

No. 1  
Plaint



IN THE SUMMARY COURT AT GEORGE TOWN

Cause No. SC 115 of 2017

BETWEEN:

Dr Sara Louise Watkin



Plaintiff

AND:

TrinCay Medical Centre and Urgent Care Ltd

Defendant

To the Defendant

Box 10708, Suite 1204, 55 Market Street, Jasmine Court, Camana Bay, George Town KY1 1006



THIS PLAINT has been issued against you by the above-named Plaintiff in respect of the claim set out on the next page.

**Within 14 days** after service of this Plaintiff on you, counting the day of service, you must either satisfy the claim or return to the Court Office, PO Box 495GT, George Town, Grand Cayman, the accompanying Acknowledgment of Service form stating therein whether you intend to contest this action. If you intend to defend the action in whole or in part you must set out **full particulars of your defence** in the space provided in the Acknowledgment of Service form.

If you fail to satisfy the claim or fail to return the Acknowledgement of Service form containing full particulars of your defence, the Plaintiff may apply for a **default judgment** without any further notice to you.

Issued this 23 day of June 2017

See overleaf for particulars of the Plaintiff's claim

## Particulars of Claim

1. On 8 March 2016, the Plaintiff signed a contract to work for TrinCay Medical Centre and Urgent Care Ltd from 5<sup>th</sup> July 2016 for a period of 5 years. The defendant signed the same contract on 17<sup>th</sup> March 2016. Section 7.1 of this contract stated that the plaintiff would be paid a salary of *'US \$18,000 (eighteen thousand United States dollars) per calendar month'* and that it would be paid on *'on the last working day of each month'*. Section 7.2 of this contract stated that plaintiff *'shall have the potential to earn an increase in monthly salary after the first six months of employment. The employee will receive twenty percent (20%) of the billed amount once the monthly financial target amount of CI\$50,000 has been attained'* said target referring to the total amount of care fees, tests and investigations that the plaintiff causes to be billed through her provision of paediatric and neonatal care in her role as specialist neonatologist and paediatrician.
2. On 29<sup>th</sup> December 2016, the defendant wrote to the plaintiff agreeing a contract variation from 20% to 25% *'TrinCay, however, will raise your bonus from 20 to 25 per cent once your target is met as stipulated in your contract. We do appreciate your hard work and expertise and understand that you want your hard work and service recognized.'*
3. On 6<sup>th</sup> January 2017, the plaintiff met with the defendant senior management team where the plaintiff confirmed acceptance of the variation of bonus amount from 20% to 25% based on the total billed amount above \$50,000 CI.
4. In January 2017, the plaintiff was told by multiple members of the medical staff at the defendant that they were not being paid on their pay date and that this failure was increasing in frequency. Although the plaintiff had been paid on time to this point, it caused her to have concerns about her future pay security and the financial security of her employer.
5. In January 2017, the plaintiff was told directly by Dr Joan Harriot, another doctor employed by the defendant, that despite her making and having deducted from her salary additional voluntary contributions towards her pension, said voluntary contributions amounting to over \$70,000 CI and deducted over a prolonged period of time, these contributions had not been paid into her pension plan by the defendant. This gave the plaintiff further cause for concern over financial security and additional concern over the defendant's openness and probity, given that Dr Harriot had discovered this, rather than been informed and that this failure had occurred continuously over a prolonged period.
6. Around the same time the defendant admitted directly at a doctors meeting that he was some 9 months (May 2016) behind in paying any pension contributions (including those deducted from staff salaries expressly for that purpose) into their pension plans.
7. On Friday 27<sup>th</sup> January 2017, in response to the defendant's cleaner having a fall, attending at George Town Hospital but being denied health insurance coverage, the

