

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES**

IN THE HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV2014/0176

BETWEEN:

**NICOLE HOLAS
(T/A Nicki and Daughters)**

Claimant

and

AIDEN HANNIBAL

Defendant

Appearances:

Ms. Aniyka Johnson for the Claimant

Ms. Pauline Hannibal for the Defendant

2015: December 4

JUDGMENT

[1] **AZIZ, J.:** The claimant, Nicole Holas, of Mt. Rose, filed a claim form and a statement of claim on April 10, 2014, being the owner and manager of the business registered as "**Nicki and Daughters**" and claimed against the defendant, Aiden Hannibal, of Pearls, the following:

1. General Damages occasioned by the claimant as a result of the defendant's breach of the provisions of the Rent Restriction Act CAP. 286 of the 2010 Revised Laws of Grenada.
2. Aggravated Damages occasioned by the claimant as a result of the defendant's wrongful and unlawful interruption of the electricity supply to the claimant's business, which said business is situated in premises owned by the defendant and rented to the claimant.

3. Special Damages in the sum of EC\$8,500.00 being payment for the use of electricity by the defendant his servants and/or agents.
4. An injunction restraining the defendant, his servants and/or agents howsoever named, permanently, from committing the following acts:
 - a) Tampering with the electricity meter, which services the property, the subject matter of these proceedings, as the same is described in the schedule hereto (hereinafter called **‘the said property’**);
 - b) Using obscene, threatening and/or abusive language towards and in the presence of the claimant, her family members, their servants and/or agents and the customers of the claimant’s business;
 - c) Harassing the claimant, her family members, their servants and/or agents and the customers of the claimant’s business.
5. An order directing the defendant to restore forthwith the electricity supply to the said property.
6. A Declaration that the claimant is not indebted to the claimant for rents for the said property for the month of March 2014.
7. Such further order or relief as this Honourable Court deems just.
8. Costs.

[2] On the 13th May 2014, the defendant filed a defence and counterclaim. It became clear from the pleadings and during the course of the evidence at trial, that there was a written tenancy agreement¹ between the claimant and the defendant. The tenancy agreement stated that:

1. *“The Landlord hereby demises unto the tenant a supermarket space approximately 3000 sq. ft. for a supermarket and a restaurant situate at*

¹ Dated the 19th May 2011

Pearls, in the Parish of St Andrew in the State of Grenada, to be used for business premises subject to the following terms and conditions:

- a) The Tenancy shall be for a term of Five (5) years commencing from the 1st day of June Two Thousand and Eleven at the rent hereinafter reserved payable therefore monthly in advance.*
- b) The rental fee of Six Thousand Dollars (\$6000.00) should thereafter be paid in advance to cover two months rent for the supermarket and one (1) month's security deposit, the receipt whereof the Landlord hereby acknowledges and shall continue monthly in advance for every subsequent month thereafter.*
- c) The rent shall be One Thousand Five Hundred Dollars (\$1500.00) per month for the supermarket until the restaurant is ready after which the rent shall be Three Thousand Dollars (\$3000.00) per month payable monthly in advance and should be paid promptly to the Landlord.*

2. The tenant for herself and assigns throughout the term hereby create covenants with the landlord as follows:

- a) To purchase the present stock in the supermarket, with access to two (2) deep fridge, one (1) electronic scale, security camera, two (2) stand up coolers, cash register, and metal shelving.*
- b) To pay all electricity bills and water rates as they may be assessed and charged from time to time from the demised premises by the proper authorities*
- c) To pay the rent hereby reserved on the days and in the manner aforesaid; failure to do so can lead to termination of the same by the Landlord with immediate effect."*

[3] There were clear issues of dispute in relation to the demised premises, as in the statement of claim, the claimant indicated that the property was a three-storey

concrete structure. The bottom storey of the building is a garage and on the top storey are living quarters or an apartment. The middle storey measures some 3000 sq. ft. and houses the claimant's supermarket business. The defendant in his defence indicated that the middle storey does not measure 3000 sq. ft. but much more. The defendant states that "3000 sq. ft. of the middle floor²" is rented to the claimant. The defendant states that he had retained possession of two sections of the middle floor, one to the right of the supermarket which the defendant uses for storage and one to the left which the defendant did not rent to the claimant, but the claimant has without the defendant's authorization, been using to store stocks and furthermore has been using the toilet facilities although she has her own toilet facilities available.

- [4] There was also another point of contention as far as whether anyone was living on the top floor or the bottom floor of the building. The defendant maintained that he always occupied the top floor as the said top floor of the building was the defendant's residence.
- [5] These are matters that will become more relevant a little later on as there is an issue as to outstanding electricity bills and which party was to pay for electricity based on meter readings and also included is the issue concerning the installation of a new meter. The defendant in his defence pleaded that he also occupied the bottom storey of the building where he had a block making plant from 2008 to May 2011.
- [6] There is agreement between the parties that there were arrears owed on the electricity meter(s). The claimant, by her statement of claim, sets out that it was after the tenancy agreement was executed that the issue of arrears arose, and furthermore that there was only one working electricity meter. It was at the stage, after the agreement was executed, that the issue of the shared meter arose. The

² Pg. 19 of Core Bundle No. 1, Pg. 19, Defence and Counterclaim, paragraph 3

defendant pleaded in his defence that the issue of arrears did come up, but before the tenancy agreement was executed.

- [7] There is also disagreement between the parties about \$250.00 that would be paid towards the electricity bills. The defendant says that he never discussed or agreed to pay \$250.00 towards the electricity bill, whereas the claimant states that the defendant agreed to pay \$250.00 to her as a contribution towards the electricity bill as he was living on the top floor.
- [8] As far as the electricity accounts are concerned the claimant indicated that she had paid for outstanding bills and arrears as the defendant had other property with electricity accounts in severe arrears.
- [9] It was pleaded that in February 2014, Grenlec had taken the decision to disconnect all other accounts in the name of the defendant until all of the arrears had been paid. The balance on the other buildings was \$6,509.08, and at this time the claimant says that the amount owed on her account was \$1,069.98, as a result of which \$5,500.00 was paid, along with a further \$2,305.53. Once this payment had been made, the electricity supply was reconnected. The defendant has not said very much about this in his defence, other than he puts the claimant to strict proof of paragraph 20 – 33 of her statement of claim, which deals with this issue.
- [10] There is a further dispute between the parties in relation to stock, which the defendant had agreed to sell and the claimant agreed to purchase. The claimant suggests that the stock was counted and valued at \$35,000.00 and the sum of \$25,000.00 was paid to the defendant for the existing stock. The defendant in his defence sets out that the stock was valued at over \$50,000.00 and agreed that the sum of \$25,000.00 was paid. What is agreed is that whether it was by way of a discount or whether the value on the goods was \$35,000.00 and \$25,000.00 was paid towards that amount. What was owing for goods was \$9,993.00.

