

In the District Court of New Zealand  
at 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 Advane Road  
Cockle Bay, Auckland, Company Director

**Nikau Grove Nursery Limited**, a duly incorporated  
company having its registered office at 35 Advane Road,  
Cockle Bay, 2014, New Zealand

**Helen Irene Mitchel** of 53 Smith Road, Kumeu  
Retired

**Applicants**

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

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**Affidavit of Ian James Plowman in Support of Application to Strike-out proceedings  
and in the Alternative Security for Costs  
Dated 23<sup>rd</sup> August 2019**

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Next Event Date:

Judicial Officer:

Case Officer:

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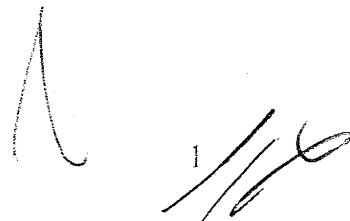
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**Affidavit of Ian James Plowman in Support of Application to Strike-out proceedings  
and in the Alternative Security for Costs  
Dated 23<sup>rd</sup> August 2019**

Handwritten signature and initials in the bottom right corner of the page.

I, Ian James Plowman of Cockle Bay, Company Director affirm:

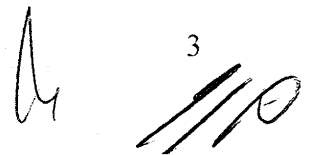
1. I am the First Defendant in this proceeding. I am also a Director of Nikau Grove Nursery Limited. My company has been incorrectly named as the Second Defendant. The Plaintiff has incorrectly stated the address of the premises as 51B Smith Road which is incorrect. That address does not exist. My company leases the commercial premises at 51 Smith Road from J&P Corban Trust. Address provided by the plaintiff is incorrect Attached **marked "A"** is a copy of the relevant pages of the Lease.
2. On the 16 August 2018, the Plaintiff approached me personally at my Nursery business purporting to be a customer to buy nuts. He then offered to work for me in exchange of allowing him to park one truck and one container on my place of business for a period of three weeks. This was in a customer car park area.
3. The Plaintiff approached me personally. He said that he was in immediate need for a parking space for a container and a house truck. This was a temporary arrangement for three weeks. He agreed to pay me \$50 per week for the parking; plus power so he could have access to power, water and toilets. There was no mention about his company or my company. He agreed to keep the area in a tidy condition.
4. I was dealing with the Plaintiff, Mr Smith. Likewise, he was dealing with me in my personal capacity.
5. On the 16 August 2018, following our meeting, he sent me an email claiming to be a Lease and a negotiated agreement between the parties. This is false. Attached **marked "B"** is a copy of the email. The word Lease was never mentioned during our conversation. In any case, it would have been a sublease and it would have required my Landlord's consent. I was not in any position to offer him a lease or a sublease.
6. There was no agreement to provide a parking space (plus a little more area) for a car, truck and two 40 foot container for 12 months as stated in his email. Nothing in the Plaintiff's email dated 16 August 2018 was ever discussed with me during our initial meeting.
7. On 6 September 2018, I was leaving for a holiday to Rarotonga for 10 days. This coincided with the date for the expiry of the three weeks period. I did not wish to antagonise the Plaintiff before I left for a holiday for fear of him vandalising the place.
8. On 16 September, I arrived back from a holiday from Rarotonga. I found out that he had broken into my power meter. This incurred costs to me. He also incurred other costs with me. Attached **marked "C"** is a copy of my invoices rendered to him. He was becoming vicious and making a nuisance of himself around my customers; vandalising my place of business in retaliation. This was after I mentioned that I would evict him.
9. The Plaintiff only made one first initial payment for the power. He then illegally fitted a personal meter, breaking into the fuse box using bolt cutters and interfered with the fuse box.
10. Around 25 and 26 October 2018, he interfered with the wiring and the fuse box. Vector was called out twice by him to disconnect the power. This had to be reconnected by a registered

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electrician and incurred costs to me for approximately \$500. The Police had warned him that he would be charged with criminal nuisance if he interfered with the power supply again.

11. He was also hoarding rubbish on my nursery which was increasingly becoming unsightly and was interfering with my business. Attached **marked "D"** is a photograph of the rubbish at my place of business. My customers complained about the rubbish in the car park and the Plaintiff's abnormal behaviour. I took steps to evict him from the property after seeking Police assistance from Kumeu Police.
12. On 9 October, I emailed him an eviction notice. He ceased making rental payment.
13. On 10<sup>th</sup> October, I handed him a copy of this eviction notice. Attached **marked "E"** is a copy of the Eviction Notice. I stated that all his belongings (including his rubbish) was to be removed from my business premises no later than 8 November 2018. Attached marked **"F"** is a copy of the email sent.
14. On 15 October 2018, Mr Smith issued me with a Trespass notice which the Police refused to accept. Attached **marked "G"** is a copy of the Trespass notice. He also claims to be a Private Investigator. This is false.
15. I approached Kumeu Police to seek their assistance to Trespass him. The Trespass Notice was issued on the 6<sup>th</sup> November 2018. Attached **marked "H"** is a copy. He left leaving his house truck and the container and all his personal belongings and positions including the hoarding of the rubbish on my premises. This was after the Police legal division and my Landlord confirmed that he was nothing more than a squatter on the property. It was brought to my attention that his pattern of behaviour was known in the area.
16. On 11 November 2018, the Plaintiff returned and took his house truck from the roadside which was towed off my business premises. I had to remove his container which was leased from the Fourth Defendant.
17. On 8 November 2018, he was evicted from my place of business with the help of Kumeu Police. I also approached the neighbour Helen Irene Mitchell. She is named as the Third Defendant in the proceedings. Mrs Mitchell owns the Private Road, Smith Road which provides access to my place of business. She has been implicated in this proceeding because she had consented for the trespass notice to take effect as noted on the Trespass Notice.
18. After my encounter with the Plaintiff, I learnt that around 2 August 2018 he was evicted by Keith Hay Homes, at the Concourse in Henderson. Mr Smith issued proceedings against Keith Hay Homes, in retaliation. The Director David Hay faced the same issues as me in terms of Mr Smith vandalising his property and hoarding rubbish.
19. I found out that around 2 August 2018, he approached Swanson Storage Property. Around 20 August 2018, he was ordered to leave from Swanson storage property.
20. On 20 August 2018, he approached me at my Nursery.
21. Around 15 October 2018, he applied to the *Residential Tenancy Tribunal [2018] NZTT Waitakere 4159555 26 November 2018*. That application was heard on 26 November 2018. He did not appear and cancelled the hearing (2 hours before the hearing), falsely claiming that he had transferred the case to the North Shore District Court. It was held that the

