

Arthur Gortifacion Cajés, #1



April 22, 2016

No. S-1510284
Vancouver Registry

In the Supreme Court of British Columbia

Between

**Prakash Basyal, Arthur Gortifacion Cajés,
Edlyn Tesorero and Bishnu Khadka**

Plaintiffs

And

**Mac's Convenience Stores Inc, Overseas Immigration Services Inc., Overseas
Career and Consulting Services Ltd., and Trident Immigration Services Ltd.**

Defendants

Affidavit #1 of Arthur Gortifacion Cajés

I, **Arthur Gortifacion Cajés**, a cook residing at [REDACTED] in the City of Calgary, Alberta, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Plaintiff herein and as such I have personal knowledge of the facts and matters hereinafter deposed to except where stated to be on information and belief and in those cases I verily believe them to be true.
2. I am a Philippine national presently residing and working in Calgary, Alberta under Canada's temporary foreign worker program.

3. In or about October 2012, I was living with my wife in Abu Dhabi, United Arab Emirates ("UAE"). I worked as a cook in a restaurant. My two daughters were, and still are, living in the Philippines with my sister.
4. I wanted to come to Canada to work because I knew that working in Canada could lead to permanent residence and citizenship for me and my family. I wanted to obtain permanent residency and bring my wife and two daughters to start a new life in Canada. That was not a possibility in the UAE.
5. I first heard of Overseas Immigration ("Overseas") from Carla Moreno. I met her because we lived in the same flat in Dubai, renting different rooms within the flat. When I met her or shortly after I met her, she told me that she would be leaving Dubai and going to Canada soon. I asked her if she could help me get a job in Canada too and she gave me the email address for AJ Mann, an employee of Overseas.
6. On October 28, 2012 I sent my resume to Mr. Mann by email. This email and the ensuing exchange, described below, are attached hereto as Exhibit "A".
7. Mr. Mann replied on October 29, 2012. He told me that he would be in Dubai in November 2012 but that I could only meet with him if I first paid a \$2000 registration fee by October 30, 2012, the next day. He said that if I paid after that date the fee would go up to \$2500. His email said that Overseas would provide various assistance in exchange for the fee, including providing me with work.
8. Mr. Mann said that Overseas brings approximately 250 workers to Canada every year, people just like me who dream of working in Canada. He said that Overseas would make my dreams a reality.
9. Mr. Mann told me to make the payment to Overseas through Al Rostumani, which is a currency exchange in Dubai that also processes international remittances and payments. He told me to ask for a specific person named Marichu at Al Rostumani.
10. I replied to Mr. Mann's email on October 30, 2012. I told him that I was living in Abu Dhabi but would go to Dubai to make the payment. I asked him for Marichu's phone number so I could contact her before travelling to Dubai. I also asked whether I could get a job as a cook because that was what I had skills and experience doing.
11. Mr. Mann replied on October 31, 2012 and told me that he could get me a job as a cook. He gave me Marichu's phone number and said that I could make the payment from Abu Dhabi as well. He said that I should make the payment that day to avoid the increased registration fee.
12. I replied that same day and told Mr. Mann that I was not able to make the payment that day because currency exchanges were closed by that time. I asked whether I could pay the discounted rate on November 1, 2012. Mr. Mann replied that I could.

13. I emailed Mr. Mann again the next day and told him I had made the payment. I sent him the receipt for the payment as well as other documents he had requested: my passport, visa, and CV. The receipt for the payment is attached hereto as Exhibit "B".
14. Mr. Mann replied and told me I had paid the wrong amount. I explained that I had misunderstood and agreed to pay the remainder of the fee when I met with him in Dubai in November.
15. Overseas held a recruitment fair in Dubai on November 18, 2012, at which I paid the remainder of the fee, \$500, in cash to Cynthia Hirak, another Overseas Employee. Attached as Exhibit "C" to this affidavit is an email exchange between me and Ms. Hirak, confirming that I made this payment.
16. Attached as Exhibit "D" to this affidavit is my receipt, dated November 17, 2012, documenting my exchange of UAE dirhams for \$500 CAD.
17. Also at the recruitment fair, I was interviewed by two representatives of Subway and/or Mac's, who were named Debra and Tara. An email from Ms. Moreno, who was at that time an employee of Overseas, arranging the interview is attached hereto as Exhibit "E".
18. On or around April 4, 2013, Overseas sent me the following:
 - a. an offer of employment signed by Geoff Higuchi on behalf of Mac's to work as a Food Service Supervisor in Calgary, Alberta (attached hereto as Exhibit "F");
 - b. an employment contract signed by Mr. Higuchi on behalf of Mac's to work as a Food Service Supervisor in Calgary, Alberta (attached hereto as Exhibit "G"); and
 - c. a Labour Market Opinion ("LMO") dated November 29, 2012, authorizing Mac's to bring 18 temporary foreign workers to work as Food Service Supervisors in Calgary, Alberta. The LMO had an expiry date of April 19, 2013. It identified Overseas Consulting as a third party authorized to act on behalf of Mac's, and identified Mr. Higuchi as the Employer Contact. The LMO is attached as Exhibit "H" to this affidavit.
19. I signed the employment contract on or about April 10, 2013.
20. The Employment Contract provided, among other things, the following terms:
 - a. the term of employment is 24 months;
 - b. the position is Food Service Supervisor;
 - c. the hours of work and wage rate are 37.5 hours per week at \$13.00 per hour;

