

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. CV 2010-01412

BETWEEN

REAL TIME SYSTEMS LIMITED

Claimant

AND

**RENRAW INVESTMENTS LIMITED, CCAM & COMPANY LIMITED, AND AUSTIN
JACK WARNER aka AUSTIN WARNER t/a DR. JOAO HAVELANGE CENTRE OF
EXCELLENCE**

Defendant

Before the Honourable Mr Justice Frank Seepersad

Appearances

1. Mr Bisnath instructed by Ms Mendonca for the Claimant.
2. Mr Scotland instructed by Ms Watkins-Montserin, Ms J. Chang for the Defendant.

Date of Delivery: 15th May, 2018.

DECISION

Overview

1. Before the Court for its determination is the Claimant's claim for the sum of \$1,505,493.00. The Claimant contends that in or about August 2007, Mr Krishna Lalla and Mr Jack Warner agreed that Mr Lalla would assist Mr Warner by obtaining loans for him which would be repaid by 28th February, 2008 as Mr Warner expected to receive a US\$10M payment from FIFA. It was further agreed to that Mr Warner would secure the loans by way of a promissory note and the execution of a charge over the Centre of Excellence. Pursuant to the oral agreement Mr Lalla alleged that the Claimant advanced to the Defendant the aforesaid sum by way of five (5) cheques over the period 9th October 2007 to 1st November 2007.
2. The Defendant admitted that the sum was paid over to him and that same was never repaid. Contrary to the Claimant's pleaded case, the Defendant averred that the money, together with other sums, was a donation made by the Claimant's principal, Mr Lalla, for the financing of the 2007 General Election Campaign for the United National Congress (UNC), a political party.
3. The critical issue to be determined is whether or not the sum of \$1,505,493.00 was advanced pursuant to a loan arrangement or whether it amounted to a donation/ gift towards the financing of the 2007 General Election Campaign for the UNC.

The Evidence

The Claimant's evidence

Krishna Lalla

4. Mr Lalla testified via video link from Panama and his responses during cross examination were generally consistent with the Claimant's case as pleaded and with the terms of his witness statement. The witness did however say that he did not approve the draft

promissory note which he attached as KL1. He accepted that no promissory note was ever executed nor was a charge given over the Centre of Excellence. The witness also said that Mr Warner, after the sums were advanced, outlined further financial difficulties and he remained in constant contact with Mr Warner with the view of effecting firm repayment proposals. Exhibited to his witness statement as KL2 were a bundle of emails sent between rajnanan1@yahoo.com and krishna_lalla@yahoo.com (being his addresses) and JAWfifa@aol.com, which he said was the address that Mr Warner used. The witness maintained that he asked the Claimant Company to loan the sums to Mr Warner and Mr Warner failed to repay the sum of \$1,505,493.00 which the Claimant advanced.

5. Mr Lalla indicated at paragraph 12 of his witness statement that Mr Warner had emailed him the draft promissory note exhibited as KL1. By email dated 26th September, 2007, Mr Warner enquired as to whether there was any progress on the promissory note, to which Mr Lalla replied 'yes' and Mr Warner responded by saying "will talk on arrival tomorrow".
6. By an earlier email dated September 6, 2007 sent by JAWfifa@aol.com, the following message was transmitted:

"Raj, I need your help....temporarily. The 2.5m USD I paid off was short by about \$100,000 when I requested the wire transfer. Can you be so kind and transfer that sum to my USD account until my return next week?"

Pls treat this matter as confidential....as you have always done.

Regards "

7. Annexed in the bundle KL2, was also an exchange between Mr Warner and his accountant Kenny Rampersad, that was referenced 'Scotiabank'. This was forwarded to Mr Lalla. This exchange reads as follows:

"Kenny, my sincere apologies for any embarrassment which I may have caused you to suffer in your meeting with the bank earlier today. You know me for the

last 20 years and know that I am not that kind of person....it won't ever happen again.”

Mr Rampersad responded:

“Jack,

The fact that you took the time to write this note means a lot to me. I do sincerely thank you. As I said during our brief telecom I was not as concerned about me as I was about you and your image particularly now.

One your return if you would like to let us review our position and plan the cash flows. I am confident that we will come out of this with flying colours.”

8. In November, 2007, after the Claimant's funds had been advanced, Mr Warner forwarded to Mr Lalla another email dated 28th November, 2007 and was exhibited in the bundle of documents as KL2 which he wrote to his said accountant and copied to personnel at Republic Bank and this read as follows:

“Kenny, Republic Bank has just bounced the salary of a staff member for \$2,306.08 – Rochelle Smith.

