

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-00623

BETWEEN

RIA NARINESINGH

CLAIMANT

AND

EDUCATIONAL FACILITIES COMPANY LIMITED

DEFENDANT

Before the Honourable Madame Justice Margaret Y. Mohammed

Dated the 1st June, 2018

APPEARANCES:

Ms. Lesley Ann Lucky-Samaroo instructed by Ms. Niala Narine Attorneys at law for the Claimant.

The Defendant not appearing and being unrepresented.

REASONS

1. On the 8th March 2018 the instant matter came up for trial. There was only one witness statement for the Claimant and there was no evidence filed on behalf of the Defendant to dispute the Claimant's claim on liability and loss. After hearing the Claimant's evidence and the submissions from the Counsel for the Claimant I made the following order:

1. There shall be judgment for the Claimant.

2. *The Defendant do pay to the Claimant the following:*
 - a) *The sum of Six Hundred and Twenty-Three Thousand Four Hundred and Forty-Five Dollars (\$623,445.00) (net of income tax) as loss of income for the remainder of the Claimant's stipulated contract.*
 - b) *Damages for loss of reputation in the sum of One Hundred Thousand Dollars (\$100,000.00).*
 - c) *Exemplary Damages in the sum of One Hundred Thousand Dollars (\$100,000.00).*
 - d) *Interest on the sum of Six Hundred and Twenty-Three Thousand, Four Hundred and Forty-Five Dollars (\$623,445.00) at the rate of five percent (5%) per annum from the 6th June, 2016 until date of judgment. Statutory interest thereafter.*
 - e) *The Defendant do pay to the Claimant prescribed costs in the sum of Ninety-Five Thousand, Seven Hundred and Fifty-Eight Dollars and Thirty-Five Cents (\$95,758.35)."*

2. The Defendant has appealed my decision with respect to my assessment of the Claimant's damages and I now set out my full reasons to address the appeal.

The Claimant's case

3. The Claimant was a former employee of the Defendant and was hired as its Divisional Manager of Finance and Corporate Services attached to the Finance and Corporate Services Division. The Defendant is a limited liability company.
4. The Claimant's case is that the Defendant by letter of agreement dated the 18th September 2012, offered her employment as a Divisional Manager- Finance and Corporate Services for a probationary period of six (6) months effective 8th October 2012. The Claimant signed the letter of agreement and accepted the said position. She annexed a copy of the letter dated 18th September 2012 and marked it as "A".
5. The Defendant offered the Claimant permanent employment as the Divisional Manager by letter dated the 24th April 2013, for a period of two years effective 8th October 2012. One

of the terms of the said letter of agreement was that the Claimant should inform the Defendant of her interest with respect to renewal at least two months before the expiry of the said contract. The Claimant signed the said letter dated the 24th April 2013 (“the first agreement”), a copy of which was annexed and marked “B”.

6. The Defendant renewed the Claimant’s contract of service as the Divisional Manager-Finance for a period of three years by letter of agreement dated 4th March 2015, effective 8th October 2014. The Claimant subsequently signed the said letter dated the 4th March 2015 (“the second agreement”), a copy of which was annexed and marked “C”.
7. The Claimant was terminated on the 6th June 2016, at which time she was receiving the following remuneration and entitlements: (i) a base salary of \$29,000.00 per month; (ii) monthly transportation allowance of \$2,500.00; (iii) monthly entertainment allowance of \$500.00; (iv) 20 working days’ vacation leave per year; (v) 3 working days emergency leave per year; (vi) 14 working days sick leave; (vii) Group health and life plan (matching contributions) and (viii) gratuity subject to tax upon satisfactory completion of the contract period amounting to 20% of full basic salary earned over contract period.
8. A new board of the Defendant was appointed after the 7th September 2016 elections and Mr. Arnold Piggott was appointed Chairman of the Board of Directors of the Defendant (“the Board”). The Board commissioned an audit from PricewaterhouseCoopers. According to the Claimant, she was not aware or informed of the nature, extent or findings of the said audit nor was she informed that any acts, omissions or performance by her in the course of her employment was under investigation or audit.
9. By letter dated the 29th January 2016, the Defendant wrote to the Claimant directing her to take administrative leave from the 29th January 2016 to the 29th February 2016 in order to “*facilitate the conduct of the audit.*” On the 29th January 2016, the Claimant was called into a meeting with Mr. Louis J. Frederick (“Mr. Frederick”), Executive Manager of the Defendant and she was directed to proceed on administrative leave with immediate effect. The Claimant was escorted to her office by Mr. Frederick and she was supervised while she packed up her personal effects from the building. The Claimant averred that since she

was a senior manager at the time, she was humiliated by the unexplained, demeaning and unprecedented treatment in the presence of co-workers and subordinates. She thereafter proceeded on administrative leave with full pay.

10. By letter dated the 15th February 2016, the Defendant wrote to the Claimant, asking her to return the iPhone 6 and SIM card issued to her by the Defendant “with immediate effect”. In accordance with the said directive, on the same day, the Claimant returned the cell phone and the SIM card to the Defendant.
11. The Defendant wrote to the Claimant on the 29th February 2016, purporting to extend the period of the Claimant’s “suspension” for a further period of thirty (30) days. In response thereto, the Claimant through her attorney-at-law wrote a letter dated the 8th March 2016, in which she indicated that prior to receiving the letter dated the 29th February 2016, she had not been informed that any disciplinary action had been taken against her or that she had been “suspended” as asserted in the said letter. The Claimant annexed copies of the letters dated 29th February 2016 and 8th March 2016 and marked “D”. The Claimant averred that she intended to rely on the letter dated the 29th February 2016 to demonstrate that she was disciplined by the Defendant without complying with due process and contrary to the rules of natural justice.
12. The Defendant replied by letter dated the 18th March 2016, suggesting that the references to the Claimant’s “suspension” and the Defendant’s “right to terminate” in the Defendant’s letter dated the 29th February 2016, were “errors in transcription”. The Claimant annexed a copy of the letter dated the 18th March 2016 from the Defendant to her attorney at law, Ms. Lucky-Samaroo and marked “E”.
13. The Defendant informed the Claimant by letter dated 29th March 2016, that her Administrative leave was extended for a further period of 30 days. By letter dated the 12th April 2016, the Claimant requested an All Parties meeting with the Defendant. By letter dated the 20th April 2016, the Defendant indicated that its Counsel was prepared to meet with Ms. Lucky-Samaroo on Friday 22nd April 2016. However Ms. Lucky-Samaroo was not available on that date and the Defendant was so notified. Ms. Lucky-Samaroo’s

secretary attempted to reschedule the meeting but received no feedback from the Defendant.

