

BETWEEN **LAND INFORMATION NEW
ZEALAND**

Plaintiff

AND **DENNIS SMITH**

Defendant

Hearing Commenced: 21 June 2023 held in Courtroom HC 03
Appearances: G Carter for the Plaintiff
 Defendant appears in Person (via AVL)

NOTES OF EVIDENCE TAKEN BEFORE ASSOCIATE JUDGE BRITTAIN

THE COURT:

So what I can indicate is that I've had a very careful read of the file. So I've read all the evidence, I've read the submissions, I'm familiar with the legal principles. What I'm going to suggest, and you've got the right to go first
5 obviously, is that we might consider letting Mr Smith speak first. I've got just one or two questions to clarify a couple of facts from you.

MR CARTER:

10 Yes.

THE COURT:

But let Mr Smith go first and give you a full right of reply to anything that he has to say.

15

MR CARTER:

I'm content with that Sir.

THE COURT TO MR SMITH:

- . So Mr Smith what I'm going to do is reverse the usual batting order so that you can go first. I've carefully read your written submissions so I can see that you have, like me, carefully read LINZ's written submissions, so we'll let you have first speaking rights subject to a couple of questions that I have for counsel for Linz and then counsel for LINZ will have a right of reply. Do you understand that?
- 5
- . Yes I do Sir.
- . Okay, thank you.

THE COURT:

- 10 . Now I was trying to get my head around the actual correct legal description of the property.
- . Sir.
- . And so just looking at the title, and I'm, I was just working from the affidavit so I'm not sure where that is in your bundle...
- 15 . The title is the first exhibits to the exhibit bundle, so page 1 of that.
- . Does Mr Smith have a copy of that bundle?
- . He was served electronically.
- . Is it paginated?
- . It is – you can't see it on the first page very well, it's bottom right, the red numbers.
- 20
- . All right thank you so Mr Smith we're referring to a bundle that was prepared on behalf of LINZ which I understand you have a copy of which has the relevant page numbers in red which are quite small in the bottom right-hand corner. Have you seen that bundle of documents?
- 25 . Yes Sir I've seen it, I don't have it with me, there is no dispute over the property.

THE COURT TO MR CARTER:

- . Okay thank you. So counsel, just looking at that title.
- 30 . Sir.
- . As I understand, the subject property is only part of lot 1?
- . Let me just review Ms McKinstry's affidavit.

. And what I was, where I was going is to try and reconcile the plans that
were attached to the lease to Mr Mills which are at pages 48 and 49 of
your bundle to try and reconcile those with the legal title and if the
answer's not immediately known to you this could be something you
5 have a look at during the break.

. It will have to be Sir, I'll have a look.

. So just so you understand where I'm trying to get to I want to be able to
properly describe the exact piece of land that would be subject to any
orders.

10 . Sir, thank you.

. And as I understand, the affidavit of Ms McKinstry it's only part of the
land that's in that title and it would be the land that was subject to the
original lease but appears to be about sort of 750 or 7,500 squares out
of a total of over two hectares and I'm just not sure how you delineate
15 that.

. And that's the – I see what you mean Sir. If you're looking at page 48
as you say there's...

. I couldn't reconcile that plan, Taranui Street with the plan attached to
the title which only shows Para Street.

20 . Yes.

. So –

. I'll have a look at it while you speak with Mr Smith.

. So that was one query. The other query was there was the email
exchange in May 2019 between Colliers and Mr Smith which was the
25 first occasion that Colliers sent an application for a lease to Mr Smith.

. Yes.

. Now I've seen a later application which Mr Smith actually completed
which is in evidence.

. Yes the –

30 . I wasn't sure whether that first application form that was sent is in the
evidence?

. It isn't Sir, it was for a different piece of land.

. Yes, nothing matters about that, I just wanted to clarify that.

. Yes, thank you.

. All right, well on that basis I didn't have any other questions about your submissions so I'll open it over to Mr Smith.

. Sir.

THE COURT TO MR SMITH:

5 . So Mr Smith, you're welcome to make your submissions. If you just give me one moment I'll just locate your written submissions.

. Would you like me to stand or is sitting okay Sir?

. I'm happy for you to sit, thank you. I've also got, so I've now got your submissions which are entitled "Defendant's reply to submissions re
10 summary judgment" and dated 14 June 2023 and I've also got a document which I understand that you filed today which is entitled summary of missing evidence and dated 21 June 2023, so I've got both of those is there anything else that you believe you may have filed which I should have in addition to that, other than your earlier affidavit?

15 . No Sir. There is an email notice of opposition. That email was sent when I was in hospital or after I got out of hospital. I could not format it I'm sorry. Has that been received by the Court?

. Yes I've seen that thank you and when this matter was called on a previous occasion it was by consent agreed that that would be treated
20 as your notice of opposition.

. Thank you Sir. So there are two issues prior to us starting the hearing proper, the first is the confidential aspect of Graham Mills and his agreement with the plaintiff. I have not ever received and I don't believe it will ever be granted permission for that agreement to be made public.
25 Is there a way please Sir that both Graham's cellphone and the original leave agreement remain confidential to the Court? This is both in writing and summaries.

. So when you say cellphone are you saying that the lease has his cellphone details in it at some point?

30 . No Sir, I have provided the cellphone and I do believe the plaintiff has also referred to the cellphone. The cellphone information was an error on my part because I have never thought about the significance of making that available. The cellphone should remain confidential please,

and the plaintiff is aware of that because they refused to give it to me in May 2019 as evidenced by DAS-111, my –

. What document contains Mr Mills' cellphone number?

