In the High Court of Fiji at Labasa

Civil Jurisdiction Action no: 9 of 2005

Singhs Shopping Limited

Plaintiff

vs

Labasa Town Council

Defendant

Appearances: Mr Amrit Sen for the plaintiff

Mr Adrian Ram for the defendant

Date of hearing: 29th and 30th November,2012, 22nd and 23rd April, 2013

JUDGMENT

1. This litigation arises out of an incident that occurred in the early hours of 1st May,2003, in the Labasa town market. The plaintiff alleges that the defendant's agents broke into its shop, removed all its goods and stock and threw them outside. The plaintiff claims general and special damages. The defendant states the plaintiff was given notice of termination of tenancy or occupation, effective on 30th April,2003, and became a trespasser, after that date. On 1st May,2003, it was asked to remove its belongings. Any loss sustained by the plaintiff, was due to its refusal to vacate.

2. ***The amended statement of claim***

   2.1. The amended statement of claim recites that the plaintiff, a tenant of the defendant, had been operating a shop in the Labasa Municipal market, since 1996.

   2.2. The plaintiff supplied varieties of root crops, sea food and other foodstuffs, from the shop premises.

   2.3. The defendant, by its letter of 29 May,2001,granted the plaintiff, a renewed tenancy or lease for a term of 3 years from 1st January, 2002.

   2.4. The plaintiff accepted the tenancy or lease for a term of 3 years and expanded its business.

2.5. The defendant unconditionally accepted the agreed rental from the plaintiff, until April, 2003.

2.6. It was an implied covenant and condition of the letting of the premises that the plaintiff would peacefully occupy the premises, for a term of three years.

2.7. On the night of 30th April 2003,the defendant, by its agents and servants and other workmen broke and entered into his shop, removed all his stock and threw them outside. The plaintiff's merchandise goods and other stock were damaged and taken away by unknown people.

2.8. The plaintiff claims general and special damages.

3. ***The re-amended statement of defence***

3.1. The re-amended statement of defence provides that the plaintiff occupied a portion of the buildings erected on the market premises, since 1996, under various agreements. The second last agreement expired on 31st December, 2001.

3.2. The defendant advertised for tenders for lease of the premises from 1st January, 2002. The plaintiff tendered.

3.3. The defendant conditionally accepted the plaintiff's tender, subject to an increase in the rental and approval of the Price and Incomes Board .

3.4. Consequent to the Board approving a rent increase, the plaintiff accepted the increase in rent to $880.00 per month vat inclusive.

3.5. No agreement in writing was entered into.

3.6. The defendant commenced improvements and reconstruction of the Labasa market.

3.7. On 6th February, 2003, the defendant gave the plaintiff notice of termination of tenancy or occupation, effective on 31st March, 2003.

3.8. The re-amended statement of defence proceeds to state that the plaintiff agreed to a termination of its tenancy or occupation on 31st March, 2003, with no payment of rent for March,2003, or alternatively on 30th April,2003, with payment of rent up to that date.

3.9. The plaintiff paid rent up to 30th April 2003, but failed to vacate the premises by that date.

3.10. Paragraphs 11 and 12 provides that:

> "*On 1st May,2003 ,the Plaintiff removed the goods and chattels and took possession of the premises.*

On 1st May,2003,the..Defendant wrote to the Plaintiff asking it to remove its belongings, but the Plaintiff did not do so."

3.11. By way of defence , it is stated that :

a) The tenancy offended section 13 of the State Lands Act.

b) No action can be brought under the arrangement of tenure in terms of section 59(e) of the Indemnity Bailment and Guarantee Act.

c) The plaintiff's tenure was cancelled by mutual agreement, as at 30th April, 2003. The plaintiff was a trespasser and could be evicted. If any loss was sustained by the plaintiff, it was due to its refusal to vacate.

4. ***The reply***

4.1. The plaintiff states that when his tender was accepted, he was advised that renewal was lawful and the defendant had all the consents and approval.

4.2. The defendant having let the premises to plaintiff and/or accepted rental is estopped from justifying its unlawful actions by suggesting that the tenancy was illegal. The plaintiff denies that the tenancy is illegal. Section 13 of the State Lands Act does not affect plaintiff's claim.

4.3. The provision in the Indemnity Guarantee and Bailment Act does not apply. In any event, the plaintiff will rely on the doctrine of part performance.

5. ***The hearing***

5.1. *PW1*

5.1.1. Asith Jagen Singh, Managing Director of the plaintiff company testified. He said his late mother managed the shop in the Labasa market, from 1996. The plaintiff had a canteen selling frozen items, cigarettes, ice cream and confectionary items. The core business of the plaintiff was retail, supplying root crops, fish and vegetables to govt depts.

5.1.2. The plaintiff was a tenant of the defendant, since 1996. The plaintiff tendered for a renewal of the tenancy. The defendant acknowledged the tender and stipulated an increased monthly rent of $ 1100. Subsequently, the defendant informed the plaintiff, that the Prices and Incomes Board had stipulated a monthly rent of $ 800(vat exclusive). The plaintiff punctually paid the monthly rent. The tenancy was to expire in January,2006.

5.1.3. Asith Jagen Singh said that the plaintiff did not receive a demand for payment of arrears of rental. The defendant was not entitled to terminate the lease. The defendant unilaterally took the decision to seek vacant possession, by its letter of 25 April,2003.The plaintiff was not required to give vacant possession.

5.1.4. On 30th April,2013,the shop closed at 6 pm.The canteen contained fruits, food, sea food and other items. The next morning at 7am, the witness was informed that the shop was demolished.

5.1.5. The employees of the shop found the contents thrown outside. The witness said that there were three deep chest freezers in working condition worth $ 20,000; a cash register; furniture and fittings; counter weighing scales and stock in trade worth $ 30,000. He read the schedule of special damages filed.

5.1.6. The shop was renovated at a cost of $ 15,000.

5.1.7. On 1st May, 2003, the defendant demolished the building. The defendant had delivered a letter dated 1st May, 2003, to the plaintiff at 4.55pm on that day, stating that the defendant would demolish its premises, as the plaintiff had failed to vacate. Nothing was salvaged. Security personnel were present.

5.1.8. There was 450 to 500 kg of fish and root crops in six freezers. The fish was purchased at 4.50 a kg. The fish was not salvaged. The plaintiff did not take the other items, as they were damaged. Others were missing. The employees who went to the site at 5 am on the morning of 1st May, 2003, did not find the cash register and counter scale. The witness was not aware, if the freezers were retaken by the employees.

5.1.9. The plaintiff did sales of $ 2,000 daily and made an average 30 % profit. The weekly expenditure was $ 500 to $1000 per week. The plaintiffs' books of account were in the shop.