14. By letter dated the 2nd May 2016 captioned “Disciplinary Charges”, the Claimant was informed for the first time that: (i) the alleged “audit” undertaken by PricewaterhouseCoopers Advisory Services Limited was a Forensic Audit; and (ii) a disciplinary hearing was scheduled to take place on the 6th May 2016.
15. The Claimant was further informed that she was required to answer the following disciplinary charges: (i) failure to act in the best interest of the Defendant by intentionally deceiving the Board of Directors of the Defendant by splitting contract values to avoid Board approval in many instances and (ii) failure to act in the best interest of the Defendant by diverting allocated funds, provided to the Defendant by the Ministry of Education for specific contractors, to other contractors without obtaining approval from the Ministry of Education. A copy of the letter dated 2nd May 2016 is annexed and marked “F”.
16. The Claimant averred that the Defendant only made limited information available to her with the clear intention that it may rely on other relevant documents in its determination of the hearing. She contended that it was contrary to the rules of natural justice, unfair, biased and demonstrated the Defendant’s mala fides in dealing with her. On the 4th May 2016, she was presented with a bundle of documents under cover of letter dated 4th May 2016 from the Defendant. The letter purported to enclose “materials relevant to the charge listed” in the letter of 2nd May 2016 and further stated that the Defendant “reserves the right to rely on any other material relevant to the charges in its possession”.
17. The Claimant requested an adjournment of the Hearing to the 22nd May 2016 since the date was not convenient with Ms Lucky-Samaroo, However, the Defendant rescheduled the Hearing to the 12th May 2016 on the basis that the Claimant was entitled to have the hearing of the charges dealt with swiftly.
18. On the 6th May 2016, Ms. Lucky-Samaroo wrote to the Defendant via email requesting that she be provided with copies of all reports and/or documents and/or statements upon which

the Defendant had based the allegations against the Claimant. The Defendant responded by letter dated the 9th May 2016, refusing the adjournment to a date convenient to the Claimant's attorney and indicated that the Hearing of the Disciplinary Tribunal ("the Hearing") would proceed on the 12th May 2016. The Defendant further indicated that the composition of the Tribunal with respect to the hearing of the Disciplinary charge, namely, Mr. Jeffrey Francis (Director) and Mrs. Gyllis Noel (Human Resource Manager). The Defendant further refused to furnish the Claimant with the necessary information requested in Ms. Lucky-Samaroo's email of the 6th May, 2016.

19. Ms. Lucky-Samaroo sent a further email to the Defendant on the 12th May 2016, to the attention of the Corporate Secretariat/Legal Services, wherein she detailed specific information necessary for the Claimant to defend the charges made against her. The Claimant and Ms. Lucky-Samaroo also attended the Disciplinary Hearing on the 12th May 2016, for the purpose of engaging the Defendant and not to present the Claimant's case on the charges and advised the Defendant's attorney of same in person. The Claimant and Ms. Lucky-Samaroo were asked by Counsel for the Defendant whether the hearing/meeting could be audiotaped and transcribed to which they agreed on the condition that the Claimant through her attorney be provided with a transcript of same.
20. The Claimant indicated that she was unable to mount her defence in light of the Defendant's refusal to provide the requested information. The Claimant also averred that contrary to the Defendant's letter dated the 9th May 2016, the Tribunal consisted of Mr. Anthony Bisnath, a Director of the Defendant and the Human Resource Manager of the Defendant. The Defendant's position on the 12th May 2016 was that the Claimant was not entitled to the information requested and in particular she was not entitled to know which Board members of the Defendant claimed to have been deceived by the Claimant.
21. In light of the Defendant's refusal to provide general and specific requests for disclosure, the Claimant was advised by her attorney at law not to participate further in the Hearing until the requested disclosure was provided. Ms. Lucky-Samaroo further requested that the Tribunal and/or the Defendant's attorney supply a transcript of the Hearing as agreed. However, contrary to an earlier agreement, Counsel for the Defendant indicated that he

needed the approval of the Board in order to supply same. The Claimant averred that no transcript was supplied.

22. By letter dated the 13th May 2016, the Defendant purported to respond to a request for an adjournment of the Hearing however the Claimant averred that the request she made was to adjourn it until such time as the information requested was provided. The Claimant averred that the Defendant's letter of the 13th May 2016, deliberately misstated the Claimant's position and appeared to be a letter designed to prejudice the Claimant's position.
23. By letter dated the 16th May 2016, the Claimant through her attorney at law wrote to the Chairman of the Board, setting out the Claimant's position and requested an All Parties Conference.
24. A further All Parties Meeting was scheduled by the Defendant on the 25th May 2016. The meeting was attended by Counsel for the Defendant, Mr. Keith Scotland, the Claimant and her attorney at law, Ms. Lucky-Samaroo. No member of the Board was present. The meeting ended without any resolution.
25. On the 6th June 2016, the date to which the Claimant's Administrative leave had been extended, the Claimant was served with a letter of dismissal. A copy of which was annexed and marked "G". The Claimant's case was that such dismissal was wrongful and in breach of contract.
26. According to the Claimant, her name and photograph were published in the Trinidad and Tobago Guardian on the 9th June 2016 under the heading "*EFCL Board fires five*". The article by Shaliza Hassanali quoted the Minister of Education Mr. Anthony Garcia, stating "*the decision to axe the five was as a result of investigations that were conducted into an internal audit, arising out of recommendations that were made...those persons were terminated.*" The Claimant averred that it can be inferred from the said article that the Minister of Education made and directed the Board to terminate the Claimant as a result of some recommendation and not as a result of any fair and unbiased Disciplinary Hearing.

The Minister of Education also alleged within the said article that he had two reports, one internal and one external for at least two months. The Claimant averred that his revelation, if true meant that the Defendant deliberately chose not to let the Claimant know what, if anything, had been alleged against her in those reports. The article further made reference to a “secret room” which the Claimant had no knowledge of. The Claimant contended that no issue with respect to a “secret room” was put to her.

