

**In the District Court of New Zealand
North Shore Registry**

CIV- 2018-044-001629

Under the Property Law Act (2007)

In the Matter of Breach of [Lease] Contract

Between **Ian James Plowman**, Nurseryman of 35
Advene Road Cockle Bay, Auckland,
Company Director
Nikau Grove Nursery Limited, a duly
incorporated company having its
registered office at 35 Advene Road,
Cockle Bay, 2014, New Zealand
Helen Irene Mitchell of 53 Smith Road,
Kumeu, Auckland
Retired
Applicants

and **Dennis Arthur Smith**, Beneficiary of
Taumarunui
Defendant

***Submissions for the Defendant (Plaintiff) for Strike-Out Proceedings
and in the Alternative Seeking Security for Costs***

Dated: 16 March 2020

Judicial Officer:
Case Officer: Steve McHugh

Dennis A. Smith
Address for service: 2A Para St, Matapuna, Taumarunui, 3920
Ph: 0211183296 ~ Email: dennis@dennis.nz

May it please the court:

CORE ISSUES

1 The **Defendant** submits that this matter turns upon the disputed circumstances surrounding an agreement between the **First Applicant** (Mr Ian Plowman) and the **Defendant** (Mr Dennis A. Smith) entered into on 16 August 2018;

2 It is agreed between the parties that a lease was undertaken, and that losses to the **Defendant** have occurred at the hands of the **Applicants** - the term of the lease however is contested;

3 The **Applicants** claim at various times that

3.1 The lease was for a fixed term of 'only' three weeks; or indeed at other times that

3.2 There was no lease;

4 The **Defendant** contests both these claims and states that the lease was for 12 months, fixed term and that the **Applicants** knew this prior to the **Defendant** taking possession, thus a trial is required to establish these disputed facts;

5 The **Applicants** claim that the **Defendant** was (or became at some point) "a squatter" which is denied;

6 The **Applicants** claim that the District Court is not the correct jurisdiction to hear this matter, again which is denied;

7 The **Defendant** notes that the **Third Applicant** believed (and continues to believe) that the **Defendant** was "a squatter" though she was not directly involved in establishing the contested lease, although she was directly involved in the **Defendant's** eviction.

LACK OF EVIDENCE

8 The **Applicants** have not provided any documentary evidence that: this agreement was for 'only' three weeks;

9 The **Applicants** have not provided any documentary evidence that the District Court is not the correct jurisdiction for hearing Property Law Act disputes, despite being asked to do so twice.;

10 The **Applicants** have not provided any documentary evidence that the **Defendant** has undertaken self-represented litigation for lexatious reasons;

11 The **Applicants** have not provided any documentary evidence that the **Defendant** is impecunious;

12 The **Applicants** have withheld critical evidence injurious to their case, specifically the First **Applicant's** email acknowledgement of the Defendant's lease summary that clearly included the term of 12 months (Appendix 1);

DISPUTED FACTS

13 This Application is predicated upon a myriad of core falsehoods, including but not limited to:

13.1 The fabricated claim that an agreement existed for only "three weeks";

13.2 The subsequent incorrect characterisation of the **Defendant** as “a squatter”; and

13.3 Claims of impropriety in the personal conduct and impecuniosity of the **Defendant**;

14 The **Defendant** claims however to the contrary that:

14.1 A verbal agreement was entered into between the **First Applicant** and the **Defendant** following a two and a half hour conversation;

14.2 Agreement to have no written contract for the lease was at the **First Applicant's** instigation as a result of his claimed previous difficulties with written leases;

14.3 The **First Applicant** supplied the **Defendant** with a key to the gate following that initial verbal agreement;

14.4 The **Defendant** summarised this agreement by email later the same day and explicitly included the term of 12 months and reference to the Property Law Act as the act under which the lease would be undertaken;

14.5 The **First Applicant** replied to this summary email therefore not only acknowledging receipt of it but also commenting on specific aspects of the agreement summary;

14.6 The **First Applicant** therefore naturally accepted the email summary was the agreed terms of the lease prior to the **Defendant** taking possession;

14.7 The **Defendant** then took possession, and paid all rent and all accounts in full and on time;

14.8 The **First Applicant** later unilaterally and without notice nor discussion nor agreement with the **Defendant** terminated and enforced eviction of the **Defendant**; and

