

CLAIM NO. 538 OF 2015

BETWEEN

(YOLANDA GOMEZ

CLAIMANT

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(LA INMACULADA CREDIT UNION

DEFENDANT

CLAIM NO. 723 OF 2015

(LA INMACULADA CREDIT UNION

CLAIMANT

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(AND

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(YOLANDA GOMEZ

DEFENDANT

BEFORE THE HONORABLE MADAM JUSTICE MICHELLE ARANA

Eamon Courtenay SC along with Stacey Castillo for Yolanda Gomez

Fred Lumor SC along with Ashanti Arthurs Martin for La Inmaculada Credit Union

Darrel Bradley for the Registrar of Credit Unions

1. FACTS

The Claimant in Claim No. 538 of 2015 and the Defendant in Claim No. 723 of 2015 Mrs. Yolanda Gomez (“Mrs. Gomez”) was employed at La Inmaculada Credit Union (“LICU”) for twenty-four years from 1991 -2015. Mrs. Gomez was employed firstly as the Manager, then later as the General Manager.

On or about 29th April 2015, the Board of Directors of LICU (“the Board”) placed Mrs. Gomez on administrative leave pending an investigation concerning alleged mismanagement. By letter dated 24th July 2015, the Board dismissed Mrs. Gomez with immediate effect (“the Dismissal Letter”). The Board stated that it had lost all trust and confidence in Mrs. Gomez’s management and listed grounds for dismissal. Some members of LICU petitioned the Board to hold a special

general meeting. This meeting was held on 22nd August 2015. (“the Meeting”).

On or around 20th August 2015, the Board published a statement to Members and to the general public to, *inter alia*, clarify developments at LICU that triggered an internal and external audit, which resulted in the termination of Mrs. Gomez.

The special investigation was conducted by Mr. Cedric Flowers, Certified Public Accountant, who produced a report dated 21st October 2015. That report contained, *inter alia*, the following allegations of mismanagement:

- a. The waiving of accrued interest on active loans advanced to members of the Credit Union
- b. Dishonestly and unlawfully writing off loans advanced by Mrs. Gomez to relatives through fraudulent changes made to the Emortelle System

- c. Dishonestly and unlawfully reducing the loan balance of three accounts by processing fictitious credit to the accounts;
- d. Charging personal expenses to LICU's credit cards; and
- e. Ordering the falsification of two accounts, and instructing the disbursement of unauthorized loan facilities to Mrs. Gomez's husband by the dishonest manipulation of the said account

2. ISSUES

Claim No. 538 of 2015

1. Whether Mrs. Gomez was unlawfully placed on administrative leave by LICU?
2. Did the Registrar of Credit Unions have a duty to act in accordance with section 36 of the Act in a situation where the Supervising Committee did not inform the Registrar in writing that they were of the opinion that misappropriation and/or misdirection of property of the credit union had taken place?

3. Whether the Registrar of Credit Unions breached his statutory duties by failing to intervene when Mrs. Gomez was placed on administrative leave?
4. Whether Mrs. Gomez was wrongfully dismissed as General Manager of LICU on 24th July 2015?
5. Whether the Registrar of Credit Unions breached his statutory duty by failing to intervene when Mrs. Gomez was dismissed on 24th July 2015?
6. Whether Mrs. Gomez is entitled to damages for injury to her reputation and feelings?
7. Whether Mrs. Gomez is entitled to claim damages in respect of her dismissal?

Claim No. 723 of 2015

1. Whether the waiver of interest on active loans approved by Mrs. Gomez for the years ending 31st March 2013 to 31st March 2015 in the sum of \$95,586.83 was lawful?

2. Whether Mrs. Gomez acted dishonestly, unlawfully and in violation of LICU's policies and by-laws when she approved the write-off of active loans for relatives and friends in the sum of \$55,984.32 in 2012?
3. Whether Mrs. Gomez acted dishonestly and unlawfully by causing a credit to be made to the account of her domestic helper, Olga Hernandez, and thereby reduced her loan balance by the sum of \$79,519.94?
4. Whether Mrs. Gomez acted dishonestly and unlawfully by causing a credit to be made to the account of her nephew, Roy Roberto Rosado, and thereby reduced his loan balance by the sum of \$45,693.28?
5. Whether Mrs. Gomez acted dishonestly and unlawfully by causing a credit to be made to the account of her sister, Sandra Reyes, and thereby reduced her loan balance by the sum of \$39,219. 46?

6. Whether Mrs. Gomez abused her office and acted in breach of trust by using LICU's credit card for personal purchases in the sum of \$67,309.74?
7. Whether Mrs. Gomez ordered the falsification of the account of Fiona Reyes and Armando Gomez?
8. Whether Mrs. Gomez acted in conflict of interest and in violation of LICU's by-laws and policies by instructing the disbursement of unauthorized loan facilities to her husband Armando Gomez on the account that he held jointly with her niece Fiona Reyes?
9. Whether Mrs. Gomez acted unlawfully in ordering the disbursement of \$27,000 to her husband Armando Gomez which was drawn on the account of her nephew, Roy Roberto Rosado, through the dishonest manipulation of the said account?

10. Whether Mrs. Gomez is accountable to LICU for the embezzlement of \$436,906.34 or to otherwise, accountable for said loss to LICU?

3. Evidence of Mrs. Yolanda Gomez in Claim No. 538 of 2017

Mrs. Yolanda Gomez testified on her own behalf and called four witnesses to prove her claim. In her testimony, she explained that she is currently employed as the Human Resources and Marketing Manager at Centaur Communications Ltd. She was previously employed at La Inmaculada Credit Union (“LICU”) for 24 years from 1991-2015. She was first employed as the Manager, then later as the General Manager, after departments were created as a result of the tremendous growth at LICU. Her responsibilities included:

- (a) Developing and executing strategic plans and objectives;
- (b) Directing and implementing systems and processes to monitor and report on achievement of strategic plans with specific outcomes;

- (c) Guiding the growth and profit margins, specifically directing and controlling the assets, loan portfolio and other investments;
- (d) Planning and monitoring of the administrative operations and the general accounting systems used, and pursuing continuous enhancement as necessary; fully responsible for quality, cost, accuracy delivery and security;
- (e) Planning and driving marketing activities to display a vibrant institution in the community;
- (f) Interpreting financial data and directing the preparation of capital and operating budgets and investment;
- (g) Developing the organization's structure and staffing, including hiring staff and implementing compensation strategies that reward excellence and competencies;
- (h) Promoting personal development, motivation and providing string leadership;

- (i) Actively promoting outreach through financial inclusion for the unbanked sector;
- (j) Filling in for other members of staff especially when the Credit Manager was officially posted to the Belmopan branch;
- (k) Creating networks and forming alliances with stakeholders and key players such as the European Union, International Development Bank, Caribbean Development Bank, the Caribbean Micro Finance Alliance, the Belize Natural Energy Trust, The Development Finance Corporation, The Belize Rural Finance Program and Network One; and
- (l) Establishing a healthy relationship and compliance with authorities, regulators, and the community.

Mrs. Gomez says that during her time as General Manager, LICU grew significantly. LICU's assets increased from less than BZD\$1million to BZD\$56.254 million. LICU had been in existence for 42 years but had not experienced a significant increase in assets

until Mrs. Gomez assumed the post of General Manager in 1991. At the time she was removed, LICU had become the 4th largest credit union in Belize. Mrs. Gomez says that she was placed on administrative leave by way of a letter from Mrs. Ena Martinez, President of LICU, on 29th April 2015, so as to enable the Board of Directors to conduct an investigation into alleged mismanagement occurring at LICU (**Tab 1**). Mrs. Gomez said that based on advice from her attorney, she did not respond to requests from the Board to attend meetings to address the allegations of mismanagement. She says that she wanted to reply to clear up the unfounded allegations, but LICU repeatedly refused to supply her with the reports which contained the allegations against her. Copies of the letters exchanged between her and LICU are as (**Tabs 2, 3, 4 and 5**). Mrs. Gomez was dismissed from the position of General Manager by way of a letter from Ena Martinez dated 24th July 2015. A copy of this letter is as (**Tab 6**).

Mrs. Gomez says that she was wrongfully dismissed and the procedure adopted to affect her dismissal did not comply with the procedure mandated by the Credit Unions Act. A copy of the letter from her attorney sent to the Registrar of Credit Unions outlining the said breach of statutory duty is as **(Tab 7)**. She is saying that as General Manager she acted at all times in the interest of LICU and its members, and in accordance with the policies and by-laws of LICU, and the Credit Union Act. Copies of the Credit Union By-Laws and the LICU Loan Policy are attached as **(Tabs 8 and 9)**. Mrs. Gomez states that at no time did she abuse her power as General Manager and she did not use her position to improperly influence other staff members to act for her benefit. In the financial year April 2014 to March 2015, LICU had been experiencing problems with cash fluctuations. She inquired into the situation by requesting that their auditor conduct a special investigation to assist with this issue. A resolution was not arrived at because investigations were

ongoing at the time she was dismissed. Mrs. Gomez attaches an email highlighting her concerns as **(Tab 10)**.

Waiving Accrued Interest on Active Loans Advanced to Members of the Credit Union

4. Mrs. Gomez states that on numerous occasions especially when there is no tangible guarantee or collateral and a LICU member is already financially challenged, rather than to have them become discouraged and end up defaulting further, or to avoid the time consuming and lengthy process of taking legal recourse, it is prudent to forego some interest that has accrued on the loan, if not all, especially once it is being negotiated that the member will pay in full. It is always viewed as best to recover the principal promptly. Mrs. Gomez says that the loan department had implemented a policy in relation to members who had exorbitant interest arrears. If these members eventually showed an interest to make new arrangements to fully repay their loan, based on a capacity to make

payment, or make consistent payments for 3 to 6 months, these members were considered for an interest waiver.

5. Mrs. Gomez further explained that in such a situation, monthly payments would be made in reference to any outstanding interest during the consistent payments of 3 to 6 months and thereafter the remaining interest would be waived. Subsequent payments would be applied to the principal along with interest owing as of such date when a new undertaking was agreed upon. In order to determine whether a member's interest would be waived, the Loans Monitoring Officer would conduct a thorough analysis of the member's account and financial situation. If the analysis showed that the member could continue to make payments, the member would be required to give an undertaking that he or she would be able to meet their commitments punctually thereafter. Mrs. Gomez said that this was a motivational approach for members who for reasons beyond their control fell into arrears but were willing and committed to update their account as best as possible.

Mrs. Gomez said that the interest waiver provided the member with an opportunity to be able to repay the loan and avoid further contamination. Once the member updates his account with the assistance of the interest waiver, LICU still profits. After the waiver has been given, the new payment plan is in place and interest begins to run anew; LICU is able to collect the principal along with some interest payments from the revised loan. She says that by way of this process, the loss to LICU is minimized, especially where the monies are recovered more quickly than if such decisions were not taken in a timely manner; the quicker the monies are collected, the quicker the turnover and the more revenue is generated which was their objective. She says that most of LICU's policies were unwritten and it was only in the last 2 years before her dismissal that LICU began to document its policies and procedures. Mrs. Gomez says that this email from Hector Sabido confirms that there were these unwritten policies at LICU (**Tab 11**). She denies that there were any members who received special benefits because of

their relationship or friendship to her. Roy Roberto Rosado, Anthony Rosado, Minerva Sabido and Hector Sabido Jr. qualified for interest waiver and were recommended for such waivers. The Management Committee reviewed and approved the amalgamation of loans for Mrs. Sabido, Hector Sabido's wife, with the condition that the interest owing at the time of processing would be considered to be waived so as to assist the member to continue making payments to her loan.

6. Loan Write-Offs

Mrs. Gomez testified that all the Central Bank regulations were complied with by her when she was General Manager at LICU. She attaches a copy of Central Bank regulations as **(Tabs 12 and 13)**. When there have been no payments made on a loan for more than 12 months, such loans should be written off. Only the Board of Directors can confirm such write-offs. The accounts that LICU are alleging were not approved in Claim 723 of 2015 for Sandra Reyes,

Minerva Esther Rosado, Martin Rosado and Ida Therese Rosado were indeed approved as per the minutes, the listing and the audited financials for 2012-2013. The then President of the Board signed the audited financials and the Treasurer verified their accuracy. A copy of those minutes and the listing and the audited financials for 2012 -2013 are attached as **(Tabs 14 and 15)**.

The Conflict of Interest Policy came into effect in November 2013. Most of the allegations against Mrs. Gomez in Claim No. 723 of 2015 occurred prior to this date. The policy is attached as **(Tab 16)**.

In response to the allegations that she unlawfully and dishonestly reduced loan balances through fictitious credit, Mrs. Gomez gave the following explanation. Two past employees, Reinaldo Novelo and Hector Sabido, cashed cheques on her behalf that were endorsed by her husband, Armando Gomez. The money was used to reduce the loan balances of accounts in the names of Olga Hernandez, Roy Roberto Rosado, and Sandra Reyes.

These gentlemen gave the relevant funds to the Operations Manager, Melissa Leiva. Melissa Leiva confirmed that she held those funds, and she later placed the money along with the credit union's funds. Copies of these cheques are attached as **(Tabs 17 and 18)**. There would have been no need for Mrs. Gomez to ask any of her colleagues to cash any cheques were they not for the processing of payments at the LICU. There would have been no need for her husband to endorse the cheques and hand them to her had it been for any other purpose. He would simply have cashed them himself. Both colleagues individually cashed the relevant cheques on different dates without the knowledge of each other. They complied with Mrs. Gomez's request of taking the envelope with cash to Melissa Leiva for storage in the vault for consequent payments. The LICU cashiers issued receipts for these payments. It was not prudent for Melissa Leiva to have given such a large amount of cash to the cashiers, as it was not practical for them to hold such a large amount of cash at their station, especially at closing time. Moreover, Melissa Leiva, being the person directly responsible for

ensuring that the LICU's cash was properly managed, was directly responsible for transferring Mrs. Gomez's personal monies to LICU. No cash shortage was recorded for such dates. Melissa Leiva had worked along with Mrs. Gomez for the twenty-four years she was General Manager at LICU. She was a very trustworthy employee. She took her obligations very seriously, and cash was always in order and balanced daily to the penny under her responsibility. The shortages became a challenge when another employee, Yolly Trejo, was assigned to assist Melissa Leiva with the management of the cash and the vault.

7. In an investigation report at LICU, an auditor attempts to create a scenario, which alludes to the cash shortage existing at the time these three payments in question were made to reduce the loan balances of Olga Hernandez, Roy Roberto Rosado and Sandra Reyes. However, a cash shortage had existed at LICU prior to the time these payments were made. There were also instances where cash on hand exceeded financial records.

Mrs. Gomez had launched an investigation into these fluctuations. They were unable to arrive at a conclusion, since the special investigation that was launched by auditors on her instructions could not be completed. It has been stated that only two persons, Yolly Trejo and Melissa Leiva, had access to the cash and vault. Yadeli Urbina, who was the then Projects Manager, was also jointly responsible for some years along with Melissa Leiva.

Both Yadeli Urbina and Melissa Leiva rotated during lunch breaks and were jointly responsible for the cash/vault. When Melissa Leiva was out on vacation or for whatever reason was not in office, Yadeli Urbina was responsible for the cash/vault, and she also had the combination to the vault and the safe up to the day I was asked to leave. There is no mention of Yadeli Urbina having access to the cash or vault.

8. VISA CARDS

Mrs. Gomez states that on the occasions that she used the Visa credit cards issued to her by LICU, she paid the amounts charged by using personal monies. She personally gave Melissa Leiva her monies for the payments of such usage. The receipts were kept on the file at LICU to prove that she was meeting her personal obligations. All usage and payments for the credit union were done via the LICU's cheques. All cash payments are usually stapled to a cash voucher with the relevant description of the payment and are stored in the cash pan and is considered as part of the cash until such receipts are cleared through the books and the system.

9. Ordered the falsification of accounts/ordered disbursements

Before more formal practices were implemented, if a member, who had a loan, wanted to borrow an additional amount shortly after an initial loan request, and the additional amount was approved by the relevant staff member, these additional amounts

would be disbursed, and were recorded on the loan agreement by making an adjustment to the figure on the loan agreement to reflect the additional disbursement. This was a common practice.

All adjustments were recorded in the Emortelle system. The entire amount, which would consist of the original loan and the additional disbursement, was captured in the Emortelle system.

The accounts of Fiona Reyes/Armando Gomez and Roy Roberto Rosado were not falsified. These accounts were adjusted, in accordance with the practice as described above, to reflect additional loan requests at LICU. Entries to the Emortelle system do not require approval from any Credit Committee or Chair of the Board of Directors or the Board of Directors. The Credit Advisor, who conducted the members' transactions, always made these entries. At no time did Mrs. Gomez make any changes to the Emortelle System.

10. Only loans above the ceiling of BZD\$100,000.00 were required to be tabled to the Board of Directors or the Credit Committee. All

loans and additional loan requests under this ceiling were processed and disbursed immediately. The Credit Committee subsequently reviewed and endorsed those loans. The Credit Committee does not meet to approve loans on a daily basis. Sometimes they did so monthly, and other times, semi-monthly. The daily operations at LICU could not wait until then, and consequently loans were never signed and approved by the Credit Committee before the disbursements. In reference to Roy Rosado's loan, Mrs. Gomez's nephew, at one time he traded vehicles, and so he was not going to be around to obtain the disbursement. He needed the cash, as he was abroad, and so he authorized his uncle, my husband, Armando J. Gomez, to collect the disbursement. Marina Gongora claims that Mrs. Gomez instructed her to destroy an original loan application. If an adjustment was requested, either a new loan application was made to include the adjustment, or the same application was adjusted whereby the initial amount was

crossed out and the adjusted amount was written in to replace the initial amount.

The adjusted document became the approved and supporting document for the LICU. All relevant adjustments were made on the source documents and in the system to reflect such. It is alleged that Mrs. Gomez instructed Marina Gongora, (known by many of the LICU staff to hold personal grudges against Mrs. Gomez) to destroy an original loan application. This could not be possible, since only one loan document exists with an adjustment reflected therein. Mrs. Gomez says she did not instruct Marina Gongora to destroy the only supporting document.

11. Outline of Benefits

Mrs. Gomez's gross monthly salary at the point of dismissal was BZD\$13,370.10. She had always been rewarded a double increment, approved by the Board of Directors, as her performance and that of the LICU has always been exceptional.

On April 1, 2015, Mrs. Gomez was already deserving of an increment, at the minimum, since she usually earned a double increment, as did many of her employees. An increment was 5% of her gross salary. A double increment would have been an additional 5%. Mrs. Gomez had a clean file and a clean record for 24 years. A copy of the letter revoking her employment package and contemplating her double increment is attached as **(Tab 19)**.

Mrs. Gomez received various benefits while she was employed at LICU. A copy of LICU Employees Employment Package is now shown to me and attached as **(Tab 20)**.

Severance pay - once an employee is terminated other than as a result of disciplinary action, payment of 3 weeks per year over 7 years' service is due. However, LICU created a situation whereby they could claim that disciplinary action was taken against Mrs. Gomez, to avoid having to pay her this amount. A bonus of 5% of the annual salary was awarded every December, and this was

based on the individual's performance and the profitability of the institution. Ever since the package was introduced in 2009, this was awarded to Mrs. Gomez every year as LICU had always surpassed its budget and goals. A General Manager's vacation leave was 25 working days. A vacation grant of 33.33% of one month's gross salary was awarded annually. When an employee leaves LICU, a pro-rated amount is payable, again, other than as a result of disciplinary action.

All permanent employees were entitled to a uniform allowance of BZD\$350 annually every October.

Travel allowance - whilst on business, Mrs. Gomez's travel allowance locally was BZD\$45 daily and internationally USD\$100 daily. She was scheduled to travel twice to represent LICU regionally, just before she was placed on administrative leave. Mrs. Gomez was to finalize these attendances at two forums. She had requested clearance but the Board of Directors ignored her emails.

One was for the Caribbean Confederation of Credit Unions whereby Mrs. Gomez was to make a presentation on a panel to share the LICU experience of how a Credit Union can deliver micro-financing benefits. This was to have been held at a resort at the Riviera Maya. Mrs. Gomez was already approved to attend, along with three other officers.

The other forum was the Caribbean MicroFinance Forum hosted by the Caribbean MicroFinance Alliance of which Mrs. Gomez was the Vice Chairman. She was supposed to take up the chairmanship this year. This was to have been held in Miami.

A pension fund is in place whereby the employees contribute 5% of the gross salary and the credit union matches the same. There is no condition that limits this benefit other than as a result of disciplinary action. Mrs. Gomez's contributions at the time of dismissal were BZD\$53,249.78. She did have a loan under this fund that is managed and controlled by its own rules and regulations and by a committee of which she is not a member.

12. Mrs. Gomez had a loan of BZD\$59,300.00 under this fund; consequently, this fund would have had to pay her BZD\$47,199.56 which would be the difference of the net, plus any proceeds of any investment. This has been paid to the 4 employees who have left the credit union and have qualified as per the above 3 years, including the past manager. The retirement age at LICU is fifty-five. Mrs. Gomez would have had to work six more years to reach the retirement age had she not been dismissed.

All permanent employees are covered by a life insurance of BZD\$100,000.00 and this is paid fully by LICU. There is also a medical insurance coverage of BZD\$500,000.00 with Sagicor as well. Both the employees and LICU pay the premiums for this on a 50% basis. A long service award was also in place whereby Mrs. Gomez was to achieve her 25 years' service on April 1, 2016 and would have been awarded BZD\$5,000 plus a plaque. She had last received an award when she had accomplished 20 years of service.

13. Mrs. Gomez states that she is informed by her attorneys and she verily believes that on the basis of the foregoing she was wrongfully dismissed by the LICU and that the Registrar of Credit Unions breached his duty to protect her as a credit union employee. In light of the foregoing, Mrs. Gomez requests that the court grants her the relief sought in Claim No. 538 of 2015.

14. Cross-examination of Mrs. Gomez by Mr. Fred Lumor SC

On behalf of LICU

Mr. Lumor SC asked Mrs. Gomez whether, during the course of her employment as General Manager of LICU, she had seen a letter from the Registrar of Cooperatives attaching the by-laws in 1998. She said that the Registrar would normally give an endorsement, but she could not recall the date. She could not recall receiving a written directive from the Registrar of Credit Unions in 2011, but she was not sure. Up to the point of her dismissal, LICU was in the process of engaging an internal auditor. The vacancy had been advertised, notices were in the public newspaper and applicants

were interviewed. Mrs. Gomez was on the panel that conducted the interviews; the successful applicant did not accept the package offered so Mrs. Gomez was tasked with increasing the package. The Supervisory Committee has the responsibility under the by-laws to engage an Internal Auditor. Mrs. Gomez agreed that during her tenure as General Manager there existed a policy concerning Conflict of Interest and a Code of Ethics. In 2009, LICU also introduced a Loan Policy. She said that during her tenure as General Manager, she has never written off loans for any family members; only the Board has the authority to do that. The Board would have to give its approval before a loan can be written off. She agreed that 3 years prior to her departure from LICU, there was a standard deduction from her monthly salary; that sum was used to liquidate loans for close family members. She could not recall the exact size of the deduction. Mrs. Gomez agreed that some of the proceeds of the loans were deposited into her personal account. She said that at the time of those deposits she did not sign

any declaration of interest in those transactions to the Board because those policies were not in place at that time. She did not make any declarations of interest as required under the Credit Unions Act. Mrs. Gomez said that during her tenure as General Manager, she was not aware whether any LICU employee signed documentation as to the amount of cash they were transporting from the Orange Walk branch to Belmopan branch. She said that the Operations Manager would be directly responsible for those details.

15. Mrs. Gomez was questioned about the letters sent to her by Mr. Cedric Flowers, CPA, during the time that she was placed on administrative leave. She agreed that she responded to those letters through her attorney. She agreed that prior to Mr. Flowers' letter dated 20th July 2015, the Board had written to her asking her to meet with them and with Mr. Flowers. Mrs. Gomez said that she was advised by her lawyer not to attend. She has not returned to her post since being placed on leave and then being dismissed. She

is aware of a special audit conducted by Grant Thornton in respect of Reynaldo Novelo, former Credit Manager of the Credit Department of LICU. He was involved in approving loans; Mrs. Gomez was not sure whether some of those were loans that she had liquidated by salary deductions. While Mrs. Gomez was General Manager, the Grant Thornton report discovered that Mr. Novelo had stolen \$49,000.00. This was money belonging to members of LICU placed in envelopes and deposited in the vault. Mrs. Gomez said that she brought the findings of that report to the attention of the Board; she did not make recommendations in writing, but the issue was discussed at meetings. She agreed that despite this theft, Mr. Novelo was paid all his benefits when he left LICU. She could not recall the amount but she did not agree that the amount he received was over \$100,000.

16. The submission of loan write offs and interest write offs are taken to the Board of Directors by the General Manager. The list of names of the loan write offs and interest write offs are in files at

the LICU office. She said that she has submitted loan write offs for close family members to the Board. Every employee at LICU has access to the Emortelle system that the credit union works with. It was mainly the System Administrator and the Operations Manager who could enter the system and write off loans. Once the loan write offs are approved by the Board, the operations proceed. At the management level, the General Manager is the only person who attends Board meetings; she would then give the information to the employees to effect the write offs. She said that she had requested that the Accountant Administrator, Miguel Garcia to prepare a report to match the cash on hand at LICU; as they were experiencing cash fluctuations where the cash was not in sync with the report on the system and the investigation was still ongoing. She agreed that if Mr. Garcia prepared a report to match the cash at hand, that report would not be an accurate position of the cash situation. Mrs. Gomez said that the entire interest waiver system she had described was not authorized by the Management Credit

Committee, nor was it in LICU's by-laws, nor was it a part of LICU's Loan Policy. She said that this was one of LICU's practices that was not documented, which LICU implemented to try to assist members in financial hardship. She said that while the Board was aware of this interest waiver policy, the Board of Directors did not authorize her to implement this policy. Mrs. Gomez admitted that she, during her tenure as General Manager, signed a loan application as a co-borrower; she did not declare her interest in those loans to the Board. She agreed that the proceeds of loans of her relatives, Olga Hernandez, Roy Rosado, Fiona Reyes, Benita Ayuso, Jose Quan, were all deposited into her personal account. She said she was not sure whether any of these loans (ranging from \$40,000 to \$70,000) were guaranteed by collateral.

17. Under re-examination by Mr. Courtenay SC, Mrs. Gomez clarified that she was not personally involved in dispensing cash to employees who had to transport money from the Orange Walk branch of LICU to

the Belmopan branch. Looking at the letter sent by LICU to her, Mrs. Gomez agreed that nowhere in that letter was a request made to her to return from administrative leave. She explained that her attorney had replied to LICU by saying that she would be prepared to study the reports and audits before responding to the queries raised once she had had an opportunity to review those reports, and requesting that the meeting be postponed to enable LICU to provide her with the materials so that she could prepare for that meeting. She explained that the purpose of the report that she instructed Mr. Garcia to prepare was to make sure that the cash reconciled with what they were going to cash count in Belmopan. She said that she would co-sign on loans to help those members who do not qualify for loans on their own because they did not have enough security; if they defaulted then she as co-borrower would be responsible to pay the loans. Mrs. Gomez said that the proceeds of Roy Rosado's loan were placed in her personal account because at that point he was abroad; he used to bring vehicles from the US and needed her to do transactions on his behalf. Fiona Reyes lives in the US and she

relied on Mrs. Gomez to conduct most of her personal business for her in Belize. Mrs. Gomez would pay these loans by salary deductions, then she would be reimbursed by the borrower because that was the easier process for the loan to be repaid. Benita Ayuso used to work with Mrs. Gomez and it was easier for her to make payments through Mrs. Gomez; they would make arrangements through her wages that Mrs. Gomez used to pay Ms. Ayuso.

18. Evidence of Giacomo Sanchez

The second witness for Mrs. Gomez was Mr. Giacomo Sanchez, currently employed as a partner at Grant Thornton LLP. He has been employed at Grant Thornton as a partner for twenty-six (26) years. It is mandated by law that financial institutions such as La Inmaculada Credit Union (“**LICU**”) get annual external audits. Grant Thornton LLP, an international auditing firm, has been conducting these audits for LICU in excess of five years. Mrs. Yolanda Gomez requested that an informal special examination be conducted in March 2015. This special examination was

conducted as an extension of normal audit procedures. The basis for this special examination was that there was a discrepancy between physical cash on hand at LICU in relation to what the financial records were saying on any day a physical count was done. However, the process stalled and the special examination was inconclusive. At the same time Mrs. Gomez was terminated. The reports reviewed revealed that there was a fluctuation with respect to daily cash balances in LICU accounting system as compared to physical cash on hand. A solution of the issue could have been achieved if the special examination was allowed to continue. All that was required was a comprehensive comparison of a series of data transactions from LICU's records compared to a matching cash count on any given day. Grant Thornton recommended an adjustment to the financial records on 31st March 2015, which was the end of LICU's annual fiscal year. This adjustment was to be made to reconcile physical cash, bringing it to match LICU's records thereby avoiding differences moving forward. This limited review suggested that the cause of the fluctuations was not as a result of money being removed from the vault. Rather, the

discrepancies were evidence of a systematic error which was causing balances to fluctuate from period to period. The Belmopan branch of LICU reflected a greater cash discrepancy than that of the Orange Walk Town branch.

19. Cross-examination of Mr. Sanchez by Mr. Lumor SC on behalf of LICU

Mr. Sanchez was questioned about his Report of Special Examination that he had conducted at LICU from the period 2008 to 2014. That report is dated 13th March 2015 and signed and addressed to Mrs. Yolanda Gomez. This was a special examination requested by Mrs. Gomez as General Manager of LICU. Mr. Sanchez stated that based on his limited review of LICU documents, the systematic errors referred to had to do with the processing of transactions in the accounting system. It was very likely that the errors were recurring as a result. He concluded in his report that the cause of fluctuations was not as a result of money being moved from the vault. Rather the discrepancies were evidence of a systematic error which was causing balances to fluctuate from period to

period. The limited exercise conducted by him was to determine whether there was cash misappropriation, to quantify the amount, if any and to determine the means by which the cash was misappropriated. His conclusion was that there had been cash misappropriation by Mr. Reynaldo Novelo of \$48,000. His report was limited to the available documentation which he had access to. The definition of misappropriation in his report was as follows:

“For the purpose of this report, misappropriation implies that funds have in some way been mishandled, particularly where an officer or agent has breached his or her fiduciary duty. It applies to an officer who fails to account for money received by them in their official capacity, or to an officer who utilizes Credit Union cash for their own private use.”

Mr. Sanchez’s other findings included that loans less than \$5,000 did not qualify for collateral. He also found that there were loans with incomplete security charges totaling 296. He said that the scope of his work did not concentrate on loan approvals because that was outside the scope of what they had been looking for.

20. Evidence of Reinaldo Novelo

Mr. Novelo says he is currently employed as Chief Operations Officer at AME Consulting Ltd. He was employed at La Inmaculada Credit Union (“LICU”) as the Credit Manager from 2nd January 1997 to about the end of February 2015. As the Credit Manager, Mr. Novelo was in charge of the credit department, along with managing the loans portfolio of LICU. He ensured that loans were given within the parameters of the loans policy, and oversaw the credit officers’ proper execution of their responsibilities and duties on a daily basis. Mr. Novelo also worked along with loans monitoring officers, ensuring that they executed their daily duties and obligations properly. Within the loan portfolio of project loans, he also saw that these loans were properly executed. Additionally, he provided reports to management for analysis, as requested.

Waiving Interest on Loans

LICU is a people-oriented institution that promotes the philosophy of people helping people. It is different from other financial institutions in that it not only gives loans, but also attempts to assist people in any way

possible with regard to their finances. LICU was a small business, which experienced tremendous growth in a short period of time. Throughout this development, policies were implemented before they were put in writing. A policy was in place for the waiving of interest for certain loans. It was a process that members of staff were continuously discussing. Before granting a loan, an analysis would be done to determine the ability of the member to repay the loan. The loan would then be granted if the member satisfied the LICU of the ability to repay. As time passes, the financial circumstances of that member may change. That member may not have the finances that were available when he/she initially made the loan. Sometimes a member becomes unable to make payments, and as a result, interest would accumulate, and the member would not have the capacity to meet the principal payment along with the interest that had accrued. The loan would then become delinquent. At this stage, interest waivers were considered. If a member is willing, or is showing a level of commitment to make payment, but his/her income or ability to pay had become considerably less, as compared to the initial

analysis, the relevant staff would review the loan, the loans monitoring officer would recommend said member, and interest would be waived in order to leave the member in a position that he/she would be able to make payment toward lessening the principal amount of the loan. LICU's main objective was to assist the member. The procedures adopted were considered on an individual and objective basis. The LICU members that were considered for these procedures had to show a firm intention, commitment, and capacity to make payment on their loans. After the interest that had accumulated was forgone, the interest began to run anew on a monthly basis. As far as he knew, the General Manager informed him that this procedure had been discussed with the Board of Directors. There was no documented policy, but the Board of Directors was aware that these procedures were being followed. Roy Roberto Rosado, Roy Anthony Rosado, Minerva Sabido, and Hector Sabido Jr. all fell into this category. They were not selected because of their relation to staff.

Writing off of active loans

At the end of every financial year, if a member could not be located, or the member was not in the country, or if a member had passed away, and there is no way to recover the loan, the loans monitoring officer would make a recommendation to have that loan written off. After the loans monitoring officer reviewed these recommendations, it would be forwarded to the General Manager who would take the list to the Board of Directors, which would then approve the list. The Board of Directors must approve all loans that have been written off. Once the Board of Directors approved the list of loans to be written off, the relevant changes would be made to the system. As far as Mr. Novelo was aware, the Board of Directors approved all write-offs, which LICU is alleging was unauthorized.

Reducing loan balances

Mr. Armando Gomez had received one of two disbursements of a loan he had gotten at Holy Redeemer Credit Union. On or about 5th

September 2014 at around 3:30p.m., Mrs. Gomez asked Mr. Novelo if he could assist her with a favor: to go with the credit union vehicle and cash a cheque, which Mr. Gomez had endorsed. Mr. Novelo attempted to cash the cheque at Belize Bank, but this could not be done immediately, because of the large amount of the cheque. He phoned Mrs. Gomez, who then directed him to instead cash the cheque at First Caribbean Bank. Mr. Novelo went to First Caribbean, and he was able to cash the cheque. The teller counted the money, and then sealed it in a bag. When he returned to the LICU office, it was already closed. However, cashiers were still in the process of conducting their daily balancing. When Mr. Novelo arrived, Mrs. Gomez told him that since they were already closing, she had called Ms. Leiva and told her to put the money in the vault for security purposes. The relevant transactions could not be processed, since LICU was already closed. Mrs. Gomez also said that she would instruct Ms. Leiva as to what transactions should be done with the money. Mr. Novelo then handed the bag with all the money which he had received from First Caribbean Bank to Ms. Leiva.

Additional disbursements

When a person makes a loan and an additional amount is needed, loan officers have the authority per the loan policy, to approve additional loans up to a certain amount. These were known as loan ceilings. The General Manager and the loans officer have the authority to approve a certain amount without having to go to the Credit Committee or the Board of Directors. This was in accordance with the loan policy. Taking into consideration the size and amount of transactions loan officers had to conduct, along with the desire to offer quick service to members, when members who had very recently requested a loan asked for an additional sum, instead of granting a new loan, loan officers could adjust the figure on the loan agreement, to reflect additional disbursements. Once the proper analysis was completed, and the member qualified for a loan, as per loan ceilings loan officers were able to approve and disburse that new amount. The credit committee would then endorse whatever they had processed. If a member required a certain amount,

and meets the qualifications, loan officers would make an adjustment in the application. The credit officer giving the loan would initial it. Sometimes the member initials it as well. All source documents were available for whatever amounts were disbursed, including any adjustments and if an amount was initially entered in the system, the adjusted amount was also entered in the system. The full amount would be in the system as well as on the applications and would be paid by the member. The Credit Committee did not meet daily. This means that if the loans fell within their loan ceiling, loan officers had the authority to disburse that amount, and they did disburse that amount. It was a matter of business efficacy, since it would not have been practical to wait for the credit committee to meet in order to approve and then disburse the amounts. This was especially so when the credit committee took two to three weeks to meet at LICU.

21. Cross-examination of Reinaldo Novelo by Mr. Lumor SC

Mr. Novelo stated that Roy Roberto Rosado, Roy Anthony Rosado were relatives of Mrs. Yolanda Gomez, and Minerva Sabido and Hector Sabido Jr. were the wife and son of Hector Sabido Sr.

All these persons had loans with LICU where interest was waived. This was done by the Systems Administrator Miguel Garcia after there was a consensus meeting held by the General Manager. Mrs. Yolanda Gomez instructed Mr. Garcia to waive the interest on those loans. Mr. Novelo admitted that as he was the Credit Manager at LICU during this period, the interest on these loans could not have been waived without his involvement. The procedure he described at paragraph 8 to 15 of his evidence was not a part of the by-laws of LICU, neither was it a part of the Loan Policy. He admitted that he had approved loans for members of LICU beyond \$5,000 without collateral. He has also approved loans in excess of \$30,000 without any collateral and those loans were approved to the knowledge of the General Manager. He recounted an incident where he was given a bag with a large sum of money by Mrs. Gomez

which he gave to Ms. Leiva. He did not see Mrs. Gomez take any money out of that bag as the bag was sealed from the time he took it to her. Mrs. Gomez had given Mr. Novelo a large cheque to cash but Belize Bank had refused to cash it due to the size; he then took it to First Caribbean Bank where it was cashed. When he returned to LICU it was already late, LICU was closed so Mrs. Gomez instructed him to take the bag to Mrs. Leiva.

When Mr. Novelo resigned from LICU, he received between \$85,000 to \$90,000 as his departure benefit. He refunded \$48,000 to LICU. Mr. Novelo said that he did not attend Board meetings at LICU; it was the General Manager Mrs. Gomez who passed on the directives of the Board to Mr. Novelo.

22. Evidence of Hector Sabido

Mr. Hector Sabido testified that he is unemployed. He joined La Inmaculada Credit Union (“LICU”) in or around July 2007 as the Loans

Monitoring Officer. His main responsibilities included, but were not limited to, the following:

- a. Attending to LICU members who were faced with financial difficulties;
- b. Monitoring the loan portfolio by calling, visiting, and sending reminder letters to LICU members;
- c. Making arrangements with LICU members to address their financial challenges;
- d. Writing contact reports;
- e. Submitting recommendations for troubled accounts;
- f. Preparing a list of write-offs for recommendation of action by the Board of Directors;
- g. Preparing individual credit advisors' portfolios for a constant follow up of arrears of accounts;
- h. Preparing civil suits as well as representing the credit union in Court;

- i. Executing foreclosure, including making announcements in public newspapers;
- j. Arranging public auctions with the assistance of an auctioneer; and
- k. Preparing monthly reports to management and the Board of Directors.

One of the duties assigned to Mr. Sabido was that of preparing the annual write-off listing. This list entailed those accounts where monthly collections were difficult, or collection efforts had been completely exhausted. The list included members who were unable to make payments due to various reasons, which included LICU members who had migrated to another country. It must be noted that an account, which has been written off, was not rendered completely inoperative; collections could still be pursued. The write-off was done for recording and classification purposes, especially in keeping with compliance of Central Bank's requirements of the classification of such loans. The write-off list is prepared as the year progresses. While monitoring accounts,

those accounts whereby all collection efforts had been exhausted, were added to a list, which was forwarded to the General Manager for submission to the Board of Directors for approval.

Once approved, the General Manager would instruct Mr. Sabido or the System Administrator to proceed with entering the write-offs into the system.

Mr. Sabido and the General Manager adopted a procedure for the waiver of interest arrears. There were situations where members fell delinquent and their accrued interest became very high. Sometimes, members, as a result of their circumstances, would stall in making payments towards their loan, which would then cause the interest on the loan to accumulate. If that member later regains the capacity to make payments, and upon seeing a dedicated repayment trend, management would agree to forgo interest in an effort to allow the principal of the loan to be affected, especially in an attempt to recover the principal before having to write off the entire loan. In some cases where a member had capacity to repay the entire principal on the loan

balance, management would apply the payments only to the principal of the loan. In other instances, payment of only partial interest was allowed. These strategies were employed since other means of recovering arrears, such as through the Court, was not the most cost effective solution for LICU. The procedure of waiving interest was designed to try to ensure collection of full principal, thus removing the loan from the delinquent statistics, which would in turn enhance and strengthen LICU's loan portfolio, as well as comply with Central Bank's requirements. On 18th September 2014 Mrs. Yolanda Gomez, the then General Manager requested that Mr. Sabido assist her personally by cashing a cheque in the amount of BZD\$134,000.00 from First Caribbean Bank. The cheque was in the name of Armando Gomez, husband of Mrs. Yolanda Gomez. Mr. Sabido took the cheque to the bank and cashed it. The teller gave him the money, and he took it to Mrs. Gomez's office, located on the 2nd floor of LICU. There, Mrs. Gomez removed some of the money from the envelope Mr. Sabido received from the bank, and handed him the remaining portion in the envelope. Mrs. Gomez then

instructed that he deliver the remainder of the funds to Mrs. Melissa Leiva, the Operations Manager. Mr. Sabido did as instructed, and personally delivered the envelope to Mrs. Leiva. On 8th September 2014 and 18th September 2014, Mrs. Gomez instructed Mr. Sabido to direct cashiers Lucia Gonzalez and Jeremias Tun to process separate payments of \$39,219.46 and \$79,519.94 respectively. Mrs. Gomez also instructed that he should inform the cashiers that due to the volume of cash in the transaction, this would be handled by the Operations Manager, Mrs. Melissa Leiva. Mr. Sabido did inform them of this and they prepared the payment receipts for the specified amounts and he proceeded to take these to Mrs. Gomez.

23. Mr. Cedric Flowers, a private auditor hired by LICU, summoned Mr. Sabido to his office in mid- July 2015 to request information regarding the write off on an account belonging to Jose/Sandra Reyes. After Mrs. Gomez was removed as LICU's General Manager, Mr. Sabido said that he was being pressured to agree with false accusations with regard to Mrs. Gomez. Mr. Sabido did not consent to or agree to those accusations. Mr.

Sabido was eventually diagnosed with diabetes in July 2015, and he was admitted to the hospital for treatment of an abscess that started surfacing on his body, which required antibiotic treatment. While he was admitted in the hospital, senior staff members Marina Gongora and Marisa Perera demanded that he sign a declaration making false statements against Mrs. Gomez. In his hospital bed he clarified to both ladies that he would sign once he was allowed to cross out the false statement within the document. He was cautioned that their lawyers may pressure him, but this did not change his position. To Mr. Sabido's disbelief, they did present their lawyer, Estevan Perera who was right outside the aisle of the hospital room. As a result of being pressured, he signed their declaration but crossed out the accusation that Mrs. Gomez instructed him to prepare false contact reports and that he knew that specific loans belonged to Mrs. Gomez.

The account of Jose/Sandra Reyes was processed as a recommendation to be written off just as any of the other account in the list of recommendations that was submitted to the Board for

approval. No special treatment was given to this account. The Board was resolute in trying to convince Mr. Sabido that Mrs. Gomez was instructing him to alter the delinquency report. The Acting General Manager – Yadelí Urbina, cited this to him on various occasions. There was a lot of negativity in the office, which was evident in the way some senior staff, namely Acting General Manager, Yadelí Urbina and Acting Projects Manager, Ms. Marina Gongora, acted towards Mr. Sabido. On various occasions the acting projects manager, Ms. Marina Gongora, would question his work and activities in instances where she had no supervision or authority over him. Mr. Sabido said that he no longer felt comfortable with the environment at LICU, so he decided to resign on 10th November 2015. The Board of Directors, namely Ena Martínez, the President, Manuel Polanco, Teresita Miranda, Flori Quiroz, Cindy Castillo, Oscar Gutierrez, and Yadelí Urbina, acting General Manager, met with him on 3rd December 2015. They insisted that he agree with them with regard to the false accusations against Mrs. Gomez, especially the allegation that he was instructed by Mrs. Gomez to alter

the delinquent loans report. He clearly indicated to them that the reason for the drastic increase in delinquency was because the credit staff was no longer putting any effort in the collection procedure. He even went further to provide the General Manager and the President with a letter dated 4th December 2015 clearly explaining the reasons for the increase in delinquency (**Tab 1**). Mr. Sabido could not alter the delinquent loans report because the system automatically generated the report, and this was done twice a week. Every credit advisor was aware of their individual portfolio, and in effect was aware of the credit union's overall delinquency position. The Board requested that Mr. Sabido reconsider resigning, since he was very integral to the investigation, so he remained.

After the Annual General meeting held on 7th November 2015, Mr. Sabido says he was more aggressively pressured to agree with the accusations that the Board was alleging against Mrs. Gomez, and he decided to resign. Mr. Sabido forwarded his letter of resignation to Ms. Ena Martinez, LICU's President and copied to Acting General Manager,

Yadeli Urbina and worked for a month, which constituted the requisite notice necessary for resignation. The Board again requested an audience and aggressively attempted to force him to agree with their false accusations against Mrs. Gomez. A copy of this letter is attached as Tab 2. Again, Mr. Sabido refused to agree with their position. The entire month went by and on the evening of Mr. Sabido's last day at work, the Operations Manager, Mrs. Melissa Leiva, gave him a letter whereby the Board was stating that his resignation was not accepted, and that he was to report to work the following day. A copy of this letter is attached as Tab 3. The following day he reported sick and sought legal advice. Mr. Sabido then consulted with Mr. Kevin Arthurs who advised that he did not need to report to work. Mr. Sabido was also advised to refrain from having any further contact with LICU, which he did. On the same day, Mr. Sabido received a letter from the Board of Directors, stating that they were dismissing him, as he abandoned his job, he was not paid any benefits.

24. Cross-examination of Mr. Sabido by Mr. Lumor SC

As the Loan Monitoring Officer, Mr. Sabido also had responsibility to implement the Loan Policies of LICU. Mr. Sabido agreed that he also had to bear in mind the Conflict of Interest Policy. He said that the Waiver of Interest Policy that he had described in his evidence was not contained in the Loan Policy of LICU. He agreed that he had, on the instructions of the General Manager, entered waivers of interest and waivers of loans into the Emortelle System at LICU. Mr. Sabido said that it was his duty to collect on all delinquent accounts. He recalled cashing a cheque for Mrs. Gomez the General Manager of LICU for \$134,000.00. That cheque was made out to the husband of Mrs. Gomez. He recalls cashing the cheque at the bank, taking the cash to Mrs. Gomez in her office on the second floor of LICU, Mrs. Gomez removing some of the cash from the envelope and handing him the remaining portion in the envelope. She then instructed him to deliver the remainder of the cash to Ms. Leiva. Mr. Sabido said that he did not count the remaining amount of cash. This

took place during working hours. He said that on two separate occasions 8th September 2014 and 18th September 2014, Mrs. Gomez instructed him to direct the cashiers Ms. Gonzales and Mr. Tun to process separate payments of \$39,219.46 and for \$79,519.94 respectively. Mrs. Gomez also instructed that Mr. Sabido should inform the cashiers that due to the volume of cash in the transaction, this would be handled by the Operations Manager Mrs. Melissa Leiva. He informed the cashiers of this and the cashiers then prepared the payment receipts for the specified amounts and Mr. Sabido took those receipts to Mrs. Gomez. Mr. Sabido agreed that what occurred was that receipts were being issued by the cashiers for monies that they had not received. Mr. Sabido also spoke of loans issued to him, his son and his wife which were amalgamated by Mrs. Gomez. One person took responsibility for loans granted to three persons. He recalled seeking permission from Mrs. Gomez to grant extensions on accounts that were delinquent and overdue for payment. He said that if he is instructed to write off interest in the Emortelle System, he would receive instructions in writing from the General

Manager. He was questioned by Mr. Cedric Flowers, but he did not give him any of the written instructions that he had received from Mrs. Gomez to write off interest. He said that he was not aware of loans co-signed by Mrs. Gomez where the proceeds were paid into her personal account. He was not aware of loans which were liquidated by salary deductions from Mrs. Gomez. As the Loan Monitoring Officer, he only dealt with delinquent loans; if the loans were not delinquent he would not be aware of them. He said that he is aware that it was against LICU by-laws to cash a \$134,000 cheque, give Mrs. Gomez the money then collect receipts for payments that were not made.

25. Mr. Sabido was re-examined briefly by Mr. Courtenay SC. He clarified that Mr. Flowers never asked him for the written instructions that he had received from Mrs. Gomez. He also explained that after he gave Melissa Leiva the money, he saw her put the money into the vault. He did not take the money to the cashiers personally, but the Operations

Manager Mrs. Melissa Leiva was the one who was going to make the transfer as she was in charge of the cash.

26. Evidence of Minerva Rosado

Ms. Rosado says that she is currently employed as an Administrative Assistant at Belize Agriculture Health Authority (BAHA). She is a member of La Inmaculada Credit Union “**LICU**”. On 19th February 2016, Ms. Rosado received a letter from Marisa Perera, Credit Manager of LICU. This letter requested that she can make an arrangement to clear the outstanding balance of the account in the name of Minerva Esther Rosado. A copy of this letter is attached as (**Tab 1**). Ms. Rosado has been making payments towards this loan.