5.1.10. Apart from retail sales, the plaintiff supplied items to the Fiji Military Force, the Labasa hospital, Labasa College and Prisons Dept on a weekly basis .Fish were supplied every week for the following values: $300 worth to the Fiji Military Force; $1500 worth to the Labasa hospital; $1000 worth to Labasa College and $1000 to Prisons Dept.

5.1.11. The Director's Reports together with the balance sheets, revenue statements and schedules of fixed assets and depreciation of the plaintiff company for the

years ended 2001,2002 and 2003 were produced.The bank statements of the plaintiff were also produced .

5.1.12. The witness concluded his evidence in chief, stating that he claims damages for trespass to goods.

5.1.13. Mr Ram, counsel for the defendant, elicited in cross-examination, that the witness, Asith Jagen Singh, was a student in Suva, as at the date of the incident. He completed his studies, in 2006. His father, Jagat Singh did all the business dealings. The witness said he was a director of the plaintiff company. He had pictures of the damage caused to the shop.

5.1.14. In 2003, the sales figures decreased. In response to Mr Ram's question,the witness said that the balance sheets produced do not reflect the proper accounts of the plaintiff company. The expenses and damages incurred in 2003, are not shown. This arose due to a problem with the Accountant.

5.1.15. It emerged that no action was taken against the Accountant, nor were amended accounts filed with the Tax dept. The witness said his mother had signed all the statements.

5.1.16. By a letter of 6 February, 2003, the defendant asked the plaintiff to vacate before 20 April,2003, since the entire market area was to be upgraded. He was not aware, if all tenants of the market were given notice. There is now a roof over the area.

5.1.17. When questioned about the shop in Park Street, the witness said it was run by his mother. It did not belong to the plaintiff. It was acquired, after the plaintiff's business at the market ceased. He denied that both shops were operating in 2002 and 2003. He said he did not know whether the deposits from sales in both shops were lodged, in one account at ANZ Bank.

5.1.18. He was referred to a letter written by his mother on 19 March,2003, attaching a cheque for $ 1800 as two months rent and the defendant's reply of the next day. The reply contained two options, namely, that if the plaintiff vacated by 31 March,2003, then the March rent would be waived, alternatively, if the plaintiff stayed till 30 April, that year, rent would be required to be paid till then. It was suggested to him, that the plaintiff chose the second choice. The witness said he was not aware of a discussion between Jagat Singh and Charan Jit Singh, nor had he seen the letter of 20th March,2003.

5.1.19. The witness was asked why the plaintiff's employees did not secure the things after the demolition. His response was that the staff were not allowed to collect items. The fish was rotten and other items were damaged or stolen. He was not aware whether the matter was reported to the Police, nor if the plaintiff had written to the defendant complaining about the loss.

5.1.20. He denied that the security looked after the items and the plaintiff took all its things. Mr Ram asked the witness how he could say that the freezers were not locked nor chained, when he was not at the scene. The witness said albeit, he was not in Suva at the relevant time, the employees of the shop told him that the things were thrown outside and the pictures depicted so.

5.1.21. The sales from the market shop were $2,000 a day. The shop operated six days a week and generated $ 12,000 a week, $ 600,000 year. He denied that accounts were prepared for both shops together and were deposited in the same account.

5.1.22. On an analysis of the revenue statements for 2002 and 2003, Mr Ram stated that the net income for 2002 as well as 2003 was 2% of sales.The total expenses were reduced, in 2003.The witness's response was that the accounts were incorrect.

5.1.23. As regards the loss of freezers and other items, the witness was referred to the schedule of fixed assets and expenditure for 2003. There were no additions nor "*retirement*(s)". Particularly, no additions of counter scales. It emerged that except for the purchase of two items, namely a computer and residential building, the same assets were shown in 2002 and 2003. The witness said that the Accountant was not informed of the losses. Mr Ram commented that this explains why no letter of complaint was made to the defendant. It was suggested that the plaintiff had made a false claim.

5.1.24. The witness said that stocks were lost. Other items like fish were rotten.It was put to him that he was not in Labasa, at the relevant time. The witness said he was a Director of the plaintiff company.

5.1.25. He was not aware how the 2003, accounts were made. He admitted the accounts did not depict any special loss.

5.1.26. He had no idea whether a permit or the consent of the defendant was obtained to do renovations of the shop. All documents and invoices were thrown by the defendant and lost.

5.1.27. Again, it was suggested that the cost of renovations to the building was not reflected in the accounts, nor was a qualification made that the relevant documents were missing. He said he was unaware, who did the renovations and how the 2003 financial accounts were prepared.

5.1.28. Asith Jagen Singh said that the claim for pain and suffering, is not pursued.

5.1.29. The plaintiff was claiming loss of income of $30,000 monthly from cash sales. Mr Ram recapitulated that there was no loss to the plaintiff, on a comparison of the profits of 2002 and 2003.

5.1.30. The plaintiff did not reply to the defendant's letter of 1 May, 2003.

5.1.31. The plaintiff purchased its stock from many suppliers. When the witness was asked why these suppliers were not subpoenaed, he said their addresses were misplaced.It was suggested that the witness was lying, since suppliers come to the shop daily.His response was that it was very difficult to contact them.

5.1.32. It was put to him, that there would be low stock level at any time not $ 30000, as claimed, since it was a running business. When the relevant balance sheets were shown to him, he agreed that the stock levels for 2000 to 2003 were similar, ranging from $ 2000 to $ 4000.

5.1.33. Mr Ram put it to the witness that contrary to his evidence that the plaintiff had only one the market shop at the relevant time, the records of the defendants reveal that the plaintiff had on 31 January,2003, paid for two business licences.

5.1.34. He was unaware whether his mother had filed a separate tax return.

5.1.35. The plaintiff claimed a loss of income of $ 30,000 per month. Mr Ram commented that the revenue statement he produced, depicted that the annual profit was $1,000 .

5.1.36. In re-examination, he reiterated that the plaintiff did not have operations in Park Street. Fishermen, dalo, cassava and fruit suppliers did not provide invoices.

5.1.37. There was no stock, at the end of the year, due to the holidays.

5.1.38. Neither the plaintiff nor its solicitor agreed to vacate by April,2003.

5.1.39. The witness's attention was drawn to the defendant's letter of 1 May, 2003, received by the plaintiff at 4.55 pm. He said that the defendant's office was not open at 5pm. The items were thrown like garbage. The freezer did not have power supply. The plaintiff could not salvage anything. The defendant did not give the plaintiff, a list of items. Fish left outside, cannot be used. The plaintiff reported the matter to the Police.

5.1.40. He concluded his re-examination stating that the Accountant had not done his job. There was a drop in sales of $100,000 in 2003. The plaintiffs' profit margin was 30 to 40%.

