THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE
Sub-Registry San Fernando

CLAIM NO: CV2018-02985

BETWEEN

ANTONIO ELLIOTT BULLOCK

First Claimant

SUSAN WARMACK

Second Claimant

AND

ISABEL ANGELA HARRILAL

First Defendant

SIMON HARRILAL

Second Defendant

Before the Honourable Madame Justice Quinlan-Williams

Appearances: Ms. Renu Teekasingh for the Claimants
Ms. Nabilah Khan instructed by Mr. Randy Sinanan for the Defendants

Date of Delivery: 9 September 2021

JUDGMENT

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1. The claimants believing they had an excellent opportunity to start a business, entered into a written lease agreement dated 5 March 2015, with the first defendant to lease what had been Isabel's Bar for five years at a cost of $7,000.00 per month ("the demised property"/"the bar").

2. Things did not go as planned, and so the claimants felt constrained to file this action against the defendants. Therefore, by claim form and statement of case filed on the 17 August 2018, the claimants claimed against the defendants:

    a. Special Damages;
    b. Damages for trespass and/or breach of the covenant for quiet enjoyment;
    c. Damages for personal injuries, loss, damages and humiliation, trauma and mental distress as a result of the assault and battery;
    d. Aggravated damages;
    e. Interests as prescribed by the Supreme Court of Judicature Act s. 25A;
    f. Costs; and
    g. Any such further and/or other relief as to the Honourable Court may seem just.

3. By their defence filed on the 15 October 2018, the defendants have denied all allegations contained in the claimants' claim.

The Issues

4. The court is called upon to resolve the following issues, whether:
    I. The lease is a valid lease for a period of five years;
    II. There was breach of the covenant of quiet enjoyment and trespass on the demised property;

III. The second defendant committed assault and battery against the claimants; and

IV. The claimants are entitled to damages.

The Evidence

5. Before summarizing the evidence, the court notes that for the first time, the defendants' in their submissions in reply took issue that the claimants' witness statements, save for Antonio's contained no statements of truth. Part 29.5(1)(g) of the Consolidated Civil Proceedings Rules 2016 ("CPR") states that "a witness statement must include a statement by the intended witness that he believes the statements of fact in it to be true."

6. The consequences of the failure to verify a witness statement was explored by the authors of the Civil Procedure Volume I[1] ("the White Book"). In the White Book, there was clear understanding that witness statement needed to comply with the requirements of the relevant practice direction, including verification by a statement of truth. Further, a witness statement that is not verified by a statement of truth, by the maker of the statement, may be rendered inadmissible as evidence, but only if the court so directs. Since there is no sanction in the rules, the lack of verification does not render the witness statement, ipso facto inadmissible.

7. In this case, the defendants took no objection to the witness statements neither at the case management conferences nor at the pretrial review. Additionally, the witnesses were not cross-examined on the absence of the required verification and its impact on the veracity of their statements. As noted, it was not raised in the principal submissions of the defendants; it seems to have been an afterthought.

[1] By Sweet & Maxwell 2014 at paragraph 22.3.3

8. Each witness was sworn and accepted the contents of their statement and true and correct and the court accepted the witnesses' statements as their evidence in chief. As such, the court rules that the statements remain admissible and will therefore considered all the evidence adduced by the claimants at the trial.

- The Claimants' Evidence

9. In support of the claimants' case, along with the claimants, witness statements were filed on behalf of Sanmattee Bullock, Phulmat Samaroo and Sanjay Bharose. At the trial however, Sanmattee Bullock was not called to give evidence.

10. The claimants share a common law relationship of husband and wife. After showing them the bar, they agreed to lease the first defendant's bar located at L.P. No. 10 Quinam Road, Penal to the claimants. Their residence is located to the back of the bar.

11. The claimants say that upon viewing the bar, it was confirmed that the square footage measured 996 square feet. This consisted of a designated physical bar counter area, stockroom, bathroom, drinking area and two covered entry points. One of the entry points leads to a kitchen.

12. Based on what the defendants showed them, the claimants entered into a written agreement with the first defendant ("Isabel") on the 5 March 2015 to lease the bar for $7,000.00 per month for five years.

13. Soon after the claimants took possession of the demised property, they began experiencing problems with the defendants. The claimants averred that they were told and soon witnessed that Simon had a habit

of drinking alcohol and when inebriated would become verbally abusive, especially towards Susan.

14. According to clause 3(a) of the lease agreement, it was expressly stated that, "the Lessee(s) paying the rental above stipulated in the manner stipulated shall peacefully occupy the tenanted Premises without interruptions by the Lessor." Notwithstanding the said clause, the defendants and/or their servants and/or agents entered on several occasions during the period 18 March 2015 to 9 June 2018 without permission or prior notice, trespassing into the demised property.

15. On the 18 March 2015, during the opening hours of the business, Simon in an inebriated stated entered the bar and began using obscenities towards Susan for no apparent reason.

16. On the 5 April 2015, Isabel entered the demised property and using obscene language, requested rent that was not yet due. The claimants say that Isabel threatened to lock them out of the bar if rent was not paid. After explaining that rent was payable on the 7th day of each month, Isabel stopped cursing the claimants.

17. On the same occasion, Susan informed Isabel of the lack of water in the tank suppling the demised premises. Nevertheless, Isabel refused to rectify the situation within a reasonable time causing loss to the business that day as Susan was unable to cook and the washroom was not operational.

18. On the 8 April 2015, Simon entered the bar and began harassing customers to purchase beer for him. After Susan asked him to leave the bar, Simon got angry and left. Simon then went to his home and turned up the music so loudly that patrons left the bar causing financial losses to the claimants.

19. On the 18 April 2015, Simon visited the bar with his two-year-old step granddaughter. When asked to leave, Simon began using obscene language (in front of the child). The claimants assert that Simon's behavior not only embarrassed them but also resulted in a loss of business.

20. On the 26 April 2015, Simon entered the demised premises threatening, "to chop" and "finish" the claimants. The claimants say that they became fearful for their safety due to Simon's intoxication and aggressive behaviour. Customers who witnessed the events immediately left the bar. The claimants aver that they were embarrassed and suffered financial losses and damage to the reputation of their business.

21. On the 19 June 2015, Simon entered the bar, consumed alcohol with other patrons and played loud music. Despite her fear of Simon in his drunken state, Susan asked him to lower the music. In response, Simon began to curse Susan and she asked him to leave. Susan began to walk away when Simon took a chair from the bar, struck Susan across her back causing her to fall to the ground unconscious. Due to Simon's actions, Susan suffered pain and discomfort to her neck and upper back.

22. On the 24 September 2016, the defendants entered the demised premises and without notice or justification, began cutting down the burglar proofing at the main entrance gate to the bar. The claimants' attempts to stop the defendants were futile; therefore, Susan called the Siparia police. When Simon realized, he approached Susan and shouted, "I will buss your face". The claimants became fearful for their safety and went to the back of the bar until the police arrived. WPC 19008 Sunnylal arrived 20-30 minutes later and although she warned

the defendants not to threaten the claimants, Isabel still continued to threaten to beat Susan.

23. On the 12 November 2016, the defendants entered the demised premises and without notice or justification, completely cut down the burglar proof forcing the claimants to close the bar. The claimants say they suffered financial losses, as they were unable to sell.

24. On the 26 November 2016, at about 9:30am, the defendants' son acting as Isabel's servant and/or agent removed the burglar proofing without any notice. As a result, the kitchen and four slot machines were left exposed and unprotected to the public. With the assistance of some customers, the claimants removed the gambling machines. The claimants claim that they suffered financial loss, as they had to close the bar that day and since then, have been unable to use the machines.

25. On the 28 November 2016, between 10:00am and 11:00am, Simon and his son without prior notice, welded off the fire exit, previously used by patrons and the claimants to access the kitchen.