- [11] There was also dispute over a further payment of \$1,800.00 for the said stock leaving a balance of \$8,193.00.

Counterclaim

The Defendant's counterclaim is as follows:

1. The Defendant repeats paragraphs 1-20 of the defence and states that the claimant violated the terms of the tenancy agreement pursuant to which the defendant accepted her as a tenant and the defendant has suffered loss and damage as a result of the claimant's said breach.
2. Paragraph 1 (b) of the tenancy agreement dated 10th May 2011 provides that the rent of \$3,000.00 per month shall be paid monthly in advance promptly to the Landlord. The claimant has caused the rent to fall into arrears and last paid rent in February 2013 for that month of February 2013. The claimant is owing rent for the period March 2013 to present in the sum of \$42,000.00.
3. At paragraph 2 of the said tenancy agreement, the claimant agreed to purchase the stock in the supermarket and the claimant has failed to honour the terms of the agreement paying only \$25,000.00 towards the said stocks. The claimant executed a promissory note on 21st June 2011 agreeing to pay the balance of \$9,993.00 by 21st August 2011 but failed to do so and the sum of \$9,993.00 is still owing to the defendant for stocks by the claimant.
4. The claimant under paragraph 2(b) of the agreement committed to pay electricity and water rates as charged from time to time. When the claimant took the premises in May 2011, the arrears on the electricity bills were \$1,067.67. The claimant allowed the bills to accumulate to the point where the service was disconnected at least 5 times. The service remains on the defendant's name and the defendant would be liable to the electricity company for any amounts consumed by the claimant and not paid for by the claimant. The claimant refused to sign the paperwork for transfer of the meter on the claimant's name.

5. The claimant failed to pay the half share of the water rates and her last payment was February 2013 in the sum of \$174.12. As a result, the service was disconnected for arrears in June, 2013. The defendant claims that the claimant pay the said arrears of \$1,249.04 and reconnection fee of \$86.25 making a total of \$1,335.29.
6. The claimant has without the defendant's consent dismantled and removed from the front of the supermarket the burglar proof gate which the defendant had there and has damaged same in the removal process. The claimant left in place only the inner door. The claimant damaged two other doors in the tenanted premises which the claimant failed to replace. The claimant drilled holes in the mahogany door and put large tower bolts in an expensive aluminum door in the premises. The claimant damaged it when she drilled same and put larger tower bolts. It will cost the defendant \$1,323.00 to replace the iron burglar proof gate and \$2,453.93 to replace the other two doors.
7. The claimant has without the defendant's consent removed the lighting fixtures and placed surface wiring and her own light fixtures in the supermarket.
8. The claimant has been dumping her garbage on the defendant's land in the back of the defendant's building and the claimant and her agents and workmen have been incessantly walking on the roof of the defendant's garage which is located to the back of the building on the ground level thereby causing the galvanized roof to leak from the damage caused by the constant weight from their walking.
9. The defendant gave the claimant permission to place a gas cage outside the building for storing cooking gas for sale. The claimant refused to have it located outside the building where the defendant gave her permission to do so and has placed it adjoining the defendant's building where there is risk of damage or destruction of the building in the event of a cylinder explosion.
10. The claimant has, after the electricity service was disconnected due to non-payment, installed a generator inside the building from which to generate electricity. The claimant has placed this generator in the building in an area

which is immediately below the defendant's bedroom. The poisonous gases are emitted from this generator into the defendant's bedroom making it impossible for the defendant to use the bedroom. The defendant has on numerous occasions spoken to the claimant about the matters complained of herein and asked her to remedy the breaches but she has refused to do so.

11. On the 11th day of April 2014 the defendant instructed his Attorney-at-law to serve notice to quit on the claimant on account of the breaches including the rent owing of over Forty-Two Thousand dollars. The said notice to quit was done on 12th April, 2014 and served on the claimant on 22nd April, 2014."

12. Vacant possession.

13. Arrears of rent in sum of \$42,000.00 from March 2013 to April 2014.

14. Mesne Profit in sum of \$3000.00 per month from April 2014 till delivery of premises.

15. \$1,335.29 for reconnection fees and arrears of water.

16. Special Damages of \$3,776.93 for replacement of doors and fixtures damaged.

17. Immediate ceasing of using areas that are not within the 3000 sq. ft. allowed.

18. Payment of balance of stock in sum of \$9,993.00.

19. Interest.

20. Costs.

EVIDENCE AT TRIAL

Tricia Holas

[12] Tricia Holas, was tendered for cross-examination. Tricia Holas is the daughter of the claimant. As far as the rent was concerned, Tricia was able to say that she worked with her mother ever since the supermarket began in May 2011, making decisions, doing the stock and involved in the buying and selling of stock. She knew that the monthly rent was \$3,000.00 and also stated firmly that the rent was paid in cash. Tricia Holas stated that the rent was paid either by herself or her mother. The rent was paid to Mr. Aiden Hannibal, the defendant, and she (Tricia)

had paid the rent 6 or 7 times. As far as receipts for rent were concerned, Tricia Holas indicated that she had collected some of the receipts but not all, and was honest in saying that she was not sure if her mother, the claimant, had collected all receipts in 2012.

[13] Tricia Holas further indicated, and quite adamantly, that she could state that all the rent was paid to the defendant up to 2014. The following is an extract of the evidence, which helps in determining the witness's credibility.

Q. Did you get all of the receipts for the rent in 2011?

A. Yes.

Q. Did you get all of the receipts for the rent in 2012?

A. No, my mother collected those.

Q. Do you know if your mother collected all of the receipts for payments in 2012?

A. No, I don't know.

PUT: You do not know if all the rent up to 2014 was paid to Mr. Hannibal?

