

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2017-03126

NIGEL SPRINGER

Claimant

AND

CARIBBEAN COMMUNICATIONS NETWORK LIMITED

Defendant

Before the Honourable Madame Justice Margaret Y Mohammed

Date of Delivery July 31, 2020

APPEARANCES

Mr. Mathew Gayle instructed by Ms Crystal S. S. Paul Attorneys at law for the Claimant.

Mr. Farrees F Hosein Attorney at law for the Defendant.

JUDGMENT

INTRODUCTION

1. The Claimant is employed by the Defendant as a Debt Collector pursuant to an agreement dated 1 October 2012 (“the Agreement”). According to the terms of the Agreement, the Claimant was assigned certain accounts to collect payments. The Government Information Services Limited (GISL) account was one of the accounts which was assigned to him. The GISL account consisted of outstanding debts for services provided by CCN TV 6 (“TV6”) and Trinidad Express Newspaper Limited (“TEN”). The Claimant was initially entitled to a commission of 8% on all collections over 180 days but this was later varied by memorandum dated 1 March 2013 to 120 days for government debts. The GISL account was assigned to the Claimant upon it accruing over 120 days. The Claimant

contended that he collected the sum of \$4,560,212.32 (“the GISL Debt”) from GISL for the Defendant. In keeping with the practices and procedures of the Defendant, the Claimant submitted his payment vouchers in order to be paid his commission on the GISL Debt. However, the Defendant refused to pay the Claimant the commission of 8% but instead offered him a commission of 4%. As a consequence the Claimant has instituted the instant action seeking payment of his commission and other related orders.

THE CLAIMANT’S CASE

2. The Claimant asserted that he is entitled to be paid the commission of 8% on the sum he collected as the GISL Debt as he was able to obtain a commitment from GISL to pay its debt to TEN in the sum of \$3,167,916.38 and to TV 6 in the sum of \$1,392,295.94 totalling \$4,560,212.32. This commitment was received in a letter dated 22 April, 2016 (“the April 2016 letter”) from GISL to the Claimant. The Claimant contended that after the Defendant received the commitment from GISL to pay the GISL Debt, he was able to collect a substantial amount of the payments for the Defendant. The Claimant submitted cheque vouchers dated 18 October, 2016 and 29 November, 2016 along with his commission sheets, and GISL’s listing of all invoices and receipts as proof of the payments.
3. The Claimant contended that in the past there has been assistance by senior personnel of the Defendant in the collection of outstanding debts from other Government departments and in those cases the Defendant did not seek to pay him less than the 8% commission. The Claimant referred to assistance in March 2015 rendered by the then President of the Trinidad and Tobago Publishers and Broadcasters Association (“TTPBA”).
4. According to the Claimant, there is no express or implied term of the Agreement which permits the Defendant to withhold payment or to disallow his commission if there is assistance from senior personnel. The Claimant claimed that the Defendant unilaterally sought to alter the terms of the Agreement by offering him a commission of 4% on the sum he collected from GISL.

5. The Claimant also asserted that Clause 10 of the Agreement provides for vacation leave of 15 days for an employee from 1 to 5 years service and Clause 11 provides that an employee is entitled to up to 10 days sick leave. The Claimant contended that the Defendant breached Clause 11 of the Agreement as it failed to pay him the correct sum for his sick leave taken for the periods 2 December 2016 to 9 December, 2016, 23 December 2016 and 28 December 2016 to 30 December 2016 as the Defendant did not take into account the commission which was due to him for the GISL Debt which he collected.
6. The Claimant stated that he is an employee being paid on commission and not a fixed daily pay rate. The Defendant had devised a formula to calculate his daily average pay rate which was necessary to determine how much to pay him for any vacation and sick leave taken. He contended that the steps to calculate his daily average rate were as follows. A total commission and vacation is calculated by adding up the commission and vacation/sick leave, paid to the Claimant for the preceding 12 months. This total is then divided by 52 weeks to arrive at a weekly average. This weekly average is then divided by 5, representing a workweek. The daily average rate is then multiplied by the relevant amount of vacation/sick leave days the Claimant is to be paid. As such, the Claimant's position was that the Defendant incorrectly calculated the sum due to him during the sick leave he took in certain periods in December 2016 and that it owes him the sum of \$10,703.42.
7. The Claimant issued a pre-action protocol letter dated 6 January, 2017 to the Defendant in a bid to amicably settle the matter. The Defendant was called upon to enter into settlement discussions with the Claimant.
8. By letter dated 30 January, 2017 the attorney at law for the Defendant, responded and indicated that the pre-action letter was received and that a response would be forthcoming. However, no communication from neither the Defendant nor its attorney at law was received by the Claimant. By letter dated 21 February, 2017 the attorney at law for

the Claimant wrote to the attorney at law for the Defendant calling upon the Defendant to respond to the pre-action letter dated 6 January 2017. No response was made to this letter to date

9. Based on the foresaid facts the Claimant seeks the followings sums:
 - a. The total sum of \$278,290.57 representing the value of remuneration owed and payable by the Defendant to the Claimant for collection of monies owed to the Defendant under cheque vouchers dated 10 October 2016 and 29 November 2016;
 - b. The total sum of \$17,845.32 representing the value of remuneration owed and payable by the Defendant to the Claimant for collection of monies on 10 February 2017 owed to the Defendant;
 - c. The total sum of \$10,703.42 for sick leave taken for the period 2 December 2016 to 9 December 2016; 23 December 2016 and 28 December 2016 to 30 December 2016;
 - d. Interest on the amount of the said remuneration at the rate of 12% per annum from the date of the Claim until payment or judgment;
 - e. Costs;
 - f. Such further and/or other relief as the Court may deem fit.

THE DEFENCE

10. The Defendant's position was that the Claimant is not entitled to be paid the 8% commission on the GISL Debt since he was not instrumental in its collection but rather it was due to the efforts of third parties. According to the Defendant, by Clause 6 of the Agreement the Claimant is and was entitled to compensation of a travelling allowance of

\$1500.00 per month and a commission of 8% on all collections over 180 days. The Claimant's performance is assessed using the Balance Scorecard ("BSC") tool which was used to define the Claimant's goals and objectives and measure his achievements. The terms of Clause 6 of the Agreement were modified by Memorandum dated 1 March 2013 and the collection period for receivables from the Government of Trinidad and Tobago ("the Government") was changed to 120 days.

11. According to the Defendant, the change in the collection period was due to a significant increase in the receivables owed to the Defendant and in particular, by the Government. This change in the collection periods and the commission payable on the collections were to incentivise the collection of receivables by the Claimant in a timely manner as well as to assist the Defendant in reducing its receivables. Some of the receivables assigned to the Claimant for collection were long standing and some were nearing the limitation period for recovery.

12. The Defendants contended that the GISL Debt was an account where the receivables for collection had been outstanding for a considerable time. According to the Defendant, with respect to GISL, in the event of a change of Government, the incoming administration routinely posed difficulty to settle the receivables with the Defendant for the past administration. Prior to and after the change in administration in Government in September 2015, the Defendant sought to have settlement of its receivables, including the GISL Debt, settled but it encountered difficulties in collection. GISL did not have purchase orders and invoices to support the claim for payment by the Defendant and as such they had to be supplied by the Defendant to GISL. Upon receipt of the purchase orders and invoices, there was a further delay in collection caused in large part by the GISL management structure. Once the sums payable were agreed there was a delay on account of a lack of funding of GISL by the Government since the former was completely reliant on the latter to meet its liabilities.

13. The Defendant’s position was that the April 2016 letter from GISL to the Claimant, was a statement of account which stated that the sum of “\$4,560,212.32 may be due to you”. It was not any legal commitment to pay as alleged by the Claimant and it did not constitute in law any agreement by GISL to pay to the Defendant any sum as no sum was then ascertained. The Defendant also contended that the April 2016 letter was also an invitation for a meeting which was held on 13 May, 2016 (“the May 2016 meeting”) between the executives of GISL, the Chief Financial Officer (CEO) of One Caribbean Media (“OCM”), the parent company of the Defendant, the credit manager of the Defendant and the Claimant.
14. The Defendant’s position was that arising out of the May 2016 meeting, discussions took place between the CEO of OCM and the Minister of Information, the then line minister of GISL, seeking his intervention in having the GISL Debt paid to the Defendant. In or about October 2016 to February 2017 the Defendant was paid the following sums:

Month	Amount (\$)
October 2016	2,585,956.87
October 2016	802,381.76
October 2016	41,233.25
October 2016	18,988.80
October 2016	43,176.75
October 2016	83,760.25
October 2016	63,108.56
October 2016	5,422.25
October 2016	106,317.50
November 2016	250,081.00
February 2017	256,526.51
TOTAL PAYMENTS	\$4,256,953.50

15. The Defendant relied on the aforesaid pleaded facts to assert that the Claimant played no role in the collection of the GISL Debt and as such his claim was unmaintainable for the sums claimed as commission. The Defendant stated that it relied on various items of correspondence evidencing the meetings and discussions between the CEO of OCM and members of Government as well as GISL.
16. According to the Defendant, in an effort to resolve the dispute between the Claimant and the Defendant with respect to the commission, the Defendant through its Financial Controller, Karlene Ng Tang (“Ms Ng Tang”) proposed to the Claimant by email dated 16 December, 2016 a payment of a 4% commission on the monies paid to the Defendant for the GISL Debt in acknowledgment of the Claimant’s preliminary work on the account with GISL, but the Claimant refused to accept the said sum.
17. The Defendant also pleaded that any other claim made by the Claimant with respect to his treatment by the Defendant does not in law constitute an estoppel and/or a waiver in law of the Defendant’s rights under the Agreement.
18. The Claimant did not file a Reply.

