



[2017] JMSC Civ 182

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2011 HCV 07536

BETWEEN	LITTLETON PHILLIPS	CLAIMANT
AND	GARFIELD GRANT	DEFENDANT

IN OPEN COURT

Ms Renee Freemantle and Ms Lavern Glave instructed by Scott Bhoorasingh & Bonnick, attorneys-at-law for the Claimant

Ms Kaysian Kennedy and Ms Cavelle Johnston instructed by Townsend Whyte & Porter, attorneys-at-law for the Defendant

Heard: **November 30, December 1, 2016, January 30, 2017 and November 17, 2017**

CONTRACT - WHETHER VALID AGREEMENT REACHED - WHETHER DEFENDANT LIABLE TO COMPENSATE CLAIMANT FOR SUMS EXPENDED

LINDO J

**The Claim**

[1] By Claim form filed on November 30, 2011, the Claimant, Littleton Phillips, claims damages for breach of contract arising out of an oral agreement entered into between himself and the Defendant, Garfield Grant in or around October 2010. This he alleges is for the lease of the Defendant's property situated at 142 Brunswick Avenue, Spanish Town in the parish of Saint Catherine.

[2] In his Particulars of Claim, he avers that it was agreed that he would carry out improvement works on two containers located on the property in consideration of which the Defendant would grant him a seven (7) year lease of part of the property. Thereafter, he would begin operating a bar and lounge and would commence paying lease money four months after he started operating the business. He contends, payment would be \$30,000.00 per month for the first 6 months, and the parties would review same thereafter. He also alleges that a draft lease was presented to him and claims that "in pursuance of the agreement" he carried out improvement works to the property and the containers, which resulted in him expending \$404,000.00 and he commenced operation of the bar and lounge in March 2011 and paid \$30,000.00 rent in July 2011.

[3] He claims that in breach of the agreement, the Defendant served him a notice to quit dated July 15, 2011 for him to give up possession of the property on or before August 31, 2011 and failed to provide him with a written lease. He also claims that the Defendant wrongfully terminated the lease and consequently he suffered loss of the sum of \$404,000.00 and loss of income as a result of being forced to close his business.

#### **The Defence**

[4] On December 18, 2012, the Defendant filed a Defence and on June 4, 2015 he filed an Amended Defence in which he denies that they entered into an oral agreement in or around October 2010, and admits that he had discussed with the Claimant his willingness to rent one of the containers for the purpose of the operation of a bar, once construction was completed. He also states that he entered into the discussions with the view of forming an agreement and these discussions were modified on several occasions.

[5] He states that the original understanding was that he would be responsible for the installation of a counter, electricity, water and door locks in respect of the

container to be rented, and that the Claimant would take possession after these were completed and would pay rent of \$35,000.00 per month.

- [6] The Defendant further states that the Claimant continued to inform him of his urgent need of the premises, to open the bar during Christmas season and for his birth night party in March 2011 and they entered into an oral agreement that "the Claimant would stand the cost of the electricity and water installation in exchange for 3 months rent free... The Defendant would remain responsible for installing the counter ...after three months the Claimant would commence paying rent ... in the sum of \$35,000.00 per month".
- [7] The Defendant states that he gave the Claimant the keys to the container in January 2011, he started to operate the bar in March and in June the Claimant requested that the rental be reduced to \$30,000.00 per month due to financial difficulties and this was agreed, and that there was no agreement between them regarding the grant of a seven (7) year lease and that he refused to agree to any of the terms outlined in the draft lease that was presented. Further, the Defendant states that there was no agreement that the Claimant would carry out improvement works on two containers which resulted in him expending \$404,000.00, and that any money expended by the Claimant was expended at his own volition.
- [8] The Defendant denies that there was breach of the agreement when he served the Claimant the notice to quit dated July 15, 2011.

### **Claimant's Evidence**

- [9] By his witness statement filed on November 30, 2015, the Claimant indicates that he is also called "Ranking" and that he is an agronomist and businessman. He states that he operated a very successful and well known bar and lounge called "Philltronics Lounge" for in excess of nineteen years, and in about 2009, the Defendant, who he says is also called Peter, invited him to participate in a

business with him at his property at 142 Brunswick Avenue. The invitation was for him to move his lounge and set up business at the Defendant's property, but he was hesitant and in about September 2010, he spoke to the Defendant as the electricity supply where he operated had been disconnected.