On 19th February 2016, Ms. Rosado received another letter from Marisa Perera, Credit Manager of LICU. This letter requested that she should make an arrangement to clear the outstanding balance of the account in the name of Ida Therese Rosado. A copy of this letter is

attached as **(Tab 2)**. Ms. Rosado has been making payments towards this loan.

On 23rd February 2016, Ms. Rosado received a third letter from Marisa Perera, Credit Manager of LICU. This letter requested that she make an arrangement to clear the outstanding balance of the account in the name of Martin Rosado. A copy of this letter is attached as **(Tab 5)**. She has agreed to make payments towards this loan.

There was no cross-examination of Ms. Rosado and with her testimony, the case for Mrs. Gomez was closed.

The next evidence was that of Mr. Glenford Ysaguirre, former Governor of the Central Bank of Belize.

27. Evidence of Mr. Glenford Ysaguirre

Mr. Ysaguirre says that at all material times he was the Governor of the Central Bank and the Registrar of Credit Unions. Section 5 of the Credit Unions Act (“the Act”) appoints the Governor of the Central Bank as the Registrar of the Credit Unions. Section 6 of the Act sets out the general

functions, obligations and powers of the Registrar. Furthermore, Section 36(4) of the Act grants the Registrar powers of suspension where he is satisfied, based on evidence in the report of an auditor or special examiner that misappropriation or misdirection has occurred at the hands of an employee. Section 60 of the Act empowers the Registrar to appoint examiners to conduct an examination into the affairs of a Credit Union. Based on complaints made from a whistle blower to the Supervisory Committee of LICU in or around May 2015, pursuant to section 60 of the Act, the Central Bank carried out a risk based on-site examination of the affairs of LICU as of 31st March 2015. A copy of the report of the examination conducted is attached as **“G.Y.1”** Prior to the examination by the Central Bank, on or before the 29th April, 2015, Mr. Ysaguirre received a letter, which he was copied, from La Immaculada Credit Union Limited addressed to Yolanda Gomez, which stated that the 1st Defendant had placed the Claimant on administrative leave for allegations of mismanagement. A copy of the letter is attached **“G.Y. 2”**.

When Mr. Ysaguirre received the letter dated the 29th April, 2015, it was the first time he became aware of the fact that Mrs. Gomez was placed on administrative leave by LICU. At no point in time did he act under the powers conferred upon him by section 36.

LICU on their own and not by virtue of provisions laid out under section 36 of the Act decided to place the Claimant on administrative leave. It is Mr. Ysaguirre's understanding that the Board of LICU, under their role of general management of the Credit Union, felt this was the prudent thing to do pending the outcome of their own investigation.

Section 36(1) of the Act requires that the Supervisory Committee of the Credit Union would first need to inform the Registrar in writing of the allegations against the Board, the Credit Union Committee, or a member of either the body or any officer or employee engaged by the Board. After that, pursuant to section 36(2) the Supervisory Committee, in the event of a misappropriation or suspected one, shall in consultation with the Board appoint an auditor or special examiner to look into the

matter. Section 36(3) states that if the auditor or special examiner concludes that misappropriation has occurred, the report is to be submitted to the Registrar, the Board of Directors, the Supervisory Committee and the Credit Committee. It is only after the processes outlined in sections 36(1) to (3) occurred that Mr. Ysaguirre would have been able to act under section 36(4). In the instant case, the provisions were never triggered by LICU, therefore Mr. Ysaguirre says he was under no obligation to carry out any statutory under section 36(4). He therefore states that there was no dereliction of his statutory duties regarding the suspension of Mrs. Yolanda Gomez by LICU.

28. Cross-examination of Mr. Ysaguirre by Mr. Lumor SC

Mr. Ysaguirre said that he received a request for a meeting from the Supervisory Committee to discuss the matter of Yolanda Gomez and LICU. At the Central Bank on a date he could not recall, the Supervisory Committee of LICU met with Mr. Ysaguirre and several Senior Regulators to inform them that they have made a decision and have taken action to

suspend Ms. Gomez as they felt that they had sufficient evidence to indicate that there was material mismanagement in the affairs of the Credit Union. He said that they placed Ms. Gomez not on suspension, but on administrative leave. He said that he recalled correspondence which indicated that she was to make herself available to provide information and support to their investigative process. Looking at his Report of Examination of La Inmaculada Credit Union Ltd conducted at 31st March 2015, he read from page 5:

“All the Board and the Supervisory and Credit Committees had a fiduciary responsibility to oversee the operations of the Credit Union. The former General Manager was the person primarily responsible to oversee the day-to-day operations and management of the Credit Union in compliance with laws and policies and procedures. However, the Central Bank observed that on several occasions she carried out activities in a manner contrary to laws, requirements and policies and procedures abusing her authority and misusing the assets of the Credit Union.”

Mr. Lumor SC then asked Mr. Ysaguirre to read the conclusion of the Central Bank report and he did:

“The examination findings indicated that the former General Manager mismanaged the affairs of the Credit Union by not adhering to proper policies and procedures, misrepresentation to the Board, weak internal control practices and violations of the MLTPA requirements and the Central Bank’s requirements which placed members’ funds at tremendous risk. Consequently, the Central Bank has concluded that the former General Manager no longer satisfies the fit and proper criteria of a person who can own, control or participate whether directly or indirectly in the directorship, management or operation of a financial institution.”

29. Cross-examination of Mr. Ysaguirre by Mr. Courtenay SC

Mr. Ysaguirre admitted that he personally did not conduct the actual physical examination of La Inmaculada Credit Union. He said he was not aware that at an earlier point in this trial, an objection had been raised

as to the admissibility of this report, and his previous counsel had told the court that the Central Bank report would not be relied upon for its accuracy. Mr. Ysaguirre said that he was not aware of that as he has since demitted office of the Central Bank Governor. He said that he was Registrar of Credit Unions from September 2008 until September 2016 and he is familiar with the Credit Union Act and the responsibilities of the Registrar. He agreed that as Registrar it was his responsibility to inspect and supervise Credit Unions and to conduct examinations. He agreed that prior to the meeting with LICU, he could not recall and was not aware of any conduct or performance that would have required an immediate need for an examination. Examinations are generally scheduled and conducted by the Regulators based on a calendar that they develop at the beginning of the year. Mr. Ysaguirre also agreed that as Registrar he had a statutory duty to regulate all Credit Unions. Under Section 6 of the Credit Unions Act, there was a statutory duty imposed on him as Registrar of Credit Unions to monitor the performance of all registered Credit Unions. One of those obligations of a Credit Union like

LICU was to have an annual audit of its books and affairs which would be independently done and sent to the Registrar on an annual basis. As Regulator, he would look at the annual audits and annual reports of the Credit Union to see whether there are any red flags. Prior to May 2015, Mr. Ysaguirre could not recall seeing any of LICU's audited accounts that would have raised a red flag. When he received the letter from LICU dated 29th April 2015 that was the first time that he became aware that LICU had placed Mrs. Gomez on administrative leave. It was after Mrs. Gomez had visited him at the Central Bank that LICU's Supervisory Committee visited him. Mrs. Gomez was already on administrative leave at the time of her visit to Central Bank. He cannot recall whether it was the Supervisory Committee or the Board of Directors of LICU who came to see him at the Central Bank. He could not recall the specific date but he was sure that was at the records of the Central Bank. There is a letter from LICU dated 29th April from LICU to the Registrar. Mr. Ysaguirre says he received that letter prior to the letter dated 6th May 2015. Based on information provided and discussed at the meeting with LICU, he as

Registrar invoked his powers under section 60 of the Credit Unions Act to appoint examiners. The allegations made against Mrs. Gomez were considered egregious enough to compel the Regulators to conduct an examination. He appointed Angela Reneau, Damaris Humes and Edlene Broaster to be the Lead Examiners. This team would lead support staff from the Central Bank which would include technical support. These Lead Examiners are still employed at the Central Bank. Mr. Ysaguirre stated that the decision he, the Central Bank and its Regulators made not to act under the powers conferred on him by Section 36 of the Act was based on internal and external advice given to him that it was not necessarily required. He explained that while the Governor is designated as the Registrar, it is actually an entire regulatory department with a person designated as the Supervisor. There is a department at the Central Bank that deals with the supervision of credit unions, banks and other financial institutions; that department is headed by a Director and it reports directly to the Central Bank Governor. Mr. Ysaguirre said he knew that LICU appointed Mr. Cedric Flowers to conduct a special audit

but he could not recall if he or members of his team met with him. He said that he has seen Mr. Flowers' report but cannot recall when he received it or whether he as Registrar took any specific action at LICU as a result of it. He said that he is certain that recommendations to address the shortcomings may have been identified that led to the situation, but he would not be able to recall any specific actions taken by him at this time. When he received Mr. Flowers' report, he did not invite Mrs. Gomez to a meeting to give her an opportunity to respond to its contents. While he agreed that there are extremely damning statements in this report in relation to Mrs. Gomez, he said that it was his understanding from his Regulators and from the Acting Manager of LICU that Mrs. Gomez refused to cooperate or to attend interviews or meetings requested by Mr. Flowers. That would have been part of Mrs. Gomez's responsibility and duty while she was on administrative leave to cooperate with the investigation. When asked whether he believed that Mrs. Gomez was refusing to cooperate, he said that he believed that information was contained in Mr. Flowers's report on LICU, and that he

relied on what was in Mr. Flowers's report as a professional Auditor and an independent investigator on the matter. He had no reason to doubt the veracity of his report. During this period, he was also informed by one of his regulators that Mrs. Gomez was not even in the country; he explained to the court that frequent meetings were held with his regulators to discuss the progress of these investigations or audits while they were being conducted. Mr. Ysaguirre was shown a series of letters dated 20th July 2015 and 21st July 2015 where Mrs. Gomez was invited to a meeting with Mr. Flowers and 22nd July 2015 where Mrs. Gomez was invited to a meeting with the Board of Directors, and Mrs. Gomez replied saying that she is prepared to cooperate once she has the information so that she can prepare. Mr. Ysaguirre was asked whether it is true to say, having looked at this exchange of correspondence that Mrs. Gomez refused or did not refuse to cooperate. Mr. Ysaguirre said that having seen the correspondence he thought it was true that Mrs. Gomez was refusing to cooperate. He did not agree that he was obliged by law to give Mrs. Gomez an opportunity to exculpate herself, as she had already

been terminated by her employer. He said that the date on the report of the Central Bank shows when the report was conducted was between 13th May 2015 and 5th June 2015. He could not say when the report was finalized. He was not aware that Mrs. Gomez was never invited by his examiners for an interview; he did not think that was unfair. When asked what did he as Registrar of Credit Unions do after receiving the Central Bank report on LICU, Mr. Ysaguirre said several recommended courses of action were made by the Regulators. He said that a copy of the Central Bank report was sent to LICU and from practice, he would imagine that the Credit Union would have been invited to discuss or challenge anything within the report that they are not satisfied with in terms of the recommendations and corrective actions forward. He did not know if LICU complied with the recommendations set out in the report. He did not send a copy of the Central Bank report to Mrs. Gomez because he did not think there was any requirement to send her a copy. He says he did not call a general meeting of the members of LICU once the report had been presented to him and put the report before the members; he

did not agree that in these circumstances that was what he should have done as Registrar of Credit Unions. He said he saw no need to do so. Mr. Ysaguirre said that it was not the practice of the Central Bank to send individual copies of the report to individual employees. They would send the Central Bank report to the institution, whether to its Chairman or to the management of that institution. He explained that it was not practical for him as Registrar to conduct the field examination; he had a field team and technical support staff within the Central Bank to carry out this exercise and he would meet with them on a regular basis so that he would be kept abreast of the progress in the field. He said that as the Governor of the Central Bank he is legally responsible for the report.

30. Mr. Ysaguirre was re-examined briefly by his counsel Mr. Bradley. He clarified that this Special Examination Report would be directed towards the Board of Directors or the Supervisory Committee of LICU. On page 9 of the report he explained that the enumerated list of items entitled "*Corrective Actions*" is to correct and rectify shortcomings,

management deficiencies, internal control weaknesses or other operational weaknesses that would put at risk the operations and soundness of the institution. These would include corrective actions that needed to be taken by the Central Bank itself. The next steps after this report had been shared would be a follow-up visit or report from the Credit Union to the Central Bank to inform on the progress made in relation to the corrective measures implemented. By the time he received Mr. Flowers's final report, Mrs. Gomez was no longer working at LICU.

31. Evidence of Mr. Cedric Flowers

Mr. Cedric Flowers is a Certified Public Accountant who holds a B.S. in Accounting and has been in practice as a Certified Public Accounting in Belize since 1989. He has considerable experience in accounting and auditing, having served as the Court appointed and private receiver of several large corporations, and having given expert testimony in several cases before the Belize Supreme Court.

In or about June 2015 he was contacted by the Supervisory Committee of La Inmaculada Credit Union Limited (“LICU”) and on 17th June 2015 he was engaged to conduct a Special Audit into matters of concern which had been raised by the Board of Directors and which were set out in the Terms of Reference in his report. On 20th October 2015 he concluded his report, which was presented to the Supervisory Committee and the Board of Directors. A copy of his report is attached at **Annex 1**. Although the report was finalized in October 2015, the Board of Directors was informed of his findings in or about July 2015, prior to the termination of the employment of Mrs. Yolanda Gomez, the former General Manager of LICU. Mr. Flowers says that he made several attempts to contact Mrs. Gomez during the course of his audit but, Mrs. Gomez did not respond to any request for information and failed to attend any meeting where she could be interviewed. As a result, the report does not incorporate Mrs. Gomez’s responses to findings in the report. Mr. Flowers’s report Exhibit CF1 is entitled “***Report on Special***

Investigation at La Inmaculada Credit Union Limited, Orange Walk Town, Belize, 20th October 2015”

32. Cross-examination of Mr. Flowers by Mr. Bradley

Mr. Flowers said that he prepared a report on this matter upon the request of the Supervisory Committee of LICU. He agreed that as Auditors he and his firm were engaged to conduct an investigation into the affairs of LICU, La Inmaculada Credit Union, and to seek to identify and quantify any and all cases of misappropriation, misdirection or violation of policies or sound practices as might be uncovered by the exercise. He said that he was aware that prior to his investigation the Central Bank of Belize had already done an investigation in relation to LICU. At the time of doing his report, Mr. Flowers said that he had not seen any report done by the Central bank; therefore, he would not have been aware of the extent of the details contained in any such report and as such he could not say whether or not his report was more detailed. In carrying out his investigation, he used extensive interviews and extensive review of documentation to support his conclusion. The documentation

would have included all policies of the Credit Union, including LICU's Conflict of Interest Policy. Some of the concerns relating to one aspect that he was asked to look at included unauthorized waiver of interest, potential conflict of interest and related party transactions, unauthorized changes to loan accounts, violation of loan approval process, unauthorized loan write offs, misrepresentations and others. Mrs. Yolanda Gomez would have been directly or indirectly involved in some of these instances of irregularities. In his report, he identified specific instances of named persons whose interest would have been waived and the amounts that had been waived. Based on his investigation, Mr. Flowers concluded that there is no waiver of interest policy at LICU; he also concluded that any write-off of loans would have to be expressly approved by the Board of Directors. He found no evidence of Board approval for those waivers of interest. He also found that Mrs. Yolanda Gomez was one of the persons responsible for the waiver of interest policy which resulted in an \$87,897.95 loss to LICU. He agreed that in his view this loss involved multiple violations of policy at

LICU including Conflict of Interest violations and unauthorized transactions. Mr. Flowers found multiple “Related Party Transactions” where a Director of the Credit Union would be making decisions in relation to a loan application where the applicant would be a family member. He identified this as a violation of Conflict of Interest and concluded that the persons he identified and named were related to officers of LICU including Mrs. Gomez. From his investigation it appeared to Mr. Flowers that LICU had no policy for waiver of interest on active loans, and that Mrs. Gomez and other members of LICU management formulated and developed that policy. He said that there was in place a specific procedure to deal with Conflict of Interest which required the officer to fill out a disclosure form; he found no evidence of any disclosure form being filled out. Mr. Flowers went through individual persons and individual instances of violations in his report, and identified the specific familial relationship. Mrs. Yolanda Gomez was involved in many related party transactions or familial relationships. In the section of his report entitled “ Extent of changes to Loan Balances” Mr. Flowers

said that this section dealt with where individuals from management would have gone on to the electronic system and they would have altered the balances for members of the Credit Union. He saw repeated instances of conflict of interest and related party transactions involving Fiona Reyes and Armando Gomez. In his report he also mentioned an incident where Mrs. Gomez had instructed a member of staff to destroy an original loan application and as a result, there were 2 separate loan balances for the same loan. In that instance, it was Mrs. Gomez's husband who was the co-applicant. There was no evidence of any notification of the Credit Committee. The system would have the new amount as the balance in the system was adjusted. These transactions involved Fiona Reyes and Armando Gomez; Mr. Flowers described these transactions as "*fraud*" and "*embezzlement*". These transactions would have resulted in additional funds being given to members of the Credit Union not in conformity with the established policies. In his report, Mr. Flowers quoted a section of the Credit Union Act dealing with criminality which in his view was relevant to his findings. He described a loan

transaction involving Roy Roberto Rosado as involving “*corrupt practices*” and he identified Mrs. Yolanda Gomez as the person responsible. Another aspect of his report showed that the Supervisory Committee of LICU became aware after the fact of a cash shortage at the Belmopan Branch. There was a difference of between \$160,000 and \$185,000; when the cash was actually counted it amounted to \$77,029.02. Mr. Flowers’s finding was that the system at LICU was actually manipulated to reflect that it would have reconciled. The General Manager had issued instructions to have this matter resolved. After that, no further steps were taken to try and resolve the matter. The adjustment to the system was an isolated incident in his view, after which a report was sent to the Supervisory Committee and all other efforts ceased. His conclusion was that “*the report prepared and submitted to the Committee which purportedly originated from the Emortelle System was deliberately altered, through fictitious entries, to conform with the cash count balance which resulted from the joint exercise, in order to mislead the Committee by giving the appearance*

that there was no difference between the books (Emortelle) and the actual count, when in fact a difference existed and was known to both Gomez and Garcia.”

Mr. Flowers said there was an attempt at a voucher system but the lack of consistency meant that the system was not properly enacted in that vouchers were unsigned and unnamed in several instances, and substantial amounts were transferred without any vouchers supporting those transfers. One of Mr. Flowers’s findings in his report is that he found that there was a difference between \$973,494.66 reflected in the system and vouchers reflecting only \$431,882.87. There was also an item in his report relating to \$79,519.94 where the Cashier Balancing Sheet as reconciled by Tun and his closing Supervisor Trejo did not support the receipt of \$79,519.94 cash by the cashier based on the breakdown of cash noted on the balance sheet. This was an accounting entry with no cash to back it up; Mr. Flowers used the word “fraud” as defined by LICU’s policy to describe this transaction. The persons who Mr. Flowers found to be responsible for these incidents were Yolanda Gomez and

Melissa Leiva. He found that LICU suffered a financial loss of \$79,519.94 plus interest as a result of these transactions. These instances are recounted in his report to show where there was a receipt issued, but there was no cash, and no evidence that any cash came in or went to the cashier. The person responsible was Yolanda Gomez, and Mr. Flowers described this as "*fraudulent*". He found irregularities with the LICU credit card as a consequence of Mrs. Gomez not reimbursing for personal use, and as a result of this, LICU lost \$67,309.74 directly attributable to Mrs. Gomez.

Mr. Flowers said that he sent letters to Mrs. Gomez and to her attorney informing her of his investigation and asking her to participate so that he could get responses from her in order to answer questions he had. His final report would be 21st October 2015. He agreed that Mrs. Gomez did not provide any assistance to the audit exercise, not even to provide contrary information or explanation. There was no attempt on her part to make herself available to participate in the audit exercise.

33. Cross-examination of Mr. Cedric Flowers by Mr. Eamon Courtenay

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Mr. Flowers said that he conducted an investigation. He did not conduct an audit nor an examination. He explained that an investigation is more narrowly focused where he looks at specific matters contained in the Terms of Reference as opposed to a financial audit which is generally the same as an examination where they would be looking at the overall organization. During his investigation and preparation of his report, Mr. Flowers did not meet with any member of the Central Bank staff, nor did he receive any documents from the Regulators from Central Bank. When asked whether he recalled a letter sent by him to Mrs. Gomez he said that he vaguely recalled the contents of that letter. He was told by counsel that he asked Mrs. Gomez to respond to his letter about twenty one specific items in seven days. Mr. Flowers said that he did not provide copies of any documents referred to in his letter. He recalls that Mrs. Gomez's attorney responded to the letter saying that their client has

reviewed the requests and was unable to respond to most of the items raised because of the passage of time she did not recall the circumstances surrounding the issues raised. The attorneys requested that Mrs. Gomez be given an opportunity to review the relevant documents so that she could provide Mr. Flowers with a response. Mr. Flowers said he did not respond to that letter. He said that the Board of Directors were informed of his findings in or about July 2015 but he does not recall the exact date. He does recall that this was probably in a meeting he held with the Board prior to the termination of employment of Mrs. Gomez.

34. Mr. Flowers was pressed again by counsel as to the date when he presented his preliminary report to the Board, but he said that he could not recall. He agreed that he was called upon to investigate certain allegations against Mrs. Gomez as a result of which he knew that the LICU Board would be relying on his report. He said that when he was engaged by LICU under his Terms of Reference and he was not aware that his

report would be used by LICU to determine Mrs. Gomez's employment. He said that he was engaged by LICU to carry out certain functions and it was for LICU to decide how they would use that. He was told that Mrs. Gomez had been put on administrative leave.

Mr. Flowers said that he recalled writing to Mrs. Gomez on the 7th August. The purpose of the letter was that they were conducting their investigation and they tried as best as they could to give an opportunity for all sides to make representation to them and to assist with the investigation, to get other view points, to deal with the findings and to seek to get explanations for the findings before coming to their conclusions. He said that at the date of 7th August 2015 when he sent the letter he had not reached any conclusions with respect to Mrs. Gomez. He said that at that time they had reached certain findings which point in a particular direction, and the entire purpose of trying to reach Mrs. Gomez would have been to seek further clarity. He said that there was a difference between factual findings and conclusions. He said that there

was no response to Mrs. Gomez's request to review the relevant documents for several reasons. First, he felt in his professional judgment that they had provided sufficient time and secondly he believed that Mrs. Gomez was very much acquainted with the information having worked at the Credit Union for a number of years. She was very familiar with the documents, the names and the nature of the transactions. Thirdly, he was asking her about her involvement in the transactions outlined in his letter. They were not necessarily asking about anything other than her involvement. He did not ask her about specific amounts of money, and he believed that they had provided her with an adequate description of the transaction for which they needed her assistance. She responded on the 14th and made no attempt to address any part of the matters which they had raised. He had also indicated to her that she would be able to raise any matter with him as the Investigator. He said he did not communicate these reasons to Mrs. Gomez. Mr. Flowers agreed that his letter of 7th August 2015 was sent after Mrs. Gomez was terminated on 24th July 2015. He also agreed that he had a meeting with the Board of

LICU in July 2015 where he indicated to them his preliminary findings. He recalls telling the Board to inform Mrs. Gomez she was invited to attend that meeting, bringing her attorney with her if she so wished, or at the least to advise her that he would be at the meeting as he was doing the investigation and that he had some issues that he wanted to clarify with her.

Mr. Flowers agreed that the responsibility of the Supervisory Committee was to have oversight of the Credit Union and its financial affairs. They were to meet regularly, to audit the finances of the Credit Union, to investigate any irregularities and to report any irregularities found. In his report where he referred to communicating in writing with the General Manager and seeking her account, Mr. Flowers agreed that he was referring to the letter he had written to Mrs. Gomez and to her attorneys. He clarified that in those instances in his report where he said he communicated with Mrs. Gomez and she did not respond, the truth was that she did respond asking for information. He said she did respond,

but in her response she did not address the matters raised by him in his letter to her. He said that he reviewed the Minutes of the Board of Directors with respect to the relevant period under his investigation, but he did not produce those minutes as part of his report. Mr. Flowers explained that he did not produce Minutes of any meetings with any of the LICU Committees because the report which he produced was for the LICU Board, the Supervisory Committee for the Credit Union so there would be no need for him to produce their own minutes for them. He was asked the meaning of write-off of interest and he said that that meant that interest is taken off the account and that is no longer a debt due to LICU. He agreed that writing off loan interest meant forgiving or taking off or relieving a debtor of his obligation to pay that portion of interest. Write-off is the actual process of removing the debt from the account. Waiver of interest is saying to the person or the organization that the interest does not have to be paid. A waiver will become a write-off if approved. In relation to a specific finding involving write-off of interest by Melissa Leiva, Mr. Flowers said he found no evidence of any

written instructions from Mrs. Gomez giving her instructions to do so. He found no evidence of Mrs. Gomez giving written instructions to anyone to waive or write –off interest. In a general sense, he agreed that the General Manager has latitude to work with members who are experiencing financial difficulties. He could not say that in this case Mrs. Gomez was specifically authorized to do so at LICU. It was normal for a Credit Union to work with its members to refinance existing loans, and credit unions were generally more lenient than banks. He understood that the General Manager had authority to work with the members who were in financial difficulties; what he was investigating was the extent she would have gone in working with those members. He said he did not mention this power of the General Manager in his report. Mr. Flowers did not recall whether the waivers of interest cited in his report related to loans that were in default, non-performing or current. He said there might not generally be anything unusual for a loan to be disbursed in one day in normal circumstances. But if the loan is to a related party where the rules require special approvals or more scrutiny, then such

disbursements in one day may carry a different level of scrutiny. Where the transaction involves related parties and family members, these are circumstances where certain disclosures and approvals are required, so the level of scrutiny would be to look for confirmation of those disclosures and adherence to the rules governing those particular situations. He agreed that the Credit Committee has the duty to examine those loans that were approved regardless of whether the loans are related party. If that Committee finds anything wrong, it has the duty to bring that to the attention of the Supervisory Committee of the Board of Directors. The Supervisory Committee has the obligation to scrutinize the loans that were approved, and if they find anything irregular, to bring it to the attention of the Board or the external Auditor. He did not put in his report that any of these committees failed LICU because he did not make any such finding; he put responsibility for irregularities found on specific employees. He did not find any written evidence of Mrs. Gomez authorizing or instructing the waiver of interest or of her instructing any employee of LICU to alter loan documents increasing the amount of

loans. He agreed that he had no independent document signed by any of the persons he interviewed saying that Mrs. Gomez told them to commit any of the irregularities he found. He explained that he found that Mrs. Gomez was responsible e.g. where the transactions required certain disclosures that this was a related party transaction and looking at the totality of circumstances, the nature of the transaction, the account, the relationship between Mrs. Gomez and the member, the position Mrs. Gomez held at the Credit Union, the position of authority, the fact that Mrs. Gomez's husband collected the money on a transaction which he thought was irregular. It was based on that that he concluded that Mrs. Gomez was the responsible person. He was specifically asked by counsel to identify what was it that Mrs. Gomez did that in his opinion constituted embezzlement or fraud. He said he came to that conclusion based on the totality of circumstances. In terms of specific irregularities cited in his report, Mr. Flowers said that on 26th July 2013 Mrs. Gomez, in her position of authority, failed to disclose to LICU that she in fact had an interest in a related party transaction where her husband Mr. Gomez

walked into LICU and collected \$22,000.00. His finding was that she allowed this irregular transaction to take place, unauthorized changes were made and it was done on the account of her husband, who collected the monies. He concluded that Mrs. Gomez was responsible for misdirection in the irregular transaction where Armando Gomez was removed from the joint account which further exposed LICU to a risk of loss. That could only have been done with the approval of Mrs. Gomez as the General Manager. Mr. Flowers identified from his Working Papers the specific action taken by Mrs. Gomez in relation to the irregular transaction on 10th April 2015 where her husband Armando Gomez was removed by her as a joint holder of the account; the printout in his Working Papers showed that the signature from the computer system showed that it was done by Mrs. Gomez. In response to questions about cash shortages at the Belmopan Branch of LICU, Mr. Flowers said that they did not find Mrs. Gomez responsible. In relation to those transactions where cashiers who did not receive cash credited accounts and issued receipts as if they had received the cash, his investigation

showed that in relation to some of those transactions money was placed in the vault. The cashier would have been advised that the cash is being placed in the vault. The person who was actually placing the cash in the vault would inform that the cash was personal cash for Mrs. Gomez which had nothing to do with the transaction even though the cashier would have been advised that in fact the cash is for that transaction. He does not know what happened to that cash, but he knows the cash is no longer in LICU. He said that one of his conclusions in his report was that the list which was submitted for write-offs was not the same list which was approved by the Board. He also noted that Mrs. Gomez did not make the appropriate disclosures for related party transactions or conflict of interest transactions. These were all family members of Mrs. Gomez and looking at the totality of circumstances he concluded that there was misrepresentation on the part of Mrs. Gomez. He disagreed that he was speculating on this matter; he explained that his conclusion was based on interviews he conducted with other persons involved in the transactions. He noted that Mrs. Gomez was the person responsible for

providing instructions to the person who will actually do the write-offs of the names. It was based on all these circumstances that Mr. Flowers concluded that Mrs. Gomez was responsible for the misrepresentation.

Under a brief re-examination by Mrs. Arthurs-Martin, Mr. Flowers explained that his investigation revealed that it was Mrs. Gomez who would have supplied the list of four persons who were her family members to the Board. It was also Mrs. Gomez who supplied the list of names to Mr. Garcia. Those were some of the factors which led him to determine that it was Mrs. Gomez who was responsible for the misrepresentation.

35. Evidence of Ena Martinez

Mrs. Ena Martinez says she is the President of the Board of Directors of La Inmaculada Credit Union Limited (“LICU”). She has been a member of LICU’s board since May 2007. Mrs. Martinez served as the Secretary of the Board for 3 years, then as its Treasurer for 3 years, before she was appointed as the President in December 2013.

LICU was established on 5th June 1949, and is the third largest Credit Union in Belize with approximately 25,000 members. The by-laws which presently govern LICU were established in 1998. A copy of the By-laws are attached as **Annex 1**.

Mrs. Yolanda Gomez was the General Manager of LICU from the time Mrs. Martinez became a member of the Board until July 2015 when her employment with LICU was terminated. As a member of LICU's Board, Mrs. Martinez says she therefore got to know Mrs. Gomez and, like the other members of the Board, had great respect and a high regard for Mrs. Gomez. She had been with LICU for over 24 years. The Board had complete faith and trust in her management of LICU. She was always present at Board and Joint Meetings. She insisted on being present at all meetings. Her termination was not, therefore, a decision that was taken lightly by the Board, and was only done after the Board was satisfied that they could no longer trust Mrs. Gomez's management of LICU. Strong concerns began when seemingly Mr. Reinaldo Novelo, the then Credit

Manager, had removed envelopes from the vaults which contained members' mortgage fees. As a result, in March 2015, LICU's management engaged the services of Grant Thornton to conduct a Special Examination into LICU to determine the extent of the misappropriation. Mr. Reynaldo Novelo then submitted his resignation from LICU. The Board then decided to accept his resignation but at no point did the Board approve that all benefits be paid to him as he was not leaving in good grace. The report, dated 13th March 2015, indicated that 65 envelopes were missing from the vault, totaling \$46,227.98 in missing funds. Mr. Novelo admitted liability for 18 envelopes only but paid the entire amount. A copy of the report is attached at **Annex 2**.

Mrs. Martinez recalls that in or about March 2015, a member of LICU's Credit Committee expressed concern about the manner in which loans were being issued under Mrs. Gomez's management. Of primary concern was a loan issued to Minerva/Crissani Sabido, who are the wife and daughter of the Loans Monitoring Officer at the time, Hector Sabido.

The Credit Committee expressed concern about the member's ability to repay the loan, considering other loans advanced, and the manner in which the loan was structured. Concern was also raised about the violation of LICU's policies as a loan had been advanced to Mr. Abel Blanco prior to seeking Board approval, as was required, since the loan was for over \$150,000.00. The Credit Committee also raised concerns about the fact that Mrs. Gomez was granting loans, in breach of the Loan Policy, to her immediate family members, brother, sister, in-laws, nieces and nephews.

In view of the recent findings of misappropriation by Mr. Novelo, the Board meeting of 26th March 2015 had already been scheduled for regular matters at which time discussions arose as to the manner in which loans were being approved. The Board members raised a similar concern about the number of loans that Mrs. Gomez had issued to very close family members. Orange Walk Town is a small community and so all Board members knew Mrs. Gomez's close relatives. On 27th March

2015 Mrs. Gomez wrote to Mrs. Martinez to address the concerns of the Credit Committee, which had been discussed at the Board meeting of 26th March 2016. Mrs. Martinez believed that as President it required that she convene a meeting with her Board Members and Credit Committee Officers to discuss these issues without the presence of Mrs. Yolanda Gomez. A copy of this letter is attached at **Annex 3**.

A Special Board Meeting along with the Credit Committee Officers was then held on 7th April 2015. Minutes of Meeting are attached at **Annex 3 (a)**. Another Special Board Meeting was held on 9th April 2015. Minutes of Meeting are attached at **Annex 3(b)**. On 14th April 2015 Mrs. Martinez wrote to Mrs. Gomez to advise her of the meeting with the Board which had been scheduled for 15th April 2015. A copy of the letter is attached at **Annex 3(c)**. A Special Board Meeting with Mrs. Yolanda Gomez was then held on 15th April 2015 to discuss the matters in question. A copy of the Minutes of Meeting are attached at **Annex 3(d)**. The Board was very prepared

for the meeting and had prepared a note which addressed some of the concerns raised by the Credit Committee, and this was presented to Mrs. Gomez at the meeting on 15th April. A copy of the action list is attached at **Annex 4**. When the Board met with Mrs. Gomez the Board had a heightened concern as to the management of LICU and so had very direct questions for Mrs. Gomez. She was not responsive during the meeting, either stating that she could not remember or did not know of the irregularities at LICU. The Board found it hard to believe that she would not be aware of what was happening, particularly when it involved her family members. Her answers were generally evasive and she failed to address the concerns of the Board. She then requested that the Board give her time to review the pointers and provide a response. Days later the Board was also able to meet with Ms. Marina Gongora to question her about the concerns raised by the Credit Committee. Several Board members were aware that Ms. Gongora had raised concerns with a previous Board member, a few years

earlier, and so the Board decided to speak to Ms. Gongora about her concerns.

Ms. Gongora, to the surprise of the Board, had documented many irregularities at LICU and presented these to the Board, with the supporting documentary evidence. The report from Ms. Gongora was very troubling, as it revealed, among other things, that Mrs. Gomez had routinely taken loans on the accounts of family and friends, had issued loans to family and friends in violation of the Loan Policy and without proper collateral, had asked an employee at the time, Raul Cocom, to obtain a loan on her behalf, and had failed to declare her relationship to parties or her financial interest in loans she approved. At a Board Meeting held on 23rd April 2015, the matter of Reynaldo Novelo's resignation and compensation was discussed. Minutes of Meeting are attached at **Annex 4(a)**. Mrs. Martinez says that she left the meeting with the sentiment that something was wrong at LICU. After the meeting, the Board members began texting each other

and the general consensus was that something was very wrong at LICU, and so it needed to be investigated. The Board members were all very shocked as they had the highest regard and blind trust for Mrs. Gomez. Mrs. Martinez also learned from the newcomers to the Board that Mrs. Gomez had been texting them with a view to dividing the Board on the issue. However, the concern that there may be some impropriety on her part was too deep. The Board approached the Central Bank and the Credit Union League to get some guidance on how the Board could investigate the concerns that they had. LICU was no longer a member of the League as Mrs. Gomez had insisted that LICU leave the League in 2011. However, the Board still reached out to the League.

The Board also held several joint meetings with the Credit Committee and Supervisory Committee to review policies at LICU and to determine a way forward. At a meeting held on 24th April 2015, the Joint meeting made several decisions, including a decision that the Employee Package would be rendered null and

void and of no effect, and that going forward, only the Board could approve double increments. Mrs. Gomez was notified of this decision by letter dated 28th April 2015. A copy of the letter is attached at **Annex 5**. On 29th April 2015, the Board made a decision that Mrs. Gomez should be put on administrative leave so that the concerns could be investigated. The Board had learnt that Mrs. Gomez had scheduled a meeting with all employees of the 2 branches on that day, and so thought it opportune as it would allow the Board to meet all employees. The entire Board met at Mrs. Martinez's office, which is near LICU, and then went together to LICU. The Board was shown into Mrs. Gomez's office, where Mrs. Martinez presented the letter to her which placed her on administrative leave, with full pay. She was asked to pack her things that day, hand over all keys and assets belonging to LICU. Mrs. Martinez personally escorted her out of the building. The Board then had a meeting with the staff where they explained that Mrs. Gomez had been placed on administrative leave and that no

communication should be entertained with her so as not to interfere with the process. A copy of the letter is attached as **Annex 6**.

That very night Mrs. Gomez sent e-mails to all members of staff, who shared the e-mails with the Board. Mrs. Martinez considered this was improper since she was on administrative leave. Mrs. Martinez therefore sent a letter to Mrs. Gomez on 30th April 2015 expressing the Board's dissatisfaction at her behavior. A copy of the letter is attached as **Annex 7**. On 30th April Mrs. Martinez attended at LICU in Orange Walk where a cash count was conducted. Members of the Supervisory Committee who were present requested a report from the Emortelle System as to the cash balance. Mrs. Yadelí Urbina, the Projects Manager, advised that there would be a cash shortage. The cash count revealed a cash shortage of about \$190,000 for the period ending March 2015.

The Board then met with the Central Bank to report on the concerns it had, and the reasons why Mrs. Gomez was placed on

administrative leave. The Board took the supporting documentation that it had obtained. The Central Bank accepted the Board's explanation, and indicated it could undertake an audit of LICU's policies, but it could not do a Special Financial Investigation. It was suggested that LICU engage an auditor who could undertake a full audit. On 13th May 2015 the Central Bank began an on-site audit and were at LICU for about 3 to 4 weeks. The Board was later provided with a copy of Central Bank's report in or about November 2015 which highlighted many irregularities in the procedures at LICU. A copy of the report is attached at **Annex 8**. LICU had contacted several auditors who were not available before being referred to Mr. Cedric Flowers, Certified Public Accountant.

The Supervisory Committee then engaged the services of Mr. Flowers to undertake the special investigation in or about June 2015. Mr. Flowers spent many weeks at LICU physically going through files and reports to complete his report. Mr. Flowers wrote to Mrs. Gomez to request her assistance in addressing specific

questions about the report. However, Mrs. Gomez failed to attend, or to respond. Since there was no response to Mr. Flowers, the Board decided to write Mrs. Gomez to request her attendance to address concerns raised by Mr. Flowers. Her input was required. However, there was no response. The Board had a meeting with Mr. Flowers about the investigation and he presented to the Board his preliminary findings, with supporting documentation. Mr. Flowers findings, based on his review of the files and interview of LICU staff, supported what had been revealed to the Board by Ms. Gongora. The evidence presented to the Board was very damning. In addition to the matters of which the Board had already been made aware, Mr. Flowers presented proof that Mrs. Gomez had abused LICU's credit card, had written off loans and interest for close family and friends without Board approval and without disclosing the relationship, abused her power to obtain a loan from an employee, Raul Cocom, provided an altered cash position to the Chairperson of the Supervisory Committee, failed to report cash

shortages, and instructed the falsification of members' files. As a result, on 20th July 2015, Mrs. Martinez wrote to Mrs. Gomez requesting that she attend a meeting at LICU on 23rd July to answer queries which have arisen as a result of the ongoing audit. A copy of this letter is attached at **Annex 9**. On 21st July Mrs. Martinez received a reply from Mrs. Gomez's attorney requesting copies of reports and audits as Mrs. Gomez wished to study the reports before responding to queries. A copy of this letter is attached at **Annex 10**. As at 21st July 2015 no report had been prepared by Mr. Flowers. Mrs. Martinez therefore wrote again to Mrs. Gomez on 21st July 2015 informing that the investigation was ongoing and so no report had been received. Mrs. Martinez indicated in the letter that the investigation had reached a stage, however, where she was required to present herself, as the General Manager of LICU, to answer questions and provide guidance. A copy of this letter is attached at **Annex 11**. All other staff members had been interviewed, and it was necessary to have Mrs. Gomez to address

the concerns of the auditor and the Board, particularly since she was still a LICU employee, and although on administrative leave, she was in receipt of full salary. On 22nd July 2015 Mrs. Martinez received a letter from Mrs. Gomez's attorney informing that she would not attend the meeting without first knowing what she would be questioned about, and requesting to be provided with relevant documents. A copy of this letter is attached at **Annex 12**.

Mrs. Gomez failed to attend the meeting which was scheduled for 23rd July 2015. The Board took into account that meetings were held with Mrs. Gomez in March and April where concerns were raised with her directly. She failed to address those concerns. Particularly, the meeting of 15th April 2015 raised specific issues and she was evasive and never reported back to the Board. The Board also took account of Mrs. Gomez's refusal to respond to the Auditor, or to provide input into the audit, coupled with her refusal to attend before the Board on 23rd July 2015 and be heard in respect of the very serious concerns which the investigation had

revealed. The Board was satisfied by the investigation which had been conducted and the documentary proof presented to it by Mr. Flowers that Mrs. Gomez had violated LICU's by-laws, Loan Policy, Conflict of Interest Policy, Code of Ethics and the Credit Unions Act in the way that she managed LICU, and consequently, lost all trust and confidence in her as a manager. Prior to this, on 11th July 2015, the Board had made its decision to dismiss Mrs. Yolanda Gomez but decided to wait until Mrs. Martinez's return from her trip abroad. During this time, however, Mrs. Gomez was being given the opportunity to exculpate herself with the Special Investigator. As a result, on 24th July 2015 Mrs. Gomez was notified of her dismissal, and the letter listed the reasons which led to her termination, including that she:

- a. Instructed the write-off of principal and interest amounts for close family, friends and selected staff members without Board's approval;

- b. Orchestrated the processing of a loan for her personal gain by abusing her power to influence an employee, Raul Cocom. She then signed as the approving authority to the loan obtained under deceit. This infraction is further compounded by the breaching of the Conflict of Interest Policy by not declaring her private interest and gain from the loan;
- c. Failed to inform the Board of existing cash shortages;
- d. Provided an altered cash position report to the Chairperson of the Supervisory committee in relation to the Belmopan cash count conducted on 28th March 2015;
- e. Instructed the falsification of contact reports which were inserted into members' files; and
- f. Continuously abused the institution's credit cards for her personal use.

A copy of the termination letter is attached at **Annex 13**

In relation to the interest write-offs, the Board was particularly concerned about the interest write offs for years

ended March 2013, 2014 and 2015 because LICU has no policy for interest write-offs and Mrs. Gomez never sought the Board's approval for any interest write-off. LICU has a policy in place for loan write-offs. However, the write-off must be done with board approval. Mrs. Martinez does not deny that the Board approved write-offs of \$97,697.36 in 2012. However, she is certain that the list provided in the Minutes dated 4th April 2012, which has been disclosed by Mrs. Gomez, is not the list which was produced to the Board. Orange Walk Town is a small community, and as a result, Mrs. Martinez says that she knows the members of Mrs. Gomez's family. Other members of the Board also know Mrs. Gomez's family. Mrs. Martinez has consulted with 2 other members of the Board who were present at the meeting in 2012, and who still remain on the Board, who confirm that they did not see and did not approve loan write-offs as follows:

g. \$24,312.61 for Sandra Reyes, Mrs. Gomez's sister;

- h. \$16,344.79 for Esther Rosado, Mrs. Gomez's sister-in-law
- i. \$9,922.39 for Martin Rosado, Mrs. Gomez's nephew
- j. \$5,404.54 for Ida Therese Rosado, Mrs. Gomez's niece

The Reyes and Rosado family are known to Mrs. Martinez and she says that she certainly would not have authorized loan write-offs, not only because she knows Mrs. Gomez could collect from her immediate family members, but also because of the size of the loan write-offs. These 4 write-offs accounted for approximately 60% of the loans written off. These would not have gone unnoticed to the Board members. Mrs. Gomez always collected the spreadsheet listing from Board members at the end of the meeting and so Mrs. Martinez does not have the spreadsheet which was supposedly approved in 2012. However, Mrs. Martinez says that she knows that while the Board did authorize over \$97,000 in loans to be written off in 2012, the Board did not authorize write-off for the 4 loans identified above.

The facts to support the allegations set out in the termination letter were provided by Ms. Gongora, who has filed a statement in these proceedings, and Mr. Cedric Flowers, whose report confirms the allegations. Allegations are also substantiated by the statement of the current General Manager, Mrs. Yadelí Urbina, from documents extracted from LICU's files and Emortelle System, and from the statements of other employees who have given evidence on behalf of LICU. The Board was in possession of compelling allegations against Mrs. Gomez, and afforded her the opportunity to attend before the Board and be heard in respect of the Board's concerns, which had arisen as a result of the ongoing investigation. However, Mrs. Gomez failed to attend the meetings, notwithstanding that she was still LICU's General Manager and so was required to follow the Board's directive. On 20th August 2015 LICU issued a statement to members to address several concerns raised by members, including the delay in the 2015 Annual General Meeting, and the termination of Mrs. Gomez's employment. A copy of this statement is attached at **Annex 14**. In or about October 2015 Mr. Flowers completed

his report and presented it to LICU. A copy of the report is attached at **Annex 15.**

36. Mrs. Martinez says that she has seen the claim for loss made by Mrs. Gomez arising from her termination. Mrs. Gomez's gross salary at the time of her termination was \$13,370.11 per month, and her net salary was \$10,027.59 per month. No severance was paid to Mrs. Gomez since she was terminated for mismanagement. As to the claim for damages, this is discretionary and is not automatically paid. Bonus is determined based on the employee's performance, and affordability to LICU. Mrs. Gomez is not entitled to any bonus on account of her misconduct. Likewise, the double increment claimed is not automatic, but is within the sole discretion of the Board. No determination was made by the Board as to Mrs. Gomez's entitlement to double increment. At the time she was terminated Mrs. Gomez had contributed \$53,249.78 from the Pension fund, and owed \$59,300. She did not therefore have any entitlement under the Pension Fund since she could

only collect on LICU's contribution if her employment ended when she was in good standing.

Cross-examination of Mrs. Martinez by Mr. Bradley

Mrs. Martinez explained that the role of the Board of Directors was to have general supervision of the affairs of the Credit Union and to ensure good governance as it is a financial institution and a regulated entity. She agreed that at the material time, the Board of Directors of LICU was made up of experienced people trained in accounting, finance, business and in the Credit Union movement. They were people who had their own businesses, were employed by the Government of Belize or by other private business as their livelihoods. The members of the Board were volunteers. The Board had oversight over the activities of upper management and the General Manager would report to the Board. Mrs. Martinez stated that the conduct of staff was governed by certain policies at LICU such as the Code of Ethics Policy and the Conflict of Interest Policy. She agreed that paragraph 1.1.7 of the LICU Code of

Ethics dealt with the removal from office of an employee and provides that failure to declare a conflict of interest is sufficient grounds for removal from office. She also stated that paragraph 4.1.1.8 on *“Criminal Acts”* says that *“All Directors, committee members and staff must refrain from all criminal acts such as bribery, embezzlement, forgery, theft, etc. Evidence of such activity represents sufficient grounds for immediate dismissal of an employee.”*

She was asked about Article VII which dealt with violations of LICU’s Conflict of Interest Policy which read as follows:

“If the Board has reasonable cause to believe that an insider of the Credit Union has failed to disclose actual or possible conflicts of interest, including those arising from a transaction with a related interested party, it shall inform such insider of the basis for this belief and afford the insider an opportunity to explain the alleged failure to disclose. If, after hearing the insider’s response and making further investigation as warranted by the circumstances, the Board determines that the insider has failed to

disclose an actual or possible conflict of interest, the Board shall take appropriate disciplinary and corrective action.”

Mrs. Martinez agreed that this policy was in place at LICU at the time that Mrs. Gomez was the General Manager. Mrs. Martinez admitted that she had difficulties with the Employees Benefits Package at LICU because persons were being terminated for cause but they were still receiving benefits from LICU. She said that those sections of the Employee Benefits Package would be rendered null and void where employees were terminated for misconduct; she also said that only the Board could approve a double increment.

Mrs. Martinez said that the Termination of Services section of the LICU Employees Employment Package, along with the Code of Ethics and the Conflict of Interest Policy governed the terms of how an employee could be dismissed from LICU. She agreed that this section provided that service of an employee could be terminated by one month's notice given by either side, and that where an employee was terminated for reasons

other than disciplinary action, that employee was entitled to severance pay. Disciplinary action included suspension on reduced pay and suspension without pay and termination. Mrs. Martinez agreed that it was well within the power and authority of the Board to discipline a member of staff, including termination, under this provision. She was referred to the following section:

“Save in cases where the exigencies of the situation necessitate the immediate suspension of an employee, the Credit Union shall, before any disciplinary action is taken against an employee, give to the employee notice in writing of the complaints and invite him/her to make a written and/or oral response thereto within two clear working days of the receipt of the said notice or within any other reasonable period of time.”

