



~~June~~ ^{July} 13, 2016
No. S-1510284
Vancouver Registry

In the Supreme Court of British Columbia

Between

Prakash Basyal, Arthur Gortifacion Cajos,
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 Edlyn Tesorero

I, **Edlyn Pama Tesorero**, am a retail supervisor and reside at [REDACTED]
[REDACTED] in the city of Dubai in the emirate of Dubai in the United
Arab Emirates, 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 citizen of the Philippines, currently residing in Dubai, United Arab Emirates.

3. In or around June 2012, I was living and working in Dubai, United Arab Emirates,
4. I contacted Overseas Immigration to inquire about finding a job in Canada. I had learned about Overseas Immigration from a friend who had told me that Overseas Immigration was recruiting workers in Dubai for jobs in Canada.
5. On or around June 8, 2012, AJ Mann, who I believed to be an Overseas Immigration manager and agent, emailed me and told me to pay an initial fee of \$2000 to process my application. The email and its attachment is attached hereto as **Exhibit "A"**. I had previously met Mr. Mann in person approximately a year earlier and discussed getting a job in Canada through Overseas Immigration with him but I did not have the funds at that time to do so.
6. On or around October 14, 2012, I sent a bank transfer of \$2000 in Canadian funds to Overseas Career and Consulting Services through Al Rostamani International Exchange. The receipt for this payment is attached hereto as **Exhibit "B"**. I understood and believed that, by paying this first instalment, I had retained Overseas Immigration to secure me a job in Canada.
7. On or around November 13, 2012, Cheryl Bodie, who I believed to be an Overseas Immigration employee, emailed me and told me that I had been scheduled for an interview on November 20, 2012 with a Canadian retail employer at the Flora Creek Hotel in Dubai, United Arab Emirates. I confirmed this date with Mr. Mann as he had previously told me that the interview would take place on November 22, 2012. Attached hereto as **Exhibit "C"** is a copy of this email chain.
8. On or around November 20, 2012, I attended at the Flora Creek Hotel in Dubai, United Arab Emirates. I was interviewed by Geoff Higuchi, who I believed to be a representative of a Canadian retail employer, Mac's Convenience Stores Inc., for a job working at a one of these stores in Canada. Mr. Higuchi was assisted by Cynthia Hirak, who I believed to be an Overseas Immigration employee and paralegal. I asked Mr. Higuchi if I got the job and he told me that he would let me know through Overseas Immigration.



9. On or around April 4, 2013, I received the following documents via an email, attached hereto as **Exhibit "D"**, from Ms. Bodie:
- a. an offer of employment signed by Mr. Higuchi on behalf of Mac's Convenience Stores Inc. to work as a Food Service Supervisor in Calgary, Alberta, which was dated April 2, 2013 (the "**Offer of Employment**"), attached hereto as **Exhibit "E"**;
 - b. an employment contract signed by Mr. Higuchi on behalf of Mac's Convenience Store o/a Subway, for me to work as a Food Service Supervisor, which was also dated April 2, 2013 (the "**Employment Contract**"), attached hereto as **Exhibit "F"**; and
 - c. a Labour Market Opinion (the "**LMO**") dated November 29, 2012, which authorized Mac's Convenience Stores Inc. dba Subway to bring in 18 temporary foreign workers to work as Food Service Supervisors in Calgary, Alberta. The LMO had an expiry date of April 19, 2013. The LMO identified Overseas Career and Consulting Ltd. and its representative Kuldeep Bansal as a third party authorized to act on behalf of Mac's Convenience Stores Inc., and identified Mr. Higuchi as the Employer Contact. The LMO is attached as **Exhibit "G"** to this affidavit.
10. The Employment Contract included, among other things, the following terms:
- a. the term of employment is 24 months;
 - b. the position is Food Services 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;
 - g. Mac's is obliged to abide by the standards set out in the relevant provincial labour standards act; and