26. On the 3 December 2016 at about 6:00am and 7:00am, Simon and a person identified as Gobin, re-welded a burglar proof and locked the gate to the bar. This prevented the claimants' access to their storage area and also reduced the area of space rented.

27. On the 25 and 26 December 2016, the defendants and another servant and/or agent broke down the kitchen area made of ply board and threw the debris in front of the bar entrance, thereby obstructing same. Due to the defendant's actions, the claimants say that they attended the Siparia Police Station to make a report of the incident. The claimants were unable to open the bar and suffered loss of

earnings in the sum of $4,785.66.[2] In addition, the claimants were at a loss of $800.00 since they usually prepared breakfast and lunch for their loyal customers on Christmas day.

28. The claimants aver that the defendants' removal of the kitchen area has resulted in the loss of approximately one third of the leased area measuring 341 square feet out of the 996 square feet leased. As such, the reduction in rented space without the claimants' agreement has resulted in over payment of $2,333.33 per month from December 2016 to the end of the lease, since the claimants have been deprived of approximately one third of the demised premises. Moreover, the loss of the kitchen has caused the claimants financial loss, as they were unable to prepare the cutters.

29. On the 8 August 2017, Simon shut off the electricity to the demised property. Consequently, the claimants state that three of their cameras costing $600.00 were damaged. Further, the claimants sustained financial losses, as they were unable to operate the bar on that day.

30. On the 10 December 2017, the defendants cut the electricity supply to the demised premises during the operation of the bar, which resulted in financial loss as customers left and the business was closed.

31. On the 9 January 2018, the defendants refused to performed the necessary correction works as directed by the Health Inspector for the bar license to be renewed for the year 2018. The defendants used obscene and derogative language when the claimants asked about the said works. The defendants' failure to do the necessary correction works, resulted in water leakage in six areas of the bar.

[2] The claimants aver that the daily average earnings amounts to $2,392.78 – Witness Statement of Susan Warmack at paragraph 14(k)(i)

32. On the 10 January 2018 between 9:00am and 11:00am, Isabel requested that the claimants meet at the lawyer's office to review the contract.

33. On the 20 January 2018, there was no water supply to the demised premises and the defendants did not answer the claimants' calls to remedy the situation. As a result, the claimants were forced to run the bar without water in the taps disturbing the proper operation of the bar and causing undue distress and frustration.

34. On the 13 February 2018, the defendants shouted profanities to the claimants in the presence of customers, thereby causing embarrassment to the claimants.

35. On the 21 May 2018, the claimants aver that while the bar was opened, their electricity supply was suddenly disconnected without notice. The Trinidad and Tobago Electricity Commission ("T&TEC") informed that the disconnection arose because the account was in arrears. Pursuant to the lease agreement, the claimants were responsible for paying half the electricity bill. The claimants assert that as soon as they received the bill, they made their half payment but the defendants failed to maintain their obligation to pay the other half to ensure that there was a consistent electricity supply. As a result of the defendants' actions, the claimants sustained financial losses as six patrons who were at the bar left and the bar was without electricity for over six hours.

36. During the periods January to June 2018, the claimants' water connection would frequently cease. The claimants' evidence is that the defendants controlled the main water valve. As such, the claimant would often beg the defendant to turn on the connection. Because of the defendants' constant disconnection, the washroom facility was inoperative as worms began gathering and the claimants were unable to properly sanitize the area.

37. On the 30 May 2018 and 9 June 2018, the claimants state that the defendants played extremely loud music from their home, which caused a disturbance and disruption to the bar. Police visited the property and asked them to reduce the volume. A caretaker from the church located next to the property also came to the bar asking that the volume be reduced, only to realize that is was the defendants who were responsible for the music.

38. The claimants were in still in occupation of the bar when they filed this claim.

- The Defendants' Evidence

39. The defendants are husband and wife. Isabel is the owner of a bar namely, Isabel Bar which she agreed to lease to the claimants on the 5 March 2015 for a term of five years at $7,000 per month.

40. The defendants assert that the claimants always enjoyed exclusive possession of the bar. Isabel's evidence is that visits to the bar were only made to inspect and/or conduct the necessary repairs as per the claimants' request.

41. Simon visited the bar to purchase snacks with his granddaughter. Simon also visited the bar when he was invited by loyal customers to share in beverages purchased and consumed at the bar. Most times after such escapades, Simon says that he usually returned home and went to bed as he became drowsy after having the said beverages.

42. There was no issue with the claimants in relation to rent. When rent became due, the first claimant ("Antonio") always ensured that it was paid on time i.e. before 3:00pm on the 7th day of every month.

43. The only issue that arose from the operation of the bar was the continuous and unexpected disruption in the pipe borne water supply. Occasionally, the claimants would complain about the unavoidable disruption in the water supply from the Water and Sewerage Authority (WASA). The defendants always ensured that there was a sufficient supply of water in their storage tanks. During the time when Isabel operated the bar, the storage tanks were more than sufficient. However, when the claimants took control of the bar, the storage tanks on most occasions were insufficient.

44. Simon's evidence was that he never had any disagreements with the claimants. He never used obscene language in or around the bar as he maintained respect for the claimants and by extension, the customers of the said bar, most of whom he knew because of Isabel formerly running the bar. Simon denied ever hitting Susan with a chair and denies all allegations of assault and battery since the first time he heard of the incident was by virtue of these proceedings.

45. The defendants assert that despite the claimants' difficult personalities and refusal to cooperate, the defendants were always respectful to the claimants and the patrons of the bar.

46. On the 5 April 2015, there was a temporary disruption of the regular supply of water. It returned at about 11:00pm while the defendants were asleep. In an effort to have the defendants restore the water supply to the demised property, Susan in an intoxicated state made attempts to wake the defendants by loudly shouting their names. Susan also violently shook the defendants' entry gate causing damage to it. Nevertheless, Simon awoke and complied with Susan's request.

47. The defendants admit that the floor space of the bar measured approximately 996 square feet comprising a counter area, stockroom,

bathroom, drinking area and two entry points as set out in the floor plan. However, the defendants' evidence is that separate and apart from the actual bar space, the claimants were allowed to use an additional adjoining space for storage. There was an understanding that the defendants would allow the claimants to use the additional space since the defendants had no immediate need for the space but when the need arose, the claimants would deliver up the space to the defendants.

48. Despite constant requests by the defendants to remove and secure their items in order to deliver up vacant possession of the additional space, the claimants refused to comply. Therefore, on or around the 24 September 2016, the defendants arranged to remove the burglar proofing securing the additional space. The claimants refused to cooperate and contacted the district police station. The officers visited and were informed of the situation. Despite the officers' advice to remove their items, the claimants failed to comply with the request.

49. Pursuant to the claimants' lack of cooperation, the defendants received legal advice to safely remove the claimants' belongings and place them in the bar space.

50. On or around Saturday 26 November 2016, the defendants cleared the additional space. The claimants willingly removed the wall machines in the additional space and installed them in the bar space. The authorities were contacted on the next working day i.e. Monday 28 November 2016 and the wall machines resumed regular operation on that day. The disruption in the service could have been avoided if the claimants cooperated. Moreover, the defendants aver that the bar was not closed nor was its operations otherwise ceased.

51. The defendants aver that there was a wooden area, which also did not form part of the actual bar space or leased area. Since the claimants

were not known for opening the bar for business on the 25 and 26 December 2016 (as they never did so in previous years), the defendants decided to dismantle the wooden area. During the demolition process, the dismantled pieces of wood were placed in front of the bar, and were immediately removed and discarded after the demolition.

52. After removing the burglar proofing and additional spaces, Simon caused one entrance and exit point to be sealed off.

53. Throughout the readjustment, Simon avers that he always ensured that the claimants had uninterrupted access to the actual bar area and the area in which they stored cases for empty bottles. In any event, the empty cases should have been stored in attached storeroom of the bar.