. Definitely the email, 23rd of May 2019, contained within my own
5 evidence. I do believe that's been suppressed by the plaintiff and I seek my own evidence to be redacted and also the entire agreement. There is no problem referring to the agreement, but anything that mentions anything specific other than what I have specifically said in my reply must remain confidential because the other party has not yet given us
10 his approval to make it public, and I don't believe he ever would. He's aging and his health is in (inaudible 14:25:15) and he would be saying: "I don't want anything to do with it, please I've never given anyone authority to speak to me or let anyone know except Colliers and Dennis Smith."

15 . All right well I'll consider your applications regarding confidentiality when this matter is concluded and I'll deal with it later so you can progress on with your substantive submissions.

. Sure and the other one is the description of me, my occupation, the plaintiff continues to call me a blogger. While I do blog I am actually a
20 beneficiary. That is how I (inaudible 14:26:01) and described myself. I've also asked for this previously from the Court and the plaintiff. So my request please –

. I'm happy to, I'll make a direction that your occupation is to be stated as beneficiary.

25 . Thank you Sir.

. My application summarised is – may I proceed?

. Yes, please do.

30 **MR SMITH BEGINS SUBMISSIONS**

My application is based on a strike out of both the application of a summary judgment and the statement of claim. The strike out is clearly not safe to order with a disputed and missing evidence. The plaintiff has only produced part of the evidence and the conclusion, all the facts are actually correct

however the conclusion that I am an illegal occupant or tenant or occupier, whatever he's called it is actually wrong.

The reason it is wrong is because there was an agreement and this can be best seen in my affidavit, and I'll just find you the date of my affidavit where it is clearly written down that there was an agreement between the two parties. I believe that the issue turns Sir on the existence and the nature of that agreement, I've said that many times in my presentation to the Court. If there was an agreement, which the plaintiff does not mention at all, if there was an agreement then of course the summary judgment has not legs. It cannot stand. It must be rejected and that is my position and Sir my evidence DAS-111 shows quite clearly that there was an agreement.

When Megan McKinstry – when Megan from LINZ appears on the stand I will be asking her when she first knew about my presence on the property in 2019. She admits quite freely that she knew from September 2019 but in actual fact Colliers knew from the 23rd of September 2019 and this is information that she and the plaintiff does not want the Court to take into consideration. It's mentioned.

This morning I spent time and I went through and I identified, I'm now referring to the document called "Summary of missing evidence" dated today and there are 20 points there that are not mentioned by the plaintiff. There is no mention of any dispute, there is no mention nor acknowledgement of my defence ever. She has never done this. She has never shown the Court Lara's email. That's point 3. Point 4 the police refusal to assist in trespassing me, the question the Court should be asking is why? Why not? And it's obvious, I can tell you why because police told me that it was a civil dispute and so therefore as a dispute she is claiming there is no dispute. I say there is a dispute, therefore the summary judgment should be struck out because it's not safe to confirm or accept a summary judgment. Section 13 of the High Court Rules Act is quite clear about that, it makes it very clear that if there is a dispute of evidence that a summary judgment cannot and should

not be issued. Point 5, police and LINZ written discussion of theft by me written long after the section 147 dismissal.

At this stage we have varying claims from the plaintiff in regards to why I have
5 been asked to leave the property and, secondly, why it has not been renewed
or they say a new lease, that doesn't matter either way.

So, what is the real story? And I've given multiple reasons in 1.8 of this
document; gossip, intimidation, harassment, fencing disputes, personal
10 religious reasons or attempted eviction or refusal to renew. The plaintiff has
not even done that. They've provided no evidence and yet this conversation
occurred. They've claimed this in some letters and then they've said: "Oh
yeah but it's because of this and then when they're proven wrong or their
evidence is non-existent," they say: "Oh it's because of this." The bottom line
15 Sir is that there is a dispute over the grounds for eviction.

So, there's a list of 20 points. There's actually 21. Graham refused to release
his phone number of agreement and the plaintiff has not produced anything
that says that this agreement can or should be released. The plaintiff is using
20 material that has been provided between – sorry, that has been generated
Graham Mills who's a third party and LINZ who is the plaintiff. What gives that
plaintiff the right to breach commercial sensitivity? There is none. I would've
expected them to have gone to Graham Mills and said: "Graham, we seek to
use your agreement in a court case, can we do this?" They have not done
25 that as far as I know. And certainly they haven't produced it for the Court, so
that's 21. There's another 20, I'm very happy to go through them.

At this point though your Honour all I'm saying is that there has been limited
disclosure by the plaintiff in regards to the summary judgment and the
30 section 13 action.

Now, when Megan, I'm presuming I will call her Megan, forgive me if I get it
wrong, but when Megan stands I will go through nine points of her affidavit
referring back to evidence 7, 8, 9, 10, 10, 11, et cetera, et cetera but there is

no summary of defence, so she says quite clearly: "I have no defence," but that is her opinion based on her discussion with her lawyer. The reality your Honour is that if there was an agreement and if the agreement was exactly what I said it was, which it was, then of course I have a defence. Of course I am sitting there on property that I rightfully believe that I have a bare lease land to and I summarise very briefly for the Court because I understand that you've read the documents clearly.

