

**THE REPUBLIC OF TRINIDAD AND TOBAGO**  
**IN THE HIGH COURT OF JUSTICE**  
**CV 2016 – 00289**

**BETWEEN**  
**INTERNATIONAL SHIPPING LIMITED**

**Claimant**

**AND**  
**NIKKI RAMANAN**  
**MACHEL RAJKUMAR**  
**NICOLE SALVADOR**  
**STRATEGIC LOGISTICS LIMITED**

**Defendants**

**Before:** Mr Justice Ronnie Boodoosingh

**Appearances:**

Mr Rajiv Persad and Mr Lee Merry for the Claimant

Mr Gerald Ramdeen and Mr Dayadai Harripaul for the Defendants

**Date:** 7 December 2017

**JUDGMENT**

1. The claimant is a limited liability company in the business of freight forwarding, intermodal transportation, marine insurance, customs brokerage and logistics. It is a line agent

for Evergreen Line, the fourth largest global carrier in the world. It owns and operates a custom bonded warehouse in El Socorro. The company was started in 1997 by Michael Laughlin. His daughter, Shivana Laughlin, and her mother, Aysha Laughlin, are managers in the company.

2. The defendants are Nikki Ramanan (Mrs Ramanan), Machel Rajkumar (Mrs Rajkumar), Nicole Salvador (Ms Salvador) and Strategic Logistics Limited (SLL) respectively. Mrs Ramanan and Mr Rajkumar are directors of SLL. They are all former employees of the claimant. SLL has business in some of the same areas as the claimant, particularly in the provision of brokerage services. It is a competitor of the claimant company.
3. Mrs Ramanan and Mr Rajkumar were terminated as employees of the claimant in December 2015. Ms Salvador resigned in December 2015. Mrs Ramanan was the brokerage manager from 17 November 2014 and had worked at the claimant company before. Mr Rajkumar was a Document Supervisor. Ms Salvador was an Account Executive.
4. The fourth defendant was incorporated on 21 July 2015. Thus Mrs Ramanan and Mr Rajkumar were directors of a competitor while they worked for the claimant company.
5. The claim alleged that the first three defendants breached their duty of fidelity and confidentiality and owed a fiduciary duty to the claimant as implied terms of their contracts of employment. Ms Salvador dealt with the clients of the claimant. She visited them, contacted them, dealt with their business and issues. Mrs Ramanan also had access to the clients as did Mr Rajkumar.

6. The defendants have contested this claim on the aspect of damages only. Mr Ramdeen for the defendants frankly conceded this at the trial. Indeed both his cross-examination and submissions were based on the issue of damages.
7. There being no contest on liability and finding that the claimants adduced sufficient credible evidence I conclude that the claimants have proved their case on the liability aspect.
8. The claimant claimed both special and general damages arising from the conduct of the defendants.
9. The claim is based on the duties of fidelity to their employer, confidentiality, fiduciary obligations of an employee and other conduct relating to inducing breaches of contract.

### **The Evidence**

10. The claimant called several witnesses connected with the company who were cross-examined. These were Shivana Laughlin, Crystal Williams, Nicole Arjoon, Khadine Ranjitsingh, Aysha Laughlin, Kwasi Thomas, Kirk Ramcharitar and Rishi Balroop. They gave evidence on different aspects of the claim.
11. The significant witnesses concerning the damages claim were the accountant Rishi Balroop, Kirk Ramcharitar and Shivana Laughlin. Nicole Arjoon and Khadine Ranjitsingh testified about being offered a side-cut on any work passed to the fourth defendant from among the claimant's clients. Kwasi Thomas was a computer specialist who retrieved information from the company's data base.

12. Arising from the claims were several aspects for which damages were claimed.
  
13. Shivana Laughlin is a director of the company and general manager of the warehouse of the claimant company. She gave instructions to Mr Thomas to check the ACE server. They found 30 transactions with the name Antonio Gomez. This showed that a customs clerk with access to their software was entering transactions for a broker named Antonio Gomez. 13 of the 16 clients listed for that broker were clients of ISL. These, however, had the reference number sequence beginning SL. She noted at least 10 of the transactions mentioned in paragraph 23 of her witness statement were entered on the claimant's system but that they files were missing from their office entirely. Thus these were worked on by the claimant but then removed and billed to the fourth defendant. Of the 13 clients of the claimant 7 were regular customers.
  
14. She said due to the backlog several demurrage charges were incurred which were irrecoverable (para 53). Thus the claim for demurrage charges has to be directly linked to whether there was in fact a backlog created by the defendants 1 to 3. She said hundreds of extra hours in the customs brokerage department had to be worked at a cost of \$157,905.68.
  
