

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV2017-04181**

**BETWEEN**

**ROGER RAMJATTAN**

**Claimant**

**AND**

**ANDREW RAHAMAN**

**SUE ANN JOSEPH**

**PHARMACY COUNCIL OF TRINIDAD AND TOBAGO**

**Defendants**

Before **Master Pierre**

**Appearances:**

Claimant: Mr. Devesh Maharaj instructed by Ms. Kandace Bharath

Defendants: Ms. Kamini Persaud-Maraj for the Third-named defendant

No appearance of first and second defendants

**Date:** 4th August, 2020

**JUDGMENT**

1. The claimant sued the defendants for loss of profits and goodwill when the third-named defendant refused to issue him a pharmacy licence in respect of his pharmacy, H & R Drugs.
2. A preliminary issue as to whether the claimant could properly sue and be compensated for losses in relation to H & R Drugs, notwithstanding that H & R Drugs was not a party to the action, was determined in favour of the claimant. On the substantive issue, Dean-Armorer J, as she then was, declared that, 'the defendants have unlawfully failed to issue the pharmacy licence for the pharmacy business known as H & R Drugs for the year 2017 to 2018' and ordered, 'damages to be assessed by a

Master in chambers in respect of the unlawful act of the pharmacy board to issue a licence’.

3. The definition section of the Pharmacy Board Act, Chapter 29:52 (hereinafter the Act) states that a pharmacy means a shop or place of business operated for the purpose of
  - a. selling by retail, poisons, drugs or devices; or
  - b. compounding and dispensing prescriptions given by registered and medical practitioners, dentists and veterinary surgeons.
4. Section 27 of the Act makes it unlawful and an offence to carry on trade as a pharmacy, so defined, without a pharmacy licence.
5. The defendants unlawfully failed to issue a pharmacy licence for the pharmacy business for the periods 1<sup>st</sup> January, 2017 to 19<sup>th</sup> December, 2017,<sup>1</sup> and 1<sup>st</sup> January, 2018 to 28<sup>th</sup> June, 2018. H & R Drugs therefore could not have lawfully carried on trade as a pharmacy (selling drugs, poisons or devices, compounding and dispensing prescriptions) during the periods for which it was not issued a licence.
6. The claimant pleaded that he suffered both pecuniary and non-pecuniary losses, including consequential losses, as a result of the defendants’ actions. The claimant claimed that he suffered:
  - a. Daily losses of approximately \$5000.00 to \$6000.00;
  - b. Loss of CDAP contract/business for a six-month period;
  - c. Loss of incidental sales (cold beverages, toiletries, cosmetics, snacks, stationery and other convenience items);
  - d. Inability to purchase regular prescription items from local distributors; and
  - e. Loss of profits from antibiotics and controlled drugs and narcotics.

*The evidence in support of loss of profits*

7. The claimant relied on unaudited financial statements, which he had himself prepared, showing his loss for the relevant period. The defendant submitted that the best evidence with respect to profit, loss and trends would have been audited reports from a certified accountant or other witness possessing relevant expertise, and

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<sup>1</sup> The period was taken up to 31<sup>st</sup> December, 2017; the 12-day period between 20 December to 31<sup>st</sup> December was not an unreasonable period of time for return to business as usual.

submitted that the Court should attach little or no weight to the claimant's unaudited financial statements.

8. The Court ascribed due weight to the financial statements for several reasons. The financial statements themselves were quite detailed and distinguished between loss of profits from antibiotic and controlled drugs and narcotics and loss of profits from sales of other items. Further, the claimant established that he was well placed to speak to matters of sales, purchases and loss, as he was a partner in the business of H & R Drugs. The defendants did not conduct any cross-examination, so no challenge had been raised with respect to the financial statements nor did the defendants lead any evidence.<sup>2</sup>
9. The claimant had also stated in his witness statement that, '...the non-issuance of the pharmacy licence has resulted in some \$5000.00 to \$6000.00 in losses daily to the pharmacy.' However, it was not clear how the estimate was arrived at and whether it referred to the claimant's estimate of his daily loss of profits or goodwill or the both taken together.
10. The financial statements, however, provided a breakdown of the loss of profits and in the circumstances, the claimant was entitled to be compensated in the sum of \$198,000.00 as follows-
  - a. antibiotics January to June, 2018: \$54,000.00;
  - b. antibiotics January to December, 2017: \$90,000.00; and
  - c. controlled drugs January 2017 to June, 2018: \$54,000.00.