This has never happened to Jamad Ltd. in its history. Pls arrange to meet with me soonest so as to bring closure to our dealings with Republic Bank at the earliest opportunity.”

9. By way of email dated 28th November, 2007 sent from JAWfifa@aol.com to Mr Lalla, he was informed as follows:

“I know that you are not responding to my phone calls or emails but I felt compelled to relate you an experience and humiliation I suffered today. I was rushing out of the office when I sent you this mail and could not explain to you my predicament. But here goes. Before I left for South Africa, I asked my Accountant, Kenny Rampersad, to go back to Republic Bank to try and get my accounts reactivated at least for one month (pending some mortgages I am trying to raise) since the Manager was off on holidays.

The Ag. Manager advised Kenny that I can go ahead and make cheques not exceeding \$50,000.00 for one month only. The Manager returned from holiday on Monday and bounced the very first salary cheque I made to a member of staff for less than \$3000.00

I have never been so ashamed in my life.... But I remain convinced that both you and I shall overcome these present situations. Trust me.”

10. By email dated December 7, 2007 Mr Lalla sent the following email to JAWfifa@aol.com:

“The banks need answers in the loans moneys advanced what do we tell them the repayment terms the moneys didn’t hit the account.”

11. In response, JAWfifa@aol.com stated:

“In reference to your comment:-

The moneys didn’t hit the account

Why did you not tell me this before? I will call now to investigate. Re the loans etc, do see how much time you can get beyond January 2008, I am swamped with debts now and am being harassed every day re the payment of outstanding bills. My family and staff lives have been threatened and for the first time in my life, I am afraid but you are the only one I have told that to and do beg you not to disclose it to anyone.

I am in Tokyo at the moment, on FIFA business, but all where I go, very discreetly, I am looking for loans. I am looking for help.”

12. By further email on December 7, 2007 JAWfifa@aol.com wrote to Mr Lalla stating:

“I just cannot make anymore....I have borrowed from every conceivable source and yet there are still so many persons to be paid.

Regards”

13. Attached as the last document to KL2 was an email thread from the 7th and 21st February, 2008. On the email dated 7th February sent to JAWfifa@aol.com, Mr Lalla said as follows:

“I tried contacting you on your phone with no luck.

At the meeting on Saturday 26th January 2008 you mentioned I would receive 1,000,000.00 on the 6th February, 2008.

You did not give me any reply to my email attached hereunder.

JACK THIS MATTER IS URGENT!

I await your reply.”

14. By the email dated the February 21, 2008, JAWfifa@aol.com wrote to Mr Lalla and said:-

“Raj, I am awaiting the transfer of the money from Zurich, I don't recall giving you a date of February 6, knowing Zurich quite well 'but if I did I am sorry, I did say however that the money is due in February, two million dollars, of which I shall give you one. I also wish to advise you as well that besides my having to find the money to pay for the airline (who has now accused me of having lied and tricked them, an unfair accusation with which I will have to live with for the rest of my life) additional bills have come in for payment amounting to \$1.56 million TTD. Where I will get all this money for payment, only God alone knows at this time!!!

When you called me on Wednesday, I was in a meeting and was not able to speak but I could have listened, finally, Raj, as you know and I know my means do not allow me the possibility to assist with any monthly payments of the magnitude you are suggesting at this time. I have shown you all the facts and have even explained to you the position with my own home at the moment.

Please be guided accordingly

Regards”

15. In response Mr Lalla replied:

“I receive you email of 21st February, 2008 and I am very concern of the content

Hereunder is an email from yourself replying to the same mail that you are claiming you did not receive earlier.

You indicated you will honour your promise.

I WILL LIKE TO KNOW WHAT IS THE PROMISE”

I hope it is what you promise when you requested these loans

I await your urgent response”

16. Mr Lalla’s evidence reiterated that all the sum in this case was advanced to Mr Warner were by way a of loan and that the money advanced by the Claimant was made payable to the Defendant upon Mr Warner’s instructions. In cross examination, it was put to Mr Lalla that he was the main financier of the 2007 election and he denied same. It was also put to him that he and/or his companies benefitted significantly from government contracts during the period 2010-2015 and he responded that all contracts were duly tendered for.

Romila Marajh

17. This witness was at the material time and still is the Claimant’s General Manager. She confirmed that the five (5) cheques were issued based on a request she received from Mr Lalla to assist Jack Warner and she said that a decision was taken to raise \$1.5M. She further said that Mr Lalla told her that the sums loaned would be repaid by February, 2008 and that security would be provided for the loan. The witness in cross examination admitted that no security was ever provided and confirmed that she could not testify as to the nature of the conversations between Mr Lalla and Mr Warner. She further accepted that there were no board minutes in relation to the sums advanced and stated that after the

sums were disbursed, she pursued the issue of repayment with Mr Lalla but no repayment was received from Mr Warner.