- h. under no circumstances are transportation costs recoverable from the employee.
11. I signed the Employment Contract shortly after receiving it by email from Overseas Immigration.
 12. I had calculated approximately how much I was going to earn based on the terms of my Employment Contract. I understood that I was going to work 37.5 hours per week for a wage of \$13.00 per hour for 24 months. I made the decision to sign the Employment Contract based on those working hours, wage rate, time period and calculated earnings.
 13. On April 4, 2013, Ms. Bodie advised me to apply at the Canadian embassy in Abu Dhabi, United Arab Emirates, as soon as possible as the LMO was expiring very soon. A copy of this email is attached hereto as **Exhibit "H"**.
 14. I used the LMO, the Offer of Employment and the Employment Contract to apply to Citizenship and Immigration Canada in April 2013 for a visa to travel to Canada very shortly after I received these documents.
 15. On or around September 17, 2013 I received a letter from the Embassy of Canada requesting that I submit my original passport in order for them to continue processing my application. A copy of this letter is attached hereto as **Exhibit "I"**.
 16. On or around October 9, 2013 I received my passport with the Canadian visa stamp, attached hereto as **Exhibit "J"**.
 17. On or around October 8, 2013, Ms. Hirak instructed me during a phone call to pay a second instalment of \$5,500 to Trident Immigration Services Ltd ("**Trident**"). On or around October 15, 2013, I sent a bank transfer of \$5,500 in Canadian funds to Trident through Al Rostamani International Exchange. Attached as **Exhibit "K"** to this affidavit is a copy of the bank transfer.
 18. In total, I paid \$7,500 in Canadian funds (the "**Recruitment Fees**"), as instructed by Mr. Mann and Ms. Hirak, for Overseas Immigration to secure a job for me.



19. On or around October 15, 2013, I emailed Ms. Hirak and Mr. Bansal, who I believed to be the director of Overseas Immigration, copies of my visa to travel to Canada, my passport, and receipts showing the payment of \$5,500 to Trident. Attached hereto as **Exhibit "L"** is a copy of this email chain and attachments.
20. On or around November 5, 2013, I purchased a plane ticket to travel from Dubai to Vancouver, British Columbia. A copy of this ticket is attached hereto as **Exhibit "M"**.
21. On or around December 1, 2013, I travelled by air to Vancouver, British Columbia. I understood that once I arrived, I would be taken to Calgary, Alberta to commence work at a Mac's store.
22. On arrival in Vancouver on December 1, 2013, at the border crossing, I was issued a work permit to work for Mac's Convenience Stores Inc. dba Subway as a Food Services Supervisor in Calgary, Alberta, (the "**Work Permit**") based on the LMO, the Offer of Employment and the Employment Contract. Attached as **Exhibit "N"** to this affidavit is a copy of the Work Permit.
23. The Work Permit included, among other things, the following conditions:
 - a. Not authorized to work at any occupation other than stated.
 - b. Not authorized to work for any employer other than stated.
24. From December 2 to December 8, 2013, I went to the Overseas Immigration office at 204 - 12380 80th Ave in Surrey, British Columbia repeatedly and waited to be deployed to Calgary, where I understood I had a job waiting for me.
25. On or around December 9, 2013, Mr. Bansal confirmed that he was sending me to my job at a Mac's location in Calgary and he booked me a bus ticket to Calgary from Vancouver.
26. During my stay in Vancouver, Mr. Bansal instructed me to stay at the Best Western Hotel, at 8033 King George Boulevard in Surrey, British Columbia with two other female foreign workers, one from Sri Lanka and one from Kenya.



27. On or around December 10, 2013, I left Vancouver to travel by bus to Calgary, where I arrived on December 11, 2013.
28. On or around December 11, 2013, I contacted Kalmajit Kaur, an employee at the Mac's located at 8060 Silver Springs Blvd NW, Calgary, where I believed I was to start work. She told me that the store had no instructions from its head office that I would be joining them and that she had to contact Mr. Higuchi, among others, about this.
29. On December 16, 2013, I contacted Ms. Kaur again by text message asking for an update. I also asked her if they were hiring right now. She responded that she still had a job available but that she was still waiting for Mac's to tell her whether or not I could have it. Attached hereto as **Exhibit "O"** is a copy of this text message chain.
30. On or around December 11, 2013, I texted and called Ms. Hiraak and Mr. Bansal to ask about my job and was told to wait until January 6, 2014 because the employer was on leave until then. Upon contacting Mr. Bansal, he informed me that he was in contact with the "brand manager" from Mac's about my position. Attached hereto as **Exhibit "P"** is a copy of this text message chain.
31. On or around December 19, 2013, I emailed Mr. Higuchi to tell him about the situation and to ask for his help. I found his contact information on the LMO. On or around December 19, 2013, Mr. Higuchi replied by email that there was no longer a job available for me and copied Mr. Bansal and Ms. Hiraak. Attached to this my affidavit as **Exhibit "Q"** is a copy of this email chain.
32. After I received the email from Mr. Higuchi saying there was no job for me, I called Overseas Immigration for help. They did not provide me with any accommodation or financial support and I was 19 hours away by bus from their office in Surrey.
33. I tried to find a job myself but had difficulty doing so because my work permit limited my employment to Mac's locations in Calgary.
34. In February 2014, I asked Ms. Hiraak to help me get the documents related to my work status updated so that I could work legally but she did not end up assisting me.