27. The Claimant further contended that the photograph accompanying the article was provided by the Defendant, because it was the same official portrait taken of the Claimant solely for the Defendant. The Claimant contended that from the facts outlined in the article. The Defendant deliberately placed the story and the photograph in the hands of the reporter for the specific purpose of damaging the Claimant’s name and reputation within the business community and the community at large and that in doing so, the Defendant had ensured that her ability to find alternative employment would have been restricted or curtailed tremendously.
28. The Claimant averred that in April 2016, she visited Peake Trading Limited in order to speak to the Group Financial Officer. She indicated to him that she was exploring alternative employment options, pending the outcome of the Defendant’s decision with respect to her current job. She was informed by the Group Chief Officer that he was in a position to offer her a position as an accountant at Peake Trading Limited. The Claimant indicated that she was not in a position to accept the offer at that time, but that she would have confirmed her position depending on whether or not her position with the Defendant was terminated.
29. Upon her dismissal by the Defendant on the 6th June 2016, the Claimant contacted the Group Chief Officer and advised him of her dismissal. He indicated that he would proceed to put the necessary arrangements in place to facilitate her employment at Peake trading Limited. However, subsequent to the article published on the 9th June 2016, the Claimant was informed by the Group Chief Officer that the Board of Directors of Peake Trading Limited were not pleased with the article and in those circumstances, the job offer was no longer available to the Claimant.

30. The Claimant pleaded that she was deprived of the salary allowances and bonus that she would have otherwise earned from the Defendant and thereby she suffered loss and damage.
31. In her particulars of loss, she claimed that she suffered loss of: (i) salary for the balance of the contract period (\$513,839.07 subject to tax); (ii) gratuity for contract period 8th October 2014 to 7th October 2017 (\$209,133.33 subject to tax); (iii) loss of medical insurance plan for remaining period of contract June 2016 to October 2017 (\$15,216.00); (iv) damages to reputation and aggravated damages (\$100,000.00); (v) 20 days' vacation leave for contract year 8th October 2015 to 7th October, 2016 (\$32,000.00 subject to tax and deductions) and (vi) 20 days' vacation leave for contract year 8th October, 2016 to 7th October 2017 (\$32,000.00 subject to tax and deductions).
32. The Claimant contended that during the course of employment with the Defendant, prior to the 29th February 2016, she was never provided with any warning letters and/ or any other suitable form of notice whereby any alleged breaches of conduct or issues with her performance were outlined to her. According to the Claimant, she has always maintained a flawless and commendable record with the Defendant.
33. The Claimant wrote a pre-action letter to the Defendant dated the 13th July 2016. A copy of which was annexed as "H". The Defendant responded by letter dated 6th September 2016, denying the "allegations" made against it in the pre-action letter and denied that the Claimant was entitled to damages as claimed or at all. The Defendant also falsely asserted that the Claimant had offered to provide incriminating information against the other members of the Defendant's executive who were also being charged, in exchange for monetary settlement and an opportunity to resign from the Defendant rather than be terminated. The Claimant contended that the contents of the Defendant's letter were untrue and defamatory and designed and intended to prejudice any claim the Claimant may have taken and to cause the Claimant humiliation and embarrassment. The Claimant annexed a copy of the Defendant's letter dated 6th September 2016 and marked "I".

34. The Claimant responded to the Defendant's letter through her attorney by letter dated 7th September 2016, denying the allegations referenced therein. A copy of the letter was annexed to her Statement of Case and marked "J". The Defendant responded to the Claimant's letter by letter dated the 13th September 2016 in which it recalled the letter dated the 6th September 2016. A copy of the 13th September 2016 letter was annexed to the Statement of Case and marked "K".
35. Based on the aforesaid fact, the Claimant instituted the instant action against the Defendant for: (a) loss of income for the remainder of the Claimant's stipulated contract of employment; (b) damages for wrongful dismissal and breach of contract in the sum of \$802,188.40; (c) aggravated and exemplary damages; (d) interest at a rate of 5% pursuant to Section 25A of the Supreme Court of Judicature Act; (e) costs and (f) any further or other relief that the court deem fit.

The Defence

36. The Defendant denied that it acted contrary to the rules of natural justice, unfairly or with bias. The Defendant further averred that at all material times it acted fairly and in keeping with the principles and practices of good industrial relations. The Claimant was afforded ample opportunities to be heard, but never engaged in the process. The Defendant denied any assertion that the appointment of Mr Arnold Piggott to its Board was intrinsically linked to the General Elections held on the 7th September 2016.
37. The Defendant averred that it was well within the remit of its Board to conduct audits and/or related investigation from time to time as the Board may deem necessary. The Defendant's case was that an audit was commissioned by its Board. The Defendant could not admit or deny whether the Claimant was aware of the nature, extent of finding of the audit, however it averred that she was duly informed as to the nature, extent or findings of the said audit to the extent that it touched and concerned her employment with the Defendant.

38. Upon receipt of the preliminary information, and having regard to the nature of the audit, a decision was made by the Board to direct the Claimant to proceed on immediate administrative leave in order to facilitate the completion of the audit and the analysis of the relevant findings. The Defendant further admitted that on the 29th January 2016, the Claimant was informed by Mr. Frederick, that she was to proceed on administrative leave with immediate effect to expire on the 29th February 2016. By letter dated the 29th February 2016, the Claimant's period of leave was extended for a further period of thirty days as the audit was still on going.
39. The Defendant admitted that the Claimant was a senior manager at the time and that she was escorted to her office by Mr. Frederick, supervised and subsequently escorted from the building. The Defendant averred that such actions were necessary to protect the status quo of all documentation during the course of the audit.
40. The Defendant admitted that a letter in response dated the 8th March 2016 was received from the attorney-at-law for the Claimant. The Defendant averred that the correspondence of the 29th February 2016 was not intended to convey that any disciplinary action was taken against the Claimant by the Defendant. The Defendant rejected any assertion that the Defendant acted without due process or contrary to the rules of natural justice. The Defendant maintained that it was in fact an error in transcription and the error was corrected as soon as it was brought to the attention of the Defendant. By letter dated the 29th March 2016, the Claimant's leave was extended for a period of thirty days.
41. The Defendant admitted that the Claimant requested an All Parties meeting with the Defendant, to which the Defendant acceded. The meeting was scheduled for Friday 22nd April 2016. The Defendant also admitted that a letter was written to the Claimant dated the 2nd May 2016 relative to Disciplinary charges, specifically, the Claimant was informed that subsequent to the review of the audit, the Board determined that there was in fact sufficient questionable transactions which indicated that the Claimant may not have been acting in the best interest of the Company. As a result, a consequent Disciplinary Tribunal was convened relative to the disciplinary charges.

