

No. LACV 0019
GC 58/2015

WORKMEN'S COMPENSATION LAW (1996 Revision)

Regulation 13

Application for Cancellation of Agreement



IN THE GRAND COURT

holden at George Town

BETWEEN:

DIANA PATRICIA CLARK REYES residing at 106 Armada Garden, Finch Drive,
West Bay, Grand Cayman



Applicant

-versus-

RC CAYMAN HOTEL HOLDINGS LIMITED

T/A THE RITZ CARLTON GRAND CAYMAN residing at PO Box 32348, Seven Mile
Beach, Grand Cayman KY1-1209

Respondent

27th April, 2016 eq. 30AN

Application is hereby made to the Court by the Applicant for an Order cancelling an agreement dated the 8th day of January 2015 between The Ritz Carlton Grand Cayman an employer and Diana Clark (full name Diana Patricia Clark Reyes) a workman determining:

In relation to an accident at work on 4th December 2014 the total compensation under the Workmen's Compensation Law (1996 Revision) and for the period between 5th December 2014 and 19th December 2014 inclusive, the sum of US\$1,630.80 (for the full terms and effect of the said agreement written out in two parts please see the attached copies)

On the grounds (pursuant to section 17(2) of the Workmen's Compensation Law 1996 Revision) that,

1. The sum to be paid as compensation by the Applicant was grossly inadequate.

The Applicant suffered an avulsion fracture to her right foot; she has suffered pain and loss of amenity and has symptoms that are ongoing. The sum payable does not reflect the true value of her pain suffering and loss of amenity nor does it compensate her for her lost earnings

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adequately or at all. Payment was not in the event actually made in the sum of US\$1,630.80 as the Applicant was subjected to further deductions – she never received a payment in the sum of US\$1,630.80 from her employer as agreed and both prior to the date of agreement (post-accident) and subsequently she received different sums with deductions applied.

Further, despite the agreement in two different documents declaring itself to be both a 'total settlement' and alternatively an 'interim settlement' the Applicant has received no further payment or offer thereof.

2. The agreement was obtained by undue influence and or other improper means as would in law be sufficient ground for voiding the agreement.

The Applicant was told that if she does not sign the agreement the employer would be entitled to recoup wages paid to her during the time that she was unable to work because of her injury. Subsequent wages payments were withheld pending her signature on the 'agreement'. Further, notwithstanding the fact that her employer had a policy of health cover in place she was required to pay sums personally for medical treatment. Consequently she was placed in a position of financial weakness and effectively coerced to sign the agreement to receive further wage payments.

3. The agreement was entered into in ignorance of or under a mistake as to the true nature of the injury.

The symptoms resulting from her injury have not recovered fully. Her mobility remains affected. There is no prognosis to hand as to when (or if at all) she will recover fully. None of this was known at the time the agreement was tendered for signature and the employer neither offered nor arranged for any medical examination at its expense to ascertain the true extent of the injury.

Dated the 7th day of April 2015



DIANA PATRICIA CLARK REYES

Applicant

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