Chandresh Sharma

18. He was the Claimant's final witness. Mr Chandresh Sharma was the UNC's treasurer in 2007 and in his witness statement he stated that he had knowledge of all monetary donations and contributions made to the party and no money was ever received from Krishna Lalla or the Claimant. He testified that he introduced Mr Lalla to Mr Warner around mid-2007 and at that first meeting, no one else was present. He also indicated that Ronald Phillip (one of the Defendant's witnesses) did not design a plan for the 2007 election campaign and that Mr Lalla did not carry out any UNC elections management function from or at his office, although, he accepted that Phillip assisted in the election campaign. During cross examination Mr Sharma said that it was the practice of political parties that the names of members and financial contributions received, would not be disclosed. He also said that in the preparation of his witness statement he relied on his memory as well as on documents but later accepted that at the time he prepared his witness statement he had no access to UNC internal documents as he was no longer a member of the executive of the party.

The Defendant's evidence

Jack Warner

19. Mr Warner's witness statement stated the following:

- a. In or around early 2007, I was approached by both Mr Chandresh Sharma and Mr Einool Hosein to attend a meeting with Mr Krishna Lalla.
- b. I was informed by both Mr Sharma and Mr Hosein that Mr Lalla wanted to see me as a matter of urgency.

- c. I had a firm conversation with him concerning my plans to remove Basdeo Panday from the leadership position of the party (UNC) and my intention to revive the UNC to its former glory.
- d. Mr Lalla insisted that he would assist the UNC as a financier, however he wanted me to be its political leader, and he wanted Mr Sharma to be Minister of Works and Transport and a host of other things. He spoke passionately about Mr Panday not being a leader and about the transforming of “his” party.
- e. We spoke at length about the way forward and I opened up to him about my plans to reposition the party and out-manoeuvre the COP and the PNM.
- f. He was quite pleased and excited about my initiatives and insisted that we have nothing to worry about because he is there to assist in the campaign financing as well.
- g. From our discussions, Mr Lalla was most concerned about what would come out of his efforts to assist the party and in fact, he openly asked me, “what is in it for me...?”
- h. Several businesses were selected to receive campaign financing from Mr Lalla to then donate and have readily available to the party and to assist the party in the 2007 General Election. At no time did I enter into any contract or made any utterances that would indicate or lead Mr Lalla or anyone to believe that Mr Lalla was giving me or any of my companies a loan. I do indeed acknowledge the fact that five cheques were given to my company for the amounts on the cheques which sums were to be made available to the party (UNC) for the 2007 General Election and as such this was done.
- i. As was discussed between Mr Lalla and myself, several companies including the Centre of Excellence (Renraw Investments Limited) received monies from Mr Lalla during the period leading up to the 2007 General Election to finance the party. I also donated much of my personal finance toward this cause as well.

20. Mr Warner was not cross examined extensively and it was put to him that the sums received were in the form of loans as opposed to campaign financing.

Ronald Phillip

21. His witness statement stated as follows:

- a. In March 2007, I was appointed a permanent United Nation Congress (UNC) Senator and was such until the 8th Parliament was prorogued for election in December 2007.
- b. With reference to the matter listed above, in or around two months before the General Elections in 2007 around September, I was invited to a meeting by Mr Jack Warner and a UNC financier at Vie de France Restaurant in Atlantic Plaza, Couva.
- c. The meeting was attended by myself, (Ronald Phillip), Mr Jack Warner and a gentleman of East Indian descent, dark complexion, about 5 feet 6 inches and about 170 lbs. who introduced himself as Mr Raj Nanan. I subsequently found out that this name was Mr Krishna Lalla, a Businessman and Owner of Super Industries Supplies Limited (SIS). I felt this double identity was intentional to deceive.
- d. Mr Lalla was interested in recruiting someone to help him to manage an elections' campaign for the UNC. My understanding was that I was a volunteer. I initially was unwilling to work with him as he had no previous election's management campaign experience. However, I was told by Mr Jack Warner, at that meeting, that he was financing the elections campaign and wanted to have some control of the disbursements of the money. Mr Krishna Lalla explained that he was previously presented by Mr Jack Warner with Mr Fazal Karim (the then UNC Secretary) and that Mr Karim was unsuitable to him. Time was short, the

elections date was set and the UNC needed the money to have a fighting chance. He wanted someone to work twenty for (24) hours with him. I understood this to mean full time volunteer. I left the meeting, willing to work with Mr Krishna Lalla to manage the UNC 2007 Elections Campaign.