14.9 These (and other actions) caused substantial loss to the **Defendant**;

15 Aside from the documentary evidence above, the **Applicants'** core claim that the agreement was for 'only' three weeks can be logically proven to be a fabrication considering the circumstances surrounding the potential business relationship between the **First Applicant** and the **Defendant**:

15.1 Contrary to claims that the **Defendant** would “work for” anyone, let alone the **First Defendant**, the **First Applicant** and the **Defendant** intended that the **Defendant** would establish a community and business involving and helping the **First Applicant** by taking over the head lease of 26 acres and sublease a portion of approximately 3 acres back to the **First Applicant**, thus securing for him both a lease reduction and increased tenure;

15.2 With the **First Applicant's** knowledge and approval the **Defendant** approached the **First Applicant's** landlord with this objective in mind - financial cost savings and increased security of tenure for the **First** and **Second Applicants** and of course land for the **Defendant's** proposed business;

15.3 This will be proven at trial with evidence from multiple sources;

15.4 Evidence supplied to this court by way of affidavit from Mr Bruce Corban

that he had a conversation with the **Defendant** in which the term of three weeks was discussed is an outright fabrication – a provable falsehood and an act of perjury;

15.5 No conversation occurred between the **Defendant** and Mr Bruce Corban on the day that the container arrived as the **First Applicant** specifically asked the **Defendant** both verbally and by email that no discussion over lease matters with Mr Corban should occur due to his (the **First Applicant's**) intention to evict him if/when the new lease arrangements occurred;

15.6 The **Defendant** complied with these requests fully;

16 The Statement of Claim is 'sound', perfectly valid and the case 'has legs';

17 The **Defendant** is not impecunious; and

18 The **Defendant** claims that the District Court is the appropriate jurisdiction to hear disputes such as this one under the Property Law Act;

PROCEDURAL OMISSIONS

19 This Application fails to address specific points in the Statement of Claim, not directly related to the lease including:

19.1 Damages resulting from actions subsequent to the unilateral eviction such as vandalism, assault and damage to property; and

19.2 The role of the **Fourth Defendant** (in the Statement of Claim) in the conflict;

CONCLUSION

20 The **Defendant** believes that this court is being asked with this Application to pre-determine matters of hotly contested fact based on partial information supplied only in a Statement of Claim and by the **Applicants**, and without the full (and in most cases any) evidence;

21 The **Applicants** have previously objected to a Judicial Settlement Conference thus the **Defendant** seeks that this Application be denied on all counts and the matters proceed to trial in the North Shore District Court forthwith.

22 The **Defendant** seeks costs and disbursements.



Dennis A. Smith

Defendant

Appendix 1 – Supressed evidence

Email sent by the Defendant to the First & Second Applicants summarising the Lease agreement and then a reply to the Defendant by the First and Second Applicants acknowledging receipt and providing return commentary on aspects of the agreement.

