

IN THE SUPREME COURT OF BELIZE, A. D. 2016

CLAIM NO. 49 OF 2016

BETWEEN: (CINDY LOPEZ-LINAREZ CLAIMANT  
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(AND  
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(ROBERT'S GROVE LTD DEFENDANT

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*BEFORE THE HONOURABLE MADAM JUSTICE MICHELLE ARANA*

Ms. Stacy Grinage of Michel Chebat and Co. on behalf of the Claimant

Ms. Iliana Swift of Courtenay, Coye and Co. on behalf of the Defendant

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D E C I S I O N

1. This is an assessment of damages for breach of contract where the Claimant Cindy Linarez Lopez was unlawfully terminated by the Defendant Robert's Grove Ltd from her 7 year contract as General Manager of the Defendant Company. On December 15<sup>th</sup>, 2017, this court ordered Judgment in favour of the Claimant, and on June 4<sup>th</sup>, 2018 an order was made for damages to be assessed by way of affidavit evidence. Legal submissions on Damages were filed by the Applicant/Claimant on August 17<sup>th</sup>, 2018 and by the Respondent Defendant on September 27<sup>th</sup>, 2018. The court will now consider these submissions in assessing the quantum of damages to be awarded to the Applicant/Claimant.

**Legal Submissions On Behalf Of the Applicant/Claimant**

2. Ms. Stacey Grinage on behalf of Mrs. Cindy Linarez Lopez, the Claimant, submits that the case of ***Lloyd Enriquez v Belize Tourism Board*** Claim 517 of 2011 is instructive in addressing the principles to be applied in assessing the damages in this matter, where the Court decided the measure of damages for wrongful dismissal:

*“The measure of damages for wrongful dismissal is prima facie the amount that the Claimant would have earned had the employment continued according to contract subject to a deduction in respect of any amount accruing from any other employment which the claimant, in minimizing damages, either had obtained or should reasonably have obtained.”*

At the time of her dismissal, the Claimant’s contract had a period of 4 years 4 months remaining on her 7 year contract with her employer the Defendant Robert’s Grove Ltd. Learned Counsel for the Claimant submits that if Mrs. Linarez-Lopez contract had continued for the entire period up to February 2020, the Claimant would have earned as follows:

November 2015 to February 2016 4 x \$5,240.34 =	\$20,961.36
March 2016 to February 2017	\$69,212.00
March 2017 to February 2018	\$76, 133.20
March 2018 to February 2019	\$83,746.52
March 2019 to February 2020	<u>\$92,121.18</u>
TOTAL	\$342,174.26

Ms. Grinage also contends that Mrs. Linarez-Lopez is also entitled to severance pay and notice pay as follows:

1. Severance Pay (10 years x 1 week per year)	\$12,100.00
(4 years x 2 weeks per year)	\$9,680.00
2. Notice Pay (8weeks)	<u>\$9,680.00</u>
TOTAL	\$31, 460.00

Since being dismissed, the Claimant has tried to obtain employment by applying to several places including NAIA, Chabil Mar and Guild & Guild Consulting. To date, the Claimant has not been able to obtain similar employment despite various applications.

Ms. Grinage submits on behalf of Mrs. Cindy Linarez-Lopez that at the time of her dismissal had a period of 4 years 4 months remaining on her contract which was a fixed term contract. She was dismissed unlawfully and is entitled to be compensated for her loss i.e. the sum she would have earned had her employment not been terminated less the sums she has earned since then. In the circumstances, the Claimant submits that she is entitled to and prays that the court would see it fit to award damages in the sum of \$355,634.26 and prescribed costs.

**Legal Submissions on behalf of the Respondent/Defendant**

3. On 27<sup>th</sup> September 2018, Ms. Iliana Swift filed submissions in Response to submissions filed on behalf of the Applicant/Claimant on 17<sup>th</sup> August 2018. Ms. Swift states that the Defendant accepts the learning cited by the Claimant from ***Lloyd Enriquez v. Belize Tourism Board*** Claim 517 of 2011:

*“The measure of damages for wrongful dismissal is prima facie the amount that the Claimant would have earned had the employment continued according to contract subject to a deduction in respect of any amount accruing from any other employment which the claimant, in minimizing damages, either had obtained or should reasonably have obtained.”*

Ms. Swift argues that this is merely the starting point for the assessment of damages. She cites McGregor on Damages:

*“The measure of damages for wrongful dismissal is prima facie the amount that the claimant would have earned had the employment continued according to contract subject to a deduction in respect of any amount from any other employment which the claimant, in minimizing damages, either had obtained or should reasonably have obtained. The rule has crystallised anomalously in this form. It is not the general rule of the contract price less the market value of the claimant’s services that applies; instead prima facie measures of damages is the contract price, which is all the claimant need show. This is then subject to mitigation by the claimant who is obliged to place his services on the market but the onus here is on the defendant to show that the Claimant has or should have obtained an alternative employment...”*

...