- [10] The Claimant further states that they had discussions along with Alton Grant, another person he says the Defendant had approached, and subsequently the Defendant agreed to a seven year lease of both containers and the grounds and said he would provide him with a written agreement. He adds that as part of the agreement, he would not start paying lease money until four months after he started operating and rent would be \$30,000.00 per month for six months, reviewable after six months.
- [11] He asserts that he started improvement works in about October 2010 and did not receive the keys to the property but that the Defendant's cousin, Robert, opened and closed the property daily. He further states that he installed the water and electricity. The electrical works he says cost \$137,100.00, and the deposit for the electricity supply cost \$6,000.00. He also states that the arrangement with the National Water Commission to supply water cost \$21,600.00 and that he carried out improvements on the property and containers, bushed the land and paved an area of "about 45' X 25' or thereabout".
- [12] The Claimant also states that he converted both containers by partitioning off a storeroom area, constructing counters, installing a third window, doing welding works, including safety devices for all the areas "where we locked", installed sinks with necessary fittings, and added sheet racks in one container, while in relation to the other container, he had it partitioned for male and female rest rooms, installed tiles, some of which were purchased by the Defendant and he paid for labour and he painted the interior of each container.
- [13] He also gave evidence that in relation to both containers, he installed all the electrical works and contributed to some of the plumbing by purchasing pipes, in

addition to those bought by the Defendant, and he completed both doors and paid for labour. In total, he states that he spent approximately \$404,000.00 and that he is unable to locate all his receipts.

- [14] He states that Peter was at all times aware of the work that was being done on the property and "agreed with everything that I was doing" and that he accompanied him to Mr Guyah to seek the use of a roller when the paving of the property was to be done.
- [15] The Claimant also gave evidence that he started operating on March 26, 2011 and in "about mid-June" the Defendant requested a breakdown of his expenditure which he provided, and on July 4, 2011, the Defendant sent him an email indicating that he would reimburse him \$139,800.00. He adds that at the end of June, he gave Peter \$20,000.00 and they subsequently had a discussion in relation to the payment for the use of electricity and Peter thereafter served him with a notice to quit dated July 15, 2011.
- [16] Under cross examination, he denied that the Defendant presented him with a lease, but agreed that "Tony Taylor" downloaded the document and presented it to him and the Defendant. When pressed, he insisted that all three of them sat down and filled out the document and said "Tony Taylor was like a witness to the whole thing". He then admitted that when he said the Defendant presented him with the lease, that was not true.
- [17] He disagreed that he said work was to be on two containers and when confronted with paragraph 3 of his Particulars of Claim, he admitted that he indicated, as the first term of the agreement that the Claimant would carry out work on two containers on the property. He also admitted that he had indicated that in or around October 2010, the Claimant and Defendant entered into an oral agreement and that nowhere did he indicate that any work was to be done in respect of anything other than the two containers and nowhere did he say a third person was to be facilitated. He disagreed that when he filed the claim in

November, 2011, the Defendant had a claim against him in the Resident Magistrates Court.

- [18] He agreed that on March 26, 2011 he kept a 'birth night bash' at the premises where the containers are located and indicated that it was fair to say that the relevant sum to be paid after the first six months was not certain. He admitted that the 'commercial lease agreement' refers to a 40 ft container, and stated that the sum to be paid was \$360,000.00 per year at \$30,000.00 per month and that the lease contained the terms discussed with Mr Grant. He said that based on the 'agreement', there was no indication that a rental sum was to be determined between himself and Mr Grant after six months. He agreed that of the "tax charge invoices", dated December 20, 2010, December 30, 2010, March 14, 2011 and March 25, 2011, tendered and admitted in evidence, all but the one dated March 25, 2011, had no indication that they were paid, and that the one dated March 25, shows payment in August 2011. He indicated that Robert McLeod did odd jobs at the premises, disagreed that he was to "bush the premises" and stated that he gave him permission to assist with painting and the partitioning of the container.
- [19] The Claimant admitted that he operated a sound system with about six boxes and that a 110 voltage could not operate them. He also indicated that he did not get back the \$6,000.00 paid as deposit towards the installation of electricity.
- [20] Although he said he could not specifically recall the year he first met and spoke to the Defendant, the Claimant stated that it was not October 2010, and he denied that in discussion with the Defendant, the Defendant, indicated that he would be responsible for installation of counter, electricity, water and door locks. He also denied that he agreed to take possession after construction was completed or that in the initial agreement, the Defendant indicated that rental would be \$35,000.00. He then stated that he first discussed participating in business with Mr Grant sometime in October 2010, and that it would not be true to say it was before 2010. He denied that he was the one who contacted the

Defendant several times about moving his business, indicating that after the initial visit, he approached him in "about 2011".