5.2. *PW2*

5.2.1. Riyaz Hussein said he was employed as a salesman in the plaintiff's shop, at the market. The dimensions of the shop were 25 ft by 25 ft. The shop was a busy place with two to three counters.There were 6 to 8 employees. He sold lobster, fish, prawn, crabs, firewood and oranges. Dalo and cassava were supplied by farmers.

5.2.2. The shop was dismantled on 1st May,2003. He had worked on 30th April,2003. When he came to work the next morning, at 7 am, he found the freezer upside down and goods scattered on the road. There was a lot of stocks in the shop. People were taking away the things. He then called his employer, Jagat Singh. The witness said that he had stayed there for half an hour. As he was sick, he had gone to hospital. He was admitted for one week. He did not go back to work.

5.2.3. In cross-examination, it transpired, he had worked for nine years for the plaintiff, commencing in 2002. He said he was not aware that the plaintiff operated from two places and had a shop at Park Street, in 2002 or 2003. He had not delivered sea food etc to Park Street. It was suggested to him that he was lying, since he had lived for 14 years in Labasa.

5.2.4. After the shop was dismantled, he went to Lautoka to study. He came back in 2005, worked for a year for Hakim Begg and then at Singhs at Park Street.

5.2.5. The plaintiff supplied foods to Prison Dept, Labasa College, the hospital and the army camp. Invoices were made, when good were delivered. The invoices were made by a girl working in the office. The witness purchased five bags of cassava, dalo, rourou and bele, every week.

5.2.6. On 1 May, food items were scattered outside with a freezer upside down. The freezer was not locked. There were **7** freezers and a coke freeze. He was unaware, if there was a freezer for vegetables.The shop had a stainless steel tray for washing fish.

5.2.7. He said no one looking after the items, when he arrived.When asked why he did not take the items belonging to his employer, he said that people would have said things were on the road.

5.2.8. The witness said that after his employer came half an hour later, he went to hospital. He was unaware as to the action taken by his employer .

5.3. *PW3*

5.3.1. Satyawan Bal Ram said he did occasional work for the plaintiff, with respect to its correspondence, negotiating with suppliers and other business matters.

5.3.2. Mrs Singh was a Director of the plaintiff company. She was experienced, though not well-educated.

5.3.3. The plaintiff's business centre was next to the Labasa River, at the market. He said he was unaware whether the plaintiff had any other place of business. The plaintiff had a canteen. It also traded in sea food, the purchase and supply of fish, fresh vegetables, eggs and other items in bulk to govt depts. such as the Labasa hospital, Labasa College, Prison Dept, and the Military Camp. Merchandise was obtained from producers.

5.3.4. When he was informed that a shop in the market was dismantled, he had gone to the spot. There were freezers and other items on the foot path. Security personnel, Mr Jagat Singh and a number of other people were gathered there. There was substantial loss to the plaintiff. At any time, there was 1500 kilo of fresh fish. He said he was unaware whether the plaintiff could retrieve the items.

5.3.5. It transpired in cross-examination, that the witness had a hardware shop. He had substantial debts and a receiving order was issued against him.

5.3.6. When asked why the plaintiff did not retrieve its belongings, he said it was the plaintiff's right to choose his course of action. Mr Jagat Singh had reported the matter to the Police.

5.4. *PW4*

5.4.1. Rajesh Chan, a businessman said he had been doing business in Labasa, since 1987. He was a member of the defendant for seven years, as a Councillor and Deputy Mayor. He was a Councillor, when the shop was dismantled.

5.4.2. He said that the plaintiff was operating a business in Labasa market, for six to eight years. The shop was in full operation.

5.4.3. The plaintiff had a right to remain in the property, as an agreement was signed and rent was paid.He was not aware whether the plaintiff had responded, when given notice of termination.

5.4.4. He had not attended any meeting of the Council, where it was discussed that a building of the defendant would be dismantled and a tenant evicted, with its belongings. There was no resolution passed by the defendant terminating the tenancy. The "*Full*" Council had to pass a resolution to do so. A tenancy cannot be terminated, without a resolution.

5.4.5. He had heard that Jagat Singh's shop was dismantled and all the contents were lying outside. He went to the market. There were more than 100 people. Most parts of the shop building were removed. The contents were piled up. He was not aware who dismantled the building.

5.4.6. He was at the market for half an hour. He did not see Jagat Singh. Later, he saw security. He was not aware whether the security was employed by the defendant. He was told employees of the defendant had employed people, to dismantle the building. The dismantling was not raised subsequently, at a Council meeting. It was not a correct thing to do. There was a tenancy agreement. Procedures had to be followed, to evict tenants.

5.4.7. The shop had freezers and stocks. The defendant did not accept rent, after notice to vacate was given.

5.4.8. In cross-examination, the witness agreed that the entire market was to be renovated by the defendant. The entire area is covered now.

5.4.9. A notice was sent to Jagat Singh to vacate. He said he was not aware of the options made available to the plaintiff. Jagat Singh had written a letter that the shop was dismantled and the contents put outside. There were more than 4 or 5 freezers.

5.4.10. In re-examination, the witness said that the plaintiff was not given notice that its items were to be thrown out, at night.

5.4.11. He said he had no knowledge of the defendant's letter of 20 March,2003. There was no discussion at any meeting of the Council of a discussion between Jagat Singh of the plaintiff company and Charan J Singh.

5.5. *DW 1*

5.5.1. Jitendra Prasad, Town Clerk of the defendant testified. He referred to the tender made by the plaintiff for a renewal of its tenancy, the ensuing letters written by the defendant to the plaintiff and the order of the Prices and Incomes Board, restricting the rent payable by Jagat Singh to $ 800 vat exclusive.

5.5.2. He said a new tenancy agreement was not entered into. The plaintiff was occupying on a monthly basis.

5.5.3. He produced the exchange of correspondence between the parties,in March,2003.

5.5.4. On 6th February,2003, the defendant gave the plaintiff, three months notice to vacate by 30th April,2003. The development of the market area necessitated the plaintiff vacating the premises.

5.5.5. He referred to the defendant's letter dated 1st May, 2003, advising the plaintiff, to collect its items from the market premises within 24 hours. The plaintiff collected its items. The plaintiff had not complained to the defendant that its items were not given,nor was there a police investigation on the alleged loss.

5.5.6. The plaintiff operated from Park Street, after they closed down. The witness said that according to its records, in January,2003,the plaintiff had two licenses for retail shops. An extract from the defendant's revenue management report was produced, in support.

5.5.7. In cross-examination, the witness said that he was not Town Clerk at the relevant time.There was no record of the address of the plaintiff's other business premises, in the defendant's file .