54. The defendants assert that at all times the claimants were aware of the arrangement that they could use the additional spaces until the defendants were ready to recover them. Even prior to executing the lease agreement, the claimants were informed of and accepted that the additional spaces attached to the bar did not form part of the demised premises. Despite being allowed to use the additional spaces, the claimants did not incur an additional rent. The rent charged represented the agreed rent for the bar space only.

55. Eventually, the claimants began falsely accusing the defendants of shutting off the electricity supply to the demised premises. The defendants say that this was impossible since the bar space has its own panel box and they do not have access to the bar as the claimants have the entry keys.

56. In relation to the renewal of the liquor license, the defendants always ensured that the necessary remedial works were done. The defendants always undertook and completed the works in a timely manner so as

to avoid any interruption and/or delay in obtaining the respective liquor license.

57. On or around the 21 May 2018, there was a disruption in the supply of electricity to the property. Upon contacting T&TEC the defendants were informed that payments were received but not registered on the system, which was the reason for the disconnection. Antonio closed the bar and requested that Isabel inform him when the supply was restored so that he could resume business. Isabel asserts that although she informed Antonio of the resumption of the electricity supply he did not reopen the bar.

58. Simon denies ever playing music loudly or that police officers had cause to visit his home and instruct him to lower the volume of music he was playing. He always enjoyed the music of the bar and never had cause to play music of his own due to the proximity of the bar.

Findings of fact

<u>The demised premises</u>

59. There is no dispute that the lease agreement was executed on the 7 March 2015 for five years, ending on 6 March 2020. The agreement was not created by deed and it was not registered. The lease included a covenant at clause 3(a) for quiet enjoyment. There is also no dispute that the monthly rental was $7000.00. The parties to the agreement are the claimants and the first defendant.

60. What is disputed by the defendants, is the area leased by the claimants. The claimants say 996 square feet was shown to them and that is what they leased. The defendants say they rented the bar area only and gratuitously permitted the claimants to use the additional space until they need it for their own use.

61. To resolve that dispute the court considered a number of factors. Firstly the agreement itself. The agreement described the tenanted property as "a Bar situate at Light Pole 10 Quinam Road Penal". Beyond the address, the lease does not provide a description of the bar. Secondly, the court considered the depiction of the bar in the plan described as the "FLOOR LAYOUT OF BAR" at 10 Quinam Road. This Floor Plan is certified as submitted by the first defendant by for the Bar Licence No. 70485. The Bar Licence is for a bar at 10 Quinam Road and appears to have been approved on 10 July 2006.

62. The Floor Layout depicts two entrances at the front of the bar, both entering into the main drinking area. Off the main drinking area is a room to the left (if looking in from the entrance) about 27 feet in length. That room is apparently divided with the larger area having what appears to be a six-foot counter. It is labeled "E" in the plan.

63. Thirdly, the lease provides that "whenever the Licence comes up for renewal, the Lessee hereby agrees to pay the Licence Fee"[3]. It seems that the licence referred to is the Bar Licence No. 70485. The Agreement does not require the claimants to obtain their own Bar Licence, rather it requires them to pay the annual renewal fee for Isabel's Bar.

64. Fourthly, the defendants admit that the claimants were permitted to and did take occupation of the entire area depicted in the Floor Layout for the bar and used the entire area from the commencement of the lease and for some time thereafter.

65. It is clear and the court is satisfied on the evidence, that the claimants leased "Isabel's Bar" as described in the lease, the Floor Plan and

[3] Paragraph (3) e. of the Agreement

acknowledged by the behaviour of the parties. Additionally, the Floor Layout includes measurements for the area the defendants say was not included in the lease. Even the suppliers such as CARIB Brewery recognized that they were delivering their goods to Isabel's Bar as the delivery notes and receipts state.

66. The court is also satisfied that had the first defendant intended to lease an area inconsistent with the Floor Layout and the Bar Licence for Isabel Bar, that description would have been in the lease.

67. The court is therefore satisfied, on a balance of probabilities, that the entire area depicted in the Floor Layout is the area referred to in the Agreement executed by the claimants and the first defendant. The court does not accept the defendants' evidence that the claimants leased only part of the Bar and that they were aware that the area leased was less than 996 square feet. The court also does not believe the defendants when they say the claimants always knew the defendants would be taking back space for their own use.

Defendants' behaviour

68. On the issue of the second defendant's behaviour and in particular the alleged attack on the second claimant. It is alleged, that on the 19 June 2015 the second defendant struck the second claimant with a metal chair causing her to fall to the ground in an unconscious state. She was subsequently taken to the hospital by ambulance. The second claimant allege that she sustained injuries. Susan supports her evidence with a medical report, which says that the second claimant was seen at the Siparia District Hospital on the 19 June 2015 and ordered transferred to the San Fernando General Hospital. The history recorded on that medical report was that she suffered an alleged assault by being hit on

the head with a metal chair, which caused her to lose consciousness for over 20 minutes.

69. There is also a report from the San Fernando General Hospital, which documents that the second claimant was seen at the San Fernando General Hospital on the 19 June 2015. The patient's history was recorded as being assaulted by the landlord and being hit with a metal chair on the back and falling forward hitting her forehead. The patient was treated and referred to the Orthopaedic Unit for review.

70. The history given in the contemporaneous medical records supports the claimants' version. It would be unusual that the claimants would make this up and not report the incident to the police.

71. A later reference was made to the incident in the letter dated 19 February 2016 from the Attorney at Law for the claimants to the first defendant alleging breach of contract and "an assault" upon the second claimant. There is no evidence that the second defendant, at that time, disputed the allegation of "the assault". The second defendant claimed that he first heard of the alleged incident with the chair during these legal proceedings.

72. The claimants annexed copies of receipts of two police reports made by them in 2015. The first claimant made one on 15 April 2015 alleging harassment on 8 April 2015. The other was made by the second claimant, alleging threats on the 26 April 2015. The claimants made these two reports before the alleged incident on the 19 June 2015. There is a third receipt of a police report made on 10 December 2017 by the second claimant alleging "Breach of Contract re Lease Agreement". There is no receipt of a police report made about the incident on the 19 June 2015. It seems rather strange that the claimants would make police reports about threats, harassment and breach of

contract but no report about the second claimant being hit with a chair by the second defendant.

73. On the 19 June 2015, the records for the daily sales show that the sales were $2,282.00. That sales figure was not glaringly low or out of the ordinary; there were days when sales were higher and days when sales were lower. The following day, Saturday 20 June 2015, the bar was closed for business. The bar was also closed on the 22 and 23 June 2015. There were no notations about the reasons for the closures on those days. Additionally, the bar was closed on the 30 June 2015 with a notation made for "Lawyer/Hospital" and on the 1 July 2015, the bar was closed with a notation for "Clinic/Therapy".

74. Those five days of closures in a two-week period were unusual and not in keeping with the pattern of closures recorded by the claimants in their sales reports. It is however consistent with the allegation made against the second defendant and that Susan sustained injuries that required immediate and follow-up medical treatment.

75. It may seem unusual that there was no police report of the incident, also no "lawyer's letter" sent to the second defendant at or around the time, and that the claimants continued with the lease. However, the court is satisfied that the claimants having invested in the business, tried to keep the bar open as it was their livelihood. Further, the contemporaneous medical records and the records of daily sales support the claimants' case. The court is satisfied on a balance of probabilities that the second defendant on the 19 June 2015 hit the second claimant with a chair causing her to fall forward and sustain injuries that required immediate hospitalization as well as clinic treatment.

76. While this beating stands out, the claimants also complained of various other acts committed by both defendants. The first defendant is accused of making threats and demands for the rent on the 5 April 2015, although the rent was due on the seventh of each month. On the 18 April 2015, the second defendant used obscene language. On the 26 April 2015, the second claimant entered the bar and threatened to chop up the claimants. As noted earlier, there were reports made to the police of threats and an assault committed by the second defendant in April 2015.