- plaintiff contacted BritCay to confirm her own family cover. BritCay confirmed that the plaintiff, her husband and her child were not covered at that time, a situation other staff found themselves in too and whom confirmed such to the plaintiff. This is despite deductions being made by the defendant for the express purpose of health insurance coverage. Besides concern over the plaintiff's and plaintiff's family's health security, this also gave the plaintiff grave cause for concern about the financial security of defendant, as well as concerns the defendant appeared to be deducting contributions from staff but using them for purposes other than the intended, permitted and statutory purpose.
8. In February 2017, the plaintiff's practice billing was a total of \$61,997.42 CI. This was as indicated by the electronic system used for billing management and tracking and agreed by the defendant.
  9. On 15<sup>th</sup> March 2017, the plaintiff met with the defendant senior management team, where the defendant agreed to pay the plaintiff's bonuses on the 15<sup>th</sup> day after the previous month end.
  10. On 15<sup>th</sup> March 2017, the plaintiff received \$2,999.35 CI in bonus for February 2017, which was 25% of all billing above \$50,000 CI ( $\$61,997.42 - \$50,000 = \$11,997.42 \times 25\% = \$2,999.35$ ) and paid on the agreed day i.e. the defendant was adhering to the contract.
  11. Additionally, at the same meeting on 15<sup>th</sup> March 2017, the defendant Medical Director and Company Owner advised that he felt the contract with the plaintiff was wrong and that the defendant felt it should be changed. The defendant wished to remove vaccines and laboratory tests billed by the plaintiff from the billing sum used to calculate the plaintiff's bonus. These two elements of practice billing had been an agreed part of the total billing since the start of the plaintiff's contract and contributed to the overall financial package agreed to that allowed the plaintiff to resign her very senior role in London to move to Grand Cayman.
  12. At the same meeting, the plaintiff stated that the plaintiff was not in a position to agree any such change at that meeting and that the plaintiff would need a proposed amendment in writing from the defendant that could be discussed with the plaintiff's lawyer and ensured the plaintiff's overall earnings were not unduly harmed by such a change. The plaintiff stated that she was amenable in principle to a contract change if new terms respecting the above were agreed. The plaintiff suggested that the contract might be changed to exclude these items in return for the billing target being reduced in line with the reduction in billing arising out of the removal of these items and the bonus percentage being increased so that the plaintiff did not suffer a reduction in income as a result of the changes. The defendant's Deputy Medical Director agreed with the plaintiff's view. The plaintiff was still awaiting written suggestions from the defendant in relation to a change of contract when the plaintiff left the employment of the defendant based on unfair and constructive dismissal on 8<sup>th</sup> May 2017.
  13. On Wednesday 22<sup>nd</sup> March 2017, the plaintiff discovered and BritCay confirmed that, despite the defendant continuing to deduct Health Insurance contributions monthly

from the plaintiff's salary, for the plaintiff and her family, the defendant had failed to pay for health insurance since December 2016, now resulting in cessation of cover for multiple days in March, including whilst the plaintiff's husband was travelling in the United States and thus vulnerable. Given the nature, including repeated nature and extent of the failure in such an important, mandatory financial obligation, the plaintiff became very concerned for both her financial and personal health security and the security of her family.

14. In response to the loss of coverage and deductions not used for their permitted purpose, on Thursday 23<sup>rd</sup> March 2017, the plaintiff wrote by email to the defendant to request return of fees for the period in which said fees were not used for health insurance and to insist that health insurance coverage was restored forthwith.
15. On Thursday 23<sup>rd</sup> March 2017, the defendant responded with a one-line email, save for salutations, that said '*Please note you have continued coverage*', a statement confirmed as untrue both by BritCay, the insurer, and by other medical staff being denied insurance coverage when trying to access care.
16. On Friday 24<sup>th</sup> March 2017, the plaintiff wrote again by email to the defendant, requesting confirmation of the extent of loss of coverage, challenging the above statement and informing the defendant that without a satisfactory response, the plaintiff would inform, without further notice, the Department of Health Regulatory Services (Health Insurance Commission).
17. On Sunday 26<sup>th</sup> March 2017, following no response from the defendant, the plaintiff made a Protected Disclosure, under The Whistleblower Protection Law 2015, to the Department of Health Regulatory Services (Health Insurance Commission), which was acknowledged on Monday 27<sup>th</sup> March 2017.
18. During March 2017, the plaintiff was consistently and significantly billing more than in February 2017, due to an increased hospital and clinic case load. This included working outside normal working hours on all 31 days due to clinical pressures.
19. In March 2017, the plaintiff billed \$121,365.43 indicated by the electronic system used for billing management and tracking, giving a bonus of \$17,841.36 CI based on 25% of the billing over the \$50,000 CI target. This amount was later reduced in that system to \$120,729.30 CI, now giving a bonus of \$17,682.33 CI. This bonus amount was agreed by the defendant. However, no payment was received by or on 15<sup>th</sup> April 2017.
20. At the general staff meeting on 29<sup>th</sup> March 2017, the defendant finance director openly announced to all staff that those doctors generating large billing of over \$100,000 CI per month for the defendant should not expect to get paid their bonus, clearing inferring that the plaintiff and others were attempting to gain payments that were outside their contractual terms, when in fact they are part of their normal contractual arrangements. The plaintiff responded immediately that the comments were undermining.
21. Across the period 31<sup>st</sup> March to 2<sup>nd</sup> April 2017, the plaintiff was told directly by multiple members of the defendant's medical staff that they had either not been paid at all or had received only partial payment of their salaries. The view was expressed by more