- d. 4.00% vacation pay;
 - e. Mac's shall provide health insurance at no cost to me until I am eligible for applicable provincial health insurance;
 - f. Mac's will not recoup, through payroll or by any other means, any costs incurred from its recruitment of me; and
 - g. Mac's is obliged to abide by the standards set out in the relevant provincial labour standards act.
21. I used the LMO, offer of employment, and employment contract to apply to Citizenship and Immigration Canada for a visa to travel to Canada. I received this visa on or about October 17, 2013. A copy is attached hereto as Exhibit "I".
22. On October 22, 2013, I sent an email to Mr. Higuchi notifying him and Mac's that I had received my visa and booked a ticket to travel to Canada on November 30, 2013. This email and the entire email exchange described in the following paragraphs are attached hereto as Exhibit "J".
23. Mr. Higuchi replied the same day telling me that I was not on his list and that I should not travel until he had confirmed that there was a position for me. I forwarded this email exchange to Overseas on October 23, 2013. Over the phone, Mr. Bansal told me I had to pay \$6,000 CAD to Trident Immigration at this point in order to proceed further.
24. I emailed Mr. Bansal and Ms. Hirak on October 27, 2013, confirming that I would make this payment as instructed and asking what to do next. I also asked them to clarify why Mr. Higuchi said I was not on his list. Ms. Hirak replied asking me to send a copy of my receipt and said that my employment location would be confirmed prior to my arrival in Canada.
25. On October 30, I went to Al Rostamani International Exchange and sent a payment of \$6,050 CAD to Trident Immigration. The statement of transaction details for this payment is attached as Exhibit "K" to this affidavit.
26. To make this payment, my wife took out an interest-bearing loan.
27. On November 7, 2013, I sent the receipt to Ms. Hirak as she had requested. This email is part of the chain attached as Exhibit "J".
28. I received no further communications from Overseas or its employees after I made this payment. I called Overseas' office and asked to speak with Mr. Bansal but was told he was unavailable. The person answering the phone told me to communicate by email.

29. I emailed Mr. Bansal on December 2, 2013, explaining that I had been trying to contact him and to find out from Overseas what the next steps would be, and that I had not received a reply. This email is also part of the chain attached as Exhibit "J".
30. Finally, in or around early February 2014, Cheryl Bodie, an employee of Overseas, contacted me by telephone and said that they were going to purchase a plane ticket for me to travel to Canada.
31. On February 5, 2014, Mr. Bansal purchased a plane ticket for me to travel to Canada on February 16, 2014. He purchased the ticket using a credit card with the last name "Bala". The booking confirmation for this ticket is attached as Exhibit "L" to this affidavit.
32. The plane ticket was to fly to Vancouver rather than Calgary where my employment contract and LMO said I would be working. During our phone call in early February 2014, Ms. Bodie told me that I would be training in Vancouver first before going to Calgary to start working there.
33. Ms. Bodie also told me during that phone call that Mr. Bansal's instructions were that I must not bring with me to Canada any receipts showing that I made payments to Overseas.
34. I arrived in Vancouver on February 16, 2014. I applied for and received a work permit at the border crossing, based on my offer of employment, employment contract, and LMO. A copy of my work permit is attached as Exhibit "M" to this affidavit.
35. My work permit sets out, among other things, the following:
 - a. Not authorized to work in any occupation other than stated.
 - b. Not authorized to work for any employer other than stated.
 - c. Not authorized to work in any location other than stated.
36. When I arrived in Vancouver on February 16, 2014, an employee of Overseas named Johnny picked me up at the airport and drove me to the accommodation where Overseas would house me. It was a house in Surrey where I was to live with several other workers. The housing was overcrowded.
37. On or about February 17, 2014, I went to Overseas' office to ask when I would start my job. Ms. Hirak was there and she told me there was no job for me at Mac's.
38. I was very upset. I had given up a good job and left my wife behind in Dubai to come to work for Mac's in Canada. I had paid Overseas a lot of money. I was not able to work legally for any other employer than Mac's in Calgary due to the conditions on my work permit.

