

**EASTERN CARIBBEAN SUPREME COURT
SAINTVINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

CLAIMNO. SVGHCV2023/0077

BETWEEN:

SUMMUS LIMITED

Claimant

AND

[1] KIMYAGLASGOW

[2] KIMYAGLASGOW DESIGNSINC.

Defendants

Before: Her Ladyship the Hon. Justice Gertel Thom (Ag.)

Appearances:

Mr. A.I. Elliot of Counsel for the Claimant

Mr. Duane Daniel and Ms. Tonya Da Silva of Counsel for the Defendants

2025: February 25,
June 27

JUDGMENT

THOMJ(Ag):

Introduction

[1] This claim is a claim for breach of contract. The Claimant, Summus Limited (Summus) is a limited liability company registered in St. Vincent and the Grenadines. The first Defendant

Kimya Glasgow (Mrs. Glasgow) is the Managing Director of the Second Defendant Kimya Glasgow Designs INC(together they are referred to as the Defendants).

- [2] On March 31, 2020, Mr. David Martinez the Managing Director of CanaSVG, held discussions with Mrs. Glasgow. The 2nd Defendant occupied Shop 11 at the Cruise Ship Terminal pursuant to a lease granted by the Port Authority. The discussions related to the acquisition of the rights of the said lease.
- [3] Several further discussions were held between Mr. Martinez and Mrs. Glasgow and between their respective Attorney at Law which led to the execution of a non-disclosure agreement between Mr. Martinez and Mrs. Glasgow. Mr. Martinez in his capacity as the Manager Director of Summus a corporate entity separate from CanaSVG, made an offer to acquire the occupancy of Shop 11 for a price of \$65,000.00 payable in two instalments being \$55,000.00 on execution of the Agreement with a further obligation to pay the sum of \$10,000 six months thereafter.
- [4] The offer was accepted on condition that the payment is in exchange for the 2nd Defendant vacating the demised premises to allow Summus the opportunity to negotiate a new lease with the Port Authority.
- [5] On April 20, 2022, Mr. Martinez on behalf of Summus and Mrs. Glasgow on her own behalf and on behalf of the 2nd Defendant executed an Agreement (the April 2022 Agreement).
- [6] Subsequently, at the request of Summus, the Defendants remained in occupation of Shop 11. By letter dated June 28, 2022 Summus agreed to assume financial responsibility of paying the monthly rent for Shop 11 effective July, 2022.
- [7] The relationship between the parties subsequently broke down and Summus instituted these proceedings on May 12, 2023 in which Summus alleged that the Defendants breached the April 2022 Agreement and claimed the following reliefs:
 - (a) Damages for breach of contract in the sum of Fifty-five Thousand East Caribbean Dollars (EC \$55,000.00) being the sum paid to the Defendants pursuant to the April 2022 Agreement.
 - (b) Damages in the sum of EC \$1,285.00 being rent paid to the Port Authority.
 - (c) Damages of EC \$3,000 per month being nominal damages for loss of potential revenue from November 2022.
 - (d) Interest and costs

- (8) In its Claim, Summus alleged that it paid the sum of \$55,000 to Mrs. Glasgow on April 20, 2022 in accordance with the April 2022 Agreement. Summus also paid the rent for Shop 11 between May 2022 and October 2022 directly to Mrs. Glasgow. Summus acknowledged that some of its payments were rejected by Mrs. Glasgow's Bank. Nevertheless, Mrs. Glasgow received a total sum of EC \$1,285.88 from Summus during the period May 2022-October 2022, but Summus was not granted access or possession of the shop by the Defendants.
- (9) In November 2022, Summus communicated to Mrs. Glasgow its readiness to pay the remaining sum of EC \$10,000.00. Summus also stressed the need for the Defendants to confirm with the Port Authority their intention to release the tenancy to Summus in accordance with the April 2022 Agreement. Summus contended that the Defendants failed to do so, and in so doing they breached the April 2022 Agreement in that:
- (a) They failed and or refused to communicate to the Port Authority their intention to release the tenancy to Summus.
 - (b) They failed to grant access, entry or possession to Summus.
- [10] Summus also alleged that the Defendants acted fraudulently in that:
- (a) Having accepted the initial payment, the Defendants refused to cooperate to effect the terms of the Agreement.
 - (b) Having entered into an agreement with Summus for Summus to acquire the leased premises, the Defendants failed and or refused to give any notice of the said agreement to the relevant authorities.
 - (c) The landlord having no knowledge of the agreement between the parties was unable to give effect to the agreement without such notice from the Defendants,

Defence

- (11) The Defendants contended that an offer was made by the Managing Director of Summus to purchase the lease for \$55,000. The Managing Director of Summus and Mrs. Glasgow had a meeting at which Mrs. Glasgow provided her lease to the Managing Director. Negotiations commenced and after several discussions between the parties the Defendants agreed Summus would pay the Defendants EC \$55,000 and the Defendants would surrender their lease to the Port Authority. A non-disclosure agreement was executed by the parties.