- than one that the proportion of staff not being paid had increased again. Despite the plaintiff receiving salary in full by the last day of the month, the apparently increasing proportion of staff not receiving their salary gave the plaintiff even more grave concern over the financial security of the defendant.
22. On Friday 7<sup>th</sup> April 2017, the plaintiff delivered by hand a letter of formal complaint about the incident on 29<sup>th</sup> March, indicating that the plaintiff viewed the comments as defamatory, undermining and a clear intention by the defendant to not pay the due bonus accruing in March.
  23. At the defendant's doctors meeting on 12<sup>th</sup> April 2017, the defendant medical director and company owner openly announced to all doctors present, without any prior warning or discussion with the plaintiff, that the plaintiff was stealing patients from her colleague. Not only was this categorically not true, the plaintiff had already noted and documented on numerous occasions prior to this, and raised with the defendant on multiple occasions, that her own patients were being moved to her colleague without any reason, something that commenced immediately after the plaintiff raised safety concerns with the defendant's medical director and accelerated when the practice changed its electronic medical records system. This has since been substantiated directly and spontaneously by multiple patients and which came to light without prompting since the plaintiff left the employment of the defendant. The wholly defamatory nature of the comments made by the defendant were part of the reason for the plaintiff's resignation in May on the grounds of constructive dismissal.
  24. On 12<sup>th</sup> April 2017, the plaintiff wrote and hand delivered a letter to the defendant, constituting a formal warning under The Whistleblower Protection Law 2015, that following the events of 29<sup>th</sup> March and the 12<sup>th</sup> April, the plaintiff considered she was being victimised following her protected disclosure, a belief she considered would be validated by non-payment of the accrued contractual bonus payment due for payment to the plaintiff by the defendant on 15<sup>th</sup> April 2017.
  25. From the 14<sup>th</sup> to 24<sup>th</sup> April 2017, the defendant owner and Medical Director and defendant CEO (who is married to the owner) took annual leave to the USA, along with their 4 children. At this time, multiple members of staff had not been paid either all or in some cases any of their salaries, including the majority of the defendant's medical staff.
  26. On 18<sup>th</sup> April 2017, whilst away, the defendant informed the nursing staff that the doctors were no longer to have their name put against any laboratory tests undertaken. This involved the nursing staff being expected to alter their doctor's bills after the doctor had done their billing. This change of practice, directly affecting the billing total for each and every doctor, was not communicated to the doctors.
  27. On 19<sup>th</sup> April 2017, again without any consultation or announcement, the defendant removed medical staff access, including the plaintiff's, to their own billing figures, making it difficult for medical staff to track their billing and equally difficult to identify any billing irregularities, such as amended bills. In response and for personal security, the plaintiff then manually recorded the billing information as generated.