- [21] He agreed that he introduced Tony Taylor to the Defendant, stated that the unpaved section of the premises was about ten feet from the container, and disagreed that the Defendant wanted a green space for the premises. He also agreed that there was no 'end date' in the 'Draft Commercial Lease' and that by the Notice to Quit, he was to give up the property by August 31, 2011 and that he went to the Resident Magistrates Court for rent arrears.

### **Defendant's Evidence**

- [22] The Defendant states that after having discussions with the Claimant about his willingness to rent him one of the containers to operate a bar, he was contacted by the Claimant on several occasions and they entered an oral agreement which was modified on several occasions.
- [23] He states further that the Claimant was anxious to commence operation of the bar and wanted to open for the Christmas season in December 2010, and keep his birth night party in March 2011, and he "flatly" indicated that the container would not be ready for the Christmas season. He adds that in or around January 2011, he agreed with the Claimant that he, the Claimant, would stand the cost of electricity and water installation in exchange for three months, rent free at the premises and he, the Defendant, would install the counter and that after three months the Claimant would commence paying rent of \$35,000.00 and he was given the keys to the container.
- [24] The Defendant states further that in April 2011, the Claimant presented him with a seven (7) year lease, he refused to agree to the terms outlined in it, and in June 2011, the Claimant requested that the rental be reduced to \$30,000.00 and made a payment of \$20,000.00 and another payment of \$10,000.00 for which he gave him two computer generated receipts.

- [25] He adds that there was no agreement for the Claimant to "bush" or to pave the premises and that when the Claimant rented the container it was already converted for the purpose of operating a business and the Claimant installed a sink, two temporary counters, tiles that he, the Defendant, had purchased, and a metal covering over the door lock to the premises. He also states that the Claimant insisted that he would repaint the container and he permitted him to do so at his own expense, and he thereafter undertook "at his cost" to paint the other container.
- [26] In amplifying the evidence contained in his witness statement, the Defendant gave evidence that he took photographs of the female bathrooms to show that the Claimant's stools were blocking access to the bathroom. He also stated that he saw a poster inside the container when the Claimant operated his bar there, and as a result he spoke to Chris Bowen in the presence of the Claimant, and was told that he had an arrangement with the Claimant to keep 'round robin' and an argument developed between Mr Bowen and Mr Phillips, regarding the venue.
- [27] He also said he knew Robert McLeod, his cousin, all his life. He indicated that the Claimant installed a photocell light on the property and subsequently removed it and that when the Claimant got the container, it was 'sheet rack and partitioned' and in good condition. He also indicated that one container was red, the other was red and blue, and that windows were cut out, doors were completed and the concrete base around the one he called 'container 1' was completed.
- [28] Under cross examination, the Defendant maintained that he did not approach the Claimant and offer him any lease, and that in or about February 2011, he agreed that the Claimant put in electricity and water after he agreed to compensate him for installing them, and this was in exchange for three months rent free at the premises. He also agreed that the Claimant put in a sink with the necessary fittings, but indicated that he did the plumbing before the sink was put in and also agreed that they both carried out work on the urinal, but he, the

Defendant, provided the tiles. The Defendant disagreed that the Claimant put in sheet racks and partitioned the container or completed doors. The doors, he said, were completed by Michael Royal.

- [29] In seeking to clarify his evidence in relation to his offer of compensation to the Claimant for work he did, and whether he paid him any of the sums offered in the email, the Defendant indicated that he paid him by the way agreed, and said, "I agreed on three months' rent".
- [30] In support of his defence, the Defendant called Robert McLeod as a witness.
- [31] Robert McLeod states that he is a handyman and was employed by the Defendant to do various improvements to the Defendant's container and he had installed partitions, windows and doors and that he did plumbing works and that all the materials used to complete his tasks were purchased and supplied by the Defendant. He states that he never acted as an agent for the Claimant.
- [32] In cross examination, he indicated that he was working with the Defendant when he saw the Claimant painting. He maintained that he installed partition for the Defendant, did plumbing work and painted the inside of a container. When pressed as to whether he installed windows, he admitted that "is a welder man install the windows" and indicated that the same welder installed the doors.
- [33] He indicated that the works were completed in February 2011 and when the Claimant came to the premises, he did not ask him to do any work and he never did any work for the Claimant on the Defendant's premises. He was emphatic in his denial when it was suggested to him that the Claimant paid him for work he did on the premises.