- (12) The Defendants acknowledged receipt of EC \$55,000 from Summus but denied that the Agreement required them to communicate any of the terms of the April 2022 Agreement to the Port Authority. They alleged this was only requested by Summus when Summus' negotiations with the Port Authority reached an impasse. A collateral agreement was then agreed by the parties where the Defendants would remain in the premises and Summus would pay the rent.
- (13) The Defendants vacated the leased premisses in February 2023 and notified Summus that the key would be handed over to them on payment of the outstanding rent which Summus failed to pay.
- (14) The Defendants denied allof the allegations of fraud.
- [15] In their counterclaim the Defendants alleged that Summus breached the April 2022 Agreement by failing to pay the remaining sum of \$10,000.00 and the outstanding rent of \$2,214.17. They claimed interest on the sums and costs.
- [16] In Summus' reply and defence to counterclaim, Summus alleged that it paid the rent, but Mrs. Glasgow's Bank did not accept the transfer of sums. Summus also contended that the Defendants did not set out any lawful justification for the fraudulent actions of Mrs. Glasgow.

Evidence

- (17) Ms. Joleen Marks the Corporate Secretary of Summus testified on behalf of Summus. Mrs. Glasgow, testified on behalf of the Defendants.

Claimant's Evidence

- (18) Mrs. Marks testified that Mrs. Glasgow at all material times operated a store at Shop 11 at the Cruise Ship terminal Building.
- [19] On April 20, 2022, Summus entered into a written agreement with Mrs. Glasgow for Summus to take over Shop 11. The agreement was executed by herself and Mrs. Glasgow. On the said 20th April 2022, the sum of \$55,000 was paid to Mrs. Glasgow as agreed. Under the terms of the Agreement the lease was to be released to the Port Authority on Summus obtaining the necessary permission of the Port Authority to enter into occupation of the premises.

- [20] In May 2022, Summus began paying the rent for Shop 11 by transferring the payments by wire transfer to Mrs. Glasgow. Some of the wire transfers were rejected by Mrs. Glasgow's bankers due to the nature of Summus' business. However, Mrs. Glasgow received a total of \$1,285.83 for rental. Notwithstanding the payments, Summus has been refused and denied access and entry to the Shop. On several occasions between June-December 2022, Summus requested Mrs. Glasgow to meet with the Port Authority to inform the Port Authority that the 2nd Defendant had agreed to vacate Shop 11 in favour of Summus. Mrs. Glasgow failed and or refused to do so.
- [21] In November 2022, Summus communicated to Mrs. Glasgow it was ready to pay the remaining \$10,000. Summus also again requested Mrs. Glasgow to communicate to the Port Authority the Defendants intention to release Shop 11 to Summus. Summus relied on Mrs. Glasgow to inform the Port Authority of the Agreement to release Shop 11 to Summus. Mrs. Glasgow refused to give any confirmation to Summus.
- [22] On 29th March, 2023 Summus again caused to be prepared a bank draft in the sum of EC \$10,000 in favour of Mrs. Glasgow and informed her of its intention to pay the sum and repeated the request for her to inform the Port Authority of the agreement with Summus and hand over the keys to Summus. Mrs. Glasgow continued to refuse to inform the Port Authority and Summus decided not to pay the Defendants the remaining \$10,000. The Defendants have failed and or refused to grant Summus access to Shop 11. Summus has lost \$55,000 in addition to \$1,285.83.
- [23] Under cross-examination, Mrs. Marks testified that she was appointed Secretary of Summus on 21st February 2022. She was not a party to the discussions between Mr. Martinez and Mrs. Glasgow which took place in 2021. She was however aware of the correspondence of April 20, 2022, in which Summus offered to pay the Defendants \$65,000.00 for the release of Shop 11. Mrs. Marks agreed that the agreement was for Summus to pay the Defendants to vacate Shop 11 and Summus would apply to the Port Authority to lease Shop 11. Ms. Marks also agreed that the Defendants did not give any guarantee that the application would be successful. Several persons including Summus were on the waiting list to get a shop to rent at the Cruise Ship Terminal. Summus subsequently proposed to enter into a service agreement with the Defendants but the Defendants refused to sign the agreement and affirmed the April 2022 Agreement. Summus requested the Defendants not to vacate Shop 11 and Summus agreed to pay the rent while Summus pursued getting a lease of Shop 11. However, some of the rental payments were not made to Mrs. Glasgow since the Bank did not accept the payment. Ms.