A. Yes, I do know, he collected the rent up to 2014.

Q. Did you pay all of those rents?

A. No, I did not.

Q. Did you receive receipts for the rent up to 2014?

A. No, I did not.

Q. Were you present every time your mother paid rent?

A. No.

PUT: Because you were not present when all the rent was paid, and did not pay all the rent, you cannot say it was paid?

A. Yes, I can.

Q. Are you aware that Nicole Holas has all receipts for up to 2012?

A. All receipts up to & to 2014 paid to the Attorney.

PUT: Your mom has receipts only up to February 2013, because that is what she paid.

A. Not true

- [14] When Tricia Holas was asked about the rent for 2014, she was open and honest and indicated that she had not paid that rent but indicated that it was her mother. When questioned about the manner in which the defendant, Mr. Hannibal, had come in and demanded rent in a loud and aggressive manner, Tricia Holas denied this, and reiterated that the rent had been paid.
- [15] Upon re-examination, Tricia Holas confirmed that the claimant had receipts up to February 2013 and then from November 2014 to present, for rent which had been paid through her mother's attorney.

Sean Alexander

- [16] Sean Alexander was the next witness called on behalf of the claimant. He was cross-examined on the contents of his statement filed on the 16th January 2015. He indicated that he was employed from September 2012 in the supermarket but would normally get there at about 6:00 p.m., but there were days when he would go during the day so he could say what was happening at the business. Mr. Alexander stated that if he was up at the supermarket during the day he would offload heavy goods when the trucks came, as he would be called either by Tricia Holas or Ms. Holas. Mr. Alexander indicated that he would regularly see Mr. Hannibal come for his rent, this was later qualified to seeing him three times. Many of the transactions that he witnessed were in 2013.
- [17] Rather interestingly, when one considers the claim and the counterclaim, there are certain amounts of damages claimed for breach of the tenancy agreement. Mr. Alexander in his witness statement described several incidents of vandalism, including urinating on items in the supermarket, breaking of security lights and other lights of the supermarket.

[18] A plan was set to discover who the perpetrator(s) was or were, and Mr. Alexander and the claimant locked themselves in the supermarket. On the morning of the 13th June 2014, footsteps were heard coming downstairs from the apartment above the supermarket where the defendant resided. Mr. Alexander saw the defendant throw a bucket of liquid, which turned out to be urine, through the window into the storeroom. Mr. Alexander was soaked with urine, together with goods in the supermarket. This all forms part of the course of conduct and harassing behaviour experienced which contributed to the bad relationship between the claimant and defendant, and also the claim for damages.

[19] I note that none of this part of the evidence of Mr. Alexander as set out above was challenged on behalf of the defendant.

Calisha Jones

[20] The next witness who gave evidence for the claimant was Ms. Calisha Jones. Her evidence was that she had been employed with the business from August 2012 up to presently.

[21] Her evidence was that:

“Since the time that I have been employed with Nicki and Daughters, I had observed the relations which take place between my employer Nicole Holas and Mr. Aden Hannibal, who I am told is the owner of the building where the supermarket is located.”

Ms. Jones further stated:

“I have regularly observed that Mr. Hannibal would come to the supermarket to collect his rent monies. I have observed on several occasions that Ms. Holas seems to be paying him those monies in cash as far as I have seen. I am sure that I have not seen every occasion when this transaction has taken place but I have seen many. I have

definitely observed that transaction taking place many times in 2013 as well.”³

[22] Ms. Jones also had provided evidence about the threatening language and behavior that she had witnessed from Mr. Hannibal in respect of rents for February and March 2014. There was also an incident in April 2014 where Ms. Jones witnessed verbal threats of violence such as Ms. Holas being threatened by Mr. Hannibal to kill her and/or to shoot her. Ms. Jones also had to clean the urine that was thrown into the supermarket “several times” in the June 2014. Ms. Jones also was the person who locked Ms. Holas and Mr. Alexander in the supermarket to investigate the occurrences of vandalism.

[23] When cross-examined by Ms. Hannibal, Ms. Jones was sure that the money was paid, but when her statement was put to her about “seems to be paying those monies in cash”, Ms. Jones indicated that she was not always there when the money was paid in cash. Ms. Jones also did not know if the rent was always paid on time, and accepted that the argument between Ms. Holas and Mr. Hannibal was due to rent.

Nicole Holas

[24] The evidence-in-chief by Ms. Holas was that she was the owner and operator of the business “Nicki and Daughters” which is a supermarket. The defendant was the owner of a three-storey building situated at Pearls, and the supermarket was on the middle floor measuring approximately 3000 sq. ft. The bottom storey was a garage and the top storey was a living area or apartment.

[25] The tenancy agreement between Ms. Holas and Mr. Hannibal was entered into in May 2011 and she avers that no one was occupying the top or bottom storey of

³ Pg 54 of Core Bundle No.2 – Witness Statements

the building. The parties agreed to the rental of the building for the **purposes of a supermarket**. The rental agreed was \$3,000.00 per month.

Electricity

- [26] The claimant indicated that after the tenancy agreement had been drawn up, Mr. Hannibal informed her that there was only one electricity meter working in the building and also that there were arrears on the other electricity meters which had to be cleared up. Ms. Holas indicated that she was informed that the top and middle floors would have to share one meter.
- [27] The claimant through her evidence-in-chief indicated that it was agreed orally that she would pay the electricity in respect of the shared meter but that the defendant Mr. Hannibal would pay the sum of \$250.00 for his use of the electricity as he was using the top floor of the building. The claimant believed that the defendant was or would not be living on the top floor but sometime in 2012/2013 the defendant moved his daughter and her family into the top floor apartment and as a consequence says Ms. Holas, the electricity consumed was more than agreed upon.
- [28] Ms. Holas also says that she paid the electricity directly to Grenada Electricity Services Ltd "Grenlec." The bills never came in Ms. Holas' name, so in order to pay the bill she would go to Grenlec and make payments there. This is something the claimant says that she was forced to do every month, until she finally got her own meter on or around the 5th August 2014, without having the defendant append his signature to the authority. The claimant says that she never knew about the arrears and it was only when she attended Grenlec at the end of her first month of occupancy that she was made aware of arrears in sum of \$2,159.83. The arrears and reconnection fee amounted to \$2,229.83.