### **The Submissions**

- [34] Counsel for the parties in their respective closing submissions, set out the factual background of the case and summarised the parties' case and the evidence

presented. They identified as issues for the court to consider, inter alia, what was the nature of the agreement between the parties, whether the Defendant's actions amounted to a breach of the agreement between the parties and whether the Defendant was liable to compensate the claimant for improvement works he carried out on the premises.

### **Defendant's Submissions**

- [35]** Counsel for the Defendant pointed to material inconsistencies on the evidence of the Claimant in relation to whether the agreement was to carry out improvement works on the containers as well as the property, whether the Defendant offered him a five (5) year or seven (7) year lease, or presented him with a draft lease, or whether it was someone called Tony Taylor who presented the draft lease to both parties. Counsel also pointed to the Claimant's evidence concerning when the parties met and whether it was the Defendant who first approached him to do business at his premises.
- [36]** Counsel expressed the view that the more credible version is that of the Defendant who had been taking steps to prepare his property for commercial use when the Claimant pressed him to enter business with him.
- [37]** Counsel pointed out that the sum to be paid as rental after the first six (6) months was not certain, the Claimant had the urinal tiled and installed a sink so that it could be ready for his 'birth night bash' which he held on the premises at which time he also used the kitchen, and that he painted the containers which he said "was unsightly". Counsel also pointed out that the Claimant relied on several documents, some of which were agreed, and that he agreed that the email spoke of water installation, electricity installation, security light and installation, welding work and painting for the bathroom container.
- [38]** Counsel also stated that the issue of whether there is a binding agreement for a lease or not, has to be decided by reference to the ordinary rules of the law of

contract and in this regard, relied on the case of **Rossiter v Miller** [1874-80] All ER Rep. 485. In relation to the requirements for a lease, Counsel referred to **Street v Mountford**, [1985] 2 All ER 289 at 293 and also referred to the case of **Cassandra Todd v Ivy Barrett**, Claim No.2008 HCV01681, unreported, delivered January 27, 2011, in which the court cited **Isaac v Hotel De Paris Ltd.** [1960] 1 WLR 239, and made reference to **Cobb & Another v Lane** [1952] 1 All ER 1199, for the proposition that the conduct of the parties is important.

### **Claimant's Submissions**

- [39] The essence of the submissions made on behalf of the Claimant is that there was an agreement between the parties for the improvement of the Defendant's property in exchange for a lease of a container on the property and that the Defendant breached the agreement by taking back the property after the improvements were completed, resulting in a loss to the Claimant.
- [40] Counsel also referred to the case of **Street v Mountford**, in relation to the criteria for a lease and pointed out that there must be "rent, certainty of duration, exclusive possession, description of the parties and description of the premises". She indicated that there are generally two stages to the creation of a lease, the agreement stage and the grant, and noted that it was not necessary for there to be both agreement and the lease itself.
- [41] She examined the evidence of the parties and pointed out that the Defendant wrote to the Claimant offering to compensate him for things, other than water and electricity installation, and expressed the view that this is a "stark deviation" from the agreement the Defendant said existed between himself and the Claimant.
- [42] Counsel suggested that there would be no need for the Defendant making an offer to compensate the Claimant in July 2011 if the agreement was that the Claimant install water and electricity, in exchange for three months free rent.

- [43] She noted that the Defendant's witness denied installing windows and doors for him and that the Defendant's evidence shows that he was aware of the improvement works being carried out on the property and he consented to more than just electricity and water installation.
- [44] Counsel further submitted that the lease agreement presented to the Defendant represented the terms the parties had agreed, it met the requirements of a lease and that although the Defendant contends that the rent payable was not certain, parties to a lease agreement are at liberty to negotiate the rental sum after the commencement of the lease. She pointed out that the parties acted in accordance with the agreement as the Claimant made a payment to the Defendant in June 2011 and the Defendant presented him with receipts which he called 'rent receipts'.
- [45] Ms Glave expressed the view that the Claimant had more than a personal privilege to operate the bar, and with reference to the case of **Isaac v Hotel De Paris**, noted that the court, in distinguishing between a lease and a personal privilege, focus on the circumstances and the conduct of the parties. She indicated that the circumstances in the case at bar suggest that what was intended was to grant a seven year lease of the property.
- [46] Counsel reiterated that the Defendant offered compensation to the Claimant, noting that it was in the sum of \$139,800.00 for water and electricity installation, security light, welding work and paint for bathroom container and there was no offer in relation to other improvement works. She pointed out that the Claimant has some receipts which support his claim, and, in asking the court to accept the sum claimed as that which he spent on the improvement works on the property she said, "it is not strange or farfetched for a claimant not to have receipts to support their claim".
- [47] Counsel expressed the view that that which has been highlighted by Counsel for the Defendant as "three material inconsistencies", cannot and should not be