15. In cross-examination she noted that overtime is recorded on time sheets. She maintained the backlog lasted until April / May 2016. They were not always reimbursed for demurrage. Most of the names on the list were their clients, but not all. Not all of the 30 transactions did both brokerage and shipping. She said they never had a backlog like that so she concluded someone was trying to sabotage the company.

16. Kwasi Thomas gave evidence that on 15 December 2015 he retrieved from their ACE computer server, entries under the name Antonio Gomez. This was not a broker the claimant dealt with. The transactions identified the reference number sequence beginning with SL. The claimant used ISL. He said he did not authorise these transactions to be done from a remote location. But he did notice that some of the 30 transactions he identified were modified on 16 December 2015. In cross-examination he stated he created the document KT 1 based on information inputted by other employees.
  
17. Kirk Ramcharitar is a Customs Clerk Grade II. In cross-examination he stated that transport rates had no fixed fee. He did not recall between October and December 2015 having to work overtime. Importantly, he said that in December 2015 they cleared up whatever backlog there was so that by January 2016 things went back to normal.
  
18. Crystal Williams in cross-examination was clear that she personally was not paid any extra money for overtime between December 2015 and May 2016.
  
19. Aysha Laughlin in cross-examination accepted that they were not always paid for demurrage. It depended on whose fault it was if rent was incurred.
  
20. Rishi Balroop was really the critical witness as far as advancing the claimant's claim for damages was concerned. He was the financial controller of the claimant at the material time. He is a registered accountant both in the United Kingdom and Trinidad and Tobago. He was given the task of tabulating the losses. He noted that a log book is kept which sets out as part of the company's records the transactions of the company and the invoicing of clients. He

stated upfront that he was forced to estimate certain losses because of missing files and that some transactions were not done to completion.

21. He compared logs for October 2015 to December 2015. 14 transactions were identified as not invoiced to the claimant. There were missing files for these. He estimated the brokerage fees if these had been completed by the claimant. His estimate was done based on the cost, insurance and freight (CIF) value recorded in the log book and the brokerage tariff rates plus an estimated transport fee based on the CIF value. Where there was no CIF value he used a median brokerage fee of \$2,000.00 plus transport of \$1,890.00, which he considered to be reasonable median amounts. He therefore estimated losses of \$48,860.65 due to missing files. He produced a table to represent this.
  
22. Thomas provided him with a list of 30 transactions brokered by Antonio Gomez. These transactions had CIF values so he used these to calculate the brokerage fees plus an estimated transport cost of \$1,890.00 or \$700.00 depending on the size of the CIF value. The amount he estimated representing foregone transactions for these 30 was \$91, 748.90. He produced a table with these 30 transactions.
  
23. He also produced a table with brokerage transactions incurring rent and demurrage which remained uncollected as of 7 June 2016. These amounted to \$40,258.00 at the claimant's bond facility; \$159,464.79 for rent at other ports and \$136,331.79 for demurrage from shipping lines.
  
24. They also hired temporary staff and paid them \$21,550.00 due to the backlog. There were significant overtime payments paid during 19 December 2015 to 29 April 2016 totalling \$206,460.21.

25. There were other costs for advertising vacancies, disclaimers and meal costs in the total of \$15,807.10. Receipts were provided for these.
  
26. In cross examination Mr Balroop noted there were time sheets for junior staff to show overtime work but he did not exhibit these. He also did not produce the brokerage log book because the attorneys advised this was not necessary.
  
27. He did compile the document with the losses set out based on the inputs made by other employees. He also did not check after June 2016 to see if customers paid any sums towards the rent. He used a similar process with demurrage as he did for rent and these were estimates.

### **The Law**

28. A claimant must prove losses claimed. Where there are items of special damages claimed a claimant should provide supporting documentation if available. The court in deciding what would prove damages in each case has flexibility in examining the reasonableness of the evidence presented. In **Ratcliffe v Evans (1892) 2 QB 524 at 532 to 533** Bowen LJ noted:

... the character of the acts themselves which produce the damage and the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable having regard to the circumstances and the nature of

the act themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles, to insist upon more would be the vainest pedantry.”