Marks further agreed that pursuant to the April 2022 Agreement, the sum of \$10,000 which was due to be paid to the Defendants within six (6) months of April 20, 2022 being October 20, 2022, was not paid to the Defendants.

[24] Mrs. Marks also agreed that Summus now occupies a shop at the Cruise Ship Terminal but not Shop 11.

Defendants' Evidence

[25] Mrs. Glasgow testified that she is the managing Director of the 2nd Defendant. On March, 31, 2021 Mr. David Martinez introduced himself to her via WhatsApp indicating that he was the Managing Director of CanaSVG. She was not familiar with the entity. Mr. Martinez made an offer to purchase Shop 11.

[26] On April 29, 2021, Mr. Martinez made an offer of EC \$55,000. She met with Mr. Martinez on May 6, 2021, she explained she was not certain that she could sell her occupancy of Shop 11. Further discussions were held and they agreed a sum of EC \$65,000 with \$55,000.00 to be paid immediately and \$10,000 within six months.

[27] In October, 2021, she sent a signed Non-Disclosure Agreement to Mr. Martinez for him to sign. He signed same at the same time she received an offer letter from Summus' Attorney. She caused her Attorney to respond indicating that the \$65,000 was non-refundable and it was for the Defendants vacating the shop only. The payment was not a guarantee that Summus would be granted the Shop by the Port Authority as she had no control over such matters.

[28] In April 2022, she received the \$55,000 and she signed a Receipt and Release document prepared by Summus' Attorney Mr. Elliot.

[29] On June 1, 2022, Mr. Elliot submitted a new agreement titled "Service Agreement" which differed entirely from the April 2022 Agreement. She refused to sign same. Summus, by its Attorney subsequently requested her to remain in Shop 11. On June 28, 2022 she was requested by Summus not to submit her notice to quit to the Port Authority until Summus could regularize its application to the Port Authority. Summus agreed to pay the rent.

[30] Mrs. Glasgow further testified that she received from Summus two payments for rent totalling \$1,304.95 less 50.00 bank charges. She paid the \$1,254.95 to the Port Authority. She did not receive the \$10,000. In February 2023, she informed the Manager of the Port Authority

of her intention to vacate Shop 11 and she notified Summus to collect the keys from her Attorney and inquired of Summus about the outstanding sum.

- [31] In March 2023, Summus indicated that they would pay the outstanding rent directly to the Port Authority. It was agreed that Summus would present receipts to her Attorney. A representative of Summus presented the \$10,000 bankers cheque to her attorney but no receipts of the rent paid to the Port Authority. The Representative agreed to produce the receipts and return the Bankers cheque. The Defendants have not received the \$10,000 or the \$2,214.17 from Summus.
- [32] Under cross-examination Mrs. Glasgow agreed that she held discussions with Mr. Martinez and subsequently they executed a non-disclosure Agreement.
- [33] On April 20, 2022 Summus and the Defendants entered into an agreement. The terms of the Agreement provided for Summus to pay the Defendants \$65,000, of which \$55,000 was to be paid on April 20, 2022 and \$10,000 six months thereafter. It was agreed the Defendants would vacate Shop 11 and Summus would occupy same. Summus subsequently explained that they had experienced some difficulties with the Port Authority and Summus requested her to remain in occupation of the shop while they resolved their tenancy arrangement with the Port Authority.
- [34] Mrs. Glasgow further testified that she became aware Summus was experiencing difficulties in making payments to her account in October 2022. She agreed that the rent for Shop 11 was in arrears in November 2022. She did not disclose this to Summus as there was no need for her to do so. Her arrangement to pay rent was with the Port Authority. Mrs. Glasgow also agreed that Summus agreed to pay the outstanding rent directly to the Port Authority. However, she did not disclose to Summus what was the sum owing to the Port Authority.
- [35] Mrs. Glasgow agreed that she was aware that Summus had banking challenges and that they also had difficulties getting a lease from the Port Authority. She became aware of this after April 20, 2022, when the agreement was reached and she had received the \$55,000.00 non-refundable payments. She did not think that Summus would not be able to complete the tenancy arrangement for Shop 11.
- [36] Mrs. Glasgow also agreed that on 29th March 2023 she did not meet with the Port Authority and Summus in spite of Summus' request for her to meet with the Port Authority. She did not attend because she was not available. However, she did meet subsequently with the Port Authority but did not give the Port Authority any information concerning her agreement with Summus. Mrs. Glasgow also testified that she cooperated with Summus, she facilitated

negotiations with the Port Authority by encouraging Summus' Attorney to speak to the CEO of the Port Authority.