42. The Defendant rejected the Claimant's assertion that the Defendant erred in not having the Claimant participate in such an audit, or by making the terms of the said audit known to the Claimant, as it was imperative that the said audit be conducted fairly and impartially by PricewaterhouseCoopers, the body entrusted by the Board to conduct the audit.
43. The Defendant averred that the Claimant was called upon to attend the Disciplinary Tribunal to answer to two disciplinary charges. The Disciplinary Tribunal was scheduled for the 6th May 2016. The Defendant maintained that the relevant disclosure was made to the Claimant since the Claimant was presented with a bundle of documents relevant to the charge under cover letter dated the 4th May 2016.
44. The Defendant further averred that by the letter of 2nd May 2016, the Claimant was informed of the findings of the audit and that the Board determined that there was sufficient findings to show that the Claimant did in fact act contrary to the best interest of the Defendant. The Claimant was also made aware that the said audit was ongoing and as such further information relevant to the charges against the Claimant may have been discovered and on that premise the Defendant reserved the right to disclose further information as it became available to the Claimant.
45. The Defendant admitted that the Hearing was adjourned to the 12th May 2016 based on the request from the Attorney-at-law for the Claimant. The Defendant averred that having regard to the nature of the charges against the Claimant and her continued period of administrative leave, it was in the interest of justice on the part of the Claimant to have the Hearing conducted as expeditiously as possible. The Defendant averred that the Claimant sought an adjournment of the Hearing to delay it.
46. The Defendant admitted that by letter dated the 9th May 2016, the Claimant was informed that the Hearing would proceed as scheduled on the 12th May 2016. The Defendant averred that the said letter reminded the attorney-at-law for the Claimant that whilst the Claimant was entitled to have a representative present, the proceedings were not pursuant to the rules of a court of law. The Defendant annexed a copy of the letter dated 9th May 2016 and marked "B".

47. The Defendant admitted that an email with a request for further documents and information was sent to the Defendant on the 9th May 2016. However, the Defendant denied that the information requested by the Claimant's attorney was necessary for the advancement of a defence by the Claimant at the Hearing. The Defendant further averred that it discharged its duty of disclosure on the 4th May 2016, when the relevant documents were disclosed.
48. The Defendant denied the assertion that the Hearing was recorded only on the basis that the Claimant would be provided with a copy of the transcript. The Defendant averred that the Claimant and her attorney were duly informed that the Hearing was being recorded and that the Defendant's attorney thereafter requested a copy of the transcript. The Defendant annexed a copy of the transcript of the hearing and marked it as "C" and it relied on page 2, lines 2 to 13 of the annexure.
49. The Defendant contended that the Hearing was duly convened on the 12th May 2016 as scheduled at which time each and every request for further disclosure by the attorney at law for the Claimant was addressed in seriatim. During the proceedings, the Claimant's attorney at law ultimately declined to participate in the Hearing. The Defendant further averred that on the said morning of the Hearing, at approximately 6:28 am, the attorney at law for the Claimant requested a disclosure of further items of disclosure. Upon convening the Tribunal provided a detailed explanation for the non-disclosure of the items requested to the attorney at law for the Claimant. The Claimant thereafter refused to meaningfully participate in the process.
50. The Defendant admitted that the Disciplinary Tribunal was conducted by Mr. Anthony Bisnath, Director of the Defendant, instead of Mr. Jeffrey Francis as was initially stated and Mrs. Gyllis Noel, the Human Resource Manager at the Defendant.
51. The Defendant averred that the Claimant attempted to engage in a discussion in semantics with respect to the names of the members of the Board members of the Defendant who claimed to have been deceived by the Claimant. The Defendant averred that the Claimant had in her possession all the material upon which the charges against her were premised and was therefore properly equipped to respond to the charges.

52. The Defendant denied that the non-disclosure of material was the Claimant's reason for not participating in the Hearing. The Defendant averred that the Claimant used this unfounded request as an attempt to frustrate the disciplinary process. The Defendant further averred that the Claimant's attorney further requested a meeting with the Defendant Company in order to discuss another way forward. The Defendant relied on page 18 (line 20) to page 19 (line 9) of the annexure.
53. The Defendant admitted that it chose not to participate in the Hearing. The Defendant further averred that the Tribunal adjourned the Hearing in order to give the Claimant a further opportunity to defend herself against the charges laid against her. The Defendant admitted that the consent of the Board was necessary prior to the copy of the transcript of the Hearing being sent to the Claimant.
54. The Defendant contended that subsequent to the Claimant's request for an adjournment of the Hearing, the Tribunal adjourned the Hearing in order to give the Claimant an opportunity to be heard. The Defendant further contended that by letter dated the 13th May 2016, it informed the Claimant's attorney at law that the Hearing was adjourned to the 18th May 2016. Counsel for the Claimant informed the Defendant that the Claimant was unable to attend because the Hearing on the 18th May because she was unwell along with the Claimant. The Defendant acknowledged the letter dated the 19th May 2016, which the Defendant annexed and marked as "D". The Defendant averred that it assiduously attempted to facilitate all requests for meetings made by the Claimant's attorney at law.
55. With respect to the Claimant's termination, the Claimant averred that the Claimant was terminated for cause as a direct result of the matters contained in the letter dated 6th June 2016. The Defendant averred that such action was well within its purview as stated under the "Gratuity clause" exhibited as "C" in the Claimant's Statement of Case. Specifically, *"The gratuity will not be payable if the Company terminates the contract for cause or if you decide to terminate the contract for any reason before the expiration of the contract period."*

56. The Defendant admitted that the article was published in the Trinidad and Tobago Guardian. The Defendant further averred that the matters alleged in the newspaper article were the views and opinions of the author and as such the Defendant could not speak to its truth. The opinion of the author was in no way reflective of the Defendant or as a result of any information released by the Defendant to the author. The Defendant rejected assertions that the Defendant deliberately placed the information into the hands of the reporter.
57. The Defendant denied the Claimant's inference that the Minister of Education made or directed the Board to terminate the Claimant. The Defendant maintained that it was within its purview to terminate the Claimant for cause and by the matter stated in the termination letter to the Claimant dated the 6th June 2016, the Claimant was terminated for cause as the Claimant acted contrary to the interest of the Defendant. The Defendant contended that the dismissal of the Claimant was necessary in order to preserve its integrity.
58. The Defendant further averred that the impugned photograph of the Claimant was taken at the behest of the Defendant in 2013 for the Management Team Annual Report. The Defendant annexed the report and marked "E".
59. The Defendant denied that the Claimant is entitled to any claim for loss and damage claimed or at all. The Defendant averred that the Claimant's particulars have not been established on an evidential basis and as such the Claimant is not entitled to same.
60. The Defendant admitted that prior to the 29th February 2016, no warning letters were issued to the Claimant. However, the Defendant averred that this did not preclude it from requesting that the Claimant proceed on administrative leave by letter dated 29th January 2016 or from the event that followed thereafter subsequent to the finding of the audit commission by the Defendant.
61. The Defendant maintained that it acted in its best interest at all times and that it acted fairly and without mala fides. The Defendant gave the Claimant a fair opportunity to be heard and subsequently the Defendant granted adjournments of the Hearing at the Claimant's

request. The Defendant further acceded to the Claimant's request for an all-parties conference and meaningfully engaged in the process however it was unfruitful.

