to destroy or cause to be destroyed all Confidential Information in his possession or control or at the Company's sole discretion, to return such Confidential Information to the Company.

B. **Confidentiality Regarding Terms/Conditions of Separation and Release Agreement:** Employee agrees that this Release and the terms and conditions hereof

are strictly and shall forever remain, confidential, and that neither Employee nor Employee's heirs, successors and assigns shall disclose or disseminate any information concerning any term or terms hereof to any person(s) under any circumstances except Employee may disclose the terms of this Release to Employee's attorneys, accountants, tax advisors, other similar professionals, or spouse (hereinafter referred to as "Permitted Third Parties"). Employee will use Employee's best efforts to ensure that any Permitted Third Party to whom such disclosures are made shall agree in advance to be bound by the terms of this confidentiality paragraph. Employee may disclose the terms of this Release as is required by law.

C. **Conditions on Confidentiality:** If Employee is subpoenaed in a lawsuit or ordered by a court, Employee shall give Company at least seven (7) business days' notice or other reasonable notice as may be dictated by relevant circumstances so that Company may assert any objections prior to testimony, the return of a subpoena, or the entry of a court order.

2. **Non-Discernment:** Employee agrees and covenants that Employee will not at any time make, publish or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments or statements concerning Company related to the Company's businesses, or any of its employees, officers, and existing and prospective customers, suppliers, investors and other associated third parties, now or in the future.

4. **Reasonable Time to Consider Separation and Release Agreement:** Employee acknowledges that Employee has had a reasonable time when which to consider this Release, before executing it and has carefully read and fully understands the provisions of this Release. In considering whether to execute the Release, Employee has been given the opportunity to ask questions and seek clarification from Company's representatives.

5. **Limitation on Representations:** Company's representations have been limited to the information contained in the materials provided to Employee.

6. **Release by Employee:** Employee, on behalf of Employee and Employee's successors, heirs, assigns, attorneys, agents and representatives and all other persons who could assert a claim based upon Employee's relationship and/or dealings with Company, hereby unconditionally and forever waives, releases, acquits and discharges Company and its parents, subsidiaries, affiliates, predecessor entities—including without limitation, all current and former officers, directors, attorneys, employees, insurers and agents (hereinafter referred to as "Released Parties") of, and from, any and all debts, complaints, claims, charges, "Releases" or "Released Parties") of, and from, any and all debts, complaints, claims, charges, which have arisen or could have arisen in the past through the Effective Date of this Release, whether now known or unknown, suspected or unsuspected. The Released Claims include, without limitation: (i) any claims arising out of or related to Employee's employment with Company and/or Employee's separation from employment through the Effective Date; (ii) all claims or causes of action which were or could have been asserted by Employee against Company for any reason; and (iii) all claims arising under any local law or statute, The Employment Act of The Bahamas, the Industrial Relations Act of The Bahamas, and any other law, rule, regulation, or ordinance, any public policy, contract, tort, or common law.

As of the Effective Date, Employee fully releases Company and its parents, subsidiaries, affiliates, predecessor entities – including without limitation, all current and former officers, directors, attorneys, employees, insurers and agents (hereinafter referred to as "Released Parties") and will not seek any compensation or relief from Company for any work-related accident, injury and/or occupational disease that Employee may be presently suffering from, or which Employee may become aware of, after the Effective Date, which may be

attributable to Employee's employment with Company.

Within three (3) business days from execution of this Release, Employee shall withdraw all actions, grievances or complaints of any kind against the Company which are pending before all agencies, tribunals, courts, departments, or any other entities.

7. **Covenant Not To Sue:** Employee further agrees and covenants that neither Employee, nor any person, organization or other entity acting on Employee's behalf, will file, charge, claim, sue or cause or permit to be filed, charged or claimed, any civil action, suit or legal proceeding for personal relief (including any action for damages, injunctive, declaratory, monetary or other relief) against Company (or any person or entity released herein) involving any matter occurring at any time in the past up to and including the Effective Date of this Release or involving any continuing effects of any acts or practices which may have arisen or occurred prior to the Effective Date of this Release.

8. **No Admission of Liability:** Employee understands and acknowledges that this Release constitutes a compromise and settlement of a disputed claim. No action taken by the Company either previously or in connection with this Release shall be deemed or construed to be (a) an admission of the truth or falsity of any claims heretofore made or (b) an acknowledgment or admission by Company of any fault or liability whatsoever to the other party or to Employee.