THE ISSUES

19. The issues to be determined from the pleadings are:
 - (a) Whether under the Agreement the Claimant is entitled to be paid a commission of 8% on all collections assigned to him irrespective of any role he played.
 - (b) Whether the Claimant is entitled to be paid the sum of \$10,703.42 as sick leave for various periods in December 2016.

THE WITNESSES

20. At the trial, the Claimant gave evidence to support his claim and the Defendant relied on the evidence of Ms Dawn Thomas (“Ms Thomas”), the CEO of OCM the parent company of the Defendant and Mr Mark Peters (“Mr Peters”), the Credit Manager of the Defendant.

WHETHER UNDER THE AGREEMENT THE CLAIMANT IS ENTITLED TO BE PAID A COMMISSION OF 8% ON ALL COLLECTIONS ASSIGNED TO HIM IRRESPECTIVE OF ANY ROLE HE PLAYED

21. It was common ground by the parties that the terms of the Agreement for the payment of commission was set out at Clause 6 which stated:

You will be paid a Traveling allowance of \$1,500.00 per month and a commission of 8% on all collections over 180 days. Your performance will be assessed using the Balanced Scorecard tool which will be used to define your goals and objectives and measure your achievements.

22. It was also not in dispute that by memorandum dated 1 March 2013 the collection period, originally 180 days on all collection was changed to: Agency- 60 days; Direct- 90 days; and Government-120 days.

23. In interpreting the Agreement the Court must refrain from interpreting the meaning of the words but rather strive to arrive at an interpretation which a reasonable person with the objective background information which the parties had at the time of contracting would have intended it to mean. In doing so, the Court must not attribute to the parties an intention which they plainly could not have had. The Court ascribes to it a meaning that is consistent with “business common sense”. This approach was articulated by Lord Hoffman in the House of Lords judgment of **Investors Compensation Scheme Ltd v West Bromwich Building Society**¹ who summarized the general rule as:

“(1) Interpretation is the ascertainment of the meaning which the document would convey to a reasonable person having all the background knowledge which would reasonably have been available to the parties in the situation in which they were at the time of the contract.

¹ (1998) 1WLR 896 at pages 912-913

- (2) The background was famously referred to by Lord Wilberforce as the “matrix of fact”, but this phrase is, if anything, an understated description of what the background may include. Subject to the requirement that it should have been reasonably available to the parties and to the exception to be mentioned next, it includes absolutely anything which would have affected the way in which the language of the document would have been understood by a reasonable man.
- (3) The law excludes from the admissible background the previous negotiations of the parties and their declarations of subjective intent. They are admissible only in an action for rectification. The law makes this distinction for reasons of practical policy and, in this respect only, legal interpretation differs from the way we would interpret utterances in ordinary life. The boundaries of this exception are in some respects unclear. But this is not the occasion on which to explore them.
- (4) The meaning which a document (or any other utterance) would convey to a reasonable man is not the same thing as the meaning of its words. The meaning of words is a matter of dictionaries and grammars; the meaning is what the parties using those words against the relevant background would reasonably have been understood to mean. The background may not merely enable the reasonable man to choose between the possible meanings of words which are ambiguous but even (as occasionally happens in ordinary life) to conclude that the parties must, for whatever reason, have used the wrong words or syntax; see *Manni Investments Co. Ltd v Eagle Star Life Assurance Co. Ltd* [1997] A.C. 749.
- (5) The “rule” that words should be given their “natural and ordinary meaning” reflects the common sense proposition that we do not easily accept that people have made linguistic mistakes, particularly in formal documents. On the other hand, if one would nevertheless conclude from the background that something must have gone wrong with the language, the law does not require judges to

attribute the parties an intention which they plainly could not have had. Lord Diplock made this point more vigorously when he said in *Antaios Compania Naviera S.A. v Salen Rederierna A.B.*[1985] A.C 191,201:

“if detailed semantic and syntactical analysis of words in a commercial contract is going to lead to a conclusion that flouts business common sense, it must yield to business common sense.”

24. In the instant case, the relevant factors to be examined to determine the meaning of Clause 6 of the Agreement are (a) the background knowledge of the parties at the time of the variation of the Agreement; and (b) whether the natural and ordinary meaning of the words reflect business common sense.

Background knowledge of the parties at the time of the variation of the Agreement

25. The Claimant stated in his witness statement that he was employed with the Defendant as a Debt Collector on 1 October 2012 and all his duties were either directly or indirectly related to debt collection. On 27 March 2013, after he completed his probationary period his appointment as a Debt Collector was confirmed and to date he is still employed as a Debt Collector with the Defendant.
26. According to the Claimant, he was the only Debt Collector employed with the Defendant from 1 October, 2012 and all Direct and Government accounts were assigned to him automatically as long as they were over 180 days which was subsequently amended by memorandum dated 1 March, 2013 to 120 days for Government debtors.
27. The Claimant stated that a few months later when a second Debt Collector was hired, the portfolio of accounts was split on the 11 July 2013. He explained that the accounts were split by account number on an even and odd bases for TEN and alphabetically for TV6. All account numbers with an odd number remained part of his portfolio for TEN while all accounts with an even account number were given to the other Debt Collector. For TV6, all accounts with the first letter of the account name starting with letters from A to M

remained part of his portfolio. He stated that the GISL account remained under his portfolio.

28. According to the Claimant, in an email dated 11 July 2013 Ms Ramsanahie, the Accountant for the Defendant provided a list of all accounts that remained under his portfolio. The total number of accounts that remained in his portfolio for TEN was 307 along with 12 even accounts that remained in his portfolio temporarily, while for TV6 the total number of accounts which remained in his portfolio was 48. The Claimant stated that the said list only showed Direct and Government accounts and it did not include any agency accounts. He explained that an agency account was when an agency placed advertisements with the Defendant on behalf of other external organizations and received a commission from the Defendant for doing so. An agency account was serviced by a special agency representative not a direct sales representative. The GISL did not receive any agency commissions from the Defendant and it was not serviced by an agency representative to be considered as an agency account.
29. In cross-examination, the Claimant testified that the period for collections for Government accounts was reduced from 180 days to 120 days because collections were going so well that the Defendant wanted to collect more money so it was given to him 60 days earlier by the sales team.
30. Ms Thomas stated in her witness statement that the change in the collection period for Government accounts was due to a significant increase in the receivables owed to the Defendant by the Government. She also stated that the change in the collection periods and the commissions' payable on the collections were to incentivise the collection of receivables by the Claimant in a timely manner as well as to assist the Defendant in its strategy to reduce its receivables. She further stated that some of the receivables assigned to the Claimant for collection were long standing and some were nearing the limitation period for recovery.

31. According to Ms Thomas, one such account with the Defendant was the GISL account with which the receivables for collection had been outstanding for the period 2009 to 2015. She stated that in the case of the GISL account, its history was tied to changes in the administration in Government. She explained that when there was a change in administration, the Defendant encountered a difficulty with the incoming administration to settle the outstanding account of the outgoing administration.
32. Ms Thomas was permitted to amplify her witness statement. She stated that the period for collection from the Government and Government departments was reduced because the volume of outstanding receivables was having a negative impact on the Defendant's cash flow. She explained that one of the strategies which was employed was to reduce the number of outstanding days to determine if the Defendant could have gotten all of the parties involved in the collection process to try and collect within a shorter period of time. This aspect of Ms Thomas' evidence was not challenged in cross-examination.
33. In order for the Court to satisfy itself which version of the events is more probable in light of the evidence, it is obliged to check the impression of the evidence of the witnesses on it against the: (1) contemporaneous documents; (2) the pleaded case; and (3) the inherent probability or improbability of the rival contentions, (**Horace Reid v Dowling Charles and Percival Bain**² cited by Rajnauth-Lee J (as she then was) in **Mc Claren v Daniel Dickey**³). The Court must also examine the credibility of the witnesses based on the guidance of the Court of Appeal judgment in **The Attorney General of Trinidad and Tobago v Anino Garcia**⁴ where it stated that in determining the credibility of the evidence of a witness any deviation by a party from his pleaded case immediately calls his credibility into question.

² Privy Council Appeal No. 36 of 1897

³ CV 2006-01661

⁴ Civ. App. No. 86 of 2011 at paragraph 31

34. In my opinion, the Defendant's version for the reasons for reducing the period of collection for debts from Government or Government departments was more probable for the following reasons. First, Ms Thomas evidence on the reason for the change was unchallenged in cross-examination. It is more probable as the CEO of OCM she had intimate knowledge of the reasons for the change in policy. Second, the change in policy took place six months after the Claimant was employed on a probationary period and one month before the Claimant's probationary period had expired. It was less probable that within this brief period of six months the Defendant was able to demonstrate that collections were so good to reduce the collection period for Government or Government departments.
35. I therefore find that the reason for reducing the collection period for Government's receivables from 180 days to 120 days was because there was a significant increase in receivables by the Defendant from Government or Government departments and the Defendant encountered difficulties in collecting these receivables when there was a change in the administration of the Government.

