

**EASTERN CARIBBEAN SUPREME COURT
GRENADA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2023/0544 (formerly CLAIM NO. GDAHCV2013/0313)

BETWEEN:

ELLEN LANGE

Claimant

and

**[1] PERMANENT SECRETARY OF THE MINISTRY OF
INFRASTRUCTURE AND PHYSICAL DEVELOPMENT**

[2] ROSA CHARLES

Defendants

Before:

The Hon. Mde. Justice Agnes Actie

High Court Judge

Appearances:

Mr. Anslem Clouden for the Claimant

Ms. Regine Mondesir for the First Defendant

Mr. Sasha Courtney for the Second Defendant

2025: November 25th;
2026: May 27th.

- [1] **ACTIE, J.:** The issue to be determined is whether there is breach of an oral rental contract between the claimant and the second defendant.

Brief Facts

- [2] By vending license agreement executed in 2015, the first defendant (hereafter referred to as “the PS”) granted the second defendant (hereafter referred to as “Ms. Charles”) a licence to occupy Booth No. 2 at the Grenville Market, St. Andrew (hereafter referred to as “the booth”) for the operation of a food and beverage business.
- [3] Upon the expiration of the licence, Ms. Charles remained in occupation of the booth on the same terms and conditions as the original licence. However, the booth remained closed and unoccupied for a brief period.

Ms. Lange's case

- [4] In or around early June 2023, the claimant (hereafter referred to as "Ms. Lange") approached Ms. Charles seeking to occupy the booth to operate a small restaurant and bar business. Ms. Lange acknowledges that her close friendship with Ms. Charles' sister, Roselyn Charles-Clyne, influenced her decision to approach Ms. Charles with that request.
- [5] Ms. Lange asserts that she entered into an oral agreement with Ms. Charles whereby she would occupy the booth from June 2023 to operate her business. It is undisputed evidence that the parties agreed that Ms. Lange would pay a monthly sum of \$600.00 to the Government and \$500.00 to Ms. Charles for the use of items within the booth, including music equipment, laptops, refrigerators and bar equipment.
- [6] Ms. Lange further avers that as part of the oral agreement, she purchased items which remained in the booth, and which belonged to Ms. Charles, for the price of \$800.00.
- [7] Ms. Lange states that she took possession of the booth on 8th June 2023 and commenced business operations the following day. She contends that she invested in stock and equipment, including \$2,500.00 worth of drinks, a gas cooking stove, liquor, a microwave and a deep fryer.
- [8] Ms. Lange states that in October 2023 she attempted to pay rent but was informed that it had already been paid by Ms. Charles. Shortly thereafter, by letter dated 3rd October 2023, Ms. Charles demanded that she vacate the booth by 5th October 2023. On 6th October 2023, the electricity to the booth was disconnected and the locks were changed.
- [9] On 19th October 2023, Ms. Lange received a letter dated 17th October 2023 from counsel for Ms. Charles, requiring her to remove her stock, including drinks, meat, and other produce from the booth within five days. Ms. Lange maintains however that she was unable to comply with the demand because she no longer had access to the booth.

- [10] Ms. Lange contends that she lost the benefit of her oral contract, and the profits she was generating from the business. She asserts that she earned an average of \$1,200.00 per day during the months of June to September 2023.
- [11] By claim form filed 31st October 2023, Ms. Lange seeks, among other relief: an injunction restraining the defendants from preventing her entry into the booth, a declaration that she is entitled to have access to the booth, special and general damages, interest and costs.

The PS' case

- [12] The PS asserts that Ms. Charles was the designated licensee of the booth, and that no contractual or legal relationship exists between the Government and Ms. Lange.
- [13] The PS further contends that no cause of action has been made out against it, and that there is no basis for its joinder in these proceedings.

Ms. Charles' case

- [14] Ms. Charles denies Ms. Lange's assertions and states that she allowed Ms. Lange to use the booth temporarily as her agent, until her further notice. She avers that she informed Ms. Lange that the contract prohibited subletting under the Vendors Licence Agreement.
- [15] Ms. Charles maintains that she was merely assisting Ms. Lange who is a close friend of her sister, and that no contractual agreement was ever intended or created between them.
- [16] Ms. Charles states that in September 2023 she instructed Ms. Lange to cease operations and return the keys to the booth. When Ms. Lange refused, Ms. Charles sought police assistance and subsequently made formal demand of Ms. Lange to vacate the booth.