5.5.8. It transpired that there were no minutes of the Council, as regards the development nor the demolition.

5.5.9. Mr Sen, counsel for the plaintiff, questioned the witness, as regards the period of tenancy. In response, he said that the tenancy would have been three

years, if the plaintiff had accepted the offer contained in the defendant's letter of 29 November,2011.

5.5.10. He said there was an "*indirect*" undertaking given by plaintiff, in its letter of 19 March,2003, that it would give vacant possession for the development. The payment of advance rental was interpreted to mean that it would vacate by 30th April,2003.

5.5.11. The witness was referred to a letter dated 24th April,2003, from the plaintiff's solicitors stating that the plaintiff was entitled to peaceful enjoyment of the premises and his tenancy could not be terminated, by an eviction notice.

5.5.12. He was further cross-examined, as to whether it was proper to dismantle and put things on the streets. The defendant had not filed proceedings, to evict the plaintiff. No communication was made to the plaintiff, that its things were to be thrown on the street. The defendant's file did not contain an inventory of the plaintiff's things. The payment of rentals was not an issue.

5.5.13. The witness said it was not necessary to obtain a demolition order from the Health Dept, in respect of properties belonging to the defendant. He had no knowledge of photographs taken.There was no complaint lodged by plaintiff with the Police, that its items were lost.

5.5.14. The shop was closed, when it was broken into.

5.5.15. In re-examination, the witness said that minutes of the meetings of the council are filed according to dates. The file he brought to court did not contain any minutes of meetings.

5.6. *DW 2*

5.6.1. Umesh Prasad, a driver of the defendant gave evidence. He said there was a development of the market in 2003. One part was made.

5.6.2. In 2003, the plaintiff had two shops. One in the market and the other at Park Street.

5.6.3. The witness said the market shop was dismantled in the early hours of 1st May,2003. There were many people and Police Officers present.

5.6.4. The contents of the plaintiff's shop were taken and placed outside. Pioneer Security looked after the items. There were three freezers, one with a lock;1 big tub with fish and ice; firewood. Nothing else of importance. Three more freezers could be put in the shop. Umesh Prasad said he left after 5am.

5.6.5. In cross-examination, he said that six people broke the main door. The market master and Engineer entered first. He could not recall whether there was a coca cola freezer . The Police were in attendance. He said he was not aware of the quantity of fish in the fridge.

5.7. *DW 3*

5.7.1. Rajesh Chandra, Debt Collector of the defendant testified. He said that the plaintiff had another shop located at Park Street. As at 30 April,2003, the plaintiff had two shops.

5.7.2. The Council demolished the shop. The witness said he went after 12am on 1st May, 2003. He was told to get the roof dismantled. The roofing iron, timber and purlins were taken out.

5.7.3. There were three freezers and a half cut steel tray. One was locked, a steel tray and three sacks. The shop was a busy establishment. It could have had firewood.The items were put on side of road. Security was looking after items. The plaintiff got his items. The steel tray was in the plaintiff's shop at Park Street. The Police did not investigate nor question staff.

5.7.4. In cross-examination, he said that there were 12 to 13 people and security at the scene, when the shop was being dismantled.

5.7.5. He was on the roof for three hours. He was unaware as to who broke the lock or entered the premises.

5.7.6. Jagat Singh was operating the Park Street shop, in 2003. The witness's brother had a video library beside it.

5.8. *DW 4*

5.8.1. Faizal Sheik, Business Consultant said he had worked for the plaintiff. He prepared financial statements for the plaintiff .

5.8.2. The plaintiff supplied sea food,vegetables and crops to retail outlets, hospitals and schools.

5.8.3. As at 1 January,2003, the plaintiff operated from two locations. One was at Park Street, the other at the market .

5.8.4. The witness said he prepared the statements of accounts produced by PW1. The accounts were based on information requested and original documents supplied by the plaintiff. The accounts were signed by the Directors. The tax returns for 2003 were lodged .

5.8.5. The figures were given by the plaintiff. He did not carry out a detailed analysis. Stocks fluctuates. On an average, the profit was $ 11,000 to 12,000 per annum, for both shops.

5.8.6. Referring to the schedule of fixed assets, he said that except for two items: a computer and residential building, all assets remained the same at the commencement and end of 2003. There were no retirements, sale or loss of assets as at 31 December, 2003.

5.8.7. The schedule of assets provided there were 21 freezers. Mr Ram pointed out that there were more than three freezers, at the commencement of 2003.

5.8.8. The accounts do not depict that any renovations were done to the shop.

5.8.9. In cross-examination, the witness agreed that stocks are generally low, at the close of a year. He was unaware when the shop at Park Street commenced business. Separate books of account were not maintained for the two shops.

5.8.10. He was aware that the business at the market shop ceased.Faizal Sheik said the loss of freezers and scales,was not brought to his notice. Assets written off as a result of depreciation are not reflected in balance sheets.

5.8.11. The profit for 2003 was less. The turnover went down by $ 100,000 from 2002 to 2003.

5.8.12. In re-examination, he said the same legal entity was running both shops.

5.8.13. The variation of profit from 2002 to 2003 was minimum and ranged from $11000 to $13000.

5.9. *DW 5*

5.9.1. The final witness was Charan Jit Singh, businessman and former Mayor of the defendant Council from 1993 to 2005.

5.9.2. In his manifesto for election as Mayor, he had promised to ameliorate the conditions in the market, as it was congested with traffic. Market vendors were complaining that they did not have proper shelter.

5.9.3. The Town Clerk recorded meetings of the Council.

5.9.4. He dealt with Jagat Singh of the plaintiff company, as a tenant. A new tenancy agreement was not entered into, since the plaintiff did not accept the increased rental.The tenancy was on a month to month basis, not a period of three years.

5.9.5. The defendant had decided to upgrade the market area in 4 phases. The last stage was the area of the plaintiff's shop. The plaintiff saw the development taking place. Jagat Singh knew and publicised that he had to vacate. The defendant decided to give him time to move out.When the development reached the plaintiff's canteen, Jagat Singh did not co-operate, as the political party in opposition, supported him.

5.9.6. There was a clear understanding between the parties that once the rental of $1800 was received, the plaintiff would vacate by 30 April 2003. This was accepted by Jagat Singh.

5.9.7. Prior to 30 April, the defendant resolved at a meeting of the "*Full Council* that it would dismantle the plaintiff's shop, if it was not vacated.

5.9.8. The defendant waited for the close of 30th April.After midnight, the plaintiff's goods were placed under a tauplin cover, so that the goods would not be damaged and the shop was dismantled. Security was in attendance.A letter was delivered to plaintiff, to collect his items on 1 May, 2003. The plaintiff had made no complaint that its items were stolen. The witness said he was unaware whether the Town Clerk and workers took an inventory nor if the plaintiff had collected its things.