“Where it becomes necessary to pursue an investigation, the employee shall be paid 50% of his/her basic salary during the period of the investigation. In the event the employee is found not guilty, then the remaining 50% of salary will be paid.”

Mrs. Martinez agreed that as President of the Board it was within her power to place an employee on administrative leave. She placed Mrs. Gomez on administrative leave and paid her 100% of her salary; Mrs. Gomez therefore remained an employee of LICU during that period. Mrs. Martinez said that she expected that Mrs. Gomez would have cooperated with the investigative process as she was on leave and receiving 100% of her salary from LICU. Mrs. Martinez agreed that based on what the allegations were against Mrs. Gomez these were exigent situations referred to in this policy which necessitated the immediate suspension of Mrs. Gomez. She heard of these allegations against Mrs. Gomez during the months of March 2015 to July 2015 during which time investigations were conducted. She agreed that it took LICU's Board five months to make a determination to fire Mrs. Gomez. During this time LICU Board interviewed members of staff such as Ms. Gongora and members of the Credit Committee, and reached out to the Credit Union League for guidance. There were five Board meetings held, prior to the decision taken to terminate her. Mrs. Martinez said that Mrs. Gomez was

only present at one of those meetings, the one on 15th April 2015. Special Board Meetings were held on 7th April 2015 and 9th April 2015 to deal specifically with concerns raised, and Mrs. Martinez said that Mrs. Gomez was not at those meetings. In the month after the Board first learnt of these allegations, Mrs. Martinez said that Mrs. Gomez was still going to work while LICU was gathering information; she was still functioning as the General Manager as no disciplinary action had been taken against her at that time. At the meeting of 15th April 2015, Mrs. Martinez said that she found that Mrs. Gomez's responses were unsatisfactory and evasive. After leaving that meeting, Mrs. Gomez felt that the situation was far worse than she had originally assumed in the early part of March. Mrs. Martinez said that Ms. Gongora provided the Board with documentation substantiating the allegations against Mrs. Gomez regarding breaches of the Conflict of Interest Policy and other irregularities. At this point the Board still did not take disciplinary action against Mrs. Gomez. Instead the Board held further meetings and consulted with the Central Bank and the Credit Union League. The Board

was also having meetings with its Credit Committee and its Supervisory Committee. On the 28th April 2015, the Board decided to place Mrs. Gomez on administrative leave, approximately six weeks after they first learnt of these allegations.

On April 30th 2015, Mrs. Martinez attended a cash count at LICU done by the Supervisory Committee, and she learnt that there was a shortage of \$190,000 in cash. She agreed that in her experience at the Credit Union, there can be no greater violation of the trust of members than to have their money go missing. Members of the LICU Supervisory Committee and members of the Board met with the Governor of the Central Bank on the 5th May 2015 after Mrs. Gomez had been suspended. As a result of that meeting, the Central Bank came on site at LICU and conducted its own special examination. LICU also engaged a private Accountant, Mr. Cedric Flowers, to do its own investigation specifically into these irregularities. Mrs. Martinez said that the Board was given a copy of Mr. Flowers's report in October 2015 and the Central Bank report

in November 2015. At the time the Board received copies of these reports, Mrs. Gomez no longer worked for LICU. Apart from the letter that Mrs. Gomez wrote to the Board on 27th March 2015 and the meeting that she attended on 15th April, Mrs. Gomez did not cooperate or participate in the investigation at all; she never made herself available for any kind of questioning. The Board wrote Mrs. Gomez twice and the Auditor Mr. Flowers also wrote to her but she did not respond. Mrs. Martinez said that in all these circumstances the Board felt justified in terminating Mrs. Gomez's employment, as they had lost all confidence in Mrs. Gomez as General Manager of LICU.

37. Cross -examination of Mrs. Martinez by Mr. Courtenay SC

Mrs. Martinez confirmed that she was the President of the Board of Directors since December 2013. She stated that the primary responsibility for overseeing loans rests not with the Supervisory Committee, but with the Credit Committee; she said that the Credit Committee consisted of volunteers who do not work for the Credit Union

who go in to check the loans. There are a lot of loans and it would take the Credit Committee a long time to review each and every loan. The Supervisory Committee would go through some loans to make sure that everything is in order. The members of the Credit Committee at the material time were Isael Cajun (Chairperson), Ana McLaughlin and Froila Cuello. None of those persons have been called as witnesses for the Credit Union, nor has the Credit Union received any report from the Credit Committee or from the Supervisory Committee. Melissa Leiva is still an employee at LICU but she was not called as a witness.

Mrs. Martinez agreed that on the 11th of July, 2015 the Board had already made its decision to dismiss Mrs. Gomez, but they decided to wait until Mrs. Martinez returned from her trip abroad; Mrs. Martinez said that at that time, she wanted to give Mrs. Gomez the opportunity to exculpate herself. She said the Whistleblower Report was not produced to the court; Marina Gongora who prepared the report was to be called as a witness. Mrs. Martinez said that when the Board received this report

with its supporting documentation from Mrs. Gongora they decided to get more into the investigation because they needed to find out more what was happening. On 26th March 2015, there was a Board meeting at which time Mrs. Gomez was present and concerns came up as to certain loans that were being given to related parties and that was brought up. The following day Mrs. Gomez wrote Mrs. Martinez as President of La Inmaculada expressing her feelings as to how the Board went about dealing with this at the meeting. She felt that The Board was not in the same line as her meaning that the Board should not be seeing this as something wrong. Based on this 2 page letter from Mrs. Gomez, Mrs. Martinez said that the Board then decided to meet with the Credit Committee to find out what was really happening. The Board made the unanimous decision to place Mrs. Gomez on administrative leave. This decision was carried into effect by the President and the entire LICU Board, the Supervisory Committee and the Credit Committee (all 12 members except one person who could not attend) took a letter to Mrs. Gomez personally at the office at around 3:30pm or 4:00pm that

evening. Mrs. Martinez recounted how the entire incident unfolded: Mrs. Martinez said that they arrived at the Credit Union, asked for the door to be open, entered and asked to see Mrs. Gomez. The letter was in Mrs. Martinez's hands. They went up the flight of stairs and knocked on Mrs. Gomez's door and then entered. Mrs. Gomez opened the door for them, they bade her the time of day, and presented themselves saying that they came to see her because the Board had made a decision to put her on administrative leave effective immediately. Mrs. Martinez handed the letter to Mrs. Gomez. They asked Mrs. Gomez to hand over all keys to LICU's vehicles, her ID cards, LICU credit cards, laptop and all property she had that belonged to LICU. She was then escorted out of the premises and taken to her home. After Mrs. Gomez's departure, the Board met with LICU staff and explained to them what had happened; staff were told not to have any contact with Mrs. Gomez.

On 5th May 2015, Mrs. Martinez as President of the Board wrote a letter to Central Bank of Belize. She had first contacted the Central Bank

around the 27th or 28th April 2015 when she called and spoke to one Neri Matus explaining that LICU had allegations of mismanagement. The Board engaged Mr. Cedric Flowers to do an investigation under advice of the Central Bank. The Central Bank did their own investigation to see if policies were being complied with. The Board met with Mr. Flowers on 22nd July 2015 where he presented his preliminary findings; Mrs. Martinez said that at that meeting Mr. Flowers presented evidence which in the Board's estimation corroborated what Ms. Gongora had said.

Mrs. Martinez did not agree with Counsel's suggestion that Mrs. Martinez wanted to explain herself. She said that Mrs. Gomez was invited to meet with the Board to assist them with the investigation. It was Mrs. Gomez's duty to participate as she was still a fully paid employee of LICU earning her full salary every month. Mrs. Martinez said that the reason that the Board did not send any reports to Mrs. Gomez was that the reports were not yet finished; she believed the reports were

not complete so there was no need for the Board to send those to Mrs. Gomez. Mrs. Martinez conceded that Mrs. Gomez consistently asked for documents so that she could respond to the allegations against her. Immediately after the Board meeting on 24th July 2015, the Board terminated Mrs. Gomez. Mrs. Martinez disagreed with Counsel's suggestion that the Board terminated Mrs. Gomez without giving her a chance to exculpate herself.

Mrs. Martinez said that the Board would not have approved loans to four people who are Mrs. Gomez's relatives. Those were Mrs. Gomez's sister, sister-in-law, nephew and niece. She said that Orange Walk is a small community where people know each other; the Board would never have approved those loans knowing that these are related parties and there was a non-disclosure by Mrs. Gomez as to her relationship to these persons. Mrs. Martinez said that the Board took a decision to terminate Mrs. Gomez based on her mismanagement under section 30(1) of the Credit Unions Act. She rejected Counsel's suggestion that the Board had

no power to put Mrs. Gomez on administrative leave nor power to terminate her services.

Mrs. Martinez said that she could not recall who decided to open a branch of LICU in Belmopan. She said that the General Manager has full management over the employees of LICU; the Board deals exclusively with the General Manager according to the organization's structure. She reluctantly agreed with Counsel's suggestion that shortfalls in cash at the LICU Belmopan Branch continued after Mrs. Gomez had left. Mrs. Martinez said that Ms. Leiva was still employed at LICU, even though Mr. Flowers' report found her responsible for irregularities; she said this is because Ms. Leiva explained that she had simply been following instructions given to her by Mrs. Gomez. Mrs. Martinez said there was no need for the Board to go to a Special General Meeting of LICU in order to dismiss Mrs. Gomez.

38. Evidence of Yadelí Urbina

Ms. Yadelí Urbina says that she is presently the General Manager at La Inmaculada Credit Union Limited (“LICU”). She has been employed with LICU for over 10 years. She knows Mrs. Yolanda Gomez as she was the General Manager of LICU up until 24th July 2015 when her employment was terminated by LICU. Ms. Urbina was the Projects Manager at LICU from 2010 and worked closely with Mrs. Gomez. During the investigation, many irregularities in transactions involving Mrs. Gomez or in which she had an interest were exposed. Most staff had heard about some of these instances during the past years however, no one felt that they could question her actions.

Code of Ethics

The General Manager of LICU has an obligation to uphold LICU’s Code of Ethics, and accordingly, is required to:

- k. Ensure that she always acts in the best interest of LICU (1.1.1(6))
- l. Ensure that controversial decisions involving conflict of interest are carefully documented (1.1.1(8))
- m. Conduct the affairs of LICU for the best interest of members at large and to avoid conflict of interest, real or implied (1.1.4)
- n. To declare her interest directly or indirectly in any contract or transaction to which LICU is or will be a party (1.1.5)
- o. To disclose the nature and extent of any benefit or consideration derived, directly or indirectly, because of such contract or transaction (1.1.5)
- p. To refrain from voting in respect of any contract or transaction where there is a conflict of interest (1.1.5)
- q. To refrain from processing transactions on her own account, or accounts in which she is a joint owner, custodian or trustee, or if the account belongs to a relative (2.1.1)
- r. To disclose all potential conflicts of interest (2.1.1)

- s. Not to abuse personal privileges of the Office (4.1.1)
- t. To refrain from any criminal activity, including bribery, embezzlement, forgery, theft etc. (8)

A conflict of interest is defined in the Code of Ethics as being a situation where a director or officer's self-interest may compromise, or appear to compromise his legal and moral obligation to LICU. The Code of Ethics further provided at 1.1.7 that *"failure to declare a conflict of interest is sufficient grounds for removal from office"*, and at 8 that evidence of criminal activity *"represents sufficient grounds for immediate dismissal of an employee."* A Copy of the Code of Ethics is attached at **Annex 1**.

Conflict of Interest Policy

Although LICU has a Code of Ethics, it also has in place a comprehensive Conflict of Interest Policy. A copy of the Conflict of Interest Policy is attached as **Annex 2**. At Article II of the Conflict of

Interest Policy, an employee of LICU is identified as an “insider”, and a conflict of interest is said to arise “when an insider’s stake in the transaction is such that it reduces the likelihood that an insider’s influence can be exercised impartially in the best interest of LICU.” The Conflict of Interest Policy gave rise to the following obligations on the part of Mrs. Gomez:

- a. A duty to disclose to the Board all material facts regarding her interest in a transaction (Art. III, (1))
- b. To complete an Annual Disclosure and Compliance Statement in which she would disclose her financial interests and family relationships that could give rise to a conflict of interest (Art. VI)

Also as per the Credit Union Act revised edition 2003 page 35 states:

33. (1) A director or officer of a credit union who:

(a) is a party to a material contract or a proposed material contract with the credit union; or

(b) has a material interest in or a material relation to any person who is party to a material contract or proposed material contract with the credit union, shall disclose in writing to the credit union, or request to have entered in the minutes of meetings of directors, the nature and extent of that interest. Clarification of who is considered an officer was amended as per the Credit Union Act revised edition 2007 page 18 which states:

“2. Section 2 of the principal Act is hereby amended by inserting the following definitions in their proper alphabetical order:

"director" means a member of the Board of Directors;

"officer" or "official" means an employee of the credit union and does not include a director or a member of the Supervisory Committee or a member of the Credit Committee.'

Loan Policy

LICU also has in place a Loan Policy. A copy of the Loan Policy dated 8th February 2009 is attached as **Annex 3**. The Loan Policy was revised in April 2015, but the revised policy is not applicable since the instant claim concerns transactions that occurred prior to April 2015. Under the terms of LICU's Loan Policy, the Credit Advisor is given authority to approve loans up to \$15,000, and the Manager is given authority to approve loans up to \$40,000. These sums were subsequently increased in 2012 to authorize approvals up to \$25,000 and \$75,000 respectively. All loans above the Manager's limit must be submitted to LICU's board for approval. Although the Manager was given the authorization to approve loans, the Loan Processing Procedures set out in the Loan Policy

expressly provided that all loans above \$25,000 should be reviewed by the Management's Credit Committee, and a thorough Credit Rating Analysis is to be executed. The Management's Credit Committee is comprised of the General Manager, the Credit Manager, 2 Credit Advisors and 1 Field Officer. The General Manager's authority to grant a loan was therefore conditional upon the approval of the Management's Credit Committee. The Loan Policy also made specific provision for write-offs. A write-off in the Loan Policy is described as a **"decision to remove a loan from the books where collection is considered to be unlikely."** Clause 15 provides that an account qualifies for consideration for write-off where **"one year has passed since any payment was received and collection procedures have been exhausted, unpromising or impractical"**. It is not therefore every delinquent loan that qualifies for write-off. By clause 15, all write-offs must be approved by the Board, and notwithstanding the write-off, collection efforts should continue even after the loan has been written-off. Consistent with LICU's by-laws, the Loan Policy expressly provided at clause 17 that officers and

employees of LICU should not receive loans on terms and conditions which are more favorable than to other members, and they are not permitted to borrow in excess of the value of their shares and deposits unless with proper collateral, and upon the unanimous vote of the Board of Directors, Credit Committee and Supervisory Committee sitting together.

Interests Write-Offs

The Loan Policy authorizes the write-off of delinquent loans. LICU has no policy that authorizes the write-off or waiver of interest. Notwithstanding the absence of such a policy, Mrs. Gomez had authorized several interest write-offs as follows:

- u. For the year ended 31st March 2013, interest was written off
26 accounts totaling \$2,700.78;

v. For the year ended 31st March 2014, interest was written off 26 accounts totaling \$79,353.74; and

w. For the year ended 31st March 2015, interest was written off 17 accounts totaling \$13,532.31.

These write-offs were confirmed in the Special Report prepared by the Expert Witness, Mr. Cedric Flowers. Copies of the list of write-offs extracted from LICU's Emortelle System is attached at **Annex 4**. On a review of the interest write-offs within the year ended 31st March 2014, write-offs were approved specifically for the following accounts:

x. \$9,059.42 for Roy Anthony Rosado, Mrs. Gomez's brother;

y. \$15,672.60 for Roy Roberto Rosado, Mrs. Gomez's nephew

z. \$3,140.23 for Roy Roberto Rosado, Mrs. Gomez's nephew

aa. \$845.20 for Minerva Georgina Sabido, the wife of Hector Sabido, LICU's Loan Monitoring Officer at the time

bb. \$45.42 for Minerva Georgina Sabido, Hector Sabido's wife

cc. \$1,918.48 for Hector Rene Sabido Jr., Hector Sabido's son

dd. \$1,885.31 for Minerva Sabido, Hector Sabido's wife

ee. \$583.67 for Minerva Georgina Sabido, Hector Sabido's wife

Snapshots of the aforementioned accounts showing the interest write-offs are attached at **Annex 5**. The Expert Witness had also identified in his report that for the year ended 31st March 2012, \$4,519.94 had been written off in interest on the account of Olga Hernandez, and \$2,524.34 was written off in interest on the account of Miguel Garcia (see pages 15 to 16 of the Report).

Roy Roberto Rosado was raised from an early age by Mrs. Gomez. The snapshot of Roy's Account at **Annex 6** shows that the interest write off of \$18,812.83 were effected as follows:

ff. 15th May 2013 - \$15,672.60

gg. 30th May 2013 - \$3,000

hh. 30th May 2013 - \$140.23

Notwithstanding that Mrs. Gomez considered it appropriate to write off \$18,812.83 in interest for a nephew whom she raised like a son, indicating some delinquency on his part, the account shows that a loan facility was extended to Roy Roberto Rosado on 13th July 2013 in the sum of \$13,000. After the deduction of service charges, the entire balance of \$12,935 was paid to Mrs. Gomez. Copies of the Loan Application, Promissory Note, and Receipts related to this loan, as well as the snapshot of the accounts of Mrs. Gomez and Roy showing the movement of the loan proceeds, are attached as **Annex 7**. The loan note was subsequently increased to \$40,000 by the amendment of the member's loan application and Promissory Note, which not only constituted a violation of LICU's Code of Ethics, but in violation of the Loan Policy, the increase was not submitted to the Management's Credit Committee for consideration. The snapshot at **Annex 6** shows that the \$27,000 to create an indebtedness of \$40,000 was added to Roy's loan as the system shows that it was approximately 1 hour after the loan was

initially issued in the sum of \$13,000. This additional \$27,000 was not therefore subject to any review by the Management's Credit Committee. Aside from being a close relative, which raises the potential for conflict of interest, Mrs. Gomez had a financial interest in the account of Roy Roberto Rosado. This conflict was not disclosed, and yet, she unilaterally approved interest write-offs on the account of Roy Roberto Rosado, which would certainly accrue some benefit to her. Mrs. Gomez's financial interest in this account can be deduced from an e-mail exchange between herself and Mr. Sabido on 6th August 2014, where Mr. Sabido indicates that Roy's account would appear on the delinquency list for July 2014, and queried whether an extension to August or September should be granted. Mrs. Gomez replied "Pls do, by next two weeks I should be clearing off, thank you", thereby implying that the loan was hers. A copy of the e-mail exchange is attached at **Annex 8**.

A Contact Report was placed in Roy's file, dated 7th March 2014, referencing a telephone conversation in which Roy

requested an extension of the payment date of his loan facility to 30th September 2014. Mrs. Gomez's comment, as stated in the Report, is to "Please proceed." A copy of the Contact Report is attached at **Annex 9**.

However, if such an extension had been granted in March 2014, as the Contact Report indicated, Mr. Sabido would not have raised the delinquency with Mrs. Gomez in his e-mail of 6th August 2014. Also, the Contact Report is not signed by the member, which is irregular, and leads to the belief that the Contact Report was fabricated and placed on Roy's file to justify the extension granted retrospectively by Mrs. Gomez in August 2014, in respect of an account in which she had a financial interest, to avoid the account being placed on the delinquency list for July 2014.

As earlier stated, LICU has no policy for interest write-offs, and so Mrs. Gomez acted without proper authorization in

proceeding to effect interest write-offs. Even if the standards set out in the Loan Policy were applied, the accounts mentioned above would not qualify as:

- ii. There was no board approval which is mandatory for any write-off and;
- jj. a write-off should only be initiated where “one year has passed since any payment was received and collection procedures have been exhausted, unpromising or impractical”, thereby enabling one to come to the view that the loan is uncollectible.

Roy Roberto Rosado and Roy Anthony Rosado are close family members of Mrs. Gomez and so she could have located them and pursued recovery of these interest. Furthermore, the fact that Mrs. Gomez authorized a further loan facility provided to Roy Roberto Rosado 2 months after his interest was written off confirms that she considered he had a means of income and the

capacity to repay, and his account was not in any delinquency, contrary to what the write off would suggest.

As to the accounts of Minerva Sabido and Hector Sabido Jr., they are immediate family members of a previously employed senior LICU staff member. Their loans were delinquent, but certainly collection efforts could not have been exhausted since Hector Sabido was employed at LICU.

Ms. Olga Hernandez is Mrs. Gomez's domestic helper and it was common knowledge at LICU that Mrs. Gomez had taken loan facilities on Ms. Hernandez's account. Not only could the relationship with Ms. Hernandez give rise to a conflict of interest, but seemingly Mrs. Gomez also shared a financial interest in the account of Ms. Hernandez.

Miguel Garcia was not an employee of LICU but became an employee shortly after the write-off interest on his account. As a

result of the unauthorized interest write-offs, LICU lost a total of \$95,586.83.

Loan Write-Offs

LICU's Loan Policy made express provision for loan write-offs, subject to the approval of LICU's board. In practice, the Loans Monitoring Officer and Credit Advisors would review delinquent accounts and prepare a list which is submitted to LICU's Loans Monitoring Officer, who then forwards it to the General Manager. The list is then presented by the General to the Board for approval. In his Expert Report, Mr. Cedric Flowers identified that 94 loans had been written off in 2012, totaling \$97,693.36 (page 28). This finding was based on a list provided by the then Loans Monitoring Officer, Hector Sabido. A copy of the list is attached at **Annex 10**. On a review of the list for 2012, the following loan write-offs raise concerns:

kk. \$24,312.61 was written off loan of Sandra Reyes, Mrs.

Gomez's sister;

ll. \$16,344.79 was written off loan of Esther Rosado, Mrs.

Gomez's sister-in-law

mm. \$9,922.39 was written off loan of Martin Rosado, Mrs.

Gomez's nephew

nn. \$5,404.54 was written off loan of Ida Therese Rosado, Mrs.

Gomez's niece

Snapshots of the aforementioned accounts showing the loan write-offs are attached at **Annex 11**.

Under LICU's Code of Ethics, Conflict of Interest Policy, the Credit Union Act and its Loan Policy, Mrs. Gomez had an obligation to disclose her close family relationship to the Board prior to any loan write off. There was a heightened obligation on the part of Mrs. Gomez because in 2004 and 2005 she had obtained joint loan

facilities with Sandra Reyes in the sums of \$30,000 and \$25,000 respectively, and therefore had some financial interest in Sandra's loan accounts. No such disclosure is reflected in the minutes of any LICU Board Meeting. Under LICU's Loan Policy, a write-off should only be initiated where "one year has passed since any payment was received and collection procedures have been ***exhausted, unpromising or impractical***", thereby enabling one to come to view that the loan is uncollectible. Due to the very close family relationship Mrs. Gomez has to the named persons, being her sister, sister-in-law, niece and nephew, it is not likely that collection efforts could have been "exhausted, unpromising or impractical". Mrs. Gomez knew where and how to contact her family members to get them to pay.

More fundamentally however, Sandra's loans were secured by \$7,464.43 shares held by Mrs. Gomez. These shares were not applied against the liability, and there were no efforts to recover

the delinquent loan facility from either Sandra Reyes or Mrs. Gomez. Furthermore, in a Contact Report dated 6th April 2012, Mrs. Gomez committed to paying \$300 per month towards Sandra's loan. A copy of the Contact Report is attached as **Annex 12**. The fact that LICU had made no effort to collect while under Mrs. Gomez's management is confirmed by the fact that a letter was sent to Esther Rosado on 19th February 2016, and Mrs. Rosado attended at LICU to make arrangements in respect of this loan. This is confirmed by the Contact Report dated 21st March 2016, where Mrs. Rosado confirmed that she is employed. A copy of the letter and Contact Report are attached at **Annex 13**. It is also noteworthy that LICU did not apply shares of Ida Rejon, who signed as co-maker, against the delinquency of Esther Rosado's loan. A copy of Esther's Loan Application which shows Ida Rejon as co-maker is attached at **Annex 14**. The write off of loans to Mrs. Gomez's close family members accounted for \$55,984.32 of the total loans of \$97,693.36 written off in 2012. These 4 loans accounted for almost

60% of the 94 loans written off in 2012. These loan write-offs account for a loss of \$55,984.32 to LICU.

Use of member's accounts

It was common knowledge at LICU that Mrs. Gomez used the accounts of several family members and friends to obtain loans for herself. This fact became well known after it was shared during the investigation that she made continuous monthly payments towards these loans every time the payroll was prepared.

Olga Hernandez

Ms. Urbina says that she has read the Witness Statement of Ms. Marina Gongora, Legal Officer/Credit Advisor at LICU, and notes that she has given details of several accounts over which Mrs. Gomez exercised control and on which loans were obtained. However, there are a couple other accounts which were not referred to by Ms. Gongora. Olga Hernandez, like Benita Ayuso, is a domestic helper of

Mrs. Gomez and her account was likewise used by Mrs. Gomez to obtain loan facilities. On 13th December 2013, Olga Hernandez/George Cummings applied for and obtained a loan in the sum of \$75,000.00. Copies of the Loan Application and Promissory Notes are attached at **Annex 15**. This loan facility was granted and approved by Mrs. Gomez although the Loan Application demonstrated that the members total assets was \$4,164, and they had liabilities of \$52,887.55, with no real property to offer as collateral security. Although this loan was taken on the account of Ms. Hernandez, monthly loan payments were made by Mrs. Gomez when payroll was processed.

Ms. Urbina states that she has read the witness statements of Mrs. Yolly Trejo and Mr. Jeremias Tun, who both confirm that adjustments were made to Ms. Hernandez's loan account on 18th September 2014 to process a loan repayment, based on instructions received from Mrs. Gomez, and purportedly, using funds that belonged to Mrs. Gomez. LICU's records confirm that adjustments

were made on 18th September 2014. However, the report from the auditor stipulates that there are no corresponding large cash deposit around this period to confirm that a cash payment of \$79,514.94 was received by LICU.

Sandra Reyes

Ms. Urbina says that she is also aware that Mrs. Gomez obtained loan facilities on the account of her sister, Sandra Reyes. Again, this fact was known to staff at LICU because Mrs. Gomez sometimes paid this loan by way of payroll deduction. LICU's records indicate that Sandra Reyes/Yolanda Gomez obtained a loan from LICU in the sum of \$30,000 on 18th May 2004. This loan was drawn on the Account No. 2692 in the name of Sandra Reyes. On 31st March 2005 this loan was refinanced to \$37,922.33, notwithstanding that the loan disbursed in May 2004 was delinquent. Copies of the Loan Applications and Sandra's account statement are attached at **Annex 16**. This loan remains in default with a balance of \$34,661.56. On 1st July 2005,

Yolanda Gomez signed as co-maker for a loan of \$25,000.00 drawn on Account No. 10461 in the name of Jose/Sandra Reyes. Copies of the Loan Applications are attached at **Annex 17**. On 31st March 2012, the principal loan balance of Sandra Reyes which stood at \$24,312.61 was written off, and the appropriate changes were made to LICU's Emortelle System.

Cash shortage

Many policies were also very lax under Mrs. Gomez's management, and the lax policies seemingly have contributed significantly to losses that LICU has sustained. LICU established a branch in Belmopan on or about 1st October 2013, but did not have an account with a bank in Belmopan at that point. As a result, large amounts of cash had to be physically moved from Orange Walk to Belmopan to sustain LICU's operations in Belmopan until an

account was established with a bank, in or about February 2014. Between the period October 2013 to February 2014, proper policies were not in place for the movement of cash. The cash was usually counted by the Operations Manager, Mrs. Melissa Leiva in Orange Walk, and documented on a cash voucher with a breakdown of the cash. However, the voucher was left in Orange Walk. The cash was usually transported to Belmopan by a LICU employee, with little or no accompanying documentation to confirm what amount was being transported. There was no requirement to count the cash on receipt in Belmopan, or to sign confirming the amount received. It was just assumed that the cash was received, without question. There was absolutely no check and balance in place, notwithstanding that it was large amounts of cash that were being transported between the two branches. As a result of these lax policies, it was discovered that there was a cash shortage in Belmopan. Sometime in January 2015 Mrs. Gomez held a meeting with Ms. Yadeli Urbina, the System Administrator Mr.

Miguel Garcia, and the Operations Manager Mrs. Melissa Leiva, where she advised them of the cash difference and directed them to reconcile the difference. On 2nd March 2014, Mrs. Gomez copied Ms. Urbina on an e-mail where she confirmed that Mrs. Leiva had been unable to balance her cash and referenced that the transfer of funds to Belmopan may account for the shortage, and suggested that they go to Belmopan to inquire into the matter. On 28th March 2015, members of the Supervisory Committee conducted a physical count of the cash. This exercise disclosed that about \$77,092.02 was available in cash at LICU's Belmopan branch. However, the Emortelle System reported that Belmopan should have had \$162,677.95 more than the actual cash counted. The username SYS, which is used by Miguel Garcia, made changes on the Emortelle System to reduce the cash balance on the books by \$162,677.95 effective 28th March 2015, so that a report would show that the system's report would match the actual cash count of \$77,029.02. E-mail exchanges between Mrs. Gomez and Mr.

Garcia suggest that the adjustment, and falsification of the report, was at the request of Mrs. Gomez. The first report forwarded by Mr. Garcia on 31st March 2015 reported the correct balance of \$244,153.71, and it was the second e-mail which was sent approximately 20 minutes later, that was amended. That second report was submitted to the Credit Committee shortly after receipt, so that the Committee would not be aware of the cash shortage of \$162,677.95. The exact amount of the overall shortage was not verified until the Expert Witness, Mr. Cedric Flowers, Certified Public Accountant, was hired to conduct a Special Report into LICU, and in his report dated 20th October 2015, confirmed that there was a cash shortage of \$255,935.31.

Use of LICU's Credit Card

LICU has credit cards with Atlantic Bank and Belize Bank. While Mrs. Gomez was the General Manager, these cards were kept by Mrs. Gomez and Mrs. Leiva. Ms. Urbina would on occasion

have access to the cards for purchases for LICU. Mr. Cedric Flowers, in his Expert Report, highlighted that both Mrs. Gomez and Mrs. Leiva used LICU's Credit Cards for personal purchases. The Expert produced a statement for each card, which contained purchases for Mrs. Gomez totaling \$67,309.74. Copies of these statements are attached at **Annex 18**. During the investigation it was noted that once or twice Ms. Urbina made small payments which were done during travels representing LICU on the card through Mrs. Gomez. Ms. Urbina has been able to locate the corresponding credit card statements, which are attached at **Annex 19**.

Ms. Urbina says that she became aware of the extent of use of the cards by Mrs. Gomez for her personal purchases during the investigation. This constituted an abuse of privilege, which violated LICU's Code of Ethics.

Termination

Report of Mrs. Gomez's mismanagement of LICU were addressed to the Board of Directors and in June 2015, Mr. Cedric Flowers was engaged to conduct a Special Investigation into LICU. Mrs. Gomez was placed on administrative leave on 29th April 2015, while the Board investigated allegations of misconduct and mismanagement as outlined in this statement. Mrs. Gomez's employment with LICU was terminated on 24th July 2015 as the Board of Directors stated that they had lost trust and confidence in her management of LICU. A copy of the termination letter is attached at **Annex 20.**

39. Cross-examination of Ms. Yadelí Urbina by Mr. Bradley

Ms. Urbina explained that when she said that no one felt that they could question Mrs. Gomez, she meant that they did not feel that they as employees could inquire further on anything that was not particularly related to them, even when some of these things were against stated LICU policies. The post of General Manager is the highest ranking post at

LICU. The General Manager would often sit in on Board Meetings and would advise the Board as to the day to day occurrences at the Credit Union. Ms. Urbina agreed that the General Manager as the highest ranking full time employee of LICU has significant responsibilities to ensure that the policies are complied with; she also agreed that the General Manager was to be part of the control and oversight of the Credit Union. As General Manager of LICU, Ms. Urbina agreed that she was well-acquainted with the Code of Ethics, the Conflict of Interest Policy and the Loan Policy. She conceded that the Code of Ethics provides for a duty of disclosure and also provided that failure to make a declaration of this conflict of interest is a ground for removal from office. She agreed that the Code of Ethics also provided that criminal activity was sufficient grounds for immediate dismissal of an employee. The terms 'insider', 'conflict of interest', 'family relations' are all defined in the Conflict of Interest Policy. This policy also sets out the disciplinary and corrective actions for failure to make a specific disclosure and an annual disclosure.

Ms. Urbina agreed that under Article VII of the Conflict of Interest Policy, power is vested in the Board to take disciplinary action against its employees for failure to disclose actual or possible conflicts of interest. She agreed that Board approval is necessary for a loan write-off; she also agreed that there is no written policy at LICU for interest write-off. Ms. Urbina explained that the transactions where interest were written off had to come from a management level for them to be able to proceed. The directives for the write-off of interest had to come from the General Manager; there would have had to be specific disclosure in relation to these related transactions according to LICU policy. Ms. Urbina says that in the case of Roy Rosado, receipts showed that the proceeds of his loan for \$13,000 were deposited into the General Manager's account; the Service Charge of \$65 for processing the loan were also charged to Mrs. Gomez's account so that it was the balance of \$12,935.00 which went into Mrs. Gomez's deposit account. In answer to a question from the court, Ms. Urbina clarified that it was not standard procedure to have the proceeds of a member's loan deposited into the General Manager's

account. She said that if a member wished to have the proceeds of a loan deposited into someone else's account, that person would usually have to authorize the Credit Union to deposit that money into the account. There is a trace that shows that the original maker of the loan is authorizing the deposit into another account; on this transaction, there was no such authorization. In relation to the four loan write-offs involving Mrs. Gomez family members, Ms. Urbina says that there was an obligation on Mrs. Gomez to disclose these relationships. In the case of Sandra Reyes in 2003 and 2004, Mrs. Gomez had a joint loan facility with her as her sister. In a joint account, both names appear on the account and the loan appears in that joint account and both persons are indebted to the Credit Union. If one person is not in country, the other person would sign. This should go to the Board if a staff member is on a joint account with another member. Ms. Urbina said that even though Mrs. Gomez was jointly responsible for this loan taken out by her sister Sandra Reyes, shares from Mrs. Gomez account were not applied towards the liquidation of the loan during the process of recovery of the

debt. She said that the Board did not see any trace of efforts at collection of this loan from Mrs. Gomez's sister.

Ms. Urbina also spoke of an incident where the passbook of Mrs. Gomez's domestic worker was updated with 2 loans and the cashier was told she should have only updated one loan. This meant that the second loan in her account was not known to the domestic worker. In regards to Roy Rosado, one loan was written off and two months later another loan was issued to him; loans would have been written off if they had approval because the person could not pay. In the case of a loan issued jointly to Mrs. Gomez and her sister Ms. Sandra Reyes, there was delinquency regarding payment of the original \$30,000.00 loan; yet that loan was re-financed when it was increased to \$37,000.00. That re-financed loan was also written off, but the interest on that loan which is owed to LICU remains outstanding at \$34,000.00 up to today.

In regards to the cash count in the Belmopan LICU office, Ms. Urbina says that the cash count did not match the balance in the system.

She says there was a falsification of information in that Mrs. Gomez as the General Manager gave a directive to make the balance in the system match be changed to reflect the actual cash count.

In relation to the use of LICU's credit card, Ms. Urbina says that the report from Mr. Flowers shows that \$67,309.74 was spent which were not charges for the credit union but for Mrs. Gomez.

40. Cross-examination of Mrs. Urbina by Mr. Courtenay SC

Mrs. Urbina said that prior to becoming the General Manager at LICU, she worked there as LICU Projects Manager for 5 to 6 years from 2009 to 2015. Her responsibilities as Project Manager was to identify any institutions, companies or Government agencies that shared the same philosophy as LICU so that LICU could merge with that organization to improve their results and provide better resources for the assistance of LICU's members through project development. She admits that she was not involved in approving loan applications, but she was involved in providing guidance as part of team work at LICU. She explained that staff

members at LICU were all highly cross-functional and since they understood the process when a member came to LICU, they were able to give general guidance to any member on the loan application process. She agrees that she was not responsible for loan application, loan consideration or loan disbursement but she said that these facts became known to her upon reviewing information when she became the General Manager of LICU. Ms. Urbina disagreed with Counsel's suggestion that as Project Manager she was not involved in the day to day running of the Emortelle System at LICU. Her responsibility was that she had to make sure that the loans that were given under a project were being monitored. She said she had to understand the entire process because she was responsible for loans under Taiwan ICDF, the RCF and the EU. She admitted finally that she was not involved in the operation of the Emortelle System at LICU, and that she simply used the system for monitoring and evaluation of projects. She also admitted that the information she gave the court was not from her first-hand knowledge; she relied on the information from the system and from supporting

documents at LICU. As Project Manager, Ms. Urbina did not attend meetings with the Board of Directors. She said that she had no direct firsthand knowledge of instructions being issued by Mrs. Gomez to staff regarding write-offs; she did not overhear any such instructions, nor did she see any in writing. She said that there was a cash shortage at the Belmopan office but that was as a result of many things; she did not say that Mrs. Gomez personally created the cash shortage. Ms. Urbina conceded that it was a regular occurrence in the Credit Union movement where someone would be authorized to get money from another person's account by giving that person an authority slip and the cash book. This is so especially where family members were abroad. She said that two persons have come to her to say that they are not responsible for loan proceeds in their accounts: Mr. Cummings and Benita Ayuso. As far as the cash shortage in Belmopan where LICU branch was concerned, Ms. Urbina agreed that she had no proof that Mrs. Gomez had requested that the system be adjusted and falsified. All she had was belief that Mrs. Gomez had done so.

41. Evidence of Jamid Teyul

Mr. Jamid Teyul says that he has been employed at La Inmaculada Credit Union Limited (“LICU”) for 4 years. He was a cashier at LICU until March 2014 when he was promoted to the post of Micro Finance Field Officer. When he first started working with LICU in or about late 2012 or early 2013, he occupied the first cashier station which was situate immediately next to the office of Mrs. Yolanda Gomez, the then General Manager of LICU. One afternoon after they had closed to the public but he was awaiting to balance his daily cash, her office door was open, Mrs. Gomez called for him. He was instructed to apply a loan payment, and was given a post-it with the account number and the code Mrs. Gomez wanted him to use. He then returned to his cashier station and upon entering the account number, he saw that the account was in arrears as it flashed red across his computer screen. He knew the code which had been given to him, CSL1, would only affect principal. Since the account was in arrears, he said that he honestly thought the wrong code had

been given to him in error. He therefore went back to Mrs. Gomez and asked “Mrs. Yoli, I just want to verify if this is the correct code you want me to use. “ I questioned her, “Shouldn’t I use the macro code, MCL1?” The macro code MCL1 is the standard code used by cashiers at LICU as it charges interest first, then principal.

Mrs. Gomez responded, “Jamid, did Mrs. Yolly Trejo give you a list of codes to learn in order for you to cashier?” he responded, “Yes Mrs. Gomez.” She then asked, “So what does the code that I am giving you mean?” He was still a bit surprised by the request to process a payment to collect principal only, even worst when the account is in arrears. He therefore asked, “So Mrs. Yoli, you want me only to affect principal?” Mrs. Gomez then responded “Are you stupid?” He replied to her, “No.” She then told me, “Then go ahead and proceed with the code. You know exactly what the code means and what it needs to get affected, so go and proceed with the

code.” Mr. Teyul then returned to his cashier station and processed the payment as instructed. He noticed that as soon as the payment was made the principal decreased. The account was no longer flashing red indicating that it was no longer in arrears, yet the interest still remained uncharged.

As the General Manager, Mrs. Gomez always emphasized that as cashiers they must collect interest first because it is the “life blood” of LICU. He had questioned Mrs. Gomez because he found it totally in contravention to the LICU policies and on what she always emphasized on loan collections.

On 13th December 2013, Mr. Teyul said that he was cashiering at the cashier station where the loan disbursements are processed. He recalled that Mr. Reinaldo Novelo, the then Credit Manager, came to him at the loan disbursement station. Mr. Teyul had finished attending to clients, but he was processing bank

transactions in the afternoon after the credit union was closed to the public. Mr. Novelo came to Mr. Teyul with a RECONDEV Project loan for Mrs. Olga Hernandez/Mr. George Cummings.

Mr. Teyul was instructed by Mr. Novelo to process and print the service charge receipt promptly, since the member was waiting at Mrs. Gomez's office. He was also instructed to sign the disbursement slip, although he did not write the cheque disbursed to the member. Mr. Novelo told Mr. Teyul he had handled the writing of the cheque at Mrs. Melissa Leiva's office. This was very unusual. Copies of the loan documents and disbursement slip are attached as **Annex 1**.

The offices at LICU are separated by glass partitions. From the loan disbursement station, which is the last cashier station furthest away from Mrs. Gomez, Mr. Teyul could see that the member was indeed with Mrs. Gomez. He therefore, proceeded with the transaction as instructed processing a service charge of a total of \$1,875.00 BZD. He gave the

receipt to Mr. Novelo. A few minutes later, Mr. Novelo returned and told Mr. Teyul that Mrs. Gomez said that he had made an error by charging the wrong amount in service charge. Mr. Teyul checked the disbursement slip which Mr. Novelo had given to him, and noticed that he had charged exactly what was on the disbursement slip. Mr. Teyul notified Mr. Novelo of this. Mr. Novelo then informed Mr. Teyul that he will verify with Mrs. Gomez. A minute later Mr. Novelo returned and said that Mrs. Gomez wants the service charge to be deleted. Mr. Teyul informed Mr. Novelo that the only authority that could make that happen would be Mrs. Melissa Leiva. He proceeded by going to Mrs. Leiva's office. A while later, Mr. Novelo informed me that Mrs. Leiva had proceeded with the instructions of Mrs. Gomez. Mr. Novelo gave to Mr. Teyul the receipt. The receipt had 2 parallel crossed lines and the word "cancelled" was clearly seen on the receipt. Copies of the cancelled, as well as the audit log showing the deletion of the charge on the Emortelle System are attached as **Annex 2**. Before Mr. Novelo left Mr. Teyul

questioned him, “Shouldn’t we charge the service charge?” He replied, “Don’t worry about it. Mrs. Gomez wants it deleted.”

Mr. Teyul says that he distinctly recalls that on another occasion, he had updated the passbook of Mrs. Benita Carmen Ayuso, Mrs. Gomez’s domestic helper. He noticed that Mrs. Ayuso had 2 loans, but only 1 loan was updated in her passbook. The 2nd loan, which was an SMP Project Loan, was not reflected in Mrs. Ayuso’s passbook. This was unusual as project loans are usually updated in the middle of the member’s book. Mr. Teyul updated that loan at the middle of the book, in accordance with LICU’s normal policies. The member left, and approximately 2 weeks later she returned. On this occasion, Ms. Ayuso went to Ms. Lucia Gonzalez and questioned her about the second loan in her passbook. The member expressed concern because she was not aware of a second loan. Lucia raised the matter directly with Mrs. Gomez. Although the door was closed, Mr. Teyul could hear Mrs. Gomez shouting at Ms. Lucia. Ms. Lucia

left Mrs. Gomez's office in tears. Mr. Teyul asked her what had happened and she said, "Something you did, but I will update you in the evening." In the evening Ms. Lucia told Mr. Teyul, as per Mrs. Gomez instruction, "There is a second loan in Mrs. Ayuso's book. Never again update that loan. If the member asks if she owes a second loan, you must tell her no, there is only one loan. Let it be the last time. It caused inconvenience to the member and raised issues that she does not need to know.

In April 2013, Mr. Teyul was cashiering at the third cashier station and behind him was the Receptionist working. During that same month auditors were at LICU. Mrs. Gomez passed and told Mrs. Nuria Martinez, the then Receptionist, to get lunch for the auditors. Mr. Teyul heard Mrs. Nuria ordering food. At noon Mrs. Nuria told Mr. Teyul to pay for the lunch ordered. Mr. Teyul asked for the receipt. He commented to her that he honestly thinks the auditors should pay for their lunch. A while later, Mrs. Nuria returned to Mr. Teyul and said to him " as per Mrs. Gomez, she has instructed that whenever she sends a receipt for payment, no one is to question her authority, and to just pay as

instructed. For future receipts you should not question.” When Mrs. Gomez passed back after her lunch break from LICU’s kitchen, she asked Mr. Teyul if he got her message. He told her “Yes, and I will not question in the future.” Mr. Teyul said that he always questioned authority and processes and so he does not think Mrs. Gomez appreciated that characteristic of him. One time she told him, “Jamid, do you know how much 6th formers are unemployed, and would like your position.” Mr. Teyul felt that she was telling him that he needed to safeguard his job and do what she instructed to do without questioning her. Mr. Teyul said that he eventually learned not to question Mrs. Gomez’s instructions.

42. Cross examination of Mr. Teyul by Mr. Bradley

Mr. Teyul said that he was asked by Mrs. Gomez to apply a payment to a principal and not to interest. He said that knew that the policy was always pay interest first and then pay the principal. He agreed that he found this instruction that he had received from Mrs. Gomez to be totally in contravention to LICU policies. He said that he also found it unusual to be asked to remove service charges of \$1,875.00 from a payment; once

a service charge is charged it cannot be revoked or removed by a cashier as the system does not allow it. That particular service charge was deleted.

In the incident involving Ms. Benita Ayuso, Mrs. Gomez's domestic helper, Mr. Teyul said that Ms. Ayuso said she did not know anything about a second loan.

There was no cross-examination of Mr. Teyul by Mr. Courtenay SC.

44. Evidence of Lucia Gonzalez

Ms. Gonzalez says that she is a Legal Assistant at La Inmaculada Credit Union Limited ("LICU"), where she has been employed for the past 8 years. In or about 2014 she was a cashier at LICU. As a cashier, she often attended to loan disbursements. It is as a result of her dual role as a loan disbursement officer and cashier that she is aware that Mrs. Gomez often acquired loans by using the accounts of family members and friends at LICU. Ms. Gonzalez said that Mrs. Gomez had access to the account of her niece, Fiona Reyes, and that her husband, Mr. Armando

Gomez, was added as joint holder of Ms. Reyes' account. Since her husband was a joint holder, it was easy for Mrs. Gomez to get loans using her niece's account as her husband signed for the loan. Ms. Gonzalez says she was surprised that Mrs. Gomez's husband was joined to Ms. Reyes's account as her husband is a member of Holy Redeemer Credit Union and, as employees of a Credit Union, they were always informed that a person cannot be a member of 2 credit unions. However, no one questioned Mrs. Gomez and how she managed LICU.

Mrs. Gomez also got loans on the account of Ms. Benita Ayuso, who used to work for her as a domestic worker. One day while Ms. Gonzalez was working as a cashier, Ms. Ayuso came into LICU to check her loan balance. Ms. Gonzalez went to the Operations Manager, Mrs. Melissa Leiva, who had some difficulty in figuring out which loan was for Ms. Ayuso, and which was for Mrs. Gomez. It is at that point that Ms. Gonzalez knew that only one loan was actually for Ms. Ayuso. Usually Ms. Ayuso would go to Mr. Reynaldo Novelo as Mr. Novelo knew which

loan belonged to Ms. Ayuso and which was for Mrs. Gomez. Mr. Novelo was the one that stated to be careful when dealing with the account for Mrs. Benita Ayuso.

Ms. Gonzalez recalls that in or about early 2013, when another employee, Jamid Teyul was still on probation, Ms. Ayuso attended at LICU with a query regarding her loan balance. As Ms. Gonzalez had earlier learnt, Mrs. Gomez had obtained a loan on Mrs. Ayuso's account. Apparently, Mrs. Ayuso was either not aware of this second loan, or was not aware of the extent of the indebtedness as her member passbook was never updated to include Mrs. Gomez's loan. However, because Jamid was still on probation, he was not aware of this and had proceeded to update the loan in Mrs. Ayuso's book when she attended before him a few weeks earlier. Ms. Gonzalez said she did not know how to respond to Mrs. Ayuso, and knowing that the loan belonged to Mrs. Gomez, Ms. Gonzalez directed the query to Mrs. Gomez. Ms. Gonzalez

vaguely recalls that she told the cashier Jamid that he is not to do things like that again because he can get in trouble. By this she meant updating Mrs. Benita Carmen Ayuso's passbook with the project loan. When it came to processing payments or updating the passbooks for Mrs. Benita Carmen Ayuso and Olga Cummings staff had to be extremely careful of what they did when processing transactions. A cashier could be called into Mrs. Gomez's office and questioned on what they were asked and what was the answer given about these specific accounts. She would say "you should know better" those were her words.

Ms. Gonzalez did not immediately inform Jamid of her conversation with Mrs. Gomez. However, in the evening she informed him of the directive from Mrs. Gomez that he is never again to update the second loan in Mrs. Ayuso's passbook. If Mrs. Ayuso was to ask if she owes a second loan, Mrs. Gomez directed that the response be "no", there is only one (1) loan. To Ms.

