

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
CIVIL**

Claim Number: SLUHCV2018/0586

BETWEEN:

**LEOCETTRA ST. HILL
represented by her duly constituted
ATTORNEY NOREEN PIERRE**

Claimant

and

JUSTINA CATHERINE “TINO” DORIUS

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence

High Court Judge

Appearances:

Mr. Alberton Richelieu for the Claimant

Mr. George Charlemagne for the Defendant

2022: February 23;	(Trial)
March 17, 21;	(Submissions)
2025: November 6.	(Decision)

JUDGMENT

[1] **CENAC-PHULGENCE, J:** - This claim arises out of a contractual relationship between the parties, during their friendship. The claimant, Ms. Leocettra St. Hill alleges that she hired the defendant, Ms. Catherine “Tino” Dorius¹ as her agent to manage the day-to-day operations of two businesses - Saint Michael Variety Store (“the Store”) and a bar in Vieux Fort (“the Vieux Fort Bar”) as she resided outside of Saint Lucia. She had lived overseas for over twenty years. According to the

¹ The defendant stated in her acknowledgement of service filed on 30th November 2018 that her correct name is Catherine “Tino” Dorviis. She also appears to be known as Catherine Dorius and is referred to as both names throughout the matter.

claimant, the defendant acted as her agent and her responsibilities included the daily management of both businesses, receiving monies and shipments from the claimant, and managing the businesses' accounts from about 2003 to 2015. The defendant, in her pleadings and evidence, denies that she was the claimant's agent but rather says she was merely a caretaker of the businesses, a position which changed by the close of the trial. She denies the existence of any fiduciary or trust relationship. She disputes that the claimant ever sent money for the operation of the businesses and says the money sent was only for the clearing of the barrels at the Saint Lucia Customs and Excise Department.

[2] It is apparent from the evidence that the focal point of the dispute between the claimant and the defendant is the tenancy of a booth at the Mandelee Visitor Shop Centre (MVSC) in Dennery. It is the claimant's case that the defendant was instructed to register the lease for a booth ("the Dennery Bar") at the Dennery Development Foundation Inc. ("the DDF"), in her (the claimant's) name and operate same on her behalf. The claimant alleges that she sent monies to the defendant to finance the licensing and repairs of the Dennery Bar from 2008 to 2015. However, the defendant registered the tenancy for the Dennery Bar in her name, in breach of her duty as agent. The claimant only became aware that the lease for the Dennery Bar was registered in the defendant's name on 20th November 2015, when she received a letter from the defendant's Attorney-at-Law asking her to remove her items from the booth.

[3] This allegation is denied by the defendant who states that on or about 2008, she informed the claimant that she no longer wanted to work with her and terminated the business relationship in relation to the Vieux Fort Bar. It was then she applied to become a tenant at the DDF upon her own volition and for her own benefit. She refers to a letter dated 2nd July 2015 from the DDF confirming that she had been renting a booth there for over 10 years. She therefore denies that she acted as an agent for the claimant when she rented the booth.

- [4] The claimant also alleges that around 2012, she found out that the defendant breached her fiduciary duty by failing to pay the rental of the Store amounting to in excess of \$26,000.00. The claimant states that she sent money monthly to the defendant to make these payments. The defendant admits that the rent was in arrears but denies having knowledge of the sum of \$26,000.00. She denies having received any money from the claimant to pay the rent. She also denies having the responsibility to pay the rent on the claimant's behalf. She avers that the money sent to her via Western Union and MoneyGram was for the sole purpose of clearing goods and not for the payment of rent.
- [5] The claimant went on to secure a loan of \$26,000.00 to pay the arrears and continued her contractual relationship with the defendant without consequence to the defendant or at all. She claims that the defendant was instructed to pay the loan using monies she sent via Western Union and MoneyGram, and from profits earned from the Store. She was assured by the defendant through telephone conversations that the loan was being paid and both businesses were in good standing.
- [6] The claimant alleges that the loan was not paid by the defendant and the \$30,000.00 held as security for the loan was seized by the bank.
- [7] Between 2013 to 2015, the claimant alleges that she continued to ship goods for both businesses to the defendant. She also continued to send money via Western Union and MoneyGram for the businesses' daily operations. At all relevant times, she alleges that she sent thousands of dollars to ensure the business was in good standing. This the defendant denies and states that the money sent was only for the clearing of the goods.
- [8] The claimant also accuses the defendant of failing to make deposits into her account from 2007 to 2015. The defendant denies that there was any agreement between the parties for any monies to be deposited into the claimant's account for the said period.