Delivered-To: victusinambitus@gmail.com
Received: by 2002:ab0:70d1:0:0:0:0:0 with SMTP id r17-v6csp1685850ual;
Thu, 16 Aug 2018 01:22:13 -0700 (PDT)
X-Google-Smtp-Source:
AA+uWPztNqxP5NjppQGo6BouZ0C8JKAJpV2PETY7gKn/zQoPGe3Uj50NznkZaUJAik6TYmVgir3dP
X-Received: by 2002:a65:5cc5:: with SMTP id b5-
v6mr27714542pgt.425.1534407732982;
Thu, 16 Aug 2018 01:22:12 -0700 (PDT)
ARC-Seal: i=1; a=rsa-sha256; t=1534407732; cv=none;
d=google.com; s=arc-20160816;
b=QPk1E9/sATA7AVDv09bsH1R0dxdHNRMDXPWOi5+BDnZ22IytcCpoPlg29Wv3Xzwx8U
qD8U3GLom8YbmJW4QG+483i3BgJjKQYvdi97Igs1mahXAIkHcUKEt5yszFeZOuccDD2u
BTwfh5UgwTZMA49bvU2vkAzTLyRRKhgSDLs4Y9VJw8IPRsw9b+VFK5qcalQawaYv7GA
GLxWW8LKsU6J004B4KJaO+gWLK1obaECHRarr0Rr1IvoHTiHiLCom82kMr0dWEanc/gH
BDojN7zun6aeETd9pA3CoyiM0hQG7qtQVMgqvl6QaJYrCN01WXHvwwQt8r1VupSOTRCg
v8QA==
ARC-Message-Signature: i=1; a=rsa-sha256; c=relaxed/relaxed; d=google.com;
s=arc-20160816;
h=content-language:thread-index:mime-version:message-id:date:subject
:in-reply-to:references:to:from:arc-authentication-results;
bh=VUkMCL2z2y4YxTgA+FDWZxs/6eLNvPAsIm4oVSWnADk=;
b=FHoy/KgDOWIONwyBTofRoNPCFqwx1MtvvwMc1dNxV0G8FYPJQGZdwgHVvMxvFZ5dJgn
BKWDkDBTaZd2MKSrzuIxRKEo/+dmhtqtMRDOX2pO6uKVQ4nW1iVdCwE6ylWkrYx2kWdj
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8SaMcQPwaxX/w6oqXaqZQUkHEu3yeXrveN/JInrdoW0Ys0xeywS51ZYHzW08HDHqnCaf
yTben076Fvug04Fzjzb7euznksG8MLeJ4ZfD5EXWlPAwQ8vu0Yd75jLN2GfIwKM/RI5W
XV0g==
ARC-Authentication-Results: i=1; mx.google.com;
spf=pass (google.com: best guess record for domain of
srs0=lmlz=k7=nikaugrove.co.nz=sales@webhost.co.nz designates 119.47.119.77 as
permitted sender)
smtp.mailfrom="SRS0=Lmlz=K7=nikaugrove.co.nz=sales@webhost.co.nz"
Return-Path: <SRS0=Lmlz=K7=nikaugrove.co.nz=sales@webhost.co.nz>
Received: from smtp-out-a02.webhost.co.nz (ak1-mlx-out-b02.webhost.co.nz.
[119.47.119.77])
by mx.google.com with ESMTPS id o15-
v6si25809887pgq.236.2018.08.16.01.22.11
(version=TLS1_2 cipher=ECDHE-RSA-AES128-GCM-SHA256 bits=128/128);
Thu, 16 Aug 2018 01:22:12 -0700 (PDT)
Received-SPF: pass (google.com: best guess record for domain of
srs0=lmlz=k7=nikaugrove.co.nz=sales@webhost.co.nz designates 119.47.119.77 as
permitted sender) client-ip=119.47.119.77;
Authentication-Results: mx.google.com;
spf=pass (google.com: best guess record for domain of
srs0=lmlz=k7=nikaugrove.co.nz=sales@webhost.co.nz designates 119.47.119.77 as
permitted sender)
smtp.mailfrom="SRS0=Lmlz=K7=nikaugrove.co.nz=sales@webhost.co.nz"
Received: from ml.ak1-mlx-in-a02.webhost.co.nz (ml.ak1-mlx-in-a02.webhost.co.nz
[172.16.246.162]) by smtp-out-a02.webhost.co.nz (Postfix) with ESMTPS id
3047162FC3; Thu, 16 Aug 2018 20:22:10 +1200 (NZST)
Received: from mlf1.webhost.co.nz (ak1-mlf-a01.webhost.co.nz [172.16.246.21]) by
ak1-mlx-in-a02.webhost.co.nz (Postfix) with ESMTTP id 3970B80151 for
<dennis@dennis.nz>; Thu, 16 Aug 2018 20:22:06 +1200 (NZST)

X-Envelope-To: <dennis@dennis.nz>
X-Envelope-From: <sales@nikaugrove.co.nz>
Received: from alcott.smtp.mailx.hosts.net.nz (alcott.smtp.mailx.hosts.net.nz [43.245.52.158]) by ak1-mlx-in-a02.webhost.co.nz (Postfix) with ESMTPS id 279B880147 for <dennis@dennis.nz>; Thu, 16 Aug 2018 20:22:05 +1200 (NZST)
Received: from [101.100.129.95] (helo=IanPC) by alcott.smtp.mailx.hosts.net.nz with esmtpa authed as nikaugrove.co.nz
(Exim 4.84_2) (envelope-from <sales@nikaugrove.co.nz>) id 1fqDXg-00073k-J2 for dennis@dennis.nz; Thu, 16 Aug 2018 20:22:04 +1200
From: Ian Plowman <sales@nikaugrove.co.nz>
To: <dennis@dennis.nz>
References: <CAOS-hrLxo24G7yLKGD1FuXEgthc5pFm3Hac5i14Z=RuhT=zixw@mail.gmail.com>
In-Reply-To: <CAOS-hrLxo24G7yLKGD1FuXEgthc5pFm3Hac5i14Z=RuhT=zixw@mail.gmail.com>