62. The Defendant contended that the Claimant offered to provide incriminating information against the other members of the Defendant's executive who were also being charged. The Defendant averred that the statement contained in the letter of the 6th September 2016 relative to the Claimant offering to provide incriminating information against the other members of the Defendant's executive who were also being charged, came from the Defendant's interpretation of the matters advanced by the Claimant at an all parties conference held on the 25th May 2016. The Defendant averred that this was the honest belief of the Defendant at the time the letter was prepared.
63. The Defendant contended that upon receipt of the letter from the Claimant's attorney at law dated the 7th September 2016, it recalled its letter of the 6th September 2016 and thereafter provided a response to the Claimant reflecting the Claimant's version and interpretation of the meeting of the 25th May 2016. The Defendant averred that without any objection by the Defendant, this error in communication was addressed in a manner favourable to the Claimant.
64. The Defendant further denied that the contents of the letter were untrue and defamatory and were designed and intended to prejudice any claim the Claimant made or cause the Claimant humiliation and embarrassment. The Defendant responded promptly to the allegations raised in the Claimant's pre-action protocol letter giving the detailed reasons why the claim was not accepted and identified which of the Claimant's contentions were accepted and which were in dispute. The Defendant denied that the Claimant is entitled to any reliefs sought.

The Claimant's evidence

65. The Claimant testified that she was formerly employed by the Defendant as its Divisional Manager-Finance and Corporate Services attached to the Finance and Corporate Services Division. By letter of agreement dated the 18th September, 2012, she was offered

employment as the Defendant's Divisional Manager-Finance and Corporate Services attached to the Finance and Corporate Services Division, for a probationary period of six (6) months effective as of the 8th October, 2012. She accepted the position by countersigning the letter of agreement dated September, 2012. A true copy of which was annexed to her witness statement and marked "R.N.1".

66. The Claimant stated that in April, 2013, her performance as a Divisional Manager was evaluated by Mr. Kiran Shah ("Mr. Shah"), the then Chief Executive Officer of the Defendant. By the performance evaluation dated 24th April, 2013, prepared by Mr. Shah and reviewed by Cavelle Joseph, then Human Resource Manager of the Defendant, the following comments were made by Mr. Shah:

"Ms. Narinesingh has made great improvements to the Division in the short time she has been here. Particularly in the "Cleaning up of the R & M finances. She has motivated her staff and created a more productive working atmosphere in the Division. Accordingly, I would not hesitate in having her confirmed as Divisional Manager".

A copy of the performance evaluation was annexed and marked "R.N.2".

67. Consequently, by letter of agreement dated 24th April, 2013, the Defendant offered the Claimant permanent employment as the Divisional Manager- Finance for a period of two (2) years effective as of the 8th October, 2012. The Claimant accepted the Defendant's offer by countersigning the letter of agreement dated 24th April, 2013. She annexed a copy of the said letter as "R.N.3".
68. According to the Claimant to the best of her recollection, in 2015, she was again evaluated by Sharma Maharaj, then Chief Executive Officer of the Defendant. However, she was unable to locate a copy the said evaluation in her records. Subsequent to this, by letter of agreement dated 4th March, 2015, the Defendant renewed the Claimant's contract of service as the Divisional Manager-Finance for a period of three (3) years effective 8th October, 2014. She subsequently countersigned the said letter dated 4th March, 2015, and she annexed a copy to her witness statement as "R.N.4".

69. The Government of the Republic of Trinidad and Tobago was elected to Parliament on the 7th September, 2016 and following this, the Board of the Defendant was changed and Mr. Arnold Piggot was appointed the Chairman of the Board.
70. The Claimant stated that she recalled subsequent to the appointment of the Board, in or about October, 2015, a meeting was held by the newly appointed Chairman of the Board, Mr. Arnold Piggot. The meeting was attended by the managers and senior staff of the Defendant including the Claimant. They were informed that the Defendant had commissioned PricewaterhouseCoopers to perform an audit of the Defendant. The Claimant stated that at no time was she informed that her performance in the course of her employment was under investigation or audit. They were asked to assist PricewaterhouseCoopers as much as possible, which the Claimant said she did to do to the best of her ability. In a series of meetings with PricewaterhouseCoopers, the Claimant provided information with respect to the procedures in place for the award of contracts and payments to contractors. The Claimant stated that at no point in time, was she ever informed, notified or given the impression that she was being personally investigated in her capacity as Divisional Manager–Finance.
71. According to the Claimant, on the 29th January, 2016 she was called into a meeting with Louis J. Frederick, (“Mr. Frederick”) the Executive Manager of the Defendant. He informed her that she was to proceed on administrative leave with immediate effect and he handed her a letter dated 29th January, 2016, addressed from him to the Claimant, indicating that having “*regard to the nature of the audit*”, the Board was directing that the Claimant be sent on administrative leave from the 29th January, 2016 to 29th February, 2016 so as to “*facilitate the conduct of the audit*”. She annexed a copy of the said letter dated 29th January, 2016 to her witness statement as “R.N.5”. The Claimant said she was shocked, as there had been no prior indication that her performance was unsatisfactory in any way.
72. Directly after this meeting, Mr. Frederick escorted the Claimant to her office and supervised her while she packed up her personal belongings. Immediately after this, the Claimant deposed that she was unceremoniously escorted from the building by him. At that time, she was a senior manager and she was completely humiliated and demeaned by this

experience which took place in the presence of her co-workers and subordinates. She was also bewildered by the heavy handed and embarrassing tactics which Mr. Frederick, on behalf of the Defendant, had chosen to employ, for no apparent reason and with no prior warning of any kind. During the packing process she was the subject of stares from her co-workers and hushed whispers which further humiliated and embarrassed her.