Natural and ordinary meaning of Clause 6 of the Agreement

36. It was submitted on behalf of the Claimant that the wording in Clause 6 of the Agreement is unambiguous; it reflected the parties intention that once the Claimant collected a debt he must be paid 8% commission on the sum collected; and the 8% commission is not discretionary as there are no circumstances or mechanism for pro-rating the commission to be paid to the Claimant.
37. Counsel for the Defendant also submitted that there is no ambiguity in language in Clause 6 of the Agreement. Counsel argued that the natural and ordinary meaning of the word "collection" is "pursuing payment of something that is owed" and that a reasonable man would conclude that under Clause 6 of the Agreement, the Defendant is to pay the Claimant the 8% commission on "all collections" as a result of efforts of the Claimant and not by a third party.

38. Counsel for the Defendant also submitted that assuming, that the words “collect and collections” do not bear their natural and ordinary meaning, it would flout business common sense for the Claimant to be entitled to the payment of 8% commission whether or not if he worked on collecting a debt.
39. Clause 6 of the Agreement states that the commission of 8% is paid on all collections over 180 days (later varied to 120 days) from Government of Government departments. The **Concise Oxford English Dictionary**⁵ defines the term “collection” as a noun which means “the action or process of collecting.”
40. In my opinion, the natural and ordinary meaning of Clause 6 of the Agreement is that the Claimant is entitled to be paid the 8% commission on any debt which is collected from the Government or Government department which is over 120 days as a result of the Claimant’s actions.

Business common sense

41. Having established the ordinary and natural meaning of Clause 6 of the Agreement, I now turn to whether this meaning is consistent with business common sense. Business common sense in the context of the Agreement is to reward the Claimant for performance as one of the reasons the Defendant varied the Agreement was to increase the collection of its receivables. It was clear that the parties intended in Clause 6 of the Agreement to reward the Claimant by paying him the 8% commission for collection of a debt. However, it was only business common sense to reward the Claimant and pay the 8% commission where he collected the debt as a result of *only* his efforts and not if he received assistance from any third party. In my opinion, if the parties had intended to reward the Claimant for a partial effort, a mechanism for the pro-rating of the payment of a commission would have been included. However, Clause 6 did not set out any mechanism for the Defendant

⁵ 11th ed

to pay the Claimant a lesser sum by pro-rating the commission to be paid for any partial effort on the part of the Claimant.

The Evidence and Analysis

42. The Claimant set out in his witness statement all the work he did with respect to the collection of the GISL Debt. He stated that on the 26 March 2013 he began working on the GISL Debt. He relied on an email dated 26 March 2013 with respect to a conversation he had with Kyle Rudder of GISL which he attached as "B".

43. According to the Claimant from the time of his first email contact to GISL to 2015 the total outstanding debt for GISL was a continuously changing value as more credit advertisements were being placed on the accounts while periodic payments were also being made. He stated that from 5 August to 2 October 2013, as he worked on the outstanding GISL Debt owed over 120 days more invoices were being added to the total at the beginning of each new month as GISL was requesting and receiving more credit advertisements from both TEN and TV6. He attached to his witness statement as exhibit "C" an email dated 2 October 2013 which he had written to Anton Frank ("Mr Frank") of GISL concerning the GISL account statement and invoices for payment.

44. The Claimant stated that during the period 19 April 2013 to 22 November 2013 he worked with Kyle Rudder, Sade Valdez and Mr Frank, all of GISL to verify and rectify the outstanding amounts on the GISL Debt. He attached as "D" to his witness statement a chain of emails between Mr Frank and him which were written during this period to support his position. He said that on 8 October 2013, he met with Mr Frank regarding the outstanding payments owed on the GISL accounts. He exhibited as "E" to his witness statement the emails showing the arrangement of this meeting.

45. The Claimant stated that, subsequently, he met with the GISL Management team of Ms. Alfonso, Ms Rishma Emrith ("Ms Emrit"), Ms Belford and Ms Ignacio at their office in

Morvant in December of 2013. He attached as "F" to his witness statement a report of the details of this meeting which he sent to Mr Peters via email dated 4 December, 2013.

46. According to the Claimant, in January of 2014 he met with Ms Emrit of GISL on two occasions to discuss the outstanding totals on the GISL Debt. He annexed as "G" to his witness statement a chain of emails dated 13 January 2014 which confirmed the conversation which he had with Ms Emrit. He also exhibited as "H" to his witness statement an email conversation he had with Ms Emrit which were copied to Ms Ignacio, Finance Manager at GISL and Mr Andy Johnson ("Mr Johnson") the then CEO of GISL, which showed a preliminary reconciliation report was done by GISL and given to him at the meeting on the 30 January 2014 to assist with verifying the total outstanding debt.
47. The Claimant stated that on 4 February 2014, he delivered more documents to GISL and payments were made towards the TEN account. He attached as "I" to his witness statement an email dated 5 February 2014 to Ms Emrit and copied to Ms Ignacio and Mr Johnson.
48. According to the Claimant, on 17 March 2014 he received an email from Jason Antoine of GISL requesting additional documents to assist him in the verification of the remaining GISL Debt. On the 25 March 2014, he provided the requested documents in an email. He attached a copy of the said email as "J" to his witness statement. He said that he received an email dated 9 June 2014 Mr Johnson requesting that he meet with the GISL Management Team. The said meeting was scheduled for 24 June 2014. He attached the email dated 10 June 2014 as "K" to his witness statement.
49. The Claimant stated that the meeting on 24 June 2014 was held at GISL's office in Morvant. The other attendees were Mr Johnson and the GISL Management Team. At this meeting they discussed the issue of the outstanding GISL Debt owed to both TEN and TV6.

50. According to the Claimant, on the 4 August 2014 he sent a strongly worded email to relevant members of the GISL team, which he copied to Mr Peters. He attached a copy of the said email as exhibit "M" to his witness statement. On that same day, he received a voicemail from Ms Emrit requesting further documents. The Claimant stated that in the week of the 22 September 2014 and 11 November 2014 he delivered additional documents regarding the outstanding balances for the GISL Debt. As at the 1 October 2014, TEN unpaid invoices over 120 days totalled to \$1,425,514.55 while for TV6, it totalled \$766,762.50. He stated that at this time credit was still being given to GISL by the Defendant which caused the balances to continue to grow. He relied on an email dated 25 March 2014 which he had written to Jason Antoine which listed the outstanding invoices. He attached a copy of the said email to his witness statement as "N".
51. The Claimant stated that on the 20 January 2015 a meeting was held by Ms Ng Tang with the members of the Credit Control department including Mr Peters and himself. At this meeting Ms Ng Tang noted GISL's Debt and suspended GISL's credit. Ms. Ng Tang then asked him to give special focus to GISL Debt and to contact Mr Johnson, the CEO of GISL and any other new contacts necessary for the collection of the GISL Debt. She also asked him try to obtain a letter of commitment from Government owned organizations which were expecting funding from the Government. He attached as "RA" to his witness statement an email dated 22 January 2015 from Ms Ng Tang to all members of the Credit Control department.
52. The Claimant also stated that in the early part of 2015 he made a new contact at GISL by the name Ms Hafizar Mohammed ("Ms Mohammed") and they began working together to reconcile the accounts and to have payments made. He obtained a payment towards the TEN account in the amount of \$232,107.54 on the 9 March 2015. He said that in 2015 he met with Ms Mohammed several times including on 7 July 2015 where he delivered a large quantity of documents relating to the GISL Debt. He stated that on the 12 August 2015 he obtained payments in the amounts of \$78,523.15 towards the TEN account and \$26,289.00 towards the TV6 account. On the 22 January 2016 he sent an email regarding

the GISL Debt to various members of GISL's finance department. On the 18 April, 2016, Ms. Rambachan, the Corporate Secretary of GISL, wrote to him in response requested all the documentary evidence in respect of each Invoice he had listed. He attached to his witness statement a copy of the said correspondence dated the 18 April, 2016 as "O".

53. The Claimant also stated that sometime between the 18 and the 19 April 2016 he had a conversation with Ms Rambachan about the relevant documents for the outstanding invoices. He indicated that he had delivered to GISL, the requested documents on several previous occasions, with the last time being on the 7 July 2015. Ms. Rambachan requested him to hand deliver the documents directly to her. He agreed to have the documents compiled and delivered to her as requested but he indicated that it would have taken a few days as the documents comprised of several hundred pages. He attached to his witness statement, exhibit "P" which was the chain of emails he exchanged with Ms Rambachan. The Claimant stated that he prepared and compiled the invoices, relevant purchase orders and ads and delivered it in person on the 21 April 2016 to Ms. Rambachan at GISL's office. He also prepared a page with all the invoice numbers and he had Ms. Rambachan sign for receiving the documents. He attached a copy of the said letter to his witness statement as exhibit "Q".
54. The Claimant stated that he also kept the Defendant's management updated on his progress with the collection of the GISL Debt as he sent an email to Mr Peters on the 21 April 2016 with a copy of the document which Ms Rambachan of GISL had signed for receiving all relevant documents relating to the outstanding invoices. He attached a copy of the email to Mr Peters as "R" to his witness statement.
55. According to the Claimant, on the 22 April, 2016 he received the April 2016 letter from John Barry ("Mr Barry"), the new CEO of GISL acknowledging receipt of the documents he had provided and confirming that a sum of \$4,560,212.32 may be due. The Claimant stated that the April 2016 letter stated that GISL was committed to honouring its obligations and that Mr Barry wanted to meet with him to discuss the documents

provided and an appropriate way forward. He attached a copy of the April 2016 letter to his witness statement as "S".

