



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

NOTICE OF APPLICATION

"Brought under the *Class Proceedings Act*"

Name of applicant(s): Prakash Basyal, Arthur Gortifacion Cajés, Edlyn Tesorero and Bishnu Khadka

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

TAKE NOTICE that an application will be made by the applicants to Mr. Justice Silverman at the courthouse at 800 Smithe Street, Vancouver, BC on April 3, 2017 at 10:00 a.m. for the orders set out in Part 1 below.

Part 1: ORDERS SOUGHT

1. Certifying this action as a class proceeding;
2. Defining the class as:

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 ("**Class**" or "**Class Members**")

3. Appointing Prakash Basyal, Arthur Gortifacion Cajes, Edlyn Tesorero and Bishnu Khadka as representative plaintiffs for Class Members.
4. Certifying the following issues as common issues:

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?
5. Approving the form and method of notice to be given to the Class Members and ordering that the Defendants pay the cost of any notice;
 6. Ordering the Defendants to provide Plaintiff’s Class counsel with a list of all Class Members and all of their contact information in the possession of or available to the Defendants including residential addresses in Canada, the United Arab Emirates, or Class Members’ places of origin; telephone numbers; email addresses; Facebook names; Skype usernames; or any other information that may be used to contact Class Members by any medium;
 7. A preservation order to preserve the Defendants’ payroll records required under section 28 of the *Employment Standards Act*, RSBC 1996, c. 113 and that those payroll records are not to be destroyed after two years from the date a Class Members’ employment terminates; and

8. Such further and other relief as to this Honourable Court may seem just.

Part 2: FACTUAL BASIS

1. The facts supporting this application are found in the Amended Notice of Civil Claim and affidavits filed in support of this application.

Part 3: LEGAL BASIS

1. The legal basis supporting this application, including the Plaintiff's Written Argument and Reply Argument, will be provided as per the Case Plan Order entered May 30, 2016.

Part 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Prakash Baysal made on June 29, 2016;
2. Affidavit #1 of Arthur Gortifacion Cajés made on April 22, 2016;
3. Affidavit #1 of Edlyn Tesorero made on July 13, 2016;
4. Affidavit #1 of Bishnu Khadka made on June 29, 2016;
5. Affidavit #1 of Devyn Cousineau made on July 12, 2016;
6. Affidavit #1 of Lori Greyell made on July 15, 2016; and such further and other materials as counsel may advise.

The applicants estimate that the application will take 2 days.

This matter is not within the jurisdiction of a master.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application, or if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;

(ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;

(iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: 15/07/2016
[dd/mm/yy]

Signature of

Applicant Lawyer for applicant(s)

Charles Gordon
[type or print name]

To be completed by the court only:

Order made

- in the terms requested in paragraphs _____ of Part 1 of this notice of application
 with the following variations and additional terms:

Date: _____
[dd/mm/yy]

Signature of Judge Master

APPENDIX

[The following information is provided for data collection purposes only and is of no legal effect.]

THIS APPLICATION INVOLVES THE FOLLOWING: [Specify the application type(s) included in this application.]

Application Type proceedings at trial