- [29] The claimant states that for at least 34 months prior to the filing of the claim she was the only one who paid on the electricity bill. The claimant states that for those 34 months she never received the \$250.00 per month and therefore the defendant owes her \$8,500.00 (\$250.00 x 34).
- [30] On the 26th February 2014, Grenlec disconnected the electricity on the basis of a “transferred balance.” This was explained to the claimant as the defendant owing money on several accounts so that Grenlec had taken the decision to disconnect electricity to all accounts in the name of the defendant. The balance of arrears on all other accounts was \$6,509.08. The amount due on the account used by the claimant was \$1,069.98. The claimant says that she paid Grenlec \$5,500.00⁴, and then a further \$2,305.53⁵ as Grenlec had indicated that all of the arrears needed to be paid off. In the meantime the claimant had to operate with a generator.
- [31] The claimant indicated that in March 2014, the defendant demanded rent and the claimant had informed him that she had paid off the arrears of the electricity bills to which the reply was that he would “deal with me.”
- [32] In or around the 8th April 2014, the claimant says that the defendant interfered with the electricity wires and cables. There was a risk of all the foods in the freezer going bad, and the claimant had the use of a generator, which got the lights going. The claimant states that the defendant would come to the supermarket while people were shopping and be loud and make demands for his money, including using words like wanting his “fucking money”. The claimant then received reports and complaints from female customers that the defendant would walk around them, and touch them.

⁴ See Page 18 of Core Bundle 2- Receipt “NH4” from Grenlec in sum of \$5,500.00 on 26th February 2014.

⁵ See Page 17 of Core Bundle 2 – Receipt “NH3” from Grenlec in sum of \$2,305.53 on the 27th February 2014.

[33] On the 9th April 2014, there was an interruption of electricity to the premises and this was reported to Grenlec who checked and found no disconnection to the premises on their part. An investigation revealed that a cable between the meter and the premises had been cut, and the claimant sought legal assistance, whereby an injunction was granted on the 10th April 2014, against the defendant. The defendant was restrained from tampering with the electricity meter which serviced the property, using obscene, threatening and abusive language towards the claimant, her family, their servants and/or agents and customers of the business and from harassing the claimant, her family members, servants and/or agents and the customers of the claimant's business.

Stock

[34] The claimant also agreed to purchase the stock⁶ from the defendant as he also had run a supermarket business. The claimant says that the stock was counted and valued at \$35,000.00⁷. The claimant indicated that customers began to complain about the goods/stock purchased, and the claimant soon came to realize that the perishable items were not good. An explanation was sought and the claimant was informed by the defendant that he would turn the freezers off at night and turn them on in the morning when he re-opened for business as this was an energy conservation method. The claimant says that she paid \$25,000.00 towards the purchase price of the stock, which left a balance of \$9,993.00. This is evidenced by a receipt⁸ marked "NH2". The claimant also says that she paid a further sum of \$1,800.00 towards the price of the stock but never received a receipt. Interestingly there is a receipt dated the 5th November 2011, but it has not been properly copied and only the date is showing from the receipt book, nevertheless the claimant says that she never received a receipt for that payment.

⁶ See Tenancy Agreement "NH1" – Pg 14 Core Bundle 2, Paragraph 2(a)

⁷ See Pg 3, Paragraph 19 of Core Bundle 2 – Witness Statement of Nicole Holas

⁸ See Page 16 of Core Bundle 2 – Receipt dated 21st June 2011

[35] The claimant also says that she runs a karaoke bar/restaurant on the weekends. The tenancy agreement does allow for a restaurant⁹. The claimant says that the defendant would be disrespectful to her and shout at her in the presence of customers. Furthermore, there ought to have been a security camera as part of the agreement. The claimant suggested that there was a camera but the monitor was in the upstairs apartment where the defendant resided and therefore of no benefit to her.

Claimant's cross-examination

[36] The evidence was strongly tested by Ms. Hannibal during her cross-examination of the claimant. Ms. Holas was consistent throughout various areas of her evidence. It was clear that 3000 sq. ft. of the middle floor was rented and the claimant remained sure that she only used the space rented to her and nothing else, not the storerooms, toilets or any other area that was not rented to her.

Agreement

[37] The claimant was clear that she took full possession on the 1st May 2011, and that she partly took possession before signing of the lease. It seems to be the case that there was cleaning, counting of stock and preparation taking place for the opening of the supermarket in June 2011. The claimant was adamant that the defendant held the keys and would open and close the premises, and that Mr. Hannibal, the defendant, was present every day. The business opened on the 1st June 2011.

[38] Counsel Ms. Hannibal referred the claimant to the tenancy agreement and in particular Clause 2(b), which referred to paying all of the electricity bills. When asked about what that meant, the claimant stated that she would use what she paid for, and that there was also an agreement for a second meter. The claimant

⁹ See Page 14 of Core Bundle 2 - Tenancy Agreement, paragraph 1(c)

was asked about the payment for the stock and agreed quite truthfully that she paid \$25,000.00 and that there was a balance of \$9,993.00, which was to be paid by August¹⁰ 2011. The claimant was furthermore very clear and forthright when she agreed that she had not honoured that agreement.

[39] Counsel Ms. Hannibal then put to the witness that the new meter was not installed because a balance of money for the stock was still owing, therefore Mr. Hannibal (the defendant) did not have enough money. The claimant replied that the goods purchased should have had the lifetime indicated or there should have been receipts to evidence the lifetime. The claimant said that there were no receipts and that within a short time the perishable items purchased from the defendant were spoilt and customers were returning the items. The sanitary napkins had mildew, boxed cereals had weavels and cobweb, vegetables were sour, and chicken was blue. The defendant had seen the spoilt items in the supermarket storeroom. The claimant stated that when she brought this to the attention of the defendant, he intimated that he would do a reduction, although there was no figure agreed. This, the claimant stated, was soon after she had opened the supermarket. She took notice of the spoilage between June and August 2011.

[40] Counsel for the defendant referred the claimant to a letter¹¹ outlining monies owing for the stock in the sum of \$9,993.00, which the claimant confirmed she had received and had responded to verbally. The claimant denied first raising the issue of spoilt goods after the matter had been brought to the court. The claimant confirmed that she had paid the defendant personally \$1,800.00 towards the amount owed for the stock, and that she never received a receipt for that payment.