29. The court must also be reasonable and realistic in determining whether damages are to be proved to the hilt: **Uris Grant v Motilal Moonan CA Civ 162/1985, unreported.**

30. Where the evidence is not contradicted and the witness is a credible witness, even if the evidence is unsupported, the court may rely on such evidence as proof of damages: **Gunness and Another v Lalbeharry Civ Appeal No. 41 of 1980, unreported.**

31. The proof required “will vary according to the nature of the item” for “which the claim is made and the difficulty or ease with which proper evidence might be obtained”: **per de la Bastide CJ in David Sookoo and Others v Ramnarace Ramdath, Civ. Appeal No. 43 of 1998.**

32. In **Shairoon Abdool v B and L Insurance Company Limited, HCA 434 of 2001**, Mendonca J spoke of the need to produce supporting documentation which could substantiate a claim and the need for an explanation when the document is not produced.

33. In **Civil Appeal No. 169 of 2008, Ramnarine Singh, Ganesh Roopnarine and Great Northern Insurance v Johnson Ansola**, Mendonca JA stated:

"97. From these cases it seems clear that the absence of evidence to support a plaintiff's viva voce evidence of special damage is not necessarily conclusive against him. While the absence of



supporting evidence is a factor to be considered by the trial Judge, he can support the plaintiff's claim on the basis of viva voce evidence only. This is particularly so where the evidence is unchallenged and which, but for supporting evidence, the Judge was prepared to accept. Indeed in such cases, the Court should be slow to reject the unchallenged evidence simply and only on the basis of the absence of supporting evidence. There should be some other cogent reason.

98. In this case the Plaintiff's evidence is open to criticism. He produced no documentary evidence although he said that he had such evidence. He called no other witnesses such as customers for whom he would have done work. However despite these shortcomings, the Judge made a clear finding that the Plaintiff carried on the business of an upholsterer/joiner. He was entitled to do so. He had the benefit of seeing and hearing the Plaintiff give evidence of this and this evidence was unchallenged."

34. Generally the maker of a document is needed to prove it:  
**Anand Rampersad v Willies Ice Cream Limited Civ Appeal No. 20 of 2002** per Archie JA.
  
35. But much turns on the credibility of the witnesses and the processes they used. In this case we had the evidence of Mr Balroop. He explained the process he used. And he frankly conceded that some of the evidence he produced was based on estimations made. He utilised the information entered into the data base of the company to produce his evidence.
  
36. When a company is advancing or defending a claim it would be impractical to call every single witness who may have had an input into the systems of the company. The court has to allow a degree of flexibility and realism into how this works. Indeed the records of the company can be admissible for proof of matters under various provisions of the Evidence

Act. This is to make the point that the court has to be reasonable in what it expects of claimants in all the circumstances.

37. But those circumstances have to be examined carefully in respect of each claim being made. Some claims will be shown to be reasonable and others not. Further, cross-examination can whittle away at some of the items being claimed and this is, of course, a legitimate approach which may be adopted by the cross-examiner.

38. Finally, on the law, I note that nominal damages may be awarded where there is not specific proof of damages but where it is clear that some loss has been sustained. I also note that nominal damages need not be “small damages”: **The Medina [1900] AC 113 at 116 per Lord Halsbury and RBTT Merchant Bank and others v Reed Monza and Others, CV 2010 - 03699.**

### **Findings and Conclusions**

39. Having said that I turn to considering the specific claims.

40. I found Mr Balroop to be a credible witness. I considered him to be forthright in explaining the process and method he used to arrive at the respective figures. I noted the defendants’ submissions about the absence of the log book and the time sheets. These were the first hand records. Mr Balroop did, however, say that the log books were quite voluminous. He said they were guided by the attorneys as to what was needed. While he did not prepare the entries himself, these were records generated in the operation of a company. He also did have regard to this first-hand information in producing his witness statement. It was, as he

said, a team operation. I found no reason to doubt his truthfulness in the evidence he gave and I therefore am prepared to accept that he conducted his investigation in preparation of his evidence and faithfully reproduced what information of the company he had access to. The absence of these records do not trouble me in the circumstances of this case. I must, however, consider his evidence in light of all of the evidence given by the claimant's witnesses. The evidence of Mr Balroop cannot be divorced from all of the other of the claimant's witnesses.

