

IN THE DISTRICT COURT OF NEW ZEALAND

NORTH SHORE

CIV-2018-044-1629

UNDER THE Property Law Act (2007)

IN THE MATTER OF: Breach of [Lease] Contract;

BETWEEN: **DENNIS ARTHUR SMITH**, Beneficiary, of
Taumarunui,
Plaintiff

AND: **IAN JAMES PLOWMAN** Nurseryman,
Cockle Bay, Auckland,
First Defendant

AND: **NIKAU GROVE NURSERY LIMITED** a duly
incorporated company having its registered office at
35 Advene Rd, Cockle Bay, 2014, New Zealand and
carrying on business as a Nursery at 51 Smith Road,
Kumeu,
Second Defendant

AND: **HELEN IRENE MITCHELL** Retired, of 53 Smith
Road,
Kumeu, Auckland,
Third Defendant

RESPONSE TO STRIKE OUT SYNOPSIS

Dated: 6 October 2020

AND: **SEA CONTAINERS NZ LIMITED** a duly
incorporated company having its registered office at

36 Newton Street, Mount Maunganui, 3116, New Zealand and carrying on business selling & hiring containers,

Fourth Defendant

Filed by: Dennis Arthur Smith, Plaintiff.

Address for Service: dennis@dennis.nz

2A Para St, Matapuna, Taumarunui, 3920

May it please the court

The Plaintiff (The Defendant in this strike out application) submits:

- 1 Clause 1 - No reponse;
- 2 Clause 2 - No reponse;

DETERMINATION OF FACTS

- 3 Clause 3 – The first claim/implication in this clause is predicated on a falsehood. The First Amended Statement of Claim of 29 March 2019 has indeed been served on all four defendants as have all other court documents. Among other things this can be proven by one email:

*"From: Odin at SEA Containers [mailto:odin@seacontainers.co.nz]
Sent: Wednesday, May 27, 2020 12:43 PM*

To: Ian Plowman

Subject: FW: Application for joinder & Memorandum 2018-044-01629

Ian

Please see the email and new attachments from Dennis.

It appears he is now bringing 'Bruce Corban' into proceedings also, from what I can gather

Any questions, let me know, but we won't be responding to him / courts

thanks

Sea Containers

ODIN MADSEN

Manager - Auckland / Northland

021 026 31676

odin@seacontainers.co.nz

FREECALL 0508 732 266

www.seacontainers.co.nz"

The Fourth Defendant therefore does not respond nor do they appear '**by choice**'. In any case this matter is not terminal;

- 4 Clause 3 – The second claim in this clause refers to a missing "interlocutory application to join another defendant, Mr Bruce Corban" but this is already before the court. Again, if there is a procedural failing, I seek the opportunity to correct it;
- 5 Clauses 4 to 17 – These matters are all fact specific and should be examined at trial;
- 6 Clause 18 – The Statement of Claim states that a lease agreement was entered into:
 - 6.1 The Plaintiff entered into a verbal agreement to lease with the First Defendant;

- 6.2 The First Defendant supplied the Plaintiff with a key;
- 6.3 The Plaintiff summarised this agreement by email;
- 6.4 The First and Second Defendants accepted this agreement and then
- 6.5 The Plaintiff moved in, paid rent and power
- 7 A lease agreement [of some sort] was clearly entered into.
- 8 The Statement of Claim also states that various other actions also occurred unrelated to any lease for which litigation is appropriate.
- 9 The Plaintiff will indeed, at trial, demonstrate that a lease was established.
- 10 Succeeding at trial will be more properly determined though, **after the evidence is properly examined** than with a Strike Out Application;
- 11 Clause 19 to 21 – The Statement of Claim clearly states that the Third Defendant, Helen Mitchell was a direct party to the Plaintiff's wrongful eviction and is thus legitimately included in the Claim.
- 12 Again though, this is a matter of fact more rightly to be determined at trial;
- 13 Clause 22 – Irrelevant and disputed; and
- 14 Clause 23 – Disputed.



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Signature of Dennis Arthur Smith
Plaintiff