Water

¹⁰ See Page 69 of Core Bundle 2 – Agreement to pay balance by 21st August 2011

¹¹ See Pg 70 of Core Bundle 2 – Letter from Joan Vincent-Christopher, paralegal and Justice of the Peace

[41] When the claimant was cross-examined in relation to NAWASA, she agreed that she had honoured the agreement and paid the water rates. The claimant had last paid water in February 2013. It was put to the claimant that she had been disconnected as she was in arrears, and very quickly, the claimant indicated that she had provided the money for that NAWASA bill to the defendant, but could not recall when was the last time she had given money to the defendant.

[42] The claimant was asked about her statement¹² in relation to the defendant's family moving into the premises. Counsel for the defendant suggested that the family were there for a few days, but the claimant was suggesting that they were living there for a lot longer, in fact it was approximately eight months that the family resided in the premises.

[43] The claimant was then asked about the Grenlec billing, as the claimant indicated that she was due for disconnection. The claimant stated that she had three working days to pay for the arrears otherwise she would be disconnected, and that she mentioned this to the defendant. The claimant also accepted that there were disconnections for failure to pay bills, in fact there were returned cheques for insufficient funds.

[44] As far as arrears were concerned, the claimant agreed that there were arrears in June/July 2011, and it is noted that her business started on the 1st June 2011. The following questions are important in the scheme of things:

Q. You started business on 1st June 2011?

A. Yes.

Q. Therefore the arrears would have accumulated before June?

A. Yes.

¹² See Pg 2 of Core Bundle 2 – Witness Statement, Paragraph 13

Payments to Grenlec

[45] The claimant was referred to the Grenlec billing information¹³ which showed the billing cycle and the payments towards the account and the relevant balances. One of the points of contention seemed to be the balance on the 14th June 2011, which was \$1,067.67. This was after a payment of \$926.05 on the 14th June 2011, which the claimant confirmed was not a payment made by her. This balance of \$1,067.67 the claimant said was for a previous billing month, as she stated the billing period cycle commences on the 23rd of June.

[46] There were matters raised about various violations of the agreement. One such matter was in relation to the storage of gas cylinders. The claimant indicated that it was implied in her tenancy that as a supermarket business she was entitled to sell gas. The claimant indicated that she was never told not to store gas inside or in the adjoining building. As far as gas cages were concerned, the claimant indicated that after the gas cages had been put in place, the defendant said that they should not be next to the building. The claimant indicated that she had not made any effort to remove the gas cages as they had been put in place using a truck hoist and approved by Mr. Hannibal, the defendant. There was never any request to remove the gas cage as a fire hazard.

[47] The claimant was referred to the letter from Joan Vincent at page 70 of the trial bundle and further referred to paragraph 3, referring to gas canister storage, it states:

“All gas sold by you must not be stored inside the building but in a storage cage outside.”

[48] In reply to the question about storing gas cylinders by Counsel for the defendant, the claimant stated that she was told that Mr. Hannibal was not insured (for the

¹³ See Pg 78 Core Bundle 2 – Grenlec billing information

canisters inside) but that she had to put them outside and that's what she did. Ms. Holas indicated that the cages are standing on their own, but they are close to the building. There were two cages as one other had been installed in December 2014.

[49] As far as garbage was concerned, the claimant was adamant that she was never walking on the roof to deposit any garbage on the defendant's land and in fact she stated that she is afraid of heights. There was also no need to walk on the roof to deposit water as the defendant had also provided sinks.

[50] There was also Karaoke, and the claimant stated that this was inside the restaurant but that people who lived close by would be able to hear some of the music which, for the latest, would go up to 3:00 a.m. The claimant indicated that she did not agree with the contents of the letter as far as entertainment was concerned but that she stopped the music after receiving the letter. According to the claimant she had never been stopped from playing music by the police.

[51] The claimant indicated that she continued to pay her rent (in cash) and that she had paid for a 12-month period without having a receipt. The reason she knows that she paid was that she knew of the nature and type of person that she was dealing with. The claimant described the defendant as an angry and aggressive person.

[52] The claimant in the end accepted that she owed money for rent but suggested that there were other deductions. The rent owed was for eight months at \$3,000.00 per month, which is \$24,000.00. There was electricity owing by the defendant which was paid by the claimant in the sum of \$6,735.55, so that meant a balance of \$17,264.45.

[53] When Counsel for the defendant suggested that the claimant owed rent monies for March 2013 to February 2014, the reply was very robust indicating that the

defendant would not let her stay in the property for a whole year without paying any rent.

[54] There was an issue raised about damage to doors. The claimant suggested that there was no damage to the doors but all that was done was some locks added as a result of attempted burglaries. The claimant confirmed the following in cross-examination:

1. That she will vacate the premises. She was eager to move, arranging to move and wanted three months to move,
2. There were arrears of rent subject to deductions,
3. There was not going to be a replacement of doors,
4. Only space allotted to her was being used and nowhere else,
5. That she wanted to discuss the balance of the money owing for the stocks.

Re-examination

[55] The claimant was re-examined and asked about moving out of the property. The claimant indicated that with all the harassment and “slander”, she was going to lease a property and would need about two months with all the expenses to get a place ready. When asked about why she paid cash, the claimant indicated that the landlord asked for cash so that he could have it to do what he wanted and the bank would not have it first.

The Defendant’s evidence – Mr. Aden Hannibal

[56] The defendant in his witness statement, filed on the 16th January 2015, averred that he was the owner of the premises, which is the subject matter of the suit, located in Pearl’s, St Andrew’s, consisting of three storey’s. There is clearly no dispute of this. The area which housed the supermarket and the root of the issue

is the middle floor. The defendant was clear that he did not rent the entire middle floor but it was 3000 sq. ft. of space. He confirmed that in addition to the rented space on the middle floor, there were two enclosed areas to the left and right of the supermarket. The defendant also indicated that he resided on the top floor of the building.

[57] The defendant averred to entering into a tenancy agreement¹⁴ with the claimant. The terms of the agreement included the rent in the sum of \$3,000.00 for the restaurant and supermarket areas. He also agreed to sell to the claimant his supermarket stock (which the claimant agreed to), and the claimant was also to pay the utility bills, such as water and electricity.

[58] The defendant in his statement set out that the claimant had allowed the rent to fall into arrears, and up to the filing of the claim, the arrears of rent was \$42,000.00 for the period March 2013 to April 2014.