77. The court is satisfied that the defendants behaved in the manner described by the claimants. While the claimants did not report all the incidents to the police, they did make some reports. I do not believe the claimants would have gone through the trouble of making those reports if the defendants were not behaving in the manner described. After all, they still had a relationship with the first defendant as the lessor and second defendant as her husband. Further, the defendants lived to the back of the bar and there was therefore no way to avoid them.

<u>Use of the demised premises</u>

78. The claimants allege a pattern of behaviour, which has amounted to trespass as well as deprivation of the quiet enjoyment of the demised premises. The court's findings that the claimants leased all 996 square feet of space comprising the bar, together with admissions made by the defendants are sufficient for the court to find the facts as the claimants' allege. The first and second defendants admit that on 24 September 2016, they instructed workers to remove the burglar proofing of "the additional space". However, because of police intervention, this was not completed. Consequently, the defendants continued what they commenced and cleared the area on the 26 November 2016. Further, on 25 and 26 December 2016, the defendants decided that they could

enter the demised premises, unannounced and without notice and completely dismantled what was remaining of the additional space. The defendants also admit that they closed one of the two entrance and exit points. These acts were done without the claimants' consent and sometimes in their absence.

79. The claimants also gave evidence about other events. The claimants allege that on numerous occasions between March 2015 and June 2018, the second defendant entered the bar and had unwelcomed encounters with either the claimants, or their customers. Most of the encounters involved the consumption of alcohol and behaviour associated with that consumption. The court accepts the claimants' evidence in this regard. It is wholly consistent with the findings of fact made by the court about the behaviour of the second defendant. The second defendant's evidence is that he drank when loyal customers invited him for a drink following which he would go home to sleep as he became sleepy. It is unclear if the second defendant was fully cognizant of his behaviour when he accepted those invitations and imbued alcohol; but the court is satisfied that he behaved in a disorderly manner. It is possible that after behaving drunkenly, he eventually became sleepy and went to bed.

80. The defendants admit that the claimants' slot machines were located in the area behind the burglar proofing – the area they cut and partially removed on the 26 November 2016. This resulted in the claimants having to remove the machines. Similarly, the kitchen area was no longer accessible to the claimants. The court has already decided that the claimants leased the entire area which included where the slot machines and the kitchen were located. The defendants by their actions deprived the claimants of access to parts of the demised premises.

Water and electricity

81. The court accepts the defendants' evidence that the electrical panel box for the bar was located inside the bar. The court is satisfied that the electricity supply to the bar was disrupted. The claimants say this happened on the 8 August 2017. This disruption, they say damaged the security cameras they had previously installed. They also say there was a disruption to the electricity supply on the 10 December 2017. At that time, patrons attending the bar left.

82. The defendants deny that they caused any interruptions to the electricity supply. The court is not satisfied on the evidence, that the defendants and not T&TEC caused those disruptions. There is no evidence for the court to make a finding that the disruption of the electricity supply damaged the claimants' cameras, and even if that were the case, the defendants are not responsible because they did not caused the disruptions.

83. On the 21 May 2018, the electricity supply was disconnected. The defendants say that they paid their half of the electricity bill, but that their payment was not registered by T&TEC. The court does not believe the account proffered by the defendants. The history of the electricity payments show that the defendants were often in arrears of their share of the bill. The court is satisfied that the defendants did not pay their share of the electricity bill, the bill was in arrears and T&TEC disconnected the supply of electricity to the building.

84. The claimants also allege that they experienced breaks in the supply of water during the period January to June 2018. There was insufficient evidence to attribute the interruptions in the water supply to any act or acts deliberately done by the defendants. The disruptions were limited to a specific period and seemingly dissociated from any

behaviour of the first and second defendant that would make sense. Further, the defendants and the claimants shared both a supply of electricity and water.

85. When the electricity supply was disconnected for non-payment of the defendants' share of the bill, they rectified it the same day. No doubt, the defendants did so because, in addition to the claimants, they would have been without a supply of electricity. It does not seem logical that the defendants would deprive themselves of a supply of water during the period January to June 2018 to spite the claimants. The claimants have not satisfied the court that the disruptions were not a consequence of the use of water by both parties and of WASA's doing.

Record keeping - Income and expenditure generated by the Bar

86. The claimants gave evidence about the division of labour and that the second claimant was responsible for keeping the accounts and tallying the books. In terms of veracity, the court is satisfied that the records produced by the claimants were the records they kept for the operations of the bar. They were not experienced business owners and kept simple day-to-day records under the hand of the second claimant. The hand written records were legible, simple and easy to interpret.

87. Whether those records would be sufficient for any proof of damages is a different issue, which will be considered at the appropriate time in the court's judgment. The court is satisfied that the records produced are the contemporaneous records made by the claimants.

Failure to renew the bar license for 2018

88. The claimants say the Bar Licence was not renewed for the year 2018 because the first defendant failed to do corrective works required to be done by the Health Inspector. They have however failed to prove

this allegation. Contrarily, the claimants' evidence is the treatment, trespass, breach of quiet enjoyment and assault and battery by the defendants that caused them to quit prior to the end of the lease. The court is not satisfied that the Bar Licence for 2018 was not renewed or that such had anything to do with the claimants leaving before the end of the lease.

Facts applied to the law

I. Term and terms of the lease

89. The defendants objected to the duration of the lease being five years. The court notes that the defendants have not pleaded or filed any counter-claim disputing the validity of the lease. The defendants referred, in their submission, to section 3 of the Landlord and Tenant Ordinance Chapter 27 No. 16 which states:

> "No lease for a term exceeding three years or surrender of any land shall be valid as a lease or surrender, unless the same shall be made by deed duly registered; but any agreement in writing to let or surrender any land shall be valid and take effect as an agreement to execute a lease or surrender, and the person who shall be in the possession of the land in pursuance of any agreement to let may, from payment or rent or other circumstances, be construed to be a tenant from year to year."

90. Based on the state of the law, a lease for a period of five years must be by deed. The lease purports to be for a period of five years. Although not duly registered, as section 3 provides, if required, the court would have construed the lease as a yearly lease, with an end date of the 4 March 2020. There is no dispute that this is what the parties intended and the court would certainly have given effect to the parties' intention.

II. Whether the defendants breached the covenant of quiet enjoyment and trespassed on the demised property

91. The claimants relied on the Court of Appeal case of *Ram v Ramkissoon*[4] on what constitutes quiet enjoyment and trespass. In that case, their Lordships noted that to constitute an actionable breach, the interference with the tenant's enjoyment of the tenancy must be substantial: see *Browne v Flower* ([1911] 1 Ch 219, 80 LJ Ch 181, 103 LT 557) ([1911] 1 Ch at p 228).

92. The Court of Appeal quoted the case of *Kenny v Preen*[5] to demonstrate the extent of the interference that would amount to an actionable breach of the covenant for quiet enjoyment:

> "In that case it was found that
>
> > 'there was a deliberate and persistent attempt by the landlord to drive the tenant out of her possession of the premises by persecution and intimidation, and intimidation included threats of physical eviction of the tenant and removal of her belongings.'
>
> And, in the view of the court,
>
> > 'that course of conduct by the landlord seriously interfered with the tenant's proper freedom of action in exercising her right of possession, tended to deprive her of the full benefit of it, and was an invasion of her rights as tenant to remain in possession undisturbed, and so would in itself constitute a breach of covenant, even if there were no direct physical interference with the tenant's possession and enjoyment.'"

93. In the case of *Martin John and another v Albert McNeil and another*[6] Justice Donaldson-Honeywell referred to *Ram* [supra] and *Kenny* [supra] in her judgment as follows:

> "63. The Claimants cite the decisions of Ram v Ramkissoon [1968] 13 WIR 332 and Kenny v Preen [1962] 3 All ER 814 which involve the breach of such an implied term. In Kenny, Pearson,

[4] (1968) 13 WIR 332
[5] [1962] 3 All ER 814
[6] CV2018-01115

L.J. explained the implication of a term for quiet enjoyment into a lease:

> "The implied covenant for quiet enjoyment is not an absolute covenant protecting the tenant against eviction or interference by anybody, but is a qualified covenant protecting the tenant against interference with the tenant's quiet and peaceful enjoyment of the premises by the landlord or persons claiming through or under the landlord. The basis of it is that the landlord by let confers on the tenant the right of possession during the term and impliedly promises not to interfere with the tenant's exercise and use of the right of possession during the term."