56. The Claimant stated that during the period 22 April 2016 to 5 May 2016 he had email conversations with Ms Rambachan and Mr Barry both of GISL to arrange a meeting. By email dated the 26 April 2016, the Claimant said that he proposed the meeting be with relevant persons from both GISL and the Defendant to discuss the GISL Debt and the way going forward. The meeting took place on the 13 May 2016 ("the May 2016 meeting") and the persons who were present were Mr Barry, the members of the GISL management team, Mr Lum Young, the Chief Financial Officer of OCM, Mr Peters, and the Claimant. According to the Claimant, at the May 2016 meeting, Mr Barry acknowledged that there was a substantial sum owed to the Defendant by GISL and that it required additional time to repay the GISL Debt. He said that Mr Barry mentioned a \$22million Cabinet Note and GISL's pursuance of an undisclosed source of funds which they hoped to apply to all media debts. Mr Barry appealed to the Defendant for time and understanding.
57. The Claimant stated that on 19 July 2016 he received an email from Ms Rambachan stating that the CEO of GISL was on leave and that the matter was being given priority. He attached the said email to his witness statement as "U". He also stated that on 12 September 2016 Ms Mohammed of GISL sent him an email which was copied to Glen Stephen the Finance Manager at GISL requesting an updated statement for both TV6 and TEN account, which he provided to her via email on 13 September 2016. He attached a copy of the said email as "V" to his witness statement.
58. According to the Claimant, on 7 October 2016, GISL made payments in the amount of \$2,585,956.87 towards the TEN account and \$802,381.76 towards the TV6 account. On 11 October 2016 the Claimant said he received an email from Ms Mohammed with the subject title "Copies of invoices for immediate payment" which requested copies of further invoices. He sent copies of all the requested invoices on the 11 and 12 October 2016. He attached the said chain of emails which he exhibited as "W" to his witness

statement. According to the Claimant, on 13 October 2016 he collected a payment for the TV6 invoices which he had provided on the 11 October 2016 in a total value of \$106,317.50.

59. The Claimant stated that on the 14 October 2016 Ms Mohammed requested via email, documents for five invoices which had no “tear sheets”. He provided the said documents to her on that same day and he attached to his witness statement as exhibit “X” the emails from Ms Mohammed. According to the Claimant, on 17 October 2016 he collected a payment for some of TEN invoices which he had provided on the 11 and 12 October 2016 in the value of \$255,689.86. On the 17 October 2016 he received an email from Ms Mohammed requesting copies of more invoices and an explanation for all the credits seen on the GISL trial balance from TEN. He provided a response via email on the 20 October 2016 which he attached as “Y” to his witness statement.
60. According to the Claimant, on 19 October 2016 Mr Peters requested him not to include the collection of the GISL Debt in his regular monthly claim but rather to do it separately as Ms. Ng Tang may have to approve it. He emailed Mr Peters on the same day to indicate that he will comply with the said request. He attached his email in reply as exhibit “Z” to his witness statement.
61. The Claimant stated that in the latter part of October 2016 he met with Ms Ng Tang. She asked him if he could postpone his claim for a month as she said words to the effect that *“the company is going through a difficult time right now”*. He stated that at the time he did not quite understand what she meant, nor whether or not the Defendant was going through a difficult time, but he agreed to have the payment of the claim postponed.
62. The Claimant stated that on 7 November 2016 he worked with Ms Mohammed to create a reconciliation report to determine exactly how much more was outstanding on the TV6 account. A copy of this report was attached to an email addressed to him. The total outstanding sum was \$250,081.00 plus an invoice number 1740-1 which GISL did not yet

have a copy of at the time. He attached the said email to his witness statement as "AA". The Claimant stated that he received another payment on behalf of the Defendant on the 17 November 2016 from GISL in the sum of \$250,081.00 which was exactly the same amount as the reconciliation report, towards the TV6 credit account.

63. According to the Claimant, between the 24 and the 30 November 2016 he worked with members of the GISL team on TEN credit account of unapplied payments and partially paid invoices. He attached to his witness statement a chain of the email conversation as "AB". On 30 November 2016 he delivered a letter addressed to Mr Glen Stephen, the then Finance Manager of GISL, a copy of which he attached as "AC" to his witness statement. He received an email on the 30 November 2016 from the GISL Finance Manager thanking him for his efforts which he attached as "AD" to his witness statement.
64. The Claimant stated that after verbally pleading with Ms Ng Tang several times to finalize the payment of his commission, he sent her an email on 2 December 2016. She responded by email dated 12 December 2016 stating that she has forwarded his claim to Mr Peters and that he should speak to him. He said that he meet with Mr Peters on the 12 December 2016 who mentioned that the Defendant had not made a final determination regarding the payment of the commission on the GISL Debt but it was understood that it was not willing to pay the 8% commission as stated in the Agreement.
65. According to the Claimant, after the meeting he sent Ms Ng Tang an email outlining the matter. He attached a copy of this email to his witness statement as "AE". Ms Ng Tang responded by email on 16 December 2016 indicating that the Defendant had approved only 4% commission on his GISL claim. He attached a copy of this response as "AF" to his witness statement.
66. The Claimant stated that on 10 February 2017 he received the last payment for TEN from GISL which brought the total payments received to \$3,098,173.24. This information was given to Mr Peters and Ms Ng Tang via email He attached the said email to his witness

statement as "AH". On the 25 April 2017 the Claimant said that he received the last payment for TV6 from GISL which brought the total payments received to \$1,451,455.26 This information was given to Mr Peters and Ms Ng Tang via email. He attached the said email to his witness statement as "AI". The Claimant also stated that while GISL has since closed its door to doing business this account still remains under his portfolio and to date he has never been told by management to stop pursuing any debts that may be outstanding on these accounts.

67. According to the Claimant, he recovered a total sum of \$4,256,953.50 from GISL and he submitted his payment vouchers in order to be paid his commission. He attached copy of the submitted cheque vouchers marked "AJ" to his witness statement. He stated that by email dated 16 December 2016 from Ms Ng Tang, the Defendant denied that it owed him any monies in relation to the GISL Debt on the basis that its payment was due to interventions of the highest levels of Government. In the said email, the Defendant offered to pay a 4% commission on the monies collected for the work which he did on the GISL account. He attached a copy of the said email to his witness statement as "AK".
68. The Claimant stated that he was not aware that Government officials intervened to assist in recovering the debt. He also stated that during his time of working on the collection of the GISL Debt, he saw no evidence of any intervention by high level Government officials to ensure that it was paid. He also indicated that some management intervention was not abnormal but this has never prevented him from being paid his 8% commission in the past.
69. In particular, the Claimant stated in his witness statement that with respect to the recovery of a Ministry of Finance debt in September 2015 the Defendant sought to pay him a lesser commission than it was contractually obligated to because it had taken the similar position that senior personnel had intervened and assisted in the collection of it. He said he was paid the 8% commission on the sum collected and in support he relied on

an email dated 12 December 2016 from Ms Ng Tang which he attached as "AL" to his witness statement.

70. The Claimant also stated that by letter dated 8 March 2015 Mr Darren Lee Sing of the TTPBA assisted in the recovery of a GISL payment. However he was paid the 8% commission, He attached as "AM" to his witness statement copies of the cheque voucher, commission sheet and a pay statement form for the period 1 March 2015 to 31 March 2015 as evidence of the Defendant acknowledging its obligation under Clause 6 of the Agreement.
71. The Claimant was cross-examined on (a) his understanding of his role as a Debt Collector for the Defendant under the Agreement; (b) his role in the payment of the GISL Debt to the Defendant; and (c) his knowledge of the efforts of third parties in the payment of the GISL Debt.
72. The Claimant stated that in his job as a Debtor Collector with the Defendant he sometimes liaised with the organisations by telephone, by emails and sometime by personal visits as it depended on the circumstances. He explained that once a debtor paid him money which it owed to the Defendant he turned it over to the Defendant and then he was paid the 8% commission. The Claimant stated that under Clause 6 of the Agreement if a debt which was assigned to him to be collected, was paid to the Defendant without any work done by him, he was still entitled to be paid the 8% commission on the sum collected.
73. The Claimant accepted that as a Debt Collector he had no role in the Government making funds available to pay the GISL Debt as his role was only to collect a debt. He also accepted that as a Debt Collector with the Defendant he could not have approached the Government and ask it to pay the GISL Debt but that there were persons in senior management in the Defendant who could take those steps.