- e. My understanding was that Mr Krishna Lalla was the UNC financier for the 2007 General Elections Campaign. He had single-handedly built his own empire and was worth millions of dollars. He had limited academic qualification but had business acumen.
- f. My specific roles were to report to an office established by Mr Krishna Lalla from 6:00 a.m. to 2:00 a.m. the following day, a twenty (20) hours work day. I was to design a campaign management plan for the elections, together with a marginal constituents plan and produce a training manual for election staff and volunteers. This was an intense six weeks.
- g. The entire campaign was managed from Mr Krishna Lalla's office on the Point Lisas Estate in Couva and not from Rienzi Complex, Couva. Mr Krishna Lalla took direct control of this campaign management. I single-handedly produced the entire campaign management strategy, plans and training modules with specific emphasis on the marginal seats. However, Mr Krishna Lalla was financing all constituencies at that time, as different campaign teams met with both of us for my assessment of their implementation of the strategy and for financing of same. Different constituency management teams were invited to the SIS Office on Atlantic Avenue, Point Lisas Industrial Estate.
- h. I worked with Mr Krishna Lalla for about six weeks prior to the 2007 general elections. I was placed in a room with one window, a table and a chair. There was a network cable (RJ45 Jack) out of the ceiling connecting my laptop to a printer. I supplied my own laptop computer to perform my job. I was to talk to no one except Mr Krishna Lalla. I subsequently was allowed to by Mr Lalla to interact with Mr Krishna Lalla's son, Terrance Lalla, who would solve the networking

problems and allowed me to print. Ms Nirmala Rampersad who provided my meals and Mr Einool Hosein also known as Jimmy Hosein, who was liaising with the UNC campaign team staff and was disbursing money on Mr Krishna Lalla's behalf. These were the names given to me by these persons.

- i. Mr Krishna Lalla managed one constituency totally to check the integrity of my campaign management modules and to work out cost of items. He worked directly on Mr Ramesh Lawrence Maharaj campaign for the Tabaquite constituency in 2007. This campaign he financed one hundred percent (100%) and disbursed money personally for expenses. In all other constituencies, he sent his SIS staff.
- j. In spite of the unfavourable working conditions, I continued until the elections day to work in Mr Krishna Lalla's office. One week before the elections, Ms Nirmala Rampersad came and offered twenty thousand dollars (\$20,000.00) for my services. I initially refused the money. She went to Mr Krishna Lalla and complained, who called me into his office. He told that I was to accept his money and sign a voucher for receiving same. He was to owe no one in this campaign. I eventually signed and took the cash. Mr Lalla reported to date, he had spent millions of dollars on the marginal seats as I had advised the campaign to be financed. He also mentioned that he had paid out five million dollars to Mr Lenny Saith, Minister of Planning and Leader of Government Business of the Senate, of the People's National Movement (PNM) Party. Mr Saith had him listed as a financier also, of the PNM Party 2007 Elections Campaign.
- k. In Mr Krishna Lalla's office were millions of dollars in cash on a table from which he disbursed money for the UNC elections campaign. Mr Einool Hosein, a senior staff of Mr Krishna Lalla's company was involved in the pay-outs. I am also aware that Mr Krishna Lalla issued several cheques to companies of Mr Warner for campaign financing purposes but I cannot specifically recall which companies and the amounts issued.

- l. The failure of the management of the UNC campaign was due to Mr Krishna Lalla insistence on controlling the disbursement of funds with poor timing and using his SIS staff to manage a process of which they had no previous experience. I had to provide training sessions for his staff to help with this management.
 - m. Failure of the elections was due in part to the failure of the UNC and Congress of the People (COP) to agree on “who would have been the next Prime Minister, if their coalition did win the general elections?” They could not have kept it together and so lost the 2007 general elections.
22. Mr Phillip was not extensively cross examined but it was put to him that the statements in his witness statement were untrue.

Einool Hosein

23. This witness’s witness statement was as follows:

- a. I was a top-level employee of Krishna Lalla for the past 23 years.
- b. With reference to the matter listed above, in or around 2007 I was contacted by my then boss Mr Lalla, who requested me to make contact with Mr Jack Warner. From my conversation with Mr Lalla I understood that he wanted to discuss the possibility of Mr Warner becoming the Political Leader of the United National Congress and transforming the party into a viable option for government.
- c. During the course of my employment and from my day to day dealings with my employer Mr Lalla, I became aware that he had already sanctioned and was financing a project called Marginal Constituency Management Team and the Caribbean Statistical Office was the Service Provider. The function of this team was to go into the marginal constituencies and pass on the training in which we (Ronald Phillips, others and I) had received from individuals who Mr Lalla had flown in and paid to train us in the field of political strategy. This initiative was

failing and failing fast. A copy of my letter of appointment in relation to this project is attached and marked "A".