73. By letter dated 15th February, 2016, Mr. Frederick wrote the Claimant on behalf of the Defendant, indicating that she would be required to return the Defendant's cellphone handset and SIM card, with "immediate effect" and that these said items were to be "handed to the messenger/ driver" upon issuance of the said letter. This letter was delivered to the Claimant by a driver employed by the Defendant who indicated verbally to her, that she was to hand over these items to him. The Claimant therefore returned the cellular phone and SIM card to the said driver. She annexed a copy of the letter dated 15th February, 2016 to her witness statement as "R.N.6".
74. According to the Claimant, her suspension was due to expire on the 29th February 2016, however letter dated 29th February 2016, Mr. Frederick wrote to her on behalf of the Defendant indicating that the period of her suspension would be extended by a further period of thirty (30) days. The letter was hand delivered to her at her home. She annexed a copy of the letter dated 29th February, 2016 to her witness statement as "R.N.7". According to the Claimant up to this point she had not been questioned by anyone in respect of any actions or omissions made by her in the course of her employment.
75. The Claimant testified that she then decided to retain Ms. Lesley-Ann-Lucky-Samaroo, Attorney-at-law ("Ms. Lucky-Samaroo") to act on her behalf. By letter dated 8th March, 2016, Ms. Lucky-Samaroo wrote to the Defendant setting out the historical matrix of the events that had taken place and that prior to the receipt of letter dated 29th February, 2016, the Claimant had not been informed that any disciplinary action had been taken against her or that she had been "suspended" as asserted in the said letter. She annexed a copy of the letter dated 8th March, 2016 to her witness statement as "R.N.8".

76. According to the Claimant, by letter dated 18th March, 2016, Mr. Frederick replied on behalf of the Defendant, suggesting that the references to the Claimant's "suspension" and the Defendant's "right to terminate" in his letter dated 29th February, 2016, were "errors in transcription". She annexed a copy of the letter dated 18th March, 2016 from Mr. Frederick to her witness statement as "R.N.9". By letter dated 29th March, 2016, hand delivered to the Claimant at her home, M. Frederick informed the Claimant on behalf of the Defendant, that her administrative leave was extended for a further period of thirty (30) days. A true copy of the letter dated 29th March, 2016 is annexed and marked "R.N.10". By letter dated 12th April, 2016, the Claimant requested an All Parties meeting with the Defendant through her attorney, Ms. Lucky-Samaroo to seek clarification from the Defendant as to the reason for her continued suspension. However she received absolutely no explanation with respect to same.
77. The Claimant stated that by letter dated 20th April, 2016, Mr. Annesa Rahim, then Corporate Secretary of the Defendant indicated that its Counsel would be prepared to meet with Ms. Lucky-Samaroo on Friday 22nd April, 2016. The said date was not a date that Ms. Lucky-Samaroo was available and the Defendant was so notified. Ms. Lucky-Samaroo's secretary attempted to reschedule the meeting but received no feedback from the Defendant. She annexed copies of the letters dated 12th April, 2016 and 20th April, 2016 respectively in a bundle and marked "R.N.11" to her witness statement.
78. According to the Claimant by letter dated 2nd May, 2016 captioned, "Disciplinary Charges", and addressed from Ms. Annesa Rahim to the Claimant, she was informed by the Defendant for the first time that:
- a. The alleged "audit" undertaken by PricewaterhouseCoopers Advisory Services limited was a Forensic Audit. The Claimant averred that she had never participated in such an audit nor were the terms of alleged audit made known to her; and
 - b. A disciplinary hearing was scheduled to take place on the 6th May, 2016. The Claimant was also informed for the first time that she would be required to answer the following disciplinary charges:

- I. *Failure to act in the best interest of the Defendant by intentionally deceiving the Board of Directors of the Defendant by splitting contract values to avoid Board approval in many instances.*
- II. *Failure to act in the best interest of the Defendant by diverting allocated funds, provided to the Defendant by the Ministry of Education for specific contractors, to other contractors without obtaining approval from the Ministry of Education.*

She annexed a copy of the letter dated 2nd May, 2016 and marked “R.N.12”.

79. The Claimant stated that on the 4th May, 2016 the Claimant received a bundle of documents under the cover of letter dated 4th May, 2016 from the Defendant. The said letter enclosed “*materials relevant to the charge listed*” in the letter of 2nd May, 2016 and further stated that the Defendant “*reserves the right to rely on any other material relevant to the charges in its possession*”. A copy of the letter dated 4th May, 2016 with the attached bundle of documents was annexed to her witness statement and marked as “R.N.13”.
80. The Claimant stated that she requested an adjournment of the Hearing to the 22nd May, 2016, as the scheduled date was not convenient to her attorney at law, Ms. Lucky-Samaroo. The Defendant ignored the Claimant’s request and instead rescheduled the Hearing to 12th May, 2016. On the 6th May, 2016, Ms.Lucky-Samaroo wrote to the Defendant via e-mail requesting among other things, that she be provided with “copies of all reports and/or documents and/or statements upon which”. A copy of the e-mail dated 6th May, 2016 was annexed and marked “R.N.14” to her witness statement.
81. The Claimant testified that by letter dated 9th May, 2016, which she annexed as “R.N.15” to her witness statement, Ms. Annesa Rahim responded on behalf of the Defendant, refusing the adjournment to a date convenient to Ms. Lucky-Samaroo, and indicated that the Hearing would proceed on the 12th May 2016. She further indicated that the Tribunal would compromise of Mr. Jeffrey Francis, Director and Mrs. Gyllis Noel, Human Resource Manager. Further, she refused to furnish the Claimant with the information requested in Ms. Lucky-Samaroo’s e-mail of the 6th May, 2016. On the morning of the 12th May, 2016, Ms. Lucky-Samaroo sent a further e-mail to the Defendant, to the attention of the Corporate

Secretariat/Legal Services, wherein she detailed specific information necessary for the Claimant to defend the charge made against her.

