

IN THE DISTRICT COURT
AT NORTH SHORE

CIV. 2018-044-1629

BETWEEN

DENNIS ARHUR SMITH

Plaintiff

AND

IAN JAMES PLOWMAN

First Defendant

NIKAU GROVE NURSERY LIMITED

Second defendant

HELEN IRENE MITCHELL

Third Defendant

SEA CONTAINERS NZ LIMITED

Fourth Defendant

**STATEMENT OF DEFENCE BY THE FIRST AND SECOND
DEFENDANTS TO FIRST AMENDED STATEMENT OF CLAIM
DATED 26 AUGUST 2020**

Counsel Acting:

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THE FIRST AND SECOND DEFENDANTS BY THEIR SOLICITOR SAY:

LEASE AGREEMENT

1. The first and second defendants deny the contents of paragraph 1 and say further:
 - a. there is no such address of 51B Smith Road; and
 - b. the first and second defendants are not the registered owners of 51 Smith Road, nor do they have authority to enter into a lease or sub-lease agreement with the plaintiff or any third party in respect of that property.
2. The first and second defendants deny the contents of paragraph 2 and say further:
 - a. there was no short-term lease, or agreed and essential terms comprising a short term lease;
 - b. On 16 August the first defendant allowed the plaintiff to park a truck and one container on 51 Smith Road for 3 weeks only at a cost of \$50.00 per week;
 - c. this was an informal and temporary arrangement between the first defendant and plaintiff only;
 - d. the plaintiff was not granted exclusive possession; and
 - e. the first defendant does not possess any authority or rights as a lessor to create a lease.
3. The first and second defendant deny the contents of paragraph 3 and say further the email is not evidence of the application or intention that the Property Law Act 2007 should apply.
4. The first and second defendants deny the contents of paragraph 4 and say further there was no lease over the land.
5. The contents of paragraph 5 are denied and the first defendant says further that the email from him, personally, was not an acknowledgement of agreed essential terms to lease or the application of the Property Law Act 2007.
6. The first and second defendants deny the contents of paragraph 6 and say

the second defendant has had no involvement with the alleged agreement to lease.

7. The first and second defendants have no knowledge and are not required to plead to paragraph 7.
8. The first defendant accepts the contents of paragraph 8.
9. The first and second defendants have no knowledge of and are not required to plead to the contents of paragraph 9.
10. The first and second defendants have no knowledge of and are not required to plead to the contents of paragraph 10.

CONTAINER REMOVAL

11. The first and second defendants have no knowledge of and are not required to plead to the contents of paragraph 11, but do say the alleged lease referred to is the lease between the plaintiff and Sea Containers and not a lease over land at 51 Smith Road.

FIRST CAUSE OF ACTION

12. The first and second defendant admits the plaintiff was served with an eviction notice but otherwise denies the allegations in paragraph 12 and says further:
 - a. There was no lease agreement;
 - b. The plaintiff had been requested to leave multiple times after the expiry of the three-week term detailed in paragraph 2(b) and (c) above.
13. The first and second defendants admit that an illegal and unauthorised meter attached by the plaintiff to the fuse box, which is the subject of an investigation by the Electrical Workers Review Board, was disconnected and otherwise deny the contents in paragraph 13.
14. The first defendant denies liability for the claimed loss and has no knowledge of the particulars in paragraph 14.
15. The first defendant on occasion moved the plaintiff's rubbish and tidied the site but otherwise deny the allegations in paragraph 15.

16. Paragraph 16 is denied and they say further that the plaintiff did not have permission to work or develop a business on site.
17. They accept that a trespass order was served on the plaintiff on 6 November 2018 by the first defendant and witnessed by the third defendant but otherwise denies the allegation in paragraph 17 and say further:
 - a. The third defendant is not a party to any alleged lease agreement between the first defendant and the plaintiff;
 - b. The third defendant has no obligation or duty of any kind whatsoever to the plaintiff; and
 - c. The only involvement of the third defendant is witnessing with her signature the document provided to the Police as evidence that the plaintiff was served with a trespass order.
18. Paragraph 18 is denied.
19. Paragraph 19 is denied.
20. Paragraph 20 is denied.
21. Paragraph 21 is denied.

THIS document is filed by Ivan Vodanovich, Solicitor for the First, Second and Third Applicant of the firm Vodanovich Law.

Documents for service on the First, Second and Third Defendant as follows:

- (1) Posted to the solicitor at PO Box 458, Kumeu, Auckland;
- (2) Emailed to Ivan@Vlaw.co.nz and wendy@wendyandrews.co.nz