The situation is that we took on the lease of the land. I did it personally based on the recommendation of Lara Meade who was a legitimate representative of the plaintiff. It's all very well for the plaintiff to refer to third party documents which is an agreement and other documents which she has quite rightly pointed out say that no agreement is binding or legally binding unless it is signed and agreed to by LINZ. I accept and I understand that except for one thing your Honour which is the agreement that was reached between Lara Meade and myself on the 23rd of May. This can be established from DAS-111 very clearly because, I'll just draw your attention to that...

THE COURT TO MR SMITH:

- . Yes, I have that in front of me.
- 20 . Okay so you will see that she has confirmed that she has Graham Mills' approval. The only reason that she saw, she went to Graham Mills' approval was because as I said in my response to and reply to the submissions regarding the summary judgment of the 14th of June, the only reason she said that was because we'd agreed it. The only reason she went out to Graham and sought his approval was because we had agreed and in the –
- 25 . Sorry Mr Smith, which particular passage of an email are you referring to?
- . It's the last, and because it's printed in reverse order it's the first of – it's on DAS-111.
- 30 . Yes what's the – if you give me the date and the time of the email I'll find it.

2 o'clock on – I don't know the day but the date was the 23rd of May 2019.

MR SMITH CONTINUES SUBMISSIONS

5 It was just after 2 o'clock when she replied and she said I'd spoken to Graham Mills and he's given approval, his name and number. Up until that time I did not know who the lessee was. So the conversation getting, and this is to the hub of the real issue, the conversation occurred on the morning of the 23rd of May and it was between me and Lara Meade from Colliers and the
10 conversation agreed that I would take the (inaudible 14:37:00) which is 2A Para Street which is what you're going to identify the legal – there's no dispute over that. It's approximately on hectare of land. It's one third of the DPS number that's on file and this agreement was – it was multi-faceted, it went along – it covered many subjects but the essence of it was that Lara
15 recommended that I take the tannery, not the mining property which is what the previous documents were that you look at and it confused you.

Sir, the agreement was very clear, there was no reason to doubt any aspect of that agreement and I put it in my documents and explain that there was no
20 disagreement, there was a meeting of the minds, there was an agreement, as the plaintiff has explained the meeting of the minds. And this recommendation came from Lara on the morning which then flowed through to her seeking Graham's approval. Graham gave his approval and we conducted business. We did it ourselves and the essence of it I have
25 summarised it is this, the details are confidential and they don't really matter but basically I bought the buildings off him and I paid him what he was paying LINZ so he escaped. He traded the value of the property, which is technically improvements, he traded that for my right to renew the property at the end of the lease and carry on.

30

Now, the plaintiff has said more than once that "the agreement this and the agreement that". If that was important then I would've received a copy of the agreement but I never received a copy or the agreement until two years later, more than two years after the event.

So the timeline goes like this. 2018 I applied for seven properties in Ōhura. In June the 12th LINZ wrote me, this is 2018, and said: "Sorry, you cannot have the property." They did that after I had advised them that their terms were unacceptable, I could not get investors who would invest, we're talking substantial money up to a million dollars, I could not get investors with a 12 month clause, escape clause. I understood their need for, you know, an escape clause. I attempted to negotiate it with Colliers, Colliers said they won't but I said: "That's fine and I walked away." In 30th of March 2019 I reapproached them because I had another need for land and that's when I commenced the investigations with Lara.

So, there is multiple conversations with Lara. The proof of the agreement exists both in logic, so that we have a man who is an intelligent businessman who is investing in property, buying buildings, on the recommendation of LINZ's agent who presented herself as if she was LINZ's genuine agent which I believed and still believe that she was and that occurred on the 23rd of May, that agreement, after multiple discussions. Probably two emails and three or four phone calls, I don't know exactly what without going into the records and because I don't have any phone calls it was only later in 2019 that I established automatic phone call recording.

Then on the 5th of September 2019 the plaintiff admits that she received, and this is the first acknowledgement that she knew that I was present, and that was on, occurred on the 5th of September 2019. So all that time from the 23rd of May until the 5th of September 2019 I was present on the land, I was doing business with Graham Mills on the understanding, on the express understanding that I had LINZ's approval via their agent Colliers. Now, nobody, either I or the plaintiff have produced anything to the Court relating to whether or not LINZ's agent Lara had the right to do what she did and agree what she did, that's for the Court to decide whether or not and it's for LINZ to decide whether or not they wish to proceed with that. As far as I was concerned there was no reason given, either to me then or now, why she was not their agent.

THE COURT TO MR SMITH:

. As I understand it Mr Smith, LINZ is not arguing agency, they are simply arguing that there was no agreement, so I don't think you need to be too concerned about the agency point.

5 . Fine.

MR SMITH CONTINUES SUBMISSIONS:

The agreement was between agency and myself. If they are happy with Colliers' work then they must accept that this agreement occurred if logically it
10 did occur.

So in order, let's just momentarily twist the whole thing around if you don't mind please Sir just so look at it negatively, in order to take their story which is, it is a story, it's an invention that only – it's deceiving the Court basically,
15 it's saying there was no agreement. I'm saying yes but there was an agreement and the reason that there was agreement is multifaceted. It's logic, it's implicit and it's also explicit.

So when Lara reached the agreement with me, the only reason that she
20 would have given me Graham Mills' phone number and contact details, email and phone, was because she sought his approval. Why did she seek his approval? Obviously there was an agreement. The details of that agreement, yeah sure there is no written agreement so it's difficult for us to look back but it's obvious if I'm spending money buying two years' investment it's obvious
25 there is no evidence for the Court right through to 2021, this is more than two years after that agreement occurred, there's no contacting me, I didn't know.