64. The court held in that case that the conduct of the landlord amounted to direct physical interference with the tenant's enjoyment of the premises and therefore a breach of the implied covenant was established. In Ram, acts of property removal were considered a violation of the implied covenant of quiet enjoyment."

94. *Ram v Ramkissoon* [supra] states that to constitute a trespass, the injury suffered must be direct and not merely consequential-direct in the sense that it follows immediately upon the act done; not consequential in that it requires no intervening cause to bring about the injurious consequences: see Salmond on Torts (13th Edn) at pp 6-7.

95. The court's findings of fact are that the defendants by their actions, reduced the space leased resulting: in the loss of the kitchen area and income generated therefrom; the requirement to remove the slot machines and the loss of income generated therefrom; and the closure of the one entry and exit point to the bar. The defendants' intentions were clear. They intended to and did take back some of the demised premises. Whether they were going to use it for their own purpose or rent it to a third party is immaterial as the result would not have changed. There is no other way to describe the injury to the claimants but as substantial and within the meaning of *Ram v Ramkisson* (supra). The bar the claimants ended up with was not the bar they leased; it was

not Isabel's Bar. Rather it was an esthetically altered space from the front, that was much smaller in dimension. It was different. The changes reduced the capacity to generate income. It was not the bar they inspected before they entered the agreement on 5 March 2015.

96. There were other acts complained of which the claimants say disturbed their quiet enjoyment of the demised premises. The court found that the defendants did not cause any disruption in the supply of water to the bar. While the court agreed with the claimants that the defendants did not pay their half share of the electricity bill thus causing the disconnection on 21 May 2018, this by itself did not amount to a substantial injury to the claimants within the meaning of *Ram v Ramkisson* (supra).

97. As to the second defendant being inebriated in the bar from time to time, unfortunately that is what happens in a bar. That the person was the husband of the lessor did not change the character of his drunken behaviour.

98. However, the various incidents of the use of threats and violent language and the beating committed upon the second claimant, have constituted a pattern of behaviour so extreme that as a whole, that they are substantial so as to disturb the claimants quiet enjoyment of the demised premises.

99. Applying *Ram v Ramkisson* (supra) to the facts as the court found them, I am therefore satisfied, that the first defendant with the assistance of the second defendant and others, breached the covenant for quiet enjoyment.

100. The court is satisfied that the first defendant, with the aid of the second defendant and others trespassed upon the demised premises

when they removed the burglar proofing and dismantled and reclaimed what they called the "additional space".

III. Whether committed assault and battery were committed upon the claimants

101. The definitions of assault and battery are settled. Justice Margaret Mohammed in the case of CV2012-04788 *Paul Chotalal v Deolal Kanhai and others* made reference to those the definitions as they are explained in the case law in this jurisdiction:

> "5. Both parties referred to the definition of an assault in Andrew Lee Kit v Carol Charles, where Stollmeyer J (as he then was) stated "The long standing definition of assault is an overt act by word or deed indicating an immediate intention to commit a battery, together with the capacity to carry the threat into action, or to put a plaintiff in fear of an immediate assault. It is an intentional act. There is an assault if there is a menace of violence with a present ability to commit it, but there will be no assault if the threat cannot be put into effect."
>
> 6. In Fabien Garcia v The Attorney General of Trinidad and Tobago, Dean-Armorer J explained that, "An assault is established once the Claimant can prove that a reasonable man, if placed in his position at the relevant time, might have feared that unlawful physical force was about to be applied to him." The Honourable Judge in the said case defined battery as "the application of force to another, resulting in harmful or offensive conduct. The elements necessary to constitute a battery are the application of physical force and the absence of a lawful basis for applying same.""

102. Both assault and battery are actionable per se – once a claimant can establish the occurrence of either, the court must award compensation: see CV2006-03721 Pemberton J. in *Skinner v The Attorney General* at paragraphs 25 – 27.

103. Based on the findings of fact, the court is satisfied that the second defendant battered the second claimant with a chair on 19 June

2015. That battery left the second claimant unconscious and requiring medical attention at the Siparia District Hospital, later at the San Fernando General Hospital and at an outpatient clinic.

104. The court is also satisfied that the second defendant committed, by his behaviour and language on various days, assaults against both claimants. This includes the language used on 5 April 2015, use of obscene language on the 18 April 2015 and the threats to chop the claimants made on the 26 April 2015.

105. The court is satisfied therefore, that the second defendant committed an act of battery on the second claimant and the defendants assaulted the first and second claimants. These acts of assault and battery are actionable as per *Skinner v Attorney General* (supra).

IV. Damages

a. Special Damages

106. It is trite law that special damages must be specially pleaded and strictly proven. In *Bonham Carter v Hyde Park Hotel* [1948] 64 TLR Lord Goddard CJ highlighted that parties:

> "must understand that if they bring actions for damages, it is for them to prove their damage; It is not enough to write down the particulars, so to speak, throw them at the head of the court saying 'this is what I have lost; I ask you to give me these damages'. They have to prove it."

107. Whilst it is a requirement that special damages must be strictly proved by the partly pleading them, the degree of strictness of proof depends on the particular circumstances of each case. In *Ratcliffe v Evans* (1892) 2 QB 524, 532-533 Bowen LJ stated:

> "In all actions accordingly on the case where the damage actually done is the gist of the action, the character of the acts

> themselves which produce the damage and the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on, both in pleading and proof of damage, as is reasonable having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles to insist upon more would be the vainest pedantry."

108. In Civil Appeal 162 of 1985 *Uris Grant v Motilal Moonan Ltd. and Frank Rampersad*, the Court of Appeal applied *Ratcliffe v Evans* [supra]. In that case, the appellant's furniture and other articles were destroyed when a vehicle ran off the road and crashed into her house. She claimed damages in respect of the destroyed chattels and relied on a detailed list of the things destroyed the day following the accident. The list she had prepared itemized each item and the price thereof. She however produced no receipt verifying the price she had paid for the items nor did the appellant retain the services of a valuator to value the damage. The Court of Appeal held:

> "In my view, the Master erred. The appellant did call prima facie evidence of her replacement costs the fact of which, as I said was unchallenged. At this stage I must pose the question whether in this country it is unreasonable, in a case of this kind, for a person to be unable to produce bills for clothing, groceries, watches, kitchen utensils, furniture and/or other electrical appliances and/or for that matter to remember the time of the purchase. To my mind, this is clearly in the negative and to expect or insist upon this is to resort to the "vainest pedantry.""

109. The flexibility of the courts in the degree of proof was explored in Civil Appeal 41 of 1980 *Gunness and another v Lalbeharry* where the appellant's evidence was unsupported to prover her loss. The appellant was injured in a vehicular collision and her claim for special damages relating to the loss of various items of jewelry, handbag, cosmetics and $75.00 in cash was disallowed by the trial Judge. The Court of Appeal held that the Judge erred in disallowing the claim:

> "There is no evidence to contradict the evidence of the appellant nor had she been shown not to be a credible witness. There is therefore no justification for the judge's finding in this respect. The fact that her evidence is unsupported is clearly not sufficient to deny her claim for a loss which must be taken, in the absence of evidence to the contrary, in the circumstances of her loss of consciousness to be at least strong prima facie evidence of the fact which she alleged."

110. In a more recent decision of the Court of Appeal, Civil Appeal No. 43 of 1998 *David Sookoo, Auchin Sookoo v Ramnarace Ramdath* M.A de la Bastide, C.J (as he then was), confirmed that the degree of flexibility had limits, depending on inter alia:

i. The circumstances,
ii. The nature of the claim,
iii. The difficulty or ease with which proper evidence of value might be obtained, and
iv. The value of the item involved.