- d. At that point in time, from my interaction and conversations with Mr Lalla he insisted on meeting with Mr Warner. The meeting was eventually arranged through Chandresh Sharma who Mr Warner was close to at that time.
- e. I am aware that Mr Warner did indeed meet with Mr Lalla early in 2007 as I was present at the said meeting together with Mr Lalla and Chandresh Sharma.
- f. In the meeting we discussed several issues including the fading identity of the UNC; the strength of the COP; the ability of the PNM to win the election and most importantly what we were going to do about it.
- g. From our meeting, we determined that the main objective was two-fold: (1) to remove Mr Basdeo Panday as political leader (2) to restructure the brand of the UNC and the UNC itself.
- h. At the said meeting, Mr Lalla in speaking insisted that he wanted several things, key among them were that Mr Warner to become political leader and that Chandresh Sharma become the Minister of Works and Infrastructure.
- i. Mr Jack Warner spoke at length at the meeting about his plans in reviving the UNC to its former glory and with this effort gaining the seat of governance.
- j. One of Mr Warner's proposals was to have Mid Centre Mall carpark full to capacity during a COP meeting and have the media compare the crowds. This proved to be a brilliant idea and that was the turning point of the resurgence for the UNC. I remember that at the UNC meeting held at Mid-Centre Mall we rented a helicopter to take pictures from above to show the comparison of the crowds.

- k. During another meeting which closely followed the success of the Mid-Centre Mall event, I was present when Mr Lalla asked Mr Warner words to the effect, “I spending my money, and I am prepared to spend more, what is in it for me?”. I heard Mr Warner respond to Mr Lalla stating words to the effect, “whatever you invest in the party now will be returned ten-fold”.
 - l. I recall hearing and seeing Mr Lalla laugh aloud while rocking back in his chair. I also recall that he rubbed his hands together and said to us, “just let me know what you need and I would give it to you. Mr Warner said we need some cash to start with. Mr Lalla said any amount just let me know and I would make it available.”
 - m. During the meeting, several companies belonging to Mr Warner were identified to receive campaign financing from Mr Lalla. These companies were identified to be given money to pay for campaign financing. I specifically recall that one such company was the Centre of Excellence which was given several cheques over a period of time during the course of the campaign just as the other companies did.
24. Mr Hosein was also not extensively cross examined but it was put to him that what he said in his witness statement was untrue.

The Law

25. The Claimant submitted that the position as outlined in the case of **Seldon v. Davidson (1968) 1WLR 1083** should be followed and that the onus is on the Defendant to prove the facts upon which he relies to support his contention that the money advanced should not be repaid. In that case the Plaintiff brought proceedings which were heard in the county court, claiming the return of a sum of money which she alleged she lent to the Defendant. The Defendant by his defence admitted receipt of the money, but claimed that it had been a gift. At the hearing, the plaintiff submitted that it was for the Defendant to begin and the judge so ruled. The Defendant appealed against that ruling and the Plaintiff contended that it was not open to him to do so.

26. At page 1088 from paragraphs A- C Wilmer LJ, said as follows:

“The way I look at it is this. Payment of the money having been admitted, prima facie that payment imported an obligation to repay in the absence of any circumstances tending to show anything in the nature of a presumption of advancement. This is not a case of father and child, or husband and wife, or any other such blood relationship which could have given rise to a presumption of advancement.”

27. Between paragraphs F and G, the Court went on to say that:

“In the absence of any such circumstances, money paid by the Plaintiff in circumstances such as these is prima facie repayable on demand. If the Defendant seeks to evade repayment of the money which was paid to him, it seems to me that the Judge was right in placing the onus upon him to prove the facts which he alleges show that the money was not repayable.”

28. At paragraphs F-H, Edmund Davies L.J. said as follows:

“Accordingly, one is really driven back to consider this matter without the assistance of authority and, being so unassisted, I ask myself what is to be inferred as to the nature of the transaction when the simple payment of money is proved or admitted between strangers. I entirely agree with my Lord that, on that bald state of affairs, proof of payment imports a prima facie obligation to repay the advancement in the absence of circumstances from which presumption of advancement can or may arise.

My Lord has expressed the view that the loan would be repayable on demand. I would say, if not repayable on demand, at least repayable within a reasonable time of a request for repayment, and, of course, if it be the case that mere loans were made and, later on, the borrower repudiates the loans and asserts that the advancements were by way of out-and-out gifts, that repudiation of the true nature of the transaction would upon any view render the loans immediately repayable.”