[59] As far as the stock was concerned, the defendant stated that the agreement was not honoured as the claimant only paid \$25,000.00 towards the agreed price, and despite a promissory note¹⁵ being executed on the 21st June 2011, the sum of \$9,993.00 was still owing. The defendant indicated that he was surprised to learn about the issue with the stock, because prior to a claim being filed in this matter, he (the defendant) was not made aware of any stock which was not good. The defendant also isn't aware of any further payments towards the stock of \$1,800.00 and is adamant that he was unaware of any "spoilt or dead" stock. There is also filed in the Magistrates Court¹⁶ a claim for the sum owed for the stock.

[60] The defendant's case is that it was the claimant who allowed the electricity to fall into arrears. It was the claimant who allowed the bills to accumulate to the point where the electricity was disconnected at least five times. The defendant asserted

¹⁴ Also referred to as "NH1" and "AH1". Period of the tenancy was five years.

¹⁵ See Page 69 of Core Bundle 2

¹⁶ Grenville Magistrates Court – Filed March 19th 2014

that the meters remained on his name, and he would be liable for any amounts of electricity used, in addition to which the claimant refused to sign the paperwork for the transfer of the meter to the claimant's name.

[61] The defendant also stated that the claimant failed to pay her half of the share of water rates and her last payment was in February 2013 in the sum of \$174.12, and the water was disconnected for the June 2013 arrears. The defendant is seeking to have the claimant pay the arrears, and reconnection fees, which total \$1,335.29.¹⁷

[62] The defendant complains that the claimant has also removed lighting fixtures, dumped garbage on the land to the rear of his building, which has resulted in the galvanize roof leaking from walking on it, bringing in a generator immediately under his bedroom and smelling noxious gases. There have been complaints about the claimant dismantling and removing a burglar proof gate from the front of the supermarket. The defendant states that it would cost him \$1,323.29 to replace the burglar proof gate and \$2,453.93 to replace the other two doors.

[63] The defendant also confirmed in his statement that the claimant was to pay electricity bills measured on "a separate meter"¹⁸. Furthermore, he maintained that a separate meter would be operated for the claimant's use of electricity until her meter was put in place; since this was meant to be temporary, he, the defendant, did not agree to pay \$250.00 and this was never discussed. The defendant accepted that there were arrears on the electricity bill and indicated that he could not settle those arrears as he had not been paid for the stocks and needed that money. The arrears were in the sum of \$1,067.67, and those arrears had been accumulated, at the time the claimant took possession. The defendant by way of his statement admitted that charges for the arrears on other electricity accounts held by him were transferred to the account that the claimant was paying

¹⁷ See Page 61 of Core Bundle 2 – Statement of the Defendant, Paragraphs 11 & 12

¹⁸ See Page 62 of Core Bundle 2 – Paragraph 25 of Defendant's statement

for. The amounts transferred were \$5,952.50 on the 4th December 2013 and a further \$20.00 on the same date.

- [64] As far as the stocks were concerned, the defendant in his statement, set out that the stocks were valued at over \$50,000.00 and that the claimant paid \$25,000.00 as he had given to her a discount on the overall price of the stock, and thereafter leaving a balance of \$9,993.00.

Cross-Examination of the Defendant

- [65] When the defendant was cross-examined he was quickly referred to his statement at paragraph 6, where the rent owed was stated to be \$42,000.00. He confirmed that he had not sent any letters to the claimant demanding the \$42,000.00 and he had filed a claim in the Magistrate's Court for that sum. When pushed further the defendant indicated that he had filed a claim for the balance owing for the stock purchase, but had reasons for not filing in the Magistrate's Court or the High Court any claim for the rent.
- [66] When further cross-examined about the stock, he indicated that he had purchased stock for his supermarket every week, or monthly depending on the company, and that cereal would be purchased depending on how the stock sold. The business was a lucrative business (meaning making enough to survive but not good money), but he had decided to return to farming.
- [67] As far as electricity was concerned, the defendant indicated that there were no discussions about him using one meter, but in any event they were both using one meter. **The defendant confirmed that he never showed the claimant any meters, despite the premises and supermarket using one meter which had arrears.**

- Q. On that electricity meter, would you agree that there were arrears?
- A. Yes, there were arrears on the meter.
- Q. You did not want arrears to increase, did you?
- A. Of course.
- Q. Even before Ms. Holas took occupation you would not want arrears to escalate in May 2011?
- A. No.
- Q. **Because you would not want arrears to increase, is that why you turned off the electricity?**
- A. **No, that was not the reason why I turned the electricity off.**
- Q. What was the reason?
- A. The electricity arrears was not the reason.

[68] The defendant was adamant that there were never any complaints about the stock not being good. It is interesting and clear to me that the defendant fully understood what was being asked of him in the question from Counsel, Ms. Johnson. The response was equally clear, that the electricity arrears were not the reason why he turned the electricity off. Is it an admission of turning off the electricity? Having seen the witness and heard him in court I have no doubt that he had turned off the electricity and caused the spoiling of the goods.

[69] Counsel Ms. Johnson then took the defendant through the agreement, which has already been referred to, and in particular paragraph 2(b) which states:

"The Tenant for herself and her assigns throughout the term¹⁹ hereby create covenants with the Landlord as follows: -

- a) To purchase present stock in the supermarket ...*
- b) To pay all electricity bills and water rates as may be assessed and charged from time to time for the demised premises by the proper authorities*

¹⁹ The term of the agreement [dated 19th May 2011] is for five years commencing from the 1st day of June 2011 at the rent hereinafter reserved payable therefore monthly in advance.

[70] When the issue of payment of electricity bills and the particular section above was put to the defendant, Counsel Ms. Johnson stressed on the words “demised premises”. The defendant’s response was simply “Yes, ok,” which was the acceptance that the bills to be assessed were for only the demised premises. The defendant indicated to Counsel Ms. Johnson that he never agreed to pay \$250.00 for electricity, but that he never made any payments to the electricity bill despite the supermarket and the upstairs apartment where he and his family stayed and shared one meter from the inception of the agreement.

