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**IN THE HIGH COURT OF JUSTICE**
**SAINT VINCENT AND THE GRENADINES**
**SUIT NO: 479 OF 1995**
**BETWEEN:**

**THE DEVELOPMENT CORPORATION** - PLAINTIFF

**AND**

**ART'S AUTO CARE LIMITED** - **DEFENDANT**

Mr Samuel Commissiong for the Plaintiffs
Mr Stephen Huggins for the Defendant

**MITCHELL J.**

**JUDGMENT**

This is a claim for a balance of rent alleged by the Plaintiff to be due from the Defendant. According to the Statement of Claim endorsed on the Writ of Summons filed on the 22nd November 1995:

> *"3. The Plaintiff is the owner of certain hereditaments and premises situate on the reclamation site at Lower Bay Street, Kingstown, Saint Vincent and The Grenadines, and commonly known as the Glove Factory. It was rented to the Defendant on a month to month basis at the monthly rental of $2,000.00. For some time the Defendant paid the rent quite promptly and by march 1994 began to default in its payments. The Plaintiff eventually forfeited the tenancy and re-entered the premises in January 1995; and up to that time the Defendant was indebted to the Plaintiff for rent for the months of March-December, 1994 and January 1995 making altogether eleven months."*

By its Defence filed on 20 December 1995 the Defendant denies owing any rent and alleges that:

> *"2. Under and by virtue of an Agreement made partly orally and partly in writing the Defendant was permitted to use certain facilities, ie, the yard and office of the building known as the*

*Glove Factory, upon payment of a monthly fee of $500.00. In so far as the agreement was oral it consisted of discussions held between Art Huggins on the one hand and Claude Leach and Steve Francis acting on behalf of the Plaintiff on the other hand. In so far as the same was in writing it is to be found in a letter of September 24th, 1992 written to Art Huggins by Steve Francis on behalf of the Plaintiff.*

*3. In or about February, 1994 the Plaintiff sought to alter the agreement between the parties by stipulating that the Defendant should make an additional payment of $1,500.00 monthly. The Defendant rejected this attempt to unilaterally modify a term of the Agreement and continued to make his monthly payments as had been agreed. The Defendant was requested by the Plaintiff to vacate the premises by December 1st 1994 ... "*

In its Reply filed on 16th January 1996, the Plaintiff alleges:

*"2. The Plaintiff will refer to its letter of September 24, 1992 written to the Defendant wherein it was made clear that the Defendant was to have the use of the premises for a period of three (3) months only "and subject to review". It further stated that the Defendant would pay a monthly fee of $500.00 for the use of the premises. The Plaintiff will contend that the said letter did not create a tenancy. It constituted a licence for three months coupled with a consideration of $500.00 for the use of the said premises.*

*3. If the said letter constituted a tenancy as known to law, the Plaintiff will contend that it was a tenancy for a specific duration of three months which has already expired. Thereafter, a tenancy of will was created in which the Plaintiff was entitled to fix the rent. Where the Defendant failed to agree the rent the Plaintiff contends that a reasonable rent would be presumed, and that in all the circumstances of the case $2,000.00 is a very reasonable rent for the commercial premises occupied by the Defendant in a very prominent commercial centre of Kingstown."*

The trial of this matter commenced and finished on the same day, 9th April 1997. The sole witness for the Plaintiff was Claud Leach, the General Manager of the Plaintiff. The sole witness for the Defendant was Mr Art

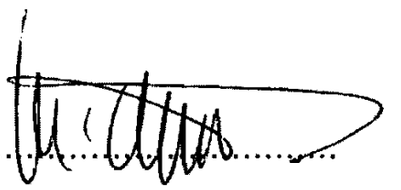
Huggins. On every occasion where the evidence of Mr Leach and Mr Huggins conflicted, I had no difficulty in preferring the evidence of Mr Leach. It is immaterial for the purposes of deciding this case whether this was a matter of a tenancy or of a licence to use the property. Nothing turns on the distinction. The sole question of fact in issue is the amount of money owing, if any.

The facts in this case as I find them are that in September 1992 the Plaintiff agreed with the Defendant for either a rental of or a licence to use for very restricted purposes a small part of the premises of the Plaintiff known as the Glove Factory for what was in the circumstances little more than a peppercorn rent or "fee" of EC$500.00 per month. The Defendant not only did not promptly pay that fee each month to the Plaintiff, but without the permission of the Plaintiff used the premises for purposes that were not allowed, and used a much more extensive area of the premises than had been agreed. Instead of evicting the Defendant as it was entitled to do, the Plaintiff, mindful of its social and economic mission in the State of St Vincent and the Grenadines, and considering that the Defendant was attempting to start up a business, negotiated with the Defendant to lease it another spot of land, and also decided that, as the Defendant was now using the premises for the extended purposes as described above, the Defendant should pay an increased fee of EC$2,000.00 per month commencing in March 1994. The Defendant was told that it would have to pay the increased fee. Mr Lynch says that the Defendant agreed to pay the increased fee. The Defendant's witness Mr Huggins says he never agreed to pay the increased fee, but tried to get out of the premises to move to the new premises he was offered. I believe that Mr Lynch really believed that the Defendant had agreed to pay the increased rent. But, it is a basic rule of law that in matters of contracts relating to land there must be either part performance or a written memorandum signed by the party against whom the particular term of the contract is being sought to be enforced. The Plaintiff wrote several letters to the Defendant reminding the Defendant that the fee had been increased. There is no suggestion in any of these letters that there was specific agreement on the part of the Defendant to the increased fee. The Plaintiff was unable to produce any written memorandum signed by the Defendant evidencing the Defendant's agreement to pay the increased fee. In spite of intense cross-examination on the point, the

Defendant's witness could not be budged from his assertion that the Defendant never agreed to pay the increased fee. I am not satisfied on the balance of probabilities that the Defendant ever really agreed to pay the increased fee. I find therefore that the only rent or fee that the Plaintiff is entitled to is the monthly amount of EC$500.00 up to the date the Defendant vacated the premises. I do not accept the Defendant's unsupported assertion that he has paid EC$500.00 per month up to the time he left the property. I accept the accounts presented by the Plaintiff, which show that the Defendant last paid rent of EC$560.00 on 16 June 1994, and that was for the month of April 1994. The Defendant, therefore, owes for the remaining 8 months in 1994 and for January 1995, which I determine to be 5 months at EC$500.00 per month.

I give judgment for the Plaintiff for EC$4,500.00.

Costs to the Plaintiff in the amount of the maximum costs payable in the Magistrates Court.



ID MICHELL QC
High Court Judge (Acting)
14th April 1997.