- [37] The issues to be determined by the court are firstly whether the Defendants breached the April 2022 Agreement and Secondly, on the counterclaim, whether Summus breached the said agreement and the Collateral Agreement.

Submissions

Claimant

- [38] Learned Counsel for Summus, Mr. Elliot submitted that the Defendants breached the April 2022 Agreement in two respects. Firstly, Summus having received permission in November, 2022 from the Port Authority to take over Shop 11 from the Defendants provided that the Defendants obligations to the Port Authority were met, notified the Defendants by email dated 15th November, 2022 of their arrears due to the Port Authority since the Port Authority would only permit Summus to occupy Shop 11 if they were paid. Secondly, by email dated 29th March 2023, Summus requested the Defendants to communicate the agreement of the parties to the Port Authority. Summus explained that the Port Authority required the Defendants to confirm their intention to release the tenancy to Summus. The Defendants failed to provide the information. In so doing the Defendants relied on the Non-Disclosure Agreement. The failure of the Defendants to provide the information resulted in Summus being unable to occupy Shop 11.

- (39) In relation to fraud, Mr. Elliot submitted that Mrs. Glasgow acted fraudulently when she failed to communicate the terms of the April 2022 Agreement to the landlord with full knowledge that if she failed to do so Summus would not get access to Shop 11. As a result of this inaction of Mrs. Glasgow the April 2022 Agreement could not be fulfilled and Summus suffered damage.

- (40) Summus did not willfully breach any of its' obligations. The Defendants choosing not to communicate with the Port Authority frustrated the agreement between the parties.

Defendants

[41] Learned Counsel for the Defendants Mr. Daniel submitted that the evidence of Ms. Marks does not show that the terms of the Agreement required Mrs. Glasgow to communicate the intention of the parties to the Port Authority. It was not the intention of the parties that the April 2022 Agreement was to be communicated to the Port Authority. The agreement was for the Defendants to vacate Shop 11 to give Summus the opportunity to enter a new and independent lease with the Port Authority. In accepting the offer made by Summus in its letter dated October 29, 2021 where Summus offered to purchase the space occupied by the Defendants. The Defendants in accepting Summus' offer notified Summus as follows:

"Ms. Glasgow accepts the offer with the clear understanding that the payment is in exchange for her vacating the premises only. Further, that the payment is not to be construed as a guarantee your client will be favoured over another applicant to replace her by her landlord. Mrs. Glasgow at no point held herself out to have the authority to influence that decision nor has she made any representation to that effect, nor has she induced your client to enter into the referenced agreement based on any such representation. Mrs. Glasgow also accepted the said payment with the clear understanding that the payment she is to receive does not represent rent for any remainder of the lease term or an advance to the landlord for rent or behalf of your client. The payment is for Mrs. Glasgow to vacate to allow your client the opportunity (but not the guarantee) to negotiate a fresh and independent lease with her landlord.

We would be grateful if the spirit of the terms and conditions under which Mrs. Glasgow wishes to accept, as detailed in this letter are reflected in a redraft of the agreement for her execution."

[42] Mr. Daniel submitted that Summus did not reject the terms outlined above.

Discussion

[43] I agree with the submissions of Mr. Daniel. The terms of the offer of Summus as outlined in its Attorney's letter of 29th October 2021 reads as follows:

"Dear Madam,

Re: Offer Letter

We write on behalf of our client SUMMUS Limited, a company incorporated within our jurisdiction.

Our Client is desirous of purchasing your space at the Cruise Ship Terminal and we have been informed that you are willing to sell same. We therefore submit this offer subject to any existing terms of lease.

Should you accept this offer in the sum of EC\$65,000.00, EC\$55,000.00 being an upfront payment and remaining balance EC\$10,000.00 to be paid six (6) months after the first payment. Kindly respond in the affirmative, and should you have any further questions or concerns with respect to the foregoing, please do not hesitate to contact the undersigned.