*The claim for loss of goodwill*

11. The claimant pleaded that H & R Drugs suffered loss of goodwill and loss of reputation and good standing as a result of the defendant's failure to issue the pharmacy licence.

*The evidence in support of the claim for loss of goodwill*

12. The claimant gave evidence that he suffered a loss of reputation and good standing in the community where he conducted business; among members of the pharmacy profession and among suppliers of drugs, all of whom were suspicious as to the reason that H & R Drugs was not in receipt of a pharmacy licence. In all the circumstances,

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<sup>2</sup> Witness statement of Andrew Rahaman filed on 6<sup>th</sup> December, 2019, after the conduct of the assessment, was struck out

the claimant's evidence as to loss of goodwill was highly probable. That evidence was not challenged nor disputed by the defendants.

13. The case of Roncarelli v Duplessis,<sup>3</sup> was relied on by the claimant. In Roncarelli, the Court, in considering the question of how loss of goodwill was to be assessed, stated at paragraph 100 thereof, 'the evidence establishes that there was a substantial reduction in the value of the goodwill of the appellant's restaurant business as a result of what occurred, apart from the matter of any loss which might have resulted on the sale of physical assets. It is difficult to assess this loss and there is not a great deal of evidence to assist in so doing. The appellant did file, as exhibits, income tax returns for the three years prior to 1946, which showed in those years a total net income from the business...The profit-making possibilities of the business are certainly an item to be considered in determining the value of the goodwill. However, in all the circumstances, the amount of these damages must be determined in a somewhat arbitrary fashion'.
14. In the local case of Junior Sammy et. ors. v. More FM Limited et. ors.,<sup>4</sup> the Court considered the type of evidence that would be necessary to support a claim for loss of goodwill. That case dealt with the tort of defamation but the principles with respect to assessing loss of goodwill were instructive. The Court cited a passage from the judgment of Boodoosingh J, as he was then, in Viro Chem Janitorial Services Company Limited v Ackbar Khan<sup>5</sup>: 'As was made clear by Lord Reid in Lewis v Daily Telegraph Limited, "A company cannot be injured in its feelings; it can only be injured in its pocket. Its reputation can be injured by a libel but that injury must sound in money." Whilst Lord Reid went on to say, "The injury need not necessarily be confined to loss of income; its goodwill may be injured", a company which is unable at trial to point to the slightest hiccup in its trading figures may be hard pressed to persuade a court that even an unpleasant libel has seriously injured its reputation.'
15. The Court then noted in the Junior Sammy case that, '[i]n order to prove their case, the corporate claimants ought to have provided financial statements, evidence of contracts tendered for and not obtained, evidence of earnings prior to the making of

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<sup>3</sup> [1959] S.C.R. 121

<sup>4</sup> CV2016-04456

<sup>5</sup> CV 2012-03304, at paragraph 67

the statements and evidence of earnings following the statements.’<sup>6</sup> In the absence of such evidence, that Court made a nominal award for loss of goodwill in the sum of \$7,500.00.

- 16.** In the instant case, the claimant provided evidence of purchases and sales for 2016 when the pharmacy had the benefit of a licence and purchases and sales for comparable periods (one year and six months) when it did not have the benefit of the licence. The evidence showed a downward trend in sales, purchases and profit, which was worked out at a 20% margin. Weight was attached to those financial statements for the very reasons given at paragraph 8 hereof. In the circumstances, this Court made an award for loss of goodwill in the sum of \$602,323.94.

*Disposition*

- 17.** The defendants shall pay the claimant the sum of \$198,000.00 for loss of profits and the further sum of \$602,323.94 for loss of goodwill/diminution of value of the goodwill, with interest thereon at the rate of 2.5% per annum from the date of service of the claim form to judgment and costs calculated on a prescribed scale.

Sherlanne Pierre

Master

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<sup>6</sup> Paragraph 94