111. The claimants claimed special damages incurred due to the breach of covenant for quiet enjoyment and/or trespass along with special damages for the assault and battery. In their statement of case, the claimants particularized the special damages claimed as follows:

Table 1 – Special Damages

Damage	**Date**	**Quantified Loss**
Medical Report	7 March 2016	$37.50
Loss of Earnings	19 June 2015	$2,977.87
	20 June 2015	$2,977.87
	21 June 2015	$2,977.87
	22 June 2015	$2,977.87
	23 June 2015	$2,977.87
	30 June 2015	$2,977.87
	1 July 2015	$2,977.87

	7 July 2015	$2,977.87
	21 July 2015	$2,977.87
	5 August 2015	$2,977.87
	19 August 2015	$2,977.87
	31 August 2015	$2,977.87
	25 December 2015	$2,977.87
	26 December 2015	$2,977.87
Loss of profits from slot machines	26 November 2016 to date	$4,558.00 per month x 19 months = $86,602.00
Loss of use of kitchen area	26 December 2016 to date	$2,333.33 per month x 19 months = $44,333.27
Loss of camera system	26 June 2016 and 8 August 2018	$600.00
TOTAL		**$173,262.95**

- Medical Report

112. The claimants attached the medical report[7] and a deposit slip from RBC Royal Bank[8] evidencing payment to their statement of case. The deposit slip was credited to the South West Regional Health Authority who governed the Siparia District Health Facility. The value of the deposit slip also matched the value of $37.50 claimed. Accordingly, the court is satisfied that the claimants have discharged their evidential burden in respect of proving the sum of $37.50 expended on receiving the medical report.

- Loss of Earnings

[7] Exhibit "L"
[8] Exhibit "M"

113. The defendants made heavy weather about the quality of the claimants' evidence. They stated that the hand written book in light of no corroborating evidence such as deposit slips from financial institutions indicating sales nor any supporting evidence from an accountant means that the claimants have failed to prove their loss of earnings.

114. The court has already decided that it was satisfied that the claimants made the records. The case law has demonstrated the court's flexibility in the degree of strictness of proof. The degree of strictness depends on the circumstances of the case. The claimants explained and the court accepted their evidence on the creation of the records.

115. Susan kept a book recording all their sales and expenditure. The monthly expenses for the bar included:

a.	Rent	$7,000.00
b.	Electricity (2 months)	$750.00
c.	Maintenance (cleaning supplies)	$1,500.00
d.	Internet Bill	$170.00
e.	Transportation	$800.00
f.	Drinks and Cigarettes	$41,800.00
g.	Food and Snacks	$3,500.00

116. The claimants' average total expenses per month was about $55,145.00. Their average sales per month was $70,000.00. On holiday periods such as Carnival, Easter, Christmas and New Year's their average monthly sales increased to $95,000.00 per month.

117. The claimants, in support of their claim for loss of earnings, produced a copy of the hand written book recording the sales and

expenditure of the bar from 7 April to 9 October 2015. Based on the evidence adduced the claimants' expenditure, sales and profits were:

Table 2 – Claimants' Profits[9]

Date	Sales	Bar Expenses	Purchases	Machine Profits	Profits
7 Apr – 6 May 2015	$80,026.00	$16,049.00	$31,704.71	$7,702.00	$39,974.29
7 May – 6 Jun 2015	$87,596.00	$9,794.00	$41,944.14	$3,348.00	$39,205.86
7 Jun – 6 Jul 2015	$65,623.00	$17,712.12	$47,489.28	$5,651.50	$6,073.10
7 Jul – 6 Aug 2015	$57,984.00	$11,798.00	$34,900.76	$6,396.00	$17,681.24
7 Aug – 6 Sept 2015	$65,457.00	$15,149.00	-	$8,655.00	-
7 Sept – 6 Oct 2015	$48,760.00	$9,875.00	$36,854.00	$5,702.00	$7,733.00

118. Susan's evidence in chief was that the daily average earnings amounted to $2,392.78. However, the Quantified Loss figure as seen in Table 1 is $2,977.87. The loss sustained cannot be the sum shown for sales, as this would be inaccurate as not accounting for expenditure incurred in running the bar. The court is satisfied that the loss sustained by the claimants is the profits the claimants would have made for any affected day.

119. Based on the figures in the Profit column in Table 2, the court found the total profits for five months to be $110,667.49. This would give a monthly average of profit in the sum of $22,133.50 and a daily average of $737.79.

120. In Table 1, the claimants claimed loss of earnings for the period 19 June – 1 July 2015. However, the claimants gave no reason why they

[9] See Appendix for the determination of purchases and profits for the periods 7 Apr – 6 May 2015 and 7 Jun – 6 Jul 2015

incurred such losses. The court notes that the second defendant battered the second claimant on the 19 June 2015. Sanjay Bharose's evidence was that this incident occurred about 3:00pm. Antonio's evidence is that the bar opens from 9:00am - till and from Sunday to Sunday. As such, there was no set closing time. Considering the bar was closed after Susan suffered personal injury, the court finds that losses for half that day is appropriate.

121. Susan's contemporaneous hand written record keeping of the sales and expenses demonstrated that the bar was closed on the 20 June 2015. The court already found that this was due to the battery committed by the second defendant upon the second claimant. On the 21 June 2015, the bar was open making daily sales of $4,405.00 and was subsequently closed on the 22 and 23 June 2015. The bar opened from the 24 – 29 June 2015 and closed on the 30 June 2015 due to a visit to the lawyer and the hospital. On the 1 July 2015, the bar was closed due to clinic and therapy appointments. The court attributes the closures on the 20 June 2015, 22 June 2015, 23 June 2015, 20 June 2015 and the 1 July 2015 to Susan's injury and will award damages for the loss of earnings sustained on those days.

122. The records showed that the bar was closed on the 7 July 2015, 21 July 2015, 5 August 2015, 19 August 2015 and 31 August 2015. However, there is no evidence why the bar was closed on those days. The court noted that there were days in September and October 2015 where the bar was closed, no reason was preferred and the claimants did not claim loss of earnings for those days. In the absence of any explanation as to the reason the bar was closed, the court is not satisfied that those closures are attributable to the defendants and the loss of earnings have not been proven.

123. The claimants also claimed loss of earning for the 25 and 26 December 2015. The claimants' hand written records of daily sales and profits only go up to 10 October 2015. Therefore, the records do no indicate whether the bar was open for business on these public holidays. Having regard to the lack of evidence, the claimants have not sufficiently proved their loss of earnings for those days and are therefore, not entitled to special damages.

124. Accordingly, the court will award special damages for loss of profits per day at the rate of $737.79. Loss of earning are awarded for the following days: half day on the 19 June 2015 ($368.90) and full days on the 20 June 2015, 22 June 2015, 23 June 2015, 30 June 2015 and 1 July 2015 - that is five days at $737.79 for a total of $3688.95. Therefore, the claimants' special damages for loss of earnings amount to $4,057.85.

- Gambling Machines

125. The claimants' evidence, of which the court is satisfied, is that on the 26 November 2016 the defendants removed the burglar proofing leaving four of the slot machines exposed. The machines were removed on that date and the claimants were not able to use the machines since. The claimants sought damages in the sum of $4,558.00 for 19 months.

126. In support these special damages, the claimants' adduced handwritten records of the profits made from the gambling machines for some periods. The defendants again made an issue about the quality of the claimants' evidence. The court has already decided that the claimants made the records contemporaneously. The claimants did not own the machines; therefore, the profits were split equally between themselves and the owner.