“Demised premises is the premises that are the subject of any lease or agreement. The lease ought to describe with reasonable certainty the property demised to avoid any conflict(s) and/or disputes. There ought to be a plan/diagram attached to ensure all parties are entirely clear of the boundaries or measurements of the property demised. For completeness where the demised premises comprises part of a building whether it be a floor, office or room and no matter whether that division is horizontal or vertical, it will prima facie include both sides of any external wall and anything attached to it, unless there is an exception or reservation or something in the lease to exclude them. In this case the demised premises as set out in the agreement is as follows:²⁰

“... a supermarket space containing approximately 3,000 sq. ft. for a supermarket and restaurant situate at Pears in the parish of Saint Andrew in the State of Grenada to be used for business purposes...”

[71] The defendant confirmed that the electricity meter served both the supermarket and the upstairs apartment. Note the following passages.

Q. You also said that you shared a meter from the beginning?

²⁰ Agreement referred to as “NH2” on page 13 of the Core Bundle No. 1

A. Yes.

Q. Is that the same meter that was used from the time that she (the claimant) moved in to the time of the claim being filed?

A. Yes.

[72] The defendant confirmed and was consistent about living in the premises from 2002 to 2014. He had never moved out but for periodic times when he was in the hospital and his family would come and stay with him. In total there were about five people staying with the defendant periodically for up to 10 days.

[73] It is also rather curious that the defendant stated that there were no discussions about who would pay for the defendant's electricity when he had made it abundantly clear to the claimant that there was only one meter, and that one meter covered the supermarket and the apartment upstairs. Again the evidence was helpful.

Q. Did you agree to pay anything for your consumption of electricity?

A. No, no discussions.

Q. You used electricity on a daily basis between May 2011 and the filing of the claim?

A. Yes, of course, I had electricity from the one meter.

Water

[74] Again when the defendant was cross-examined about the water meter, he stated that they shared a meter. The defendant was asked:

Q. What was the arrangement for water?

A. I paid the water bill because when Ms. Holas first came in and told me that she wanted utilities, she told me that she would pay for utilities and I would not have to pay for anything. She wanted to move in and sell things. She said she would pay all the utilities and I would not have to pay anything. She said all the utilities. I used to pay the water. **I paid for**

water, because she was paying for electricity. When she started having people coming in for karaoke, I mentioned that she should pay the bills.

Q. You said that you had no discussions about electricity or water?

A. Yes, that I did say.

Q. You said that you would pay for water and she electricity?

A. **I decided to pay for the water.**

PUT: **You are trying to lie.**

A. **When we went to make the agreement, she Ms. Holas, agreed to pay the electricity.**

Q. When you signed the agreement did Ms. Holas know there was one meter?

A. Ms. Holas was there in the building and knew that there was one meter, because the current was from one meter. I told her the current was from upstairs. **I told her that there was no electricity in the supermarket and electricity was coming from upstairs in my apartment.**

[75] The defendant, in my view, seemed to have contradicted himself on several occasions as far as the payment of the utilities were concerned. The questions and answers given are a simple illustration. The defendant was further cross-examined as follows:

Q. Who was paying for water?

A. Water, she (the claimant) was paying for electricity so I decided to pay the water. I paid the water, I went up and paid. Ms. Holas knew about it. Ms. Holas never paid me for water. She never gave me any money to pay and she never agreed to give me any money.

Q. From 2011 to 2013 did she give any money for water?

A. Yes, twice Ms. Holas paid by cheque.

Q. Did Ms. Holas give you any cash for the monthly water bill?

A. No, never.

Q. Was the water supply disconnected?

- A. Yes.
- Q. When?
- A. 2013.
- Q. Was the water bill and account in your name?
- A. Yes.
- Q. Did bills come to you?
- A. Yes.
- Q. Was the electricity account in your name?
- A. Yes.
- Q. The bills went to you?
- A. Yes.
- Q. **Didn't Ms. Holas request to have her own water meter?**
- A. Yes, when we made the agreement.
- Q. Why didn't you help her get her own meter?
- A. As she had outstanding arrears on stock. I said when she paid up then I would have everything transferred to her.
- Q. Did she (the claimant) present an application for an electricity meter?
- A. No.
- Q. After going into the premises did Ms. Holas ever ask for her own meter?
- A. No.

[76] Ms. Johnson questioned the defendant about the burglaries and attempted burglaries, to which he replied that he was not aware of any. When asked about locks being changed on doors, the reply was that it was bolts being placed onto the doors, and he was unsure as to whether it would make it harder for intruders to get in. This was, in my view, an attempt to evade the question.

[77] The defendant confirmed that there were no bins inside or outside the supermarket for garbage but shortly after indicated that he had noticed one bin outside. In addition to this he had noticed garbage disposal trucks coming from the property.

[78] In March 2014 the defendant indicated that he did go to see the claimant for rent money and she had indicated that she did not have any money for rent and gave a reason as paying for the electricity and also owing for other goods. The defendant accepted that the claimant has paid an electricity balance transfer in the sum of \$6,000.00, and after this they did not get along too well. The defendant was clear that he wanted the claimant out of the property and also that he cut the electricity supply off on the 9th April 2014. The supply was re-connected on the 12th April 2014.

[79] It is also noteworthy that the receipts were looked at on the 4th May 2015 when the trial resumed. The receipts²¹ were looked at and the defendant was asked why some of them bore two different dates on them, and the sum was \$6,000.00. The defendant was asked:

Q. The third receipt is for \$6,000.00?

A. Yes.

Q. That is for two months rent?

A. That's correct.

Q. What are the dates?

A. 5th November 2011 and 6th December 2011.

Q. So that is for two months rent?

A. Correct.

Q. On the first date, 5th November 2011 when rent was paid to you, you didn't give a receipt to Ms. Holas?

A. No, as she did not pay rent.

Q. This receipt was given on the 5th November 2011?

A. No.

Q. It was given to her on the 6th December 2011?

A. That's correct.

Q. Did you receive \$6,000.00 together?

²¹ See Core Bundle 2, Page 38 and 42 – Marked “NH6”

- A. One payment for two months rent.
- Q. Why would you, if you get \$6,000.00 put two dates?
- A. Ms. Holas was owing for the eleventh month.

[80] This, to me, demonstrates that the defendant was not keeping up to date with his receipts. It is interesting because there are no receipt numbers on any of the receipts, but when one looks a little further on within the receipts, it is clear that for December 2011/January 2012 there was another \$6,000.00 paid and one receipt given to the claimant.