The only reason I knew was because I did an Official Information Act and I found out information that more than two years previously these guys had
30 said: "Hmm, not good," why did she say: "Not good?" I'll tell you why Sir, because she wanted me gone and she wanted me gone for a whole bunch of reasons. Bullshit reasons like I put on this document here which talks about gossip, intimidation, harassment, fencing issues, personal, religious, it doesn't matter what the reason was, the point is there was already an agreement in

place. She can invest whatever reasons she wants, she presents that to the Court, there is no evidence. There's none because none of these things –

THE COURT TO MR SMITH:

. Mr Smith, I can help you here. I'm not at all interested in what the police
5 may or may not have done or rumours or innuendo or people's
subjective motivations. I'm just interested in whether it's reasonably
arguable that there was an agreement to leave, which you've already
dealt with quite well, so you don't need to worry about those red
herrings.
10 . Fine, okay. So if we agree there was an agreement, the details of that
agreement, what that agreement was, that becomes very important
because if there was an agreement obviously there was some
agreement and my understanding is exactly what I've put in my
documents, that there was an agreement that at the end of this term of
15 this lease, according to her words, honky dory. If everything was honky
dory it would be rolled over. I would – trying to invert it the other way is
by saying – my sound has gone I'm sorry.

MR SMITH ADDRESSES THE COURT – SOUND ISSUE (14:46:41)

20 **MR SMITH:**
So if we invert the whole issue to what happened therefore likely what the
agreement was, what happened was that she knew on the 5th of September –
sorry, the plaintiff knew on the 5th of September that I was present but did
nothing which is a full two years and she admits that she even puts it in her
25 document here: "We did nothing," in her affidavit, we did nothing for this
two years, so in other words she knew that I was present and so therefore
there must've been an agreement of some sort. Forget the police, forget
anything else, just between me and Lara there was an agreement that at the
end of this term the lease would be rolled over as long, and this is the
30 condition, I accept this condition as long as everything is honky dory.

Now she says that things were not honky dory, I say they were and there is no evidence that she has ever provided to the Court that things weren't honky dory, so there was an agreement, there was an agreement of something, nobody knows. I was there, I know what it was, this guy wasn't, neither was
 5 Megan or anyone else and I can tell you that this deception that occurred where Lara said something like: "Oh, it appears that Mr Smith is located at 2A." I'm looking at this and saying: "Hang on a minute, but you're the one who arranged it three or four months prior," so we have Lara who clearly has not told her boss LINZ that I was going on there and LINZ has obviously failed
 10 to inform them that I was not to be there for whatever reason, it doesn't matter, religious or personal or intimidation or whatever, it doesn't matter.

The point is that I was there and the agreement – the only way I would vest substantial monies and efforts over multiple years into a place is because
 15 there was an agreement which is a normal agreement I believe that when a person or a company owns property that the lease, sure it's a limited term, it could be a five plus five, in this case it was a 10, a 10 year lease fixed but it would normally have a right of renewal for another 10 years subject to everything being honky dory. My claim is that things were honky dory, there
 20 was no genuine evidence provided despite me asking multiple times and therefore the agreement logically must have been something that it's exactly what I said it was.

So, I'm not sure where you want me to go now Sir. I'm happy to dive into any
 25 of those subject in more detail or clarify or answer any questions.

THE COURT TO MR SMITH:

- . Well me just see if I understand the nub of your argument, which I think I do.
- . Yes please.
- 30 . You're arguing that you had an oral agreement with Colliers.
- . Yes, yes.
- . And that that agreement was made on the 23rd of May?
- . That is correct, in the morning.

. And that the email exchange that you had with Lara Meade from Colliers on 23 May 2019 is consistent and supports your argument that there was an oral agreement and on the basis –

. Yes, as well, as well as multiple other subjects, yes.

5 . Yes and then on the basis of that oral agreement you say you relied on that and then went into possession and then did a deal with the existing lessee regarding the improvements that were in place on the land?

. Yes Sir.

. Is that the thrust of it?

10 . That is the thrust of it, that is the essence of my issue. If there was an agreement, which obviously there was, what was the contents of that agreement and the contents of that agreement I state to the Court, and I'm very happy to validate it if required, the contents of those that agreement was that at the end of the lease it would be rolled over if
15 everything was "honky dory". These were her words, no mine. So we have this situation, if we invert it and say but why would I suddenly want to spend substantial money buying a building – by the way the lease says improvements but she used the terms "building" so for the first two years I continued to discuss buildings, plural, because there were three
20 building and that discussion for the first two or three years until I actually got the actual agreement after I think it was two and a half years I finally got the agreement and it said improvement, so that's a clarification if that confuses you. So why would someone invest so much in time and energy developing websites, ideas, concepts, putting together plans, spending money, buying buildings, investing substantial efforts into the
25 land. Why would someone do that if there wasn't some form of security. The other things too Sir which I guess it's more along the same, it's more validation but I was seeking funding from third party sources so I had investors that were coming into the business and the property and they would invest anything from \$1 through to \$1 million, it didn't matter
30 how much but how could I go out there to secure investments when I never had a proper lease? So it was the – it was – I've lost myself – there, so it was the exitance of that agreement that caused me to go out

there to seek to develop the property in the way that I have developed it.

There's a lot more –

. I understand your arguments Mr Smith.

. Thank you Sir.

5 . So, unless there's anything you want to add in an elaboration on that argument I understand the submissions that you've made.

. Thank you.