construed as inconsistencies, and that they did not go to the root of the case. She explained that the comparison between what was stated in the particulars of claim are not substantial and indicated that what was adduced was the uncertainty of the Claimant to confirm the dates from when he knew the Defendant, noting that memories and details would fade due to the length of time the agreement was made and "six years later at trial".

[48] In urging the court to find for the Claimant, Counsel concluded that the agreement between the parties was one for the improvement of property in exchange for a lease of a container on the property and that the defendant breached this agreement by "taking back" his property after the improvement works were completed causing the Claimant to lose that which he expended on the property.

### The Issues

[49] The issues which I find arise for determination are whether the parties had a concluded agreement (a contract) by which the Claimant had a lease of the Defendant's premises, and if so, whether the Defendant has breached the agreement and whether the Claimant is entitled to the sum claimed or entitled to loss of income. These issues have been determined on the circumstances of the case and the conduct of the parties and on my assessment of their credibility and the cogency of their respective evidence.

### The Law

[50] It is a principle of law that a contract may be evidenced in writing as well as oral statements (See **Couchman v Hill** [1947] KB 554) and also that an agreement may be complete although the terms are not agreed in detail (**Foley v Classique Coaches Ltd.** [1934] 2 KB 1). It is settled law that in construing an agreement, the intention of the parties taken from an objective stance must be considered. In such cases, the court can look at surrounding circumstances, what the parties

had in mind and what was going on around them at the time of making the agreement. (See **Scottish Power plc v Brittoil Exploration Ltd.**, The Times, December 2, 1997).

[51] It is also a well settled rule that an agreement is not binding as a contract unless it shows that the parties intended to create a legal relationship and all the essential terms governing the relationship between the parties to it must be incorporated, the subject matter must be certain and there must be evidence that such a contract is in existence, whether it is oral or written.

[52] The authorities also show that a lease arises where a landlord confers on a tenant the 'right to exclusive possession of land for a fixed or renewable period or periods, usually in return for a periodic payment in money'.

### Discussion

[53] I recognize that essential to the issues in this case is the credibility of the parties and the witness called by the Defendant. The court is not obliged to accept all or any part of the evidence of any witness, but has a discretion to accept a part of the evidence if it is deemed to be credible and as a result the court finds that it cannot accept the entire evidence of the parties, but finds that parts of their evidence are credible and truthful.

[54] Having had the benefit of observing the parties and the Defendant's witness, I find the evidence adduced by the Defendant and his witness to be more credible than that of the Claimant. The Defendant gave clear and cogent evidence and was not shaken in cross examination and I found him to be frank and forthright. His witness Robert McLeod, who indicated that he provided services to him in relation to the configuration of the containers, however, I note was less than forthright and had to retract his evidence in relation to some of the work he claimed he did for the Defendant, when he indicated that it was a welder who

carried out that aspect of the work. This however has not affected my finding as it does not, of itself, go to the root of the dispute between the parties.

[55] The state of the Claimant's case, on the other hand, given the variations in his allegations as to what the true nature of the agreement was, and the inconsistencies in his evidence, has led me to find that his credibility is questionable and I was therefore not impressed by him.

[56] Under cross examination, he stated that he would carry out improvement works on the containers on the property and that the agreement concerned himself and the Defendant carrying out business there. He had insisted that the agreement was that he would carry out improvement works on the containers and the property, the agreement was for himself and the Defendant to carry out business on the property. In his evidence in chief, however, he stated that discussions concerned three (3) persons participating in the development of the property, himself, the Defendant and Alton Grant.

[57] Further, the Claimant stated that the Defendant offered him a five year lease initially, and then he offered him a seven year lease, and while under cross examination, he stated that the Defendant presented him with a draft lease. He then departed from his initial position as he later agreed that it was a Mr Taylor who would have presented the lease to himself and the Defendant.

[58] I accept the Claimant's evidence that he carried out some improvement works on the property. However, the nature of the work carried out by him is in dispute and it is also in dispute whether what he did were agreed on by the Defendant. Since the question of breach of an agreement is fundamentally a question of fact, I find that there are other peripheral issues to which the court must have regard and determine if there was in fact a binding agreement.