- [9] As a result of the defendant's numerous breaches, the claimant alleges that she suffered loss amounting to \$147,131.00. The defendant denies being indebted to the claimant and accuses the claimant of making bald assertions without any bills, receipts or invoices to prove any of the claims.
- [10] In the circumstances, the claimant seeks the following relief:
- (a) Special damages in the sum of \$147,131.00;
 - (b) An order that the defendant give up possession of The Bar (the Dennergy Bar);
 - (c) An order that the defendant deliver up the claimant's bank books, credit union book and all keys to the Store;
 - (d) An account from the defendant of all profits generated from the Bar and the Store from 2003-2018;
 - (e) A declaration that the defendant breached her fiduciary duty to the claimant;
 - (f) Compensatory damages;
 - (g) Interest thereon;
 - (h) Costs;
 - (i) Further or other relief.

Evidence

- [11] From the outset, it is important to state that the evidence given by the claimant was woefully sparse in material aspects, especially relating to the particulars of the terms of the agreement/arrangement between her and the defendant and her claim for special damages. Additionally, it appeared to the Court that both parties were telling half-truths. Neither party appeared to be forthcoming in their account of the matter in all respects.
- [12] The claimant's case is supported by evidence from herself, Ms. Noreen Pierre ("Ms. Pierre"), Mr. John Pierre ("Mr. Pierre") and Mr. Celestin Charles ("Mr. Charles"). The defendant's case was supported by her own evidence and that of Ms. Janella Dorius ("Ms. Dorius"), her daughter.

The claimant, Ms. Leocettra St. Hill

- [13] The evidence contained in the claimant's witness summary was consistent with her pleadings. She elaborates that it was the defendant who convinced her to move the Bar to Dennery in 2008, where she resides, so that it could be better managed. The defendant sought the services of Mr. John Pierre in applying for the booth at MVSC. At the time, the claimant says she was under the impression that the defendant applied for the license to operate the booth in her (the claimant's) name. She claims that in 2012, she discovered that the defendant did not pay the rent of the Store although she sent money to the defendant every month to do so. After she took the loan in 2013, she instructed the defendant to pay the loan using money she sent to her via Western Union. She says that the defendant assured her that the loan was being paid.
- [14] The claimant continued to send goods (in barrels) between 2013 to 2015 to the defendant to sell, so that the monies would be used by the defendant for the upkeep of the business.
- [15] When the claimant visited Saint Lucia in 2015, she realised that the defendant never made any deposits into her account for the period 2007 to 2015 and that the loan which the defendant promised to pay from the proceeds of the sale from the Store items was never paid, although the defendant sold items from the Store and the bar.
- [16] The claimant states that the defendant and herself were good friends and like sisters which is why she allowed this to go on for so long.
- [17] During cross-examination, the claimant stated that she never kept a record of the money she sent to the defendant and would send money when called upon to do so for her business. She confirmed that she alone could withdraw money from her accounts and denied having ever asked the defendant to convert US currency to EC for her.

- [18] In cross examination, the claimant was questioned about the undated letter allegedly signed by the defendant stating the yearly income of the Store as \$53,600.00, and referred to at paragraph 6 of her witness summary.² The claimant stated that the letter was done for the purposes of a transaction she wanted to undertake, and they wanted to know how much the Store was making. When asked if it was not accurate, she stated that the Store makes more than that. However, earlier, she admitted that there were no accounting documents for the Store.
- [19] The claimant also agreed that the shipping statement which she exhibited did not say what the contents of the barrels shipped were.
- [20] The claimant struck me as someone who may not have been very truthful about all of the matters or who simply did not know because she appeared to have taken a very hands-off approach to the arrangement with the defendant.