5.9.9. The plaintiff had two business premises from the beginning of 2003. The witness said he used to pass the plaintiff's market shop every day. It was a small canteen. Goods such as seafood and vegetables were purchased and sent to the plaintiff's Park Street shop, for distribution.

5.9.10. He disagreed that there was a loss of stock to the value of $ 30,000, as claimed, since it was a running business. There was nothing more than $ 2000. There were 3 freezers. There was $ 1000 worth of fish in the freezer. The relevant balance sheets were shown to him, he agreed that all stock levels for 2000 to 2003 were similar, ranging from $ 2000 to $ 4000.

5.9.11. In cross-examination, it transpired that the witness had a business adjacent to the plaintiff's shop. He said that no renovations were done by the plaintiff.

5.9.12. A resolution was passed that the defendant would dismantle the plaintiff's shop. Mr Sen asked the witness, if this was done in a civilian society.

5.9.13. In conclusion, he said the action against him was withdrawn, upon payment of $1500 as costs to the plaintiff.

6. ***The determination***

6.1. I will in the first instance, deal with the subsidiary arguments raised by the defence.

6.2. ***Section 13 of the State Lands Act***

Mr Ram contends that the plaintiff's tenancy is illegal,since the defendant had not obtained the consent of the Director of Lands for the sub-lease to the plaintiff, in terms of section 13 of the State Lands Act.

6.2.1. This argument was raised before Wati J, in an application to strike out this action, by the then second defendant.On an analysis of the relevant conditions of the lease agreement, Wati J held that the Director of Lands has given "*blanket consent*", to sublet the use of any building or structure in the land for kiosks, shops, advertisements, offices, stalls, booths or space.

6.2.2. Mr Sen, states that the issue has been adjudged. I disagree. As Mr Ram quite correctly points out, this finding was made, for the limited purpose of determining whether there was an arguable case, in an interlocutory ruling.I would hence proceed to make a final determination, on this matter.

6.2.3. It is undisputed that the lease is a protected lease and the property was leased to the defendant by the Director of Lands.

6.2.4. It is now convenient to look at the conditions of the lease granted to the defendant. It is on a construction of these conditions that the question in issue falls to be determined.

6.2.5. I read condition 4 of the lease:

> *The lessee shall not without the consent in writing of the lessor transfer sublet assign or part with possession of the demised land or any part thereof* ***provided however that the lessee shall be entitled without such consent to sublet*** *or licence the use of any part of any building or structure on the demised land for any advertising purposes or any* ***kiosks, shops, offices, stalls, booths or ..****provided by the lessee on the demised land* ***in conformity with the provisions or condition (3) hereof to such persons*** *and at such rents or fees and upon such other terms and conditions as the lessee may think fit.* (emphasis added)

6.2.6. The introductory words of condition 4 reflect section 13(1). The proviso brings in the immediately preceding condition 3. This reads as follows:

> ***The lessee shall use the demised land solely for the purposes of market****, ..:* ***provided that the lessee*** *may in addition to or as part of any building or other structure erected in connection with those purposes construct or* ***provide on the demised land such kiosks, shops office stalls or booths*** *.. as in the opinion of the lessor shall not prejudicially affect the use of the demised land* ***for the general purposes of a market****..* (emphasis added)

6.2.7. At the core of the argument advanced by Mr Ram, is that condition 4 is ultra vires the powers of the Director of Lands, in providing that the lessee may sublet any part of the building, without his consent.

6.2.8. On a construction of the proviso to condition 4 read with condition 3, my view, is that the Director has given consent on a once and for all basis to the defendant (until the expiry of the lease),for its primary use and the ancillary purpose of facilitating a market.

6.2.9. The words "*without consent*" must be read with the phrase "***to sublet*** *or licence the use of any part of any building or structure on the demised land for..any* ***kiosks, shops, offices, stalls, booths..in conformity with the provisions or condition (3)***". (emphasis added)

6.2.10. A true construction of condition 4 is arrived at by seeking a meaning of the condition as a whole, rather than by concentrating exclusively on the words "*without consent*" and giving it a narrow linguistic interpretation. The purpose of the lease furnishes a compelling context.

6.2.11. In reaching this conclusion, I gained considerable guidance from the excerpts from two judgments of the Supreme Court of India, restating the cardinal rules of statutory interpretation, extensively quoted by Mr Ram.

6.2.12. In the first case, ***Union of India & Anr v Deoki Nandan Aggarwal,*** (1992) AIR 96 it was stated:

> *It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous ..The Court cannot add words to a statute or read words into it which are not there...* ***The Court of course adopts a construction which will carry***

> ***out the obvious intention of the legislature*** *but could not legislate itself.* .(emphasis added)

The second judgment is reported in (2009) AIR SC187. I reproduce excerpts from the citation in the closing submissions of the defendant:

> ***Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself****, (Per Lord Loreburn L. C. In Vickers Sons and Maxim Ltd. v. Evans (1910) AC 445 (HL).,,,* .(emphasis added)

This judgment cites the aphorism of Lord Wensleydale in ***Grey v Pearson***,(1857) 6 H.L.Cas.61, at page 106 enshrining what is termed the "*golden rule*" as follows:

> *The grammatical and ordinary sense of the words is to be adhered to unless that would lead to some absurdity or some repugnance or inconsistency with the rest of the instrument, in which case the* ***grammatical and ordinary sense of the words may be modified, so as to avoid that absurdity and inconsistency, but no further****.*(emphasis added)

6.2.13. There would certainly be absurdity, if the defendant is required to obtain the consent of the Director of Lands, each time it seeks to lease out a kiosk, shop, stall or booth to tenants, who are more often than not, transient market vendors.

6.2.14. Mr Ram, does instruct that *"stalls in the market are allocated to the intending vendors on a day to day basis and there is no permanency*". This consideration provides the most cogent reason to reach an interpretation which the conditions embrace.

6.3. ***Section 59 (e) of the Indemnity Bailment and Guarantee Act***

Mr Ram, next, submits that section 59 (e) of the Indemnity Bailment and Guarantee Act precludes the plaintiff from bringing this action, since there was no formal writing between the parties.

6.3.1. As I read the section, in my view, there is no requirement of a formal agreement. The relevant words are "***some memorandum or note thereof is in writing and signed by the party to be charged therewith***".(emphasis added)

6.3.2. Mr Sen, relies on several letters from the defendant to the plaintiff, as constituting the tenancy,commencing with its letter of 29th November,2001. I have referred to the contents of these letters in paragraph 6.6 below.