82. The Claimant testified that on the 12th May, 2016, Ms. Lucky-Samaroo and the Claimant attended the Hearing. As of that date, the Claimant had not been furnished with the documents requested by her attorney at law and in those circumstances, she was not in a position to present her case in defence of the charges made against her. Consequently, Ms. Lucky- Samaroo made it clear to the Defendant's attorney at law, that they were in attendance at the Hearing, not to present the Claimant's case, but for the purposes of engaging the Defendant in discussions. They were asked by an attorney at law present for the Defendant, Mr. Timothy Affonso, whether the meeting could be audio taped and transcribed, to which they agreed on the condition that the Claimant would be provided with a transcript of the discussions/meeting. The Defendant had not provided the Claimant with the information requested by her attorney at law and, Mr. Alfonso, on behalf of the Defendant, insisted on proceeding with the Hearing on that said date.
83. The Claimant also testified that contrary to the indication in the Defendant's letter dated 9th May, 2016, the Tribunal consisted of Mr. Anthony Bisnath, a director of the Defendant and the Human Resource Manager of the Defendant.
84. According to the Claimant, she was advised by her attorney-at-law, not to participate further in the Hearing until the documents requested in disclosure were provided. Ms. Lucky-Samaroo further requested that the Tribunal and/or the Defendant's Attorney-at-Law supply a transcript of the proceedings of that day as agreed. However, contrary to the earlier agreement, Mr. Timothy Affonso indicated that he would need the approval of the Board in order to supply same. To date no such transcript has been supplied to either the Claimant or her attorney at law.
85. By letter dated 13th May, 2016, Annesa Rahim, on behalf of the Defendant purported to respond to a request for an adjournment to the Hearing. The Claimant stated that she did not make such a request but her request was to adjourn the Hearing until such time as information requested was provided.

86. The Claimant stated that by letter dated 16th May, 2016, Ms. Lucky-Samaroo, wrote to the Chairman of the Board of the Defendant setting out the Claimant's position and requesting an All Parties Conference. She annexed a copy of the letter dated 16th May, 2016 as "R.N.16". A further All Parties Meeting was scheduled by the Defendant on the 25th May, 2016. The meeting was attended by Mr. Keith Scotland, Attorney-at Law for the Defendant, Ms. Lucky-Samaroo and the Claimant. No member of the Board was present. During the meeting, Mr. Scotland claimed that he was liaising with representatives of the Defendant via Telephone with respect to the proposals made by Ms. Lucky Samaroo on the Claimant's behalf at that meeting. The meeting ended without a resolution. Subsequent to the meeting, these discussions were continued in a further meeting with Ms. Lucky-Samaroo and Mr. Scotland, at the end of which, the Claimant stated that she understood that settlement discussions were still pending.
87. The Claimant testified that on the 6th June, 2016, the date to which the Claimant's Administrative Leave had been extended, she was served with a letter of dismissal dated 6th June, 2016 and addressed to the Claimant from Gyllis Noel, Human Resource Manager of the Defendant. She attached a copy of this letter to her witness statement as "R.N.17".
88. According to the Claimant on the 9th June, 2016, the Claimant's name and photograph were published in the Trinidad and Tobago Guardian under the heading "*EFCL boards fires 5*". The article by Shaliza Hassanali quoted the Minister of Education, Mr. Anthony Garcia stating "*the decision to axe five was as a result of investigations that were conducted into an internal audit, arising out of recommendations that were made...those persons were terminated*". Within the said article, the Minister of Education claimed to have had two reports, one internal and one external for at least two months. The article further made reference to a "*secret room*" of which the Claimant denied any knowledge of. The Claimant stated that she believed that the photograph accompanying the article was provided to the publication by the Defendant, as it was her official portrait which was taken for sole use by the Defendant. She annexed to her witness statement a copy of the said newspaper article dated 9th June, 2016 published in the Trinidad and Tobago Guardian under the heading "*EFCL board fires five*" as "R.N.18".

89. According to the Claimant the article was very embarrassing and damaging to her name and reputation. Based on the content of the article and accompanying photograph, she formed the view that the Defendant deliberately placed both the story and the photograph in the hands of the reporter for the specific purpose of damaging the Claimant's name and reputation within the business community and community at large.
90. The Claimant stated that the Defendant had ensured that her ability to find other employment would be tremendously restricted. In April, 2016, the Claimant visited Peake Trading Limited in order to speak to the Group Financial Officer. She indicated to him that she was exploring alternative employment options, pending the outcome of the Defendant's decision with respect to her current job. She was informed by the Group Chief Officer that he was in a position to offer her a position as an accountant at Peake Trading Limited. The Claimant indicated that she was not in the position to accept the offer at that point in time, but that she would confirm her position dependent on whether or not her current position with the Defendant was terminated.
91. Upon the Claimant's dismissal by the Defendant on the 6th June 2016, she stated that she contacted the Group Chief Officer and advised him of her dismissal. He indicated that he would proceed to put the necessary arrangements in place to facilitate her employment at Peake Trading Limited. Subsequent to the aforementioned newspaper article being published, the Claimant was informed by the Group Chief Officer that the Board of Directors of Peake Trading Limited were not pleased with the said newspaper article and in those circumstances, the said job offer was no longer available to the Claimant.
92. By pre-action letter dated 13th July, 2016, the Claimant instructed her attorney, Ms. Lucky-Samaroo to write to the Defendant about matters set out above. The Claimant was advised by Ms. Lucky-Samaroo that by reply letter of the 6th September, 2016, the Defendant's Attorney-at-Law responded to the pre-action letter, stating among other things that the Defendant "denies the allegations" made against it in the pre-action letter and further denied that the Claimant is entitled to damages with respect to this claim.

93. The Claimant was further advised by Ms. Lucky-Samaroo that the Defendant falsely asserted that the Claimant had offered to provide incriminating information against the other members of the Defendant's executive who were also being charged, in exchange for monetary settlement and an opportunity to resign from the Defendant rather than be terminated. The Claimant stated that these allegations by the Defendant were complete fabrications.
94. The Claimant stated that she therefore instructed Ms. Lucky-Samaroo to respond by letter dated 7th September, 2016, denying the said allegations. By letter dated 13th September, 2016 the Defendant responded recalling the letter dated 6th September, 2016.
95. The Claimant testified that since her termination, she has not been able to obtain employment despite making diligent efforts. In those circumstances, she has been doing accountancy on an ad hoc basis. She deposed that she has no fixed income. She is a single mother and has the financial responsibility of maintaining her daughter. She deposed that on average she makes approximately Fifteen Thousand Dollars (\$15,000.00) per month net which is far less than what she was making at the Defendant.
96. The issue before the Court was whether the Claimant had proven her loss.

Law and analysis

97. **McGregor on Damages 19th ed** at paragraph 31-005 states that “ *The measure of damages for wrongful dismissal is prima facie the amount that the claimant would have earned had the employment continued according to contract subject to a deduction in respect of any amount accruing from any other employment which the claimant in minimizing damages, either had obtained or should reasonably have obtained.*”
98. The Claimant's particulars of loss were broken down into the following:
- (a) loss of salary for the balance of the contract period (\$513,839.07 subject to tax);
 - (b) gratuity for contract period 8th October 2014 to 7th October 2017 (\$209,133.33 subject to tax);

- (c) loss of medical insurance plan for remaining period of contract June 2016 to October 2017 (\$15,216.00);
- (d) 20 days' vacation leave for contract year 8th October 2015 to 7th October, 2016 (\$32,000.00 subject to tax and deductions); and
- (e) 20 days' vacation leave for contract year 8th October, 2016 to 7th October 2017 (\$32,000.00 subject to tax and deductions).
- (f) damages to reputation and aggravated damages (\$100,000.00).