THE COURT TO MR CARTER:

. All right well counsel are there any specific points you wish to reply to in
10 relation to that? You can bear in mind I have carefully read all of your submissions.

. Understood Sir, what I'll do first is talk about that title issue that you raised.

. Yes.

15 . Sort of the best I can do is this Sir, and we'll start perhaps with Megan McKinstry's affidavit at paragraph 7 of that which is page 14 of the pleadings bundle. So she describes the land as essentially there are two unsurveyed parcels of land within this same title.

. So what I take you to mean by that is lot 1 DPS 62706 will be a
20 surveyed parcel of land under the Land Transfer Act but within it it's been severed into two tenancies.

. Yes, two, that's right.

. How do we define those?

. So Sir what I suggest we do is the first – if you turn to page 44 of the
25 exhibit bundle, that's the last page of the lease agreement.

. Oh yes, I didn't see that one, that's the plan red –

. Yes, so that's, that is to a Para Street and perhaps the other way –

. So can I, I'll just pause you there.

THE COURT TO MR SMITH:

30 . Mr Smith, I'm going to hold up a plan for you to have a look at. It's the plan taken out of the original lease between LINZ and Graham Mills. I

just want to have you confirm that the area delineated in red is actually the property that we're talking about.

. Is this the page after 13.1.10?

5 **MR CARTER:**

Yes.

THE COURT TO MR SMITH:

. Well they should be held up, can you see that on screen now?

. No, closer please. Yes, that document there, except for the top-right
10 corner which is, it's got a little tangent. That little tangent is not accurate but in essence there is no dispute over the land.

. Right, it's the area in red on that plan?

. Yes I do.

. Yes, thank you.

15 . Except – that is accepted except for a minor modification up the top-right.

. Thank you.

. Where it comes down and the angle of that right-hand land, that's very slightly different. It also differs from the other plans but may I suggest
20 Sir that the prescription that LINZ has provided in their documentation is sufficient that there is no doubt.

MR CARTER:

And also just to correct earlier Sir, I referred to page 48, that's a completely
25 different parcel of land.

THE COURT TO MR CARTER:

. Oh okay, that's why I was confused.

. Yes, sorry.

. Thank you. No that was me, I started there.

30 . Yes that's at the Ōhura property from the 2018 application.

. Right, yes.

. So Sir in terms of reply I –

. Was – sorry, just a question, is there any other affidavit in support of the application other than the one from Megan McKinstry?

. No.

. Right, sorry, carry on.

5 . Thank you Sir. In terms of oral submissions Sir I have them prepared but I am content to perhaps limit those as much as necessary. Perhaps in terms of the highlights I do, because we've spent a bit of time with that May 29 email perhaps if I can summarise our view on that.

. Yes.

10

MR SMITH:

I did not catch that I'm sorry, is that important?

MR CARTER:

15 So –

THE COURT:

You can be seated counsel if that makes it easier to speak into the mic.

MR CARTER:

20 Yes.

THE COURT:

Because that's so we can make sure Mr Smith – so Mr Smith counsel for LINZ is now going to just make some submissions to me about what LINZ makes of the email exchange on 23 May.

25

MR SMITH:

Yes, thank you.

THE COURT ADDRESSES MR CARTER – TEST AUDIO (14:57:28)

30 **MR CARTER:**

Sir perhaps if we start at the back on page 142.

THE COURT:

142 of?

MR CARTER:

5 The exhibit bundle, so that's the, nearly the back of the email chain. So this is the email 9 May to Matt Priest. This is –

MR SMITH:

Which year?

10

MR CARTER:

This is the enquiry where he's talking about an Ōhura property and then says: "I understand the soil's contaminated, that may not bother us." I just want to keep that in mind because what LINZ says is that there's no clarity about any
15 of the important aspects of what is required to lease land. You'll then see Sir that there is an application made, so that's 17 May 2019 2.19 pm Mr Smith makes an application for Ōhura, so a different property.

THE COURT:

Is that O-H-U-R-A?

20

MR CARTER MAKES SUBMISSIONS

Yes. Ms Meade then responds at 140: "I'll be in touch next week with an update," and then this – and I think this is quite important Sir, at 11 am, so Mr Smith's submissions, not his evidence but his submissions indicate the
25 conversation with Ms Meade was mid-morning 23 May. She says first of all: "Thank you for submitting your application," obviously referring to what was sent in terms of Ōhura the week prior, "Your time to discuss your plans over the phone the other day."

30 Then obviously Sir you will have seen that the application is essentially, Mr Smith is told the application isn't sufficient. He's told, quite importantly in my view Sir, that Colliers, their role in this is to present a proposal to LINZ and to give effectively LINZ some assurances particularly around funding. So he's

told that you'll need to provide a business case or a feasibility study outlining sourcing of funding and capital, ways of generating income and other examples, business operations carried out by Abundant Pass Limited, and the reason why that company is mentioned Sir is because that was the company
5 that made the application in respect of Ōhura.

So it's certainly my submission Sir that as of 11 am on the 23rd of May 2019 there's no indication that there had been a call that day, and more to the point –

10 **MR SMITH:**

There had been a what?

MR CARTER:

There had been a telephone call at that point that day.

15

MR SMITH:

Oh yes.

MR CARTER:

20 But more to the point, it's been made very clear to Mr Smith what's going to be required and who ultimately has a say over what's going on.

MR SMITH:

May I reply to that Sir?

25 **THE COURT:**

You can have a reply when counsel for LINZ has finished.

MR SMITH:

Sure, sure.