Ms. Noreen Pierre (“Ms. Pierre”)

- [21] The evidence of Ms. Pierre is that she and the defendant worked for the claimant. She manages two stores for the claimant located on Commercial Street in Vieux Fort: the Store and Kid’s Corner. She also assisted the defendant at the Dennery Bar.
- [22] Ms. Pierre alleges that during the time she assisted the defendant, she was informed by her that both businesses (the Store and Dennery Bar) belonged to the claimant as well as the furniture and items in the Dennery Bar. The defendant also employed her daughter Stanza at the Dennery Bar to assist her, and the defendant was responsible for taking care of the debts of the Dennery Bar and the Store on behalf of the claimant, according to Ms. Pierre.
- [23] Ms. Pierre states that she started working at the Store in November 2014 and became responsible for selling goods, collecting monies and paying debts after the

² See p 55 of TB.

claimant sent her barrels from the United States to be sold in the Store. After receiving instructions from the claimant, it was she who found out from the landlord that rent was in arrears for the Store.

[24] She says she was instructed by the claimant to use money from the sales at the Store to pay the bills, herself and all other debts, including the rent which was in arrears. As a result, she would use monies from the Store to pay arrears of rent. She states that sometimes when there were sufficient funds from the sales in the Store, she would pay three months' rent to cover the arrears, water, light and other utilities.

[25] She recalls having a conversation with the defendant who told her that she had built a house from the monies made from the Store. This evidence was not part of the claimant's pleadings and cannot now be relied on by the claimant in evidence. Ms. Pierre's evidence was not shaken during cross-examination, and I generally found her to be a witness of truth.

Mr. John Pierre

[26] Mr. Pierre gave evidence as to his involvement in assisting the defendant in applying for the booth at the MVSC in Dennery because the defendant told him she could not read or write. He says that he was instructed by the defendant to write the application in her name since she would be running the Dennery Bar on the claimant's behalf. He states that to his knowledge, the booth and all its contents belong to the claimant. He also says that he assisted the defendant in writing out sales she did for the month.

[27] I found no reason to disbelieve this witness, and his testimony was not undermined in cross-examination.

Mr. Celestin Charles ("Mr. Charles")

[28] Mr. Charles' evidence is that he assisted the defendant with taking the barrels from the Vieux Fort Wharf to the Store on Commercial Street, Vieux Fort. He observed

in late 2007 that the items from the Vieux Fort Bar were being moved. He assisted in transporting crates of drinks, boxes with strong liquor, kitchen utensils, pots, fridge, stove, all of which belonged to the claimant, to the booth at MVSC where it was unloaded. He says he was employed by the claimant with one Johnathon to paint the ceiling of one of the booths at MVSC and they were paid by the claimant. The defendant, he says, was present when this was being done.

[29] He claims that he always witnessed and overheard telephone conversations between the parties, where the claimant instructed the defendant to withdraw monies from her account to pay necessary bills.

[30] In cross-examination, Mr. Charles was clear that it did not matter in whose name the booth at MVSC was, but he knew it was the claimant's as she paid him to move everything from Vieux Fort to the booth. He mentions the fridge and pots and pans. I thought this witness was consistent in his evidence and I believe him when he said he moved things to the booth at MVSC.

The defendant, Ms. Catherine Dorius also Dorviis

[31] In her witness statement, the defendant maintains what was said in her pleadings. The defendant states that while she was taking care of the Store and the Vieux Fort Bar, she deposited monies into the claimant's bank accounts at Bank of Saint Lucia (BOSL), Vieux Fort. She did not have all the records but was able to retrieve and exhibit the pass books for two BOSL accounts which showed deposits totaling \$36,351.00 during the period 10th October 2009 to 10th November 2012. She also alleges that she bought US currency from BOSL for the claimant which she gave the claimant (which the claimant denies). She exhibited foreign currency slips (which were for the most part illegible) to support this. She also deposited money into the claimant's credit union account but did not have access to these records as it was some time ago. She was also responsible for paying loans from BOSL and the credit union taken by the claimant.