9. **Full Release Without Limitation:** For the purpose of implementing a full and complete release, Employee expressly acknowledges that representations given in this Release are intended to include in their effect, without limitation, claims that Employee did not know or suspect to exist in Employee's favor at the time of the effective date of this Release, regardless of whether the knowledge of such claims or the facts upon which they might be based would materially have affected the Employee's willingness to enter into this Release. The consideration given under this Release is also for the release of those claims and contemplates the extinguishment of any unknown claims.

10. **Prior Agreements:** This Release cancels and supersedes all prior agreements and understandings between the Employee and the Company or either of them and it constitutes the entire agreement between the parties with regard to the matters provided herein.

11. **Counterparts:** This Release may be executed in counterparts, each of which when so executed and delivered (whether in original, facsimile or other electronic form) shall be deemed to be an original and all of which when taken together shall constitute one and the same deed.

12. **Authority to Execute:** The Employee and the Company represent and warrant that they have full legal authority to execute this Release.

13. **Choice of Law, Jurisdiction and Venue:** This Release shall be governed in all respects, including validity, interpretation and effect by, and shall be enforceable in accordance with the internal laws of the Commonwealth of The Bahamas without regard to conflicts of laws principles. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of this Release shall be brought against any of the Parties exclusively in the Supreme Court of the Commonwealth of The Bahamas and each of the Parties consents to the jurisdiction of such courts in any such action or proceeding and waives any objection to venue laid herein.

14. **Severability:** Should any provision of this Release be held by a court of competent jurisdiction to be unenforceable only if modified, or if any portion of this Release shall be held as unenforceable and thus stricken, such holding shall not affect the validity of the remainder of this Release, the balance of which shall continue to be binding upon the Parties with any such modification to become a part hereof and treated as though originally set forth in this Release.

The Parties further agree that any such court is expressly authorized to modify any such unenforceable provision of this Release in lieu of severing such unenforceable provision from this Release in its entirety, whether by rewriting the offending provision, deleting any or all of the offending provision, adding additional language to this Release or by making such other modifications as it deems warranted to carry out the intent and agreement of the Parties as embodied herein to the maximum extent permitted by law.

The Parties expressly agree that this Release as so modified by the court shall be binding upon and enforceable against each of them. In any event, should one or more of the provisions of this Release be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, and if such provision or provisions are not modified as provided above, this Release shall be construed as if such invalid, illegal or unenforceable provisions had not been set forth herein.

15. **Captions:** Captions and headings of the sections and paragraphs of this Release are intended solely for convenience and no provision of this Release is to be construed by reference to the caption or heading of any section or paragraph.

16. **Interpretation:** The Parties hereby agree that each Party has reviewed and had the opportunity to review this Release, and each Party has had the opportunity, whether exercised or not, to have each respective Party's attorney review this Release. Accordingly, the normal rule of construction to the effect that any ambiguities are resolved against the drafting Party shall not be employed in the interpretation of this Release.

[SIGNATURE PAGE TO FOLLOW]

Exhibit A

Company shall pay to Employee's designated representative a one (1) time payment of Seven Thousand Bahamian Dollars (B\$7,000.00) on or before December 15, 2020 in full and final settlement of any and all claims by Employee, provided that Employee executes this Agreement no later than December 9, 2020.

IN WITNESS WHEREOF each Party hereto has set his hand this day and year first above written.

LESLIE EDGECOMBE:

*Leslie Edgcombe*  
\_\_\_\_\_  
EMPLOYEE SIGNATURE

Leslie Edgcombe  
\_\_\_\_\_  
PRINT NAME OF EMPLOYEE

PERFECT LUCK EMPLOYER (NO. 1) LIMITED

\_\_\_\_\_  
PRINT NAME  
ON BEHALF OF COMPANY

\_\_\_\_\_  
SIGNATURE

(10) That the Applicant filed into the Tribunal Notice of Withdrawal- Form K on 17<sup>th</sup> December, 2020; and

**THE DECISION OF THE TRIBUNAL IS AS AGREED AND THEREFORE IT IS SO ORDERED:**

- (11) The Originating Application filed in the Industrial Tribunal on 2<sup>nd</sup> July, 2020 is decided accordingly pursuant to Rule 12(1)(b) of the Industrial Relations (Tribunal Procedures) Rule 2010 and is hereby marked Settled.

**AND THIS IS THE ORDER OF THIS TRIBUNAL**

DATED THIS, 17<sup>th</sup> December, 2020

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Indira N. Demeritte – Francis

President

Industrial Tribunal