35. In March 2014, Ms. Hirak told me that there was work available at a Mac's location in Calgary if I still wanted to work there. She told me that I could start soon and that she just needed to talk to Mr. Higuchi first. I was very excited and relieved.
36. Throughout April and May 2014, I kept contacting Ms. Hirak for updates about when I could start the new job I had been promised with Mac's but she kept telling me that she was waiting to hear from Mr. Higuchi up to and including the end of May 2014. At one point, she told me that there was a problem with the job designation and that there was no vacancy for the position of Food Service Supervisor. I spoke with the manager at the Mac's location I was to work at and with a friend who was working at Mac's. They both told me that Mac's was continuing to bring in temporary foreign workers to work in its locations. I told Ms. Hirak this. Attached as **Exhibit "R"** is a copy of the text message chains between Ms. Hirak and me during this period.
37. In May 2014, I emailed Mr. Higuchi in the hopes of speeding up the start date of my new job with Mac's. He responded that he was unaware of my situation. I was surprised by this response because Ms. Hirak told me that she had repeatedly contacted Mr. Higuchi and was waiting to hear back from him. I replied to Mr. Higuchi by explaining what Ms. Hirak and Mr. Bansal had told me and promised regarding arranging another job with Mac's.
38. On May 20, 2014, I also sent text messages to Mr. Higuchi at the phone numbers listed on the LMO. Attached as **Exhibit "S"** is a copy of this text message chain. I did not receive any further communication from him.
39. I kept trying to reach Ms. Hirak and Mr. Bansal during May and June 2014, calling them nearly every day but they were very rarely reachable.
40. On or about June 6, 2014, I spoke with Mr. Bansal over the phone. He told me that he was aware of my situation and confirmed that he knew I was in Calgary and that I had been in Canada for six months and I still did not have a job.
41. I was not able to work legally for any employer other than the Mac's locations in Calgary indicated on my work permit. I was also not entitled to any public benefits or settlement services as a temporary foreign worker.



42. In June 2014, Canadian Border Services Agency ("CBSA") called me and told me they were doing an investigation in relation to my situation. They asked me questions and recorded the conversation. I also submitted some documents to them in relation to their investigation.
43. At the end of June 2014, I decided to leave Canada and I took a flight from Calgary to Toronto to Dubai, UAE and informed CBSA that I was leaving the country. A copy of this ticket is attached hereto as **Exhibit "T"**.
44. I suffered mental distress and hardship as a result of the conduct of Mac's Convenience Stores Inc., Overseas Immigration Services Inc., Overseas Career and Consulting Services Ltd., and Trident Immigration Services Ltd. (the "**Defendants**").
45. Between December 2013 until I returned to Dubai on or around June 30, 2014, I used up my savings and borrowed money from friends. I was homeless and stayed in the homes of Filipino community members and friends.
46. I was very upset and stressed during this time. I had left my sister and fiancé in Dubai in order to come to work in Canada. I left my job as an assistant store manager and my career in Dubai. I had paid thousands of dollars. I came to Canada with the intention of working and abiding by the rules. They did not help me find a solution to the situation they put me in; instead they abandoned me.
47. At no point was I ever given employment in accordance with the terms of my Employment Contract.
48. The Defendants did not reimburse me for my airfare to Canada.
49. The Defendants did not provide me with airfare when I returned to Dubai, United Arab Emirates.

Suitable to be Representative Plaintiff

50. I have been advised by class counsel and believe that there are in excess of 450 putative class members.

A handwritten signature in black ink, appearing to read "Fleury", is located at the bottom right of the page. The signature is written in a cursive style with a long horizontal stroke extending to the left.

51. Based on my personal experience with the Defendants, I am aware that many of the putative class members are Philippine nationals like myself.
52. Because the Defendants recruit workers from the United Arab Emirates, many of the putative Class Members live in the United Arab Emirates as I do.
53. I am fluent in Tagalog and English, the two national languages of the Philippines.
54. I am prepared to act as a representative of the Class in this proceeding.
55. 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.
56. 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.

57. 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; and
- I aided in drafting this affidavit.