29. This Court is of the view that the approach outlined in **Seldon** (supra) does not necessarily involve a shifting of the burden of proof. However, as in this case, where there are rival contentions as to whether the sums advanced were in the nature of a loan or gift/ donation, either side has an obligation to adduce evidence in support of the rival contentions and the Court has to consider the evidence and on a balance of probabilities determine which version of the events is more probable and/or plausible.

30. In assessing the evidence before it, this Court is of the view that the approach outlined in **Horace Reid v. Dowling Charles and Percival Bain 1989 UKPC 24** where reference was made at page 6 to the dicta of McMillan J should always be followed:

“Mr James Guthrie, in his able submissions on behalf of Mr Reid, emphasised to their Lordships that where there is an acute conflict of evidence between neighbours, particularly in rights of way disputes, the impression which their evidence makes upon the trial judge is of the greatest importance. This is certainly true. However, in such a situation, where the wrong impression can be gained by the most experienced of judges if he relies solely on the demeanour of witnesses, it is important for him to check that impression against contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability of the rival contentions, in the light in particular of facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted, there is a real risk that the evidence will not be properly evaluated and the trial judge will in the result have failed to take proper advantage of having seen and heard the witnesses.”

Resolution of the matter

31. It is evident to this Court that the arrangement between the Claimant and Mr Lalla with respect to the sums advanced was premised primarily on the good will that the Claimant and Romila Marajh had for Mr Lalla. It is not in dispute that there are no internal documents to establish the purpose for which the sums were advanced. The Court is not

tasked with the responsibility of reviewing the manner in which the Claimant conducted its financial affairs and is not prepared to draw any inference that the lack of documentation suggests that the sums were advanced as gift for campaign financing. The Court ultimately found that Mrs Marajh was a credible witness.

32. The Court had some difficulty with aspects of Mr Sharma's evidence. It difficult to accept that he could accurately recall who all the financial contributors were without having sight of the UNC's internal documents for the 2007 campaign. Accordingly the Court disregarded his evidence on the issue as to whom the UNC's financiers were. With respect to the Defendant's witnesses Ronald Phillip and Einool Hosein, they were not extensively cross examined and the Court was unable to make or form any inferences as to demeanour. However, the Court noted that neither Mr Phillip nor Mr Hosein gave direct evidence as to the 5 cheques or any information as to any payments made either directly or facilitated by Mr Lalla to Mr Warner. In relation to their assertions about their involvement in the 2007 elections, their testimony was not tested and there was no basis upon which the Court could conclude that their evidence was contrived.
33. The Court found that Mr Lalla was a generally consistent witness and his responses in cross examination did not materially contradict his evidence in chief. Mr Lalla's position that he constantly liaised with Mr Warner as to repayment after Mr Warner failed to execute a promissory note or to advance the Centre of Excellence as security, appeared to be reasonable. There was a significant flaw in Mr Lalla's evidence and that was in relation to his denial that he provided funds which were used in the 2007 election campaign. The Court formed this view based on the analysis that shall be undertaken herein after.
34. The Court carefully considered the exhibits appended to Mr Lalla's witness statement as KL1 and KL2. These documents were annexed to in the Claimant's list of documents. No counter-notice under Part 28.18 of the Civil Proceedings Rules 1998 (as amended) was issued by the Defendant and the Court also noted that Mr Warner adduced no evidence to suggest that the address JAWfifa@aol.com was not his and in his witness

statement, Mr Warner did not challenge the authenticity of the said documents. The Court also considered the fact that within the body of email exchanges exhibited as KL2, correspondence as between JAWfifa@aol.com and First Citizens Bank as well as the accountant Kenny Rampersad were forwarded to Mr Lalla. On a balance of probabilities, the Court found as a fact that the documents exhibited as KL2 were authentic, that Mr Warner was the holder of the email account JAWfifa@aol.com and that he communicated via this account to Mr Lalla. The Court therefore found that the email thread annexed as KL2 evidenced the exchanges as between Mr Lalla and Mr Warner between September 2007 and February 2008.

35. The Court addressed its mind as to the relevance and significance of the said emails in its determination as to whether the sums advanced by the Claimant were in the form of a loan or by way of gift or donation for campaign financing. The draft promissory note annexed as KL1 outlined a general loan arrangement for the sum of \$20M and the Court considered the documents at KL2 under the following three categories:

- i. Emails before the funds were advanced;
- ii. Emails after the funds were advanced between November 2007-December 2007;
- iii. Emails exchanged in February 2008.