- [32] Regarding the Dennery Bar, she denies having acted for the claimant in 2008 in securing the tenancy nor requiring the assistance of Mr. Pierre in making the application. She maintained that the claimant never sent money to her to pay the rent and that the money reflected in the Western Union and MoneyGram statements were only for the clearing of the barrels. She denies having told the claimant that the businesses were in good financial standing.
- [33] During cross-examination, she admitted that she was the claimant's agent to conduct her business in Saint Lucia. She stated that she terminated her relationship with the claimant around November 2014. She denied having interacted with Mr. Charles and Mr. Pierre to the extent that they said she did.
- [34] The defendant denied having convinced the claimant to move the bar to Dennery in 2008 and stated that the Vieux Fort Bar was shut for a while and that she left all the claimant's drinks in her bar. She denied having received financial help from the claimant to run the Dennery Bar but agreed that the claimant financed the booth.
- [35] She stated that of the goods sent by the claimant, some were sold and the rest stayed in the business place. She said that the agreement in relation to the profits from the sale of those goods was that she would pay the rent, make deposits and pay loans. She was aware of the arrears of rent for the Store, for which she was responsible, and did mention it to the claimant. She says that this was when goods 'were not selling again'. She also stated that Ms. Pierre told her to leave the business in 2014 so she could not pay the loan.
- [36] The defendant agreed that seven wrought iron chairs were installed in the Dennery Bar but denied that a camera was installed as there was no WIFI at the time. She denies that her children ever broke into the booth at MVSC and stole items and said she knew nothing about missing items from the Store.
- [37] The defendant says that she paid six (6) loans for the claimant and what she could not pay was when the Store was not 'making money'.

[38] The defendant's evidence showed some inconsistencies and at times contradicted her pleadings, especially as it relates to whether she acted as the claimant's agent. She appeared very stressed during cross-examination and at one point even burst into tears. The Court finds that like the claimant, the defendant was not forthright with all matters.

Ms. Janella Dorius ("Ms. Dorius")

[39] Ms. Dorius is the defendant's daughter and states that she worked at the Dennergy Bar from since about 2015. She recalls that her mother would go to Vieux Fort and assist in a bar that the claimant owned there. She states that from her recollection, her mother started assisting the claimant with the Vieux Fort Bar in or around 2010. The claimant would send barrels and money via Western Union to her mother to clear the barrels. She would sometimes accompany her mother to collect the money. Her mother would also deposit money gained from the bar operations for the purpose of paying the claimant's loans and for expenses related to the bar and the Shop. As far as she knew, the claimant would take profits and return to the US with it when she visited Saint Lucia. She says she never saw the claimant pay the defendant a salary.

[40] I did not attach much weight to the evidence of this witness as she could not speak to the issues in dispute. She was a student at the material time, and it is highly unlikely that she would have had firsthand knowledge of the details of the Store and Dennergy Bar and who paid what.

Discussion and Analysis

[41] The law of agency in Saint Lucia is governed by Book Eighth, Chapter First of the **Civil Code of Saint Lucia**.³

³ Cap 4.01, Revised Laws of Saint Lucia, 2020.