30

MR CARTER CONTINUES SUBMISSIONS:

then Mr Smith responds at 11.38 am Sir, so the morning's nearly done and he says: "Email me when you can talk about this, you're asking too much of us at this stage," and simply says: "I wish to speak to the current buyer, I wish to speak to the current lease holder of the old tannery and to share this information with me you asked me for an application to be filled out." And critically once I had spoken to that person I would then move into the next phase which would be to establish what LINZ was asking for the two or three sections.

10 So Sir, well past mid-morning on the 23rd of May we're in a situation where Mr Smith is making it very clear that he hasn't even talked to the person who currently leases the land, and he's said that in his submissions today, it's not clear which party would be leasing the land on behalf of Mr Smith, whether it was him or another entity associated with him. It's not even clear Sir which property we're necessarily talking about, whether we're talking about two or 15 three properties.

THE COURT TO MR CARTER:

. Which is the old tannery?

. That is 2A Para Street, as I understand it Sir, as that's what, and 20 certainly that's what Mr Smith has said today.

. So at sometime between 11 o'clock when the email was sent to page 139 and 1138 when the email was sent at 11 – from Mr Smith at some time between those two points in time there must've been the issue of renting or leasing the tannery raised for the first time.

25 . I assume that must be the case Sir and that's the only way you can logically read those emails is that a phone call must've – if Mr Smith is correct – a phone call must've taken place between –

1503

. Well there's no email in which anyone, either party raises a possibility of 30 a lease of the old tannery.

. Yes.

. So inference can be drawn there's likely to have been a conversation between 11 and 11.38.

. That's right.

. It doesn't detract from the submission you're making but that appears to be what happened.

. And certainly it's not – we're not arguing Sir, I mean there is – there may
5 well have been a conversation it's – logically there would've been a phone conversation for these emails to have taken place.

. Yes.

MR CARTER CONTINUES SUBMISSIONS

10 But what you can deduce from it and 11.38 Mr Smith's email was very, very clear that there's no agreement on any of the key issues that one would require to establish that there was actually a lease agreement or an agreement sufficient to establish an interest in land. There's – again and just repeat, we're not sure which section we're talking about, we're not sure which
15 entity is renting, we're not even sure what the price would be. He doesn't even – he hasn't even talked to the current lessee to obtain his consent to be in a position where it could just roll over and if it was honky dory Sir there's simply no way in which one could reasonably take an agreement sufficient to establish an interest in land from that.

20

Sir, there's a number of documents, we've referred them to you, them in our written submissions and so of I guess –

THE COURT:

I've looked at all of those.

25

MR CARTER CONTINUES SUBMISSIONS:

To summarise effectively Sir, what we're saying is is that if there was in fact this agreement then Mr Smith would've been saying quite different things and presenting quite differently across the next three years. There's simply no
30 way he would've for example made a fresh application for this land or made an application for this land if he thought he already had a legal agreement in respect of it for example.

Given you've read those things Sir I'll just to the final point which is to some extent, Sir, it doesn't even matter if there was a May 2019 agreement because even if Mr Smith is correct, he accepts that the agreement was conditional. He accepts that the agreement or the rolling over of this agreement was conditional on things being "honky dory". Now, whatever that may mean, fundamentally it's a matter for LINZ. They get to say whether things are honky dory or not, it's their land.

THE COURT TO MR CARTER:

. But if there was a binding agreement entered into in May which was
10 conditional on effectively an exercise of the right of renewal or LINZ
agreeing to roll over the existing lease, that wouldn't be a matter you
could determine at summary judgment.
. In my submission it could be Sir.

15 **MR SMITH:**

Sorry, I didn't catch that Sir, that last sentence that you said I didn't hear and couldn't differentiate the words I'm sorry.

THE COURT TO MR SMITH:

. I was putting a proposition to counsel Mr Smith –
20 . Yes.
. – that if an agreement was reached on the 23rd of May 2019 –
. Yes.
. – that included a condition that LINZ later had to be satisfied with
everything that was happening on the ground before the existing lease
25 was rolled over to you –
. Yes.
. – if that condition had been agreement I was putting the proposition for
comment that that would be a matter that I would be able to
determination at summary judgment stage.
30 . Yes.
. And the counsel was about to respond disagreeing with my proposition.
. Thank you, I now understand what you said Sir, thank you.

MR CARTER:

5 Thank you Sir. Obviously it's important to say on the best view of Mr Smith's position what that agreement is and what the best view of this agreement, if it exists is an implied agreement, unwritten, to roll over – which he accepts Sir there is a conditionality to this rollover and Sir I can take you to documents where that's made clear by him where he accepts – and this exists throughout
10 the documentation where he –

THE COURT TO MR CARTER:

. Because there are some references to clause 8 or something isn't there at some point in the lease?
 . That's right Sir which is the renewal clause, but more than that Sir he
15 also says that it's fundamentally conditional on what happens at the end of the lease.
 . Honky dory.
 . Well it's more than that Sir because he for example – so there's some emails for example at page 62. Page 62, 22 March 2021 and so for
20 starters he says: "I seek a continuation of the existing lease terms," so this is the third paragraph of that email Sir, asking for five plus five or whatever is normal, so we're in a position Sir where we're still negotiating what this next lease would even look like.
 . What did the right of renewal say in the lease?
25 . There is no right of renewal Sir.
 . So, what, isn't there a reference to clause 8? What does that say?
 . Turn to it Sir.
 . Was it clause 8?
 . There's no specific right, and this was – it's an option and it's entirely
30 conditional Sir so 8.1 is really the key: "If the lessee shall perform and punctually pay the rent and keep all the covenants and conditions then and give notice in writing six months prior to take a new lease the lessor at the cost and expense of the lessee may grant to the lessee a new

lease of the land.” So obviously there’s a whole heap of conditions first of all that the lessee would have to meet, but even once they reach that point Sir it still may grant, there’s no requirement on LINZ to continue the lease. But going back to that page 62 Sir is –

5 . So you’re arguing if there was an oral agreement on 23 May it was conditional and the condition was not fulfilled?