28. The plaintiff finally received a first payment against her agreed March bonus, due 15<sup>th</sup> April 2017, on 28<sup>th</sup> April 2017 in the amount of \$2,700 CI, leaving \$15,141.36 unpaid and overdue.
29. The plaintiff subsequently received 3 further payments as follows:
- a. 05-May-17     \$3,000.00 CI
  - b. 03-May-17     \$2,000.00 CI
  - c. 01-May-17     \$1,600.00 CI
30. The combined amounts, together with the first payment, totalled \$9,300 CI i.e. still \$8,382.33 CI short of the due total.
31. Between 28<sup>th</sup> April and 8<sup>th</sup> May 2017, the plaintiff met with the defendant's finance director daily on weekdays, as well as periodically writing, to ascertain the status of the outstanding payment and when it was likely to be paid. The finance director repeatedly confirmed that the company did not have the money to pay the outstanding balance but would *"try to get the defendant something"*.
32. During April, the plaintiff generated \$68,671.26 CI of total billing, ascertained using the system figures to 18<sup>th</sup> April 2017 and the manual figures from 19<sup>th</sup> April 2017 onwards, giving a bonus of \$4,667.81 CI based on 25% of total billing over and above the \$50,000 CI target.
33. On the 8<sup>th</sup> May 2017, following a failure to obtain full payment of arrears or any payment since the 1<sup>st</sup> May, with mounting raised but unaddressed safety concerns and after seeing a significant number of staff, including senior medical staff, not even receive their monthly salary, the plaintiff resigned from working for the defendant with immediate effect, claiming constructive dismissal on the grounds of clinical safety issues, failure to maintain health insurance and failure to pay agreed contractual bonuses.
34. On 15<sup>th</sup> May 2017, the defendant emailed the plaintiff requesting return of the access key to the plaintiff's office. The plaintiff corresponded, by return, suggesting that the plaintiff return the key at the same time as collecting the monies owed to the plaintiff, along with a cheque to the plaintiff from her health insurer that had also been sent to the defendant on 8<sup>th</sup> May but not passed on. The plaintiff stated in this email of 15<sup>th</sup> April 2017 that the defendant owed the Plaintiff:
- a. Outstanding bonuses for March and April in the amounts of:
    - i. March bonus \$17,841.35 CI due on 15<sup>th</sup> April 2017, of which only \$9,300 received as 5 separate payments by 8<sup>th</sup> May 2017, therefore leaving an amount owing \$8,541.35  
(please note that the amounts quoted herein are based on the original bonus at month end, the reason for the change from which we are unsure about. If the final bonus is indeed the correct one it should read \$17,682.33, leaving an amount owing of \$8,382.33 instead of \$8,541.35)
    - ii. April bonus \$4667.81 CI due 15<sup>th</sup> May 2017, of which none received, leaving the full balance outstanding

- b. Salary until 8<sup>th</sup> May 2017, along with 4.76 days of outstanding leave, a combined total of \$6,075.41 CI
  - c. Health Insurance over-deduction (verbally confirmed by the defendant on 1<sup>st</sup> May 2017 but still not returned) - exact amount not confirmed but believed to be in the region of \$120 CI
35. Also in the email of 15<sup>th</sup> May 2017, the plaintiff stated that should the sums owed not be available by 5pm on Friday 19<sup>th</sup> May 2017, the plaintiff 'would be making an application to summary court, with costs, for each outstanding item (or possibly a statutory demand)'.
36. On the 19<sup>th</sup> May 2017, the defendant responded to say that a full response would be sent to the plaintiff no later than Wednesday 24<sup>th</sup> May 2017.
37. Finally, on the 30<sup>th</sup> May 2017, after further chasing by text and email, the defendant emailed the plaintiff to say that not only did they not owe the plaintiff anything, in fact the plaintiff owed the defendant a sum of \$7,910.41 CI. This was based on a calculation that involved asserting the plaintiff had been over-paid bonus based on their now new use of the 20% level (thus ignoring the contract variation to 25% agreed in writing by the defendant on 29<sup>th</sup> December 2016 from the owner and medical director of the defendant), excluding the billing for tests and vaccines (despite no variation in the contract being agreed or even communicated around this) and using figures they claimed had already been paid to the plaintiff but some of which the plaintiff has never received.
38. Additionally, the defendant stated incorrectly that section 7.2 of the plaintiff's contract read "you will be paid twenty percent (20%) commission for revenue generated on consultation with patients after the monthly target was reached". This appears to be an attempt to justify the removal of vaccines and laboratory tests. The contract actually reads ""the Employee will receive twenty percent (20%) of the billed amount once the monthly target of CI\$50,000 has been attained"
39. Also, in the same communication of 30<sup>th</sup> May 2017, the salary owed for May was incorrectly stated as \$3,411.20.
40. Also in the same communication, the defendant claimed that the plaintiff owed the defendant \$3,832.00 CI, being the unused portion of Medical Protection Society insurance paid in advance payment for 3 months but only 18 days of which was served by the plaintiff at the defendant. That the defendant paid this is not disputed by the plaintiff. The defendant was under an undisputed obligation to provide suitable indemnity insurance for the plaintiff's neonatal care. The plaintiff was under no obligation to provide a refund of the amount and resigned 18 days into this cover period due to the actions of the defendant in not paying contractual obligations (amongst other matters).
41. Also in the same communication, the defendant claimed that the plaintiff owed the defendant \$3,714.60, being a loan made by the defendant to the plaintiff for the purposes of customs fees on household goods arising when the defendant failed to