*“Any amount that the claimant has earned in substituted employment since the breach will be deducted and the loss incurred will vanish where the claimant has immediately passed into other employment on equally good terms. This is well illustrated by Reid v Explosives Co. In that case the claimant was entitled to six month’s notice by this employer, the defendant company. The appointment of a manager by order of the Chancery Court at the instance of debenture holders was held to be a wrongful dismissal by the claimant by the claimant; but by the instructions of the manager he continued his duties at the same salary for six months. In these circumstances, it was held that he was entitled to no damages.”*

Ms. Swift submits that, as in the Enriquez case, the Claimant is entitled to her wages for a period of one year. As Benjamin CJ opined in the Lloyd Enriquez case, one year is a reasonable time for the Claimant to have obtained alternative employment. Learned Counsel further argues that the Claimant's inability to secure employment since her dismissal is a result of her own actions. Referring to the Claimant's affidavit in support of her application, Ms. Swift cites the following paragraph:

*"It is my understanding that employers are reluctant to hire the Claimant because it is known she is not qualified as well as suspected of being involved with Mr. Tasse in the misappropriation of funds in the resort."*

Ms. Swift notes that the Claimant states that she applied "*several places*" for employment, but she has not provided any evidence of her applications. Learned Counsel further submits that the appropriate damages in the instant matter is the Claimant's salary for 12 months which is \$62,688.84 minus any salary received during the period from alternative employment. Given that the Claimant did not receive alternative employment until December 2016, her monthly stipend will not be deducted. Ms. Swift contends that the appropriate quantum of damages is therefore \$62,688.84.

#### **Decision**

4. I am grateful to both counsel for their submissions on this assessment of damages. I agree with both counsel that the decision of Benjamin CJ in ***Lloyd Enriquez v. Belize Tourist Board*** Claim 517 of 2011 is of assistance in deciding the quantum of damages to be awarded to the Claimant in this case. One major difference that I find in this case is that unlike the Lloyd Enriquez case where the contractual period was for an indefinite period, Mrs. Linarez-Lopez' contract with Robert's Grove Ltd was for a fixed term of specific duration i.e. seven years. I therefore agree with the submissions

of Ms. Grinage on the calculation of damages based on the four years four months remaining that the Claimant would have been entitled to if her contract had not been prematurely terminated by the Defendant. Under the contract with Robert's Grove, Ms. Linarez-Lopez was entitled to a base salary of \$52,000 per annum and that she would be paid a 10% increase per annum for each consecutive year of employment. It was a term of her Agreement as General Manager her responsibilities included: Managing all of the hotel's departments such as maintenance, front office, housekeeping, food and beverage sales etc.; recruiting, employing, training, supervising, and terminating employees, establishing prices and terms for the hotel services; arranging and providing for public relations, advertising and marketing; planning, purchasing, and supervising capital expenditures; preparing monthly and annual financial statements and daily reports for the Managing Director; purchasing supplies and entering into contracts and making payments for those services; operating the hotel in accordance with the approved annual budget and the terms of the management agreement; adhering to service and product standards required by any affiliation or brand. I would therefore award the sum of \$342,174.26 for the 4 years 4 months remaining on the seven year contract. In addition, I award the sum of \$31,460.00 as severance pay and notice pay for a total of \$355, 634.26. I deduct from this sum the amount of \$26,000 (\$12,000 per year x 2 years 2months) that she has been earning since December 2016 to the present from a dive shop operated by herself and her husband. The amount of damages awarded for breach of contract is therefore \$329,634.26 with prescribed costs on this sum to be paid by the Defendant to the Claimant as per the Supreme Court (Civil Procedure) Rules.

***Dated this Tuesday, 5<sup>th</sup> of March, 2019.***

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**Michelle Arana**  
**Supreme Court Judge**