[81] Why would there be a receipt evidencing payment for the 5th December 2011, but also another payment for which a receipt has been issued and also dated 6th December 2011. What was the defendant's answer to this? Well he simply puts it down to a genuine mistake. I find this a little astonishing for someone who has been running a supermarket business, which was making money even if it was not a lucrative business.

Re-examination

[82] When the defendant was re-examined by Counsel Ms. Hannibal, he confirmed that the stock expiry dates had been checked by Ms. Holas, her two daughters and her niece.

[83] As far as electricity was concerned, it was "turned off" in April 2014 for non-payment of rent in 2013. Another version of payments for utilities came at this stage.

- Q. You said that she (the claimant) never gave any payment for water and at another stage she paid twice for water by cheque?
- A. She was paying half payments. Ms. Holas went and paid twice by cheque to NAWASA for water.

[84] It was clear that the turning off of the electricity supply was calculated to frustrate Ms. Holas. Mr. Hannibal, of course, too had frustrations and there would have been irritations on his part with the tenancy. The actions that Mr. Hannibal took simply went too far in causing a nuisance to Ms. Holas and her occupation of the demised premises. The final answers given in re-examination demonstrated this frustration, whereby the defendant felt that there was too much noise during the karaoke, there was urinating around the premises. There were approximately 20 cats around the property and on the couch and despite speaking to the claimant, little, if anything, was done about it.

Court analysis and conclusion

[85] The evidence as it was presented caused one to look at the contract between the parties. The court takes a moment to place emphasis on the observations of Lord Hoffmann as stated in **Attorney General of Belize and others v Belize Telecom Limited**²².

“It is right that the court has no power to improve upon an instrument upon which it is called upon to construe, whether it be a contract, a statute or an article of association. It cannot introduce terms to make it fairer or more reasonable. It is concerned only to discover what the instrument means. However, that meaning is not necessarily or always what the authors or parties to the document would have intended. It is the meaning which the instrument would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument was addressed: See **Investors Compensation Scheme Ltd v. West Bromwich Building Society** [1998] 1 BCLC 498, [1998] 1 WLR 898, 921-913. It is this objective meaning which is conventionally called the intention of the parties, or the intention of Parliament, or the intention of whatever person or

²² [2009] 1 WLR 1988 (P.C) at [16] and [17]

body was or is deemed to have been the author of the instrument”²³.

- [86] Having considered the tenancy agreement, one necessarily has to ask, looking at the terms of the tenancy, what was contemplated by the parties at the time that the original agreement was made. Were there implied terms in the agreement here? How and what effect does the conduct of one party after signing the agreement have on that particular agreement? It has been well established that conduct, which may or does relate to acts subsequent to the formation of a contract, is of limited value in assessing the contemporaneous terms of the contract in dispute. This principle was correctly stated by Sales J in **v Sattar**²⁴ as:

“Conduct of a party after the making of a contract does not provide relevant factual context to explicate the meaning with which the parties used the words at the time they made the contract.”

- [87] Therefore in the instant case Ms. Holas entered into an agreement to rent a space from Mr. Hannibal for a particular sum every month, that being \$1,500.00 per month for the supermarket and thereafter once the restaurant was operational \$3,000.00 per month for the 3000 sq. ft.
- [88] There was an agreement between the claimant and the defendant to pay for electricity but based on that agreement and furthermore the evidence presented to the court, it seems that it could not have been intended that Ms. Holas pay for all the electricity for that building, including the living space of Mr. Hannibal, and the same would have applied in terms of payments of other bills.

²³ This passage was taken from the case of James G. Samuels v Guyana Telephone and Telegraph Company Ltd. [2015] CCJ 8 (AJ). This case was on appeal from the Court of Appeal of Guyana and the Judgment delivered by The Honourable Mr. Justice Nelson on the 20th July 2015. See Page 13 at [32]

²⁴ [2009] EWHC 289 (Ch) at [36]

[89] General damages are allowed for such damage as the law presumes to result from the infringement of a legal right or duty. Ms. Holas had a legal right to the quiet enjoyment of the premises and to run her business in the manner that she saw fit, subject to the tenancy agreement. Mr. Hannibal was also entitled to have his rent paid on time and in the manner stipulated. It was clear from the evidence that there was some rent owing to Mr. Hannibal, but that did not entitle him to engage in the type of activity that the court has found as a fact that he did. Ms. Holas agreed that there was \$17,264.45 for rent owing to Mr. Hannibal, subject to any other deductions. Ms. Holas agreed in evidence that she wanted to move and had already started to look for and develop another location for her business.

[90] As far as the stock was concerned there was an agreement for \$35,000.00 and a balance owing of \$9,993.00. Ms. Holas accepted that was the agreement, and stated that she did pay \$1800.00. No one provided a receipt for that specific amount but based on the defendant's conduct and bookkeeping I find that it is more likely that he did receive \$1800.00 and did not write a receipt, therefore Ms. Holas ought to pay that outstanding balance to Mr. Hannibal. Furthermore, the claimant also produced a list of items²⁵, the quantity and the cost of those items, which the claimant indicated were spoilt as a result of having no electricity. The total value of the spoilt items was \$2363.05. The claimant produced photographs²⁶ of what those spoilt items were, which included, breads, cereals, cheeses and meats which looked to have melted. I therefore find that this cost ought to be excluded from the amount owed for the stock.

[91] I also find that Mr. Hannibal failed to allow Ms. Holas to have peaceful and quiet enjoyment of her demised premises. In addition I accept the evidence of Sean Alexander and Tricia Holas as far as the threatening and intimidating actions of Mr. Hannibal. I find that the defendant's conduct in the case at bar is a flagrant

²⁵ See Core Bundle No 2, filed on the 14th April 2015, at Pg 7

²⁶ Exhibited as 'NH5'

trespass and deliberate harassment of the claimant. There was a reckless disregard of the tenancy rights of the claimant. In other words the defendant's conduct at times was oppressive in a real sense.

[92] I therefore dismiss the claim of Ms. Holas and allow the counterclaim to the following extent:

1. The claimant is to deliver up vacant possession of the premises on or before the 29th of February 2016.
2. Payment of the arrears of rent in the sum of \$17,264.45 = (\$24,000.00 - \$6,735.55 for electricity owed by the defendant)
3. Payment of balance owed for stock purchased (minus value of spoilt goods) in the sum of \$5,829.95.
4. Costs in the sum of \$3,000.00

Shiraz Aziz
High Court Judge