74. With respect to the Claimant's role in the payment of the GISL Debt to the Defendant, he testified in cross-examination that the three important dates were 20 January 2015 which was the suspension of the GISL account; 13 May 2016 which was the May 2016 meeting ; and 19 October 2016 which was the date the payments started to be made to the Defendant to liquidate the GISL Debt.
75. According to the Claimant, all of the GISL Debt was over 120 days and some were nearly 7 years old and even pre-dated his joining the Defendant as a Debt Collector. He indicated that he knew that GISL was owned by the Government and that the advertisements which GISL placed with TV6 and TEN were from different Ministries such as the Ministry of Education and the Ministry of National Security.
76. The Claimant testified in cross-examination that on the 8 October 2013 he met with Mr Barry who was the then CEO of GISL and that the money which was paid to the Defendant by GISL were based on documents he had delivered. He stated that on the 9 June 2014 Mr Johnson, the new CEO of GISL via email requested a meeting with him and that on the 24 June 2014, he, Mr Peters and Mr Lum Young met with the persons from GISL. He indicated that it was erroneously stated in his witness statement that he alone met with GISL. He indicated that on every occasion when GISL requested any documents from him concerning the GISL Debt he supplied them.
77. According to the Claimant, when Ms Ng Tang asked him to obtain a letter of commitment from GISL for the GISL Debt at the 20 January 2015, he understood that this commitment was important as it was an acknowledgement by GISL of the GISL Debt and that the statutory time to recover the payment of the GISL Debt would start to run again.
78. The Claimant testified in cross-examination that in July and August 2015 he provided Ms Mohammed of GISL with additional documents concerning GISL Debt. He explained that he again supplied the documents he had previously provided in July 2015 to GISL in January 2016 which she had requested. Despite the Claimant providing the same

documents to GISL on several occasions he did not accept that he was getting a “run around” as he thought this was how Government funded organisations worked. He accepted that the same documents he delivered on 7 July 2015 he again delivered on 21 April 2016 to Ms Ramharack of GISL.

79. The Claimant accepted that the April 2016 letter only indicated that the GISL “may” owe the Defendant \$4,560,212.32 and that it was not a commitment from GISL. The Claimant stated that he informed Mr Peters of the proposed meeting, invited him to it and asked Mr Peters who else should attend. He stated that he invited the Chief Financial Officer, Mr Lum Young to the May 2016 meeting.
80. The Claimant stated at the May 2016 meeting, Mr Barry stated that the payment of the GISL Debt depended on the ability of GISL to obtain funding from the Government. He accepted that at the May 2016 meeting any commitment made by Mr Barry was subject to funding being made available by the Government. He admitted that although Mr Barry spoke about a Cabinet Note in the sum of \$22 million which GISL hoped to pay all debts to the media including GISL Debt, he did not produce it and nobody asked for it. The Claimant admitted that up to the time of the trial he was unaware if anyone had the said Cabinet Note. The Claimant also indicated that at the May 2016 meeting GISL had already done a reconciliation of the GISL Debt. Yet GISL still requested documents from him for a second, third and fourth time.
81. The Claimant denied in cross-examination that from the May 2016 meeting to the 7 October 2016 he had little involvement in the collection of the GISL Debt. He stated that between July to September 2016 Ms Mohammed requested an updated statement from him. He accepted that he had on previous occasions provided the information which Ms Mohammed had requested. The Claimant stated that his efforts in collecting the GISL Debt was his supplying documents on four occasions to GISL. He accepted that he did not take any action in getting the Government to pay the GISL Debt. He also accepted that if

GISL did not get the funds from the Government to pay the Defendant, it could not have been paid.

82. The Claimant's knowledge of any efforts by a third party, in particular, senior management of OCM was very limited. In cross-examination, the Claimant stated that on the 21 April 2016 when he delivered documents to GISL he told Mr Peters. He admitted that Mr Peters did not indicate to him what he did with that information and he accepted that any information he gave to Mr Peters would have been passed on the management in the Defendant.
83. The Claimant was taken through the correspondence from the 13 May 2015 to 14 July 2016 between Ms Thomas and various Government officials. The Claimant indicated that he had no knowledge of the said correspondence prior to the institution of the instant action. He accepted that the letter dated 13 May 2015 from the Defendant was sent to the then Prime Minister was copied to his then boss Ms Shida Bolai. With respect to the letter dated 25 May 2015 to Mr Anthony Deyal ("Mr Deyal"), he stated that he was aware that Mr Deyal replaced Mr Johnson and this was before Mr Barry was appointed as CEO of GISL and that this letter also referred to the GISL Debt. He accepted that the caption of the said letter which stated " Payment of Outstanding Amounts owed to Government Ministries and Agencies to Government Information Services Limited" meant that Government owed GISL money and that the said letter was indicating that the Government has to make funds available to pay GISL.
84. The Claimant accepted that the letter dated 26 June 2015 from OCM to Mr Vasant Bharath, Minister of Trade, Investments and Communications was copied to the then Prime Minister and his boss, Ms Bolai. He also accepted that when the letter dated 22 July 2015 and 24 November 2015 were written he had already supplied documents to GISL.
85. The Claimant further accepted that when the letter dated 19 May 2016 was written by the CEO of OCM to the Minister of Finance, he was having conversations and email

exchanges with Mr Barry 6 days before this letter and that Mr Barry did not mention anything about the said letter in the May 2016 meeting. With respect to the letter dated 28 June 2016 from the Permanent Secretary in the Office of the Prime Minister to Ms Thomas, the Claimant admitted that he played no role in reconciling the debt of the Attorney General's Office and the Ministry of Legal Affairs.

86. After being taken through the aforesaid correspondence, the Claimant accepted in cross-examination that while GISL was requesting documents from him between July 2015 to January 2016 letters were being exchanged by the CEO of OCM and Government officials concerning the payment of the GISL Debt. He also accepted that the collection of the GISL Debt only happened as a consequence of the funds made available by the Government and that if the said funds were not made available he could not make a claim for the 8% commission.
87. In my opinion, the admissions made by the Claimant in cross-examination undermined the credibility of his case that the GISL Debt was collected only due to his efforts. In particular the Claimant admitted that the April 2016 letter was not a letter of commitment to pay the GISL Debt which was contrary to his contention. He also admitted that at the May 2016 meeting senior officers of GISL indicated that the GISL Debt could not be paid without the Government releasing funds and he accepted that he could not approach the Government directly to release funds to GISL to pay the GISL Debt to the Defendant but that senior management in the Defendant could take such action.
88. I also found that the Claimant exaggerated his role in the meetings with GISL on the 8 October 2013 and at the May 2016 meeting as he admitted in cross-examination, in both meetings he was not the only attendee from the Defendant but that Mr Peters and Mr Lum Young, the Chief Financial Officer of OCM were also present.
89. Ms Thomas stated in her witness statement that she did not know the Claimant personally but she was aware that since 1 October 2012 he has been employed as a Debtor Collector

with the Defendant. She explained in her witness statement that the Defendant had receivables for collection for the period 2009 to 2015 from GISL and that the history of the GISL Debt was tied to changes with the administration in Government, in that when there was a change the incoming administration posed difficulty to settle the outstanding account with the Defendant from the outgoing administration.

90. Ms Thomas set out in her witness statement the work she did in relation to the collection of the GISL Debt. She stated that by letter dated 13 May 2015 she first wrote to the then Prime Minister about the aged receivables owed by Government to the Defendant, seeking her intervention to have same paid. She annexed a copy of the said letter to her witness statement as "A".
91. Ms Thomas stated that on the 25 June 2015 she met with Senator Vasant Bharath, the then Minister of Trade, Industry, Investments and Communications and also Acting Minister of Finance concerning the issue of non-payment of the GISL Debt. She stated that after the said meeting she received a copy of letter dated 25 May, 2015 from the Deputy Permanent Secretary Ministry of Trade Investment and Communications to Mr Deyal, the then CEO of GISL, indicating that the Cabinet of Trinidad and Tobago had issued a Cabinet Note which recorded an agreement that the sum of \$13,546,343.30 owed by GISL be paid to various media houses, and there be consultation between the relevant Ministries and the Ministry of Finance to identify funds from their respective budgetary allocations to cover the cost of the monies owing to GISL. She annexed a copy of the said letter to her witness statement as "B".
92. Ms Thomas stated that after the meeting on the 25 June 2015, she wrote a letter dated 26 June, 2015 to Senator Bharath to record the commitments made at the said meeting, regarding the issue of aged receivables owed to the Defendant and the follow up actions required. She annexed a copy of the said letter to her witness statement as "C".