99. In assessing the Claimant's loss of salary I took into account that based on the unchallenged evidence from the Claimant the terms of the second contract were set out in RN 4 which stated that the term of the contract was for three years from the 8th October 2014. Her monthly salary was \$29,000.00 plus a monthly transportation allowance of \$2,500.00 and an entertainment allowance of \$500.00. Based on the Claimant's evidence she was terminated on the 6th June 2016 and the second contract was supposed to have ended on the 7th October 2017. Therefore, she was entitled to the sum as salary and allowances as if the second contract had been performed. The sum that the Claimant would have earned during the period 7th June 2016 to 7th October 2017 was \$ 513,839.07 subject to tax.
100. According to RN 4 the Claimant would have been entitled to a gratuity subject to tax equivalent to 20% of the full basic salary earned over the period. The only condition attached to the payment of the gratuity was satisfactory completion of the contract period. There was no evidence from the Defendant that the Claimant would not have satisfactorily completed the second contract. The basic salary for the second contract period from 8th October 2014 to 7th October 2017 was \$1,044,000.00 and the 20% gratuity for the second contract would have been \$209,133.33 subject to tax.
101. According to RN 4 under the second contract the Claimant was entitled to 20 days vacation leave for each contract year. The Claimant's evidence was that for the period 8th October 2015 to 7th October 2016 and 8th October 2016 to 7th October 2017 she had not accessed her vacation leave during those period. The Claimant having been deprived of the benefit of vacation leave for the said period was entitled to be compensated. The sum of \$32,000.00

was used to calculate the 20 days since I was of the opinion that it represented one (1) month vacation leave. Therefore, she was entitled to be compensated for the 1 month for each period which in total was the sum of \$64,000.00 subject to tax.

102. In calculating the loss for medical insurance I took into account that RN 4 provided that the Claimant was entitled to a Contributory Group Health and Life Plan where the employee matched the Defendant's contribution. The Claimant had pleaded that the sum she claimed was \$15,216.00 for loss of medical insurance plan for the remaining period of the second contract for June 2016 to October 2017. There was no challenge to the sum claimed by the Claimant and for this reason I awarded the sum claimed.
103. The Claimant had pleaded a claim for aggravated/exemplary damages in the sum of \$100,000.00. In support of this claim Counsel for the Claimant referred the Court to the learning in **Aron Torres v PLIPDECO CV Appeal No 84 of 2005**. Counsel submitted that learning in supported the Claimant's claim for the sum claimed as exemplary/aggravated damages.
104. In my opinion this was a case which warranted an award for exemplary damages since the unchallenged evidence was that the Claimant who was senior manager was humiliated in front of the other employees of the Defendant since she was escorted to her office where she was made to pack her personal belongings and she was then escorted out of the building. There was also the information in the newspapers article RN 18 which included a picture of the Claimant which was a picture from the Defendant's records. The Claimant was a professional in the field of Finance and Accounting and her reputation was adversely affected and her prospects of securing a steady job was also negatively affected some two (2) years after her termination. I was of the opinion that the conduct of the Defendant was so high handed and outrageous that it was necessary to send a signal to public bodies that professionals in their organizations ought to be treated with courtesy and due process.
105. In awarding the sum of \$100,000.00, I took into account the learning in **Aron Torres**. In that case, the appellant had been constructively dismissed from his employment as an estate constable with the respondent company, a state enterprise. The trial judge held that the

appellant was threatened with arrest if he did not sign a letter of resignation and that the threat amounted to a breach of the contract of employment. Damages were awarded equivalent to one week's salary of \$540.00. He appealed against the part of the decision which refused: [a] to grant him a declaration that the dismissal amounted to unlawful and/or wrongful dismissal; [b] to grant his application to amend his claim to include a claim for exemplary damages; [c] the quantum of damages awarded; [d] to award costs on the High Court scale (costs ordered on the Petty Civil Court scale). Further, during the course of the trial an application was made by Counsel for the appellant, in the course of his address in reply, to amend the statement of claim to claim exemplary damages. That application was refused. The Judge exercised his discretion on the basis that it was too late since it was made after the case was closed.

106. With respect to the question as to whether the award of exemplary damages was appropriate for breach of contract; the Court of Appeal held that the problem must be faced squarely in the light of the developing jurisprudence in the Commonwealth and the recent decisions of the House of Lords in **Kuddus v Chief Constable of Leicestershire (2002) 2 A.C., 122 and Attorney General v Blake (2004) All E.R., 122**. The Court of Appeal held that after reviewing the law in the United Kingdom and other parts of the Commonwealth: [i] the desire to restrict the award of exemplary damages is no longer as compelling in the light of the development of the law and the advice of the Privy Council in **Ramanoop v A.G. of Trinidad and Tobago**; [II] having heard full argument on the question the court was of the view that it was within the competence of the Court of Appeal to develop the law to permit the award of exemplary damages where the defendant's conduct has been reprehensible.
107. The Court held that the proper approach in deciding whether to award exemplary damages: [a] would be to focus on the conduct of the defendant as a whole; [b] that the award of exemplary damages in breach of contract cases ought to be rare; [c] that the award ought to be proportionate to a defendant's conduct. The Court found that there was no doubt that the respondent's behaviour was oppressive, highhanded and reprehensible; the respondent's

misconduct was deliberate and it entailed the concurrence and complicity of employees of superior rank.

108. According to Mendonca JA, restraint must be exercised in the assessment; as stated in **Whiten v Pilot Insurance Company [2002]1 S.C.R., 595**, the award must be rational and proportionality is the key to the permissible quantum. The Court of Appeal also held in relation to the sum awarded by the judge, an award of exemplary damages of \$5,000.00 met the justice of the case.
109. In the instant case, the incident took above 10 years after the decision in **Aron Torres**, the Claimant was the Finance Manager in the Defendant which was by far a more senior position than the security guard. The Defendant's motive in treating the Claimant was high handed and was intended to humiliate the Claimant. The Defendant did not place any evidence before the Court to challenge any of the Claimant's evidence.
110. I ordered the Defendant to pay the Claimant's costs on the prescribed basis.

Margaret Y Mohammed
Judge