41. I should note that I found it unnecessary to give detailed consideration to the evidence on behalf of the defendants since their evidence was mainly targeted at the issue of liability, which as I noted before, was not contested at the trial.
42. I find the claimant has proved the claims for recruitment advertisements, meals for the overtime work in December and disclaimer advertisements. This was the sum of \$15,807.10. These were also directly related to the separation of defendants 1 to 3 from the claimant.
43. Next, I consider the hiring of temporary staff. Rondell Babel's invoice was dated 21 November 2015. This cannot, therefore, relate to hiring caused by the acts of the defendants. The invoices for Bevon Khan and Stephen Murray support the evidence that temporary staff was hired and that they were paid. I allow part of the claim in the sum of \$15,600.00.
44. There was a substantial claim for overtime for management and for employees. Shivana Laughlin's evidence was that this covered the period up to April 2016, which is the period claimed for by Mr Balroop. However, her evidence was in conflict with the evidence elicited in cross-examination from

two witnesses of the claimant. Crystal Williams gave evidence that she was not paid anything extra for her work. Furthermore, and more importantly, Kirk Ramcharitar gave evidence that the backlog work was done in December 2015 and that operations were back to normal in January 2016. On the claimant's case, therefore, there was this material inconsistency. Thus, while it may not be doubted that overtime was paid in the months January to April 2016, from the claimant's own case, this was not proved to be the result of any backlog that was created or contributed to by defendants 1 to 3.

45. I do, however, accept that there was a need for some overtime work to clear a backlog and this was likely caused by the conduct of defendants 1 to 3. I therefore make a nominal damages award in the sum of \$40,000.00. This relates to a period from 15 December 2015 to early January 2016.

46. I turn to considering the claim for foregone brokerage revenue as a result of unaccounted files. This was for 14 missing files. Mr Balroop at paragraphs 5 to 8 set out the method he adopted in this regard. Given that these files were missing, Mr Balroop testified that he himself searched for these files and they were not located and given the evidence from the other witnesses about these missing files, it seems to me that the method used by Mr Balroop was really the best he could do in the circumstances. He made an estimate using the median values for transport and brokerage fees. The files being missing, there was nothing else he could realistically do but do an estimate. Adopting a flexible and reasonable approach to this claim and considering Mr Balroop to be a credible witness, I accept his claim for the sum of \$48,860.65.

47. I now turn to the 30 transactions identified by Mr Thomas on Ms Laughlin's request and what follows from these. Now Ms Shivana Laughlin identified 13 of the 16 clients that comprised the 30 transactions to be their clients. Thus it

appears that the others were clients of the fourth defendant. The claimant therefore cannot recover in respect of all of the transactions. 3 of the persons were not their clients. Mr Balroop used these 30 transactions to come up with the claim for brokerage revenue, demurrage incurred on brokerage customers and rent incurred by brokerage customers. Furthermore, Ms Laughlin in cross-examination stated that the demurrage and rent costs would have been attributable to the backlog created by the defendants which went to April 2016. However, as noted above, Mr Ramcharitar gave conflicting evidence to show that the backlog was all but gone by January. She also said that not all of the clients used both brokerage and shipping services.

48. Given the fact that 13 of the 16 clients were those of the claimant I am prepared to allow a substantial part of their claim for revenue foregone, but I cannot allow the entire sum claimed. Again, I accepted Mr Balroop's methodology in coming to the figure he claimed. Discounting the figure therefore, I allow this aspect of the claim in the sum of \$50,000.00 instead of the sum of \$91,748.90 as claimed.
49. The demurrage claim was for \$136,331.79. Given that this was said to have resulted from the backlog and on one version the backlog was gone by January 2016, the claimant is entitled to only nominal damages for this sum which I award in the sum of \$30,000.00.
50. A similar position goes for the rent which was claimed in the sum of \$199,723.05. Adopting the same approach as for demurrage charges, I award nominal damages in the sum of \$40,000.00.
51. Finally, I have considered whether the claimant should be compensated beyond these specific claims. As indicated the

defendants did not challenge the claimant's evidence on the liability aspect. What the evidence revealed is that while the first and second defendants were employed with the claimant they formed a rival company in the same line of business. Further, along with the third defendant, they approached clients of the claimant to move their work to the fourth defendant. The evidence is also that they used information obtained from the claimant, in terms of client lists and data and possibly software, to assist with the start-up operations of the fourth defendant. While working for the claimant they were working against the claimant's interests and in favour of their own and a rival company. Even after they left, employees of the claimant were approached, from the claimant's evidence, which I accepted, to send work to the fourth defendant for a side-cut. Given these several breaches of their duties the claimant is entitled in all the circumstances to a further award for these breaches which I make in the sum of \$60,000.00.

52. In total therefore, there is judgment for the claimant against the defendants. The defendants must pay the claimant the total sum of \$300,267.75. Interest will run on this sum of at the rate of 2.5% from the date of the filing of the claim form to the date of judgment.

53. The defendants must also pay prescribed costs to the claimant on the sum of \$300,267.75.

54. I record my appreciation to the attorneys on both sides for their very helpful written submissions.

Ronnie Boodoosingh

Judge