Subject: RE: Lease Confirmation

Date: Thu, 16 Aug 2018 20:22:02 +1200

Message-ID: <000001d4353a\$37a20f90\$a6e62eb0\$@nikaugrove.co.nz>

MIME-Version: 1.0

Content-Type: multipart/alternative; boundary="-----_NextPart_000_0001_01D4359E.CCDE1B80"

X-Mailer: Microsoft Outlook 14.0

Thread-Index: AQID0RNdNW1IRKrIya4m0NCAK1Dkg6Ri0HyA

Content-Language: en-us

X-Hosts-DKIM-Check: none

-----_NextPart_000_0001_01D4359E.CCDE1B80

Content-Type: text/plain; charset="utf-8"

Content-Transfer-Encoding: quoted-printable

Hi Dennis

=20

I am sure you have thought of this but don't tell Bruce Corban what=

may or may not happen in the future between us when you meet him. Just tel=

l him you are working with me the rest is none of his bus=

iness. Keep him in the dark and feed him on bullshit.

(the mushroom theory)

=20

I have studied the Property Law Act on the points you highlighted. Not sure=

if I told you but I sub-let 2 acres to an Indian when I first arrived and =

had nothing but trouble and had to boot him out so I had to go through all =

the can and can't do,s of the Property Law Act.

Fortunately the Cou=

rt was on my side.

=20

Cheers

=20

Ian=20

=20

From: Dennis A Smith
[mailto:victusinambitus@gmail.com]=20
Sent: Thursday, August 16, 2018 4:27 PM
To: sales@nikaugrove.co.nz
Subject: Lease Confirmation

=20

Hi Ian

=20

As promised here is a summary of our agreement of today.
Thank you for your=
cooperation.

=20

Background

We have an immediate need for land to park a couple of
40' containers, our =
housetruck and my car while we establish the Tiny House
Workshop. You lease=
land from the Corban Family Trust (On a 5+5 you have
just started the seco=
nd five year stint), and you have need for other
assistance in various ways=
. I approached you (initially as a potential customer
looking to see if you=
had any "fruit or nut trees") and we have discussed
various possibilities,=
reaching agreement today.

=20

Agreement

*=09While we both see potential for good cross-pollination we will keep our businesses totally separate at this stage and will discuss ways that we could work together in the future once I have 'caught my breath'.

*=09We (Gold Tick Services Ltd) will lease from today a small concrete pad = (plus "a little") from you for a 12 month period paying you \$50.00 per week= in advance into 12-3040-0702502-01.

*=09We will share facilities but we will pay our own power, initially with = an estimated usage but eventually on my own meter/measurements.

*=09You have sought and we agree to a tidy appearance (old, dirty or decrep= it does not fit your wishes).

*=09Agreed usage is for development and operations of the Tiny House Worksh= op, my personal living needs in my housetruck and in due course a developin= g community of people potentially those interested in horticultural matters=

.

You noted that the water quality is marginal.

=20

I would note that the Property Law Act 2007 contains details of any conditi= ons not specifically discussed or agreed here, such as termination/default = terms - this may also assist you think through issues with unpaid rent from= other tenants.

=20

On other matters:

1.=09 I have suggested that if we discuss your subleasing issues over the next week, we will be in a better position to approach Tim to discuss long term matters.=20

2.=09I also suggested that you should not close down your business while you go overseas as I am happy to assist you in your absence. This is a firm commitment from me, I will just need the dates to fit my other appointments around them please.=20

3.=09I also asked you to find the price of 60 tons of macadamia chips per annum from John.=20

I have now made the first payment of \$50.00 as promised. Thank you for your co-operation.

=20

Regards

Dennis A. Smith - <http://www.dennis.co.nz/> www.dennis.co.nz - My digital home (moving to www.dennis.nz soon)

Writing the Wrong - <http://www.writingthewrong.com/> www.writingthewrong.com - Get your story out

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Skype: victusinambitus

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