Nature and Length of Relationship

- [42] Firstly, I will consider the nature of the relationship between the parties. Whilst the defendant sought to deny that she acted as an agent for the claimant, it is clear from the evidence, including her own admission during cross-examination and the submissions of her Counsel, Mr. George Charlemagne ("Mr. Charlemagne"), that she was the agent of the claimant. This finding is also supported by the nature of the responsibilities of the defendant. It is clear to the Court however, that the rights and obligations of the parties under the contract were very informal with no real delineation of specific tasks apart from the general obligations to manage the daily running of both businesses and receiving monies and shipments from the claimant. The parties were also silent on whether the defendant was rewarded for her services and the Court accepts the defendant's submission that the defendant was a gratuitous agent, as she admitted during cross-examination that the claimant never sent money for her personally.
- [43] In her pleadings, the claimant states that the contractual relationship came to an end in November 2015, when she received the letter from the defendant's Attorney. However, from the evidence, the relationship came to an end in November 2014 when the claimant hired Ms. Pierre to manage the Store. Ms. Peirre's evidence is that she became responsible for selling stuff, collecting monies and paying debts after the claimant sent barrels to her from the United States to be sold in the shop in November 2014. This was confirmed by the defendant during cross-examination where she said that she terminated the relationship with the claimant around November 2014 after Ms. Pierre asked her to leave the Store.
- [44] The claimant exhibited a letter dated 14th November 2014, in which she granted the defendant permission to act as her representative to take charge of her goods being held in Customs as she was not in the country. The Western Union record shows that the last date money was sent to the defendant was 20th November 2014. This would have coincided with the last time that the defendant would have had to clear

goods from Customs for the claimant.⁴ The evidence therefore shows that the relationship between the claimant and defendant would have been terminated towards the end of November 2014.

Accounting for Profits

- [45] I accept the defendant's submission that because the parties were good friends, despite there being an obligation on the part of the agent to keep accounts, it was not expected to be done, or enforced, in the strict sense. This is evidenced by the lack of particularity on both sides with respect to the financial records of the businesses. The claimant's own evidence shows that during the contractual relationship, she did not call upon the defendant to furnish her with accounts, nor did she keep a proper record of the monies or goods sent to the defendant. In these circumstances, it appears to the Court that the defendant's duty to account was in an informal sense as to informing the claimant of the general running of the businesses, and not from a strict accounting standpoint.
- [46] Additionally, even if the Court were to accept that the defendant breached this duty, it is apparent that the claimant acquiesced by not enforcing that duty of the defendant. Again, this is supported by the claimant's own evidence. In the response letter from the claimant's Attorney dated 22nd June 2018,⁵ her Counsel states that between 2003-2007, whenever the claimant visited Saint Lucia, she often found amenities and stock missing from both businesses and monies unaccounted for based on her account of the goods shipped to Saint Lucia. Yet, the claimant forgave these incidents of alleged theft and continued to do business with the defendant in good faith. The Court therefore finds that the claimant is not in a position to call upon the defendant to account for profits generated from the Bar and the Store from 2003 to 2012 based on her past actions of accepting the defendant's conduct.

⁴ See letter dated 14th November 2014 at p 36 of TB.

⁵ P 70 of TB.

[47] Moreover, as stated above, the defendant was not required to account for the businesses from a detailed accounting standpoint, but in a general sense. The Court therefore sees no utility in asking the defendant to do so for the years 2012 to 2014, as that level of accounting was never her obligation under the contract and would therefore be impossible to do so especially given the effluxion of time.

Tenancy - Mandelee Visitor Shop Centre Booth

[48] The Court accepts the claimant's evidence that the defendant as agent, was instructed by the claimant (principal), to apply for the booth for the Dennery Bar in her name and did breach her duty in not doing so. The Court accepts the parties' evidence that the defendant began running the booth in 2008, and as such, places no weight on the letter from the DDF dated 2nd July 2015 which states that the defendant was a tenant of the MVSC for over 10 years.

[49] The Court also accepts the evidence of Mr. Charles where he stated that the crates of drinks, boxes with strong liquor, kitchen utensils, pots, stove and fridge which belonged to the claimant were moved from the Vieux Fort Bar to the Dennery Bar. His evidence that he was paid by the claimant to paint the ceiling of one the booths at the MVSC is also accepted.

[50] Though the defendant sought to deny that she received financial assistance from the claimant when moving to the MVSC in Dennery, the evidence shows (the letter dated 20th November 2015 written by her Counsel) that she did receive furniture, equipment and stock from the claimant to start off the business. The defendant admitted to the seven wrought iron chairs belonging to the claimant being at the Dennery Bar. She however denied that a video camera was installed as the Dennery Bar did not have WIFI at the time.