93. Ms Thomas also stated that she wrote another letter dated 29 June 2015 to Senator Bharath regarding the identity of two of the recipients of media advertising. She annexed a copy of the said letter to her witness statement as "D".
94. According to Ms Thomas, she did not received any response from Senator Bharath. She then wrote a further letter dated 22 July 2015 to Senator Bharath imploring him to give his assistance to the closure of the issue of outstanding receivables. She annexed a copy of the said letter to her witness statement as "E".
95. Ms Thomas stated that in September 2015 a new administration under the Peoples National Movement formed the Government replacing the Peoples Partnership. She stated that after the change of administration in Government, the Defendant encountered more difficulties to have the GISL Debt settled as purchase orders and invoices had to be supplied by the Defendant all over again to GISL. According to Ms Thomas, by letter dated 24 Novemebr,2 015 she wrote to Senator Colm Imbert, the Minister of Finance bringing to his attention the letter dated 13 May, 2015 to the then Prime Minister and the Appendix 1 with the list of Government entities owing money including GISL to the Defendant. She annexed a copy of the said letter to her witness statement as "F". She stated that she copied the letter to the Prime Minister as the issue of Government receivables was urgent.
96. Ms Thomas stated that she wrote a follow up letter dated 19 May 2016, to Senator Colm Imbert the Minister of Finance to update him on the payments received by the Defendant. By that time TEN had been paid the sum of \$967,662.00 by the Ministry of Education which had been long outstanding. She annexed a copy of the said letter to her witness statement as "G". Ms Thomas stated that she also indicated to Minister Imbert that the aged receivables still remained at over \$14 million and needed to be addressed and she requested a meeting with him to discuss options for the settlement of the debt. She also copied the letter to the Prime Minister as she had with the earlier letters on this issue.

97. According to Ms Thomas, the Permanent Secretary to the Office of the Prime Minister and head of the Public Service wrote to her by letter dated 28 June 2016 which that responses had been received by the Office of the Prime Minister from Ministries on to their respective indebtedness. She annexed a copy of the said letter to her witness statement as “H”.
98. Ms Thomas stated that by letter dated 14 July, 2016 she wrote to the Permanent Secretary in the Office of the Prime Minister acknowledging receipt of her letter dated 28 June, 2016 and seeking her assistance in following up with the Ministry of Works and Transport for payment of receivables for which invoices and supporting documents had been submitted. She annexed a copy of the said letter to her witness statement as “I”.
99. According to Ms Thomas, in addition to all the aforesaid correspondence which she wrote, she also reached out to and had several discussions with then Minister of Communications, Mr Maxie Cuffie, with a view to having his assistance in getting the approval of the Cabinet of Trinidad and Tobago to liquidate the GISL Debt. Ms Thomas then stated that a result of all of the efforts expended the GISL receivables were settled in the following tranches:

Month	Amount (\$)
October 2016	2,585,956.87
October 2016	802,381.76
October 2016	41,233.25
October 2016	18,988.80
October 2016	43,176.75
October 2016	83,760.25
October 2016	63,108.56
October 2016	5,422.25
October 2016	106,317.50
November 2016	250,081.00

February 2017	256,526.51
TOTAL PAYMENTS	\$4,256,953.50

100. According to Ms Thomas, due to the nature of the communications referred to above, the Claimant was unaware of these efforts, which brought about the payment of the GISL Debt.
101. Ms Thomas was cross-examined on the correspondence which she exhibited to her witness statement; and her meetings with Government Officials.
102. Ms Thomas accepted in cross-examination that she was not involved in the liquidation of the GISL Debt prior to 13 May 2015. She accepted that she did not indicate in her witness statement if the then Prime Minister or another person on her behalf responded to the letter dated 13 May 2015 her witness statement. She accepted that exhibit “B” which was the letter dated 25 May 2015 referred to a Cabinet Note dated 23 April 2015 and that it was not probable that the said Cabinet Note had anything to do with her letter dated 13 May 2015 to the then Prime Minister.
103. Ms Thomas testified in cross-examination that she wrote Mr Vasant Bharath on the 26 June 2015 after she had met with him. She accepted that she did not annex to her witness statement any response from Mr Bharath to her letters dated 26 June 2015, 29 June 2015 and 22 July 2015.
104. Ms Thomas accepted that in her letter dated 19 May 2016 to Mr Imbert she referred to meeting with Mr Howai, the former Minister of Finance but she did not state this in her witness statement. She accepted that in her letter dated 19 May 2016 to Mr Imbert she acknowledged the payment of the debt from the Ministry of Education on the 18 May 2016 in the sum of \$957,662.00. Ms Thomas also acknowledged that the letter dated 28 June 2016 from the Office of the Prime Minister to her did not give any commitment to pay the GISL Debt or any specific action to be taken by the Office of the Prime Minister.

She also accepted that the said letter did not indicate that that the Cabinet of Trinidad and Tobago or any other Government body was taking action to pay the GISL Debt based on her request.

105. Ms Thomas accepted that the Claimant was working on the GISL Debt since 2013 and that it continued to increase as credit continued to be offered by the Defendant to GISL. She accepted that in the email dated 22 January 2015 Ms Ng Tang asked the Claimant to give special focus to the GISL Debt.
106. Ms Thomas admitted that she did not give any details in her witness statement such as how or where the discussion she had with Mr Maxie Cuffie, Minister of Communications, to get assistance to liquidate the GISL Debt and that the first time she indicated that she communicated with him via social media, ie WhatsApp, verbally and via cell phone was in cross-examination. She also admitted that she did not indicate in her witness statement that she had a firm commitment from him to pay the GISL Debt and that as a consequence of these discussions and that he did not inform her that he intended to give approval for liquidating the GISL Debt.
107. I accept that Ms Thomas did not provide any evidence that she had received any verbal or written commitment from any Government official to pay the GISL Debt pursuant to the letters she had written and after meeting with them. However, the credibility of Ms Thomas evidence that she was taking steps by writing the aforementioned letters and meeting with senior Government officials was not undermined in cross-examination.
108. Mr Peters has been employed by the Defendant since 1 November 2013. He stated that when he joined the Defendant, the Claimant reported to him. According to Mr Peters, some of the receivables assigned to the Claimant for collection were long standing and some were nearing the limitation period for recovery. One such account was the GISL Debt with which the receivables for collection had been outstanding for the period 2009 to 2015.

109. Mr Peters stated that when a change of the administration of the Government occurred, the incoming administration routinely posed difficulty to liquidate the sums incurred in advertising with the Defendant by the past administration and this was the case with the GISL Debt. He stated that the difficulties included the claim by GISL that it did not have purchase orders and invoices to support the claim for payment to the Defendant and as such purchase orders and invoices had to be supplied by the Defendant to GISL. After supplying the purchase orders and invoices there was further delay caused in large part by the GISL management structure. Once the sum payable by GISL was agreed there was further delay on account of a lack of funding of GISL by Government as GISL was completely reliant on the Government to meet its liabilities and in the absence of funds no monies could be paid over to the Defendant.
110. Mr Peters referred to all the correspondence which Ms Thomas wrote to the Prime Minister and other Ministers and the meeting she had with them during the period May 2015 to 14 July 2016 to settle the GISL Debt.
111. According to Mr Peters, in or about April 2016 the Defendant received the April 2016 letter from GISL indicating that after review of the invoices provided, pursuant to its request, there was in some instances either "Charge Advertising Order" sheets or copy of relevant advertisements which were not included and that "our preliminary review confirms that a sum of "\$4,560,212.32 may be due to you". He annexed a copy of the said letter to his witness statement as "I".
112. Mr Peters stated that as a result of the April, 2016 letter, the May 2016 meeting was convened between the executives of GISL and the Chief Financial Officer of OCM, himself as the Credit Manager and the Claimant. He said that he took minutes of the discussions at the meeting, and he annexed a true copy to his witness statement as "I".
113. According to Mr Peters, in order to resolve the dispute with the Claimant over payment of his commission for the GISL Debt the Defendant through its then Financial Controller,

Ms Ng Tang proposed to the Claimant by email dated 16 December, 2016 a payment of 4% commission on the monies paid to the Defendant in acknowledgment of such work by the Claimant's on the GISL receivables. The Claimant did not accept the proposal.

114. In cross-examination, Mr Peters accepted that in his witness statement he stated matters which Ms Thomas did but he did not indicate how he knew about her actions. He also testified that there were no responses annexed to his witness statement
115. Mr Peters admitted that GISL did not have purchase orders and invoices to support the claims which were being made and that the Claimant was assisting in proving the documents. He also admitted that although he stated in his witness statement that the payments received from GISL by OCM was as a result of the intervention of Ms Thomas, he did not provide any evidence of that and the only evidence is from the Claimant.
116. Mr Peters was shown the letter dated 18 April 2016. He accepted that it was addressed to the Claimant, and not copied to anyone else, and it was sent to the Claimant's email address. He stated that he was aware that the Claimant and Mr Barry, were exchanging emails concerning the GISL Debt. Mr Peters also stated that based on the first line of the second paragraph, it appeared that it was in response to an e-mail sent by the Claimant. He also admitted that based on the last paragraph, part of the correspondence was dealing with the problem of the lack of documents on the part of GISL.
117. Mr Peters was also shown the April 2016 letter from GISL. He testified that it was addressed to and sent to the Claimant's email address. He stated that in the said letter, GISL was seeking a meeting with the Claimant. He testified that on the face of the said letter there was no suggestion that that it was sent to any other person other than the Claimant. However, Mr Peters stated that he had received an original of the said letter but that he did not annex it to the Defence of his witness statement. He also testified that based on the said letter the May 2016 meeting was convened.