[59] I have therefore looked at the nature of the discussions and dealings between the parties and the timeline from the outset of the discussions to when the

Claimant took possession of the container. I am satisfied that by virtue of the discussions at the outset of the negotiations between the parties it was understood that the reason for the Claimant wanting to lease the container was for the purpose of operating a bar. The parties had discussions about the use of the premises and what has been made apparent is that the parties intended to form an agreement for the lease of one of the containers on the premises, but these negotiations I find, were never finalized or completed although the Claimant was allowed to enter onto the premises and operate his business in time for him to have his "birth night bash".

- [60] I accept the contention of the Defendant that the Claimant wanted to put a personal touch on the premises, so that, for example, he found the need to paint both containers and pave sections of the property. These works, among others, were carried out at the instance of Claimant and he sought to show that he purchased materials, although he also showed that some materials were purchased by the Defendant.
- [61] The Defendant had carried out some work on his premises and the agreement at the commencement of the discussions, as I understand it, was that the Defendant would install counter, electricity, water and door locks and subsequently, due to his urgent need to start operating the bar, the agreement was that the Claimant would carry out electricity and water installation and would have been allowed to take possession of the container, after which, the Defendant would install the counter. The arrangements were modified on more than one occasion, but that cannot, of itself, in my view, lead to the conclusion that the Defendant agreed to reimburse the Claimant the costs of all the renovations he undertook as I find that the Claimant clearly went outside of the matters discussed and did renovations to suit his own preferences including painting both containers and paving a section of the property.
- [62] It is clear that the Claimant embarked on a pattern of behaviour which indicated his anxiety and or urgency to have the container, and the entire property, for that

matter, ready for his birth night bash which was in fact held on the premises on March 26. It therefore leads me to find that the Claimant acted in blatant disregard of the Defendant's lack of consent to carry out certain improvement works and I accept that not all the improvement works undertaken by the Claimant was agreed upon and I am satisfied, on a balance of probabilities that the Defendant's version in relation to the course of dealings between the parties is to be preferred.

- [63] There were ongoing discussions in relation to an agreement for a lease and the evidence discloses that there were modifications in order to facilitate the Claimant's request to move onto the premises while it was still under construction. This is at the heart of the dispute between the parties. It is still not clear what, if any, the final arrangements were. I therefore cannot agree with Counsel for the Claimant that the parties acted on the "lease agreement presented to the Defendant" as I accept as a fact, that the Defendant refused to agree to the terms of the draft lease presented to him.
- [64] There is therefore no concrete evidence to show that they had agreed on a specific period for which the Claimant would lease the container. There is no clear evidence as to a fixed amount to be paid as rental although the Claimant said it was \$30,000.00, and the Defendant said it was \$35,000.00 and then reduced to \$30,000.00. There is also no evidence to show that the Claimant had exclusive possession of the premises. What is clear is that there was at least one other person doing business on the property and construction and renovation work was being carried out by the Claimant and the Defendant, or at the instance of the Claimant and the Defendant at the same time, up to and even after the Claimant started operating his bar on the premises.
- [65] The evidence does not disclose that the discussions between the parties led to an enforceable contract as no definite terms had been arrived at and although a lease may be presumed based on the conduct of the parties, I find that there were ongoing discussions between the parties, the Defendant allowed the

Claimant to take possession of the container before all the improvement works were completed, and notwithstanding that the Defendant collected money from the Claimant and gave him receipts, the conduct of the parties in my view show that there was no finalized agreement between them. I cannot therefore find that there was a binding contract between the parties.

[66] I must note also that I find that the inconsistencies on the Claimant's case go to the very root of his case. He had a duty to prove on a balance of probabilities that there was a binding agreement between himself and the Defendant which was breached, and having made certain allegations in his pleadings and having retracted some of the factual bases of his claim, the court is left in a state of uncertainty. He has therefore failed to satisfy the court that there was a valid contract which the Defendant has breached and neither has he shown that the sums he claimed to have expended represent his loss arising from any breach by the Defendant, or that he is entitled to damages or loss of income as claimed.

[67] In view of all the foregoing, the court concludes that there was no agreement between the parties forming a binding contract. The Claimant went into possession of the premises without there being a specified duration agreed, or an agreed monthly payment, as they were still in negotiations which had been modified to facilitate his urgent need to commence operations and have his "birth night bash".

#### **Disposition**

[68] Judgment for the Defendant with costs to be taxed, if not agreed.

*Amanda*