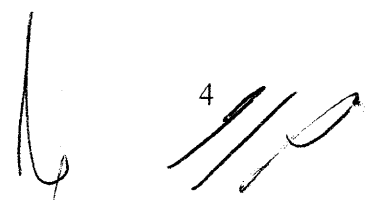
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tenancy services did not have the jurisdiction. Attached marked "I" is a copy of the decision.

22. On 6 November 2018, he filed a proceeding in the Waitakere Court but was transferred to the *Manukau District Court* [CIV- 2018-092-004420]. The proceeding was about harassment. There was no appearance from Mr Smith at the call over on the 1 February 2019 and the matter was struck out.
23. Around 10 November 2018, he applied to the Disputes Tribunal against me [CIV-2018-044-1629]. This was to be heard on 18 January 2019. He cancelled this a few days before the hearing falsely claiming he was transferring it to the North Shore District Court. Mr Smith also filed proceedings in the Disputes Tribunal against Sir David Hay when he had to appear three times; 29 October 2018, 29 January 2019 and 1 April 2019. Mr Smith claimed breach of lease against Sir Henry David Hay. Mr Smith's application was struck out on the 1 April 2019.
24. On 14 November, 7 days after he was evicted, he filed proceedings in the North Shore District court.
25. As far as I was concerned, I agreed for him to park to for three weeks for an agreed price and payment of electricity to allow him access to water and other ablution facilities. He failed to make the payment as agreed. He was a squatter and was evicted.
26. It was a verbal agreement. There was no lease mentioned, offered or signed other than Mr Smith purporting to have a lease relying on his email sent to me., Bruce Corban another tenant was present to help Mr Smith move the container on my premises. Mr Corban also confirmed that it was a temporary arrangement for three weeks. Attached **marked "J"** is a copy of Mr Corban's statement.
27. All the cases filed by the Plaintiff against me arose from the same incident. That is after I issued him with the eviction notice and carried out the eviction process with the help of Kumeu Police.
28. I sincerely believe that the Respondent has a history of issuing proceedings. Attached **marked "K"** is a copy of an email from Sir David Hay of Keith Hay Homes confirming similar predicament that he faced when dealing with the Plaintiff, Mr Smith. He issued proceedings in the Disputes Tribunal when Mr Hay had to appear three times. He has also issued proceedings against other including the IRD. Attached **marked "L"** is a copy of an email from Mr Smith to Brody Andrews discussing his various proceedings.
29. I respectfully submit to the court that the proceeding issued by Mr Smith be struck out as it is simply vexatious. There is no reasonable basis on which the Plaintiff could succeed. There was no lease and therefore could not have been a breach of lease. The property address is incorrect.
30. He has already issued three other proceedings against me and has failed. It is unlikely that he would succeed with his claim of breach of lease. This was a verbal agreement and he failed to pay on time.
31. I have incurred unnecessary costs in terms of repairs and cleaning costs. I have rendered Mr Smith the invoices which he has failed to pay. I am also incurring legal costs to defend this proceeding which is costly for me taking into consideration the inconvenience, loss of earnings, the clean-up and repair costs for me.

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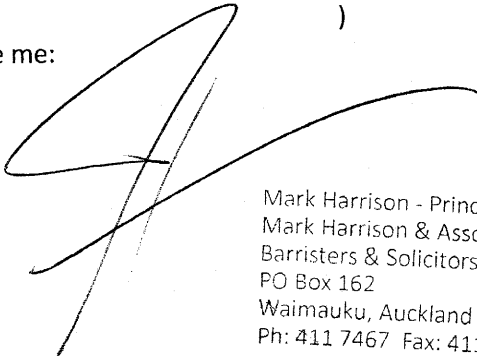


32. The Plaintiff is a beneficiary. It is unlikely that he will be able to pay my costs if the proceeding did proceed to a hearing.

33. I respectfully ask the court that in the alternative, that the Plaintiff pay security for cost if the matter is not struck -out.

Affirmed in Waimauku )  
on this 23<sup>rd</sup> day of August 2019) )

before me:



Mark Harrison - Principal  
Mark Harrison & Associates  
Barristers & Solicitors  
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Waimauku, Auckland 0842  
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**Ian James Plowman**