118. Mr Peters accepted that the May 2016 meeting was important in the collection of the GISL Debt. He denied that the Claimant told him of the said meeting as he had received an original of the April 2016 letter. He testified that in the sequence of events, his initial conversation about the meeting came from Mr Lum Young, the former Chief Financial Officer of OCM. However, Mr Peters accepted that the Claimant liaised with the GISL staff to arrange the date of the May 2016 meeting and this was after receiving the request to have the meeting. He admitted that when the Claimant was arranging the May 2016 meeting, he asked him the dates which were convenient for him but that was not the first time he heard of the meeting.
119. Mr Peters was referred to a chain of emails between the Claimant and Mr Barry arranging the date of the May 2016 meeting, and he testified that he was not copied with those emails. He accepted that the Claimant provided the information by way of email to GISL.
120. In my opinion, Mr Peters had no direct knowledge of the steps taken by Ms Thomas with respect to the collection of the GISL Debt between May 2015 and July 2016. Even if this aspect of his evidence was admissible, I attached no weight to it. Further, Mr Peters' evidence in cross-examination that he had an original of the April 2016 letter was not credible as there was no evidence from the chain of emails that it was copied to him and he did not reveal who sent it to him apart from the Claimant. It was therefore more probable that Mr Peters became aware of the April 2016 letter from the Claimant. With respect to the May 2016 meeting, Mr Peter's evidence on who attended the said meeting was consistent with the Claimant's evidence in cross-examination.
121. It was submitted on behalf of the Claimant that the Court should make an adverse inference against the Defendant for failing to call Ms Ng Tang as a witness in this matter, as she is still in the employ of the Defendant and that her evidence was relevant to the central thrust of the Defendant's pleaded case. In support of this submission, Counsel for

the Claimant relied on the learning in **Wisniewski v Central Manchester Health Authority**⁶ and the statement of principles made by Brooke L.J. as follows:

- a. In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in the action.
 - b. If a court is willing to draw such inferences, they may go to strengthen the evidence adduced on that issue by the other part or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.
 - c. There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.
 - d. If the reason for the witness's absence or silence satisfies the court then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.
122. Counsel for the Defendant argued that as a matter of law the Court cannot make any adverse finding against the Defendant for failing to call Ms Ng Tang as a witness as: it was not the Defendant's pleaded case that the decision not to pay the Claimant the 8% commission was made by Ms Ng Tang; it was not part of the documentary evidence adduced by the Claimant that Ms Ng Tang was the person who made the decision not to pay the Claimant the 8% commission; the Claimant did not put to Ms Thomas or Mr Peters that Ms Ng Tang made the decision not to pay the Claimant the 8% commission; the Defendant's pleaded case was that it put the issue of "collection" of the GISL Debt in issue;

⁶ [1998] PIQR p 324

the Defendant relied on correspondence, meetings and discussions of Ms Thomas with senior Government officials in support of its case; and none of the letters the Defendant relied on were written or copied to Ms Ng Tang.

123. The principles of law articulated in **Wishniewski** were not in dispute by the parties. The dispute was centred on the application of the said principles to the circumstances of the instant case.
124. The Defendant's answer to the Claimant's case, as set out in paragraph 4 of the Defence, was that it gave a different interpretation to the term "collection" under Clause 6 of the Agreement. The Defendant's defence was that the GISL Debt was collected as a result of the efforts of third parties, and not due to the sole efforts of the Claimant. In support the Defendant relied on the meetings Ms Thomas had with senior Government officials and various correspondence attached to Ms Thomas witness statement, as evidence of the efforts of Ms Thomas as the CEO of OCM in the collection of the GISL Debt.
125. Ms Thomas stated in and attached to her witness statement the correspondence which she had written and received with respect to her and other third party efforts in having Government release funds to GISL to pay off the GISL Debt which I have already set out aforesaid.
126. In the cross-examination of Ms Thomas, it was not put to her that Ms Ng Tang took the decision to not pay the Claimant the 8% commission on the sum collected by the Defendant as the GISL Debt. In the Claimant's exhibit "AL" to his witness statement which was his email to Ms Ng Tang he stated that "I meet with Mark today and he mentioned that the organisation has not made a final determination regarding my GISL claim, but it is already understood that the organization is not willing to pay me the full 8% that is stated in my contract." In the last sentence he stated "I am awaiting management's response as you have mentioned you will have to consult with other members of management and to provide me with an update by the end of this week."

127. Ms Ng Tang responded by email dated 16 December 2016 which the Claimant annexed to his witness statement as “AK” where she stated:

“As per our discussions earlier this week and your previous discussions with your Manager, the collection of the monies from GISL towards their debt with the Company was primarily as a result of the involvement of senior Executives throughout the OCM Group and persistent intervention at the highest levels of Government”.

At the May 2016 Meeting with GISL together with the OCM CFO, Credit Manager and yourself, their position was that there was no funding to settle the debt.

The Company however acknowledges the work that you have done on this account and as per our discussions has approved a payment of 4% commission on the monies collected.”

128. I agree with Counsel for the Defendant that the Claimant failed to make out any case for making an adverse inference against the Defendant for not calling Ms Ng Tang as a witness as, the Claimant failed to adduce any evidence that the decision not to pay the Claimant the 8% commission was a decision of Ms Ng Tang. The Claimant also failed to prove that Ms Ng Tang wrote any, was copied with or was the person from the Defendant who was involved in the third party efforts to secure the payment of the GISL Debt.

129. It was also submitted by the Claimant that the Defendant failed to bring any evidence to support its case as it did not adduce any documentary evidence and there was no witness from GISL or the Government who gave evidence to support the Defendant’s assertion that work was being done by a third party behind the scenes for the collection of the GISL Debt.

130. I accept that there was no witness from GISL or the Government to support the Defendant’s case. In my opinion, the rationale for the Government paying the GISL Debt

is not relevant. What is relevant is if the GISL Debt was collected as a result of the sole efforts of the Claimant. In this case, the Defendant relied on the direct evidence of Ms Thomas that she wrote certain letters and in order to substantiate her evidence she attached the said letters as the contemporaneous to prove that she took such acts. Ms Thomas evidence was also that she received certain letters and the said letters corroborated her evidence. In my opinion, Ms Thomas direct evidence was material in determining that the collection of the GISL Debt was not as a result of the Claimant's sole efforts.

131. From the evidence, it was not in dispute that, the Claimant provided all the documents to GISL concerning the GISL Debt on various occasions before it was paid to the Defendant. It was also not in dispute, that despite the Claimant providing the same documents on more than one occasion, the GISL Debt was not paid to the Defendant after he had provided the documents. In my opinion, it is more probable that the Claimants knew that his efforts in the collection of the GISL Debt were not bearing fruit as he admitted on two occasions when he met with GISL Management on 8 October 2013 and the May 2016 meeting he ensured that he had two senior officers present with him namely Mr Peters and Mr Lum Young, the then Chief Financial Officer of OCM.
132. Counsel for the Claimant submitted that the Claimant was receiving responses from GISL and Ms Thomas received no response to the several letters she had written until June 2016.
133. In my opinion, the nature and not the fact of the response which both parties received was material. The nature of the responses the Claimant received were simply more requests to provide documents from 2013 to 2016 which he had already provided and still GISL had not made any payments. After the Defendant suspended further credit to GISL in January 2015 the Claimant was only able to receive two payments from GISL in March 2015 and 12 August 2015. The April 2016 letter was not any acknowledgement of

the GISL Debt and at the May 2016 meeting, GISL Management acknowledged that the GISL Debt could only have been paid by a release of funds by the Government.

134. Ms Thomas received a response from the Office of the Prime Minister in a letter dated 28 June 2016 and four months after ie October 2016, the Defendant started to receive payments from GISL to liquidate the GISL Debt. In my opinion, this response which Ms Thomas received in the letter dated 28 June 2016 must be considered in the context that the undisputed evidence was GISL was funded by the Government and any GISL Debt had to be paid by a release of funds from the Government. The Claimant as a Debt Collector could not directly approach any senior Government official about the payment of the GISL Debt, but Ms Thomas who was a member of senior management could do so. Ms Thomas did this by writing letters and meeting with senior Government officials from May 2015 to July 2016. In my opinion, it was more probable that the letters written to senior Government officials by Ms Thomas and her meetings with them played an important role in the release of funds by the Government which resulted in the payment of the GISL Debt.

135. Indeed, the letter written to Ms Thomas from the Office of the Prime Minister dated 28 June 2016 stated that all the Ministries with outstanding payments to OCM had been informed; it indicated the Ministries from which responses had been obtained and the nature of the responses. It also stated that once additional feedback was received it would have been communicated to Ms Thomas. In my opinion, it was more probable that the said letter was the catalyst for the email dated 19 July 2016 from Ms Rambachan to the Claimant which indicated that although the CEO of GISL was on leave the matter was given priority. The contents of this email clearly demonstrated that the payment of the GISL Debt was beyond the authority of the CEO of GISL, since even in his absence, the officers in GISL were told to give priority to pay the GISL Debt. It was very likely that the only authority which could such instructions in the absence of the CEO of GISL were the senior Government officials, whom Ms Thomas had been writing to, as the Government had to finance the payment of the GISL Debt.