127. Table 3 shows the records adduced into evidence for the readout of the slot machines:

Table 3 – Claimants' Gambling Machine Profits

Date	Gambling Machine Profits
28 Aug 2015	$5,783.00
18 Sep 2015	$4,344.00
2 Oct 2015	$3,782.50
17 Oct 2015	$3,620.00
31 Oct 2015	$1,266.00
31 Oct to 13 Nov 2015	$2,542.00
13 Nov to 27 Nov 2015	$1,871.00
27 Nov to 11 Dec 2015	$1,112.50
11 Dec 2015 to 8 Jan 2016	$4,624.00
8 Jan to 29 Jan 2016	$2,258.50
29 Jan 8 March 2016	$5,754.50
7 Apr to 30 Apr 2016	$8,838.00
30 Apr to 3 June 2016	$2,258.00
6 Aug to 19 Aug 2016	$2,520.00
19 Aug to 9 Sep 2016	$6,119.50
9 Sep to 7 Oct 2016	$2,288.00
7 Oct to 31 Oct 2016	$4,849.00
31 Oct to 18 Nov 2016	$9,567.50
18 Nov to 9 Dec 2016	$10,056.00

128. The records are not clear to the court. Some appear to be records for single days while others are for different periods. There is no consistency in the records. This court cannot, on those records arrive at an average for the income earned for the slot machines. Further, the sum of $10,056.00 for the period the 18 November 2016 to 9 December 2016 is the largest figure earned for the slot machines. Interestingly, this period includes days after the claimants say they were forced to remove the four slot machines on the 26 November 2016.

129. There are also the records produced by the claimants which show the bar's income for certain months in 2015. These income

statements include profits earned from the slot machines. This is reproduced in Table 4:

Table 4. Income Statement

Period	**Profits from gaming machines on Income statement**
7 April to 6 May 2015	$7,702.00
7 May to 6 June 2015	$3,348.00
7 June to 6 July 2015	$5,651.50
7 July to 6 Aug 2015	$6,396.00
7 Aug to 6 Sept 2015	$8,655.00 (machine on kitchen side $5,783.00)
7 Sept to 16 Oct 2015	$ 5,702.00

130. From Table 4, it appears that there were slot machines in the kitchen area as well as slot machines in other areas of the bar. While the claimants' records disaggregate those figures for the months August to September 2015, the evidence does not permit the court to make a finding what profits was earned from the slot machines in the kitchen area only. The court is not sure if the machines were relocated to other areas of the bar, if only some machines were operational or if no slot machines were in use after 26 November 2016.

131. There is no evidence how the claimants arrived at the sum of $4,558.00 for 19 months. The claimants are required to strictly prove their special damages, and the court is not satisfied of the claim under this head. Accordingly, in keeping with *Bonham Carter* [supra], the claimants are not entitled to loss of profits from the gambling machines.

- Loss of Use of Kitchen Area

132. The court determined as a fact that the kitchen area formed part of the demised property. Therefore, when the defendants removed the kitchen on the 25 and 26 December 2016, they interfered with and deprived the claimants of the kitchen area. The kitchen was used to prepare cutters in the bar. As a result, the claimants' loss appear to be the profits earned from the sale of cutters prepared in the kitchen. The claimants did not prove this loss.

133. The claimants' evidence was that the defendants' removal of the kitchen area resulted in the loss of approximately one third of the leased area measuring 341 square feet out of the 996 square feet leased. As such, the reduction in rented space without the claimants' agreement has resulted in over payment of $2,333.33 per month from December 2016 to the end of the lease. The claimant's did not adduce any evidence about the rents per square foot for commercial properties in that area.

134. The court noted that the claimants stated that the dimension of 341 square feet was the area lost. While the court is allowed flexibility in the degree of strictness of proof required, the claimants in this instance simply stated a dimension and reduced the rent accordingly. They provided no evidence as to how they arrived at that dimension, they did not state which areas were measured nor did they produce the calculations performed in arriving at the figure. Had the lease changed a rate per square foot this may have assisted the claimants in proving this head of special damages claimed by them.

135. In accordance with *Bonham Carter* [supra], special damages must be proven. The claimants have failed to do so in this aspect of their claim and the court is not minded to award special damages for the loss of use of the kitchen in the manner claimed.

- Loss of camera system

136. The claimants in their statement of case claimed loss of camera system for the 26 June 2015 and the 8 August 2018. On the 8 August 2017, the claimants averred that the defendant cut the electricity causing damage to three of their cameras costing $600.00. In support of their loss, they provided two receipts indicating that they paid $2,000.00 each on the 27 June 2015 and the 8 August 2015.

137. The court has found as a fact that there is no evidence to attribute the loss of the camera to the cut in the electricity supply. In any event, the court did not find that the disconnection of the electricity supply on the 8 August 2017 was attributable to the defendants.

b. General Damages

- Damages for trespass and breach of covenant for quiet enjoyments

138. In a claim of trespass, if the claimant proves the trespass he is entitled to recover nominal damages, even if he has not suffered any actual loss. If the trespass has caused the claimant actual damage, he is entitled to receive such an amount as will compensate him for his loss – Halsbury's Law of England (Vol. 97 (2015) at [591].

139. In CV2006-02600 *Vincent Joseph v Danish Mahabir* Master Alexander at paragraph 41 opined that it is the responsibility of the court to ensure that a claimant receives reasonable and adequate compensatory damages even in the absence of the requisite evidence:

> "I bear in mind that in the instant case at bar, despite the lack of exactitude by the claimant in calculating and proving his loss consequent on the trespass, it was the defendant who had

perpetrated the wrong and for this he was fully responsible. The failure of the claimant to prove the extent of compensation due to him does not give the defendant a 'Get Out of Jail Free' card to play and so allow him to escape with a slight tap on the hands nor does it absolve this court from attempting to fairly assess damages and/or in default of this making a fair and reasonable award in nominal damages."

140. In the case of CV2005-00454 *Jacob & Polar v Samlal*, Pemberton J accepted that nominal damages will be awarded in two circumstances: (a) In recognition of an infraction of a legal right giving the successful party judgment. There is no need to prove actual loss; and (b) Where damage is shown but its amount is not sufficiently proved. See McGregor on Damages Common Law Library 1997 paras 420; 427-429.

141. The claimants failed to establish their claim special damages claim for the loss of use of the kitchen area, as they did not sufficiently prove the dimensions of the demised property lost, they also claimed to prove damages for loss of income from the slot machines. Nevertheless, the claimants are still entitled to nominal damages for the defendants' breach of the covenant of quiet enjoyment and subsequent trespass. Lord Halsbury LC opined in *The Medina*[10] that nominal damages did not mean "small" damages.

142. In deciding the quantum of damages for trespass and breach of the covenant for quiet enjoyment, the court considered the following cases:

Table 5 – Cases of trespass and covenant for quiet enjoyment

Case Name	**Amount Awarded**
CV2006-02600 *Vincent Joseph v Danish Mahabir*	Master Alexander awarded nominal damages for trespass in the sum of $5,000.00, in the absence of evidence, where the claimant's land was cut and

[10] [1900] AC 113, 116

	cleared, flags were removed and soil and other materials were deposited on his lands.
CV2009-02823 *Gillian Thomson and Giselle Thomson-Lowe v Gunbridge Enterprises Limited*	Rajkumar J on the 5th April 2011 awarded nominal damages for wrongful interference with the Claimants' goods and/or trespass to the claimants' goods and/ or detention and/or destruction of the claimants' goods in the sum of $15,000.00.
HCA 1766 of 2004 *D. Lak Transport Limited v Renaud Joseph, The Comptroller of Customs and anor*	Master Sobion-Awai on the 24th October, 2011 awarded to the plaintiff, a haulage company, with respect to loss of use of a truck and trailer seized by the defendants, a sum of $20,000.00 as nominal damages.
HCA 148 of 1998 *Goolcharan v General Finance Corporation*	The sum of $10,000.00 was awarded as nominal damages for the loss of use of a excavator.
CV2007-04633 *Hollis Lynch v The THA*	In that case the sum of $35,000.00 was awarded for damages for breach of the covenant for quiet enjoyment when the claimant trespassed onto property leased to the defendant to conduct repairs.
HCA 145 of 2001 *Hurbert Job v Maud Skerret and another*	In that case the sum of $5,000.00 was awarded for breach of the covenant for quiet enjoyment when the defendant landlords instituted ejection proceedings against the plaintiff, shut off water and electricity supply, deposited material in front of the premises and commenced repairs causing the plaintiff inconvenience.
CV2010-03244 *Garner and Garner Limited v Roopan Chootoo*	The claimant tenants claimed damages for trespass and breach of the covenant for quiet enjoyments and was awarded nominal damages in the sum of $10,000.00.