Gonzalez's knowledge Mrs. Gomez also maintained a loan on the account of her brother, Ruben Melendez. Payroll is usually done through the cashiers, and Ms. Gonzalez's station was used by Mrs. Leiva on several occasions to process payroll. From the receipts Ms. Gonzalez could see that loan payments were made from Mrs. Gomez's salary to several other members' accounts, including for Mrs. Ayuso, her brother Ruben, Fiona Reyes, and her sister Sandra Reyes.

As the disbursement officer, Ms. Gonzalez has, on occasion, disbursed loans directly to Mrs. Gomez for loans drawn on the account of family and friends. Ms. Gonzalez would be given the loan application and disbursement slip by Mr. Novelo and was told to just let them (Mrs. Olga Cummings, Mrs. Benita Carmen Ayuso, Mr. Ruben Melendez) sign the receipts and the cash or check being disbursed from the loan be given to Mrs. Gomez. Ms. Gonzalez said she never questioned any directive given by Mrs. Gomez. Ms.

Gonzalez recalled that on or about 8th September 2014, she was asked by either Mr. Hector Sabido or Mrs. Leiva to process a payment of \$39,219.46 on the account of Sandra Reyes, the sister of Mrs. Gomez. Ms. Gonzalez was aware that Mrs. Gomez had obtained a loan on the account of Mrs. Reyes and the payment was towards that loan. A copy of the receipt issued by LICU for this payment is attached at **Annex 1**. Ms. Gonzalez says she was not provided with any cash at the time she processed the payment. She was informed that the cash was in the vault, and that per Mrs. Gomez's instructions, she was to process the payment. It was unusual to process a payment without receiving the cash. Ms. Gonzalez did not ask anyone whether the cash was in the LICU cash pan. She felt as though she could not question anything that Mrs. Gomez instructed, for fear of being fired. Ms. Gonzalez therefore proceeded to process the payment. She does not know if any monies were transferred into LICU's cash pan, but she did not receive any.

Ms. Gonzalez also recalls that on or about 26th September 2014, while working as a cashier, she was approached by Mrs. Leiva and asked to process a payment of \$45,693.28 on the account of Roy Roberto Rosado. Mr. Rosado is Mrs. Gomez's nephew, whom she raised like her son. Ms. Gonzalez was aware that Mrs. Gomez made payments monthly towards the loan. She was not provided with any cash at the time she was asked to process the payment. Ms. Gonzalez was informed by Mrs. Leiva that the payment was already in the vault. Ms. Gonzalez said she did not feel that she could question the directive. Mrs. Leiva and Mrs. Gomez were very close and as cashiers, she often received instructions from Mrs. Gomez through Mrs. Leiva. Ms. Gonzalez proceeded to process the payment as instructed. A copy of the receipt for this payment is attached as **Annex 2**. At the end of the day she was not provided with any cash. Ms. Gonzalez was instructed by Mrs. Leiva to simply add the payment in the paperwork. Mrs. Leiva checked Ms. Gonzalez's balancing and so there was no question about the

absence of the cash. Ms. Gonzalez does not know if any cash was paid to LICU in respect of the two payments she processed, which totaled over \$80,000.

On occasion Ms. Gonzalez would assist Ms. Yolly Trejo in the vault, and she recalls in or about September 2014, while inside the vault, Ms. Trejo showed her a black bag which was in the safe and told her that the bag belonged to Mrs. Gomez and supposedly had cash in it. However, Ms. Gonzalez does not know if cash was in the bag, or if any payment was transferred from the bag to LICU. All deposits from LICU are usually put into a blue cash pan in the safe. Usually when Mrs. Gomez made loan payments Ms. Gonzalez would be provided with cash, or it would be withdrawn from her deposit account. It was therefore unusual to process a payment without receiving any cash.

While Mrs. Gomez was the General Manager of LICU Ms. Gonzalez says she was often asked to make credit card payments for LICU credit cards. These cards were held by Mrs. Gomez and Mrs. Leiva. The charges were for personal purchases by Mrs. Gomez. Ms. Gonzalez says she considered this was abusive as LICU's credit card should be used for expenses of the credit union, not for personal expenses. On a few occasions Mrs. Gomez would take money from her purse to pay the credit card bill. However, this was usually no more than BZ\$200 or BZ\$300. The majority of the payments would be given to Ms. Gonzalez by Mrs. Leiva. She knows that LICU funds were used to pay for the credit cards as, on several occasions, she would follow Mrs. Leiva to get money from the cash pan in the vault to make the credit card payments. Ms. Gonzalez would go to the bank and pay the credit card statements, and the money from LICU cash pan was being used to pay for personal purchases. However, Ms. Gonzalez did not say anything.

The policy at LICU was not to question Mrs. Gomez, and this policy was adhered to strictly, out of fear of losing their jobs.

44. Cross-examination of Ms. Gonzales by Mr. Bradley

Ms. Gonzalez said that she was aware that Mrs. Gomez often acquired loans by using the accounts of family members and friends at LICU such as Mrs. Benita Ayuso, Mrs. Olga Cummings and Mr. Melendez. She has given loan proceeds for these people to Mrs. Gomez on various occasions. Ms. Gonzalez says she would have posted to Sandra Reyes and Roy Roberto Rosado which would reflect that payments were made in the system, but she received no cash in those transactions; this was against normal procedure. Those two payments totaled over \$80,000 and she does not know whether LICU actually received that cash. She made the payments to LICU credit cards for personal expenses of Mrs. Gomez; she thought such charges were abusive as the cards belonged to LICU and should have been used for purchases of LICU. She followed the

instructions to make these payments because she did not feel she could question those instructions.

45. Cross-examination of Ms. Gonzalez by Mr. Courtenay SC

Ms. Gonzalez said that Mr. Novelo gave her certain disbursement slips and she was told to let Mrs. Cummings, Mrss. Ayuso and Mr. Melendez sign the receipts and check disbursed from the loans, and she did as instructed. She disagreed with Counsel's suggestion that the cash she referred to as missing could have been paid to LICU but she did not know about it. She said that payment should have gone through the cashier to be passed on to the end of day balance.

44. Evidence of Jeremias Tun

Mr. Jeremias Tun says that he has been employed with La Inmaculada Credit Union Limited ("LICU") for 3 years as a cashier. In the early morning of 18th September 2014, before LICU was opened to the public, Mr. Hector Sabido approached Mr. Tun and instructed him to process a payment of \$79,514.94 for the account of Olga Hernandez, per

the instructions of Mrs. Yolanda Gomez, the then General Manager. Mr. Tun said he was alarmed by the request, but he did not question it. Mr. Tun was also told that he would take the receipt upstairs so that the member would sign and in the evening he would receive the cash. He complied with the request. Mr. Sabido went upstairs and returned with the signed receipt. Mr. Tun did not know the customer and so he does not know if the customer was indeed in the building. However, it would be unusual to have anyone other than staff in the building before the Credit Union opens. In the evening Mr. Tun did not receive any cash. When it was time to balance he was told to insert it in the cash section, as though he had the cash. Mr. Tun says he was not notified when, or how the cash payment would be made. He said that he simply carried out the instructions that were given to him. Mr. Tun said that he knew better than to question any instruction from Mrs. Gomez. Nobody questions any directive or instruction given by Mrs. Gomez, out of fear of being fired. Although all members of staff were required to adhere to the rules, Mrs. Gomez would not always follow the policies of LICU. Mr.

Tun says he had once overheard a conversation between Mrs. Gomez and a cashier, Janina Cantun. Mrs. Gomez had instructed Janina to apply a loan payment against principal only, and Janina did not know how to input that directive in LICU's Emortelle System. The request was against protocol because usually a payment is processed first to interest and then principal. Mrs. Gomez scolded Janina loudly for not knowing what to do, and asked how could she not know when she had been working with LICU for 2 years. The code that cashiers usually use is called a macro code. It automatically applies payment first to interest, and then to principal. Janina needed to use another code to do what Mrs. Gomez wanted, but she did not know the code. Mr. Tun said that he did not comment on this incident as he did not feel it was his place to comment.

45. Cross examination of Mr. Tun by Mr. Bradley

Mr. Tun agreed that cashiers are the entry points for cash entering the Credit Union and this is why it is necessary for cashiers to be able to balance at the end of the day. Credit Unions need to know at all entry

points through the cashiers, how much money comes into the credit union. Monies would not ordinarily come in to the credit union from members except through the cashiers. In the normal procedure, payment would go through him as the cashier and he would normally have the cash to place it in the receipt. He was given instructions to process a payment of \$79, 514.94 with no cash. He says he was alarmed at that request because ordinarily the member would need to be present to give the cash in person so he as the cashier could verify it and enter that payment into the system. For this transaction, he was directed to make an entry payment of \$79, 514. 94 into the system without any cash. He does not know if any cash for this transaction came into LICU. He said that for accounting purposes it is important that every entry point for cash coming into the credit union balances at the end of every business day because the physical cash needs to balance with the system cash. He was directed by his supervisor Mrs. Leiva to make an entry in the system of \$75,000.00 under the section labeled "Others" on the balancing sheet in order to balance the money that he did not physically receive. Mr. Tun

said he knew this was unusual and wrong, but he felt that he was not in a position to question the directive as he felt he would have lost his job. He explained that in the normal procedure, at the very least the member would need to go to a cashier who would verify the cash even before processing the receipt. By verify, Mr. Tun said he meant that the cashier would count the cash to ensure the amount. Once the cash was verified, then the cashier would also need to ask the member for supporting documentation to substantiate where the monies came from because the amount is a large payment. Those are some of LICU regulations that the cashier needed to go through. Mrs. Gomez would not follow this procedure.

46. Mr. Tun was not cross-examined by Mr. Courtenay SC.

47. Evidence of Yolly Trejo

Ms. Trejo says she is the Accounting Officer at La Inmaculada Credit Union Limited (“LICU”) and she has been employed with LICU for 16 years. She was a cashier at LICU until about 2014 when she started to

assist the Operations Manager, Mrs. Melissa Leiva, with the accounts. As the Accounting Officer, Ms. Trejo's duties include:

- i. Posting to manual record keeping
- ii. Preparing deposits
- iii. Requesting cash from banks
- iv. Preparing Death Claims
- v. Assisting with cash counts
- vi. Balancing cashiers

Shortly after Ms. Trejo's appointment as Accounting Officer she was given access to the vault. Currently, Mrs. Leiva and Ms. Trejo are the only two persons who generally access the vault. Mrs. Urbina does have the combination to the safe and opens and supervises on occasions when both Ms. Leiva and Ms. Trejo are not in office, which is rare. However, while Ms. Trejo worked under Mrs. Yolanda Gomez as General Manager, the policies were not strict and were not very good. A couple other

persons had access to the vault, including Mr. Reynaldo Novelo and Mrs. Gomez. The vault at LICU is very much like a small room. It has many filing boxes and 2 filing cabinets which house clients' files. Most of LICU's excess cash is deposited into its account at Belize Bank. Some cash is kept in the safe for daily operations, and to supply the ATM machine. The cash for the ATM machine is kept in rectangular lock boxes, and is kept separate from LICU's daily cash deposits. The daily cash collected at the end of the day are kept in a rectangular blue lock box measuring 11 3/4 x 9. Pictures of the LICU vault, safe and the cash pan are attached as **Annex 1**. Ms. Trejo recalls that in or about September 2014, while she was in the vault, Mrs. Leiva showed her a black bag which was in the safe. Ms. Trejo was informed that the bag belonged to Mrs. Gomez and contained cash. Ms. Trejo was directed not to touch the bag. Ms. Trejo has seen the report of the expert, Mr. Cedric Flowers, and in particular, the finding that loan payments were processed on LICU Emortelle System as follows:

- oo. \$79,514.94 in favor of Ms. Olga Hernandez on 18th September 2014;
- pp. \$45,693.28 in favor of Roy Roberto Rosado on 26th September 2014;
- qq. \$30,643.78 in favor of Philip Albert Vargas on 31st March 2015; and
- rr. \$39,219.46 in favor of Sandra Reyes on 8th September 2014.

Ms. Trejo says that she is familiar with the persons on whose behalf loan payments were allegedly made. Ms. Olga Hernandez is a domestic worker who was at the time employed by Mrs. Gomez. Mr. Roy Roberto Rosado is Mrs. Gomez's nephew. However, he was known to staff as her son as she had raised him. Philip Vargas is a cousin of Mrs. Gomez and Sandra Reyes is Mrs. Gomez's sister. It was also well known among senior members of staff at LICU that Mrs. Gomez used the accounts of family and friends to obtain personal loan facilities from LICU, and that

payments were made towards these loans on a monthly basis from her salary. Although Ms. Trejo believed this was wrong, she said nothing about it because like most other members of staff, she was intimidated by Mrs. Gomez. The policy at LICU was not to question any directive from Mrs. Gomez, and not to question the actions of Mrs. Gomez.

Ms. Trejo says she is familiar with the purported payment of \$79,514.94 made on behalf of Olga Hernandez on 18th September 2014. On that particular evening, she had balanced the cashiers to ensure that their accounts reconciled. She distinctly recalls that when she balanced Mr. Jeremias Tun's cash, it did not balance. Ms. Trejo questioned the absence of the \$79,514.94 and was informed by Mrs. Leiva that the payment had been made from Mrs. Gomez's cash and that the payment was in the safe. Ms. Trejo said she did not question the matter further, as she knew better than to question anything having to do with Mrs. Gomez. However, she never saw any transfer of the sum of \$79,514.94

into LICU's cash pan, where the deposit should have been made. This is a large amount of cash, and she says that she certainly would have observed the payment. Ms. Trejo says that she is not aware that any of the payments that were supposedly made by Mrs. Gomez from the bag of cash she kept in the vault was actually paid to LICU. The sums are quite large, and so the payments would not have gone unnoticed, particularly since Ms. Trejo has access LICU's cash pan on a daily basis. Ms. Trejo is not aware of any physical movement of cash from the bag that was in the safe, to the cash pan, where all customer deposits should be placed when the cashiers reconcile at the end of the day. Ms. Trejo says she is aware that Mrs. Leiva is the only person who had direct access to Mrs. Gomez's cash in the vault. Mrs. Leiva and Mrs. Gomez were very close, and Mrs. Leiva therefore personally attended to many transactions at LICU on behalf of Mrs. Gomez. However, Ms. Trejo can say with certainty that she did not see Mrs. Leiva, or any other member of LICU staff, counting the monies that were allegedly paid on behalf of Mrs. Gomez. There is no space in the vault to count a large amount of cash,

and it would be unusual to count cash in the vault. The cash is usually counted by the tellers. The offices at LICU, including Ms. Trejo's office and Mrs. Leiva's office, are separated by glass partitions. There is therefore complete transparency between the offices, from any angle. It would not therefore be possible Mrs. Leiva to count \$79,514.94, \$45,693.28, \$30,643.78 or \$39,219.46 without being seen. Ms. Trejo did not see Mrs. Leiva counting those monies, and other members of staff likewise did not see Mrs. Leiva counting large sums of monies. Ms. Trejo says that she has checked LICU's deposits to its Belize Bank Account for the months of September and October 2014 and note that there is no corresponding large cash deposit. LICU would not have kept that cash at the Credit Union. There had to be a corresponding large cash deposit into its account around that time and she could find none. Ms. Trejo notes that there are a couple large deposits to LICU account, but these are either by way of cheque deposits, or electronic transfers. Copies of LICU's Belize Bank statements for September and October 2014 are attached as Annex 2.

Ms. Trejo does not recall exactly when the bag which Mrs. Leiva said contained cash was removed from the vault. However, it may have been a few months after she first saw it that it was removed. As an employee of LICU, there were several things that Ms. Trejo observed that made her consider that there was mismanagement while LICU was being managed by Mrs. Gomez. However, the most concerning for herself and other members of staff was the issuance of loans to Mrs. Gomez's family and friends when they did not qualify, or lacked proper collateral. Ms. Trejo says that she was also concerned about Mrs. Gomez's use of accounts of family and friends to take loans. For instance, in the case of Ms. Hernandez, as a domestic worker with a meagre salary she would not have qualified for a loan of \$75,000.00, but this loan was nonetheless issued. Ms. Trejo says she knew that the loan was approved by Mrs. Gomez for Mrs. Gomez's personal benefit, particularly because the loan payments were made from Mrs. Gomez's salary. However, as a subordinate staff member, Ms. Trejo did not feel that she could question Mrs. Gomez's actions.

48. Cross-examination of Ms. Trejo by Mr. Bradley

Ms. Trejo referred to an incident where Jeremias Tun's cash was not balancing on 18th September, 2014, and he was off by \$79,514.94. When this did not balance, she made inquiries as to the absence of this cash. She confirmed that the entry point for monies coming into the Credit Union is the cashiers or tellers. That cash has to balance at the end of every day and as LICU's accounting officer, it was Ms. Trejo's duty to ensure that the cashiers balance. The difference of over \$79,000 concerned her gravely and she endeavoured to find out where the physical cash was in the Credit Union. To the best of her knowledge as LICU's Accounting Officer, that money never came into the credit union. She says that it would have been very difficult to count that large volume of cash inside the vault, and a picture of the LICU vault is shown. She also brought the cash pan which holds all the physical cash for LICU as evidence. Ms. Trejo said it would be very unusual to keep that amount of physical bills at LICU. As the Accounting Officer at LICU, she knew that

Mrs. Gomez was issuing loans to her family and friends which they did not qualify for and for which they lacked collateral. The \$75,000 loan issued to Mrs. Gomez's domestic helper, Ms. Hernandez was an example of this. To Ms. Trejo's knowledge, Ms. Hernandez did not qualify for such a loan as she did not have the salary or collateral; Mrs. Gomez's salary is what was used to pay this loan.

49. Cross-examination of Ms. Trejo by Ms. Castillo

Ms. Trejo said that under Mrs. Gomez's management, the policies were not strict and not very good. There was no record keeping system of how monies were moved. Most of LICU's excess cash is deposited into its account at Belize Bank. Some cash is kept in the safe for daily operations and to supply the ATM machine. Excess cash was not used for operational procedures in Belmopan and monies were not transported from LICU in Orange Walk for operation in Belmopan. When asked by Counsel as to the evidence that Mrs. Gomez used the accounts of her family and friends to obtain personal loan facilities, Ms. Trejo said that

all those loans were paid from Mrs. Gomez's salary directly. She admitted that she did not know what the monies were used for nor how those monies were used. She did not check the cash in Mrs. Gomez's bag in the vault when making inquiries as to missing amount of \$79,514. 94. She agreed that the money could have been inside that bag, but she does not know.

Under a brief re-examination by Mrs. Arthurs, Ms. Trejo said that it was possible that the missing money could have been inside that bag in the vault. But that would have been improper for a loan payment to be in a bag in the vault; it should have been processed by the tellers, counted by them and then put in the vault in the cash pan.

50. Legal Submissions on Behalf of Yolanda Gomez

I. Introduction

1. These submissions are made on behalf of Yolanda Gomez, the Claimant in Claim No. 538 of 2015 and the Defendant in Claim No. 723 of 2015 ("**Mrs. Gomez**").

2. La Inmaculada Credit Union (“**LICU**”) employed Mrs. Gomez in 1991¹.
3. On the 29th of April 2015, the Board of Directors of LICU (“the **Board**”) issued a letter² to Mrs. Gomez placing her on administrative leave pending an investigation into alleged mismanagement at the LICU.
4. On the 24th of July 2015, the Board of Directors of LICU (“the **Board**”) issued a letter³ (“the **Dismissal Letter**”) to Mrs. Gomez terminating her services as the General Manager of LICU effective immediately.
5. The report produced as a result of the investigation conducted by Cedric Flowers (“the **Report**”) on which LICU relied to terminate Mrs. Gomez’s services was dated 20th October 2015, which was just about three months after she was terminated by LICU.

¹ Trial Bundle p. 171

² Trial Bundle p. 15

³ Trial Bundle p. 16

6. Mrs. Gomez instituted this Claim seeking a declaration that LICU wrongfully dismissed her, damages for said wrongful dismissal, and for injury to reputation and feelings, a declaration that the Registrar of Credit Unions breached his statutory duty owed to the Claimant, and damages for breach of that statutory duty.
7. LICU instituted Claim 723 of 2015 against Mrs. Gomez, alleging that she embezzled funds and or caused LICU loss through fraud, deception, falsification of accounts, concealment, false and dishonest statements, conflict of interest, and acting contrary to the provisions of the Credit Unions Act, LICU's By-Laws and policies.
8. On the 9th of March 2016, the abovementioned claims were consolidated.

II. Discussion

9. The parties filed an Agreed Statement of Facts and Issues in these proceedings dated 31st October 2016.⁴

⁴ Trial Bundle P. 979

10. These submissions will address the issues identified by the parties in the Agreed Statement of Facts and Issues.

III. Issues Identified in Claim No. 538 of 2015

A. Administrative Leave

- a. Issue 1- Mrs. Gomez was unlawfully placed on administrative leave by LICU

11. The letter issued to Mrs. Gomez, placing her on administrative leave, stated:

“This serves to inform you that under the powers delegated to the Board of Directors, a decision has been made to place you on administrative leave effective immediately until the completion of the investigation. The Board needs to conduct an investigation concerning alleged mismanagement.”⁵

⁵ Trial Bundle p. 15

12. The Board derives its powers from section 27 of the Credit Unions Act⁶ and the LICU Credit Union By-Laws⁷.
13. The Credit Unions Act does not empower the Board (or any credit union) to place an employee on administrative leave. Neither the Credit Union By-Laws nor the LICU Employees Employment Package⁸ empowers the Board of the LICU to place an employee on administrative leave.
14. The word 'misappropriation' has been defined as "*The application of another's property or money dishonestly to one's own use.*"⁹ The Credit Unions Act contains a procedure to be adopted by the Supervisory Committee, the Board and the Registrar where an employee is suspected of misappropriation.
15. Most, if not all, of the reasons stated for Mrs. Gomez's dismissal in the Dismissal Letter fall within the ambit of section 36 of the Credit Unions Act, which applies to situations where funds, securities, or other property of the credit union have been misappropriated or

⁶ The Credit Unions Act, Chapter 314 [TAB 1]

⁷ Trial Bundle p. 195

⁸ Trial Bundle p. 262

⁹ Black's Law Dictionary 8th Ed p 1019 [TAB 2]

misdirected, or where the by-laws, the Credit Unions Rules or the Credit Unions Act have been contravened by an employee engaged by the Board. The reasons stated were as follows:

- a. Instructed the write-off of principal and interest amounts for close family, friends and selected staff members without the Board's approval;
- b. Orchestrated the processing of a loan for your personal gain by abusing your power to influence an employee, Mr. Raul Cocom. You then signed as the approving authority to the loan obtained under deceit. This infraction is furthermore compounded by the breaching of the Conflict of Interest Policy by not declaring your private interest and gain from the loan;
- c. Failed to inform the Board of the existing cash shortages;
- d. Provided an altered cash position report to the Chairperson of the Supervisory Committee in relation to the Belmopan cash count conducted on 28th March 2015;
- e. Instructed the falsification of contact reports which were inserted in members' files; and
- f. Continuously abused the institution's credit cards for your personal use.

16. Consequently, section 36 of the Credit Unions Act is applicable in the circumstances.

17. LICU denied in its Defence that section 36 of the Credit Unions Act was initiated or invoked¹⁰. However, LICU expressly mentions section 36(2) in a Statement to Members which was dated 20th August 2015:

“In addition to there [sic] commendation from Central Bank, and in accordance to Section 36(2) of the Credit Union Act, the Supervisory Committee, in consultation with the Board, appointed a special examiner to proceed with an investigation.”¹¹

18. Such a statement demonstrates LICU’s knowledge of the statute which should have been invoked in the circumstances. Notwithstanding having this knowledge, LICU did not act in accordance with section 36 of the Credit Unions Act. LICU placed Mrs. Gomez on administrative leave, when LICU should have

¹⁰ Trial Bundle p. 21 @ [5]

¹¹ Trial Bundle p. 18

adopted the step by step procedure outlined in section 36 of the Credit Unions Act.

19. It is submitted that Mrs. Gomez could only have been placed on administrative leave if such disciplinary action was provided for in the applicable legislation or regulations.
20. In ***Re Sooba, Carol***¹² the High Court of Guyana held that the City Council, relying on an incorrect statutory provision, had no legal authority to send the town clerk on administrative leave:

“In respect of the decision of the City Council to send the de facto Town Clerk, Carol Sooba, on administrative leave, the respondents have not referred the court to any provision of the Municipal and District Councils Act which empowers the City Council to send the Town Clerk as an officer earning more than \$18,000 per annum on administrative leave. Having regard to section 116(1) of that Act, it does appear to the court that the legal power to send the Town Clerk on administrative leave does not lie in the City Council but rather

¹² GY 2014 HC 27 [TAB 3]

lies in the Local Government Service Commission. As mentioned in a previous related decision, that Commission has been statutorily established under section 95 even though its members have never been appointed under section 96.

“But assuming that the City Council did have the power to make the decision whether the Town Clerk should be sent on administrative leave, the City Council could not have lawfully exercised that power simply to create an enabling state of affairs for the exercise of its own power to substitute a person to perform the duties of Town Clerk. To achieve such a power by such an artful device is an unlawful exercise of power in administrative law. For this reason also, the court holds that the City Council acted unlawfully in making the decision to send the de facto Town Clerk on administrative leave.¹³”

21. In ***Karimullah, Mohamed Re***¹⁴, it was held that the decision by the Board of Directors to place the applicant on administrative leave was unlawful, since such a power was vested in the Executive Officer:

¹³ Ibid @ p. 10

¹⁴ CM 35 of 2014 [TAB 4]

“While it was open to the Executive Officer to have had regard to the views of the Board as to whether the applicant should be sent on administrative leave, that issue was a matter for the exercise of the discretion of the Executive Director and not for the exercise of the discretion of the Board. It was his statutory responsibility under the Order to deal with issues of leave administrative or otherwise and it was not open to him to surrender or abdicate his statutory discretionary power by acting on the directions of the Board since, by so acting, he would be surrendering his statutory responsibility to the Board. The decision to send the applicant on administrative leave was also ultra vires the powers of the Board and was a nullity.

“In any event, while the rules of natural justice are not written in “tablets of stone,” there was no circumstance which warranted the denial to the applicant an opportunity of being heard before a decision was taken to sent [sic] him on administrative leave. It must be appreciated that the sending of the applicant on administrative leave entailed the deprivation of his right to work as a qualified person and

although he was not being deprived of his remuneration as Director, Financial and General Services, he was nevertheless being deprived of his right to be assigned work and to engage himself in such work during the indefinite period that he was sent on administrative leave.”

22. In the abovementioned cases, the Courts ruled that the placement of an employee on administrative leave was unlawful where the power was exercised pursuant to the wrong provision, or where the wrong body exercised the given power.
23. In the case at bar, there are no by-laws, regulations, or statutory provisions, which grant the Board the power to place Mrs. Gomez on administrative leave. As such, it is submitted that LICU’s decision to place Mrs. Gomez on administrative leave was unlawful, null, and void.

B. Breach of Statutory Duty

- b. Issue 2- The Registrar of Credit Unions had a duty to act in accordance with section 36 of the Credit Unions Act

24. Mr. Glenford Ysaguirre, witness for the Registrar of Credit Unions, and also the Registrar of Credit Unions at the material time, was cross-examined by Mr. Fred Lumor SC, Counsel for LICU, in relation to his understanding of the reason Mrs. Gomez was placed on administrative leave:

Q. In paragraph 7 of your witness statement, what was your understanding as to why Yolanda Gomez was placed on administrative leave?

A. I cannot recall the exact date or the sequence of event but I received a request for a meeting from the Supervisory Committee to discuss this matter and we visited the Central Bank, met with myself and several Senior Regulators to inform us that they have made a decision and has taken action to suspend Mrs. Gomez as they felt that they have sufficient evidence to indicate that there was mismanagement in the affairs of the Credit Union, material mismanagement.¹⁵

¹⁵ Transcript p. 110

25. This is consistent with LICU's Statement to Members¹⁶, which also confirms that LICU informed the Central Bank of the matters being investigated, and acted in accordance with Section 36(2) of the Credit Unions Act.
26. Ms. Ena Martinez corroborated this, as she testified that she contacted the Central Bank before Mrs. Gomez was put on administrative leave.¹⁷
27. Consequently, it is evident that the Supervisory Committee did act in accordance with section 36 of the Credit Unions Act. Therefore, the Registrar did have a duty to act in accordance with that section.
- c. Issue 3-The Registrar of Credit Unions breached his statutory duties by failing to intervene when Mrs. Gomez was placed on administrative leave
- d. Issue 5- The Registrar of Credit Unions breached his statutory duties by failing to intervene when Mrs. Gomez was dismissed on 24th July 2015

¹⁶ Trial Bundle p. 18

¹⁷ Transcript p. 367

28. At paragraph 6(b) of its Defence¹⁸ LICU avers that the Board initiated special examination of cases of mismanagement of the affairs of the Credit Union pursuant to its powers of general management conferred by the provisions of Sections 11(1) and 27(1) & (6) of the Act.
29. Those sections provide as follows:

11.–(1) The registration of a credit union shall render it a body corporate by the name under which it is registered with perpetual succession and with power to hold property, to enter into contracts, to borrow monies, to institute and defend suits and other legal proceedings and to do all things necessary for the purpose of its by-laws.

27.–(1) Every credit union shall be managed by a Board of Directors of not less than five (5) members and not more than nine (9) members, which shall be constituted in accordance with this Act and the by-laws of the credit union.

¹⁸ Trial Bundle p. 21

(6) Subject to the provisions of this Act, the directors shall have responsibility for the general management of the affairs of a credit union and in particular shall,

(a) act on applications for membership and on the expulsion of members;

(b) determine the maximum individual share holdings and the maximum individual loan which may be made with or without security;

(c) determine interest rates on loans and on deposits;

(d) declare dividends;

(e) fix the form and amount of the security which shall be required from officers and employees handling money;

(f) fill vacancies on the Board of Directors and on the Credit Committee until the next annual meeting when successors are chosen;

(g) perform such other duties as are required by this Act and by the by-laws.¹⁹

¹⁹ The Credit Unions Act [TAB 1]

30. These provisions set out the powers that the Board held in relation to the general management of the affairs of LICU.
31. It is submitted that this section is not the applicable section in the circumstances of allegations of misappropriation, as section 36 of the Act makes specific provision for the procedure to be adopted by the Registrar of Credit Union when misappropriation is alleged against an employee.
32. The position in law is:

“Where the literal meaning of a general enactment covers a situation for which a specific provision is made by some other enactment within the Act or instrument, it is presumed that the situation was intended to be dealt with by the specific provision. This is expressed in the maxim Generalibus specialia derogant (special provisions override general ones).

“Acts very often contain general provisions which, when read literally, cover a situation for which specific provision is made elsewhere in the Act. This maxim gives a rule of thumb for

dealing with such a situation: it is presumed that the general words are intended to give way to the particular. This is because the more detailed a provision is, the more likely is it to have been tailored to fit the precise circumstances of a case falling within it.”²⁰

33. Section 36 of the Credit Unions Act provides:

36.–(1) When the Supervisory Committee is of the opinion that the funds, securities, or other property of the credit union have been misappropriated or misdirected, or in the event that the by-laws, the Rules or this Act have been contravened by the Board, the Credit Committee or a member of either body or any officer or employee engaged by the Board, the Supervisory Committee shall forthwith inform the Registrar in writing.

(2) In the event of a misappropriation or suspected misappropriation or misdirection or suspected misdirection, the Supervisory Committee shall, in consultation with the

²⁰ Bennion on Statutory Interpretation p 1164 [TAB 5]

Board, appoint an auditor or special examiner to investigate the situation at the expense of the credit union.

(3) In the event that the auditor or special examiner appointed pursuant to subsection (2) of this section, concludes that misappropriation or misdirection has occurred, he or she shall submit his report to the Registrar, the Board of Directors, the Supervisory Committee and the Credit Committee.

(4) Where, on receipt of the report of the auditor or special examiner, the Registrar is satisfied that there is sufficient evidence of misappropriation or misdirection on the part of any director, or a member of the credit union, or any officer or employee engaged by the Board, he or she may after consultation with the Supervisory Committee and after giving the person concerned a reasonable opportunity to exculpate him or herself, suspend such person from the exercise of his or her functions, and shall request the Board to summon a special general meeting of the members, and where the Board fails to do so, he or she shall hold the meeting within fourteen (14) days of the date of suspension.

(5) The Registrar shall report to the special general meeting all the circumstances of any misappropriation or misdirection and the reasons for any suspension under subsection (4) of this section.

(6) The member of the credit union may by resolution and after due deliberation, dismiss from office or reinstate any person suspended under subsection (4) of this section.

34. By virtue of this section, only the Registrar is empowered to suspend an employee for alleged misappropriation or misdirection.
35. The power to dismiss an employee for these reasons lies with the membership of the relevant credit union in a special general meeting.
36. As stated in paragraph [23] above, the Registrar was aware of LICU's investigation of Mrs. Gomez for alleged misappropriation and did not intervene. The Registrar allowed the Board to usurp his powers.

37. In order to succeed in an action for a breach of a statutory duty, Mrs. Gomez must establish:

- a. a breach of a statutory obligation which, on the proper construction of the statute, was intended to confer private rights of action upon a class of persons of whom she is one;
- b. she must establish an injury or damage of a kind against which the statute was designed to give protection; and
- c. she must establish that the breach of statutory obligation caused, or materially contributed to, that injury or damage, or (exceptionally) to the risk of that injury or damage.²¹

38. Section 36 of the Credit Unions Act provides procedural safeguards for Mrs. Gomez in the factual situation which she faced. The section ensures due process for the benefit of Mrs. Gomez. This was the private right conferred upon Mrs. Gomez, who was a member of a class of persons, specifically an employee of a credit union.

²¹ Halsbury's Laws of England Tort Vol 97 (2015) @ 500 [TAB 6]

39. The Registrar of Credit Unions owed a statutory duty to Mrs. Gomez to ensure that in so far as there were allegations made against her relating to misappropriation and/or misdirection all the protections afforded by the Act were guaranteed to Mrs. Gomez and that she would be treated fairly.

40. The Registrar of Credit Unions breached his statutory duty to Mrs. Gomez by failing to consider whether to suspend Mrs. Gomez, failing to intervene in the Board's unauthorized suspension of Mrs. Gomez, or failing to prevent the Board from suspending Mrs. Gomez on the basis of an inconclusive report, with insufficient evidence of alleged misappropriation or misdirection and without giving her a reasonable opportunity to exculpate herself. Mrs. Gomez was subsequently terminated by LICU.

41. It is submitted that these provisions were designed to afford protection to employees against whom allegations of misappropriation of credit union funds are made, and also to afford fairness to that employee throughout the investigation process. Mrs. Gomez was deprived of these safeguards, including her right to natural justice.

42. Consequently, Mrs. Gomez suffered the following damages:

- a. Mrs. Gomez's suspension was effected by the Board, and not the Registrar of Credit Unions, in clear contravention of section 36(4) of the Act.
- b. Mrs. Gomez was suspended prior to the conclusion of an investigation by an auditor or special examiner of the allegations against her in contravention of section 36(3) of the Act.
- c. Mrs. Gomez was not given an opportunity to fairly exculpate herself in respect of any report by an auditor or special examiner in contravention of section 36(4) of the Act.
- d. Mrs. Gomez was suspended before a full report of the investigation was provided to the Registrar of Credit Unions as is required by section 36(4) of the Act.
- e. Mrs. Gomez was terminated by the Board, and was deprived of an opportunity to appear before the membership. As per section 36(5) and 36(6) of the Act, the membership was

required to deliberate and pass a resolution to dismiss from office or reinstate after a suspension under section 36(4) of the Act.

- f. Mrs. Gomez suffered damage to her character and reputation as a result of LICU's publications which spoke to Mrs. Gomez's dismissal²².
 - g. Mrs. Gomez was terminated after over twenty-four years of employment with LICU.
43. Mrs. Gomez was deprived of her salary entitlements and work benefits she would have received had she not been unfairly dismissed. The Registrar's breach of his statutory duties owed to Mrs. Gomez materially contributed to this outcome, as Mrs. Gomez was not given an opportunity to exculpate herself and provide explanations for the matters alleged against her.

²² Trial Bundle p. 17-18 Statement to Members

44. It is therefore submitted that Mrs. Gomez is entitled to damages based on the Registrar's breach of his statutory duty owed to Mrs. Gomez.
45. In the case of ***Mayan King Ltd Appellant v Jose L Reyes Oscar Orlando Maradiaga Julio Carceres Hernandez Cornelio Rubio Guterrez Emilina Bautista Rivera Rigoberto Maldonado Respondents***²³, the Caribbean Court of Justice awarded \$15,000.00 to each employee that had been unlawfully dismissed in contravention of their statutory rights. In arriving at its decision to grant an award, the Caribbean Court of Justice considered that:

*“...the rights granted by [The Trade Unions and Employers Organisations (Registration, Recognition and Status) Act] are specifically located in the guarantee provided by section 13 of the Constitution. It might be said that Parliament intended through the passage of the Act to give horizontal effect to the constitutionally enshrined right of freedom of association.”*²⁴

²³ [2012] CCJ 3 AJ [TAB 7]

²⁴ Ibid @ [28]

46. The Court of Appeal in *Christine Perriott v Belize Telecommunications Ltd and Belize Telemedia Limited*²⁵ awarded \$40,000.00 as damages for an unquantifiable loss, taking into consideration the fact that the appellant was, fairly well educated and her job required a special skill, it would take longer to obtain a similar or other employment; her salaries were way higher than the wages in The Mayan King. The evidence about distress and inconvenience that the appellant endured is much more than the appellants in The Mayan King endured. This evidence of distress involved denying the appellant a hearing, and publications in the newspaper.²⁶
47. It is submitted that a parallel can be drawn in the case at bar, since section 36 of the Credit Unions Act contains provisions which enshrine and protect an individual's rights to due process and a fair hearing, which is contained in the Constitution.

C. Wrongful Dismissal

²⁵ Civil Appeal No. 35 of 2010 [TAB 8]

²⁶ Ibid @ 139

e. Issue 4- Mrs. Gomez was wrongfully dismissed as General Manager of LICU on 24th July 2015

48. It is submitted that the procedure that LICU adopted to address Mrs. Gomez's alleged mismanagement and misappropriation deprived her of her right to natural justice, resulting in wrongful dismissal.
49. Ms. Ena Martinez, when being cross-examined by Counsel for Mrs. Gomez, testified that the board made a decision to dismiss Mrs. Gomez before giving her an opportunity to answer to respond to the allegations being made against her:

Q. "Prior to this, on 11th July, 2015, the Board had made its decision to dismiss Mrs. Yolanda Gomez but decided to wait until I return from my trip." I suggest to you that, as you said, prior to this, on the 11th of July was when the Board decided to dismiss her.

A. But of course at that day we had made a decision but we decided to wait until I return from my trip abroad.

Q. What was your decision?

A. That we would dismiss her but of course based on the fact that we needed to hear from her as well because we knew that the investigation was still ongoing. I wanted to give her the opportunity to exculpate herself.²⁷

50. Further, when Mrs. Gomez requested information about the matters being raised by the LICU, LICU failed to produce any documentation, notwithstanding the fact that they had a whistleblower's report and substantiating documents:

Q. Ms. Martinez, on this date, the 7th of July 2015, why didn't you produce and send to Ms. Gomez the Whistle Blower Report with the supporting documents which you had given to Central Bank, which you had given to Mr. Flowers?

A. Because it was not complete. We had not finished our investigation.

²⁷ Transcript p. 359

Q. Sorry. Hold on. The Whistle Blower Report with supporting documentation which was given to you by Ms. Marina Gongora, why was that not given to Mrs. Gomez?

A. If a person is under investigation, why immediately have to give her information?

Q. You are asking your lawyer?

A. I'm suggesting.

Q. I am asking you why--

A. There is no need for us to have done it. There was no need for us to have done it.²⁸

51. On the 20th of July 2015, Mrs. Gomez was asked by LICU via letter²⁹ to attend a meeting with the Board of Directors. Ena Martinez, President of LICU, indicated that the purpose of the meeting was

²⁸ Transcript p. 373.

²⁹ Trial Bundle p. 28

to allow Mrs. Gomez an opportunity to answer to queries, which had arisen from an external audit which was ongoing at the time.

52. Mrs. Gomez, through her Attorneys-at-Law, wrote³⁰ requesting copies of all reports and audits, to enable her to review the reports and audits prior to a meeting with the Board.
53. The Board failed to produce the requested information and demanded in a subsequent letter dated 21st July 2015 that Mrs. Gomez attend a meeting with the Board.³¹
54. By way of letter dated 22nd July 2015³², Mrs. Gomez's Attorneys-at-Law informed LICU that Mrs. Gomez had been advised not to attend any meeting without being aware of what the Board would question her about.
55. Mrs. Gomez was deprived of her right to due process and natural justice, which is guaranteed to her by section 6 the Constitution³³.

³⁰ Trial Bundle p. 29

³¹ Trial Bundle p. 30

³² Trial Bundle p. 31

³³ [TAB 9]

56. In the case of ***Premier Beverages v Edmeasde Joyce***³⁴, it was held that even where an employee causes a company to lose a considerable sum based on his misconduct, if the employer did not carry out a proper investigation, and the claimant was told that his performance was under review, but the claimant was not given an opportunity to proffer any explanation, the dismissal is unfair:

*“On the counterclaim, the Court is of the view that when Premier Beverages terminated Mr. Joyce’s services it was because there was a large sum of money outstanding. There is no doubt that the company closed the entire department out of frustration. The Court has no doubt that the company gave him no notice. This can hardly be acceptable. Premier Beverages ought to have put the allegations to Mr. Joyce and given him the opportunity to respond. See Rawlins JA in ***Epicurean Limited v Madeline Taylor*** *ibid*.*

“[58] Accordingly, there is no doubt that an employer may lawfully dismiss an employee for good cause. It is for the employer to prove the reasons for the dismissal. Not only must

³⁴ Claim No. ANUHCV 2006/0266 [TAB 10]

*the employer prove the reason for the dismissal, but the employer has the obligation to satisfy the Court that a proper and thorough investigation was carried out prior to the termination of the employee's services. I find the principles stated in **Epicurean Limited v Madeline Taylor** ibid and **Antigua Village Condo Corp v Jennifer Watt** ibid very instructive. I can do no better than apply them to the case at bar.*

“[59] The Court has no doubt that Mr. Joyce's services were summarily terminated without any proper investigation being carried out. In fact, it was only after his services were terminated that the company sought to investigate his performance and learnt that he had acted improperly. Further, what is of concern is that prior to the investigation, Mr. Joyce was not told that his performance was under review and more importantly he was not given any opportunity to proffer any explanation for his actions. In a word, he was not provided with a hearing before his services were terminated. Also, of great significance is the fact that he was given no reason for the termination of his services.

*“[60] In view of the totality of circumstances, there is no doubt that Premier Beverages has unfairly dismissed Mr. Joyce and that he is entitled to compensation. It is the law that a claimant who is unfairly dismissed is entitled to compensation under four distinct heads of damages namely: (a) immediate loss of earnings, (b) loss by reason of the manner of dismissal, (c) future loss of earnings and (d) exemplary damage. Mr. Joyce has not provided the Court with any evidentiary basis on which to make such an award. I agree with Counsel therefore, that he is only entitled to receive nominal compensation. See **Antigua Village Condo Corp v Jennifer Watt** *ibid.*”*

57. As such, it is submitted that Mrs. Gomez’s dismissal was unfair and wrongful.

D. Damages

- f. Issue 6- Mrs. Gomez is entitled to damages for injury to her reputation and feelings

58. In the case of *Malik v Bank of Credit and Commerce International SA*³⁵, the House of Lords recognised the principle of stigma damages as being where the employer's breach of contractual duty of trust and confidence creates a stigma which results in a handicap in the market place with damages being recoverable if the employee can prove a financial loss. Lord Steyn at page 45 discussed the concept as follows:

"It is expressed to impose an obligation that the employer shall not:

a) without reasonable and proper cause, conduct itself in a manner calculated and likely to destroy or seriously damage the relationship of confidence and trust between employers and employee

A useful anthology of the cases applying this term or something like it, is given in Sweet and Maxwell's Encyclopedia of Employment Law (looseleaf ed.) Vol.1 para. 1. 5107 pp. 1467–1470. The evolution of the term is a comparatively recent development. The obligation probably

³⁵ [1998] AC 20 [TAB 11]

has its origin on the general duty of co-operation between contracting parties: Hepple and O'Higgins, Employment Law 4th ed 1981 pp 134–135, paras. 291–292. The reason for this development is part of the history of the development of employment law in this country. The notion of a “master and servant” relationship became obsolete

It is true that the implied terms adds little to the employee's implied obligations to serve his employer loyally and not to act contrary to his employer's interests. The major importance of the implied duty of trust and confidence lies in the impact on the obligations of the employer the implied obligation as formulated is apt to cover the great diversity of situations in which a balance has to be struck between an employer's interest in managing his business as he sees fit and the employee's interest in not being unfairly and improperly exploited.”

59. The case of **King (Pursuer) v University Court of the University of St. Andrews**³⁶ is also relevant. In that case, the employee was dismissed after a panel set up for the purpose of investigating

³⁶ 2002 IRLR 252 [TAB 12]

disciplinary charges laid against him concluded that he should be dismissed. His appeal against the decision was dismissed and he then sought damages against his former employer. One ground on which he sought to recover the damages was that his employers had breached the implied duty of trust and confidence in various respects in the course of their investigation and evaluation of the allegations against him. In particular, he claimed that he had not been given a proper opportunity to reply to the charges against him and was prevented from cross-examining witnesses.

60. Lady Smith at paragraph 20 stated:-

“In the present case, however, the pursuer founds on alleged breaches of the implied duty of trust and confidence which occurred before any decision to dismiss had been taken. These breaches occurred, according to the pursuer, at the stage when the employer was considering but had not determined the question of whether it was entitled to dismiss in terms of clause 4 of the contract. Specifically, they occurred prior to the determination of whether ‘good cause’ had been ‘shown’ for termination of the pursuer's contract of employment For an employer to act in breach of that duty during an

assessment which has the potential either to reinforce or to terminate the contract of employment would clearly be highly destructive of and damaging to the relationship between them.”

61. Compensation for this type of breach of an implied duty of trust and confidence has been awarded in Belize in the case of ***Christine Perriott v Belize Telecommunications Ltd and Belize Telemedia Limited***³⁷. It is submitted that Mrs. Gomez should be awarded damages in a similar basis.

g. Issue 7- Mrs. Gomez is entitled to claim any damages in respect of her dismissal

62. 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

³⁷ Supra

claimant, in minimizing damages, either had obtained or should reasonably have obtained.”³⁸

63. If it is found that Mrs. Gomez was unlawfully dismissed, she is entitled to payment of severance pursuant to section 183 of the Labour Act:

183.-(1) Where a worker who has been continuously employed by an employer for a period of,

(b) over ten years and his employment is,

(i) terminated by the employer for reasons, which do not amount to dismissal, that worker shall be paid a severance pay of two weeks' wages in respect of each complete year of service.

64. Mrs. Gomez would also be entitled to the fringe benefits available to her pursuant to the LICU's employee's package. These benefits were set out in paragraphs 72 to 85 of Mrs. Gomez's witness statement³⁹.

³⁸ McGregor on Damages p. 1113 @ 31-005[TAB 13]

³⁹ Trial Bundle p. 182 - 184

IV. Issues Identified in Claim No. 723 of 2015

E. Embezzlement; Causing Loss to LICU

General Observations

65. LICU has alleged that Mrs. Gomez has embezzled funds and/or caused its loss through fraud, deception, falsification of accounts, concealment, false and dishonest statements, conflict of interest, and acting contrary to the provisions of the Credit Unions Act, the By-Laws, and Policies.
66. Several of these allegations are criminal offences, which this honourable court's civil division respectfully has no jurisdiction over.
67. LICU alleges that Mrs. Gomez acted in conflict of interest, in breach of provisions of the Credit Unions Act, the By-Laws, and other LICU Policies. In the premises, LICU claims damages. Mrs. Gomez denies that she acted in conflict of interest, or in breach of provisions of the Credit Unions Act, the By-Laws, and other LICU Policies.

Without prejudice to her position it is submitted that if this court were to find that she did in fact act in conflict of interest or in breach of the aforementioned provisions and policies, it would not entitle LICU to any damages, as these would be contractual breaches which would not cause any loss to LICU.

68. LICU did not make a claim based on breach of fiduciary duty by Mrs. Gomez. LICU did not plead a breach of fiduciary duties. As such, Mrs. Gomez did not present any evidence to meet such an allegation, and no arguments or submissions are made in relation to such a cause of action.

69. The only ascertainable cause of action, which could have potentially grounded a claim for loss to the credit union in the civil arena is fraud or the tort of deceit. An action lies in the tort of deceit where a defendant makes a false representation, knowing it to be untrue, or being reckless as whether it is true, and intends that the claimant should act in reliance on it, then in so far as the latter does so and suffers loss the defendant is liable for that loss.⁴⁰

⁴⁰ Clerk and Lindsell on Torts p. 1081 @ 18-01 [TAB 14]

70. According to **Civil Fraud Law**, *“the standard of proof for an allegation of fraud or dishonesty is the normal civil standard- the balance of probabilities. It has often been suggested, however, that the evidential burden on the claimant is in practice heightened, on the basis that:*

the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability.