136. For these reasons I have concluded that it was more probable that the payment of the GISL Debt between October 2016 to February 2017 was due to the intervention of third parties, and in particular, Ms Thomas between 13 May 2015 to July 2016.
137. As I have stated previously, the natural and ordinary meaning of Clause 6 is that the Claimant is entitled to be paid 8% commission on collections due to his sole actions. I have found that the GISL Debt was not collected due to only his actions but due to the actions of third parties in particular, Ms Thomas. As a consequence, he is not entitled to be paid the 8% commission on the GISL Debt irrespective of any role he played in its collection.
138. Before I leave this issue, there are two matters which formed part of the pleaded case and the evidence which I must address namely the relevance of: (a) the past practice by the Defendant in the payment of 8% commission to the Claimant for the collection of debts from Government agencies; and (b) the relevance of the BSC to the payment of commission under Clause 6 of the Agreement.

Past practice by the Defendant

139. It was submitted on behalf of the Claimant that the practice of the Defendant was to pay the 8% commission to the Defendant when he collected any debt from any Government department which was in line with the terms of Clause 6 of the Agreement.
140. Counsel for the Claimant also submitted that the Claimant has not denied that there may have been intervention from senior management of OCM and or the Defendant for the collection of the GISL Debt. Counsel for the Claimant argued that in the past even where there was intervention of senior persons from OCM or the Defendant in the collection of a debt assigned to the Claimant such as that from the Ministry of Education, the Claimant was still paid his commission of 8% which is no different from the facts in the instant case.
141. At paragraphs 65 to 69 of the Claimant's witness statement he stated:

- “65. I was not aware that government officials intervened in this particular case to assist in recovering the debt. I can also say that during my time working on the GISL account, I saw no evidence of any intervention by high level government officials in ensuring the debts were paid. That being said, some management intervention is not abnormal and has never prevented me from being paid by full commission in the past”.
66. I can recall a previous instance where the Company sought to pay me a lesser commission than they were contractually obligated to because the Company had taken the similar position that senior personnel had intervened and assisted in the collection of the debts. This was in relation to the recovery of Ministry of Finance debts in September of 2015. However, Ms. Ng Tang intervened, and the Company acknowledged it was bound by the Agreement to pay the 8% commission and I was paid this amount. This matter was mentioned in the December 12th 2016 email to Ms. Ng Tang (attached as “AL”).
67. A letter dated 8th March 2015 shows Mr. Darren Lee Sing’s of the TTPBA assistance in the recovery of a GISL payment. Nevertheless, I was paid my 8% commission which is evidence by the cheque voucher, commission sheet and a pay statement form for the period March 1st 2015 to March 31st 2015. These documents are evidence of the Company acknowledging their obligation to abide by the terms of the Agreement. Copies of these documents are in a bundle and marked “AM”.
68. While the Defendant has contended that I was not instrumental in the collection of the funds owed by GISL, at no time did management inform me that I am no longer required to work on the account or that they were dissatisfied with my performance in relation to the GISL account or any other account.

69. In the list of evidence provided by the defendant the two letters sent by the OCM CEO did not mention GISL directly but rather all government receivables and considering that aside from GISL I have been paid the full 8% commission when each government organization paid their debts over 120 days old. One of the organizations that was mentioned in the letter was Ministry of Education and ironically, I was paid my full 8% commission when this ministry paid their debt.”
142. In cross-examination, the Claimant was taken to exhibit “AM” of his witness statement which was a letter dated 8 March 2015 from the then CEO of GISL, Mr Deyal to Mr Darren Lee Sing, the President of the TTPBA. The Claimant accepted that Mr Darren Lee Sing as the President of the TTPBA was obliged to collect funds from GISL; he did not know what steps Mr Lee Sing took, unlike Ms Thomas in the instant case, and that it was not a proper analogy to use as a basis to be paid the commission of 8% in the instant case.
143. Exhibit “B” of Ms Thomas witness statement referred to a letter dated 26 June 2015 where the Ministry of Education is listed as one of the Ministries with an outstanding payment due to the Defendant. Exhibit “F” of the same witness statement is a letter dated 24 November 2015 where the Ministry of Education debt was again referred to by Ms Thomas In cross-examination the Ms Thomas acknowledged that when the Ministry of Education debt was collected, the Claimant was paid 8% commission of the said sum.
144. In my opinion, the facts and circumstances surrounding the payment of the 8% commission to the Claimant with respect to the Ministry of Education debt can be distinguished from the facts in the instant matter and for this reason, the payment of the 8 % commission with respect to the Ministry of Education debt cannot be applied to the facts in the instant case. Further, the Claimant admitted that the facts surrounding the payment of the 8% commission based on collections from other Government accounts which the Claimant referred to in his witness statement were different from that in the instant case. In my opinion, the payment of the 8% commission is based on the

circumstances in each matter and any past practice is not relevant in determining the issue of payment of the 8% commission.

The BSC

145. It was submitted on behalf of the Claimant that the BSC is not relevant in determining the Claimant's commission under Clause 6 of the Agreement. He also argued that even if it was relevant, the evidence was that the Claimant was given the highest rating an employee could receive in his performance which was collecting debts assigned to him.
146. I agree with Counsel for the Claimant that the BSC was not relevant in determining if a commission is to be to the Claimant as the evidence from all the witnesses was that it was not a relevant in determining if the commission is to be paid under Clause 6 of the Agreement.
147. The Claimant stated in his witness statement that the BSC was the method utilized by the Defendant to define its goals and objectives and measure an employee's achievements in relation to said goals. The assessment was done twice a year and it had no direct bearing on determining commissions in respect of individual accounts. According to the Claimant, in respect of the BSC, he has always exceeded requirements in meeting the Defendant's goals and objectives, which is the highest rating that an employee can receive. He attached a bundle of his BSC for 2013, 2014, 2015 and 2016 as "AO".
148. The Claimant testified in cross-examination that he understood the BSC to be a subjective tool which was used by the Defendant to measure how he performed in collections. In his opinion, if he did no work but collected moneys for the Defendant he should get a bad rating in the BSC but he was still entitled to be paid 8% commission on the debt collected.
149. Ms Thomas stated in her witness statement that the BSC was a tool used whereby employee performance could be evaluated. The BSC was policy driven and intended to measure the effectiveness and efficiency of each team member in a manner that is

participatory fair and equitable. She explained that the BSC was used to focus employee performance during the year and to evaluate performance at the end of the year in terms of Performance Goals/Objectives and Competencies. At the beginning of each year, performance objectives were formally established with the Claimant. Employee performance for the Claimant would have been reviewed and evaluated half-yearly.

150. Ms Thomas stated that at each stage of the evaluation process, the Claimant would have been afforded the opportunity to actively participate in the appraisal process noting any concerns, additions, or omissions. She stated that the Claimant would have formally acknowledged that he had reviewed the evaluation and discussed the contents with the Evaluating Manager. Both the Claimant and the Evaluating Manager would have signed the performance appraisal and the Claimant would have been provided a true copy of the evaluation.

151. Ms Thomas evidence in cross-examination was that the BSC was not taken into account in how commissions for the Claimant is calculated. She accepted that the Claimant's BSC for the years 2016 and 2017 exceed the Required Category. Mr Peters evidence in cross-examination was that the BSC was not relevant in the payment of commission to the Claimant under the Agreement.

WHETHER THE CLAIMANT IS ENTITLED TO BE PAID THE SUM OF \$10,703.42 AS SICK LEAVE FOR VARIOUS PERIODS IN DECEMBER 2016

152. Having found that the Claimant was not entitled to be paid a commission of 8% on the GISL Debt it follows that the Claimant's contention that the daily average rate for 2016 was calculated accurately as it did not take into account the said commission. As such the Claimant is not entitled to be paid the sum of \$10,703.42 as sick leave for the various period in December 2016.

CONCLUSION

153. The natural and ordinary meaning of Clause 6 of the Agreement is that the Claimant must be paid the 8% commission on any moneys, which are collected by the Defendant on Government debts over 120 days as a result of only his actions. This meaning is consistent with business common sense. Business common sense in the context of the Agreement is to reward the Claimant for performance. The parties intended in Clause 6 of the Agreement to reward the Claimant by paying him the 8% commission where he collected a debt as a result of only his efforts and not if he received any assistance from any third party. In my opinion, if the parties had intended to reward the Claimant for partial effort, a mechanism for the pro-rating of the payment of a commission would have been included. However, Clause 6 did not set out any mechanism for the Defendant to pay the Claimant a lesser sum by pro-rating the commission to be paid for any partial effort on the part of the Claimant.
154. Based on the credible evidence I have concluded that the GISL Debt was collected by the Defendant not as a result of the sole efforts of the Claimant but that the actions of third parties, in particular, Ms Thomas. As such, the Claimant is not entitled to the payment of the 8% commission on the GISL Debt and the payment of the sum of \$10,703.42 as sick leave.

ORDER

155. The Claimant's action is dismissed.
156. The Claimant to pay the Defendant's costs of the action in the prescribed sum of \$52,183.93 pursuant to Rule 67.5(2)(a) Civil Proceedings Rules 1998.

Margaret Y. Mohammed

Judge

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