

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2008 – 02364

BETWEEN

VINCENT HERNANDEZ

AND

SHAKHUNTULA TOTA-MAHARAJ

Before the Honourable Madame Justice Rajnauth-Lee

Appearances:

Mr. Kelvin Ramkissoon for the Claimant

Mr. Ravindra Nanga instructed by Miss Vanita Lutchmeesingh for the Defendant

Dated the 8th December, 2009

REASONS

1. By Claim Form filed on the 30th June, 2008, the Claimant sought the following relief against the Defendant:

(1) *A declaration that the Claimant is entitled to a Tenancy Agreement for the demised premises known as All and Singular that upstairs portion of a commercial building and situate at Corner Pro Queen*

and Devenish Streets, Arima, in the Island of Trinidad, for the period April, 2005, and continuing.

(2) *General Damages for Breach of Contract.*

(3) *Interest.*

(4) *Costs.*

(5) *Such further and/or other relief.*

2. The Claimant's Statement of Case was filed on the said 30th June, 2008. By virtue of paragraph 29 of his Statement of Case, the Claimant averred that by reason of the matters [set out in the Statement of Case] the Claimant had suffered loss and damage. The Defendant's Defence was filed on the 28th July, 2008. According to paragraph 23 of the Defence, paragraph 29 of the Statement of Case was not admitted as the Defendant was a stranger to the allegations therein. On the 31st July, 2008, the Court Office notified the parties to attend a case management conference on the 20th October, 2008 before the Court. On the 10th September, 2008, an amended Defence was filed.

3. On the 20th October, 2008, the case management conference was adjourned pending negotiations to the 19th January, 2009. Again on the 19th January, 2009, the case management conference was adjourned to the 27th March, 2009, since the Attorneys expressed a desire to meet with the parties in conference with a view to arriving at a settlement of this matter.

4. On the 27th March, 2009, the parties agreed that the matter be referred to a Judge for a judicial settlement conference. The case management conference was then adjourned to the 29th June, 2009. On that date, it was reported to the Court that no settlement was reached at the judicial settlement conference.

5. On the 22nd June, 2009, the Claimant had filed a notice of application to amend his Statement of Case in terms of the draft thereto annexed. By the said draft amended Statement of Case, the Claimant sought to include the following facts and/or matters which all concerned the issue of damages:

29. *The Claimant has been unable since February 15, 2005, to operate his business known as “Tip Top Recreation Club”. The said business operated as a commercial venture for profit and the Claimant made daily profits. The Claimant has lost profits in the monthly amount of \$25,000.00. For the year 2004, the Claimants monthly profit was as follows:*

<i>January</i>	<i>\$23,955.00</i>
<i>February</i>	<i>\$23,515.00</i>
<i>March</i>	<i>\$27,920.00</i>
<i>April</i>	<i>\$28,950.00</i>
<i>May</i>	<i>\$27,930.00</i>
<i>June</i>	<i>\$29,240.00</i>
<i>July</i>	<i>\$34,000.00</i>
<i>August</i>	<i>\$31,720.00</i>
<i>September</i>	<i>\$31,840.00</i>
<i>October</i>	<i>\$29,610.00</i>
<i>November</i>	<i>\$27,800.00</i>
<i>December</i>	<i>\$34,950.00</i>

There is annexed to this Statement of Case and marked “K” a copy of the statements of profits for the year 2004 detailed month by month.

30. *The Claimant's loss of profit for the period February to July 2005, is in the sum of \$150,000.00.*
31. *The Claimant also held a Recreation Club License which facilitated gambling and also had a gambling license. These increased the Claimant's profits.*
32. *The Claimant anticipated that he would have continued making the profits outlined in paragraph 29 above had the Defendant not breached the terms of contract.*
33. *Further the Defendant has removed and destroyed the Claimant's items of trade namely, 2 coolers and 2 deep freezers together valued \$22,000.00.*

PARTICULARS OF SPECIAL DAMAGES

- a. *2 coolers at \$10,000.00 each.*
 - b. *2 deep freezers at \$6,000.00 each.*
 - c. *Loss of profit for the period February to July 2005, amounting to the sum of \$150,000.00.*
34. *In the premises the Claimant has suffered loss and damages.*
6. Pursuant to the Order of the Court made on the 29th June, 2009, Written Submissions were filed and served by the parties with respect to the application to amend. On the adjourned date of the application, that is on the 24th November, 2009, the Court gave permission to the Claimant to amend his Claim Form and Statement of Case and the Court also made consequential orders.

7. The Court had carefully perused its notes of the several case management conferences that were held before it. At no stage, did the Attorneys and parties embark on the matters and issues which are normally ventilated at the first case management conference. For example, the issue whether any amendments were required to be made, and the issue whether permission should be granted for the filing of a Reply by the Claimant were never considered or adjudicated upon by the Court. On the first occasion, the Court simply adjourned the case management conference pending negotiations. On the second occasion, the Court made it clear, and my notes reflect that the case management conference was being adjourned as the first case management conference and there was no objection by either side. Thereafter, the status remained the same.
8. Accordingly, the relevant rule is Part 20.1 (2) of the Civil Proceedings Rules, 1998, as amended, which provides that a Court may give permission to change a statement of case at a case management conference.
9. Having looked at the amendment sought, I concluded that justice would be served by granting it. As to the issue of prejudice raised by the Defendant in the Notice of Appeal, in the judgment of the Court, the greater prejudice would be suffered by the Claimant had I refused the amendment sought. It would be just in the Court's view that all matters, including the issue of the damages alleged to have been suffered by the Claimant, be ventilated at a trial. I cannot see how justice would be served by allowing a trial to proceed only on part of the Claimant's claim in the circumstances of this case. Accordingly, I exercised my discretion in favour of the Claimant and permitted the amendment.

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MAUREEN RAJNAUTH-LEE
JUDGE