Yours faithfully

A.G.Elliot Attorneys"

- [44] The Defendants having accepted the offer as outlined above, the sum of \$55,000.00 was paid to the Defendants on April 20 2022 and the parties signed an acknowledgement and release which reads as follows:

"KNOW ALL MEN BY THESE PRESENTS that I KIMYA GLASGOW of NEW MONTROSE St. Vincent and the Grenadines in consideration of the sum of FIFTY-FIVE THOUSAND EASTERN CARIBBEAN DOLLARS (EC\$55,000.00) paid to me by SUMMUS LIMITED receipt of which I do hereby acknowledge, do release the premises that I hold at Cruise Ship Terminal, identified as SHOP 11 and leased by KIMYA GLASGOW INC. unto the said SUMMUS LIMITED for their lawful occupation which is not to be determined by me.

This Receipt and Release Notice does not discharge the said SUMMUS LIMITED from their further obligation to pay me the additional sum of TEN THOUSAND EASTERN CARIBBEAN DOLLARS (EC\$10,000.00) in six (6) months of the date hereof as agreed in writing."

- [45] When the above documentary evidence which is not disputed, is taken into consideration, at no time did the parties agree that Mrs. Glasgow would give any notification of the Agreement or any part of the Agreement to the Port Authority. Indeed there was no agreement for Mrs. Glasgow to take any action or assist Summus in any way in obtaining a lease from the Port Authority in relation to Shop 11 or any other space at the Cruise Ship Terminal. Further, the

Defendants were not required to disclose any aspect of their rental arrangement with the Port Authority to Summus. These matters arise because Summus was having difficulties getting a lease arrangement settled with the Port Authority.

- [46] The evidence of Ms. Marks on behalf of Summus does not support Summus' claim of breach of contract. Indeed the evidence as a whole including the documentary evidence adduced by both sides does not support Summus' claim.

The Collateral Agreement

- [47] Learned Counsel Mr. Daniel referred the Court to commentary by Jiam Jun Liew **In Defence of Ingram v Little: Understanding Collateral Offer and acceptance** 2017 p 34, in relation to the principles governing collateral agreements and submitted that a collateral contract is a secondary contract, its existence is premised on the primary contract. Learned Counsel further submitted that the evidence shows that subsequent to June 22, 2022 when the Defendants notified Summus that they intended to vacate Shop 11, Learned Counsel for Summus requested that the Defendants continue in occupation of Shop 11 while Summus resolved their arrangement with the Port Authority and Summus would pay the rent for Shop 11. Further the Defendants sought and received confirmation from Summus, that the Defendants would not be in breach of the April 2022 Agreement. Mr. Daniel refers to the following excerpts of correspondence from Counsel for Summus which were exhibited at the trial:

" the rent would be paid by Summus (\$700.00) and there is no obligation on Mrs. Glasgow to do ANYTHING at all except to keep the tenancy. For all intent and purpose, she cannot and will not be expected to operate, or act on behalf of, or to do anything for Summus, besides keep her tenancy intact."

Also:

"1. It is fully understood that there has already been consideration to Mrs. Glasgow and that Mrs. Glasgow has fulfilled her obligation to Summus.

2. It is understood that Mrs. Glasgow is not in breach of any obligation as it is my client who urgently and humbly requests that Mrs. Glasgow remain in legal occupation of the premises. My client asks Ms. Glasgow not to submit her notice to quit until such time as my client can regularize its position in relation to the application it has made for tenancy."

[48] Mr. Daniel submits that the above evidence shows that the collateral agreement was for the Defendants to remain in occupation of Shop 11 and Summus would pay the rent. The Defendants only remained in occupation of Shop 11 at the request of Summus. The Defendants at no time denied Summus access and or entry to Shop 11. Further, Learned Counsel also referred to the Defendants letter to Summus dated June 22, 2022 rejecting a "service agreement" proposed by Summus which was adduced in evidence:

"...the Defendants did not wish to enter into a fresh agreement. I am instructed to report that my client is holding firm to the original terms of the agreement and is positioned to vacate the promises.

Please provide the date you wish to be in occupation so that the relevant notice can be forwarded to the Port Authority. We propose to give notice soonest to alleviate expenses for rent.

[49] Learned Counsel submitted that the Defendants at no time refused to vacate Shop 11. There was a valid collateral agreement between the parties. This agreement was binding.