. Well that’s right Sir but in any event it’s entirely condition on there even being – essentially it was entirely at LINZ’s discretion whether they chose to lease or not, enter into a new lease with Mr Smith or not, if indeed he had been in a position where he was effectively somehow had an interest in land up until that point and what that interest would be is obviously unclear, he describes himself variously as a subtenant or having been assigned that lease.

. Isn’t your argument, this alternative argument essentially that if there was an oral agreement on 23 May 2019 it was an agreement that Mr Smith could take an information assignment of the existing lease subject to its terms including clause 8 and therefore it only got rolled over if LINZ exercised its discretion under clause and extended the lease term which didn’t happen?

20 . That’s right, that’s exactly right Sir.

. So that’s your backup argument. Your primary argument is well there simply was no agreement at all?

. That’s right Sir but as I say, I still think that summary judgment can be reached on the basis that there was simply no legal obligation, reasonably arguable legal obligation on LINZ to have leased the land even if there was an agreement in May 2019. Because perhaps again, and flipping this around, if this did exist Sir then where we are is in a position where effectively LINZ has an implied unwritten lease agreement with a party it doesn’t want to have a least agreement with and that lease agreement by definition under the Property Law Act would be unenforceable because it’s not written so they’re essentially being left – and this is why Sir, if Mr Smith is correct we’re in a position where LINZ has leased land for an indefinite period of time on terms that are unclear in a matter that is completely unenforceable and that just

cannot be the case and that just cannot be the case and so that's section 24 of the Property Law Act. Sir I'm happy to go deeper into any of these particular points but otherwise...

. No, I understand the arguments.

5 . That's really all I need to say then thank you Sir.

. All right thank you.

THE COURT TO MR SMITH:

. Mr Smith, did you want to reply to the specific submissions that counsel has just made?

10 . Yes Sir, please. It's just a total bunch of bollocks quite honestly, it's a waste of time. What we're talking about here is a situation, yeah sure mid – I've said mid-morning, it could've been 11 to 11.38, let's assume that –

. I think Mr Smith we've agreed that it does appear there was a
15 conversation between 11 and 11.38 so...

. Thank you and –

. It's about what was said in that conversation and you don't need to make submissions on that point again because you've already made those in your opening.

20 . Let's take apart what the plaintiff is meant to have said then.

. Yes.

MR SMITH BEGINS REPLY SUBMISSIONS

He said that all LINZ was asking – all I did was exactly what LINZ told me to
25 do. LINZ told me that they would not look at the matter until six months prior to the lease, that's fine so I – that's exactly what I did, they sent me a form to fill out so I filled the form out. That denies the agreement that was entered into between 11 and 11.38 on the 23rd of May, that was very clear and you've summarised it very clearly and counsel there just doesn't seem to understand
30 that an agreement was entered into between him, whether he likes it or not, and myself, that should everything be honky dory, yet to be defined and yes that's a condition and I'm the one who's keep on calling it a condition, and if that condition was met then the lease would be renewed. A man does not

invest substantial sums of money, especially other people's money without some form of agreement.

Now what I assume, and this is something that's come in further down the track, is that I had LINZ's approval because I was dealing with Lara. Lara specifically, between 11 and 11.38 she specifically said the lease would be renewed if things were honky dory, those were her words. So all this stuff about that the counsellor's there is there is trying to go into detail on the words, let me just address what he said. No email, that would've been a conversation not sufficient to establish, not – excuse me, it's not my business to know what he or his client wants from me. All I did was I responded to what was in front of me and I had a sales rep and her name was Lara Meade and I believed and I still believe that she was speaking on behalf of a legitimate landowner. This can be proven from the course of events that occurred thereafter. If there was an agreement. Of course there was an agreement. There was no way that he would've – excuse me, I filled out a form and they're twisting the words around by saying that because I filled out a form or an application I wouldn't have applied for something that I already had. Excuse me, you were the ones who told me – or sorry, depersonalising slightly – Sir, the plaintiff was the one who told me to fill out the form and make the application, so I filled out the form and made the application. That was their advice, that's what they instructed me to do. I did not know that they had a personal vendetta. Now they're talking about if the 2000 and agreement was conditional, that it was honky dory, it was, that was that whole point of the conversation. Why would a man invest time and money, which is what I've already said, unless there was an agreement for a renewal?

So this idea that the plaintiff is there sharing and saying but if there wasn't agreement and we didn't have the details sufficient to be able to do an agreement, we didn't know who we were dealing with – who gives a hu – who gives two Charlies about anything to do with that because Lara did not bother? Personally I think what Lara did was she did not, she was not informed by the plaintiff that I was a persona non grata. There is no evidence provided, in fact the actual opposite. If you go through all of Megan's affidavit

you will find the actual opposite that there was an engagement including something that was not mentioned which is an hour and a half where I went to Wellington and I met with these people for an hour and a half and they were all smiling and sweet and happy and there was no problem in the slightest.