6.3.3. In my judgment, the letters constitute sufficient memoranda and notes in writing, to satisfy section 59(e).

6.4. ***Part performance***

In this context, I note that the plaintiff has pleaded the doctrine of part performance, in its reply to the re-amended statement of defence. The defendant has acknowledged receipt of rent by its letters of 23 August,2002,and 20 March,2003, which would I refer to later in this judgment. With this digression, I return to consider the remaining subsidiary argument.

6.5. ***Was the defendant entitled to determine the tenancy***

The defendant contends that it was entitled to determine the tenancy for two reasons.

6.5.1. Firstly, Mr Ram argues that the tenancy was on a month to month basis. He relies on the defendant's letter of 1st February,2002, informing the plaintiff that approval from the Prices and Incomes Board is being obtained for the increased rental, "***until such time the tenancy shall remain on month to month basis*** *at the present rental."*(emphasis added)

6.5.1.1.1. The first communication from the defendant was its letter dated 29th November,2001, acknowledging the plaintiff's tender and going on to advise that:

> *The Council has resolved that if you accept the rental to be $ 1,100 vip per month and increase the deposit.* ***A new agreement will be drawn effective from 1/1/02.***
>
> ***The tenancy shall be for a period of 3 years***. (emphasis added)

6.5.1.1.2. On 23 August,2002, the defendant wrote to the plaintiff stating that the Prices and Incomes Board had agreed to a monthly rental of $ 880.00 VIP from 1 August,2002.

6.5.1.1.3. It is evident that the tenancy was stated to be on a monthly basis, in the letter of 1st February,2002, for a transitory period, until the increase was approved by the Board.

6.5.1.1.4. In my view the defendant's letter of 29th November,2001, unequivocally declares that the shop premises was demised to the plaintiff by the defendant, for a term of three years. It was conditional as regards the increase in rent, as expressly averred in paragraph 4 of the amended statement of defence**.** I need hardly add that the period of tenancy was not a matter for the Prices and Incomes Board**.**

6.5.1.1.5. In my judgment, the plaintiff had security of tenure of tenancy for a period of three years.

6.5.2. As a second leg, Mr Ram argues that Jagat Singh of the plaintiff company, agreed to vacate by 30 April,2003, at a discussion he had with the then Mayor. Reliance was placed on an exchange of correspondence between the parties in March, 2003.

6.5.2.1 The first is a letter dated 19th March, 2003, from the plaintiff attaching two months' rent, and stating in paragraph 5 that:

> *I hope fully feel other tenants of the council follow the que from here and pay all their dues so that the council can make developments for the betterment of our little town which was devastated by cyclone Ami.*

6.5.2.2 I am nonplussed as to how it could possibly be concluded that the plaintiff, by agreeing to the developments, had agreed to vacate by 30 April,2003.

6.5.2.3 The second is a letter of 20th March, 2003,which refers to two options given to the plaintiff to vacate either by 31 March,2003,or 30th April,2003. I read this letter, in its entirety:

> *<u>Re: Rental – Council Premises</u>*
>
> *I refer to your letter dated 19th instant which I received today together with your cheque for sum of one thousand and eight hundred dollars ($1,800.00).*
>
> *The Council had issued a notice dated 06/2/03 to Singh's Shopping Ltd to give vacant possession of council premises situation at Labasa Market.*
>
> *As discussed earlier (04/3/03) between Mr J Singh of Singh's Shopping Ltd and the Mayor, Cr Charan J SinghJP*

that if Singh's Shopping Ltd gives vacant possession of councils premises by 31/3/03 the council had assured that it shall not accept rent for month of March 2003.

It was further discussed between the parties that if Singh's Shopping Ltd gives vacant possession of council premises by 30/4/03 then Singh Shopping Ltd shall pay rent for months of March and April being for sum of one thousand and eight hundred dollars ($1,800.00).

Now that you have paid rent for March and April 2003, it is understood that Singh Shopping Ltd shall comply the council premises upto April 2003 *and it shall also make arrangement to give vacant possession by 30/4/03 as per our notice dated 6/2/03.*

The Council is firm with its decisions and it shall upgrade to market area therefore you are advised to give vacant possession of Council premises on or before 30/4/2003. (emphasis added)

Yours faithfully

M.RAFIQ
LEGAL OFFICER
for TOWN CLERK/CEO

6.5.3. It is evident from the penultimate paragraph that the defendant had reached an unilateral understanding.

6.5.4. In my judgment, the plaintiff had not agreed to vacate the premises.

6.6. In my view, the defendant's arguments, that it was entitled to determine the tenancy prior to the expiry of three years, are misconceived.

6.7. I turn from these linguistic points to the crucial point in this case.

6.8. ***The plaintiff's claim***

The scene opens in the early hours of 1st May,2003, when the defendant's agents demolished the plaintiff's shop, removed all his goods and placed them outside. The demolition is justified. I would read the defendant's letter of 1st May,2003, in its entirety.

ATTENTION:MR JAGAT SINGH

Dear Sir,

Re: VACANT POSSESSION – LABASA TOWN COUNCIL PREMISES COLLECTION OF YOUR ITEMS FROM MARKET COMPLEX

> *Please refer to our earlier letters dated 06/02/03 and 25/04/03 regarding vacant possession of council premises situated at Labasa Market.*
>
> *The Council had given you ample time to give vacant possession of council premises and despite serving remainders you had failed to vacate the said premises. The Council needed the premises for its own development and the Council had no choice but to demolish its premises after 30/04/03.*
>
> *Please be advised to collect your items from the market premises within 24 hours time from the date of this letter and failure to do so within the stipulated period the Council will dispose all perishable items to avoid health risk to ratepayers and the market vendors.*
>
> *We would appreciate your assistance and cooperation in this matter.*
>
> *Yours faithfully,*
>
> ***M RAFIQ***
> ***LEGAL OFFICER***
> ***for TOWN CLERK/CEO***

6.9. The demolition was a *fait accompli*, when the plaintiff received this letter at 4.55 pm, on the same day, as noted therein. It was admittedly done, after midnight on 30th April,2003,in the early hours of 1st May, 2003. The letter is hence addressed to the plaintiff's shop, at Park Street.

6.10. Mr Ram, relies by analogy, on the decision in ***Hemmings and Wife v The Stoke Pages Golf Club Ltd***,(1920) KB 720.In this case, the plaintiffs were permitted to occupy premises belonging to the defendants, as a condition of their employment with the defendant. The plaintiff refused to vacate, at the end of his employment. The defendants got the plaintiff and his furniture removed.