Legal Analysis

Whether an agreement for occupancy of the booth was created

- [17] It is not disputed that an arrangement existed between Ms. Lange and Ms. Charles for the occupancy of the booth. However, Ms. Lange maintains that no agency relationship ever existed. Ms. Lange also contends that, relying on representations made to her, she took possession of the booth and fulfilled her alleged contractual obligations from June to September 2023.
- [18] Counsel for Ms. Lange and Ms. Charles agree that no exclusive possession to the booth was granted by Ms. Charles. In closing submissions, counsel for Ms. Lange, referring to the maxim *nemo dat quod non habet* (no one can give that which he has not), submitted that given that Ms. Charles' interest in the booth was that of a license, the agreement between the parties to be found by the court could only have amounted to a sub-license.
- [19] A license is described as a permission or authority to do something that would otherwise be unlawful¹, and can arise from contractual arrangements, depending on the circumstances under which it is created.
- [20] According to **Halsbury's Laws of England**², a contractual license is a license that arises pursuant to a contract. Such a licence is simply one of the contractual provisions agreed between the parties, and not a legal entity distinct from the contract that creates it.
- [21] A contractual license, being grounded in agreement between the parties, necessarily depends on the existence of a valid and enforceable contract. It is therefore necessary to consider the essential elements required for the formation of a binding contract.

¹ Words and Phrases Legally Defined (6th edn) LNUK

² Vol 62 (2022) Para 6

[22] In the case of **Donald Bridgeman v HKZ INC**³ the following was stated:

“The essential elements of a valid contract are trite. There must be an offer, an unconditional acceptance of that offer by another person and there must be consideration flowing from the promisor... To give rise to a binding agreement, the contracting parties must evince an intention to create legal relations and with each other... In *Keith Garvey v Richardo Richards*, Harris JA (at para 10) put it this way:

‘It is well-settled that an agreement is not binding as a contract unless it shows an intention by the parties to create a legal relationship. Generally, three basic rules underpin the formation of a contract, namely, an agreement, an intention to enter into the contractual relationship and consideration. For a contract to be valid and enforceable all essential terms governing the relationship of the parties must be incorporated therein. The subject matter must be certain. There must be positive evidence that a contractual obligation, born out of an oral written agreement, is in existence.’”

Intention to Create Legal Relations

[23] An agreement will not be enforced unless it evinces an intention to create legal relations. The authors of **Halsbury’s Laws of England**⁴ state that:

“... Ordinarily, the test will be the objective one of whether a reasonable person would regard the offer made to them as one which was intended to create legal relations; but what is decided may be considerably influenced by the importance of the agreement to the parties, and this is especially the case if one of them has performed their side of that agreement.

To aid them in the task of ascertaining the intention of the parties, the courts have become accustomed to divide the cases into two classes: (1) commercial agreements; and (2) family, domestic or social agreements. In the case of family, domestic or social agreements, it is presumed that there is no intention to create legal relations but there is presumed to be such an intention in the case of commercial agreements.”

[24] Counsel for Ms. Charles argues that no agreement arose because the parties lacked the requisite intention to create legal relations. Counsel cites the Privy Council decision in **Wilfred Isaac v Hotel de Paris Ltd**⁵ where Isaac was permitted to operate a night bar inside premises used in connection with a hotel.

³ GDAHCV2021/0011

⁴ Vol 22 (2025) Para 101

⁵ [1960] 1 WLR 239

Isaac paid the respondent an amount equal to the rent, stocked the bar at his own expense, retained all profits, paid all expenses in connection with the running of the bar, and even obtained a licence in his own name for the bar. When the respondent required Isaac to vacate, Isaac contended that a tenancy had arisen. The Privy Council rejected that contention, and agreed with the finding of the trial judge that Isaac was a licensee⁶ and said:

“The circumstances and conduct of the parties show that all that was intended was that the defendant should have a personal privilege of running a night bar on the premises, with no interest in the land at all. It was at first only a privilege to be there pending the execution of a formal contract. Later, when the contract fell through, and notice was given to him to remove his belongings, even that privilege came to an end...

He was there at sufferance liable to be turned out whenever the plaintiff company thought fit to execute its right to do so...”