In Foodco UK LLP v Henry Boot Developments Ltd Lewison J put it thus:

“The burden of proof lies on the [claimants] to establish their case. They must persuade me that it is more probable than not that Henry Boot made fraudulent misrepresentations. Although the standard of proof is the same in every civil case, where fraud is alleged cogent evidence is needed to prove it, because the evidence must overcome the inherent improbability that people act dishonestly rather than carelessly. On the other hand inherent probabilities must be

*assessed in the light of the actual circumstances of the case:
In re B 120091 AC II.*⁴¹

71. It is submitted that LICU has not discharged the burden of proof, nor has its evidence risen to the standard required to establish fraud in the circumstances.
72. As is well known, the general rule in civil proceedings (and fraud claims are no exception) is that evidence is not admissible on the grounds that it is hearsay, “hearsay” for these purposes meaning a statement made otherwise than by a person while giving oral evidence in proceedings, which is tendered as evidence of the matters stated.⁴²
73. A multitude of the documents attached to the witness statements of LICU’s witnesses contained documentary hearsay, and counsel for Mrs. Gomez objected to the admissibility of these documents on that basis. This Honourable Court did not uphold the objection, but expressly held that evidence was to be led at trial to satisfy the requirements of the Evidence Act:

⁴¹ Civil Fraud Law: Practice & Procedure, Sweet & Maxwell First Edn 2018 p. 1028 @ 34-003 [TAB 15]

⁴² Civil Fraud Law Practice & Procedure, Sweet & Maxwell First Edn 2018 p. 1030 @ 34-010 [TAB 16]

“I fully agree with Mr. Lumor, SC, that all the documents objected to by Mrs. Gomez as documentary hearsay will be admissible once the witness is allowed to amplify on the stand and explain the reason why the maker of the statement is not available (e.g. whether the witness is dead, body or mentally unfit, outside the jurisdiction) to tender the evidence directly. Once this is done, then requirements of Section 82 of the Evidence Act are satisfied, and the court can exercise its discretion not to require each and every witness to come to court where such a course of action will incur additional and unnecessary time and cost⁴³.”

74. LICU did not lead evidence to satisfy section 82 of the Evidence Act. Therefore, all the documents annexed to witness statements of persons who are not the makers of those documents are inadmissible.

75. The inadmissible documents are set out in the table below:

⁴³ *Claims Nos. 538 and 723 of 2015 (Consolidated) Yolanda Gomez v La Inmaculada Credit Union et al* p. 37 [Tab 17]

Witness	Document	Annex Number
Ena Martinez	Copy of report from Grant Thornton	2
Ena Martinez	Central Bank Report	8
Jamid Teyul	Copy of Loan documents and disbursement slip	1
Yolly Trejo	Belize Bank Statements	<hr/> 2
Yadeli Urbina	Contact report	9
Yadeli Urbina	Contact report	12
Yadeli Urbina	Contact report	13
Yadeli Urbina	Ester Rosado's loan application	14
Yadeli Urbina	Loan application and promissory note	15
Yadeli Urbina	Loan application / account statement of Sandra Reyes	16

Yadeli		17
Urbina	Loan Application for Sandra Reyes	
Yadeli		18
Urbina	Credit card statements	
Yadeli		19
Urbina	Credit card statements	

76. LICU annexes the Report to its Statement of Claim in support of its claims against Mrs. Gomez. However, the Report contains no annexes or independent documents to support its findings, save for one email sent by Mrs. Gomez.⁴⁴ The contents of the report are hearsay.
77. LICU chose not to call Mrs. Melissa Leiva as a witness, notwithstanding the fact that she was still an employee working at LICU.⁴⁵ Mrs. Leiva would have been a seminal witness for LICU, as she is identified multiple times in the Report as the person who effected many of the transactions, which Mrs. Gomez was held responsible for. This significantly erodes the credibility of the evidence put forward by LICU against Mrs. Gomez.

⁴⁴ Transcript p. 319-322

⁴⁵ Transcript p. 357.

78. Three of LICU's witnesses that produced witness statements did not appear for cross-examination, namely Marina Gongora (the person who produced the whistleblower's report⁴⁶ that led the Board to investigate Mrs. Gomez), Luis Galaz and Oscar Cawich. Pursuant to paragraph 6 of the case management order made herein on the 12th of September 2016, these witness statements cannot be admitted into evidence:

"The witness statements are to stand as examination-in-chief unless the court orders otherwise. All witnesses are to attend the hearing for cross-examination, unless the other side dispenses with such attendance by notice in writing. If a party who has served a witness statement does not call the witness to give evidence at trial the witness statement shall not be admitted in evidence."

79. Pursuant to LICU's By-Laws, the following committees are established and given different responsibilities so as to operate the credit union:

⁴⁶ Transcript p. 359-360

- a. The Board, which is the *“governing body of the society to whom the management of its affairs is entrusted”*⁴⁷;
 - b. The Credit Committee, which *“shall have the general supervision of all loans to members”*⁴⁸; and
 - c. The Supervisory Committee, which is required to *“make an examination of the affairs of the Credit Union at least quarterly and audit its books, and inform the Registrar in writing, who would act in accordance with Section 36(4)-(6) of the Act. The Supervisory Committee shall in consultation with the Board, appoint an auditor or special examiner to investigate the situation, in the event of any misappropriation or suspected misappropriation or misdirection.”*⁴⁹
80. Ena Martinez testified that no members of the credit committee or the supervisory committee were called as witnesses.⁵⁰ Ms. Martinez further testified that she did not attach any reports produced by the credit committee or the supervisory committee to her statement.⁵¹

⁴⁷ Trial Bundle p. 195

⁴⁸ Trial Bundle p. 201

⁴⁹ Trial Bundle p. 202

⁵⁰ Transcript p. 355

⁵¹ Transcript p. 356

81. It is submitted that LICU is structured in the manner set out in paragraph [78] above to incorporate checks and balances to ensure that the credit union and its employees function properly.
82. LICU alleges that Mrs. Gomez mismanaged the affairs of the credit union. Mrs. Gomez denies any alleged mismanagement. Without prejudice to her position, if any mismanagement indeed occurred, the only conclusion that can be drawn is that the members of the Board, who, according to Ms. Yadelí Urbina⁵², meet with the General Manager regularly, the credit committee, and the supervisory committee all abdicated their duties or were negligent in failing to detect any alleged wrongdoing or mismanagement by Mrs. Gomez, which, according to LICU's statement of Claim, had been occurring since 2012.⁵³ What seems to have occurred was a systemic breakdown, and the Board, the credit committee and the supervisory committee cannot absolve themselves from their respective responsibilities by placing the blame squarely on Mrs. Gomez.

⁵² Transcript p. 396

⁵³ Trial Bundle p. 43

83. The philosophy of a credit union is also an important consideration in this case, as credit unions aim to bank the unbanked.
84. Cedric Flowers, witness for LICU, confirmed in his cross examination by counsel for Mrs. Gomez that Credit Unions typically assist their members by refinancing loans, and that such institutions are more lenient than banks:

Q. And it is also true to say, Mr. Flowers, that one of the ways in which a Credit Union works with its members in financial difficulties is to refinance an existing loan?

A. Generally, yes.

Q. A member falls behind on his or her payments, comes in, sees their Loan Officer and says I can't pay the \$500.00 a month, I can pay \$350.00 or whatever the figure is, and the re-finance work it out and come to a new arrangement. Would that be generally correct?

A. Yes, quite normal, yes.

Q. And a lot more lenient than compared to a bank?

*A. Generally, yes.*⁵⁴

85. LICU is located in a small community, Orange Walk Town. It is inevitable that persons applying for loans would be related to or at least be acquainted with persons employed at the credit union. Mrs. Gomez cannot be penalized for providing services to members of LICU who fall within this category.
86. The current general manager, Yadeli Urbina, also testified that it is regular for members to authorize other persons to get money from their account, especially when family members are abroad.⁵⁵
87. In light of these circumstances, and as more particularly set out below, that LICU has failed to adduce evidence which would establish on a balance of probabilities that Mrs. Gomez is liable for the loss suffered by LICU as pleaded.

⁵⁴ Transcript p. 312

⁵⁵ Transcript p. 439

88. The issues arising in Claim No. 723 of 2015 will now be addressed in turn.
- a. Issue 1- The waiver of accrued interest on active loans approved by Mrs. Gomez for the years ending 31st March 2013 to 31st March 2015 in the sum of \$95,586.83 was lawful
89. LICU Employees Employment Package- Revised 2012 provides for managements rights and responsibilities:

MANAGEMENT'S RIGHTS AND RESPONSIBILITIES

a.) La Inmaculada Credit Union through its board, other committees and managerial staff shall retain and exercise in its discretion all its customary and existing powers, rights, authorities and prerogatives to manage, control and direct its business, its employees and other personnel. To make rules and regulations as it considers necessary or admissible for the orderly, efficient and safe conduct of its business and to require employees to observe such rules and regulations.⁵⁶

⁵⁶ Trial Bundle p. 263

90. This specific provision shows that Mrs. Gomez had authority, as General Manager, to exercise her discretion in relation to the business of LICU.

91. Mrs. Gomez, in exercise of that discretion, gave evidence that she developed an interest waiver policy which entailed the forgoing of interest accrued by a customer in certain circumstances.⁵⁷ This is consistent with the findings contained in the Report at paragraph B52.00.⁵⁸

92. It is submitted that it was within Mrs. Gomez's power to create such a policy to assist members.

93. It should also be noted that the Report deemed several persons, and not only Mrs. Gomez, to be responsible for direct financial loss. The persons identified were Mrs. Gomez, Miguel Garcia, Hector Sabido, and Melissa Leiva.⁵⁹

⁵⁷ Trial Bundle p. 174 @ [16] – [36]

⁵⁸ Trial Bundle p. 67

⁵⁹ Trial Bundle p. 67 @ [B.54.00]

b. Issue 2- Mrs. Gomez did not act dishonestly, unlawfully or in violation of LICU's policies and by-laws when she approved the write off of active loans for relatives and friends in the sum of \$55,984.32 in 2012.

94. Mrs. Gomez's evidence⁶⁰ shows that the loan write offs were approved by the Board and appear in the minutes of the material board meeting⁶¹.

95. No evidence was provided by LICU or the investigators of falsification of the list containing the loan write offs, which were approved by the Board.

c. Issue 3- Mrs. Gomez did not act dishonestly and unlawfully by causing a credit to be made to the account of her domestic helper, Olga Hernandez.

d. Issue 4- Mrs. Gomez did not act dishonestly and unlawfully by causing a credit to be made to the account of her nephew, Roy Roberto Rosado.

⁶⁰ Trial Bundle p. 178 @ 43

⁶¹ Trial Bundle p. 237

e. Issue 5- Mrs. Gomez did not act dishonestly and unlawfully by causing a credit to be made to the account of her sister, Sandra Reyes.

96. The test for dishonesty in both criminal and civil proceedings is an objective one, and it is for the jury (or judge) to decide, given the defendant's actual state of knowledge and belief as to the facts, whether or not he behaved dishonestly in the sense that the word is commonly understood.⁶²

97. Mrs. Gomez maintains that the abovementioned accounts indeed should have been credited, since she caused corresponding sums to be deposited into LICU's safe.⁶³

98. Ms. Yolly Trejo, Accounting Officer at LICU, gave evidence that the cash to correspond with the transaction identified at issue (c) above could have been placed in the vault:

⁶² Halsbury's Laws of England Criminal Law Volume 25 2016 @ [316] [TAB 18]

⁶³ Trial Bundle p. 178 @ [46] – [58]

Q. When My Learned Friend was examining you just now, you said -- well, he asked: To the best of your searches as Accounting Officer and inquiries that you made directly, the cash never came into the Credit Union? And you said it never did.

A. It never did.

Q. But you say at paragraph 10 of your witness statement, "I questioned the absence of the \$79,514.94 and was informed by Mrs. Leiva that the payment had been made from Mrs. Gomez's cash and that the payment was in the safe". Did you check Mrs. Gomez's cash?

A. No. That was a bag that was in the vault. So once they say that that money is for Mrs. Gomez, we don't question anything on that.

Q. So in truth the monies could have been in the bag?

A. I don't know what is in -- I don't know.

Q. But the monies could have been in there?

*A. Could have been, if you say so.*⁶⁴

99. Lucia Gonzalez addressed the transactions mentioned at issues (d)⁶⁵ and (e)⁶⁶ above. Ms. Gonzalez's evidence is that she "[does] not know if any cash was paid to LICU in respect of the two payments [she] processed, which totaled over \$80,000."
100. The evidence in support of LICU's alleged loss caused by Mrs. Gomez is equivocal at best, and therefore does not meet the necessary standard, and should therefore be rejected.
- f. Issue 6- Mrs. Gomez did not abuse her office or act in breach of trust by using LICU's credit card for personal purchases
101. As stated in the Report, there were no written policies or guidelines for the usage or repayment of the charges to the credit cards.⁶⁷ As such, it is submitted that Mrs. Gomez did not abuse her office nor

⁶⁴ Transcript p. 492-493

⁶⁵ Trial Bundle p. 482 @ [15]

⁶⁶ Trial Bundle p. 482 @ [11]

⁶⁷ Trial Bundle p. 108 @ H4.00

did she breach of trust by her use of LICU's credit card so long as she repaid amounts she expended for her personal use.

102. Mrs. Gomez's case is that any personal sums expended on the LICU credit card were reimbursed.

103. LICU has only provided evidence that certain charges were made to the credit card. LICU has not adduced any further evidence. Notably, LICU has not adduced any evidence of demands for repayment of the credit card usage by Mrs. Gomez.

g. Issue 7- Mrs. Gomez did not order the falsification of the account of Fiona Reyes/Armando Gomez

104. Mrs. Gomez's evidence is that she did not falsify account information, but rather adjusted documents to reflect requests made by customers.⁶⁸

h. Issue 8- Mrs. Gomez did not act in conflict of interest and in violation of LICU's By-Laws and policies by instructing the

⁶⁸ Trial Bundle p. 181 – 182 @ [62] – [71]

disbursement of loan facilities to her husband, Armando Gomez, on the account that he held jointly with her niece, Fiona Reyes

105. If, without admitting that Mrs. Gomez acted in conflict of interest and in violation of LICU's By-Laws and policies, it is submitted that any alleged breach of those policies and by-laws would **not occasion loss to LICU.**

106. Mrs. Gomez also gave evidence in her examination that payments were being made to Fiona Reyes's loan through deductions from her salary, as this was easier since Fiona Reyes was living in the United States. Mrs. Gomez stated in her re-examination:

"Fiona lives in the US. She relies on me to conduct most if not all of her business in Belize. She would reimburse me. It was easier for me to request that payment [of her loan] be deducted from my salary."⁶⁹

i. Issue 9- Mrs. Gomez did not act unlawfully in ordering the disbursement of \$27,000 to her husband, Armando Gomez,

⁶⁹ Transcript p. 52

which was drawn on the account of her nephew, Roy Roberto Rosado.

107. Mrs. Gomez gave evidence in her re-examination stating that Roy Rosado was abroad, and that he used to bring vehicles to sell. He would not have been in town and needed her to do transactions on his behalf.⁷⁰

108. It is submitted that the member duly authorized Mrs. Gomez to conduct transactions on his behalf, and as such, received authorization for the material transaction.

j. Issue 10- Mrs. Gomez is not accountable to LICU for \$436,906.34, or any amount whatsoever.

109. LICU's particulars of fraud, deception, falsification of accounts, concealment, false and dishonest statements, conflict of interest, and acting contrary to the provisions of the Credit Unions Act, the By-Laws, and Policies⁷¹ can be categorized as follows:

⁷⁰ Transcript p. 52

⁷¹ Trial Bundle p. 43-49

- a. Without authority and or approval of LICU's Board, waiving of accrued interest on active loans advanced to members of the Credit Union;
- b. Without authority and or approval of LICU's Board, dishonestly and unlawfully writing off active loans;
- c. Dishonestly and unlawfully reducing the loan balances of Olga Hernandez, Roy Roberto Rosado, and Sandra Reyes;
- d. Charged to LICU's account personal expenses incurred on official credit cards;
- e. Falsification of accounts of Fiona Reyes and Roy Roberto Rosado.

110. It is submitted that the Report produced to substantiate these allegations and attached to LICU's Statement of Claim is unreliable, as Mrs. Gomez was not consulted prior to the Report being finalized. Further, no documentation is attached supporting the findings contained in the Report. The Report itself provides at paragraph 1.42 that the conclusions are subjective, and other persons may come to different conclusions based on the findings:

"The conclusions reached by the Auditors in this report, particularly those conclusions in relation to persons

responsible for violations, are based on their professional judgment. Such judgment took into consideration the Auditors' findings, as well as the totality of the prevailing circumstances at the time of the transactions as gleaned from the Interviews and other background information. Others may therefore come to different conclusions."

111. The Report attributes responsibility for certain losses to persons other than Mrs. Gomez. It is therefore unreasonable for LICU to claim the alleged losses arose solely as a consequence of Mrs. Gomez's actions.
112. It is submitted that LICU has failed to prove the causation element of the tort of deceit, namely that LICU's loss resulted from Mrs. Gomez's misrepresentations.
113. In relation to paragraph 93(a), the operational procedures adopted by Mrs. Gomez were only carried out in an attempt to accommodate and best assist members facing challenges⁷². It is submitted that such practices are analogous with the nature of the business of a credit union.

⁷² Trial Bundle p. 177 @ [36]

114. As to paragraph 93(b), Mrs. Gomez has presented evidence which shows that the Board duly approved the write offs identified by LICU.
115. In relation to paragraph 93(c) and (d), Mrs. Gomez avers that these amounts were paid.
116. The matters arising in paragraph 93(e) did not constitute a loss for LICU, as all borrowed amounts were being repaid by the material persons.
117. LICU alleges that Mrs. Gomez acted in breach of the material conflict of interest policies. Mrs. Gomez denies any such breach. Without prejudice to her position, if any breach indeed occurred, these breaches would not constitute a loss for LICU, as the persons identified by LICU had been making payments towards their loans.
118. Thus, Mrs. Gomez has not caused loss to LICU. She made decisions using her discretion in her managerial capacity, which were at all times reasonable. Any losses which LICU incurred would have been in the course of its business as a credit union, and cannot be

attributed to Mrs. Gomez specifically. Consequently cannot be indebted to LICU for same.

F. Conclusion

119. It is therefore submitted that Mrs. Gomez should be awarded the relief she seeks, and that the relief sought by LICU should be denied, as LICU has failed to produce evidence which would ground a claim for loss within the realm of this Honourable Court's civil jurisdiction.

120. Legal Submissions On behalf of The Registrar of Credit Unions

1. Claim No. 538 of 2015 is a wrongful dismissal claim against the First Defendant. The Registrar of Credit Unions is joined as a defendant for breach of statutory duty.

2. The Claimant alleges that she was wrongfully dismissed by the First Defendant from the post of General Manager of La Inmaculada Credit Union. The Claimant contends that Section 36 of the Credit Unions Act sets out the procedure for the initiation of disciplinary proceedings

against her for allegations of misappropriation. According to her, this Section provides that only the Second Defendant has authority to suspend the Claimant. The fact that it was the First Defendant who suspended the Claimant constitutes wrongful dismissal, and the failure of the Second Defendant to initiate the suspension constitutes an actionable breach of statutory duty.

3. This is a fundamental misinterpretation of Section 36 of the Credit Unions Act. That section does not create any statutory duty and is not an employment law provision. All that the section contains is a discretionary power given to the Registrar of Credit Unions to suspend employees of a credit union for allegations of fraud and misappropriation. This is a regulatory power given so that the Registrar of Credit Unions can carry out his statutory function to protect members of a credit union and the public from acts of fraud, misappropriation and corruption carried on by employees of the credit union. This section is not an employment law provision and was

never intended to protect employees of credit unions from being suspended or to confer of these employees tenured employment similar to public officers.

4. Section 36 of the Credit Unions Act exists because ordinary law provides that only an employer can take disciplinary action against an employee based on the terms of the contract of employment or the Labour Act. But, in this case, because a credit union is a regulated entity, statutory law has intervened to give the Registrar of Credit Unions authority, in addition to and not in derogation of the authority of the employer under ordinary principles of employment law, to suspend an employee of a credit union. So, the First Defendant at all times retained the ordinary power of any employer to suspend and dismiss the Claimant, and the First Defendant did so properly and in accordance with the rules set out in the LICU Employees Employment Packages, the Code of Conduct and the Conflict of Interest Policy, all

of which contains the power to suspend and dismiss employees of the First Defendant.

5. Section 38 of the Credit Unions Act therefore does not create any statutory duty at all. But in any event, the Second Defendant maintains that it acted assiduously in this matter, including by meeting with representatives of the First Defendant and by providing advice and guidance to the First Defendant to deal with the allegations of misconduct levied against the Claimant, and by commissioning its own examination of the affairs of the First Defendant.

6. Based on the foregoing the Second Defendant asks that this case be dismissed and for an order that the Claimant pays prescribed costs.

Legal issues to be determined

7. Second Defendant says that, in relation to the case for breach of statutory duty, the main issue for determination is whether or not Section 36 of the Credit Unions Act imposes any statutory duty on the Second Defendant. A corollary issue is whether or not, according to Section 36, only the Second Defendant has authority to suspend the Claimant?

Law and submissions

8. The gravamen of the Second Defendant's submissions is that Section 36 of the Credit Unions Act is a discretionary power that does not create any statutory duty on the part of the Second Defendant. So, the Claimant has no justiciable cause of action against the Second Defendant.

9. The First Defendant relies on the Belize Court of Appeal case of *Kent Herrera et al vs. Alma Gomez (Supervisor of Insurance) et al* Civil

Appeal No. 30 of 2014 (**TAB 1**). This case went all the way to the Caribbean Court of Justice, and that final court upheld the finding of the Court of Appeal that there was a statutory duty imposed upon the Supervisor of Insurance. But the Caribbean Court of Justice granted the appeal on a good faith defence relied upon by the Supervisor of Insurance, so that, notwithstanding the imposition of the breach of statutory duty, she was not liable in damages. The Court of Appeal decision provides guidance on the determination of the existence of a civil cause of action for breach of statutory duty.

10. The First Defendant relies on the following passages from the judgment, commencing at Paragraph 32:

[32]In particular, Counsel submitted that the law for breach of statutory duty required a claimant to show that (a) the injury he suffered is within the ambit of the statute; (b) the statutory duty imposed a liability to civil action; (c) the statutory duty had not been fulfilled; and (d) the breach of duty caused his injury...

[33]Mr. Marshalleck submitted that the applicable legal principles in resolving the foregoing issues were as explained by Lord Browne-

Wilkinson in the House of Lords case of X (Minors) v. Bedfordshire C. C. 1995 2 A.C. 633 at page 731: [1995] 3 FCR 337 at pages 347 and 348:

*“The principles applicable in determining whether such a cause of action exists are now well established, although the application of those principles in any particular case remains difficult. The basic proposition is that in the ordinary case a breach of statutory duty does not, by itself, give rise to any private law cause of action. However a private law cause of action will arise if it can be shown, as a matter of construction of the statute, that the statutory duty was imposed for the protection of a limited class of the public and that Parliament intended to confer on members of that class a private right of action for breach of the duty. There is no general rule by reference to which it can be decided whether a statute does create such a right of action but there are a number of indicators. If the statute provides no other remedy for its breach and the parliamentary intention to protect a limited class is shown, that indicates that there may be a private right of action since otherwise there is no method of securing the protection that the statute was intended to confer. If the statute does provide some other means of enforcing the duty that will normally indicate that the statutory right was intended to be enforceable by those means and not by private right of action: *Cutler v. Wandsworth Stadium Ltd* [1949] AC 398; *Lonrho Ltd v. Shell Petroleum Co. Ltd (No. 2)* [1982] AC 173. However, the mere existence of some other statutory remedy is not necessarily decisive. It is still possible to show that on the true construction of the statute the protected class was intended by Parliament to have a private remedy. Thus the specific duties imposed on employers in relation to factory premises are enforceable by action in damages, notwithstanding the imposition by the statutes of criminal penalties for any breach: see *Groves v. Lord Wimborne* [1898] 2 QB 402. Although the question is one of statutory construction and therefore each case turns on the provisions of the relevant statute, it is significant that your Lordships were not referred*

to any case where it had been held that statutory provisions establishing a regulatory system or a scheme of social welfare for the benefit of the public at large had been held to give rise to a private right of action for damages for breach of statutory duty. Although regulatory or welfare legislation affecting a particular area of activity does in fact provide protection to those individuals particularly affected by that activity, the legislation is not to be treated as being passed for the benefit of those individuals but for the benefit of society in general. Thus legislation regulating the conduct of betting or prisons did not give rise to a statutory right of action vested in those adversely affected by the breach of the statutory provisions, i.e. bookmakers and prisoners: see Cutler [1949] AC 398; R. v. Deputy Governor of Parkhurst Prison, ex parte Hague [1992] 1 AC 58. The cases where a private right of action for breach of statutory duty have been held to arise are all cases in which the statutory duty has been very limited and specific as opposed to general administrative functions imposed on bodies and involving the exercise of administrative discretions."

11. According to the foregoing passage, for a statutory duty to exist and then be actionable against a public authority the language or interpretation of the statute itself must create a statutory duty. Then it must be apparent that the intention of the legislature was to confer a private right of action against the statutory authority to sue for damages on a specific class of persons. Ordinarily, a statutory duty will not give rise to a cause of action for damages unless it can be shown that the intention of the legislature was to benefit that particular class

of persons. The case also makes the point that no cause of action can be founded upon the exercise of a discretionary power to act.

12. The starting and finishing point then, to answer the issue of whether or not a statutory duty exists, is to look to the statute. Section 36 of the Credit Unions Act (**TAB 2**) provides:

(1) When the Supervisory Committee is of the opinion that the funds, securities, or other property of the credit union have been misappropriated or misdirected, or in the event that the by-laws, the Rules or this Act have been contravened by the Board, the Credit Committee or a member of either body or any officer or employee engaged by the Board, the Supervisory Committee shall forthwith inform the Registrar in writing.

(2) In the event of a misappropriation or suspected misappropriation or misdirection or suspected misdirection, the Supervisory Committee shall, in consultation with the Board, appoint an auditor or special examiner to investigate the situation at the expense of the credit union.

(3) In the event that the auditor or special examiner appointed pursuant to subsection (2) of this section, concludes that misappropriation or misdirection has occurred, he or she shall submit his report to the Registrar, the Board of Directors, the Supervisory Committee and the Credit Committee.

(4) Where, on receipt of the report of the auditor or special examiner, the Registrar is satisfied that there is sufficient evidence of misappropriation or misdirection on the part of any director, or a member of the credit union, or any officer or employee engaged by the Board, he or she may after consultation with the Supervisory Committee and after giving the person concerned a reasonable opportunity to exculpate him or herself, suspend such person from the exercise of his or her functions, and shall request the Board to summon a special general meeting of the members, and where the Board fails to do so, he or she shall hold the meeting within fourteen (14) days of the date of suspension.

(5) The Registrar shall report to the special general meeting all the circumstances of any misappropriation of misdirection and the reasons for any suspension under subsection (4) of this section.

(6) The member of the credit union may by resolution and after due deliberation, dismiss from office or reinstate any person suspended under subsection (4) of this section

13. Statutory provisions like these are not uncommon in Belize and appear frequently in legislation dealing with regulated entities, particularly banking, financial services, and insurance. Similar provisions exist in the Insurance Act and the Domestic Banks and Financial Institutions Act. As an example, Section 85(1) of the Domestic Banks and Financial Institutions Act (**TAB 3**) says:

The Central Bank may, by order, remove a person from office as a director or officer of a licensee or financial holding company if the Central Bank is of the opinion that the person is not suitable to hold that office:-

(a) on the basis of the competence, business record, experience, conduct or character of the person;

(b) because the person is no longer fit and proper pursuant to section 5 (Fit and proper person); or

(c) because the person has contravened or, by action or negligence, has contributed to the contravention of :-

(i) any provision of this Act or the regulations and guidelines made hereunder, including, without limitation, section 47 (Duties of directors and officers);

(ii) any order or directive issued under this Act;

(iii) a condition or limitation contained in the licence of the licensee; or

(iv) any undertaking given by the licensee to the Central Bank.

14. All that these provisions do is confer on the regulator the statutory authority to intervene in matters of the internal management of the regulated entity. If these provisions did not exist a financial institution that had a rogue management could remain in control of that financial

institution to the detriment of depositors and the financial markets so long as those persons retained the support of the Board of Directors, senior leadership, or unsuspecting shareholders or members. *Section 36* type provisions give the regulator the additional tool, through powers like declaring a person “not fit or proper” or removing a person from office or, as in this case, to suspend an employee for misappropriation. These powers enable the regulator to properly ensure the soundness of the financial institution, including to ensure the competency and integrity of the senior leadership. But nothing in these provisions are meant to derogate from the powers already conferred on any employer, including an insurance company, bank, or credit union, to discipline its own staff for acts of misconduct. To the contrary, these *Section 36* type provisions are always written in discretionary terms to provide latitude to the regulator to act, when appropriate, in the interest of persons concerned with a financial institution and in the public interest. So, no statutory duty to act is

created and the employer always retains the power to discipline its own staff.

15. When one thinks about this, to say that because Section 36 provides a discretionary power on the Registrar of Credit Unions to suspend for misappropriation means that the employers power to suspend or dismiss for similar reasons is somehow ousted is rather absurd. The implication of this interpretation wipes out an entire body of employment and contract law, giving a credit union, as an employer, the power to discipline for misconduct. The effect is that a credit union will no longer enjoy the power contained in Section 46 of the Labour Act to dismiss employees for good and sufficient cause, including for misconduct. It also means that all the written contracts of employment or employment manuals or policies that confer a power on credit unions to dismiss any of its staff for acts of misappropriation are void and unenforceable. On the other side of the coin, this interpretation places a tremendous regulatory burden on

the Registrar of Credit Unions to police all acts of misappropriation, even minute acts. So, if the secretary or cleaner misappropriated small amounts of funds only the Registrar could discipline by way of suspension, and then only the entire credit union members convened could make a decision to dismiss. This makes no sense.

16. The Claimant's interpretation of Section 36 of the Credit Unions Act is further weakened when one considers this section in light of the overall purpose of the Credit Unions Act. The purpose of the Act is to ensure that credit unions are being run properly, with competent staff and following sound financial practices, and for the benefit of members of the credit union and members of the public. Section 36 furthers this purpose by authorizing the Registrar of Credit Unions to take the step of suspending any employee of a credit union in circumstances of allegations of fraud, misappropriation and other acts of financial impropriety, and only after he has received a report from an examiner or auditor containing credible allegations of

misappropriation. In this way, Section 36 is a regulatory provision, giving the Registrar of Credit Unions similar powers as the credit union itself *qua* employer, to remove a staff by way of suspension. The purpose of this provision is to protect members of the credit union and the public from acts of fraud and misappropriation. Section 36 is not, and was never intended to be, an employment provision meant to protect staff from being suspended or dismissed. The important question to ask, from the above cited case of *Kent Herrera et al vs. Alma Gomez (Supervisor of Insurance) et al*, is what class of persons is Section 36 intended to benefit. The section is intended to benefit members of the credit union from acts of fraud and theft of credit union assets. It is not meant to protect employees from being terminated or dismissed.

17. According to the Claimant, Section 36 of the Credit Unions Act gives employees of a credit union entrenchment, conferring upon them a status similar to public officers with tenured employment by

preventing their dismissal from office for misappropriation except in accordance with the procedure set out in Section 36. According to her, the credit union has no power to suspend her from office, and suspensions may only be effected by the Registrar of Credit Unions. The Claimant is interpreting Section 36 as an employment law provision conferring tenure on her, when this is not the purpose of the Act or the purpose of that section of the Act. The Claimant is actually flipping the section in the reverse, saying that a section which authorizes and empowers the Registrar of Credit Union to suspend an employee for acts of fraud and misappropriation also protects the employee from being suspended by the credit union. This is absurd, in light of this specific scenario. This case involved documented evidence of misappropriation and misconduct. The Credit Unions Act is designed to protect credit union members from these acts of misconduct. But the Claimant is saying that the section protects her and is meant to keep her in office. Nowhere in the Credit Unions Act is it intended or meant to protect employees from being suspended

or dismissed, and to apply this meaning to this section defeats the purpose of the Act because it would limit the power of the credit union itself to discipline a staff in case of fraud, misappropriation, or impropriety. It actually creates a situation that encourages fraud and misconduct.

18. A close reading of Section 36 of the Credit Unions Act suggests exactly what is intended.

19. The side note for Section 36 is entitled *misappropriation, etc.* So, this section does not deal with employment rights of staff, but rather it deals with the situation of allegations of fraud and misappropriation of moneys from a regulatory standpoint to ensure that appropriate actions are taken to protect the members of the credit union and the public.

20. Section 36(1) places a mandatory duty on the Supervisory Committee to report acts of misappropriation of funds or property to the Registrar of Credit Unions. Nothing is stated in this sub-clause about staff rights. The clause actually only deals with misappropriation, and the requirement for reporting is specifically to protect members of the credit union.

21. Section 36(2) requires the Supervisory Committee to appoint a special examiner or auditor to investigate allegations of misappropriation. Again this is mandatory, so if there is any allegation of misappropriation the Supervisory Committee is required to carry out certain steps and they cannot ignore the allegations. This does not mean, however, that this is the only or exclusive step that they can take in line with their other policies and rules. The credit union is perfectly entitled to initiate its own disciplinary procedures, in line with any employment contract or employment manual or other policy or rule to operate parallel with its regulatory obligation to the

Registrar of Credit Unions to investigate allegations of misappropriations. This is precisely what occurred, and the First Defendant (as stated in the testimony of Ms. Ena Martinez) acted pursuant to the powers conferred upon it by the LICU Employees Employment Packages, the Code of Conduct, and the Conflict of Interest Policy, all of which contains powers to suspend and dismiss staff for misconduct, including misappropriation of funds.

22. Section 36(3) requires the auditor or examiner to submit his report to the Registrar of Credit Unions, the Board of Directors, the Supervisory Committee, and the Credit Committee if he concludes that there was misappropriation.

23. Now to Section 36(4). This sub-section says that the Registrar of Credit Unions, upon receiving the report of the auditor or special examiner mentioned in sub-section (3), may suspend the employee for his function and the Registrar shall summon a special meeting of

the members. The word “may”, according to Section 58 of the Interpretation Act (**TAB 4**), is permissive and empowering, conferring a discretionary power to act, as opposed to the mandatory “shall”. So, this discretionary power cannot be the basis for establishing a statutory duty. This sub-section confers a right or power, but no duty, to suspend in cases of fraud and misappropriation.

24. It is important to consider that Section 36(4) provides for two things. First, that the Registrar of Credit Unions may suspend an employee, and second, that if he suspends an employee then he must call a statutory meeting of the members to consider this matter and the general members would vote on the question of dismissal. These two requirements together with sub-sections (5) and (6) of Section 36 add to the meaning and interpretation of this section. The Registrar of Credit Unions is given only the power to suspend. He cannot dismiss. His regulatory powers are limited to protecting members by allowing him to suspend an employee accused of misappropriation.

But, for the suspension to turn into a dismissal the Registrar must put his complaint to the members, assembled in general meeting, and the members must decide on a dismissal. In this way, the legislation is still protecting the right of the employer (the credit union) to be ultimately responsible for dismissal through its members. But, the Registrar has the statutory power and right (but not the duty or obligation) to remove an employee by way of suspension on allegations of misappropriation.

25. All that this section does is create a discretionary power on the Registrar of Credit Unions to intervene to protect the credit union's members from acts of fraud and misappropriation. This provision is not meant to protect staff from being suspended or dismissed. When one reads the entire Section 36 the clear intent is to protect members of the credit union from misappropriation or fraud perpetrated by the staff of the credit union. So, the class intended to be protected is the

credit union members. Nothing in this section creates or imposes any duty.

26. Section 36 is not exclusionary, meaning that it does not restrict or remove the authority of the credit union itself to dismiss members of staff for misconduct.

27. The witness, Ena Martinez, spoke extensively about the disciplinary process, involving the Claimant and the actions taken by the First Defendant from March to July, 2015, when the Claimant was dismissed from her employment with the First Defendant. The witness, Ena Martinez, testified about the LICU Employees Employment Package (pg. 262 of the bundle). There is a section of the LICU Employees Employment Package entitled Termination of Services and Disciplinary Procedures. That section reads as follows:

TERMINATION OF SERVICES

The services of an employee who is on the full-time and permanent staff of the Credit Union may be terminated by giving one month's notice on either side...

Disciplinary Procedure

...

Disciplinary action may be applied by the Credit Union for the following causes among others:

Habitual tardiness, absenteeism, insubordination, incompetence, negligence, breach of staff rules, misconduct, dishonesty and criminal conduct.

Disciplinary action may include, but shall not be limited to

Written reprimand

Withholding, deterrent or suspension of increment

Surcharging

Demotion

Suspension from work on reduced pay

Suspension from work without pay

Termination

Save in cases where the exigencies of the situation necessitates the immediate suspension of an employee, the Credit Union shall, before any disciplinary action is taken against the employee, give to the employee notice in writing of the complaints, and invite him/her to make a written and/or oral response thereto within two clear working days of the receipt of the said notice or within any other reasonable good period of time.

Where it becomes necessary to pursue an investigation, the employee shall be paid 50% of his/her basic salary during the period of the investigation. In the event the employee is found not guilty then the remaining 50% of salary will be paid.

(See Pg. 266 of the trial bundle)

28. The foregoing sections of the LICU Employees Employment Package then contains clear provisions, binding on the employee in contract, setting out the manner of termination, including the disciplinary procedure. The witness, Ena Martinez, testified about the various stages of the disciplinary procedure involving the Claimant, including the decision to place her on administrative leave with full pay pending the investigation, and the engagement of the auditor, Cedric Flowers, and having discussions with the Registrar of Credit Unions. The First Defendant then went through a deliberate process from March to July, 2015 of inquiry, then investigation, and then discipline, eventually leading to the dismissal of the Claimant, quite properly under the polices of the credit union.

29. The Code of Conduct and Conflict of Interest Policies also contain specific provisions dealing with disciplinary staff for breaches, including dismissal. Article 8 of the Code of Conduct says that: “All directors, committee members, and staff must refrain from all criminal acts such as bribery, embezzlement, forgery, theft, etc. Evidence of such activity represents sufficient grounds for immediate dismissal of an employee” (See pg. 759 of the trial bundle). Article VII of the Conflict of Interest Policy says as follows:

If the board has reasonable cause to believe that an insider of LICU has failed to disclose actual or possible conflicts of interest, including those arising from transactions with a related interested person, it shall inform such insider of the basis for this belief and afford the insider an opportunity to explain the alleged failure to disclose. If, after the hearing, the insider’s response and making further investigation as warranted by the circumstances, the board determined that the insider has failed to disclose an actual or

possible conflict of interest, the board shall take appropriate disciplinary and corrective action.

(See pg. 765 of the trial bundle)

30. All the foregoing policies of the First Defendant show clearly that it is within the remit of the First Defendant to discipline its employees, including the Claimant.

31. The evidence from the trial also bears on the fact that the decision to take disciplinary action against the Claimant, including the decision to dismiss the Claimant on 15th July, 2015, was proper and done in accordance with the law. The evidence that came out established credible evidence of wrongdoing, including the following:

(a) Falsification of the report in relation to the cash shortages at the Belmopan branch

- (b) The Claimant's misuse of the LICU credit card, including charging personal expenses
- (c) Unchallenged allegations that the Claimant received moneys directly into her bank account at the credit union as the proceeds of a loan for another member
- (d) Unchallenged allegations that the Claimant failed to conflict of interest disclosures
- (e) Examples of waivers involving close relations to the Claimants without the appropriate authority or disclosures made by the Claimant
- (f) Actual loss of funds from the credit union resulting from the actions of the Claimant

32. Supporting these allegations are the investigation and report of Cedric Flowers and the examination by the Registrar of Credit Unions, both of which feature the Claimant prominently and names the Claimant as the person responsible for the misconduct, and in the circumstances the First Defendant was quite proper to dismiss the Claimant.

Conclusion

33. Based on the foregoing the Second Defendant says that the claim against the Second Defendant should be dismissed with costs.

Legal Submissions on Behalf of La Inmaculada Credit Union
Summary of the Arguments in Claim No. 538 of 2015

1. In CPR 8.6 the Claimant in Claim No. 538 of 2015 is required to include in the Claim Form the following, namely –
 - a) short description of the nature of the claim;
 - b) specify any remedy the Claimant seeks;
 - c) aggravated damages/or exemplary damages;
 - d) when seeking interest to include:
 - i) basis of entitlement;
 - ii) date of interest;
 - iii) period for which interest is claimed.

2. In the Amended Claim Form dated 17th February, 2015 (p.1), the Claimant states that –
 - (1) She was wrongfully dismissed from her post as General Manager of LICU.
 - (2) On 29th April 2015, the Board of Directors of LICU placed her on administrative leave with immediate effect.
 - (3) LICU Board on 24th July 2015 summarily dismissed the Claimant.
 - (4) Section 36 of the Credit Union Act, Chapter 314, prescribed mandatory procedure for the suspension and/or dismissal of employee of credit unions on the grounds of misappropriation

and/or misdirection.

- (5) According to the Credit Unions Act, only the Registrar of Credit Unions (the Governor of the Central Bank of Belize) is authorized to suspend employees of a credit union **and** only the members of a credit union are authorized to dismiss employees such as the Claimant.
- (6) The decision of the Board of LICU to suspend and dismiss the Claimant was *ultra vires* and done in contravention of the procedure mandated in the Credit Unions Act.
- (7) That the Registrar of Credit Unions did not suspend the Claimant and/or did not intervene in the unauthorized suspension of the Claimant **or** prevent LICU Board from suspending the Claimant on the basis of an inconclusive report and without giving the Claimant a reasonable opportunity to exculpate her.
- (8) The Registrar of Credit Unions failed to call a special general meeting of the members of the Credit Union (LICU) within fourteen (14) days of the suspension of the Claimant **and** to report to members of LICU at a special meeting all the circumstances of any misappropriation or misdirection and the reasons for the suspension of the Claimant **and** allowed LICU to arrange and conduct a meeting in clear violation of the Credit Unions Act.
- (9) The Claimant therefore claims reliefs against LICU for wrongful dismissal.

- (10) The Claimant also claims reliefs against the Registrar of Credit Unions for breach of statutory duty owed to the Claimant as a credit union employee.
- (11) And the Claimant seeks declaration that LICU wrongfully dismissed the Claimant on 24th July 2015.
- (12) Damages for wrongful dismissal.
- (13) Damages for injury to reputation and feelings caused by the manner the Claimant was suspended and dismissed by LICU in the sum of BZ\$40,000.00.
- (14) A declaration that the 2nd Defendant (Registrar) breached his statutory duties owed to the Claimant mandated in section 36 of the Credit Unions Act, Cap. 314.
- (15) Damages for breach of statutory duty the Registrar owed to the Claimant.
- (16) Interest at the statutory rate.
- (17) Costs.

Natural Justice

3. The Claimant **failed to** seek in the Claim Form as required that her suspension and/or dismissal was in breach of the rules of natural justice. The Claimant sought the declaration on the basis that LICU failed to follow the statutory procedure mandated in section 36 of

the Credit Unions Act.

Amended Defence

4. In its Amended Defence, LICU states that it did not initiate and/or invoke “section 36 procedure” against the Claimant which deals with specific cases or instances of misappropriation and misdirection.
5. LICU initiated investigation of a number of instances of mismanagement of the affairs of the Credit Union under its powers of general management in accordance with sections 11(1) and 27(1), (3) and (6) of the Credit Unions Act, Chapter 314.⁷³
6. LICU employed the Claimant in the exercise of its powers of management and in accordance with section 30(1) of the Credit Unions Act. The Board of Directors therefore have the power to

⁷³ TAB 1 – Credit Unions Act, Cap. 314

remove or dismiss the Claimant. The provisions of section 31(4) of the Interpretation Act, Chapter 1 states:

“31(4) Where an Act confers powers upon any person or authority a power to make appointments to any office or place, the power shall, unless the contrary intention appears, be construed as including a power to remove or suspend any person appointed and to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or place.”⁷⁴

Administrative Leave

7. LICU placed the Claimant on administrative leave on 29th April, 2015 **and not** on suspension (p.15). This is also the power of general management of the Credit Union.

⁷⁴ TAB 2 – Interpretation Act, Cap. 1 see s.31(4)

- “leave of absence” means “*A worker’s temporary absence from employment or duty with the intention to return. Salary and seniority are typically unaffected by leave of absence.*”

Black’s Law Dictionary 8th Edn. p 910⁷⁵

- “leave” means “*Permission to be absent from one’s normal duties, employment etc; (authorized) absence from work; a period of such absence.*” **Shorter Oxford English Dictionary**

5th Edn. Vol. I p. 1564⁷⁶

- Whilst “suspension” means “... 3. *The temporary deprivation of a person’s powers or privileges, esp. of office or profession; esp. a fairly stringent level of lawyer discipline that prohibits the lawyer from several months to several years ...*” **Black’s**

Law Dictionary 8th Edn. p. 1487⁷⁷

⁷⁵ TAB 3 – Black’s Law Dictionary 8th Edn. p. 910

⁷⁶ TAB 4 – Shorter Oxford English Dictionary 5th Edn. Vol I p. 1564

⁷⁷ TAB 5 – Black’s Law Dictionary 8th Edn. p. 1487

Alleged S.36 Mandatory Procedure [Chapter 314]

8. Similar argument was taken up before the Supreme Court of Jamaica (Trial Division) before Duffus J in ***Ballen v The Kingston and S. Andrew Corporation (1959) 1 WIR 513***⁷⁸. The Appellant was the Inspector of Poor for the Parish of Kingston. In April 1954 the sum of £559 10s was discovered missing from a sum of money entrusted into his care. He was convicted and sentenced to 9 months imprisonment; his employers terminated his employment. After his release from prison he claimed salary up to the date of the writ in the Supreme Court of Jamaica. He claimed a declaration that his purported dismissal was illegal, ***ultra vires*** and invalid. He alleged non-compliance with s.22 of the Poor Relief Law, Cap. 299:

“22. (1) Where any Parochial Board is of the opinion that poor relief is not being administered properly or efficiently in any place or district, or by any poor relief officer, in the parish,

⁷⁸ TAB 6 – Ballen v The Kingston and S. Andrew Corp. (1959) 1 WIR 513

the Parochial Board may hold an investigation into the administration of such poor relief.

(2) If after such investigation the Parochial Board is of the opinion that any poor relief officer has been negligent in the performance of his duties, or is unfit, incompetent, or incapable of discharging his duties, then such Parochial Board may dismiss without notice or degrade any such officer, or may make such other order in relation to the administration of poor relief in the parish as it may think fit:

Provided that where any poor relief officer is dismissed or degraded that officer shall have a right of appeal to the Board of Supervision against such order. On such appeal the Board of Supervision may make such order, which shall be final and conclusive, as it may think fit.”⁷⁹

9. a) Duffus J. dismissed the claim. Ballen appealed to the Federal

⁷⁹ See TAB 6

Supreme Court (Civil Appellate Jurisdiction) – **Repudiation of**

Employment Contract. The decision of Archer J at 517 states:

“The argument of counsel for the appellant was founded entirely on the proposition that the contract between the appellant and the respondents can only be terminated by the appellant’s dismissal by the respondents and in accordance with the procedure prescribed by s 22 of the Poor Relief Law, Cap 299 [J]. This contention is quite baseless. The section points out the manner in which the Parochial Board must proceed if it desires to terminate a contract by dismissal for any of the causes specified in the section but it has no application where the contract has already come to an end. The appellant’s contract was terminated by breach on his part. It was his own act which made it impossible for him to perform the duties which he had undertaken and the Board treated the contract as at an end by appointing someone else to perform those duties ...”

Whyllie J. also at p. 517

“The appellant, by his admitted dishonesty in handling his employers’ moneys, had broken a fundamental condition of the contract amounting to repudiation, entitling the employers to treat the contract as at an end. It is not necessary in these circumstances that an employer should dismiss an employee in order to show that he treats the contract as at an end. ... In my view, s 22 only prescribes a method of dismissal and cannot possibly exclude termination by impossibility of performance or by repudiation, more especially repudiation on the part of the appellant entitling the respondents to treat the contract as at an end.”⁸⁰

(emphasis supplied)

b) In the circumstances –

⁸⁰ See TAB 6

- i) The Registrar of Credit Unions (the Governor of Central Bank) is not required to authorize the suspension of the Claimant in this case and he is not required to authorize the dismissal of the Claimant.
- ii) The Registrar is also not required to intervene in the disciplinary action taken by LICU against the Claimant.
- iii) The Section 36 procedure had no application to the case of the Claimant. Members of LICU requested the meeting called by the Board.