[51] Notwithstanding my findings above, the claimant has failed to show the Court that she continued to ship goods to Saint Lucia for the Dennery Bar, or that she sent money to pay the rent for the booth. There is no mention by the claimant of the monthly amount of the rent of the booth, nor the sum required to run the Dennery

Bar, the nature of the goods she sent, or the expected profits for same. As far as the Court can ascertain based on the sparse evidence, the defendant became solely responsible for the financing and running of the Dennery Bar as the claimant provides no evidence of her involvement with the booth after its initial set up in 2008.

- [52] In addition, it is evident that after the termination of the relationship in November 2014, the defendant undoubtedly ran the Dennery Bar in her personal capacity and has been doing so to date. That is, eleven years after the breakdown of the relationship without the involvement of the claimant. The claimant also admitted that she did not visit Saint Lucia between 2008 and 2012 which supports the conclusion that the Dennery Bar was set up but she really had nothing more to do with it thereafter. In the circumstances, the Court declines to make an order for the defendant to give up possession of the Dennery Bar.

Nonpayment of Rent

- [53] The claimant's evidence is that she would send money to the defendant to pay the rent for the businesses. She relies on the statements of the money sent through Western Union and MoneyGram to support her assertion. She provides no particulars with respect to the amount of money sent, the monthly rental amounts or the timeframe when the rent went into arrears. She also did not identify the amounts sent via Western Union or MoneyGram which were to be put towards the rent of the businesses. As indicated earlier, she is also completely silent with respect to the payment of rent of the booth at the MVSC.
- [54] The Court does not accept the claimant's evidence that she sent money for the rent of the businesses. Her own witness, Ms. Pierre, said in her evidence that she would use monies from the Store to pay arrears of rent. Sometimes, Ms. Pierre said, when there were sufficient funds from sales in the Store, she would pay three months' rent at a time to cover the arrears, and pay water, light and other utilities. This aligns with the defendant's evidence that the agreement in relation to the profits from the sale of the goods was that she would pay rent, make deposits and pay loans, and

sometimes sales were low, and the rent would be in arrears for the Store. It is evident to the Court that the claimant expected the business to run itself.

[55] Therefore, whilst it is not disputed that the rent for the Store was in arrears, the claimant has failed to show that she sent money for the purpose of paying the rent which the defendant misapplied. Rather, the rent was to be paid from the profits of the Store, which was not always profitable. The Court therefore places no weight on the undated letter with the Store's letterhead stating that the store made a yearly income of \$53,600.00 particularly as the claimant admitted that the letter was produced for a specific transaction.

[56] Additionally, up until 2012, the claimant did not seek to hold the defendant accountable for the nonpayment of rent. This is evidenced by her taking a loan from BOSL in 2013 to pay off the arrears and using her own savings in the account as security. The Court notes that the claimant has not provided any details surrounding the terms of the loan with respect to its repayment or any other details. The claimant has also failed to show that she sent money between 2013 to 2014 to the defendant to pay the loan as she asserts. The defendant's evidence that the money was sent only to clear the barrels from Customs is more plausible on a balance of probabilities given the amounts sent and the timeframes when the money was sent.

[57] Having found that the Store was not always profitable, the claimant did not send money for the payment of rent for the Store, and taking into account (i) the claimant's conduct after she found out about the defendant's failure to pay the rent, (ii) the fact that the relationship came to an end in November 2014, and (iii) the general lack of details surrounding the loan and rent payments, the Court finds that it cannot hold the defendant accountable for the security amount of \$30,000.00 which the claimant alleges was seized by the bank.