6.11. In my view, the facts are not comparable. The plaintiff in that case, had ceased to be an employee. He was a trespasser and no injury had been sustained by him. I refer to the following passage from the judgment of Bankes LJ at page 733, as quoted in the closing submissions of the defendant :

> *"..the plaintiff, having no title to the possession as against his landlord, can have no right of action against him as a trespasser, for entering upon his own land, even with force; for, though the law had been violated by the defendant, for*

> *which he was liable to be punished under a criminal prosecution,* ***no right of the plaintiff had been infringed, and no injury had been sustained by him for which he could be entitled to compensation in damages.***."(emphasis added)

6.12. In the present case, the plaintiff's shop was dismantled and goods removed, during the period of tenancy. There was no countervailing consideration for the eviction. Not a shred of evidence was adduced of any minutes of a meeting of the Council,that the plaintiff's shop in the market would be dismantled and its contents removed.

6.13. Mr Sen cites the case of ***William Leitch & Co v Leydon***,(1931) AC 90 at page 106 for the proposition that trespass to goods is actionable per se. The authority cited does not state so. Lord Blanesburgh,in summarising the arguments of the appellant, "*without indicating upon it any opinion of my own*" stated further at page 106 that the "*wrong to the appellants in relation to that trespass is constituted whether or not actual damage has resulted therefrom either to the chattel or to themselves: see Pollock on Torts, 13th ed., p. 364*". In the case of trespass to goods, damages is measured by their value, as stated by Lord Hanworth MR in ***Re Simms,***(1934) 1 Ch1 at page 17.

6.14. ***General damages***

The first point of claim is a claim for general damages. The statement of claim provides that the loss of income from 30th April, 2003, for the unexpired term of tenancy of 1 year, 8 months was $10,000 per month. The schedule of special damages filed on 23rd August, 2007, claims $ 30,000 per month.

6.14.1. The revenue statements of the plaintiff company, for 2003 and the preceding years, do not support either of the claims.

6.14.2. PW 1, in cross-examination, said that the balance sheet for the year ended 2003, does not reflect the proper accounts of the plaintiff. He said that the documents were lost, when the shop was dismantled. I find no qualification to this effect, in the Directors' Report. Moreover, DW4 said that he was given original documents, to prepare the accounts.

6.14.3. It transpired that the plaintiff had another shop at Park Street, which was operating concurrently with the plaintiff's market shop, prior to, and after the incident. DW4 said that the revenue statements reflect the aggregate profit of

both shops. Mr Ram concludes that the loss of income from the market shop cannot be assessed.

6.14.4. That argument is formidable, but would be manifestly unjust. The courts have in several instances, granted damages, where loss of profits could not be accurately assessed.

6.14.5. In ***Newbrook v Marshall,***(2002)2 NZLR 606 at page 614, Richardson P delivering the judgment of the Court of Appeal stated as follows :

> *Where there are variables involved, as usually occurs in assessments of business profits or losses, if precise figures had to be proved few plaintiffs could succeed. Where, as here, it is established that* ***a particular factor was causative but its precise contribution to the loss could not be correctly calculated in precise dollar terms, a more robust approach is required of the courts.*** *It is not a matter of whether an expert could give a reasoned assessment and could defend the number he or she came up with. As* ***Lord Mustill said in Smith New Court Securities Ltd v Scrimgeour Vickers (Asset Management) Ltd [1997] AC 254 at p 269 "The assessment of damages often involves so many unquantifiable contingencies and unverifiable assumptions that in many cases realism demands a rough and ready approach to the facts***.(emphasis added)

Richardson P referred to the case of ***Walsh v Kerr,***(1989) 1 NZLR 494 at 494 where Cooke P stated:

> *There are cases where, although the assessment can only be largely speculative and the evidence is exiguous, the court will do the best it can to arrive at a figure if satisfied that there has been some real damage..*

The judgments of the New Zealand Court of Appeal were cited in ***AG of Fiji vs Metuisela Cama,***(ABU 0030 of 2004S). The FCA stated:

> *Where, for whatever reason, damages cannot be assessed accurately, and* ***the court is required to take a broad global approach to the assessment of damages, that approach should be conservative. The claimant***

> ***should not receive the benefit of any doubt if it is unable to prove its loss precisely.*** (emphasis added, underlining mine)

6.14.6. I turn to the evidence in this case. The revenue statements provide that:

- The net income for 2000 was $ 9455 and sales were $ 351,309
- The net income for 2001 was $ 11,351 and sales were $ 620537.96
- The net income for 2002 was $ 13,940 and sales were $ 613,940
- The net income for 2003 was $ 11,905.21 and sales were $500,657.67

6.14.7. On an analysis of the revenue statements, I find that the net income of the plaintiff has increased from 2000 to 2002, as follows:

- In 2001,the net income increased by $ 1896, a 20% increase.
- In 2002,the net income increased by $ 2589, a 23% increase.

6.14.8. Adopting a conservative approach, I hold that there would have been a 20 % increase in the percentage of profits, in 2003, if the market shop was not dismantled. The expected net income for 2003, would then be $16,728. Instead, the net income decreased to $ 11,905.21, with a resulting loss of profit of $ 5633.

6.14.9. I award the plaintiff, a sum of $ 5633, as general damages.

6.14.10. The plaintiff has not provided any evidence with respect to its trading in 2004 and 2005. As Lord Keith of Kinkel .stated in ***Tai Hing Cotton Mill Ltd v Kamsing Knitting Factory***,(1979) AC 91 at page 106 *"the ends of justice would be best served if they were to fix a new figure of damages as best they can they can upon the available evidence, such as it is*". Accordingly, I make no award with respect to the second and third years of tenancy.

6.14.11. ***Aggravated and Exemplary Damages***

The closing submissions of the plaintiff seeks aggravated and exemplary damages. The claim for exemplary damages is not pleaded. In respect of aggravated damages, it is sufficient if the facts relied to support a claim, are pleaded: the *White Book*, Vol 1 (1995), para 18/12/6.

6.14.12. Aggravated damages are a species of compensatory damages granted to compensate for cases of insolent, outrageous and high-handed trespass, as in the present case.

6.14.13. The case of ***Govind Prasad v NLTB and Ratuu Sakiusa Mutuku,***(HBC 145 of 2002) Mr Sen points out, is distinct from the present case, as regards the period of the lease. In that case, the plaintiff had a 30 year lease, that was extended for a further 29 years. The head of the land owning unit had driven him out of the property.The High Court awarded $ 250,000 as general damages, since he had been deprived of his 30 year lease and family home. Aggravated damages in a sum of $ 10,000 and exemplary damages in a sum of $ 25,000, were also awarded. The judgment was upheld in appeal.

6.14.14. The case before me is almost a counterpart of the case of ***Drane v Evangelou,***(1978) 1 WLR 455 where a couple, protected by statute from eviction, found that their landlord had barred the entrance to a maisonette leased to them, put all their belongings in the back yard, thereby damaging the goods. Lord Denning, upheld the county court judge's decision that such *"monstrous"* behaviour called for exemplary damages of GBP 1000. Lawton LJ and Goff LJ said it was proper to award aggravated damages. Lawton LJ at page 461 stated that it "*brings the law into disrepute if people like the defendant can act with impunity in the way he did*".