Summary Dismissal

- 10. LICU on 24th July 2015 dismissed summarily the Claimant on the grounds that the Board of Directors of LICU “**have lost all trust and confidence**” in the management of the credit union by the Claimant.
- 11. Though LICU was not required by law to state the grounds for the

summary dismissal of the Claimant at the time of the termination of her employment, LICU did provide the Claimant with those grounds. The Claimant did not deny any of the grounds of misconduct except to say she was “not afforded the opportunity” to defend herself which is a false statement.

12. The acts of misconduct include –

1) Giving instructions to subordinate officers or employees of LICU to write-off principal (loans) and accrued interest on loans for close family members, friends and selected employees without the approval of LICU Board.

2) The Claimant *“orchestrated the processing of a loan for personal gain by abusing your power to influence an employee, Mr. Raul Cocom. You then signed as the approving authority to the loan obtained under deceit. This infraction is further compounded by the breaching of the Conflict of Interest Policy by not disclosing your private interest and gain from the loan.”*

- 3) Failure to inform the Board of LICU of cash shortages existing at the Credit Union.
- 4) Provided an altered cash position report to the Chairperson of the Supervisory Committee in relation to the Belmopan cash count on 28th March 2015.
- 5) Instructed the falsification of contact reports which were inserted in members' files.
- 6) Continuously abused LICU's credit cards by using the official credit cards for personal use.

13. Each of the acts of mismanagement constitutes –

- i) conduct incompatible with duty or prejudicial to employer's business (ground for summary dismissal);
- ii) conduct incompatible with the faithful discharge of her duties to the employer (ground for summary dismissal);

iii) entering into transaction whereby her personal interests conflict with her duty as general manager of LICU (ground for summary dismissal).

14. 1) *“A servant whose conduct is incompatible with the faithful discharge of his duties to his master, may be dismissed, as where, unknown to his employer, he enters into transactions whereby his personal interests conflict with his duty as servant in his particular capacity, or if he takes a secret commission, even though it be an isolated act, **unless he is able to discharge the burden which lies on him of proving that there is nothing improper in the transaction in question.** Dismissal is also justified in the case of a servant who claims to be a partner; or if his conduct has been such that it would be injurious to the master’s business to retain him.”* **Halsbury’s Laws of England, 3rd Edition, Vol. 25 p. 487 para. 938⁸¹**

⁸¹ TAB 7 – Halsbury’s Laws of England, 3rd Edn. Vol. 25 p. 487 para. 938

(emphasis supplied)

2) The Claimant did not discharge the evidential burden placed on her to prove that there was nothing improper in each of the acts of mismanagement.

3) In the “*locus classicus*” of ***Boston Sea Fishing Co. v Ansell*** [1886-90] All ER 65 at 73 Bowen LJ states “... cases where the character of the isolated act is such as of itself to be beyond all dispute a breach of confidential relation and a want of faith towards the matter, the rights of the master do not depend on the caprice of the jury, or of the tribunal which tries it. ***Once the tribunal has found as a fact that there is a fraud and breach of faith, then the right of the master to determine the contract follows as a matter of law. ...***”⁸²

(emphasis supplied)

4) The dictum of Bowen LJ at p. 73 of ***Boston Sea Fishing*** was

⁸² TAB 8 – Boston Sea Fishing Co. v Ansell [1886-90] All ER 65 at 73

cited with approval in ***Attorney General v Toby (1976) 28 WIR 277***⁸³ at 297 by Rees JA Court of Appeal of Trinidad and Tobago.

- 5) The Privy Council also on appeal from Bombay, India, in ***Jupiter General Insurance Co. Ltd. v Ardeshir Bomanji Shroff [1937] 3 ALL ER 67***⁸⁴ at 74 Lord Maugham pronounced on a single act constituting a ground for immediate summary dismissal. The Respondent was the manager of the life insurance department of an insurance company, the Appellant. He recommended the issue of an endowment policy upon the life of a person which the managing governor had a few days earlier refused to re-insure. He [was] thereupon dismissed. “... *If an officer of a life insurance company, whatever his motive may be, withholds from his superiors information which will in all probability lead them*

⁸³ TAB 9 – Attorney General v Toby (1976) 28 WIR 277 at 297

⁸⁴ TAB 10 – Jupiter General Insurance Co. v Ardeshir Bomanji Shroff [1937] 3 All ER 67 at 74

to refuse a risk, and a fortiori if it is one of exceptional character and magnitude, it would seem to be very difficult for his superiors to be confident that he will, in the future, properly carry out the important duties entrusted to him. In other words, if a person in charge of the life assurance department subject to the supervision of superior officers, shows by his conduct or his negligence that he can no longer command their confidence, and if, when an explanation is called for, he refuses apology or amendment, it seems to their Lordships that his immediate dismissal is justifiable.”

- 6) The Claimant was the general manager of a financial institution answerable directly to the Board of Directors of LICU. The employment relationship is fiducial which calls for the highest form of honesty.
- 7) Each of the conduct of the Claimant set out in the termination letter is a “**fraud**” as defined in section 165A of the Criminal

Code Act, Chapter 101⁸⁵ –

“165A. A person who –

(a) makes any representation as to fact or law, whether express or implied, which is untrue or misleading;

(b) fails to disclose any information which he is under a legal duty to disclose; or

(c) occupies a position in which that person is expected to safeguard the financial interests of another person and that person abuses that position and knowingly or recklessly, makes that representation, fails to disclose or abuses that position to make a gain for himself or another person or to cause loss to another

⁸⁵ TAB 11 – Section 165A Criminal Code Act

person or to expose another person to a risk of loss commits the offence of fraud and is liable on conviction on indictment to a fine of one hundred thousand dollars or imprisonment for a term of ten years or both.”

- 8) The Special Commissioner of the European Court of Justice in the case of ***Neary & Neary v Dean of Westminster*** [1999] 1 RLR 288⁸⁶ found that the conduct of the petitioner/claimant in taking fixing fees from external promoters in respect of events involving members of the choir of Westminster Abbey, and retaining any surpluses accruing from such events, amounted to gross misconduct justifying their summary dismissal.
- 9) a) Lord Jauncey, the Special Commissioner at [18] stated that: *“it has been recognized that there exists between*

⁸⁶ TAB 12 – Neary & Neary v Dean of Westminster [1999] 1 RLR 288

*master and servant a fiduciary relationship of trust and confidence. In **Hivac Ltd. v Park Royal Scientific Investments** [1946] 1 Ch. 169, Lord Green MR at p. 174 said ‘An employee owes a duty of fidelity to his employer ...’.*⁸⁷ (emphasis supplied)

- b) He continued at [18] that “... More recently, in **Attorney General v Blake** [1998] 2 WLR 805, Lord Woolf MR, after referring to the existence of the relationship of trust and confidence which subsists between employer and employee, said at 814: “The employee must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and interest may conflict; he may not act for his own benefit of a third party without the informed consent of his employer.”⁸⁸
- c) Lord Jauncey continued at [19] that “... As Lord Maugham

⁸⁷ See TAB 12

⁸⁸ See TAB 12

said, delivering the judgment of the Board in **Jupiter General Insurance Co. Ltd. v Ardeshir Bomanji Shroff** [1937] 3 All ER 67 at 74C, **'The test to be applied must vary with the nature of the business and the position held by the employee.'**"⁸⁹

- d) Finally, the Special Commissioner stated at [20]: "... *These statements were made in the context of a claim for accounting by a company against former directors in respect of profits from the acquisition and sale of shares in a subsidiary company. The statements of law, however, are in my view equally applicable where the issue is dismissal of the servant who has made the profit rather than a call to account. I am fortified in this view by the decision of the Court of Appeal in **Sinclair v Neighbour** [1967] 2 QB 279. Sellers LJ, at p. 287C, said: 'But whether*

⁸⁹ See TAB 12

it is to be described as dishonest misconduct or not, I do not think matters. Views might differ. It was sufficient for the employer if he could, in all the circumstances, regard what the manager did as being something which was seriously inconsistent incompatible with his duty as the manner in the business in which he was engaged.’

Davies LJ expressed views to similar effect at p. 289B: ‘The judge ought to have gone on to consider whether even if falling short of dishonesty the manager’s conduct was nevertheless conduct of such grave and weighty character as to amount to a breach of confidential relationship between master and servant such as would render the servant unfit for continuance in the master’s employment and give the master the right to discharge him immediately.’⁹⁰

⁹⁰ See TAB 12

15. Each act of mismanagement is repudiation of a fundamental term in the contract of employment by the Claimant which repudiation LICU accepted by terminating the employment of the Claimant.

*“In Harbutt’s Plasticine v Wayne Tank and Pump Co. Ltd. [1970] 1 All ER 225, Lord Denning said that where the contract is still open to be performed the effect of a fundamental breach is to give the innocent party when he gets to know of it, an option either to affirm the contract or disaffirm it. If he elects to disaffirm it, that is, accepts the fundamental breach as determining the contract, then the contract is at an end from that moment ...”*⁹¹

Statutory Duty of Care

16. The common relationship between the Claimant and LICU, implied

⁹¹ See TAB 9

in the Claimant’s contract of employment – a “**fiduciary relationship of trust and confidence**” is reinforced in the provision of section 31 of the Credit Unions Act, Cap. 314⁹²:

“31. Every director and officer of a credit union, exercising the powers and discharging the duties of his office, shall

(a) act honestly and in good faith with a view to advancing the best interests of the credit union; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.”

A breach of the provision of section 31 of the Credit Union Act like the common law duty will ground an immediate summary dismissal. Each of the acts of mismanagement contravenes the provision of section 31.

⁹² See TAB 1 – Credit Unions Act, Cap. 314, Section 31

Statutory Conflict of Interest

17. a) Also the common law duty implied in the Claimant's employment contract – "**... he must not place himself in a position where his duty and his interest conflict; he may not act for his own benefit or the benefit of a third party without the informed consent of his employer**" – is also given statutory reinforcement in the provision of section 33 of the Credit Unions Act, Cap. 314⁹³:

""33(1) A director or officer of a credit union who,

(a) is a party to a material contract or proposed

material contract with the credit union; or

(b) has a material interest in or a material relation

to any person who is a party to a material

⁹³ See TAB 1 – Credit Unions Act, Cap. 313, Section 33

contract or proposed material contract with the credit union,

shall disclose in writing to the credit union, or request to have entered in the minutes of meetings of directors, the nature and extent of that interest.”

- b) The Claimant extended loans to herself using relatives and friends as “fronts”. The loans were deposited in the personal account of the Claimant. The Claimant in breach of section 33 did not disclose to LICU her interest in those loans. These acts of mismanagement also constitute grounds of immediate summary dismissal.

Misconduct under the Labour Act

18. The Labour Act, Chapter 297 in sections 41 to 43 confers powers on

employers to dismiss employees summarily without notice and without payment of any severance or terminal benefit in circumstances where the employee is guilty of misconduct or gross misconduct. Once **“good and sufficient cause”** exists, the employee is liable to summary dismissal. “Good and sufficient cause” is defined in section 41(2)(a) of the Labour Act as acting *“inconsistent with the fulfilment of the express **and implied condition of his contract of employment.**”*⁹⁴ Express conditions exist in sections 31 and 33 of the Credit Unions Act which are incorporated by reference in the employment contract. The implied terms include **“a duty of fidelity”**. **“Fidelity”** means – *“Loyalty, faithfulness, unswerving allegiance; 2. Trustworthiness, veracity, accuracy, etc.”* **Shorter Oxford English Dictionary 5th Edition, Vol. 1 p. 950.**⁹⁵

⁹⁴ TAB 13 – Labour Act, Cap. 297, Sections 41 to 43

⁹⁵ TAB 14 – Shorter Oxford English Dictionary 5th Edition, Vol. I p. 950

Instances of Misconduct discovered after Dismissal

19. *“Supposing the act had been done eight years ago, would that in law have justified the employer in discharging him? In law, I say Yes”.* Cotton LJ in ***Boston Sea Fishing Co. v Ansell*** [1886-90] All ER 65 at 70H⁹⁶
20. *“It is not necessary that the master, dismissing a servant for good cause, should state the ground for such dismissal; and, provided good ground existed in fact, it is immaterial whether or not it was known to the employer at the time of the dismissal. Justification of dismissal can accordingly be shown by proof of facts ascertained subsequently to the dismissal or on grounds differing from those alleged at the time.”* **Halsbury’s Laws of England, 3rd Edition Vol. 25 pp. 487-488 para. 939**⁹⁷
21. LICU is therefore permitted to rely on the instances of misconduct

⁹⁶ See TAB 8

⁹⁷ See TAB 7

the Claimant admitted on oath during the trial as justification for the summary dismissal.

“In all the circumstances I conclude that the alleged misdeeds of the plaintiffs, whether known to the defendants before the determination of the managership or not, are directly relevant to the defence against a plea of wrongful dismissal. ...” **Cyril Leonard & Co. v Simo Securities Trust Ltd. and ors. [1971] 3 All ER 1313 (h) at 1321 per Russell LJ⁹⁸**

Damages on Summary Dismissal

22. It is well settled that at common law an employee who is rightfully dismissed for misconduct cannot recover any moneys which are not due and payable at the time of his dismissal.⁹⁹

“... it is clear and established beyond all doubt by authorities which we should not be justified in overruling, even if we

⁹⁸ TAB 15 – Cyril Leonard & Co. v Simo Securities Trust Ltd and ors. [1971] 3 All ER 1313(h) at 1321

⁹⁹ See TAB 9 – Attorney General v Toby (1976) 28 WIR 277 at 297(j)

desire to do so, that the servant who is dismissed for wrongful behavior cannot recover salary which is not due and payable at the time of his dismissal, but which is only to accrue due and become payable at some later date and on condition that he has fulfilled his duty as a faithful servant down to that later date. The authorities put the question beyond dispute, and the principle also leads us to the same conclusion. He cannot sue his master in such case on his contract with the master, because the obligation of his master under the contract is that he shall pay the salary only at the end of the current

A. INTRODUCTION AND BACKGROUND

Introduction

23. These submissions are made on behalf of La Inmaculada Credit Union (“**LICU**”) in defence of the Claim filed by Yolanda Gomez

(“**Mrs. Gomez**”) in Claim No. 538 of 2015, and in support of LICU’s claim made against Mrs. Gomez in Claim No. 723 of 2015.

24. Mrs. Gomez instituted Claim No. 538 of 2015 against LICU and the Registrar of Credit Unions (“**the Registrar**”) seeking, *inter alia*:

a. A declaration that she was wrongfully dismissed by LICU on 24th July 2015;

b. Damages for wrongful dismissal;

c. Damages for injury to her reputation and feelings caused by the manner in which she was dismissed;

d. A declaration that the Registrar breached his statutory duty under section 36 of the Credit Unions Act; and

e. Damages for breach of statutory duty.

25. LICU in turn instituted Claim No. 723 of 2015 against Mrs. Gomez seeking, *inter alia*:

a. Repayment of \$436,906.34 which Mrs. Gomez embezzled from LICU between 31st March 2012 and 31st March 2015 while she was employed as LICU's General Manager;

b. Alternatively, damages in the sum of \$436,906.34 for loss sustained by LICU due to Mrs. Gomez's gross mismanagement and falsification of LICU's accounts, and through violations of LICU's By-Laws, Policies and provisions of the Credit Unions Act, which resulted in the unauthorized write off of interest, loans, and the unauthorized advances of loan facilities to Mrs. Gomez's family members and friends.

26. LICU denies that Mrs. Gomez was wrongfully dismissed, maintaining that Mrs. Gomez's dismissal was justified as there was sufficient evidence of gross mismanagement of LICU at the time of her dismissal. LICU further submits that, as a result of Mrs. Gomez's gross mismanagement of the credit union, LICU has suffered loss totaling \$436,906.34.

Background

27. LICU was established on 5th June 1949, and is the third largest credit union in Belize with approximately 25,000 members.

28. Mrs. Gomez was employed with LICU for approximately 24 years. At the time of her termination, she was serving as LICU's General Manager.

29. The board did not interfere in the day to day operations of LICU, and prior to her placement on administrative leave, the board had complete trust and confidence in Mrs. Gomez's management of LICU.

30. In or about March 2015 concerns were raised by a member of LICU's Credit Committee as to the manner in which loans were being disbursed under Mrs. Gomez's management, particularly to senior staff members, family and friends of Mrs. Gomez.

31. These concerns were raised with Mrs. Gomez in a board meeting held on 26th March 2015. Although Mrs. Gomez did not reply to the concerns in the meeting held on 26th March 2015, she provided a written response in a letter addressed to LICU's President, Ena Martinez, dated 27th March 2015.

32. Following several joint meetings held between LICU's board and the Credit Committee in April 2015 to discuss the concerns of possible mismanagement under Mrs. Gomez's leadership, a Special Board Meeting was held on 15th April 2015 where several concerns were again addressed to Mrs. Gomez. Despite questions directed to her, Mrs. Gomez failed to provide any explanation to the concerns raised and her responses were evasive. She was given time to provide a written response, but none was provided.

33. The board subsequently met with LICU's compliance officer, Marina Gongora, who provided information and documents that showed many irregularities at LICU and repeated violations of LICU's policies by Mrs. Gomez through her disbursement of loans to family members and friends.

34. LICU's board was deeply concerned and presented its concerns to the Central Bank which conducted an on-site audit of the credit

union. The report from the Central Bank, which was provided to LICU in November 2015, highlighted many irregularities in the procedures at LICU.

35. LICU placed Mrs. Gomez on administrative leave on 29th April 2015, while it investigated the irregularities at the Credit Union.

36. On 30th April 2015 a cash count was conducted at LICU's office in Orange Walk which revealed that there was a cash shortage of approximately \$190,000.00.

37. In or about June 2015 Cedric Flowers was retained by LICU to conduct a special investigation of the credit union. Mr. Flowers spent many weeks at LICU physically going through files and reports. Mr. Flowers met with the board to present his preliminary findings, which supported the matters disclosed by Ms. Gongora. In addition to Mrs. Gomez's violation of LICU's policies by

disbursing loans to family and friends, Mr. Flowers presented documentary proof which supported his findings that Mrs. Gomez had abused LICU's credit card, had written off loans and interest for close family and friends without board approval and without disclosing her relationship, had abused her power when she obtained a loan from an employee, had provided an altered cash position to the chairperson of the Supervisory Committee, failed to report cash shortages and had instructed the falsification of members' files.

38. As a result of Mr. Flowers' findings, a letter was sent to Mrs. Gomez on 20th July 2015 inviting her to a meeting at LICU on 23rd July 2015 to answer queries which had arisen as a result of the ongoing audit.
39. Mrs. Gomez's attorneys replied on 21st July 2015 requesting copies of reports and audits.

40. On said 21st July 2015 a response was sent to Mrs. Gomez's attorneys advising that the investigation was ongoing and so no report had been received. However, it was necessary for Mrs. Gomez, as General Manager of LICU, to present herself and answer questions.
41. On 22nd July 2015 LICU was notified by Mrs. Gomez's attorney that she would not attend the meeting without first knowing what she would be questioned about, and requested copies of documents.
42. Mrs. Gomez failed to attend the meeting on 23rd July 2015 and therefore failed to provide any input in the ongoing investigation.
43. On 24th July 2015 Mrs. Gomez was notified of her dismissal as General Manager of LICU for the following listed reasons:

- a. Instructed the write-off of principal and interest amounts for close family, friends and selected staff members without Board's approval;
- b. Orchestrated the processing of a loan for her personal gain by abusing her power to influence an employee, Raul Cocom. She then signed as the approving authority to the loan obtained under deceit. This infraction is further compounded by the breaching of the Conflict of Interest Policy by not declaring her private interest and gain from the loan;
- c. Failed to inform the Board of existing cash shortages;
- d. Provided an altered cash position report to the Chairperson of the Supervisory committee in relation to the Belmopan cash count conducted on 28th March 2015;
- e. Instructed the falsification of contact reports which were inserted into members' files; and
- f. Continuously abused the institution's credit cards for her personal use.

44. Although there are minutes of a meeting held on 4th April 2012 where the board approved loan write offs totaling \$97,697.36, LICU disputes that the list produced to the board for approval is the list which Mrs. Gomez placed on LICU's files. Of the \$97,696.36, a total of \$55,984.33 (approximately 60%) of the amount written off related to only 4 loans issued to Mrs. Gomez's sister, sister-in-law, nephew and niece.

45. Ena Martinez has given evidence that, because Orange Walk Town is a small community, members of Mrs. Gomez's family are known to members of the board, including herself, and that the board did not and would not have written off loans of that size, and not for members of Mrs. Gomez's family as she could collect the loans from her family members.

46. LICU claims that it has lost a total of \$436,906.34 as a result of Mrs. Gomez's mismanagement of the credit union.

B. ISSUES FOR DETERMINATION

Claim No. 538 of 2015

47. Whether Mrs. Gomez was unlawfully placed on administrative leave by LICU?
48. Whether the Registrar of Credit Unions have a duty to act in accordance with section 36 of the Act in a situation where the Supervising Committee did not inform the Registrar in writing that they were of the opinion that misappropriation and/or misdirection of property of the credit union had taken place?

49. Whether the Registrar of Credit Unions breached his statutory duties by failing to intervene when Mrs. Gomez was placed on administrative leave?
50. Whether Mrs. Gomez was wrongfully dismissed as General Manager of LICU on 24th July 2015?
51. Whether the Registrar of Credit Unions breached his statutory duties by failing to intervene when Mrs. Gomez was dismissed on 24th July 2015?
52. Whether Mrs. Gomez is entitled to damages for injury to her reputation and feelings?
53. Whether Mrs. Gomez is entitled to claim any damages in respect of her dismissal?

Claim No. 723 of 2015

54. Whether the waiver of accrued interest on active loans approved by Mrs. Gomez for the years ending 31st March 2013 to 31st March 2015 in the sum of \$95,586.83 was lawful?

55. Whether Mrs. Gomez acted dishonestly, unlawfully and in violation of LICU's policies and by-laws when she approved the write off of active loans for relatives and friends in the sum of \$55,984.32 in 2012?

56. Whether Mrs. Gomez acted dishonestly and unlawfully by causing a credit to be made to the account of her domestic helper, Olga Hernandez, and thereby reduced her loan balance by the sum of \$79,519.94?

57. Whether Mrs. Gomez acted dishonestly and unlawfully by causing a credit to be made to the account of her nephew, Roy Roberto Rosado, and thereby reduced his loan balance by the sum of \$45,693.28?
58. Whether Mrs. Gomez acted dishonestly and unlawfully by causing a credit to be made to the account of her sister, Sandra Reyes, and thereby reduced her loan balance by the sum of \$39,219.46?
59. Whether Mrs. Gomez abused her office and acted in breach of trust by using LICU's credit card for personal purchases in the sum of \$67,309.74?
60. Whether Mrs. Gomez ordered the falsification of the account of Fiona Reyes/Armando Gomez?

61. Whether Mrs. Gomez acted in conflict of interest and in violation of LICU's By-Laws and policies by instructing the disbursement of unauthorized loan facilities to her husband, Armando Gomez, on the account that he held jointly with her niece, Fiona Reyes?

62. Whether Mrs. Gomez acted unlawfully in ordering the disbursement of \$27,000 to her husband, Armando Gomez, which was drawn on the account of her nephew, Roy Roberto Rosado, through the dishonest manipulation of the said account?

63. Whether Mrs. Gomez is accountable to LICU for the embezzlement of \$436,906.34, or is otherwise, accountable for said loss to LICU?

C. ISSUES IN CLAIM NO. 538 of 2015

64. The issues in Claim no. 538 of 2015 fall into 2 broad categories:

- a. Whether Mrs. Gomez was wrongfully dismissed? And

- b. Whether the Registrar of Credit Unions breached his statutory duty set out at section 36 of the Credit Unions Act?

(1) Wrongful Dismissal

65. As noted by Madam Justice Sonya Young in ***Robert K Allen v Attorney General*** (Claim No. 138 of 2015)¹⁰⁰, “*the main issue in a claim for wrongful dismissal is whether the employer acted in breach of the terms of the contract.*”
66. Mrs. Gomez was employed with LICU for a period of 24 years, from 1991 to 2015. At the time her employment was terminated, she was the General Manager of LICU.

¹⁰⁰ TAB 16 – Robert K Allen v Attorney General

67. Mrs. Gomez has pleaded at paragraphs 23 to 28 of her Statement of Claim, that her dismissal is wrongful for two reasons:

a. Procedural irregularity, i.e. that she was dismissed prior to the conclusion of the investigation, in the absence of a final report, and without the members of LICU being afforded the opportunity to deliberate or pass a resolution whether to dismiss or reinstate Mrs. Gomez following her suspension; and

b. Breach of the principles of natural justice and fairness.

68. At paragraph 40 of her decision in ***Robert K Allen*** supra, Madam Justice Young stated:

*“... in **Malloch v Aberdeen Corporation [1971] 1WLR 1578 at 1595** Lord Wilberforce remarked obiter dicta that at common law no rule of natural justice attends the employer's decision to dismiss. Likewise in **Ridge v Baldwin [1904] AC 40 at 65**, Lord Reid resolved that an employer is under no duty to hear an employee's case before dismissal and may terminate "at any time and for any reason or for none" subject only to the terms of the contract. There is therefore no common law right for an employee to be given reasons for his dismissal. Wrongful dismissal is not the same as unfair dismissal.”¹⁰¹*

69. LICU therefore starts from the premise that, in a claim for wrongful dismissal, an employee has no common law right to natural justice. Such an entitlement is only imported where there is express provision for due process in the employment contract.

¹⁰¹ See TAB 16

70. In or about 2012, LICU had amended its Employment Package, which included provisions for disciplinary proceedings. However, by letter dated 28th April 2015¹⁰², Mrs. Gomez was notified that the package had been revoked, and was “*null and void with immediate effect.*” Since the board had revoked the Employment Package, it no longer formed a part of Mrs. Gomez’s employment contract when she was terminated on 24th July 2015 and she could therefore be summarily terminated, without any regard to the principles of natural justice.

71. Even if the package had not been revoked, it is LICU’s position that there has been no violation of the law for 2 reasons:

¹⁰²102 Page 261, Volume 1 of the Trial Bundle

- a. The circumstances of the case justified summary dismissal of Mrs. Gomez; and

- b. In any event, Mrs. Gomez had been given an opportunity to make representations in her defence.

Summary Dismissal

72. Section 41(1) of the **Labour Act** empowers an employer to dismiss an employee, without giving notice and without liability to pay severance *“if there is good and sufficient cause for such dismissal.”*¹⁰³

73. *“Good and sufficient cause”* is defined at section 41(2)(a) of the Labour Act as including *“dismissal, when an employee is guilty of*

¹⁰³ See TAB 13

misconduct, whether in the course of his duties or not, inconsistent with the fulfilment of the express or implied conditions of his contract of employment.”¹⁰⁴

74. Furthermore, Section 43 of the Labour Act¹⁰⁵ provides that:

(1)An employer is entitled to dismiss summarily without notice or without payment of any severance of redundancy allowance or terminal benefit, any worker who commits an act of gross misconduct.

(2)The gross misconduct referred to in subsection (1) of this section, is restricted to conduct which is directly related to the employment relationship and has a detrimental effect on the business and is based on the operational

¹⁰⁴ See TAB 13

¹⁰⁵ See TAB 13

requirements of the enterprise of such a nature that it would be unreasonable to require the employer to continue the employment relationship.”

75. In **Chitty on Contracts**, 32nd Edition, Volume II, the Editors state at paragraph **40-184** that:

*“Where the employee is guilty of sufficient misconduct in his or her capacity as an employee he or she may be dismissed summarily without notice and before the expiration of a fixed period of employment... There is no rule of law defining the degree of misconduct which will justify dismissal. The test to be applied must vary with the nature of the business and the position held by the employee, and reported cases are therefore only a general guide. **The general rule is that if the employee does anything which is incompatible with the due or faithful discharge of his or her duty to his or her employer,***

*he or she may be dismissed without notice; the employee's conduct need not be dishonest, since it is sufficient if it is "conduct of such a grave and weighty character as to amount to a breach of confidential relationship' between the employer and employee."*¹⁰⁶ (Emphasis supplied)

76. It therefore follows that at common law, an employee may be summarily dismissed by an employer where her conduct *"is incompatible with the due and faithful discharge of his or her duty to his or her employer."* An employer is also given statutory authority to dismiss an employee for *"good and sufficient cause"* and/or *"*".

77. It is LICU's submission that there were serial breaches of LICU's policies by Mrs. Gomez which justified summary dismissal. The

¹⁰⁶ TAB 17 – Chitty on Contracts para. 40-184

reasons for Mrs. Gomez's termination are set out in her termination letter produced at page 585 of the trial bundle. As shown below, evidence has been produced to this court to support each ground set out in the termination letter:

a. Instructed the write-off of principal and interest amounts for close family, friends and selected staff members without Board's approval;

i. Under LICU's Code of Ethics, Conflict of Interest Policy, Loan Policy and the Credit Union Act, Mrs. Gomez had an obligation to disclose her family relationship to the Board prior to any loan write off. In breach of LICU's policies:

1. In 2012 Mrs. Gomez caused loans to be written off for various family members without disclosing to

the board her relationship to the account holders,
including¹⁰⁷:

a. \$24,312.61 for her sister, Sandra Reyes;

b. \$16,344.79 for her sister-in-law Esther
Rosado;

c. \$9,922.39 for her nephew Martin Rosado;

d. \$5,404.54 for her niece Therese Rosado.

2. Mrs. Gomez had acquired joint loans in 2004 and
2005 with her sister Sandra Reyes, and so had a

¹⁰⁷ Paragraph 43 of the Witness Statement of Yadelí Urbina, page 744 of the trial bundle

financial interest in Sandra's account¹⁰⁸. This was not disclosed to the board.

3. By clause 14 of the Loan Policy¹⁰⁹, a loan should only be recommended to the board for write off where 1 year has passed since the last payment, and collection procedures are "*exhausted, unpromising or impractical.*" This could not be the case with Sandra Reyes, particularly since Mrs. Gomez was the co-borrower and the loan was secured by \$7,464.43 shares held by Mrs. Gomez. It also could not be the case with the other persons mentioned above who are closely related to Mrs. Gomez.

¹⁰⁸ Paragraphs 44 and 61-64 of the Witness Statement of Yadelí Urbina, pages 744 and 746-747 of the trial bundle;

¹⁰⁹ Page 778 of the trial bundle

ii. LICU had no written policy in relation to interest write off, and no approval was granted by the board to have interest written off for the year ended 31st March 2014¹¹⁰. Mrs. Gomez therefore acted unlawfully when she authorized the write off of:

1. \$18,812.83 in interest on the account of her nephew Roy Roberto Rosado¹¹¹, where:

a. She failed to disclose her relationship to the account holder in breach of the Conflict of Interest Policy;

b. Failed to disclose to the board that she had a financial interest in Mr. Rosado's account.

¹¹⁰ Paragraph 24 of the Witness Statement of Yadeli Urbina, page 741 of the trial bundle

¹¹¹ Paragraph 28 of the Witness Statement of Yadeli Urbina, page 742 of the trial bundle

Mrs. Gomez admitted under cross-examination that loans disbursed to Mr. Rosado were paid into her account¹¹²;

c. Although the interest write offs were effected in May 2013, loans were subsequently disbursed in July 2013 to Mr. Rosado totaling \$40,000¹¹³, indicating that it was not impossible to collect the interest from Mr. Rosado. The issuance of this loan violated Article VI (4) of LICU's By-laws which prohibits a member from borrowing if *"he is not in good standing or if he has failed to repay any previous loan, or if he is presently*

¹¹² Pages 40 -41 of the Transcript of Proceedings of 13th February 2017

¹¹³ Paragraphs 27 – 32 of the Witness Statement of Yadelí Urbina, page 742 of the trial bundle

in arrears in the payments of any current loan or any instalment thereon.”

2. \$9,059.42 in interest on the account of her brother, Roy Anthony Rosado, where she failed to disclose her relationship to the account holder in breach of the Conflict of Interest Policy;

3. \$3,359.60 in interest on the account of Minerva Sabido and \$1,918.48 on the account of Hector Rene Sabido Jr., the wife and son respectively of Hector Sabido, then LICU’s Loans Monitoring Officer.

b. Orchestrated the processing of a loan for her personal gain by abusing her power to influence an employee, Raul Cocom. She then signed as the approving authority to the loan obtained

under deceit. This infraction is further compounded by the breaching of the Conflict of Interest Policy by not declaring her private interest and gain from the loan¹¹⁴;

c. Failed to inform the Board of existing cash shortages¹¹⁵;

d. Provided an altered cash position report to the Chairperson of the Supervisory Committee in relation to the Belmopan cash count conducted on 28th March 2015¹¹⁶.

i. Mrs. Gomez has admitted in cross-examination that she had instructed the system administrator, Miguel Garcia, to prepare a report to match the cash on hand at LICU since there was a variance in cash¹¹⁷.

¹¹⁴ Paragraphs B90-B93 of the report of Cedric Flowers, page 325 of the trial bundle;

¹¹⁵ Pages 36-40 of the report of Cedric Flowers, pages 340 to 344 of the trial bundle; Paragraphs 65 – 74 of the Witness Statement of Yadeli Urbina, pages 747 – 748 of the trial bundle; pages 36 -40 of the report of Cedric Flowers, pages 340 – 344 of the trial bundle

¹¹⁶ Pages 30-35 of the report of Cedric Flowers, pages 334 to 339 of the trial bundle; paragraphs 65 – 74 of the Witness Statement of Yadeli Urbina, pages 747 – 748 of the trial bundle

¹¹⁷ Pages 34-35 of the Transcript of Proceedings of 13th February 2017

e. Instructed the falsification of contact reports which were inserted into members' files; and

f. Continuously abused the institution's credit cards for her personal use:

i. The abuse of LICU's credit card has been supported by the evidence of Yadelí Urbina and Lucía González, who confirm that Mrs. Gómez used the cards for personal purchases, and that the card payments were made by LICU¹¹⁸.

¹¹⁸ Paragraphs 22-24 of the Witness Statement of Lucía González, page 483 of the trial bundle; paragraph 275 – 78 of the Witness Statement of Yadelí Urbina, page 748 of the trial bundle

- ii. The use of the credit card violated clause 4.1.1 of LICU's Code of Ethics which stipulated that an employee should not "*abuse the personal privileges of office*¹¹⁹."

78. Mrs. Gomez has admitted under cross-examination that she instructed the loan write offs¹²⁰, and that there was no board approval for the interest write offs¹²¹.

79. Mrs. Gomez's failure to declare her familial relationship and/or financial interest in the aforementioned loan and interest write offs, and in relation to loans issued by LICU and in which she had an interest violated:

- a. The **Credit Union Act**, which provides at section 33(1) that any officer who:

¹¹⁹ Page 759 of the trial bundle

¹²⁰ Page 33, lines 8-18 of the transcript of proceedings of 13th February 2017

¹²¹ Page 38, lines 5-9 of the transcript of proceedings of 13th February 2017

1. Is party to a material contract or a proposed material contract with the credit union; or

2. Has a material interest in or a material relation to any person who is a party to a material contact or proposed material contract with the credit union, shall disclose in writing to the credit union, or request to have entered in the minutes of the directors, the nature and extent of that interest.

b. LICU's By-laws, which:

- i. Mandate at Article VI (1)¹²² that interest must be charged on loans at the rate of 1% per month on unpaid

¹²² Page 198 of the trial bundle

balances, “*or as the Board of Directors may approve from time to time not in contravention of the ordinance.*”

- ii. Provides at Article VII (10)(a)¹²³ that the duties of the board of directors includes the right “*to determine from time to time the interest rates on loans.*” It is therefore only the Board of Directors that can alter the requirement for interest, or the rate of interest that must be charged on unpaid balances. Mrs. Gomez had no residual discretion to waive interest on loans.

- c. LICU’s Code of Ethics which required Mrs. Gomez to:

¹²³ Page 200 of the trial bundle

i. Declare her interest directly or indirectly in any contract or transaction to which LICU is or will be party (clause 1.1.5)¹²⁴;

ii. Disclose the nature and extent of any benefit or consideration derived, directly or indirectly, because of such contract or transaction (clause 1.1.5);

iii. Disclose potential conflicts of interest (clause 2.1.1)¹²⁵.

d. LICU's Conflict of Interest Policy which required Mrs. Gomez to:

i. Disclose to the Board all material facts regarding her interest in a transaction (Art III(1))¹²⁶; and

¹²⁴ Page 752 of the trial bundle

¹²⁵ Page 755 of the trial bundle

¹²⁶ Page 763 of the trial bundle

ii. Complete an Annual Disclosure and Compliance Statement in which she disclosed her financial interests and family relationships that could give rise to a conflict of interest (Art. VI)¹²⁷;

e. LICU's Loan Policy, which provides at clause 14¹²⁸ that a loan should only be recommended to the board for write off where *“one year has passed since any payment was received and collection procedures have been exhausted, unpromising or impractical.”*

80. A conflict of interest is defined at clause 1.1.4 of LICU's Code of Ethics¹²⁹ as being a situation where an officer's self-interest may

¹²⁷ Page 764 of the trial bundle

¹²⁸ Page 778 of the trial bundle

¹²⁹ Page 752 of the trial bundle

compromise, or appear to compromise his legal or moral obligation to LICU.

81. The circumstances outlined in the termination letter, and in particular the violations of LICU's Code of Ethics justified summary dismissal. Reliance is placed on Clause 1.1.7 of LICU's Code of Ethics¹³⁰ which states that "*Failure to declare a conflict of interest is sufficient grounds for removal from office.*"

82. Furthermore, there was evidence, as stipulated in the letter, that Mrs. Gomez had committed serious offences against LICU, tantamount to stealing, fraud and embezzlement.

83. Clause 2.1.3 of LICU's Code of Ethics¹³¹ states that:

¹³⁰ Page 752 of the trial bundle

¹³¹ Page 757 of the trial bundle

“Serious offences, such as stealing, fraud, embezzlement etc., should warrant immediate dismissal.”

84. Furthermore, clause 4.1.8 of LICU’s Code of Ethics¹³² states that:

“All Directors, committee members and staff must refrain from all criminal acts such as, bribery, embezzlement, forgery, theft etc.

Evidence of such activity represents sufficient grounds for immediate dismissal of an employee.”

85. LICU was therefore permitted, under its Code of Ethics, to summarily dismiss Mrs. Gomez for the serious offences outlined in her termination letter:

¹³² Page 759 of the trial bundle

- a. Mrs. Gomez has admitted to instructing the system administrator to falsify a report, which constituted fraud;
- b. Mrs. Gomez abused her privileges when she used LICU's credit card for personal purchases. She has not reimbursed LICU for the purchases, and this therefore constitutes theft;
- c. Mrs. Gomez authorized the write off of interest on several accounts in which she had a personal interest, and so benefited from these write offs. Aside from being unlawful and violating LICU's policies, the write offs conferred a direct benefit on Mrs. Gomez and so amounted to embezzlement/misappropriation of LICU's funds.
- d. She recommended the write off of loans for family members, and failed to disclose her personal interest in the account of family members' whose loan accounts were written off. Again, this constituted embezzlement/misappropriation of LICU's funds.
- e. It is LICU's position that the list provided to the board for the loan write off is not the list which was placed on LICU's files¹³³. The board did not authorize the write off of large loans for

¹³³ Paragraphs 47-50 of the Witness Statement of Ena Martinez, pages 493- 494 of the trial bundle

members of Mrs. Gomez's family members. LICU's position is that there has been fraud and embezzlement by Mrs. Gomez in relation to the loan write offs.

- f. The fact that there were no procedures in place and accountability for the movement of large sums of cash from the Orange Walk office to the Belmopan branch of LICU confirms lax policies and is evidence of gross mismanagement by Mrs. Gomez.
86. In view of the above it is respectfully submitted that LICU could summarily terminate Mrs. Gomez for the reasons outlined in the termination letter.
87. As to the violation of LICU's Conflict of Interest Policy, Article VII¹³⁴ states that:

"If the Board has reasonable cause to believe that an insider of LICU has failed to disclose actual or possible conflicts of interest, including those arising from a transaction with a

¹³⁴ Page 765 of the trial bundle

related interested person, it shall inform such insider of the basis for this belief and afford the insider the opportunity to explain the alleged failure to disclose. If, after hearing the insider's response and making further investigation as warranted by the circumstances, the board determines that the insider has failed to disclose an actual or possible conflict of interest, the Board shall take appropriate disciplinary and corrective action."

88. This provides a separate and additional reason for Mrs. Gomez's dismissal. In this case, the policy requires Mrs. Gomez to be informed of the failure and to be afforded an opportunity to explain the failure.

89. In this regard, LICU submits that the initial concerns raised with Mrs. Gomez at the board meeting on 26th March concerned her issuing of loan facilities to very close family members¹³⁵.
90. Mrs. Gomez was afforded an opportunity to, and did respond in writing on 27th March 2015¹³⁶. However, the letter did not address the board's concerns which had been raised directly with Mrs. Gomez. While Mrs. Gomez failed to answer the board's concerns, she does lament in her letter that:

“... I am very disappointed that my Staff and I, or probably I alone, are being viewed with distrust. This sentiment is being validate not only by the comments and outbursts and insinuations that we all chose to ignore and refused to believe, but also by the attachment that captures strong statements

¹³⁵ Paragraph 9 of the Witness Statement of Ena Martinez, page 488 of the trial bundle

¹³⁶ Letter dated 27th March 2015 at page 525 of the trial bundle

and false accusations. I am forced to take a personal issue because I have inquired and the member 'Abel Blanco' seems to be related to no one else from the staff than my husband."

91. Clearly, the meeting of 26th March 2016 centered around the board's perceived conflict of interest in the issuance of loans. In particular, the board was concerned about a loan of \$75,000 disbursed to Abel Blanco before the Credit Committee had approved the loan.

92. The issues were further addressed in a special board meeting with Mrs. Gomez held on 15th April 2015. Mrs. Gomez was again questioned on the issuance of the loan to Abel Blanco, whom she admitted in her letter is related to her husband. The evidence of Ena Martinez as to that meeting is that Mrs. Gomez was generally

evasive¹³⁷, and asked for time to reply in writing¹³⁸. No reply was ever provided.

93. It is therefore submitted that LICU complied with the requirement of Article VII of the Conflict of Interest Policy, which also empowers LICU to take disciplinary or corrective action for breach of the policy.

Natural Justice

94. As noted above, there is no common law right which entitles an employee to natural justice. However, a right to due process can be incorporated into the employment contract.

¹³⁷ Paragraph 14 to 16 of the Witness Statement of Ena Martinez – page 489 of the trial bundle

¹³⁸ Minutes of Meeting at pages 534 to 537 of the trial bundle

95. If the court finds that LICU's Employment Package was not revoked, it is submitted that, in any event, there was no violation of the employment terms.
96. It is noteworthy that LICU is not obliged to carry out an investigation and to follow the disciplinary procedures for every instance of misconduct. The Employment Package states that disciplinary action "may be applied by the Credit Union" for the circumstances outlined, thereby making it discretionary for LICU to determine whether or not to initiate disciplinary procedures. Furthermore, items (h) and (i) of the disciplinary procedures state that:

"Whenever practical disciplinary procedures should:

(a)...

(h) Ensure that, except for gross misconduct, no employee is dismissed for a first breach of discipline

(i) Ensure that disciplinary action is not taken until the case has been fully investigated, except in cases where the misuse of monies is concerned.”

97. It follows from the above that the disciplinary procedure set out in the Employment Package are merely a guide, and are only to be followed as far as is practical. Even so, it permits the dismissal of an employee for gross misconduct, and permits disciplinary action (which includes termination) even in circumstances where the case has not been fully investigated, where there is a misuse of monies.
98. There can therefore be no legitimate complaint by Mrs. Gomez that there was no final report prior to her dismissal, since the disciplinary procedure permits dismissal where the misconduct concerns misuse of monies. Mrs. Gomez’s reluctance to participate in the investigation and her insistence on being provided with the investigative report before making herself available to be

questioned was therefore misconceived. Mrs. Gomez was on administrative leave and as an employee of LICU, had an obligation to present herself during the investigation and to answer questions.

99. LICU's evidence is that it did afford Mrs. Gomez an opportunity to make representations in her defence, but Mrs. Gomez failed to avail herself of the opportunity. It is LICU's evidence that:

- a. After initial concerns were raised in March 2015 about the manner in which loans were being disbursed, primarily to family members of Mrs. Gomez, the issue was raised with Mrs. Gomez at a board meeting held on 26 March 2015¹³⁹;

¹³⁹ Para 8 of the Witness Statement of Ena Martinez, page 488 of the Trial Bundle

- b. On 27th March 2015 Mrs. Gomez issued a written response to some concerns raised¹⁴⁰.
- c. On 14th April Mrs. Gomez was advised of a meeting to be held on 15th April to discuss the concerns with her¹⁴¹.
- d. A Special Board Meeting was held with Mrs. Gomez on 15th April, and as indicated in the Minutes of Meeting, Mrs. Gomez asked for time to review the pointers presented and get back to the Board¹⁴².
- e. Mrs. Gomez failed to address the action points raised at the meeting, in writing or otherwise following the meeting held on 15th April 2015.

¹⁴⁰ Page 525 of the Trial Bundle

¹⁴¹ Para 13 of the Witness Statement of Ena Martinez, page 489 of the Trial Bundle

¹⁴² Pages 534 to 537 of the Trial Bundle

f. On 20th July 2015, the chairperson of LICU's board, Ms. Ena Martinez, wrote to Mrs. Gomez to request that she attend a meeting at LICU on 23rd July to answer queries in respect of the ongoing investigation¹⁴³. Mrs. Gomez was notified in that letter that Mr. Cedric Flowers would be present at the meeting.

g. Following a request from Mrs. Gomez to be provided with copies of the report, by letter dated 21st July 2015, Mrs. Gomez was notified that the investigation was ongoing, as so there was no report to be provided¹⁴⁴. Mrs. Gomez was reminded that, *"as an employee of the institution, we expect your cooperation in this process in an effort to properly address certain issues."*

¹⁴³ Para. 35 of the Witness Statement of Ena Martinez, page 492 of the Trial Bundle; page 581 of the Trial Bundle

¹⁴⁴ Para. 37 of the Witness Statement of Ena Martinez, page 492 of the Trial Bundle; page 583 of the Trial Bundle

- h. Mrs. Gomez failed to attend the meeting which was scheduled for 23rd July 2015.
 - i. By letter dated 24th July 2015, Mrs. Gomez was notified of her termination¹⁴⁵.
100. Mrs. Gomez was therefore fully aware of the Board's concerns as these concerns were raised with her in at least 2 meetings. Despite her promise to revert on the points, she never did.
101. Mrs. Gomez made a conscious decision not to participate in the investigation, notwithstanding that she was on paid leave, in receipt of her full salary, was still employed as the General Manager of LICU and so remained answerable to the Board.

¹⁴⁵ Para. 45 of the Witness Statement of Ena Martinez, page 493 of the Trial Bundle; page 585 of the Trial Bundle

102. As noted above, under LICU's Employment Package it could dismiss an employee without completing an investigation if it involved misuse of monies. In the instant case, LICU could not complete its investigation as Mrs. Gomez refused to participate in the investigation by refusing to make herself available to answer any questions. Since the investigation concerned misuse of monies, even if the Employment Package applied (which is denied) LICU acted within its rights when it terminated Mrs. Gomez.

103. It is therefore submitted that the dismissal was not wrongful as there was no breach of any procedure, nor was there a violation of a right to natural justice. Since the Employment Package was revoked 3 months prior to Mrs. Gomez's termination, it no longer governed the employment relationship. As Madam Justice Young stated in **Robert K. Allen**, "*There is therefore no common law right for an employee to be given reasons for his dismissal.*" There can therefore be no breach of natural justice.

104. Even if LICU is wrong and the Employment Package continued to govern the relationship, it is submitted that Mrs. Gomez was aware of the allegations against her as they had been discussed with her in at least 2 meetings, and that she was given an opportunity to present herself at a meeting with the Board on 23rd July 2015, but chose not to attend. She cannot therefore complain that she has had no opportunity to be heard on the matter.

Matters Discovered After Termination

105. LICU submits that the evidence in this case clearly demonstrate that Mrs. Gomez repeatedly violated the policies and laws that governed the operation of LICU. Even if these matters were not all known to LICU at the time of termination, it is submitted that LICU

is able to rely on these matters in its defence to justify the summary dismissal of Mrs. Gomez.

106. In **Chitty on Contracts**, 32nd Edition, Volume II, the Editors state at paragraph **40-188** that *“An employer, when he or she dismisses his employee, need not allege any specific act of misconduct on the employee’s part as the ground for the dismissal; it is sufficient if such a ground did exist, whether or not the employer knew of it at the time of the dismissal.”*¹⁴⁶

107. In **Cyril Leonard & Co. v Simo Securities Trust Ltd. and Others** [1971] 3 ALL ER 1313, the Russell LJ stated at page 1321 that, in a case of wrongful dismissal, *“After-discovered fraud may be relied on surely because it is conduct which, if known, would have justified a premature determination. So in my view should any other after-*

¹⁴⁶ See TAB 17

discovered conduct which, if known, would have justified the same."¹⁴⁷

108. Russell LJ therefore concluded at page 1321 that *"the alleged misdeeds of the plaintiffs, whether known to the defendants before the determination of the managership or not, are directly relevant to the defence against a plea of wrongful dismissal ..."*¹⁴⁸

109. In ***Robert K Allen***, Madam Justice Young referred to ***Cyril Leonard & Co.***, although she distinguished the cases as she considered that after-discovered conduct could not be relied upon in circumstances where an employee is dismissed, without cause. It could only be invoked where an employee is dismissed for cause.