39. Overseas never provided me with a job and Mac's never employed me in accordance with the terms of my employment contract.
40. Overseas did not provide payment for a return flight in the event that I leave Canada.
41. Overseas' treatment of me caused me great distress. Waiting for many weeks after paying them \$2000, with no reply from them at all, was very stressful. I was very worried that my money was gone. Then, paying an additional \$6000 and arriving in Canada only to find out there was no job for me was also extremely stressful. I was without any income for several months. My work permit in Canada only allowed me to work at the Mac's convenience store identified on my LMO. I had to find a new employer who would be willing to apply for a new LMO to hire me, which was difficult. My status in Canada and my ability to earn an income were both uncertain which was very stressful and upsetting for me.

Suitable to be Representative Plaintiff

42. I have been advised by class counsel and believe that there are in excess of 450 putative class members.
43. Based on my personal experience with Overseas I am aware that many of the putative class members are Philippine nationals like myself.
44. I have been advised by class counsel and believe that many of the putative class members live in Alberta like myself.
45. I am fluent in Tagalog, the native language of the Philippines, as well as English.
46. I am prepared to act as a representative of the Class in this proceeding.
47. I understand that the major steps in a class action are generally as follows:

- Commencement of the action by issuance of the Notice of Civil Claim;
- Application for certification;
- Notice to the Class of the certification and the right to opt out or, in the case of non-residents, to opt in;
- Discovery of documents;
- Examination for discovery;
- Pre-trial conferences;
- Trial of the common issues;

- Notice to the Class if individual participation is required;
- Determination of proceeds of resolution by way of judgement or settlement; and possibly
- Appeals.

48. I also understand that in agreeing to seek and accept an appointment by the Court as a representative plaintiff, it is my responsibility, among other things:

- To become familiar with the issues to be decided by the Court;
- To review the Notice of Civil Claim and any amendments;
- To assist in the preparation and execution of an Affidavit in support of the application for certification;
- To attend, if necessary, with Class counsel for cross-examination on my affidavit;
- To attend, if necessary, with Class counsel for an examination for discovery where I will be asked questions;
- To attend, if necessary, with Class counsel at trial and give evidence regarding the case;
- To receive briefings from Class counsel
- To express my opinion to Class counsel and to the Court if offers of settlement are made;
- To express my opinion to class counsel and to the Court if settlement positions are to be formulated; and
- To assist in preparation of an execution of an Affidavit in support of Court approval of any settlement.

49. To date, I have taken the following steps to fairly and adequately represent the interests of the Class Members:

- I retained two law firms, Koskie Glavin Gordon and Allevato Quail & Worth as Class counsel;
- I have discussed the case with class counsel on numerous occasions and have provided information for the Notice of Civil Claim and this affidavit;
- I have reviewed the Notice of Civil Claim;
- I have advised putative Class Members of the Notice of Civil Claim and advised them that the Notice of Civil Claim is available for review on the websites of Koskie Glavin Gordon and Allevato Quail & Worth Barristers and Solicitors; and
- I aided in drafting this affidavit.

50. I intend to take the following steps to continue to fairly and adequately represent the interests of the Class Members:

- To interact with other Class Members, receive their input and relay information to and from Class counsel;
- To monitor the Koskie Glavin Gordon and Allevato Quail & Worth Barristers and Solicitors websites for information about the case; and
- Instruct Class counsel.

51. I have reviewed the Amended Notice of Civil Claim and understand that the proposed class definition in this action is as follows:

- all persons who, on or after December 9, 2009, made payments to Overseas Immigration Services Inc., Overseas Consulting and Consulting Services Ltd., and/or Trident Immigration Services Ltd. for the purpose of securing employment in Canada, and who were thereafter provided with employment contracts to work at Mac's Convenience Stores in British Columbia, Alberta, the Northwest Territories and Saskatchewan under Canada's Temporary Foreign Worker Program.

52. From my review of the Notice of Application, I understand that the proposed common issues are as follows:

A. Breach of Contract

- i. What are the relevant terms (express, implied or otherwise) of the Class' employment contracts with the Defendants respecting:
 - a. wage rate;
 - b. hours of work;
 - c. length of the contract;
 - d. recruitment fees;
 - e. payment of two-way air transportation; and
 - f. reasonable and proper accommodation.
- ii. Did the Defendants or their agents breach any of the forgoing contractual terms? If so, how?