6.14.15. Lord Reid in ***Broome v Cassell & Co.,***(1972) 2 WLR. 645 at pgs 685 to 686 stated:

> *The only practical way ..is first to look at the case from the point of view of compensating the plaintiff. He must not only be compensated for proved actual loss* ***but also for any injury to his feelings and for having had to suffer insults, indignities and the like. And where the defendant has behaved outrageously very full compensation may be proper for that..Then if it has been determined that the case is a proper one for punitive damages the tribunal must turn its attention to the defendant and ask itself whether the sum which it has already fixed as compensatory damages is or is not, adequate to serve the second purpose of punishment or deterrence. If they think that sum is adequate for the second purpose as well as for the first they must not add anything to it. It is sufficient both as compensatory and as punitive damages. But if they think that sum is insufficient as a punishment then they must add to it enough to bring it up to a sum sufficient as punishment. The one thing which they must not do is to fix sums as compensatory and as punitive damages and add them together. They must realise that***

the compensatory damages are always part of the total punishment." (emphasis added)

6.15. In my judgment, the appropriate figure for aggravated damages is $ 5,000.

6.16. ***Special damages***

6.16.1. The first disputed item titled "*Shop inventories*" relate to several items, including three freezers and counter scales alleged to have been lost. The defendant's position was that the plaintiff collected all its items, as testified by DW1 and DW3.

6.16.2. PW1 and PW4 said that security personnel were at the market on the morning of 1 May, 2003. This was confirmed by DW 2, DW 3 and DW5.

6.16.3. PW1, said that the plaintiff's employees who went to the site at 5 am on the morning of 1st May, 2003, did not find the cash register and counter scales. He was unaware whether the freezers were retaken. Several items were missing and others were not taken, as they were damaged.

6.16.4. PW 2, a salesman of the plaintiff company, said that when he went to the market the next morning, he saw a freezer upside down. He did not attempt to retake the items, as they were on the road. In my view, this reasoning is unconvincing.

6.16.5. I find the evidence given on behalf of the plaintiff shadowy, as to the number of freezers in the market shop. PW 1, at one point in his evidence in chief, said there were three, later he said there were 6. PW2 said there were 7.

6.16.6. Running through the items claimed, Mr Ram demonstrated, that the column titled "*RETIREMENT*" in the Schedule of Fixed Assets and Depreciation as at 31 December,2003, as attached to the balance sheet of the plaintiff company, was completely devoid of any entries.The Schedule of Fixed Assets and Depreciation as at 31 December,2003, lists 21 freezers, counter scales and all the other items listed in the preceding Schedule for 2002, except for a computer and residential building in the column titled "*ADDITION* ".

6.16.7. DW 4, who prepared these documents Schedule of Fixed Assets and Depreciation as at 31 December,2003, in his evidence, said that he was not informed of the loss of freezers and scales.

6.16.8. In my judgment, the Schedule of Fixed Assets and Depreciation as at 31 December,2003,refutes the claim for loss of items. I decline the claim.

6.16.9. The second challenged item is a sum of $ 30,000 for stock in trade. Three arguments have been advanced by Mr Ram.

6.16.9.1. Firstly, he submits that a party "*cannot just say..$ 30,000 and expect the Court to award it*". I do agree that the schedule of special damages filed by the plaintiff does not particularise the quantity of each item of stock alleged to be lost nor was evidence led of the specific quantity and corresponding prices, except for fish purchased. As Lord Goddard stated in ***British Transport Commission v Gourley***,(1956) AC 185 that special damage has to be specifically pleaded and proved.

In ***Mahendra Naidu and Ravindra Patel*** C.A. No. 105/197999 (West Div) it was stated:

> *No receipt or evidence has been tendered... I am unable to guess what it would be and I do not allow it. As Lord Goddard and the F.C.A. have pointed out* ***claimants are expected to call evidence supporting their claims and not simply to say this is what I have paid or suffered in losses expect to be awarded those sums".***(emphasis added)

6.16.9.2 The second concept was that loss of stock in trade is required to be recorded in a balance sheet or in a note to that effect. This argument is certainly not without attraction. The balance sheet for the year ending 31 December,2003, does not expressly reveal a loss of stock. I express my view, on this argument in paragraph 6.6.12 below.

6.16.9.3 Thirdly, Mr Ram submits that the balance sheets produced for the years ending 2000 to 2003, show that stocks were on an average of $ 2000 to $ 4000. Mr Sen argues that stocks are low at the close of a year, due to holidays. Mr Ram's riposte was that there would be a low stock level at any time, not $ 30,000, as claimed, since it was a running business. It is not necessary for me to reach a conclusion on either of these contentions.

6.16.10. At the hearing, PW 1 testified that the plaintiff supplied items to the Fiji Military Force, the Labasa hospital, Labasa College and Prisons Dept on a weekly basis. Fish was supplied every week for the following values: $300 worth to the Fiji Military Force; $1500 worth to the Labasa hospital; $1000

worth to Labasa College and $1000 to Prisons Dept. No evidence in support was adduced.

6.16.11. PW1 said that the freezers contained 450 to 500 kg of fish, purchased at $4.50 a kg. The fish was rotten, as the freezer was unplugged. PW3 also said that there was 1500 kg of fresh fish. In so far as this evidence is supported by the testimony of DW 2, I would allow the claim for 1500 kg of fish. DW 2, who dismantled the shop, recollected that there was a big tub with fish. DW 5 also accepted that there was a stock of fish, though he disputed the quantity claimed. I accept that the plaintiff could not call transient fishermen, who do not issue invoices, as pointed out by Mr Sen.

6.16.12. Albeit, the balance sheet for the year ending 31 December,2003, does not depict a loss of stock of trade, in the light of the evidence referred to in the preceding paragraph, I would presuppose that the closing figure of stock recorded of $ 2,338.75 in the balance sheet reflects the loss of fish .

6.16.13. The plaintiff is entitled to a sum of $ 6,750 as special damages.

6.17.4 I decline the claim for renovation costs. This was not reflected in the balance sheet for the year ended 2003, nor was any evidence of a building contract, invoices or payments produced.

7. The plaintiff is entitled to the following reliefs:
   a) General damages in a sum of $ 5,663.
   b) Aggravated damages in a sum of $ 5,000
   c) Special damages in a sum of $ 6,750.

8. ***Orders***
   (a) The plaintiff is entitled to judgment against the defendant in a sum of $ 17,413.
   (b) The defendant shall pay the plaintiff costs summarily assessed in a sum of $ 6,000.

24 October, 2013 **A.L.B. Brito-Mutunayagam**

Judge