5 None of that would ever have, if there was ever any negativity immediately I would've stopped and said to my investors: "I'm sorry, we're out," so whether it's "we" or "us" or which company it was the (inaudible 15:17:14) it doesn't matter, it does not matter which company it was, it was me dealing with Lara.

10 Now the agreement was very clear. It was a conditional agreement and that's fine, where – at a later stage when we get into the agreements proper and it's not just about a summary judgment I'm very happy to go through and explain why in the details but at this stage there is sufficient on the table I believe to stop this nonsense, to strike out the summary judgment. You cannot issue
15 with safety a summary judgment against Dennis Arthur Smith from LINZ for any reason at all. Everything is twisted and disputed and it requires a full hearing or if you've heard enough, for the whole thing to be booted to touch. Personally I think it should be booted to touch.

20 There is a lot more in there Sir when it comes to the actual details about the agreement. I think there is sufficient that there was an agreement, the details of that agreement is obvious that from my position that the agreement had no doubt and that's what I've put in my response to their submissions, that there was no dispute. We all knew what the agreement was, that's why we all did
25 what we did and the critical thing, if you go to Megan's affidavit and – or I'm sorry, I'd have to rely on the plaintiff to point it out because my copy is not numbered, but I don't know what page number it is but it's Megan's communication on the 5th of September 2019 in which she says something alone the lines: "Mmm, not good eh." So she's admitting that number (1) she
30 knew about it, number (2) she didn't want me in and that's also where the proof of the pudding comes from Lara that she –

THE COURT TO MR SMITH:

. Sorry Mr Smith, what was the date of that communication?

. It was the 5th of September 2019, it was the first communication that Megan admitted that she knew that I was present.

. Yes, I recall seeing it, I just can't locate it at the moment. Let's just find that.

5

MR CARTER:

MM10, page 58.

MR SMITH:

10 Sorry Sir mine is not numbered, I can't go directly to the page but there is a comment there where she has made very, very clear, she says: "Hmm," HMM, "not good eh," or not good or something and this is where Lara says: "It seems that Mr Smith is living at 2A Para. Yes it does seem that Lara, but you knew way back three, four months before back in May.

15 **THE COURT:**

Yes, I've got that, thank you.

MR SMITH:

And so that admission that she knew then also is an admission of deceit or
20 probably deceit from Lara towards LINZ along the lines of: "Hmm," but she knew and this is also one of the – a part of the missing evidence that I've mentioned here that LINZ has not made that communication from Lara to Dennis visible. Why not? I can tell you why, because it shows that she knew long before or certainly the Colliers knew long before.

25

So from this there are only two possibilities I can see, either Lara misrepresented that she had just learned about it by saying "it seems that Mr Smith has 2A," or Colliers and Lara and LINZ did discuss it back in May and it had gone too far before they responded.

30

You'll also note in Megan's response there that she says: "We did nothing for two years." Well excuse me when it comes to looking at the substantial matter then if you do nothing for two years then you've contributed there is a

principle called estoppel which you guys will know better than me but basically if you participate in a crime or in something and you facilitate something and let someone else do something then you become liable, so she was the one who agreed to it Sir. She was the one who said: "Yes Mr Smith, I recommend
 5 that you go out," and I put it in this document it does not matter who the entity is, which is what the plaintiff has just tried to explain, the point is that an agreement was entered in with me personally, Dennis Smith, and whoever else it was and it's just nuts, I, I don't know if you've got enough from me, you probably have.

10 **THE COURT:**

You don't need to concern yourself about the "we" point. If you have entered into an oral agreement for an undisclosed principle, so your undisclosed principle, it would still carry the same effect in law, so that's not what you need to concern yourself with.

15

MR SMITH CONTINUES REPLY SUBMISSIONS

Thank you. Okay so that's my response to what LINZ has just said. They have claimed that, in this last segment they have claimed that there has been confusion over the entity they're dealing with, there's insufficient information
 20 for them to work out what the hell the deal was, but between Lara and me it was – there was no dispute, no confusion, it was just a case of Dennis if you take over the property of the tannery you will own the land and because, as I say in my documents, because security was very important to me, I was dealing with other people's money and substantial amounts of money, that
 25 because you would then own those buildings, then you are better off going away from and then all this stuff previously that may I suggest has confused the plaintiff.

THE COURT TO MR SMITH:

- . All right well I understand your submissions Mr Smith.
- 30 . Thank you Sir.
- . I take it that's the last point that you wanted to make?
- . In regards to response to what the plaintiff has said, yes Sir.

- . Yes and that's all you're entitled to make submissions on at this stage. You'd normally only get one opportunity to make submissions but you've been allowed an indulgence in terms of being able to go first and have a right of reply.
- 5 . And I have also –
- . So this, what we're dealing with here is just simply any direct reply that you have to the submissions that were made on behalf of LINZ.
- . Yes, so this ends my response to what I've just heard.
- . All right, thank you. So that –
- 10 . I, I – it's important to me that what is in writing, because I have had medical issues, is that what is in writing is accurate. What I have said here today I'm not aware of anything that's been a mistake or ill spoken but this idea of mid-morning or 11, 11.30 I'm sorry Sir I may have got that wrong but in essence everything that's here is in writing. If you
- 15 have read that then I'm happy.
- . Yes I have, thank you.

THE COURT:

All right, thank you counsel, thank you Mr Smith, I'm going to reserve my decision but it'll be out next week.

20

MR CARTER:

Thank you Sir. As the Court pleases.