Discussion

[50] I agree with the submissions of the Defendants. Both the oral and documentary evidence support the Defendants' position. It was clearly as a result of Summus' request that the Defendants not give notice to the Port Authority and Summus agreeing to pay the rent, that the Defendants remained in occupation of Shop 11. Further, the evidence shows that Summus did pay the rent until they experienced banking difficulties. The evidence shows that the Defendants were willing to vacate Shop 11 at the material time in keeping with the April 2020 agreement.

Loss of Revenue

[51] In relation to Summus' claim for loss of revenue of EC\$3,000 per month from November 2022 being nominal damages for loss of profits they would have made if permitted to occupy the shop, Learned Counsel Mr. Daniel submitted that it is well settled that special damages must be pleaded and particularised. Summus has not provided any evidence of its loss. I agree. This claim by Summus was not supported by any evidence.

[Fraud]

[52] In relation to fraud, Mr. Daniel submitted that Summus has failed to meet the requirements of fraud as outlined in **East Pine Management Ltd. v Tawney Construction Ltd, William Denny and Others v Sir Henry William Peek** (1889] 14 App Cas 337 and **ECO3 Capital Limited et al v Ludsin Overseas Limited** [2013] EWCA Civ 413 where the English Court of Appeal outlined the four ingredients of deceit as it relates to contract law:

- "(i) The Defendant makes a false representation to the Claimant.
- (ii) The Defendant knows that the representation is false, alternatively he is reckless as to whether it is true or false;
- (iii) The Defendant intends that the Claimant should act in reliance on it; and
- (iv) The Claimant does act in reliance on the representation and in consequence suffers loss.

[53] There is no evidence of false representation.

[54] Learned Counsel reiterated that neither the terms of the April 20, 2022 Agreement nor the Collateral Agreement required the Defendants to give notice of the April 20, 2022 Agreement to the Port Authority nor did Mrs. Glasgow at any time inform Summus or by her action led Summus to believe that the Defendants were going to disclose the April 20, 2022 Agreement or any aspect of the said Agreement or the Collateral Agreement to the Port Authority or to anyone. I agree.

[55] While Summus made allegations of fraud, its lone witness Ms. Marks did not give any evidence to support the claim of fraud.

Counterclaim

[56] In relation to the counterclaim, Mr. Daniel submitted that the Defendants' evidence showed that they are owed a sum of \$10,000.00 under the April 2022 Agreement and \$2,214.17 pursuant to the Collateral Agreement being outstanding rent. There is no evidence from Summus which contradicted the Defendants evidence that the sums are due and owing. I agree. Indeed Ms. Marks acknowledged that the sums were owed to the Defendants.

[57] In view of my earlier finding that the Defendants were not in breach of the April Agreement or the Collateral Agreement, I find that the Defendants counterclaim succeeds and Summus is liable to pay the Defendants \$10,000.00 pursuant to the April 2022 Agreement and \$2,214.17 being rent which they would have incurred pursuant to the Collateral Agreement, in which Summus agreed to pay the rent incurred by the Defendants continued occupation of Shop 11 while Summus continued discussions with the Port Authority.

Conclusion

[58] In conclusion for the reasons set out above, I find that Summus' claim was unmeritorious. The evidence shows that the Defendants were not in breach of the April Agreement or the Collateral Agreement. Further, Summus failed to adduce any evidence in support of its allegations of fraud.

[59] The evidence in relation to the counterclaim was not disputed. The evidence clearly showed that the outstanding sum of \$10,000 was not paid to the Defendants and the entirety of the rental sums pursuant to the collateral Agreement was also not paid to the Defendants leaving an outstanding sum of \$2,214.17.

Costs

[60] Learned Counsel Mr. Daniel submitted that costs should be awarded to the Defendants on both the claim and the counterclaim. I agree. The general rule is that the successful party is entitled to its costs. I can find no reason to depart from the general rule and none has been advanced by Summus. The Defendants having succeeded in defending the Claim and having also succeeded in relation to the counterclaim are entitled to be awarded costs.

Order

[61] **It Is Ordered:**

1. The Claim is dismissed
2. Judgment is granted to the Defendants on the counterclaim.

3. The Claimant shall pay the Defendants damages in the sum of \$10,000 and the sum of \$2,214.17 being the outstanding rent. The Claimant shall pay the Defendants interest on the sum of \$12,214.17 at the rate of 5% percent per annum from the date of the judgment until payment in full.
4. The Claimant shall pay the Defendants prescribed cost unless costs is agreed by the parties.

Gertel Thom

High Court Judge (Ag.)

By The Court

Registrar