B. Negligent Misrepresentation

- i. Did the Defendants, any of them, owe a special duty of care to the Class Members?

- ii. Did the Defendant Overseas misrepresent to the Class Members that it would secure legal employment in Canada for the Class Members in exchange for the payment of a Recruitment Fee?
- iii. Did the Defendants, or any of them, misrepresent to the Class Members that the Class Members would be employed by Mac's pursuant to the terms of a valid employment contracts in exchange for the payment of a Recruitment Fee?
- iv. If the answer to B(ii) is "yes", was the misrepresentation made negligently by the Defendant Overseas?
- v. If the answer to B(iii) is "yes", was the misrepresentation made negligently by any of the Defendants?
- vi. If the answer to any of B(iv-v) is yes, did the Class Members rely to their detriment on the misrepresentation(s)?
- vii. If the answer to B(v) is "yes," are the Defendants, or any of them, liable for negligent misrepresentation?

C. Fraudulent Misrepresentation

- i. Did the Defendant Overseas deliberately or recklessly misrepresent to the Class Members that it would secure legal employment in Canada for the Class Members in exchange for the payment of a Recruitment Fee?
- ii. Did the Defendants, any of them, deliberately or recklessly misrepresent to the Class Members that the Class Members would be employed by Mac's pursuant to the terms of a valid employment contracts in exchange for the payment of a Recruitment Fee?
- iii. If the answers to C(i) and (ii) or C(i) and (iii) are "yes", did the Defendants intend to induce the Class Members to rely on this misrepresentation to their detriment?
- iv. If the answer to C(iii) is "yes," are the Defendants, or any of them, liable for negligent misrepresentation?

D. Conspiracy

- i. Did the Defendants conspire to harm the Class Members?

- ii. Did the Defendants act in furtherance of the conspiracy?
- iii. Was the predominant purpose of the conspiracy to harm the Class Members?
- iv. Did the conspiracy involve unlawful acts?
- v. Did the Defendants know that the conspiracy would likely cause injury to the Class Members?
- vi. Did the Class Members suffer economic loss?
- vii. What damages, if any, are payable by the Defendants to the Class Members?

E. Unjust Enrichment & Waiver of Tort

- i. Were the Defendants, or any of them, unjustly enriched by having the Class pay the Recruitment Fees?
- ii. If the answer to E(i) above is "yes", did the Class suffer a corresponding deprivation?
- iii. Is there a juridical reason why the Defendants, or any of them, should be entitled to retain the Recruitment Fees?
- iv. What restitution should the Defendants, or any of them, disgorge to the Class Members related to the charging of Recruitment Fees to the members of the Class based on unjust enrichment?
- v. What restitution should the Defendants, or any of them, disgorge to the Class Members related to the charging of Recruitment Fees to the members of the Class based on the doctrine of waiver of tort?

F. Breach of Fiduciary Duty

- i. Did the Defendants, or any of them, or their agents owe a fiduciary duty to the Class?
- ii. If the answer to F(i) is "yes" has there been a breach of that duty?

G. Remedy & Damages

- i. If the answer to any of the common issues is "yes", what remedies are Class Members entitled to?
 - ii. If the answer to any of the common issues is "yes", are the Defendants potentially liable on a class-wide basis?
 - iii. Is the Class entitled to an award of aggravated or punitive damages based upon the Defendants' conduct? If "yes":
 - a. What is the appropriate method of procedure for distributing any aggravated or punitive damages to the Class?
53. Class counsel has produced a plan for the conduct of the litigation, which is attached hereto as Exhibit "N".
54. Class counsel has also prepared a proposed Notice to the Class, which is attached hereto as Exhibit "O".
55. I am not aware of any fact material to this application that is not disclosed in this affidavit.
56. I am not aware of any conflict between myself and other members of the proposed class. I believe that I can fairly and adequately represent the interests of the Class Members and I am committed to fulfilling my responsibilities.
57. I have no knowledge of anything to suggest that any Class Members has a sufficient ability or interest in controlling the prosecution of separate actions.
58. I do not have sufficient resources to pursue a Small Claims Court action.
59. I was unaware of my legal rights under the British Columbia *Employment Standards Act*, the Alberta *Fair Trading Act*, or related regulations until well beyond the six-month limitation period in these statutes for recovery of paid Employment Fees from the date of paying those Employment Fees.

