

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 2A Para St,
Matapuna, Taumarunui,
Plaintiff

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

AND: **NIKAU GROVE NURSERY LIMITED** a duly
incorporated company having its registered office at
35 Advane 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

SECOND AMENDED STATEMENT OF CLAIM

Dated: 25 May 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

AND: **BRUCE CORBAN**, Nurseryman, 51 Smith Rd,
Kumeu, Auckland,
Fifth Defendant

Filed by: Dennis Arthur Smith, Plaintiff.

Address for Service: dennis@dennis.nz

2A Para St, Matapuna, Taumarunui, 3920 NZ

The Plaintiff claims:

LEASE AGREEMENT

1 **THAT** on the afternoon of 16 August 2018 the Plaintiff undertook to lease 51B Smith Road, Kumeu from the First and Second Defendants;

2 **THAT** at 16:27 on 16 August 2018, the Plaintiff summarised the agreed terms of the Short Term lease to the First and Second Defendants by email:

“Agreement

We . . . will lease from today a small concrete pad . . . from you for a 12 month period paying you \$50.00 per week in advance . . . We will share facilities but we will pay our own power . . . Agreed usage is for development and operations of the Tiny House Workshop, my personal living needs in my housetruck . . . - Dennis A. Smith”;

3 **THAT** the Plaintiff also noted that the lease agreement was to be interpreted under the Property Law Act 2007 for matters not covered in the agreement summary:

“I would note that the Property Law Act 2007 contains details of any conditions not specifically discussed or agreed here, such as termination/default terms - Dennis A. Smith”;

4 **THAT** the leased property includes bare land with power, water, ablution facilities and shared access via three Rights of Way,

4.1 First a ROW [with the appearance of a single lane country road] of approximately 500m shared by the First, Second, Third and Fifth Defendants, the Plaintiff and other tenants of 51 Smith Road,

4.2 A second ROW [with the appearance of an unsealed driveway] shared by the First, Second and Fifth Defendants, the Plaintiff, and

4.3 Third a ROW [with the appearance of a concrete

driveway] used exclusively by the Plaintiff;

- 5 **THAT** at 20:22 on 16 August 2018 the First and Second Defendants acknowledged receipt of that email which included the agreed terms, specifically noting that they were familiar with the requirements of the Property Law Act 2007:

“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 [sic] of the Property Law Act - Ian Plowman”;

- 6 **THAT** at all material times the First and Second Defendants were directly associated either by written notice signed “*Ian Plowman, Nikau Grove Nursery Ltd*” or similar or by implication by using the email address of the Second Defendant “*sales@nikaugrove.co.nz*” - the domain name of which has also at all material times been registered to “*Nikau Grove Nursery Ltd*”;

CONTAINER PURCHASE

- 7 **THAT** on 2 August 2018 the Plaintiff agreed to purchase the Container from the Fourth Defendant for \$4,025.00 incl GST;
- 8 **THAT** on 26 November 2018 the First Defendant advised the Plaintiff that if the Container wasn't removed that the Fourth Defendant would repossess it, “*The company that owns the container, Sea Containers, will be re-possessing their container on Friday 30 November - Ian Plowman*”;
- 9 **THAT** on 29 November 2018 the Plaintiff advised the Fourth Defendant that the First Plaintiff's company laid claim of title to the Container and that any actions taken against the Plaintiff's interests would be actionable, “*we lay claim to title of this container and ... any actions taken by yourselves against our interests – this claim of title will be defended in full - Dennis A. Smith*”;
- 10 **THAT** the Plaintiff also advised the Fourth Defendant that

“the container holds in excess of \$60,000.00 stock, plant & machinery owned by GTS and others and that should this container be moved or altered in any way ... that this will inevitably expose parties involved ... to liability for such actions - Dennis A. Smith”;

CONTAINER REMOVAL

11 **THAT** between 30 November 2018 and 9 December 2018 the Fourth Defendant removed the Container without the Plaintiff's knowledge or permission as evidenced from the First Defendant's Statement of Defence: *“The container belongs to a company called “Sea Containers” and they have since repossessed it as the plaintiff/squatter had failed to meet lease payments for several months - Ian Plowman”;*

FIRST CAUSE OF ACTION – Breach of Lease Contract

12 **THAT** at 19:30 on 9 October 2018 the First and Second Defendants breached the lease agreement by unilaterally, and without warning, issuing an eviction notice demanding that the Plaintiff vacate 51B Smith Road by midday 8 November 2018: *“This letter is to notify you that your temporary occupation of the land located at 51 Smith Road Kumeu is to terminate at 12.00 midday 8th November 2018. You were originally offered a short term living arrangement for a few weeks. Those few weeks have long gone and you are now required to move on - Ian Plowman”;*