provide a permanent work permit as agreed from the start, resulting in Customs applying importation duty to the plaintiff's household effects. That the defendant made this loan and the plaintiff received it is not at dispute. However, the loan was to be repaid if and only when Customs refunded the duty on the granting of a permanent work permit. This was granted in January 2017 and an application for a refund has been submitted. To date, no refund has been received and we await to see if this will ever be received now that the plaintiff was forced into making a temporary work permit application again, after resigning under a claim of unfair and constructive dismissal. The plaintiff will provide said sums immediately on receipt of the returned duty by customs, as per the agreement for the loan, the need for which only arose out of the failure by the defendant to undertake their work permit obligations in time. It should be noted that the plaintiff only agreed to resign from her Chief of Service post at a prestigious UK hospital and move to Grand Cayman if the defendant agreed to the provision of a permanent work permit from the start. However, on 26<sup>th</sup> June (5 days before arriving in Grand Cayman and long after the plaintiff had resigned her post in London) the plaintiff was informed by the defendant that a permanent work permit had never been applied for but that a temporary one had been granted.

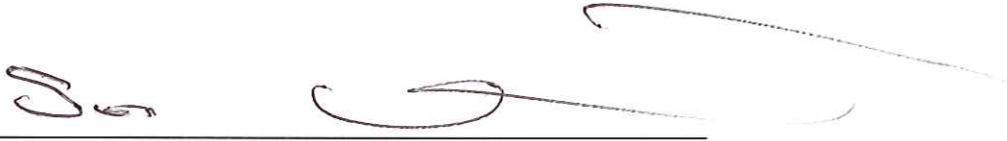
42. On 30<sup>th</sup> May 2017, the plaintiff did not receive any salary for May 2017 nor her additional pay for annual leave not taken prior to resignation (nor any outstanding bonus). The plaintiff learned she was not the only doctor employed by the defendant who was not paid. Dr A. Glicksman, Dr C. Glicksman, Dr C. Adamo and De A. Choy had received no salary. The plaintiff was not in a position to ask other doctors employed by the defendant whether they had received their salary.
43. Across this whole period, specifically in the resolution of these employment matters and unpaid amounts, the plaintiff was forced to engage the services of a solicitor, being Applebys of Fort Street, George Town. In total, as a result of the actions of the defendant, the plaintiff has incurred legal fees of \$7927.35 CI, which also form part of this claim.
44. As of 21<sup>st</sup> June 2017, the following payments and sums remain outstanding:
  - a. \$8,382.33 (remainder of March bonus)
  - b. \$4,667.81 (whole of April bonus)
  - c. \$6,075.41 (unpaid final salary & leave)
  - d. \$120.00 (unrefunded overpayment for health insurance)
  - e. \$7927.35 (solicitor fees in the above matters)

**\$27,172.9 CI TOTAL**

The plaintiff understands and accepts that the final maximum award under Summary Court is \$20,000 CI.

AND the Plaintiff claims:

- 1 The sum of **\$20,000.00 CI.**
  
- 1 Interest in the sum of \$ \_\_\_\_\_, calculated at the prescribed rate from 15 April 2017 to date.
  
- 2 Fixed costs of \$ \_\_\_\_\_, alternatively costs to be assessed.



Plaintiff's Signature

Plaintiff's address for service

Box 146, 10 Market Street, Camana Bay, KY1-9006

No. 2

**Acknowledgment of Service**

IN THE SUMMARY COURT AT GEORGE TOWN

Cause No. SC \_\_\_\_\_ of 20\_\_

**Between:**

Dr Sara Louise Watkin

Plaintiff

**AND:**

TrinCay Medical Centre and Urgent Care Ltd

Defendant

ACKNOWLEDGMENT OF SERVICE

1 State Defendant's name and address -

2 State whether the Defendant intends to contest the action.

Yes

....No

3 If you do not intend to contest the action, do you want time in which to pay the claim?

Yes

No

4 If you do not intend to contest the action in whole or in part, you must set out full particulars of your defence overleaf.

**Service of the Plaint is acknowledged accordingly.**

\_\_\_\_\_  
Defendant's Signature

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

**See Overleaf**

## PARTICULARS OF DEFENCE

(Here set out in numbered paragraphs, the grounds upon which the Defendant says that he is not liable to the Plaintiff, or is not liable for the full amount claimed).

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Defendant's Signature

**REMINDER:** This form must be taken or sent to the Court Office, PO Box 495GT, George Town, Grand Cayman within 14 days of receipt. Otherwise, a default judgment may be entered against you.