¹⁴⁷ See TAB 15

¹⁴⁸ See TAB 15

110. At paragraph 31 of her decision Madam Justice Young referred to **Smith and Wood's Employment Law**, page 456 where it states, in reference to the Boston Deep Sea case,

*"For example at common law a summary dismissal would be lawful if the employer acted on reason A which was quite inadequate, but later found out about reason B which could in fact justify summary dismissal."*¹⁴⁹

111. At paragraph 32 Madam Justice Young referred to **Fundamentals of Ethics, Corporate Governance and Business Law**, and cited the following:

"... when an employee is dismissed for possible inadequate reasons and the employer then discovers more serious

¹⁴⁹ See TAB 16

conduct, in an action for wrongful dismissal, evidence of these subsequent discoveries would be admissible as part of the employer's defence.”¹⁵⁰

112. If, therefore, the Court finds that LICU was not aware of all the matters of which evidence has been given in this case at the time of Mrs. Gomez's dismissal, LICU is able to now rely on all the evidence in support of its defence of Mrs. Gomez's claim that she was wrongfully dismissed. These include:

- a. Cogent evidence has been presented by LICU that Mrs. Gomez routinely instructed the payment of principal (not interest), or to delete service charges in relation to loans in which she had a financial interest.

¹⁵⁰ See TAB 16

i. Jamid Teyul gave evidence of being required to apply payment to principal only, and of being asked by Mrs. Gomez if he was “stupid” because he questioned her directive¹⁵¹;

ii. Jamid Teyul has given evidence of the deletion of a service charge of \$1,875 on the account of Olga Hernandez/George Cummings on 13th December 2013¹⁵²,

b. Evidence has been produced in these proceedings of Mrs. Gomez using the account of her domestic helpers and family members to obtain loans – eg.

¹⁵¹ Pages 656 and 657 of the trial bundle

¹⁵² Pages 657 and 658 of the trial bundle

- i. Use of account of Benita Ayuso and Olga Hernandez which is referenced in the witness statements of Jamid Teyul, Lucia Gonzalez and Yadelí Urbina;
 - ii. Use of the account of her niece Fiona Reyes, nephew, Roy Roberto Rosado and sister, Sandra Reyes.
- c. Evidence has been produced of Mrs. Gomez instructing the payment of significant loan balances on the accounts of Olga Hernandez, Roy Roberto Rosado and Sandra Reyes without complying with standard procedures or protocols at LICU. No cash was provided to the cashiers and so there is no evidence of actual payment of the loans. There is also evidence of fraud, not only by the unlawful reduction of the loan balances, but by the fraudulent statement of the source of the funds used to pay the loans, as further discussed below in the arguments in support of Claim No. 723 of 2015.

113. Furthermore, LICU submits that the evidence discloses that Mrs. Gomez, while on paid administrative leave, refused to cooperate with the investigation by returning to LICU to answer questions which had arisen during the investigation. The directive from LICU's board was a lawful order, which had been complied with by all other members of staff. The board fully expected that Mrs. Gomez would return from leave to assist the investigation. Her failure to do so was in disobedience of a lawful order, and as such, presents an additional ground which justifies her dismissal.

114. In **Chitty on Contracts**, 32nd Edition, Volume II, the Editors state at paragraph **40-188** that *"An employee may be summarily dismissed if he or she wilfully disobeys any lawful and reasonable order of his employer ... In circumstances which show that the employee is*

repudiating one of the essential conditions of the contract of employment, a single act of disobedience will justify dismissal.”¹⁵³

115. The evidence, when taken in its totality, clearly demonstrates that the dismissal of Mrs. Gomez was justified.

(ii) Damages for Wrongful Dismissal

116. If the court determines that the Mrs. Gomez was wrongfully dismissed, then she would be entitled to damages flowing from the termination.

117. In **Chitty on Contracts**, 32nd Edition, Volume II, the Editors state at paragraph 40-200 that:

¹⁵³ See TAB 17

*“The remedy of an employee who has been wrongfully dismissed is an action for damages. **The normal measure of damages is the amount the employee would have earned under the contract for the period until the employer could lawfully have terminated it, less the amount he or she could reasonably be expected to earn in other employment.** The dismissed employee, like any innocent party following a breach of contract by the other party, must take reasonable steps to minimize his loss.”¹⁵⁴ (Emphasis supplied)*

118. In ***Mark Menzies v Belize Water Services Ltd.*** (Claim No. 200 of 2013) Madam Justice Arana stated at paragraph 58 that in a case of wrongful dismissal,

¹⁵⁴ See TAB 17

*“The measure of such damages is confined to “a reasonable period of notice” assessed by considering the minimum statutory period of notice due under the Labour Act ...”*¹⁵⁵

119. In that case, Madam Justice Arana considered that the disciplinary process would likely have lasted about three (3) months, and so considered 3 months salary as reasonable notice.

120. In ***Lloyd Enriquez v Belize Tourism Board*** (Claim No. 517 of 2011), Chief Justice Kenneth Benjamin stated that,

“The measure of damages seeks to put the Claimant as far as is practicable in the financial position he would have enjoyed had his engagement not have been terminated. The Claimant is however under a duty to take tangible steps to mitigate his loss. Put another way, the Claimant’s entitlement is to be

¹⁵⁵ TAB 18 – Mark Menzies v Belize Water Services Ltd.

*compensated for whatever loss would have resulted from the failure of the employer to give reasonable notice. In the case at bar the Claimant plainly took steps to mitigate his loss but he was only able to secure employment with substantially lower emoluments. The Claimant had been employed for eight years when his engagement was terminated. His age was given as 38 years at the time of his termination. He held a senior management position at a unique statutory body thus rendering comparable employment not readily available. **The remit of the Court is to compensate the Claimant for the loss of earnings arising from not having been accorded reasonable notice.** In my considered view, based on the circumstances to which I have referred, 12 months would be a reasonable period in this case.”¹⁵⁶ (emphasis supplied)*

¹⁵⁶ TAB 19 – Lloyd Enriquez v Belize Tourism Board

121. As Chief Justice Benjamin pointed out, it is for the Court to determine what would be reasonable notice in the circumstances of the case. In ***Lloyd Enriquez*** he considered that reasonable notice was 12 months because Mr. Enriquez held a senior management position “*at a unique statutory body thus rendering comparable employment not readily available.*” The same cannot be said of Mrs. Gomez who was the General Manager of a credit union and has, since her termination, been able to obtain an alternative management position at Centaur Communications Corporation Limited¹⁵⁷.

122. In **Chitty on Contracts**, 32nd Edition, Volume II, the Editors state at paragraph 40-201 that,

¹⁵⁷ Mrs. Gomez is the Human Resources and Marketing Manager at Centaur – see para. 1 of her witness statement, page 171 of the Trial Bundle

*“If the defendant has a right to terminate the contract before the expiry of the term, damages for the wrongful dismissal should be assessed only up to the earliest time at which the defendant could validly have terminated the contract. Thus, if the contract expressly provides that it is terminable upon, e.g. a month’s notice, the damages will ordinarily be a month’s wages. In *Gunton v Richmond LBC* it was held that where a dismissal was wrongful by reason of a failure to comply with a contractually binding dismissal procedure, the damages were to be assessed only up to the expiry of the contractually due notice of one month notionally served on the day when the proper disciplinary procedure, if followed, could have been concluded.”¹⁵⁸*

¹⁵⁸ See TAB 17

123. It is therefore submitted that if the court finds that the Employment Package continued to govern the employment relationship notwithstanding its revocation by the Board, it would follow that the employment could have been terminated by LICU on one month's notice to Mrs. Gomez, as provided at page 5 of the said package¹⁵⁹ which states as follows:

“The service of an employee who is on the full-time and permanent staff of the Credit Union may be terminated by giving one month’s notice on either side.”

124. In that event, reasonable notice would be one (1) month notice, since the employment was terminable on one (1) month notice by either party.

¹⁵⁹ Page 266 of the Trial Bundle.

125. If the Court finds that the Employment Package was revoked, then it would not govern Mrs. Gomez's employment at the time of her termination and the court would have to determine a reasonable notice period.

126. In that event, reliance is placed on the Labour Act. As Madam Justice Young pointed out at paragraph 16 of her decision in **Robert K. Allen**, "*... the old distinctions, in the original Labour Act Cap 297, between written and oral contracts of employment of service no longer exist.*"¹⁶⁰

127. This is because "contract of employment" and "contract of service" are now defined at section 2 of the **Labour Act** as,

¹⁶⁰ See TAB 16

*“Any agreement between an employer and a worker, whether expressed or implied, **oral or written**, for a **definite or indefinite period** by which the worker works under the authority and directions of the employer even if not under his direct supervision, in return for remuneration fixed according to the hours or work or at piece or task rate, and include a contract of apprenticeship or probation.”¹⁶¹ (emphasis supplied)*

128. Section 37(2) of the **Labour Act**, which would then apply equally to written and oral contracts of service (provided there is no contrary provision in the written contract) sets out the periods of notice for the termination of a contract of employment for an indefinite period, without the need to assign any reason therefor. Where the

¹⁶¹ TAB 20

employee has been employed for more than 5 years, the period of notice is eight (8) weeks.¹⁶²

129. It is therefore submitted that reasonable notice, in the instant case, would be no more than eight (8) weeks notice.

130. Mrs. Ena Martinez has given evidence that Mrs. Gomez's gross salary was \$13,370.11 per month, and that her net salary was \$10,027.59 per month¹⁶³.

131. Mrs. Gomez's net annual salary was therefore \$120,331.08, so that her weekly salary was \$2,314.06.

¹⁶² TAB 21

¹⁶³ Paragraph 55 of the Witness Statement of Ena Martinez, page 494 of the trial bundle

132. If Mrs. Gomez was entitled to one month's notice, her entitlement would be \$10,027.59. If she was entitled to 8 weeks salary, then her entitlement would be \$18,512.48.

133. It is respectfully submitted on behalf of LICU that the measure of damages for wrongful dismissal is *not* to compensate Mrs. Gomez up to the date of her retirement, which, based on LICU's Employment Package, is up to age 55¹⁶⁴. Instead, if the dismissal is wrongful, the measure of damages would be to compensate Mrs. Gomez for the amount she would have earned under the contract until it could have been lawfully terminated by LICU "*less the amount he or she could reasonably be expected to earn in other employment*".

¹⁶⁴ Page 276 of the trial bundle

134. Mrs. Gomez has given no evidence as to her current income from Centaur Communications Corporation Limited, although she has stated that she is the Manager of Human Resources and Marketing.

(iii) Severance

135. Section 183 of the Labour Act provides for the payment of severance to an employee upon the termination of her employment. However, sections 41 and 43 of the Labour Act exempts an employer from paying a severance to an employee where she has been terminated for “*good and sufficient cause*” or for “*gross misconduct*”.

136. It is LICU’s position that it was under no obligation to pay a severance to Mrs. Gomez since she was dismissed for cause.

137. The termination letter expressly stated that the grounds referenced therein “*constitute gross misconduct and are contrary to the very mission and purpose of the institution.*” Mrs. Gomez was also advised in the termination letter that “*Given that you are being summarily dismissed, you are not entitled to any benefits*¹⁶⁵.”

(iv) Other Benefits

138. Mrs. Gomez has claimed additional sums¹⁶⁶, including:

- a. \$1,851.23 as double increment which was due on 1st April 2015;
- b. \$154,125.01 as pension fund up to retirement;
- c. \$37,820.99 vacation grant up to retirement;

¹⁶⁵ Page 585 of the trial bundle

¹⁶⁶ Page 12 of the trial bundle

d. \$3,000.00 long service award for 1st April 2016

139. In **Chitty on Contracts**, 32nd Edition, Volume II, the Editors state at paragraph 40-202 that,

*“... the employee cannot claim for the loss of expected benefits if these were not benefits which the employer was contractually bound to give. **Thus, where the grant of bonuses was entirely in the employer’s discretion, damages for wrongful dismissal should not include any compensation for the loss of expected bonuses in the future.**”* (Emphasis supplied)

(a) Bonus

140. Mrs. Gomez's claim to a bonus is directly tied to the Employment Package which provides at clause 4¹⁶⁷ that, *"A bonus of 5% of the annual salary will be rewarded based on performance of the employees and the productivity and affordability of the institution."*

141. If the Employment Package was lawfully revoked, then there can be no claim for a bonus.

142. It is submitted that even if the Employment Package was not lawfully terminated, Mrs. Gomez would not be entitled to a bonus for 2 reasons:

¹⁶⁷ Page 269 of the trial bundle

- a. The payment of the bonus is a matter which is entirely within the discretion of LICU as employer, and is directly tied to the performance of the employee;
- b. There is cogent evidence of mismanagement of LICU by Mrs. Gomez, and so it is unlikely that she would have been paid a bonus.

143. As noted above, where the grant of a bonus is within the employer's discretion, "*damages for wrongful dismissal should not include any compensation for the loss of expected bonuses.*"

144. Mrs. Gomez is not therefore entitled to the payment of a bonus.

(b) Vacation Grant

145. Mrs. Gomez has claimed vacation grant up to retirement.

146. The Employment Package provides that an employee is entitled to a Vacation Grant of 33.33% of one month's gross salary which is granted at the time the employee takes his/her annual leave.
147. By clause 2(b) of the Employment Package, the "*Vacation Grant entitlement can be accumulated up to three years entitlement.*"
148. LICU starts from the position that Mrs. Gomez is not entitled to any vacation grant up to the time of her retirement. If the court determines that Mrs. Gomez was not lawfully terminated, the normal measure of damages would include the calculation of her vacation grant up to such time that she could have lawfully been terminated which, on LICU's submission, is either 1 month or 8 weeks.

149. At most, Mrs. Gomez would be entitled for prorated vacation grant for the duration of the appropriate notice period.

150. It is further submitted, in any event, that under the Employment Package, the entitlement to vacation grant cannot be accumulated for more than 3 years.

(c) Double Increment and Long Service Award

151. Mrs. Gomez has claimed a double increment which she claims was due as at 1st April 2015. She has however produced no documentary evidence which justifies the grant of a double increment, as there is no provision for same in LICU's Employment Package.

152. It is submitted, in any event, that the grant of a double increment would have been a matter within the discretion of LICU as

employer. As such, it should be treated like a bonus which is not to be awarded on a claim for wrongful dismissal, save if the grant of the double increment was an express term of the employment contract.

153. As to the long service award, Mrs. Gomez claims that this would have been granted on 1st April 2016. It is submitted that, even if the termination in July 2015 was unlawful, any notice period granted by the court would have expired before 1st April 2016 (some 9 months after Mrs. Gomez's termination). As such, Mrs. Gomez would not have been deemed in the employ of LICU as at 1st April 2016, and so would not be entitled to a long service award.

(d) Pension

154. Mrs. Gomez claims that she is entitled to have her pension calculated up to the age of retirement. LICU disputes this claim.

155. In *Beach v Reed Corrugated Cases* [1956] 1 WLR 807¹⁶⁸, no damages were awarded to a company director under the company's retirement benefit scheme for directors, as the company had the right to discontinue either the whole scheme or any participant's assurance under it at any time.

156. In the instant case the company's pension scheme has not been produced by Mrs. Gomez to enable the court to determine the terms of the scheme. However it is submitted that Mrs. Gomez is not entitled to claim retirement benefits up to the age of retirement for one (1) simple reason. Participation in the scheme depends on a person's employment at LICU. If Mrs. Gomez was lawfully terminated then she cannot maintain a claim for any pension benefit lost.

¹⁶⁸ TAB 22

157. If Mrs. Gomez was wrongfully terminated, as noted above, her damages would be limited by the reasonable notice period by which her employment could have been lawfully terminated. In any event, the reasonable period of notice would not have exceeded 8 weeks, and so there is no circumstance under which Mrs. Gomez would be entitled to claim pension benefits up to the age of retirement.

(v) Damages for Injury to Reputation and Feelings

158. Mrs. Gomez has claimed *“damages for injury to reputation and feelings caused by the manner in which [she] was suspended and dismissed by [LICU] in the amount of BZ\$40,000.00 or such amount as the Court may deem fit¹⁶⁹.”*

¹⁶⁹ Page 3 of the trial bundle

159. It is LICU's position that, the termination falling within the realm of contract law, Mrs. Gomez is not entitled to any compensation for injury to reputation and/or feelings, even if the termination is found to be wrongful.

160. In **McGregor on Damages 19th Edition**, the Editors state at paragraph **31-024** that,

"In Addis the claimant had been dismissed in a harsh and humiliating manner, and it was held that the manner of the dismissal could in no way affect damages... This remains the position today for wrongful dismissal despite obiter indications in of their Lordships in Mahmud v Bank of Credit and Commerce International SA that damages for mental

distress might one day be available for breach of an employment other than by wrongful dismissal.”¹⁷⁰

161. It therefore remains that law that, at common law, and employee cannot obtain damages for injury to feelings in a case of wrongful dismissal.

162. As to injury to reputation, the **Editors of McGregor on Damages** state at paragraph 31-026 that the decision in *Mahmud v Bank of Credit and Commerce International SA*

“... has not, however, been interpreted as overruling, in the context of financial loss, Addis or as endorsing recovery for financial loss where the breach in question is simply wrongful dismissal. This is clear from their Lordships’ further decision in

¹⁷⁰ TAB 23 – McGregor on Damages 19th Edn. para. 31-024

Johnson v Unisys Ltd. There the employee, suing for wrongful dismissal, claimed that because of the manner in which he had been dismissed he had since been unable to work, with the result that he had suffered, and would continue to suffer, a very substantial loss of earnings. His claim failed. In the absence of breach of the trust and confidence term or any other term, their Lordships were unprepared to extend any such recover to cases simply of wrongful dismissal...”¹⁷¹

163. The position in English law that damages are not awarded for injury to reputation was confirmed in the decision of the English Supreme Court in ***Edwards v Chesterfield Royal Hospital NHS Foundation Trust*** [2012] 2 AC 22.¹⁷²

¹⁷¹ TAB 23 – McGregor on Damages 19th Edn. para. 31-026

¹⁷² TAB 24

164. The Belize Supreme Court has also determined that an employee is not entitled to damages for injury to feelings or reputation. At paragraph 50 of **Robert K Allen**, Madam Justice Young accepted the dicta in Addis v Gramophone Co. Ltd. [1909] AC 488 that,

*“Where a servant is wrongfully dismissed from his employment the damages for the dismissal cannot include compensation for the manner of the dismissal, for his injured feelings, or the loss he may sustain from the fact that the dismissal of itself makes it more difficult for him to obtain fresh employment.”*¹⁷³

165. In **Mark Menzies v Belize Water Services Ltd.** (Claim No. 200 of 2013) Madam Justice Arana also held that a claimant is not entitled

¹⁷³ See TAB 16

to compensation for injury to feelings in a claim for wrongful termination. Madam Justice Arana stated at paragraph 58 of her decision -

“... unfortunately the common law does not provide compensation for injury to feelings or distress for cases of wrongful dismissal. In England there is a statute for unfair dismissal under which such remedies can be recovered as duly noted in Claim No. 624 of 2010 Yancy Habet v. British High Commission of Belize where Olivetti J lamented the fact that Belize did not have an Industrial Relations Act as in the UK which provides a “statutory remedy for unfair dismissal which would provide job security for employees”. Olivetti J went on to state that “the right to work is a fundamental human right and it behoves our Government to ensure that each person can enjoy that benefit by ensuring that our labour laws are

updated and accord with international norms and best practices". In Claim No. 175 of 2005 Romel Palacio v. Belize City Council (Awich J as he then was) bemoaned the state of the Labour Act of Belize as "hopelessly out of date" and called on Parliament to adopt international conventions concerning employment and labour. In Belize we do not have a corresponding Act so as the law stands, all that the Claimants can rightfully claim is damages for wrongful dismissal."¹⁷⁴

166. It follows from the above that, even if the court determines that Mrs. Gomez is entitled to compensation for wrongful termination, she would not be entitled to compensation for injury to her feelings.

¹⁷⁴ See TAB 18

(2) Breach of Statutory Duty

(i) The Law

167. In *Clerk & Lindsell on Torts*, 21st Edition, the Editors state at paragraph 9-05¹⁷⁵ that a claim for damages for breach of statutory duty falls into 4 categories:

- a. Action for breach of statutory duty simpliciter (irrespective of carelessness);
- b. Actions based on the careless performance of a statutory duty in the absence of any other common law right of action;

¹⁷⁵ TAB 25 – para. 9-05

c. Actions based on a common law duty of care arising either from the imposition of the statutory duty or from the performance of it; and

d. Misfeasance in public office.

168. Breach of statutory duty simpliciter is actionable where it can be shown that the statutory duty was imposed for the protection of a limited class of the public and that Parliament intended to confer on members of that class a private right of action for breach of the duty¹⁷⁶.

169. However, it is not every statute that is designed to protect a limited class of individuals that gives rise to a common law action for

¹⁷⁶ See TAB 25 - Clerk & Lindsell on Torts, 21st Edition, paragraph 9-06.

damages. As the editors of **Clerk & Lindsell on Torts**, 21st Edition, pointed out at paragraph 9-14 -

*“Thus, industrial safety legislation designed to protect workers from injury has long been treated as conferring a common law action. **On the other hand, legislation creating administrative mechanisms for the protection of children at risk of neglect or abuse, although clearly intended to protect a particular class of the public, does not confer such an action.** Similarly, s117 of the Mental Health Act 1983, which imposes a duty to provide after-care services for patients discharged from mental hospitals, while undoubtedly designed to promote the social welfare of such individuals, does not give rise to such an action for breach of statutory duty. **The claimant must establish that Parliament intended that the statute should confer a private law right of action “sounding in damages”.** In R v Deputy Governor of Parkhurst*

Prison Ex p. Hague, the House of Lords reiterated that the primary question in relation to an action for breach of statutory duty is always whether the legislature intended to create a civil remedy for aggrieved individuals.

‘The fact that a particular provision was intended to protect certain individuals is not of itself sufficient to create a private law right of action upon them, something more is required to show that the legislature intended such conferment.’

So, the fact that one of the purposes of the Prison Rules is to protect the welfare of prisoners was insufficient to create a right to sue for breach of those rules relating to the discipline and segregation of prisoners.”¹⁷⁷ (emphasis supplied)

¹⁷⁷ See TAB 25 – paragraph 9-14

170. It is not therefore every statutory duty that gives right to a private action for damages resulting from its breach. The breach of the statutory duty is only actionable if the claimant establishes that Parliament intended that the statute would confer a private law right of action in damages.

(ii) **Statutory Framework**

171. Section 27 of the Credit Unions Act ("**CU Act**") provides that:

"(1) Every credit union shall be managed by a Board of Directors ...

(2) ...

(6) Subject to the provisions of this Act, the directors shall have responsibility for the general management of the affairs of a credit union and in particular shall,

(a) ...

(g) perform such other duties as are required by this Act and by the by-laws.”¹⁷⁸

172. The general management of a credit union is therefore entrusted to its Board of Directors.

173. Section 30(1) of the CU Act further provides that:

“The Board shall designate the employee positions in the credit union, hire suitable persons with the skill and competence necessary for the prudent management of the credit union, and delegate adequate powers to them to manage the business and affairs of the credit union.”¹⁷⁹

¹⁷⁸ See TAB 1

¹⁷⁹ See TAB 1

174. It is therefore the Board that is statutorily empowered to designate employee positions and to hire persons to manage the credit union.

175. Section 36 of the CU Act¹⁸⁰ provides that:

(1)When the Supervisory Committee is of the opinion that the funds, securities, or other property of the credit union have been misappropriated or misdirected, or in the event that the by-laws, the Rules or this Act have been contravened by the Board, the Credit Committee or a member of either body or any officer or employee engaged by the Board, the Supervisory Committee shall forthwith inform the Registrar in writing.

¹⁸⁰ See TAB 1

(2) In the event of a misappropriation or suspected misappropriation or misdirection or suspected misdirection, the Supervisory Committee shall, in consultation with the Board, appoint an auditor or special examiner to investigate the situation at the expense of the credit union.

(3) In the event that the auditor or special examiner appointed pursuant to subsection (2) of this section, concludes that misappropriation or misdirection has occurred, he or she shall submit his report to the Registrar, the Board of Directors, the Supervisory Committee and the Credit Committee.

*(4) **Where, on receipt of the report of the auditor or special examiner, the Registrar is satisfied that there is sufficient evidence of misappropriation or misdirection on the part of any director, or a member of the credit union, or any officer or employee engaged by the Board, he or she may **after*****

consultation with the Supervisory Committee and after giving the person concerned a reasonable opportunity to exculpate him or herself, suspend such person from the exercise of his or her functions, and shall request the Board to summon a special general meeting of the members, and where the Board fails to do so, he or she shall hold the meeting within fourteen (14) days of the date of suspension.

(5) The Registrar shall report to the special general meeting all the circumstances of any misappropriation of misdirection and the reasons for any suspension under subsection (4) of this section.

(6) The member of the credit union may by resolution and after due deliberation, dismiss from office or reinstate any person suspended under subsection (4) of this section.”

176. Section 36 sets out a statutory regime for the investigation and imposition of a penalty for the misappropriation or misdirection of funds, securities or other property of the credit union, by the Board, the Credit Committee or a member of either body or any officer or employee engaged by the Board.¹⁸¹

177. Mrs. Gomez alleges at paragraphs 12 and 13 of her Statement of Claim¹⁸² that the Registrar of Credit Unions:

- a. owed a statutory duty to [her] to ensure that in so far as there were allegations made against [her] relating to the misappropriation and/or misdirection the protections afforded by the Act were guaranteed to her and that she was treated fairly.

¹⁸¹ See TAB 1 – Credit Unions Act

¹⁸² Page 9 of the Trial Bundle

b. Breached his statutory duty to [her] by failing to effect [her] suspension, intervene in [LICU's] unauthorized suspension of [her], or prevent [LICU] from suspending [her] on the basis of an inconclusive report, with insufficient evidence of alleged misappropriation or misdirection and without giving her a reasonable opportunity to exculpate herself.

178. It is submitted that the statutory power conferred on the Registrar of Credit Unions does not create a cause of action, exercisable by an officer of a credit union.

179. As the Editor of **Clerk and Lindsell on Tort** states, "*The claimant must establish that Parliament intended that the statute should confer a private law right of action "sounding in damages"*".¹⁸³

¹⁸³ See TAB 24 – paragraph 9-14

180. Nothing in the Credit Union Act indicates that an officer of a credit union may recover damages for violation of any rights set out at section 36 of the CU Act.
181. It is submitted that section 36 was not intended for the protection of officers of the credit union, but rather, to afford the Registrar of Credit Unions a right to take action against an officer who is guilty of misappropriation or misdirection. Its sole purpose is to protect the credit union, not its officers.
182. The conferring of a private law cause of action “*sounding in damages*” is therefore inconsistent with the purpose and intent of section 36 of the CU Act.
183. As such, there has been no breach of statutory duty by the Registrar of Credit Unions.
184. Section 30(1) of the CU Act conferred on LICU’s Board of Directors the statutory authority to appoint a person to manage the credit union.¹⁸⁴ It is LICU’s position that Mrs. Gomez’s employment remained subject to the provisions of the Labour Act, and that it maintained the right, as employer, to terminate Mrs. Gomez’s employment pursuant to the provisions of the Labour Act.

¹⁸⁴ See TAB 1

185. LICU did not therefore violate the CU Act when it terminated Mrs. Gomez's employment. LICU's board has the statutory and legal right to manage the affairs of the credit union, and in its power of management, could hire and fire the General Manager.
186. The termination letter served on Mrs. Gomez asserts that the *"Board of Directors hereby states that we have lost all trust and confidence in your management"* and sets out the following instances of breach of duty on the part of Mrs. Gomez:
- a. Instructed the write-off of principal and interest amounts for close family, friends and selected staff members without the Board's approval;
 - b. Orchestrated the processing of a loan for your personal gain by abusing your power to influence an employee, Mr. Raul Cocom. You then signed as the approving authority to the loan obtained under deceit. This infraction is furthermore compounded by the breaching of the conflict of Interest Policy by not declaring your private interest and gain from the loan;
 - c. Failed to inform the Board of the existing cash shortages;
 - d. Provided an altered cash position report to the Chairperson of the Supervisory Committee in relation to the Belmopan cash count conducted on 28th March 2015;

- e. Instructed the falsification of contact reports which were inserted in members' files;
 - f. Continuously abused the institution's credit cards for your personal use.
187. The letter goes on to state that *"the above-mentioned actions constitute gross misconduct and are contrary to the very mission and purpose of our institution. In the best interest of the institution and all members/owners, we hereby inform that you are being dismissed, effective immediately, as the General Manager of La Inmaculada Credit Union Limited."*¹⁸⁵
188. Mrs. Gomez was therefore terminated pursuant to the provisions of the Labour Act, which were not expressly nor impliedly repealed by any provision of the CU Act.

D. ISSUES IN CLAIM NO. 723 of 2015

(1) *Whether the waiver of accrued interest on active loans approved by Mrs. Gomez for the years ending 31st March 2013 to 31st March 2015 in the sum of \$95,586.83 was lawful?*

189. LICU has no written policy in relation to the waiver of accrued interest on loans. Mrs. Gomez therefore implemented a policy, without first seeking the approval of LICU's board, pursuant to

¹⁸⁵ See Termination Letter at page 505 of the Trial Bundle

which she unilaterally authorized the waiver of accrued interest on active loans.

190. Mrs. Gomez has confirmed in cross-examination that the interest write off was not approved by the Management Credit Committee¹⁸⁶, that she was not authorized by the board to implement the policy,¹⁸⁷ and that the policy was not supported by LICU's By-laws¹⁸⁸ nor its loan policy¹⁸⁹.
191. While Mrs. Gomez has stated in her Witness Statement that "*the loan department had implemented a policy in relation to members who had exorbitant interest arrears*¹⁹⁰", Mr. Sabido has confirmed in his cross-examination that all instructions for the waiver of interest were issued by the General Manager, i.e. Mrs. Gomez¹⁹¹. Furthermore, a review of the list of interest write offs at pages 780-783 of the trial bundle show that majority were rather small arrears, a couple even under \$10. There was therefore no justification for some of the interest written off, even if Mrs. Gomez's rationale for the policy is adopted.
192. In total, Mrs. Gomez authorized interest totaling \$95,586.83 to be written off for the period ended 31st March 2013 – 31st March 2015¹⁹².

¹⁸⁶ Lines 6-8, Page 36 of the Transcript of Proceedings of 13th February 2017

¹⁸⁷ Lines 6-8, Page 38 of the Transcript of Proceedings of 13th February 2017

¹⁸⁸ Lines 9-11, Page 36 of the Transcript of Proceedings of 13th February 2017

¹⁸⁹ Lines 2 -4, Page 37 of the Transcript of Proceedings of 13th February 2017

¹⁹⁰ Paragraph 17 of the Witness Statement of Yolanda Gomez, page 174 of the Trial Bundle

¹⁹¹ Page 87 of the Transcript of Proceedings of 13th February 2017

¹⁹² Paragraph 22 of the Witness Statement of Yadelí Urbina, page 741 of the Trial Bundle

193. Under LICU's By-laws, it is the Board of Directors that is given the authority to vary the interest which must be charged on a loan. Article VI (1)¹⁹³ provides that interest must be charged on loans at the rate of 1% per month on unpaid balances, *"or as the Board of Directors may approve from time to time not in contravention of the ordinance."*
194. Article VII (10)(a)¹⁹⁴ states that the duties of the board of directors includes the right *"to determine from time to time the interest rates on loans."*
195. It is therefore only the Board of Directors that can alter the requirement for interest, or the rate of interest that must be charged on unpaid balances. Mrs. Gomez had no residual discretion to waive interest on loans.
196. The interest write off was unlawful, not only because it was not supported by any law or written policy, and was not authorized by the board, but also because in granting the write offs to close family members, Mrs. Gomez violated LICU's By-laws, Code of Ethics, Conflict of Interest Policy and its Loan Policy.
197. As noted earlier in these submissions, Mrs. Gomez had an obligation to disclose to the board any conflict of interest in a transaction, including where such conflict arose as a result of family relationship or financial interest in the transaction. Specific reference is made to:

¹⁹³ Page 198 of the Trial Bundle

¹⁹⁴ Page 200 of the Trial Bundle

- a. Section 33(1) of the **Credit Unions Act** which requires a person to disclose his/her interest where the person has a material interest in or a material relation to any person who is a party to a material contract with the credit union;¹⁹⁵
- b. Clause 1.1.5 of LICU's Code of Ethics¹⁹⁶ which requires an employee to declare her direct/indirect interest in a transaction, and/or the nature and extent of any benefit or consideration derived directly/indirectly from the transaction;
- c. Clause 2.1.1 of LICU's Code of Ethics¹⁹⁷ which requires an employee to disclose potential conflicts of interest;
- d. Article III(1) of LICU's Conflict of Interest Policy¹⁹⁸ which requires an employee to disclose to the board all material facts regarding her interest in a transaction; and
- e. Article VI of LICU's Conflict of Interest Policy¹⁹⁹ which requires an employee to complete an Annual Disclosure and Compliance Statement disclosing her financial interest and family relationships that could give rise to conflict of interest;

¹⁹⁵ TAB 1

¹⁹⁶ Page 752 of the Trial Bundle

¹⁹⁷ Page 755 of the Trial Bundle

¹⁹⁸ Page 763 of the Trial Bundle

¹⁹⁹ Page 764 of the trial bundle

198. Yadeli Urbina has given evidence that Mrs. Gomez unilaterally authorized the write off of interest for the following accounts, which were for persons related to her, or were otherwise related to members of her staff at LICU²⁰⁰:
- a. \$9,059.42 for her brother, Roy Anthony Rosado;
 - b. \$15,672.60 for her nephew, Roy Roberto Rosado;
 - c. \$3,140.23 for her nephew, Roy Roberto Rosado;
 - d. \$845.20 for Minerva Georgina Sabido, wife of Hector Sabido, LICU's Loan Monitoring Officer at the time;
 - e. \$45.42 for Minerva Georgina Sabido, wife of Hector Sabido;
 - f. \$1,918.48 for Hector Rene Sabido Jr., son of Hector Sabido;
 - g. \$1,885.31 for Minerva Sabido, wife of Hector Sabido;
 - h. \$583.67 for Minerva Georgina Sabido, wife of Hector Sabido.
199. Mrs. Gomez's actions were dishonest, as she failed to disclose her familial relationship and financial interest in several of the accounts written off.

²⁰⁰ Paragraph 24 or the Witness Statement of Yadeli Urbina, page 741 of the trial bundle

200. In the circumstances, it is respectfully submitted that Mrs. Gomez has caused losses to LICU being the \$95,586.83 which she authorized to be written off in interest for the period 31st March 2013 to 31st March 2015.

(2) Whether Mrs. Gomez acted dishonestly, unlawfully and in violation of LICU's policies and by-laws when she approved the write off of active loans for relatives and friends in the sum of \$55,984.32 in 2012?

201. LICU's Loan Policy expressly authorizes the Board of Directors to write off loans. Clause 14²⁰¹ provides that:

"A write-off is a decision to remove a loan from the books because the collection is considered to be unlikely. A write-off is charged to the loan loss account. Management reviews delinquent loans from time to time to determine which loans will be considered for write-off. Write-off exercises will be carried out once per year. Accounts where one year has passed since any payment was received and collection procedures have been exhausted, unpromising or impractical, may be recommended for write-off. Extreme circumstances, such as a member that cannot be located or a member who has died may speed up the write-off recommendation. The Board of directors shall authorize any write-offs." (Emphasis supplied)

²⁰¹ Page 778 of the trial bundle

202. It is therefore only loans that are uncollectible that should be recommended to the board for write off.
203. Yadeli Urbina has given evidence that in 2012, the board approved the write off of loans totaling \$97,693.36, which included the following loans written off for persons who are closely related to Mrs. Gomez:²⁰²
- a. \$24,312.61 for her sister, Sandra Reyes;
 - b. \$16,344.79 for her sister-in-law, Esther Rosado;
 - c. \$9,922.39 for her nephew, Martin Rosado;
 - d. \$5,404.54 for her niece, Therese Rosado.
204. In breach of the aforementioned Credit Union Act, Code of Ethics and Conflict of Interest Policy, Mrs. Gomez failed to disclose to the Board her relationship to the persons whose loans were written off, notwithstanding that they totaled \$55,984.33 or approximately 60% of the loans written off.
205. Mrs. Gomez also failed to disclose to the board her financial interest in several of the loan facilities. Yadeli Urbina has given evidence that Mrs. Gomez was a co-maker of loans with her sister, Sandra Reyes, had given her shares as collateral for Sandra's loan, and had committed on 6th April 2012 to pay \$300 per month towards Sandra's loan²⁰³. In the circumstances, the loan was not

²⁰²Paragraph 41-43 of the Witness Statement of Yadeli Urbina, Page 744 of the trial bundle

²⁰³ Paragraphs 44-48 of the Witness Statement of Yadeli Urbina, pages 744-745 of the Trial Bundle

uncollectible, which was a prerequisite to its recommendation to the board for write off. Mrs. Gomez, as co-maker, was equally liable to LICU for the repayment of the loan.

206. Ena Martinez has given evidence that the board did not approve the write off of loans for members of Mrs. Gomez's family, who are known to several members of the board including herself. Ms. Martinez has stated that she is "*certain that the list provided in the Minutes dated 2nd April 2012 ... is not the list which was produced to the Board*²⁰⁴."

207. Ms. Martinez has stated in her Witness Statement that,

*"the Reyes and Rosado family are known to me and I certainly would not have authorized loan write-offs, not only because I know Mrs. Gomez could collect from her immediate family members, but also because of the size of the loan write-offs. These 4 write-offs accounted for approximately 60% of the loans written off. These would not have gone unnoticed by the Board members*²⁰⁵."

208. Ms. Martinez states at paragraph 50 of her Witness Statement that Mrs. Gomez always collected the list of loans approved for write off from board members so the board members do not have the list. However, Ms. Martinez has given compelling evidence that the list on LICU's records is not the list presented by Mrs. Gomez to the board for approval.

²⁰⁴ Paragraph 47 of the Witness Statement of Ena Martinez, page 493 of the Trial Bundle

²⁰⁵ Paragraph 49 of the Witness Statement of Ena Martinez, page 494 of the Trial Bundle

209. If the Court accepts Ms. Martinez's evidence, then it follows that:

- a. Mrs. Gomez was dishonest, by presenting one list to the board for approval and subsequently issuing the instructions for the write off of loans for her close family members;
- b. Mrs. Gomez perpetrated a fraud against LICU;
- c. Loan write offs totaling \$55,984.33 were unlawful as they were not approved by LICU's board;
- d. Mrs. Gomez violated LICU's By-Laws and Policies and acted in conflict of interest by writing off loans for family members, and writing off loans in which she had a financial interest;
- e. Mrs. Gomez was dishonest and abused her position for personal benefit. Although she was a co-maker of Sandra's loan, and was therefore liable for the repayment of that loan, she had the loan written off as uncollectible so that she would not be called upon to pay the loan.

210. It is respectfully submitted on behalf of LICU that Mrs. Gomez's conduct is dishonest, unlawful and violates LICU's policies and By-Laws, and has caused LICU a loss of \$55,984.33 which were written off in 2012.

(3) Whether Mrs. Gomez acted dishonestly and unlawfully by causing a credit to be made to the account of her domestic helper,

Olga Hernandez, and thereby reduced her loan balance by the sum of \$79,519.94?

211. Olga Hernandez obtained a loan of \$75,000 from LICU on 13th December 2013²⁰⁶. Mrs. Gomez approved this loan as General Manager²⁰⁷ without disclosing any interest therein, and in violation of LICU's policies as at the time the loan was disbursed, Olga Hernandez's assets totaled \$4,164, while she had \$52,887.55 in liabilities.
212. Lucia Gonzalez has confirmed that the loan to Olga Hernandez was in fact disbursed to Mrs. Gomez. Lucia's evidence is that,

"As the disbursement officer I have, on occasion, disbursed loans directly to Mrs. Gomez for loans drawn on the account of family and friends. I would be given the loan application and disbursement slip by Mr. Novelo and was told to just let them (Mrs. Olga Cummings, Mrs. Benita Carmen Ayuso, Mr. Ruben Melendez) sign the receipts and the cash or check being disbursed from the loan be given to Mrs. Gomez. I never questioned any directive given by Mrs. Gomez²⁰⁸."

213. Mrs. Gomez claims that she repaid this loan from a loan her husband obtained from Holy Redeemer Credit Union. The purported repayment of the loan by Mrs. Gomez confirms her interest therein. However, LICU disputes that Mrs. Gomez paid

²⁰⁶ Paragraphs 54 – 60 of the Witness Statement of Yadelí Urbina, pages 745-746 of the trial bundle

²⁰⁷ Loan Application signed by Yolanda Gomez, Page 814 of the trial bundle

²⁰⁸ Paragraph 10 of the Witness Statement of Lucia Gonzalez, page 482 of the trial bundle

actual cash into the credit union to clear the loan balance of Olga Hernandez, and that the loan payment was just a paper entry.

214. The uncontroverted evidence of Jeremias Tun is that in the early morning of 18th September 2014, before LICU opened to the public, he was instructed by Hector Sabido to process a payment of \$79,514.94 on the account of Olga Hernandez. Mr. Sabido indicated that the instructions came from Mrs. Gomez²⁰⁹.
215. Mr. Sabido confirmed in his witness statement that the instructions to pay the loan of Olga Hernandez originated from Mrs. Gomez²¹⁰.
216. Jeremias did as he was instructed. Mr. Sabido then took the receipt upstairs and returned with the signed receipt. No cash was given to Jeremias for the loan payment of \$79,514.94.
217. At the end of the day when it was time to balance, no cash was provided, which was unusual, and instead Jeremias was instructed to simply make a paper entry to account for the cash on his end of day balance sheet.
218. Under cross examination, Jeremias has stated that he was alarmed at the request to process the loan payment, without being given cash as -

“as per usual, the person would need to come to the cashier to do the transaction on a face to face basis and another

²⁰⁹ Paragraph 2 of the Witness Statement of Jeremias Tun, page 735 of the Trial Bundle

²¹⁰ Paragraph 17 of the Witness Statement of Hector Sabido, page 292 of the Trial Bundle

person wouldn't be able to make a payment for the member who wants to clear the loan and I would need to verify the cash before entering in the system²¹¹."

219. He then admitted that the cause of his alarm was that he was being directed to make an entry payment of \$79,514.94 without receiving any cash.

220. Jeremias further confirmed under cross examination that in normal circumstances he would be required to count the loan payment made, *"and then once the cash is verified, then I would need to ask for supporting documentation. This is because the amount is a large payment. I would need to ask for documents to substantiate where the monies come from. It's just part of their regulations that we need to go through²¹²."*

221. Although Mrs. Gomez and Mr. Sabido have given evidence that the cash used to pay Roy's loan came from another loan Mr. Gomez had obtained from Holy Redeemer Credit Union, Jeremias Tun has produced as a part of his evidence during the trial, the deposit slip which indicated the source of funds of the loan payment. This deposit slip is and marked **Exhibit JT3** and states thereon,

"Member made a loan on behalf of his brother-in-law while his brother-in-law was processing a loan in Cayo. His brother-in-law has now received the loan and is now paying it off²¹³."

²¹¹ Lines 9-14, page 473 of the transcript of proceedings of 27th February 2019

²¹² Lines 10-19, page 479 of the transcript of proceedings of 27th February 2019

²¹³ See references to the deposit slip at page 469 of the transcript of proceedings of 27th February 2019

222. The payment is therefore presented as a payoff based on a loan by Olga Hernandez/George Cummings brother-in-law, which was being processed in Cayo.
223. Jeremias Tun has given evidence that the declaration was not made by him, but that it was made by the person who instructed him to do the transaction, i.e. Hector Sabido²¹⁴. This would ostensibly have been done on the instructions of Mrs. Gomez, who had instructed the “payment” of the various loans. A fraud was therefore perpetrated against LICU, and the documentation used to support the loan payment do not align with the evidence of Mrs. Gomez and her witnesses.
224. Yolly Trejo has given evidence that all LICU’s cash, including daily deposits, are kept in a blue cash pan measuring 11 3/5 x 9 which is kept in the vault²¹⁵. Pictures of the vault and the blue cash pan are shown at pages 671 to 675 of the trial bundle.
225. It is Ms. Trejo’s evidence that on the evening of 18th September 2014, she balanced the cashiers, including Jeremias Tun. She noted that Jeremias could not balance since he did not have the \$79,514.94 cash. Upon questioning Mrs. Melissa Leiva about the absence of the cash, she was informed that the payment had been made from Mrs. Gomez’s cash in the safe, which was purportedly in a black bag. However, Mrs. Trejo confirms that she *“never saw any transfer of the sum of \$79,514.94 into LICU’s cash pan, where*

²¹⁴ Page 469 of the transcript of proceedings of 27th February 2019

²¹⁵ Paragraph 5 of the Witness Statement of Yolly Trejo, page 668 of the trial bundle

*the deposit should have been made.” She also states that it is a large amount of cash and so she “certainly would have observed the payment.”*²¹⁶

226. This observation by Mrs. Trejo is important, particularly due to the denominations in which the cheques were issued in cash:

a. Cheque No. 088996 in the sum of \$134,000.00 was issued as follows²¹⁷:

- i. 2,000 \$50 bills totaling \$100,000.00;
- ii. 1,500 \$20 bills totaling \$30,000.00; and
- iii. 200 \$20 bills totaling \$4,000.00.

b. Cheque No. 088997 in the sum of \$134,000.00 was issued as follows²¹⁸:

- i. 40 \$100 bills totaling \$4,000.00; and
- ii. 2,600 \$50 bills totaling \$134,000.00.

227. Since the cash was issued primarily in denominations of \$50 and \$20, it would mean that the payment of loans of \$79,514.94, \$45,693.28, or \$39,219.46, would require a significant amount of cash to be inserted into the cash pan. It is unlikely the cash pan, which is small, could hold that volume of cash, or as Mrs. Trejo has

²¹⁶ Paragraph 10 of the Witness Statement of Yolly Trejo, page 669 of the trial bundle

²¹⁷ Page 259 of the trial bundle

²¹⁸ Page 260 of the trial bundle

observed, that such a large volume of cash would have been overlooked.

228. Mrs. Trejo has given evidence that she does not know what was in the black bag in the vault which supposedly held Mrs. Gomez's cash, as she never opened the bag.

229. In her witness statement, Mrs. Trejo states that,

"I am not aware that any of the payments that were supposedly made by Mrs. Gomez from the bag of cash kept in the vault was actually paid to LICU. The sums are quite large, and so the payments would not have gone unnoticed, particularly since I access LICU's cash pan on a daily basis. I am not aware of any physical movement of cash from the bag that was in the safe, to the cash pan, where all customer deposits should be placed when the cashiers reconcile at the end of the day²¹⁹."

230. Mrs. Trejo has also given evidence that there is no space to count cash in the vault. If cash was to be counted by Mrs. Leiva to effect a payment on behalf of Mrs. Gomez, it had to be done in Mrs. Leiva's office. However, Mrs. Trejo states that the offices at LICU are separated by glass partitions so *"there is complete transparency between the offices, from any angle. It would not therefore be possible for Mrs. Leiva to count \$79,514.94, \$45,693.28, \$30,643.78 or \$39,219.46 without being seen²²⁰."*

²¹⁹ Paragraph 11 of the Witness Statement of Yolly Trejo, page 669 of the trial bundle

²²⁰ Paragraph 13 of the Witness Statement of Yolly Trejo, page 669 of the trial bundle

231. Aside from not seeing any physical cash being deposited into LICU's cash pan, Mrs. Trejo has given evidence that the bank statements for the period also confirm that no large amount of cash was deposited by LICU²²¹. The bank statements are shown at pages 676 to 734 of Mrs. Trejo's Witness Statement.
232. The fact is that while a payment was entered into the Emortelle system reducing the loan balance of Olga Hernandez (i.e. Olga Cummings), there is no evidence that the cash was physically paid into LICU to reduce the loan balance.
233. Hector Sabido has given evidence that on 18th September 2014, he had assisted Mrs. Gomez in cashing a cheque for \$134,000.00 from First Caribbean International Bank. He took the cash to Mrs. Gomez, who removed some cash, and then returned the envelope to him. Under cross-examination Mr. Sabido admitted that he did not count the cash that was returned to him by Mrs. Gomez²²². Mr. Sabido cannot therefore certify how much cash remained in the envelope.
234. At its highest, Mrs. Gomez's evidence is that she had some cash (of an unknown amount) deposited in a black bag in LICU's vault. She instructed the payment of a loan, and the payment was effected in the Emortelle system. However, Mrs. Gomez has not adduced any evidence to prove that on 18th September 2014, or any date

²²¹ Paragraph 14 of the Witness Statement of Yolly Trejo, page 670 of the trial bundle

²²² Lines 5-17, page 88 of the Transcript of Proceedings of 13th February 2017

thereafter, cash was physically transferred from “her funds” to LICU to effect the loan payment.