13 **THAT** on 10 October 2018 and multiple times since that date, the First and Second Defendants breached the lease agreement by unilaterally disconnecting the Plaintiff's access to power, water and ablutions unless the Plaintiff acquiesced to various demands: *“. . . you have been disconnected from all power. As a direct result of this you have no access to toilets or water as they are both activated by power. If you make any attempt to break into and illegally interfere with the fuse box or power meter or water supply I will have you charged with breaking and entering and wilfull trespass and will ensure you are immediately evicted from the*

property. Should you come to your senses you and [sic] agree in writing to pay the power account that I give you then I will give you access to the power and water until 12.00 midday 8th November 2018 when you will be gone from the property. The “meter” that you illegally wired into the fuse box has been disconnected and will not be reconnected - Ian Plowman”;

- 14 **THAT** the Plaintiff advised the First Defendant at 08:43 on 11 October 2018 that should work be unable to progress on scheduled work days (Thursday to Tuesday inclusive) as a result of his adverse actions, he would be liable for losses calculated at the minimum [adult] wage x 8 hours a day, being \$16.25 per hour x 8 hours = \$151.80 per day incl GST x 6 days per week:

“I will hold you responsible should I or any of my companies incur costs or losses as a result of your actions - direct and/or indirect. My charges for unavailability of full capacity to conduct construction work will be the minimum wage x 48 hours per week - Dennis A. Smith”;

- 15 **THAT** between 08:00 and 17:00 on 10 October 2018 and multiple times thereafter, the First, Second and Fifth Defendants interfered with the Plaintiff's possessions:

“I have today at great cost of time and energy reclaimed my nursery [moved the Plaintiff's possessions] - Ian Plowman”;

- 16 **THAT** in breach of the lease agreement, the First and Second Defendants prevented the Plaintiff from working on site for the periods 11-16 October 2018; 18-23 October 2018; 25-30 October 2018; and 1-6 October 2018; all dates inclusive being 24 days;

- 17 **THAT** on or about 17:30 on 6 November 2018, at 51B Smith Road, in breach of the lease agreement, the First Defendant served a Trespass Order on the Plaintiff in the names of the First and Third Defendants, trespassing the Plaintiff from 51 Smith Road and 53 Smith Road which includes vehicular access via the first two Rights

of Way to 51B Smith Road;

- 18 **THAT** by issuing a joint Trespass Order against the Plaintiff all three Defendants have prevented the Plaintiff from working onsite from 8 November 2018, a breach of the lease agreement;

WHEREFORE the Plaintiff claims:

- A) A **DECLARATION** that all written and verbal notices for eviction and losses (including a Termination notice from the First and Second Defendants dated 9 October 2018; the Trespass Order from the First and Second Defendants dated 16 October 2018 and the Trespass Order dated 8 November 2018 from the First, Second and Third Defendants) shall all be void and have no effect;
- B) A **DECLARATION** that the Plaintiff is entitled to use and have possession of 51B Smith Road, Kumeu, for a period of 9 months from the date of judgment (or date of declaration) on the same terms as agreed between the parties and as summarised by the Plaintiff's email to the First and Second Defendants on 16 August 2018;
- C) An **ORDER** that the First and Second Defendants appoint a Professional Property Manager to manage the Plaintiff's lease at 51B Smith Road, Kumeu;
- D) **DAMAGES** from the First, Second and Fifth Defendants for lost opportunity to the Plaintiff through forced eviction in breach of the lease and the denial of critical services, at \$151.80 per day incl GST, from 10 October 2018 to 8 November 2018, totalling \$3,643.20;
- E) **DAMAGES** from the First, Second, Third and Fifth Defendants at the rate of \$151.80 per day incl GST for six days per week (excluding Wednesdays) from 8 November 2018 until the date of judgment; and
- F) **DAMAGES** from the Fourth Defendant at the rate of \$151.80

per day incl GST for six days per week (excluding Wednesdays)
from 30 November 2018 until the date of judgment;

G) **COSTS**;

SECOND CAUSE OF ACTION – Obligation of Quiet Enjoyment

19 **THAT** between the period from 10 October 2018 until 7 November 2018, the First and Second Defendant:

19.1 Conducted a concerted campaign of harrassment towards the Plaintiff both in a Public Place and on the Plaintiff's leased property at 51B Smith Rd, Kumeu including:

19.1.1 Physical assaults (shoulder charge, pushing, facial attack and manhandling) on 12 October 2018, two of them requiring later hospitalisation for suspected brain injury from whiplash and nose injury;

19.1.2 A second physical assault (shoulder charge) on 20 October 2018;

19.1.3 Verbal abuse on multiple occasions including:

19.1.3.1 "Stop wanking yourself, Smith!" on 12 October 2018;

19.1.3.2 "Get out here motherfucker!" on 12 October 2018;

19.1.3.3 "You're a pedophile [because you lived at Centrepont]!" on 12 October 2018;

19.1.3.4 "Everything you blogged about Samoa is total crap!"; on 12 October 2018;

19.1.3.5 "I'd like to kick your little balls right up and pull them out of your mouth" on 12 October 2018;

19.1.3.6 A range of insults and verbal aggression on 20 October 2018, during and after the First Defendant's

second assault (shoulder charge);

19.1.3.7 "Bye arsehole! Cops think you're a fucking nutter!"
on 21 October 2018; and

19.1.3.8 Multiple written threats;

19.2 Trespassed at will on 51B Smith Road;

19.3 Moved the Plaintiff's possessions to prevent his access to
his Housetruck and container multiple times;

19.4 Disconnected the Plaintiff's check meter twice; and

19.5 He and/or someone with his knowledge and/or approval
and/or under his instruction interfered with and vandalised the
Plaintiff's property on 51B Smith Road multiple times by:

19.5.1 Vandalising the Plaintiff's check meter;

19.5.2 Disconnecting the Plaintiff's power, water and access
to ablutions daily;

19.5.3 Moving the Plaintiff's possessions around roughly
causing excessive wear & tear and damage;

19.5.4 Removing the covers from the Plaintiff's possessions
permitting rain and dew damage;

19.5.5 Throwing the Plaintiff's possessions over a fence;

19.5.6 Burning the Plaintiff's possessions;

19.5.7 Vandalising the Plaintiff's possessions including
shelves, chairs, food, crockery, utensils and tables;

WHEREFORE the Plaintiff claims:

H) **EXEMPLARY DAMAGES** from the First and Second
Defendants of \$50,000.00; and

I) **COSTS**;

THIRD CAUSE OF ACTION - [Damaged, stolen and/or lost goods]

20 **THAT** the First, Second and Fifth Defendant and/or someone with their knowledge and/or approval and/or under their instruction interfered with, removed, withheld, destroyed, damaged and/or vandalised the Plaintiff's property on 51B Smith Road causing direct losses to the Plaintiff of:

20.1 1980 Hino Housetruck at cost, \$58,000.00, *"your . . . truck will not be returned to you till you have paid in case - Ian Plowman"*;

20.2 Machinery, electrics, tools & parts at Fair Market Value (FMV), \$11,536.50;

20.3 Personal property including frozen and chilled food etc, \$4,000.00 at estimated replacement cost;

20.4 All totalling \$73,536.50;

WHEREFORE the Plaintiff claims:

K) **DAMAGES** from the First, Second and Fifth Defendants of \$73,536.50; and

L) **COSTS**;

FOURTH CAUSE OF ACTION [Unauthorised Container removal]

21 **THAT** the First, Second and Fourth Defendants and/or someone with their knowledge and/or approval and/or under their instruction interfered with, removed, and/or destroyed the Plaintiff's property on 51B Smith Road causing direct losses to the Plaintiff of:

21.1 The Tiny House Workshop container, stock and machinery at replacement cost, \$61,345.40, *"your container ... will not be returned to you till you have paid in case - Ian Plowman" and "your property is now considered to be abandoned goods - Ian Plowman"*;

WHEREFORE the Plaintiff claims:

M) **DAMAGES** from the First, Second and Fourth Defendants of \$61,345.40; and

N) **COSTS**;

FIFTH CAUSE OF ACTION [Humiliation, reputational & trauma]

22 **THAT** the First, Second, Fourth and Fifth Defendants caused the Plaintiff humiliation, irreparable reputational damage and serious personal trauma as a result of their negative and false words and actions to neighbours, other business people and government officials from 9 October 2018 onwards;

WHEREFORE the Plaintiff claims:

O) **SPECIAL DAMAGES** of \$25,000.00 from the First, Second, Fourth and Fifth Defendants; and

P) **COSTS**;

25th day of March, 2020

A handwritten signature in cursive script, reading "Dennis Arthur Smith". The signature is written in black ink and is positioned above a dotted line.

.....
Signature of Dennis Arthur Smith

Plaintiff