Emails before the sums were advanced

36. The emails exchanged before the Claimant's funds were advanced indicated that Mr Warner had written to Mr Lalla on 26th September 2007 and sought clarity as to the progress on the promissory note.

37. Prior to that email, by the email dated 6th September 2007 Mr Warner asked Mr Lalla for a temporary loan in the sum of US\$100,000 and the emails forwarded which were dated 4th September and 7th September 2007 reflected that at that time Mr Warner was experiencing cash flow problems.

Emails after sums were advanced

38. This time period fell within the heat of the election campaign in which Mr Warner played an integral role. The Court noted that none of these emails referenced any gift or donation. In accordance with Mr Lalla's evidence, after the monies were advanced, Mr Warner, having failed to execute a promissory note or put security in place, kept outlining the financial difficulties which he was experiencing. By this time, the election was over and it is probable to conclude that all the outstanding bills for the unsuccessful election campaign would have to be addressed and the emails dated 28th November and 7th December made specific references to "loan monies advanced".

The emails exchanged in February, 2008

39. The Court found that the emails dated 7th February, 2008 and 21st February, 2008 were particularly instructive. In the email thread which was annexed at page 189 of the trial bundle and which was also the last document attached to the exhibit KL2, Mr Lalla referred to loans and to the promise made by Mr Warner when he requested "these loans". In his email response, Mr Warner informed Mr Lalla that he was expecting \$2M from Zurich and wrote "of which I shall give you one". The correspondence demonstrated that the financial arrangement between the two men was not gratuitous but was one characterised by an expectation of repayment and representations as to part payment were in fact made by Mr Warner. In addition, Mr Warner clearly articulated his inability to make monthly payments as was suggested by Mr Lalla and outlined financial difficulties, so it is improbable that he would have been advancing or promising to give Mr Lalla a gift.

40. The Court also noted that Mr Warner at paragraph 11 of his witness statement acknowledged that the Claimant's funds was received by the 5 cheques and stated that the sums were made available to the UNC. No documentation was adduced in relation to this contention, nor was any explanation advanced as to how the sums were made available and/or how they were utilised by or on behalf of the UNC.

41. The Court identified that in the Claimant's unagreed bundle of documents which were exhibited at pages 105 – 111 of the trial bundle, an email was annexed and same was from Mr Lalla to Mr Warner. It referenced a meeting held between both men on Saturday 26th January, 2008 regarding the repayment of loans and he referenced four loans together totalling millions. It appears that Mr Lalla had obtained and advanced significant funds to Mr Warner. The tenor of the correspondence indicated that there was an expectation by Mr Lalla that Mr Warner would address repayment by monthly instalments. The Court also noted that none of the communication between Mr Lalla and Mr Warner reflected any challenge or denial by Mr Warner of the existence of any loan arrangement. In his evidence, Mr Warner stated that Mr Lalla was a UNC financier and that he wanted him (Warner) to be the political leader. He also said that Mr Lalla was concerned about what would come out of his efforts in assisting the party and he openly asked "what is in it for me?" Mr Lalla in his witness statement denied categorically that he financed the UNC but maintained that he was and still is a member of the party. He maintained that Mr Warner represented that he needed a loan of \$20M to address liquidity problems and that he sought to assist him in this regard by approaching business colleagues, one of whom was the Claimant. The emails annexed as pages 105-111 of the trial bundle led the Court to find on a balance of probabilities that Mr Lalla advanced significant sums to Mr Warner prior to the 2007 UNC Election Campaign.

42. During Mr Lalla's cross examination Mr Scotland, acting on behalf of the Defendant, put to him that his companies benefited significantly from contracts between 2010 and 2015. This was the period when the People's Partnership held the reins of government and the UNC was the principal party with its political leader holding the post of Prime Minister and Mr Warner was a prominent Cabinet Minister.

43. Taking Mr Warner's case at its highest, if Mr Lalla provided financing for the 2007 General Election and his concern was "what would be in it for him" then given his admitted support of the UNC, it is probable to conclude that when the Partnership formed the government having lost the 2007 election, the stars would have been aligned as Mr Lalla then stood to benefit from his years of loyal support. It is therefore unlikely that he

would have undertaken any act to undermine his relationship with the Government of the day. The instant action was filed on April, 2010 and then actively pursued while the Partnership held the reins of governance. It is therefore difficult to accept that as a financier who gratuitously expended substantial funds to Mr Warner for the conduct of elections, he would actively seek to recover a gift/ donation of \$1,505,493.00 which was sourced from the Claimant when the documents exhibited from pages 105-111 of the trial bundle demonstrate that he had advanced over \$40M by way of his credit line.