143. Due to the defendants' breach of covenant for quiet enjoyment in the circumstances, the court finds that the award of $15,000.00 is suitable to compensate the claimants for the trespass. In addition, the claimants are awarded $35,000.00 for the defendants' breach of covenant for quiet enjoyment.

- Assault and Battery

144. In determining the quantum of damages under this head, the court was guided by Wooding CJ in *Cornilliac v. St. Louis* (1965) 7 W.I.R. 491 on the approach to assessing general damages in cases of this nature. The several sub-heads of damage to be contemplated are:

a) the nature and extent of the injuries sustained;

b) the nature and gravity of the resulting physical disability;

c) the pain and suffering which had to be endured;

d) the loss of amenities suffered; and

e) the extent to which, consequentially, pecuniary prospects have been materially affected.

145. The claimants submitted that bearing in mind the effect of pain and suffering inflicted on Susan, they suggested that a figure of $35,000.00 was suitable for the injuries sustained. In addition, they claimed aggravated damages and suggested a figure of $40,000.00.

146. In the case of *Thaddeus Bernard v Nixie Quashie* CA No 159 of 1992, Chief Justice de la Bastide made the following observations in respect of awards of aggravated damages:

> "The normal practice is that one figure is awarded for general damages. These damages are intended to be compensatory and to include what is referred to as aggravated damages, i.e. damages which are meant to provide compensation for the mental suffering inflicted on the plaintiff as opposed to the physical injuries he may have received."

147. Chief Justice de la Bastide then went on to explain mental suffering in this way:

> "Under this head of what I have called 'mental suffering' are included such matters as the affront to the person's dignity, the humiliation that he has suffered, the damage to his reputation and standing in the eyes of others, and matters of that sort."

148. In determining a value to be awarded under this head of damage, the court considered the following cases:

Table 6 – Cases on injury to back and neck and assault and battery

Case Name	Award
CV2007-04400 *Gillian Isaac v Motor and General Insurance*	In that case the sum of $40,000 was awarded for a whiplash type injury to the cervical and lumber spine
CV2009-03728 *Ferosa Harold v ADM Import and Export Distributors Limited*	The claimant was awarded $60,000.00 when she slipped in the defendant's business premises and suffered soft tissue injury to neck, lumbar spine and left shoulder.
CV2010-04096 *Shahleem Shazim Mohammed v The Attorney General*	The claimant suffered swelling of the neck and an injury to the knee, the court found there was exaggeration of the continuing effects of his injuries and awarded $25,000.00 as damages.
CV2011-04315 *Raquel Burroughs v Guardian Life of the Caribbean Limited*	The claimant experienced excruciating pain, particularly in the lower back, neck, and later, knee, which grew in intensity. The court found that because her injuries were basically soft tissue and there was an element of exaggeration in her claim, the court awarded the sum of $78,000.00.
CV2012 – 05160 *Corneal Thomas v The Attorney General*	The Claimant was beaten by two police officers on his head, neck and upper back until he was unconscious. He was given a cervical collar, placed on IV and remained bed ridden for two days. He was diagnosed with soft tissue injury to his neck, left shoulder with muscle spasms, pain and stiffness to those areas. He was awarded $35,000.00 in general damages.
CV 2015 – 00123 *Judson Mohammed v The Attorney General*	The Claimant was assaulted and battered by police officers and sustained injury. He was diagnosed with neck pain due to damaged muscles and limitation of movement, cerebral concussion or post-concussion syndrome, amnesia, post traumatic headaches, dizziness, loss of balance, soft tissue injuries, wound above the right eye and pain in the right ear. He was rescued by his colleagues in a semi-conscious state. He endured pain in his right ear and neck area which lasted months. He suffered from headaches.

	There was no evidence of loss of amenity. Scans of his head and cervical spine showed that there was no long-term resulting injuries. He was awarded $30,000. 00 in general damages.
CV2010-02956 *Ijaz Bernadine v AG*	Where the claimant was assaulted and battered by police officers and suffered a right eyebrow laceration, ecchymosis of the right eye and soft tissue injuries, an award was made of $55,000.00 inclusive of an uplift for aggravated damages.
CV2011-01191 *Chet Sutton v The AG*	The claimant was awarded $70,000.00 for general damages inclusive of an uplift for aggravated damages. The claimant suffered soft tissue injury about his body and welt, bruising, swelling and abrasions. His right cheek was swollen and right jaw was injured and he was unable to open it.
CV2018-02121 *Kriston Aguillera v The AG of TT*	The claimant was awarded $60,000.00 for assault and battery inclusive of an uplift for aggravated damages. The claimant suffered hemorrhaging of the nostrils, swelling on temple, bruise on eyelid, swelling of cheek, injury to left mandible, injury to left leg, injury to right eye, tenderness of the spine and chest wall due to beatings by police officers.

149. The medical report from the Siparia District Health Facility documents that Susan presented on the 19 June 2015 with neck pain and upper back pain. It was not resolved whether she suffered a loss of consciousness for over 20 minutes. Nevertheless, on examination, she was in painful distress. The evidence demonstrate that the business had to be closed on certain days as Susan had hospital and therapy appointments for her injury. Susan asserted that at the time of filing this claim she still experienced pains in her back and more particularly in her left shoulder. She uses medication to manage the pain of the injury.

150. Although the injuries suffered by Susan in this case do not seem as severe as those in the aforementioned cases, the court is satisfied that as a result of Simon's attack, she suffered painful injuries to her neck and shoulder. Susan was battered by the hands of Simon in view of the public in the bar that she operated. No doubt, such physical abuse would cause Susan to be humiliated and embarrassed in front of her customers. Accordingly, the court is of the view that $32,000.00 is sufficient to compensate the claimant for her injury with an uplift of $8,000.00 for the aggravated element.

151. Further, for the assaults committed by the defendants upon the claimants, the court awards damages in the sum of $5,000.00

Disposition

152. Based on the findings of fact and the law applied to those facts, the court has resolved the issues as follows:

I. The lease was a valid lease;

II. The first defendant, by herself and through her servants and or agents, breached the covenant of quiet enjoyment and trespassed on the demised property;

III. The second defendant committed a battery against the second claimant and the defendants assaulted the first and second claimants; and

IV. The claimants are entitled to damages.

153. The court hereby orders that there be judgment for the claimants against the defendants. Damages are awarded as follows:

a. Special damages

i. The second defendant shall pay the first claimant special damages in the sum of $37.50;

ii. The first defendant shall pay the claimants special damages for loss of earnings in the sum of $4,057.85; and

iii. Interest on special damages at the rate of 1.25% from 21 July 2015 to 9 September 2021.

b. General damages

i. The first defendant shall pay the claimants for trespass the sum of $15,000.00 and $35,000.00 for breach of convenient for quiet enjoyment;

ii. The second defendant shall pay the second claimant damages for battery in the $32,000.00 for her injury with an uplift of $8,000.00 for the aggravated element;

iii. The defendants shall pay the claimants' damages for assault in the sum of $5,000.00; and

iv. Interest on general damages at the rate of 2.5% from 17 August 2018 to 9 September 2021.

c. The defendants shall pay the claimants cost as prescribed on the sum of $99,095.35.

d. There shall be a stay of execution for 45 days.

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Justice Avason Quinlan-Williams

JRC: Romela Ramberran