Failure to make deposits

[58] The claimant sought to assert that the defendant could have made withdrawals from the BOSL accounts. This was later disproved during her cross-examination and by

her own documentary evidence, which showed that she had to specifically give the defendant permission to withdraw funds from her BOSL account. The Court places little weight on the typed letter dated 17th December 2012 which sought to change a BOSL account from a requiring both parties signature, to an either or signature requirement, as this document was not signed by the defendant and the claimant later admitted in cross-examination that she was the only one who could withdraw from the account at all times.

- [59] The claimant did not annex any bank or credit union statements to show that the defendant did not make any deposits for the period 2007 to 2015. This allegation was denied by the defendant who exhibited copies of the claimant's BOSL passbooks which shows that deposits were made in 2007, 2009 and 2012. On a balance of probabilities, the claimant has failed to prove this assertion, and the Court accepts the defendant's evidence that she did make deposits and also gave the claimant profits when she came to Saint Lucia.

Special Damages

- [60] The claimant has sought to recover the cost of shipping barrels to Saint Lucia from 2003 to 2014, and monies sent via Western Union and MoneyGram, but has failed, in the Court's opinion, to provide a basis for the awards. It is trite law that special damages must not only be pleaded but must be proven.⁶
- [61] For all intents and purposes, there is no dispute that the claimant sent the barrels, and the defendant applied the money sent to clear them. Nor is there any assertion that the defendant did not sell the goods in the Store. In other words, there is no evidence that the defendant did not fulfil her obligation in this regard. There were no allegations by the claimant that the defendant did not utilise the contents of these barrels in the business.

⁶ Bonham-Carter v Hyde Park Hotel (1948) 64 TLR 177.

- [62] The real issue lies in the value of the items sent by the claimant and the revenue generated from same (i.e. the profits) in the Store. However, the claimant cannot identify or place a value on the goods sent over the years. As such, the Court declines to make these awards sought based on the lack of evidence.
- [63] The claimant has sought repairs to the Dennery Bar which she claims was done in 2008, costs of furniture damaged in the bar, value of appliances at the Dennery Bar and video camera but has failed to provide any evidence in support of the loss she has suffered. The Court notes with concern the bare assertions made by the claimant for these special damages and declines to award same. At the same time, the Court cannot ignore the defendant's admittance that the claimant is the lawful owner of the furniture, equipment and stock in the Dennery Bar. These considerations will be factored into any award made.
- [64] The claimant did annex a letter signed by one Gordon Joseph dated 15th June 2018 in which he states he was employed by the claimant to make 12 wrought iron chairs at \$150.00 each, security bars for 4 windows at \$350.00 each and 1 security door at \$400.00, for use in the Dennery Bar. The Court however notes that Mr. Joseph was not a witness in this matter and also considers the fact that these items are subject to depreciation given the length of time, as relevant factors in making its award of damages.

Delivery of the Claimant's bank books, credit union book and all keys to the Store

- [65] Given the length of time, and the fact that these are the claimant's accounts and assets to which she can easily gain access, the Court does not find any utility in making this order.

Conclusion

- [66] Based on the defendant's breach of fiduciary duty and the acceptance that the claimant would have suffered loss, the Court is minded to make an award of damages. However, given the lack of evidence to support the losses, the award will be a nominal award taking into account the totality of the evidence.

Order

[67] In light of the foregoing, I make the following orders:

1. The Court declares that the defendant breached her fiduciary duty when acting as agent for the claimant in failing to register the tenancy in the name of the claimant for the Dennery Bar at the Mandelee Visitor Shop Centre;
2. The defendant shall pay the claimant the sum of \$5,000.00 as nominal damages with interest thereon at the rate of 6% per annum from the date of judgment to the date of payment;
3. The defendant shall pay the claimant prescribed costs in the sum of \$750.00 in accordance with CPR 65.5, Appendix B. The prescribed costs have been calculated in accordance with Part 65 of the **Civil Procedure Rules 2000** which were the applicable rules at the time of the trial.

[68] I thank Counsel and the parties for their patience as they awaited delivery of this judgment and regret any inconvenience caused by the delay.

Kimberly Cenac-Phulgence
High Court Judge

By The Court



Registrar