235. The instruction to effect a payment without producing actual cash was unlawful and violated the standard practice and policies of LICU.

236. LICU’s witnesses on the unlawful reduction of loan balances all confirm:

a. The instruction was unusual and not in accordance with LICU’s normal practice:

i. Lucia Gonzalez has stated that *“it was unusual to process a payment without receiving cash²²³.”*

ii. Jeremias Tun says he was *“alarmed by the request, but I did not question it²²⁴.”* As noted above, under cross-examination he confirmed that the cause of his alarm was that he was being directed to make an entry payment of \$79,514.94 without receiving any cash

b. They were informed that the instruction originated from Mrs. Gomez:

i. Lucia Gonzalez has stated that Melissa Leiva and Mrs. Gomez were very close and *“as cashiers, we often*

²²³ Paragraph 12 of the Witness Statement of Lucia Gonzalez, page 482 of the trial bundle

²²⁴ Paragraph 2 of the Witness Statement of Jeremias Tun, page 735 of the trial bundle

received instructions from Mrs. Gomez through Mrs. Leiva²²⁵.”

- ii. Jeremias Tun stated that he was told by Mr. Sabido to process the loan payment *“per the instructions of Mrs. Yolanda Gomez, the then General Manager²²⁶.”*
- c. They felt they could not question a directive from Mrs. Gomez, even if unlawful, as they feared her and/or feared losing their jobs:
 - i. Lucia Gonzalez has stated that *“I felt as though I could not question anything that Mrs. Gomez instructed, for fear of being fired²²⁷.”*
 - ii. Yolly Trejo, the Accounting Officer at LICU and therefore a senior officer, has stated *“I knew better than to question anything having to do with Mrs. Gomez²²⁸.”*
 - iii. Jeremias Tun stated, *“I knew better than to question any instruction from Mrs. Gomez. Nobody questions any directive or instruction given by Mrs. Gomez, out of fear of being fired²²⁹.”*

²²⁵ Paragraph 16 of the Witness Statement of Lucia Gonzalez, page 482 of the Trial Bundle

²²⁶ Paragraph 2 of the Witness Statement of Jeremias Tun, page 735 of the Trial Bundle

²²⁷ Paragraph 13 of the Witness Statement of Lucia Gonzalez, page 482 of the Trial Bundle

²²⁸ Paragraph 10 of the Witness Statement of Yolly Trejo, page 669 of the Trial Bundle

²²⁹ Paragraph 4 of the Witness Statement of Jeremias Tun, page 736 of the Trial Bundle

237. It is therefore LICU's position that it never received cash to justify the reduction of the loan balance of Olga Hernandez. As such, the reduction which was authorized by Mrs. Gomez, was unlawful and dishonest.
238. The loan by Olga Hernandez was disbursed to Mrs. Gomez in circumstances where she failed to disclose her financial interest therein. Mrs. Gomez directly benefited from the reduction of the loan balance of Olga Hernandez since the monthly payments had been effected by way of salary deduction, and any repayment of the loan would essentially reduce Mrs. Gomez's debts.
239. LICU claims that Mrs. Gomez's act, effected through junior officers at the credit union, was dishonest, and that she is liable to LICU in the sum of \$79,514.94, being the amount by which the loan balance of Olga Hernandez was unlawfully reduced.

(4) Whether Mrs. Gomez acted dishonestly and unlawfully by causing a credit to be made to the account of her nephew, Roy Roberto Rosado, and thereby reduced his loan balance by the sum of \$45,693.28?

240. Yadeli Urbina has given evidence that Roy Roberto Rosado was raised from an early age by Mrs. Gomez²³⁰. Yolley Trejo has stated that Roy was "*Mrs. Gomez's nephew. However, he was known to staff as her son as she had raised him*"²³¹.

²³⁰ Paragraph 26 of the Witness Statement of Yadeli Urbina, page 741 of the Trial Bundle

²³¹ Paragraph 8 of the Witness Statement of Yolley Trejo, page 668 of the Trial Bundle

241. As noted earlier in these submissions, Roy received loan facilities totaling \$40,000 from LICU in July 2013²³². Under cross examination Mrs. Gomez confirmed that the loan advanced to Roy (described as \$12,000) was deposited into her personal account²³³. Mrs. Gomez therefore had a financial interest in the loan which she failed to disclose.
242. Lucia Gonzalez has given evidence that on 26th September 2014, she was instructed by Mrs. Leiva to process a payment of \$45,693.28 on Roy's account. Lucia confirms that this is one of the loan accounts on which Mrs. Gomez made monthly payments²³⁴.
243. As with the purported payment for Olga Hernandez, Lucia was not provided with any cash and was informed that the payment was already in the vault. Lucia did not question the directive, and instead proceeded to process the payment and issue the receipt as instructed.
244. She confirms that at the end of the day she was not provided with any cash, and that she was instructed by Mrs. Leiva to "*simply add the payment in the paperwork*"²³⁵."
245. LICU relies on the earlier submissions made in relation to the unlawful reduction of the loan balance of Olga Hernandez. LICU insists that it has no evidence of physical payment of the cash by

²³² Paragraphs 28 and 29 of the Witness Statement of Yadelí Urbina, page 742 of the Trial Bundle

²³³ Page 41 of the transcript of proceedings of 13th February 2017

²³⁴ Paragraph 16 of the Witness Statement of Lucia Gonzalez, page 482 of the Trial Bundle

²³⁵ Paragraph 18 of the Witness Statement of Lucia Gonzalez, page 483 of the Trial Bundle

Mrs. Gomez, and so the reduction of the loan balance in the Emortelle system was unlawful and dishonest.

246. As such, Mrs. Gomez is liable to LICU in the sum of \$45,693.28 being the amount by which the loan account of Roy Roberto Rosado was unlawfully reduced.

(5) *Whether Mrs. Gomez acted dishonestly and unlawfully by causing a credit to be made to the account of her sister, Sandra Reyes, and thereby reduced her loan balance by the sum of \$39,219.46?*

247. Yadeli Urbina has given evidence that in 2005 Mrs. Gomez signed as co-maker of a loan for her sister, Sandra Reyes, in the amount of \$25,000, and although the loan was secured by Mrs. Gomez's shares, the principal balance of \$24,312.61 was subsequently written off by LICU²³⁶.

248. Lucia Gonzalez has given evidence that deductions were made from Mrs. Gomez's salary to pay several loans, including a loan taken on the account of Sandra Reyes²³⁷.

249. Lucia Gonzalez's evidence is that on 8th September 2014, she was instructed by Hector Sabido or Melissa Leiva to process a payment of \$39,219.46 on the account of Sandra Reyes. She states that she *"was aware that Mrs. Gomez had obtained a loan on the account of Mrs. Reyes and the payment was towards that loan"*²³⁸.

²³⁶ Paragraphs 63-64 of the Witness Statement of Yadeli Urbina, pages 746 – 746 of the Trial Bundle

²³⁷ Paragraph 9 of the Witness Statement of Lucia Gonzalez, page 482 of the Trial Bundle

²³⁸ Paragraph 11 of the Witness Statement of Lucia Gonzalez, page 482 of the Trial Bundle

250. Lucia confirms that she was not provided with any cash at the time she processed the payment, but was informed that the cash was in the vault. Although she had not received any cash, Lucia processed the payment. She stated, however, that *“I do not know if any monies were transferred into LICU’s cash pan, but I did not receive any²³⁹.”*
251. As noted above, this purported payment of \$39,219.46 was to be made from monies Mrs. Gomez had in LICU’s vault. However, Lucia Gonzalez has given evidence that the declaration which was presented to her for this payment, and which was produced during the trial and marked as **Exhibit LG2** indicated that the source of the funds to be used to pay the loan was *“remittance from abroad.”* The source of funds did not say anything about a loan from Holy Redeemer Credit Unit.
252. If the court accepts Mrs. Gomez’s evidence, then clearly, on Mrs. Gomez’s instructions, a fraudulent document was used as support for the loan payment, in violation of LICU’s Code of Ethics, Loan Policy and generally in violation of the laws of Belize.
253. LICU relies on the earlier submissions made in relation to the unlawful reduction of the loan balance of Olga Hernandez. LICU insists that it has no evidence of physical payment of the cash by Mrs. Gomez, and so the reduction of the loan balance in the Emortelle system was unlawful and dishonest.

²³⁹ Paragraphs 12-14 of the Witness Statement of Lucia Gonzalez, page 482 of the Trial Bundle

254. As such, Mrs. Gomez is liable to LICU in the sum of \$39,219.46 being the amount by which the loan account of Roy Roberto Rosado was unlawfully reduced.

(6) *Whether Mrs. Gomez abused her office and acted in breach of trust by using LICU's credit card for personal purchases in the sum of \$67,309.74?*

255. Yadelí Urbina has given evidence that LICU has credit cards with Belize Bank and Atlantic Bank. While Mrs. Gomez was the General Manager of LICU, the cards were kept by Mrs. Gomez and Mrs. Leiva.

256. Reliance is placed on the report of Cedric Flowers who prepared a statement showing that LICU routinely made credit card payments for Mrs. Gomez's personal purchases. During his audit, Mr. Flowers could find no proof that Mrs. Gomez reimbursed LICU for credit card payments made on her behalf²⁴⁰.

257. Lucia Gonzalez has given evidence that she was often asked to make credit card payments for LICU's credit cards. Lucia confirmed that many of charges which appear on the credit card statement were for personal purchases and were not related to the business of the credit union.

258. While Lucia admits that on a few occasions Mrs. Gomez would take money from her purse to pay the credit card bill, the payments she made were usually no more than \$200 or \$300. Majority of the

²⁴⁰ See pages 825 to 941 of the Trial Bundle

payments were made by Mrs. Leiva using monies from LICU's cash pan. Lucia states that she knows it is LICU's monies that was being used to pay the credit card bills because *"on several occasions, I would follow Mrs. Leiva to get money from the cash pan in the vault to make the credit card payments"*²⁴¹.

259. In the circumstances, there is no evidence that Mrs. Gomez has repaid LICU for credit card purchases made on LICU's credit card, which has been certified by the expert witness as totaling \$67,309.74²⁴²
260. The use of the credit card violated clause 4.1.1 of LICU's Code of Ethics which stipulated that an employee should not *"abuse the personal privileges of office"*²⁴³.
261. LICU therefore says that Mrs. Gomez is liable to reimburse it in the sum of \$67,309.74.

(7) Whether Mrs. Gomez ordered the falsification of the account of Fiona Reyes/Armando Gomez?

(8) Whether Mrs. Gomez acted in conflict of interest and in violation of LICU's By-Laws and policies by instructing the disbursement of unauthorized loan facilities to her husband, Armando Gomez, on the account that he held jointly with her niece, Fiona Reyes?

²⁴¹ Paragraph 23 of the Witness Statement of Lucia Gonzalez, page 483 of the Trial Bundle

²⁴² Paragraph H13 of the report of Cedric Flowers, page 362 of the Trial Bundle

²⁴³ Page 759 of the Trial Bundle

262. LICU relies on the findings of the expert witness, Cedric Flowers, in support of this claim.

263. Mr. Flowers evidence, as set out at pages 23 - 25 of his expert report²⁴⁴, is that:

- a. On 23rd May 2012, LICU refinanced an existing loan on the joint account of Fiona Reyes (Mrs. Gomez's niece) and Armando Gomez (Mrs. Gomez's husband) to \$18,736 by the advance of an additional \$7,000 which was disbursed to Mr. Gomez;
- b. On 19th June 2012, without any further application, the loan amount was increased to \$28,736 by an additional advance of \$10,000 which was disbursed to Mr. Gomez on the said date;
- c. The loan was again refinanced to \$54,836 on 9th May 2012, and the additional sum of \$26,100 was disbursed to Mr. Gomez between 9th and 14th August 2012.
- d. The refinanced sum of \$54,836 was approved by the Credit Committee on 22nd August 2012.
- e. After the approval by the Credit Committee, the loan application was altered, on the instructions of Mrs. Gomez, to

²⁴⁴ Pages 327 – 329 of the Trial Bundle

enter an additional \$14,000, thereby increasing the loan balance to \$68,836.

- f. The additional \$14,000 was disbursed to Mr. Gomez between 23rd August and 5th September 2012.
 - g. The promissory notes on file were altered in each instance to conform to the amounts of the unapproved loans and disbursements.
 - h. On 10th April 2015, Mrs. Gomez removed her husband as a joint holder of the account, although at that time the loan balance on the account stood at \$53,592.77.
264. There is no evidence that Mrs. Gomez disclosed to the board her interest in the loan facilities advanced to Fiona Reyes/Armando Gomez, nor her familiar relationship to the parties.
265. Furthermore, the loan activity as described by the expert witness confirms violation of LICU's Conflict of Interest Policy and Code of Ethics, and also confirms that the account was falsified after the loan had been approved by the Credit Committee.
266. The additional funds disbursed to Mr. Gomez as a result of the falsification of Fiona's account violated Article VI Section 2 of LICU's By-laws which provides that,

"No loan shall be made except on written application signed by the person desiring the loan, showing name of applicant,

date, amount, the purpose for which the amount is desired, the terms of repayment and the date on which such payments shall begin.”

267. The advance also violated section 84(1) of the **Credit Unions Act** which stipulates that *“Any person who obtains possession of any property of, or is granted any loan by, a credit union by false representation or other corrupt means ... is liable on summary conviction ...”*²⁴⁵

268. The alteration of the account was therefore unlawful.

269. Section 47(8) of the Credit Unions Act provides that *“Any person who knowingly approves or grants a loan in contravention of this Act or the Rules shall be liable for any losses resulting to the credit union in connection with that loan.”*²⁴⁶

270. LICU therefore claims that Mrs. Gomez is liable to compensate it in the sum of \$53,592.77 for monies unlawfully disbursed to her husband.

(9) Whether Mrs. Gomez acted unlawfully in ordering the disbursement of \$27,000 to her husband, Armando Gomez, which was drawn on the account of her nephew, Roy Roberto Rosado, through the dishonest manipulation of the said account?

²⁴⁵ See TAB 1

²⁴⁶ See TAB 1

271. LICU relies on the findings of the expert witness, Cedric Flowers, in support of this claim.

272. Mr. Flowers evidence, as set out at pages 25-26 of his expert report²⁴⁷, is that:

- a. On 26th July 2013, LICU granted a loan of \$13,000 to Roy Robert Rosado, which was disbursed to Mr. Gomez;
- b. After the loan was recorded, an adjustment was made in Emortelle to increase the loan from \$13,000 to \$40,000.
- c. The Promissory Note was altered by changing the word “thirteen” thousand to read “forty” thousand, and the repayment terms were also altered.
- d. On the same date, the additional sum of \$27,000 was disbursed to Armando Gomez.
- e. There was no evidence of a loan application or approval to support the additional \$27,000 by which the loan was increased.

273. The evidence of the Expert Witness was corroborated by Yadelí Urbina who refers to the initial loan and increase to \$40,000 at paragraphs 28 and 29 of her Witness Statement.²⁴⁸ The initial loan

²⁴⁷ Pages 329 – 330 of the trial bundle

²⁴⁸ Page 742 of the trial bundle.

application, promissory note and receipts are also produced by Mrs. Urbina at 789 to 794 of the Trial Bundle.

274. A snapshot of Roy's account which appears at page 795 of the Trial Bundle indicates that \$12,935 of the initial loan amount was deposited into Mrs. Gomez's account.
275. The snapshot of Roy's account which appears at page 796 of the Trial Bundle shows that the initial \$13,000 was entered into the Emortelle system at 9:39:49 a.m., and that the entry of the additional \$27,000 was made at 10:47:18 a.m., a mere hour after the initial loan was advanced. As stated by Mrs. Urbina at paragraph 29 of her witness statement, this indicates that the additional \$27,000 "*was not subject to any review by the Management's Credit Committee*"²⁴⁹ which violated LICU's Loan Policy and the standard approval process.
276. The amended Loan Application and Promissory Note which are annexed as Tab 29 to the Witness Statement of Marina Gongora (pages 472 to 475 of the Trial Bundle), were produced by Mrs. Urbina and marked **Exhibit YU2**.
277. As noted the Expert Witness, the Promissory Note and Loan Application were amended by striking "thirteen"/ "13,000", and replacing same with "forty"/ "40,000".

²⁴⁹ Paragraph 29, page 742 of the trial bundle

278. It is evident from the documentary evidence produced at **Exhibit YU2** that LICU's records were falsified to enable Mr. Gomez to receive an additional \$27,000 from his nephew's account.
279. This falsification of records was done with the authorization or consent of Mrs. Gomez.
280. Mrs. Gomez not only authorized the loan disbursement, but she also instructed the falsification of the account, and as such, she is liable to LICU for loss sustained as a result of the issuance of the loan. The expert witness, in the course of conducting his investigations, found that Mrs. Gomez was responsible for the fraudulent changes made to Roy's account.
281. The additional \$27,000 disbursed to Mr. Gomez as a result of the falsification of Roy's account violated Article VI Section 2 of LICU's By-laws which provides that,

"No loan shall be made except on written application signed by the person desiring the loan, showing name of applicant, date, amount, the purpose for which the amount is desired, the terms of repayment and the date on which such payments shall begin."

282. The advance also violated section 84(1) of the **Credit Unions Act** which stipulates that *"Any person who obtains possession of any property of, or is granted any loan by a credit union by false*

representation or other corrupt means ... is liable on summary conviction ...”²⁵⁰

283. The alteration of the account was therefore unlawful.

284. Section 47(8) of the Credit Unions Act provides that “*Any person who knowingly approves or grants a loan in contravention of this Act or the Rules shall be liable for any losses resulting to the credit union in connection with that loan.*”

285. LICU therefore claims that Mrs. Gomez is liable to compensate it in the sum of \$27,000 for monies unlawfully disbursed to her husband

(10) Whether Mrs. Gomez is accountable to LICU for the embezzlement of \$436,906.34, or is otherwise, accountable for said loss to LICU?

286. LICU claims that Mrs. Gomez has caused loss to LICU totaling \$436,906.34, through fraud, deception, falsification of accounts, concealment, false and dishonest statements, conflict of interest, and acting contrary to the provisions of the Credit Unions Act, and LICU’s By-laws and Policies.

287. These claims are itemized as follows:

- a. \$95,586.83 as a result of unauthorized interest waivers;
- b. \$55,984.32 as a result of unlawful loan write offs for relatives;

²⁵⁰ See TAB 1

- c. \$79,519.94 through the unlawful reduction of loan balance of Olga Hernandez;
- d. \$45,693.28 through the unlawful reduction of loan balance of Roy Roberto Rosado;
- e. \$39,219.46 through the unlawful reduction of loan balance of Sandra Reyes;
- f. \$67,309.74 in respect of personal credit card charges; and
- g. \$53,592.77 in respect of the disbursement of unauthorized loan facilities to Armando Gomez drawn on the account of her niece Fiona Reyes through his addition as a joint holder, and his subsequent removal from the said account.
- h. \$27,000.00 in respect of the disbursement of unauthorized loan facilities to Armando Gomez drawn on the account of her nephew, Roy Roberto Rosado.

288. Each allegation has been addressed in detailed above.

289. LICU therefore claims that, as a result of Mrs. Gomez's direct and indirect actions, it has suffered loss in the sum of \$436,906.34.

Conclusion

290. There is overwhelming evidence of the mismanagement of LICU while it was under the management of Mrs. Gomez. Employees lived in fear and felt unable to question any directive issued by Mrs. Gomez, even if a directive violated the law and policies of the credit union.
291. LICU has adduced evidence that, while serving as General Manager of the credit union, Mrs. Gomez:
- a. Violated the Credit Union Act, LICU's By-laws and policies, and acted unlawfully and dishonestly by authorizing the waiver of \$95,586.83 in interest on active loans, including loans in which she had a financial interest;
 - b. Violated the Credit Union Act, LICU's By-laws and policies, and acted unlawfully and dishonestly by causing \$55,984.32 in loans to close relatives to be written off, including loans in which she had a financial interest;
 - c. Consistently violated the Credit Union Act, LICU's By-laws and policies by failing to declare her familial or financial interest in loan facilities extended to members of her family, and to an employee Raul Cocom who acquired a loan on her behalf;
 - d. Dishonestly and unlawfully reduced the loan balance of her domestic helper, Olga Hernandez, by causing a loan payment

of \$79,519.94 to be entered in the Emortelle System without producing cash to support the payment;

- e. Dishonestly and unlawfully reduced the loan balance of her nephew, Roy Roberto Rosado, by causing a loan payment of \$45,693.28 to be entered in the Emortelle System without producing cash to support the payment;
- f. Dishonestly and unlawfully reduced the loan balance of her sister, Sandra Reyes, by causing a loan payment of \$39,219.46 to be entered in the Emortelle System without producing cash to support the payment.
- g. Abused LICU's credit card, in violation of LICU's Code of Ethics, by using the credit card for personal purchases totaling \$67,309.74;
- h. Caused \$53,592.77 in unauthorized loan facilities to be disbursed to her husband, Armando Gomez, drawn on the account of her niece Fiona Reyes.
- i. Caused \$27,000.00 in unauthorized loan facilities to be disbursed to her husband, Armando Gomez, drawn on the account of her nephew, Roy Roberto Rosado;
- j. Failed to report to advise the board of cash shortages at LICU;
and

- k. Provided an altered cash position report to the Chairperson of the Supervisory Committee in relation to the Belmopan cash count conducted on 28th March 2015.
292. The report of the expert witness, Cedric Flowers, confirms the many instances of dishonesty, fraud and mismanagement perpetrated by Mrs. Gomez directly, or effected by subordinate staff on her instructions.
293. Mrs. Gomez has also admitted, under cross-examination, to having loans obtained by family members deposited into her account, and authorizing loan payments to be deducted from her salary. Mrs. Gomez failed to advise LICU's board of her interest in any of these loan facilities extended to her family members, and in which she had a financial interest.
294. It is respectfully submitted by LICU that the serial breaches of the Credit Unions Act, and LICU's By-laws and policies justified the summary dismissal of Mrs. Gomez.
295. It is further submitted that even if all the facts were not known to LICU at the time of Mrs. Gomez's dismissal, LICU is able to rely on the evidence adduced in this case to justify the dismissal of Mrs. Gomez.
296. In the circumstances, it is submitted that the dismissal of Mrs. Gomez was not wrongful, but rather, was justified based on her breaches of the law and the policies of LICU.

297. Furthermore, LICU claims that, as a result of her mismanagement of the credit union, it has suffered loss in the sum of \$436,906.34 and that Mrs. Gomez is liable to compensate it for the said loss.

298. DECISION

I take this opportunity to thank each and every counsel for their comprehensive submissions which have assisted me greatly in deciding this matter. I now address each of the issues before me as follows:

Claim No. 538 of 2015

1. Whether Mrs. Gomez was unlawfully placed on administrative leave by LICU?

On the evidence before me, I find that LICU was fully entitled to place Mrs. Gomez on administrative leave. The evidence of Mrs. Ena Martinez, Chairlady of the Board of Directors revealed that by 29th April 2013, serious questions had arisen as to the

conduct of Mrs. Gomez regarding the manner in which she managed LICU and these questions had been brought to her attention by the Board of Directors in at least two meetings. Mrs. Gomez was asked e.g. in a meeting in March 2015 about loans issued to a Minerva and Cressida Sabido, the wife and daughter of Hector Sabido, Loan Monitoring Officer as it was dubious whether these members possessed the ability to repay the loan in light of the history of previous loans which had been advanced to them. Mrs. Gomez was also questioned about loan to one Abel Blanco, who had received his loan for in excess of \$150,000 without Mrs. Gomez first seeking the approval of this loan from the Board of Directors. In my respectful view, these incidents by themselves were sufficient to trigger the Board of Director's right to place Mrs. Gomez on administrative leave while it carried out further investigations into these irregularities as these actions by Mrs. Gomez completely violated the terms of LICU's Loan Policy. I therefore find that

LICU was fully entitled to place Mrs. Gomez on administrative leave.

- 2. Did the Registrar of Credit Unions have a duty to act in accordance with section 36 of the Act in a situation where the Supervising Committee did not inform the Registrar in writing that they were of the opinion that misappropriation and/or misdirection of property of the credit union had taken place?**

I do not find that the Registrar of Credit Unions had any duty to act under section 36 in these circumstances. I have considered and I do not, with respect, agree with the submissions of Mr. Courtenay SC that under section 36 of the Credit Union Act, once the Supervisory Committee of LICU had informed Mr. Ysaguirre, then Registrar of Credit Unions, that Mrs. Gomez had been placed on administrative leave, that that automatically placed a duty on Mr. Ysaguirre to act. I agree with the interpretation of Section 36 so ably set out by Mr. Darrel Bradley in his arguments on behalf of the Registrar that the

proper interpretation of that section is that the power held by the Registrar to suspend employees is a discretionary and not a mandatory one. Section 36 (4) of the Credit Unions Act says:

*“ Where, on receipt of the report of the auditor or special examiner, the Registrar is satisfied that there is sufficient evidence of misappropriation or misdirection on the part of any director, or any member of the credit union, or any officer or employee engaged by the Board, he or she **may**, after consultation with the Supervisory Committee and after giving the person concerned a reasonable opportunity to exculpate him or herself, suspend such person from the exercise of his or her functions, and shall request the Board to summon a special general meeting of the members, and where the Board fails to do so, he or she shall hold the meeting within (14) fourteen days of the date of the suspension.”*

It is clear from this section that the Registrar of Credit Unions has the power to suspend an employee, once the Supervisory

Committee of a credit union makes a report to him, but he may choose not to exercise that power. Mr. Ysaguirre did not have to take any action after he learnt from the Supervisory Committee of the allegations against Mrs. Gomez. The mandatory requirements of Section 36 are activated only if the Registrar decides to take action. Once the Registrar has made that decision to suspend an employee under the Act, then he must take specific steps delineated in Section 36 such as asking the Board of Directors to summon a special general meeting of members, and reporting to that meeting the circumstances of misappropriation and reasons for suspension of the employee. But if, as in this case, Mr. Ysaguirre decides not to take any steps based on advice he received, then he is fully entitled to do so. The discretion belongs to him to be exercised if and when he chooses to do so. Once he chooses to exercise that discretion, he must exercise it in the manner delineated in the Act.

3. Whether the Registrar of Credit Unions breached his statutory duties by failing to intervene when Mrs. Gomez was placed on administrative leave?

Whether the Registrar of Credit unions breached his statutory duties by failing to intervene when Mrs. Gomez was dismissed on 24th July 2015?

I have decided to consider these two issues (Issue 3 and Issue 5) together as they are very closely related. Mr. Courtenay SC argues on behalf of Mrs. Gomez that Mr. Ysaguirre as Registrar of Credit Unions had a statutory duty under the Credit Unions Act to intervene on behalf of Mrs. Gomez when LICU placed her on administrative leave and also when LICU decided to terminate her services. Having considered the arguments for and against this issue, I find myself in agreement with Mr. Bradley's argument that no such statutory duty exists, and that LICU retained the authority of any employer in common law and under the Labor Act to suspend and dismiss an employee. I

agree that the Credit Union Act was created for the purpose of regulating financial institutions which function as credit unions. I agree with Mr. Bradley that when the reasoning of the CCJ in **Kent Herrera et. al. v Alma Gomez (Supervisor of Insurance) Civil Appeal No. 30 of 2014** is applied to Section 36 as the test to determine whether or not any such statutory duty exists, it is quite clear that it does not. As Mr. Bradley argues, quite correctly in my respectful view, under that test, in order for a statutory duty to exist and then be actionable, the language or interpretation of the statute itself must create a statutory duty. It must then be apparent that the intention of the legislature was to confer a private right of action against the statutory authority to sue for damages on a specific class of persons. Mr. Bradley also cited this case in support of the position that no cause of action can be founded upon the exercise of a discretionary power to act. When one examines Section 36 of the Credit Union Act, it is clear that the legislature confers on

the Registrar as the regulator of credit unions the statutory authority to intervene in the affairs of a credit union in order to allow the regulator the ability to ensure the competency and integrity of the leadership of the institution. I agree with Mr. Bradley's interpretation of the statute in that nothing in Section 36 of the Credit Unions Act is intended by the legislature to derogate from the powers conferred on a credit union by the common law and by statutes such as the Labor Act to discipline its own employees for acts of misconduct. I therefore find that there was no statutory duty imposed upon the Registrar of Credit Unions to intervene on Mrs. Gomez's behalf either when she was placed on administrative leave or when she was terminated from her employment by LICU.

4. Whether Mrs. Gomez was wrongfully dismissed as General Manager of LICU on 24th July 2013?

Having reviewed all the evidence in this case, I find that Mrs. Gomez was not wrongfully dismissed. I find as a fact that there was

an abundance of evidence from LICU as to the misconduct which grounded their termination of Mrs. Gomez. It is clear from the expert report by Mr. Cedric Flowers and the testimony of several witnesses who were employees of LICU that Mrs. Gomez repeatedly violated several of the policies of the institution that she was managing. As General Manager of LICU it was her responsibility to ensure that these policies were enforced. Instead, the evidence clearly shows that after 24 years of working at this institution and eventually rising to the top as General Manager, Mrs. Gomez decided to treat the funds at LICU as if they were the funds in her personal piggy bank. I find as a fact that Mrs. Gomez flouted the regulations governing LICU with impunity e.g. by giving out several loans to her friends and family members without first disclosing the nature of her relationship to these individuals to the Board of Directors as required by the Conflict of Interest Policy, waiving interest on loans when there was no interest waiver policy at LICU, and giving out massive loans to members who were incapable of

providing collateral to secure those loans. To my mind, any one of those violations would justify LICU terminating Mrs. Gomez summarily and the cumulative effect of these violations coupled with others cited in the evidence before me is extremely damning and clearly amounts to gross misconduct on her part. I agree with Mr. Lumor's submissions that Mrs. Gomez's failure to declare her familial relationship or financial interest in loans issued to her family members such as her sister Sandra Reyes, her sister-in-law Esther Rosado, her nephew Martin Rosado and her niece Therese Rosado violated the Credit Union Act, that requires at Section 33

(1) that any officer who:

- 1) Is party to a material contract with the credit union; or
- 2) Has a material interest in or a material relation to any person who is a party to a material contract or proposed material contract with the credit union, shall disclose in writing to the credit union or request to have entered in the minutes of the directors, the nature and extent of that interest.

Mrs. Gomez's failure to disclose her relationship to friends and family who received loans also clearly violated LICU's Conflict of Interest Policy at Article III and Article VI which places a Duty to Disclose on an employee referred to in this policy as "insider":

Article III: Procedures

Each insider shall disclose to the Board all material facts regarding his or her interest in the transaction, promptly upon learning of the proposed transaction.

Article VI: Annual Disclosure and Compliance Statements

Each Director, Officer, Management, and Staff of LICU, shall annually sign a statement on the form attached, that:

- 1) Affirms that the person has received a copy of this Conflict of Interest Policy, has read and understood the policy,
- 2) and has agreed to comply with the policy; and
- 3) Discloses the person's financial interests and familial relationships that could give rise to conflicts of interest

It is important to note the purpose for which this Conflict of Interest Policy was created as set out in the very first Article:

Article 1: Purpose

This Conflict of Interest Policy is designed to foster and promote public confidence in the integrity of La Inmaculada Credit Union Limited (LICU) and to protect its interest when it is contemplating entering a transaction that might benefit the private interest of a director, a corporate officer, the management, staff or any other temporarily attached consultant and/or service provider. I find that Mrs. Gomez's repeated violations of LICU's Conflict of Interest Policy but one clear example among many that justify the Board of Directors in terminating her summarily. I therefore find that Mrs. Gomez was lawfully placed on administrative leave by LICU.

5. Whether Mrs. Gomez is entitled to damages for injury to her reputation and feelings?

6. Whether Mrs. Gomez is entitled to any damages in respect of her dismissal?

Having found in favour of LICU and against Mrs. Gomez in Issues 1 to 5 above, and addressing these two related issues at once, I find that Mrs. Gomez's dismissal by LICU was lawful and therefore Mrs. Gomez is not entitled to any damages. I find on a balance of probabilities that the evidence of Mrs. Gomez's behavior as General Manager of LICU was reprehensible and dictatorial was true, as evidenced by the uncontested testimony of witnesses such as Jamid Teyul who chronicled in detail how Mrs. Gomez terrorized and insulted him when he, as a young cashier just starting to work at LICU, dared to question a transaction where principal on a loan was being paid instead of interest. Upon Mr. Teyul questioning Mrs. Gomez about this transaction which he knew was contrary to LICU's regulations, Mrs. Gomez insulted him by saying "Are you stupid?" When he replied "No" she told him "Then go ahead and proceed with the

code. You know exactly what the code means and what it needs to get affected, so go and proceed with the code.” He also testified how another cashier Ms. Lucia Gonzalez was publicly humiliated to the point of tears by Mrs. Gomez when she questioned whether a member, Benita Ayuso, who was Mrs. Gomez’s domestic helper had a second loan on her passbook; it turned out that Ms. Ayuso was only aware of one loan which she had at LICU and Mrs. Gomez had abused her power as General Manager to secure the second loan in Ms. Ayuso’s passbook for her personal use without Ms. Ayuso’s knowledge or consent. Mrs. Gomez therefore instructed Ms. Gonzalez that there was only one loan that was for Mrs. Ayuso; no one was to question the fact that the second loan on Ms. Ayuso’s passbook was actually for Mrs. Gomez. Clearly, Mrs. Gomez ruled the staff at LICU with an iron fist, cultivating an atmosphere of fear and intimidation, which allowed her to do whatever she liked as General Manager, flouting the policies and regulations with

impunity, knowing that the staff would be too terrified to ever question anything that she did. It is my finding that she is not entitled to any damages.

Mrs. Gomez herself testified that she directed LICU's Accountant Miguel Garcia to document receipt of cash that she knew that that cash was not in the system, stating that she did this so that LICU's account would be balanced. Yet another witness Yoli Trejo, gave testimony about another incident where she was instructed to issue a receipt for in excess of over \$79,000 and when she enquired about the missing cash she was informed that Mrs. Gomez was going to pay it. Despite a challenge to Ms. Trejo's testimony on Mrs. Gomez behalf to the extent that the money could have already been repaid to LICU, I find as a fact those funds remain missing from LICU to date. In my view, Mrs. Gomez should consider herself lucky that this matter was not referred to the Director of Public Prosecutions

for further action to be taken. I find that she is not entitled to any damages due to her gross misconduct as General Manager.

I now turn to Claim No. 723 of 2015.

1. Whether the waiver of accrued deposit interest on active loans approved by Mrs. Gomez for the years ending 31st March 2014 to 31st, March 2015 in the sum of \$95 586. 83 was lawful?

Having reviewed the evidence, I find that the waiver of interest by Mrs. Gomez was completely unlawful and contrary to LICU's regulations. The Loan Policy which governs LICU clearly states that it is only the Board of Directors which has authority to regulate interest on loans. As Mr. Teyul stated, he recalls Mrs. Gomez teaching him that interest was the "lifeblood" of the credit union. That statement is quite true. It is therefore understandable why LICU would reserve the power to adjust interest in any way to the Board of Directors and not the General Manager. I

agree with Mr. Lumor SC's submission that under LICU's By-laws, it is only the Board of Directors that has the authority to vary the interest charged on a loan, and that there is no residual discretion of the General Manager to waive interest.

Article VI (1) of LICU's By-laws provides that interest must be charged on loans at the rate of 1% per month on unpaid balances, *"or as the Board of Directors may approve from time to time not in contravention of the ordinance."*

Article VII (10)(a) states that the duties of the Board of Directors includes the right *"to determine from time to time the interest rates on loans."*

I agree with the findings of the expert witness Mr. Cedric Flowers in his report that this waiver of interest policy was formulated and developed by Mrs. Gomez along with other Management members. He also found that Mrs. Yolanda Gomez was one of the persons responsible for the

waiver of interest policy which resulted in an \$87,897.95 loss to LICU. He agreed that in his view this loss involved multiple violations of policy at LICU including Conflict of Interest violations and unauthorized transactions. This waiver of interest policy was not authorized by the Board of Directors and was therefore illegal.

2. Whether Mrs. Gomez acted dishonestly, unlawfully, and in violation of LICU's policies and by-laws when she approved the write-off of active loans for relatives and friends in the sum of \$55,984.32 in 2012?

I find that this question should be answered in the affirmative. The Loan Policy of LICU in Clause 14 clearly states that it is only the Board of Directors who can authorize that loans be written off:

“A write-off is a decision to remove a loan from the books because the collection is considered to be unlikely.

*A write-off is charged to the loan loss account. Management reviews delinquent loans from time to time to determine which loans will be considered for write-off. Write-off exercises will be carried out once per year. **Accounts where one year has passed since any payment was received and collection procedures have been exhausted, unpromising or impractical, may be recommended for write-off.** Extreme circumstances, such as a member that cannot be located or a member who has died may speed up the write-off recommendation. The Board of Directors shall authorize any write-offs."*

I accept as true the evidence of the President of the Board of Directors Mrs. Ena Martinez that the Board did not approve loan write-offs totaling \$55,984.33 to Mrs. Gomez's sister (Mrs. Sandra Reyes), Mrs. Esther Rosado (Mrs. Gomez's sister-in-law), Martin Rosado (Mrs. Gomez's nephew) and Therese Rosado (Mrs. Gomez's niece). Mrs.

Martinez said that Mrs. Gomez failed to disclose her relationship to these individuals and therefore breached LICU's Code of Ethics and Conflict of Interest Policy. She further testified that the Board members did not approve the write off of these loans as these members were known to be related to Mrs. Gomez. Mrs. Martinez said that Mrs. Gomez dishonestly presented one list to the Board for approval then issued instructions for the write off of loans for her close family members. I have to say given the context that Mrs. Gomez has been proven by the evidence in this case to have repeatedly violated LICU's policy and regulations for her personal benefit as well as the benefit of her family and friends, I find Mrs. Ena Martinez to be a witness of truth and I accept the evidence that the list approved by the Board was not the same list that Mrs. Gomez had given to them as being true on a balance of probabilities. I considered Mrs. Martinez's demeanor as she gave her evidence and it was quite clear that she had held Mrs. Gomez in very high esteem prior to the discovery of these irregularities; it was quite clear that Mrs. Martinez in her testimony expressed the reverence and trust

the Board of Directors previously held for Mrs. Gomez as General Manager and the deep disappointment and shock she and the Board of Directors experienced when the extent of Mrs. Gomez's managerial misconduct were revealed was palpable. I also take judicial notice of the fact that Orange Walk is a tiny community of barely 13,000 residents at the last census in 2020 where it is quite likely that the members of the Board knew that these people were all related to Mrs. Gomez. I therefore find on a balance of probabilities that Mrs. Martinez was telling the truth when she said that the Board would never have approved write-off of loans for the list of Mrs. Gomez's family and friends; Mrs. Gomez acted dishonestly, unlawfully, and in violation of LICU's policies and by-laws when she switched the list so that the Board would approve the write-off of active loans for her relatives and friends in the sum of \$55,984.32 in 2012 .

3. Whether Mrs. Gomez acted dishonestly and unlawfully

by causing a credit to be made to the account of her domestic helper, Olga Hernandez, and thereby reduced her loan balance by the sum of \$79,519.94?

I find that this allegation is also substantiated by the evidence. Mrs. Gomez approved this loan for Mrs. Olga Hernandez, without disclosing her interest in that loan. Mrs. Hernandez was Mrs. Gomez's domestic helper. It is incredible that Mrs. Gomez as General Manager would approve a loan of over \$79,000 to Mrs. Hernandez, fully knowing as her employer, that Mrs. Hernandez at the time of receiving this loan only had \$4,164 in assets and \$52,887.55 in liabilities! The cogent, unchallenged evidence of the cashiers Lucia Gonzalez and Jeremias Tun described in detail the fact that Mrs. Gomez was the person actually benefitting from this loan which had been disbursed to her domestic helper. She abused her position as General Manager and in violation of the LICU policies and by-laws did not disclose the interest she had in this loan which was ostensibly for Mrs. Hernandez. I therefore find against Mrs. Gomez and in favour of LICU on this issue.

4) Whether Mrs. Gomez acted dishonestly and unlawfully by causing a credit to be made to the account of her nephew, Roy Roberto Rosado, and thereby reduced his loan balance by the sum of \$45,693.28?

5) Whether Mrs. Gomez acted dishonestly and unlawfully by causing a credit to be made to the account of her sister, Sarita Reyes, and thereby reduced her loan balance by the sum of \$30,219.46?

I also find in favour of LICU and against Mrs. Gomez on both issues 4 and 5. Mrs. Gomez explained that Mr. Rosado was her nephew who had a vehicle business who was outside of the country and that she was assisting him by depositing \$12,000 of his \$40,000 loan funds into her personal account. Contrary to what was argued by Mr. Courtenay SC in his submissions, it is not a question of penalizing Mrs. Gomez for issuing loans to persons who are related to her or whom she is acquainted with. Mrs. Gomez as the General Manager, like every other LICU employee, had the duty to disclose the nature of her relationship with her nephew

and to disclose the fact that she had a financial interest in his loan. She failed to do so and in so doing she violated LICU's policy.

I also accept as true the evidence of Ms. Gonzalez that she was instructed by Mrs. Leiva to process a payment of \$45,693.28 on the account of Mr. Rosado and that this was one of the loans on which Mrs. Gomez made monthly payments from her personal account. Ms. Gonzalez has testified that she did not receive any cash as she was instructed by Mrs. Leiva, she was informed that the payment was already in the vault and that she was to simply add the payment in the paperwork. While it is argued on behalf of Mrs. Gomez that the evidence that this money remains missing from LICU is equivocal at best, I respectfully disagree. To my mind, this is yet another example of the *modus operandi* existing at LICU at this time, where the rules were disregarded by Mrs. Gomez for her personal benefit and for the benefit of her family and friends. Ms. Gonzalez testified that she was afraid to question the directive and so she issued the receipt for cash that she did not receive. The evidence on behalf of LICU from Ms. Gonzales the

cashier and from Ms. Yolly Trejo LICU Accounting Officer which I accept as being true is that to date, LICU has not received the cash payment for which this receipt was issued.

A similar situation obtains in relation to the loan of \$25,000 issued to Mrs. Sandra Reyes, sister of Mrs. Gomez. Ms. Gonzalez testified that deductions were made from Mrs. Gomez's salary to pay this loan. Ms. Gonzalez also gave evidence that on 6th September 2014 she was instructed to process a payment of \$39,219.46 on this account. She says that she was aware that Mrs. Gomez had obtained a loan on the account of Mrs. Reyes and that this payment was to go toward that loan. Ms. Gonzalez said that she was not provided with any cash at the time she processed the loan, but she was informed that the cash was in the vault. I accept Ms. Gonzalez's evidence that she never received the cash for this payment and I believe that this sum remains missing from LICU to date. I therefore find that Mrs. Gomez unlawfully and dishonestly caused a credit to be made to the account of her sister Sandra Reyes and thereby reduced her loan balance by \$39,219.46.

6) Whether Mrs. Gomez abused her office and acted in breach of trust by using LICU's credit card for personal purchases in the sum of \$67,309.74?

Mrs. Gomez defence to this allegation is that as long as she made payments towards the personal expenses charged on LICU's credit card, then it cannot be said that she abused her office in breach of trust by using the LICU card to purchase her personal items. However, the evidence of the expert report of Mr. Cedric Flowers on which the court firmly relies is that LICU routinely made credit card payments for Mrs. Gomez's personal purchases, and Mr. Flowers could find no proof that Mrs. Gomez had reimbursed LICU for credit card payments made on her behalf. I find that first of all, the use by Mrs. Gomez of the LICU credit card for the purchase of personal items which were not related to the business of LICU was in and of itself abuse of the credit card. That abuse is further exacerbated by the fact that Mrs. Gomez then used

LICU's own funds to pay off these credit card debts. Mr. Flowers has found that Mrs. Gomez made purchases totaling \$67,309.74 on LICU's credit card. I agree with Mr. Lumor SC's submission that this abuse of the LICU credit card violate clause 4.1.1 of LICU's Code of Ethics which stipulated that an employee should not abuse personal privileges of office. The evidence in the report of Mr. Cedric Flowers showed that while there were no written policies or guidelines governing the usage of the cards, it was clear that the cards were to be used for the business of LICU such as facilitating foreign travel, foreign registrations and foreign purchases for LICU. Instead, Mrs. Gomez used the Credit Cards of LICU for \$67,000 worth of her personal expenses. There is no evidence from Mrs. Gomez that she has repaid LICU this amount. I therefore find that Mrs. Gomez abused her office and acted in breach of trust by using LICU's credit cards for personal purchases in the sum of \$67,309.74.

- 7. Whether Mrs. Gomez ordered the falsification of the account of Fiona Reyes/Armando Gomez?**
- 8. Whether Mrs. Gomez acted in conflict of interest and in violation of LICU's By-laws and policies by instructing the disbursement of unauthorized loan facilities to her husband, Armando Gomez, on the account that he held jointly with her niece, Fiona Reyes?**

On these two issues, I find in favor of LICU. I agree with the submissions made by Mr. Lumor SC that these 2 issues are substantiated by the findings of Mr. Cedric Flowers in his expert witness report. It is clear that Mrs. Gomez never disclosed to the Board that she had an interest in loan facilities which were advanced to the joint account held by her niece Fiona Reyes and Mrs. Gomez's own husband Armando Gomez. On 23rd May 2012, Mrs. Gomez facilitated the refinancing of a loan of \$18,736 by advancing an additional sum of \$7,000 to the joint account held by these

two people to whom she was closely related. A few days later on 19th June 2012, the loan was increased to \$28,736 by an additional advance of \$10,000 which was disbursed to Mrs. Gomez on the same day. This loan was again re-financed to \$54,836 by an additional sum of \$26,100 which was issued to Mr. Gomez between 9th and 14th August 2012. This sum was approved by the Credit Committee on 22nd August, 2012. After this, the loan application was further altered on the instructions of Mrs. Gomez to enter an additional \$14,000, increasing the loan balance to \$68,836. The additional \$14,000 was disbursed to Mr. Gomez between 23rd August and 5th September 2012. The promissory notes on file were altered in each instance to conform to the amounts of the unapproved loans and disbursements. On 10th April 2015, Mrs. Gomez removed her husband Armando Gomez as a joint holder of the account; at that time the loan balance stood at \$53,592.77. These transactions are set out in Mr. Flower's

report and confirms violation of LICU's Conflict of Interest Policy and Code of Ethics, and also confirms that the account was falsified after the loan had been approved by the Credit Committee. There were no loan applications to support these transactions, in breach of Article VI section 2 of LICU's By-laws:

“ No loan shall be made except on written application signed by the person desiring the loan, showing name of applicant, date, amount, purpose for which amount is desired, terms of repayment and date on which such payments shall begin.”

I find that LICU has proven these allegations against Mrs. Gomez on a balance of probabilities; I therefore find Mrs. Gomez liable to compensate LICU in the sum of \$53, 592.77 for repaying those sums which were issued unlawfully to her husband.

9) Whether Mrs. Gomez acted unlawfully in ordering the disbursement of \$27,000 to her husband Armando Gomez, which was drawn on the account of her nephew Roy Roberto Rosado through the dishonest manipulation of the said account?

On this issue I also find in favor of LICU, based on the clear evidence set out in Mr. Flowers's report that showed that LICU granted a loan to Roy Rosado, Mrs. Gomez's nephew and that this sum was disbursed to Mrs. Gomez's husband. After his loan of \$13,000 was recorded an adjustment was made to the Emortelle system increasing the loan from \$13,000 to \$40,000. There was no loan application or approval to support this additional \$27,000. The evidence shows that the Promissory Note was altered by changing the word "thirteen" to the word "forty". That very same day the additional sum of \$27,000 was disbursed to Armando Gomez, Mrs. Gomez's husband. The Amended Loan Application and

Promissory Note are attached to the witness statement of LICU's present General Manager Yadelí Urbina as Exhibit YU

2. The failure of Mrs. Gomez to ensure that there was a loan application form completed as required by Article VI Section 2 of LICU's By-laws:

“ No loan shall be made except on written application signed by the person desiring the loan, showing the name of applicant, date, amount, the purpose for which the amount is desired, the terms of repayment and the date on which such payment shall begin. I agree with Mr. Flowers's finding that Mrs. Gomez not only authorized the loan disbursement, she also instructed the falsification of her nephew's account and as such she is liable to LICU for loss sustained as a result of the issuance of this loan.

9. Whether Mrs. Gomez is accountable to LICU for the embezzlement of \$436,906.34 or is otherwise accountable for said loss to LICU?

I find each and every allegation against Mrs. Gomez to be proven on a balance of probabilities by the evidence before me in this case. I therefore find that Mrs. Gomez is liable to pay LICU \$436,906.34 for the loss sustained. Costs awarded to LICU and to the Registrar of Credit Unions to be paid by Yolanda Gomez to be agreed or assessed.

I so order.

Dated this day of March, 2021.

Michelle Arana

Chief Justice (Ag)

Supreme Court of Belize