44. When the Court considered the evidence in the round, the emails, the subsequent events after May, 2010 with the formation of the Partnership Government, it felt on a balance of probabilities, that it was more likely than not that Mr Lalla advanced to Mr Warner significant sums but the sums advanced were made available pursuant to loan arrangements. It is plausible and probable, having regard to the evidence of Mr Phillip and Mr Hosein as well as the various emails which outlined the facilitation of a line of credit from Mr Lalla to Mr Warner, to conclude that Mr Lalla and Mr Warner forged a clandestine political alliance for the financing of the 2007 elections after they had agreed to have Mr Warner replace Mr Basdeo Panday as the political leader of the UNC. Thereafter they engaged in a shadow election campaign which was conducted from Mr Lalla's office. This was done, it appears, in addition to and independent of Mr Warner's involvement with the official Rienzi Complex coordinated campaign. On a balance of probabilities, this Court is of the view that Mr Warner may have wanted to portray an image, to the UNC that he was its main financier but to do so, he sourced finance from Mr Lalla, on the basis and expectation that the sums advanced, would be repaid upon his receipt of an anticipated payment of US\$10M FIFA payment which was due in February, 2008.

45. The emails which formed part of KL2 and which were sent before the sums were advanced demonstrate that Mr Warner was actively pursuing funds from Mr Lalla. The emails after the sums were advanced demonstrate that Mr Warner engaged in discussions as to his cash flow problems in meeting the election expenses which he incurred and the challenges he faced in addressing the loans advanced by Mr Lalla. The February 2008

emails demonstrate that Mr Warner was willing to give to Mr Lalla \$1M and outlined his inability to meet the suggested monthly instalments with respect to sums which Mr Lalla would have obtained on the basis of his credit. The Court therefore finds as a fact that there was an agreement in August 2007 for Mr Lalla to provide or source loans for Mr Warner to finance their political objective and it was agreed that the said loans would have been repaid by February, 2008. The Court further finds that the Claimant, acting in reliance on the representations made to it by Mr Lalla, loaned to the Defendant, the sum of \$1,505,493.00 on the basis that the said sum was to be repaid by February, 2008.

46. The evidence adduced by Mr Warner was that Mr Lalla wanted to know what was “in it for him” after he advanced money for the 2007 election campaign.
47. Mr Warner was a former Member of Parliament and was a member of the Persad-Bissessar Cabinet and the fact that he gave instructions to Mr Scotland to put to Mr Lalla that he and/or his companies benefited substantially from contracts between 2010-2015 after outlining what Mr Lalla’s primary concern was, has instilled a sense of disquiet in the Court’s mind.
48. Money advanced to fund elections has for far too long played a central and dominant role in this Republic’s politics. There is an entrenched public perception that elected officers can be sold to the highest bidder and that campaign contributions are the functional equivalent of bribes which ensure that favourable treatment is given by Government to those who provide the said funds. The evidence adduced in this matter demonstrates that this perception may well be the reality which unfolds. In the absence of regulations, financiers can legitimately purchase goodwill and exercise undue influence over politicians and political parties. The insular interests of these persons may consequently be considered as relevant and/or paramount considerations when executive decisions are undertaken. Such an approach to governance is untenable, unethical and inconsistent with oath of public office which mandates that all decisions and actions should be made freely, fairly and in the best interest of the citizens of the Republic. The absence of campaign finance regulations has led to a culture of kickbacks and corruption and although within the recent past some progress has been made by virtue of the enactment of procurement

legislation and the appointment of the procurement board, the dire need for a proper regulatory framework has to be prioritised and election campaign finance reform should be effected as a matter of urgency. Courts in a developing democracy should not in 2018, have to decide whether sums received were the spoils of campaign financing, as there should be clear and cogent guidelines regulating same. The veil of secrecy and anonymity must be removed and there should be full disclosure as to the identity of financial contributors, with caps placed on the amounts which can be received by a political party from individuals, companies or institutions. In addition, safeguards and/ or prohibitions need to be formulated with respect to the award of contracts to financiers. Taxpayers' money and the resources of the State do not belong to any political party and cannot be used to court a party's financiers. After 55 years of independence, a limit must be placed on the influence of moneyed interests in the nation's politics.

49. For the reasons that have been outlined, the Court hereby orders that the Defendant is to repay to the Claimant the sum of \$1,505,493.00. Interest shall accrue on the said sum at the statutory rate from the date of this judgment until repayment and the Defendant is to pay to the Claimant costs to be calculated on a prescribed costs basis.

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FRANK SEEPERSAD
JUDGE