58. 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 websites for information about the case; and
- Instruct Class counsel.

59. I have reviewed the Notice of Application and understand that the proposed class definition in this action is as follows:

- all persons who, on or after December 11, 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.



60. 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 Defendant Mac's Convenience Stores Inc. ("Mac's") 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 Defendant Mac's or its agents breach any of the forgoing contractual terms? If so, how?
- iii. Does the contract require the Class Members to mitigate their damages?

B. Agency

- i. Were the Defendants Overseas Immigration Services Inc., Overseas Career and Consulting Services Ltd., and/or Trident Immigration Services Ltd. (collectively, "Overseas") acting as agents of the Defendant Mac's in recruiting Class Members to work for Mac's, including by securing employment contracts and LMOs for Class Members to work at stores operated by the Defendant Mac's and/or otherwise facilitating their entry into Canada?
- ii. If the answer to (B)(i) is "yes", is the Defendant Mac's thereby liable for their agents charging and receiving Recruitment Fees from Class Members?



C. Negligent Misrepresentation

- i. Did the Defendants, or any of them, owe a special duty of care to the Class Members?
- ii. Did the Defendants 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 contract in exchange for the payment of a Recruitment Fee;
- iv. If the answer to C(ii) is "yes", was the misrepresentation made negligently by the Defendants Overseas?
- v. If the answer to C(iii) is "yes", was the misrepresentation made negligently by any of the Defendants?
- vi. If the answer to any of C(iv-v) is yes, did the Class Members rely to their detriment on the misrepresentation(s)?
- vii. If the answer to C(vi) is "yes," are the Defendants, or any of them, liable for negligent misrepresentation?

D. Fraudulent Misrepresentation

- i. Did the Defendants 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, or 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 D(i) and/or (ii) is "yes", did the Defendants, or any of them, intend to induce the Class Members to rely on their misrepresentation to their detriment?



- iv. If the answer to D(iii) is "yes," are the Defendants, or any of them, liable for fraudulent misrepresentation?

E. 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?

F. Unjust Enrichment & Waiver of Tort

- i. Was the Defendant Mac's unjustly enriched by not having to pay the Class pursuant to the terms of the employment contracts?
- ii. Were the Defendants, or any of them, unjustly enriched by having the Class pay the Recruitment Fees; and
- iii. Were the Defendants, or any of them, unjustly enriched by not paying the cost of two-way air transportation for the Class?
- iv. What restitution, if any, is payable by the Defendants, or any of them, to the Class Members based on the doctrine of waiver of tort?
- v. Are the Defendants, or any of them, liable to account to the Class Members for the Recruitment Fees, if any, that they obtained from the Class Members based on the doctrine of waiver of tort?



G. Breach of Fiduciary Duty

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

H. 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. What is the appropriate method of procedure for distributing the damages award to the Class?
 - iv. Is the Class entitled to an award of aggravated or punitive damages based upon the Defendants' conduct and, if so, in what amount?
 - v. If the answer to H(iv) is "yes, what is the appropriate method of procedure for distributing any aggravated or punitive damages to the Class?
61. Class counsel has produced a plan for the conduct of the litigation, which is attached hereto as **Exhibit "U"**.
62. Class counsel has also prepared a proposed Notice to the Class, which is attached hereto as **Exhibit "V"**.
63. 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.
64. 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.
65. I do not have sufficient resources to pursue a Small Claims Court action.



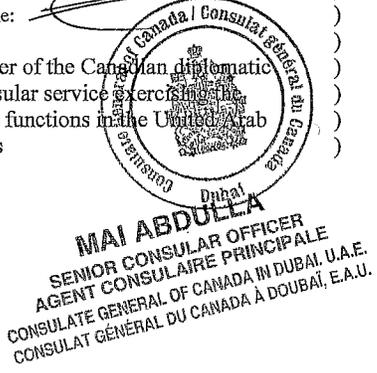
- 66. I was unaware of my legal rights under the British Columbia *Employment Standards Act* until after the six-month limitation period for recovery that would have captured the period when I paid all of the Recruitment Fees.
- 67. I am not aware of any fact material to this application that is not disclosed in this affidavit.

SWORN BEFORE ME at the city)
 of Dubai, in the emirate of Dubai in the)
 United Arab Emirates this 13 day of)
~~June~~, 2016.)

July

 Print Name:)

An officer of the Canadian diplomatic)
 and consular service exercising the)
 officer's functions in the United Arab)
 Emirates)



 Edlyn Tesorero