[25] In the extant case, Ms. Lange initially approached Ms. Charles through the latter’s sister, who was a close friend of Ms. Lange and her husband. Ms. Charles allowed Ms. Lange to operate the booth within the regulatory framework of the business, with receipts for use of the booth being issued in Ms. Charles’ name. The evidence further demonstrates that Ms. Lange utilised Ms. Charles’ liquor licence, business name (“Island Roots Rosa”), and supplier accounts. Ms. Charles also testified that she assisted Ms. Lange in purchasing beverages through her account with the Grenada Breweries Ltd. Ms. Lange retained all profits generated from the business, while Ms. Charles derived no commercial benefit beyond the agreed monthly fee.

[26] Moreover, Ms. Lange’s conduct evidences her appreciation that no binding agreement existed between the parties governing her use of the booth, as she surreptitiously applied to the market management to license the booth in her own name. Such conduct is wholly inconsistent with a belief that her arrangement with Ms. Charles constituted a legally enforceable agreement.

⁶ page 245 of the judgment

- [27] The evidence when viewed cumulatively, is inconsistent with an intention to create legal relations. In the circumstances, the court concludes that no legally binding contract was formed between Ms. Lange and Ms. Charles. The informal arrangement stemmed from personal relations and did not demonstrate an intention to create legal relations.
- [28] Additionally, as counsel for the PS submitted, the vending licence for the booth was issued solely to Ms. Charles and was expressly non-transferable. Ms. Lange's occupation of the booth was consequently in breach of the terms of that licence and amounted to an unlawful sublicensing, incapable of conferring any legal right or interest. It is the evidence that Ms. Lange was aware of the non-transferable nature of the agreement and by her own action sought to obtain the license to be transferred to her name.
- [29] Ms. Charles as a statutory tenant has no interest in the booth land but merely has a statutory licence with a personal right to remain in occupation. She does not have a transmissible interest capable to rent to the claimant. The arrangements between the parties were personal and could be terminated at short notice at any time.
- [30] It is Ms Lange's evidence that the sudden change of locks prevented her from removing her items. Ms. Charles on the other hand states that she gave Ms. Lange ample notice and time to remove her items, but she refused and instead made attempts to get the booth rented in her name. It is the evidence that Ms. Lange's application was refused.
- [31] Ms. Lange at the trial states that she still has items in the premises. Ms. Charles said that she is willing too provide full access for the retrieval of the items if necessary. In the circumstances, the court directs that arrangements be made on a date convenient to both parties and supervised by a representative of the first defendant for the retrieval of the items.

Whether Ms. Lange has a viable cause of action against the PS

[32] Ms. Lange argues that her claim against the PS is grounded in the expectation that payments made to the Government were in furtherance of the transfer of a leasehold interest in the booth to her.

[33] The PS on the other hand maintains that the claim advanced against it is fundamentally misconceived and unsustainable in law.

[34] It is trite law that parties are bound by their pleadings⁷. Rule **56.3** of the **Civil Procedure Rules 2023** as amended requires that a claimant state the nature and grounds of any relief sought. There is no pleading before this court articulating a claim founded on a breach of legitimate expectation, nor has any evidential basis been laid upon which such a finding could properly be made against the Government. It is also trite that submissions, however forcefully advanced, cannot replace or cure deficiencies in pleadings or substitute for evidence.

[35] In the circumstances, Ms. Lange has failed to establish any legal or factual foundation upon which liability may properly attach to the Government. She has adduced no evidence demonstrating that the Government owed any duty to her in relation to her occupation of the booth, nor has she identified any contractual relationship with the PS from which enforceable rights could arise.

Conclusion

[36] Having considered the pleadings, evidence, and submissions, the court finds that the claimant has failed to discharge the burden of proof on a balance of probabilities to establish any sustainable cause of action against either defendant.

ORDER

[37] In summary, it is ordered and declared as follows:

- (1) The claimant's claim is dismissed;
- (2) The claimant shall pay Prescribed Costs to the defendants in the sum of \$9,695.51 on or before 31st December 2026.

⁷ George W. Bennett Bryson's & Co. Ltd. v George Purcell [2018] ECSCJ No. 39

- (3) Ms. Charles shall, through her counsel, permit Ms. Lange until Friday, 12th June 2026 to retrieve the items, failing which Ms. Charles may dispose of the said items.

Agnes Actie
High Court Judge

By the Court

Registrar