

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No.: CV2022-00336

Between

AARON KNIGHTS ENTERPRISES LIMITED

Claimant

And

HOVE'S COURT LIMITED

First Defendant

HOVE AND ASSOCIATES

Second Defendant

FARAI HOVE MASAISAI

Third Defendant

TRISHAUNA SCARLETT HOVE-MASAISAI

Fourth Defendant

BEFORE THE HONOURABLE MADAME JUSTICE JOAN CHARLES

Appearances:

Claimant: Aaron Knights Enterprises Limited

First Defendant: Mr. Colvin E. Blaize instructed by Chelsea Edwards and Bernelle-Joy La-Foucade

Date of Delivery: May 13, 2025

JUDGMENT

The Claim

- [1] I have used the summary of the pleadings outlined by the Defendants because it accurately reflects the contents of the Parties' pleaded cases.
- [2] The Claimant claimed the sum of thirty thousand dollars (\$30,000.00) representing outstanding fees owed for the year 2018, five thousand dollars (\$5,000.00) which represents outstanding consultation fees owing to the Claimant from May 2021 until October 2021, seven thousand dollars (\$7,000.00) for damages for breach of contract and forty-two thousand dollars (\$42,000.00) for consequential losses for the period January 2022 until December 2022 as a result of the Defendants' breach of contract for certain tenancy and consultancy agreements between the Claimants and the Defendants.
- [3] The Claimant pleaded that its Managing Director was initially employed for the position of Legal Clerk with the Second Defendant. In or around June 2015, the Claimant was incorporated and in or around June 2016, it was agreed that the Claimant will instead provide consultancy services in exchange for occupying an office space of the Second Defendant. The Claimant pleaded that he provided Clerical work and Industrial Relations consulting. The agreement was that rent would be deducted automatically out of consultancy fees with the Second Defendant. The Claimant pleaded that in or around December 2016, the Claimant moved into the office space at the Second Defendant called Suite D.
- [4] The Claimant pleaded that the Parties entered into written rental agreements from January 1, 2017, until December 30, 2017, January 2, 2018 until December 30, 2018 and December 1, 2019 until November 30, 2020.
- [5] The Claimant further pleaded that the Parties entered into written consultancy agreements from January 1, 2017 until June 1, 2017, September 18, 2017 until December 17, 2017 and December 1, 2019 until November 30, 2020.
- [6] The Claimant averred that on June 25, 2021, the Third Defendant met with the Directors of the Claimant to discuss continued operations working together. The Claimant pleaded that the Third Defendant told the Claimant's Director that a monthly retainer fee of three thousand five hundred dollars (\$3,500.00) will continue and that the Parties could look towards another year of doing business in 2022. The Claimant further averred that on said date the Third Defendant agreed to reduce the rent from three thousand five hundred dollars to two thousand five hundred dollars (\$3,500.00 – \$2,500.00).

- [7] The Claimant pleaded that on September 30, 2021, the Claimant was issued with a Notice to Quit from the Second Defendant to vacate the said Suite D office space on or before October 30, 2021. The Claimant responded to the letter. The Claimant pleaded that on November 1, 2021, after the Claimant conducted a consultation with one of its clients in the morning period, the Defendants locked the front glass entrance door, changing the security code that the Claimant was assigned. The Claimant pleaded that when its Directors returned to the premises at 3:00p.m. to continue to work, they were met with this embarrassment and the Claimant's belongings were left inside.
- [8] The Third Defendant emailed the Claimant a letter instructing that the Claimant had from November 1, 2021 until December 8, 2021 to remove all items or else they will be stored away for one-month storage then disposed of.
- [9] The Claimant pleaded that on November 4, 2021, the Claimant wrote to the Third Defendant addressing the unprofessional behaviour and addressed the fact that the Managing Director of the Claimant informed the Second Defendant that the Claimant had found a place and gave a month's Notice.
- [10] On December 4, 2021, the Claimant issued a pre-action protocol letter.
- [11] The Claimant further pleaded that on December 5, 2021, the Claimant's Director Ms. Cudjoe and another agent of the Claimant entered the office space on Suite D and saw that files on the Claimant's desk were rearranged as though someone was searching through the Claimant's files.
- [12] The Claimant therefore claimed that breach of contract by the Defendants by reneging on its assurances and/or promises to continue with the contractual arrangements for the year 2022. It was also claimed that the Defendants breached the Claimant's right to quiet enjoyment of the office space and other facilities on the ground floor of Hove's Court Limited, thereby preventing the Claimant from continuing to conduct its business by locking out the Claimant and/or its servants and/or its agents from its office between the afternoon of November 1, 2021 until November 5, 2021. The Claimant averred that the First Defendant breached the contract by trespassing into the office space of the Claimant between November 1, 2021 to November 5, 2021 and rearranged files and personal belongings owned by the Claimant and its clients including other Attorneys-at-Law. The Defendants further breached the contract by not paying all outstanding fees owed to the Claimant.
- [13] The Claimant Aaron Knights Enterprises Limited claimed against the Defendants the following Reliefs:
- i. Special damages for breach of contract and consequential loss in the sum of forty-two thousand dollars (\$42,000.00) for 2022.

- ii. Special damages for Quantum Claim in the sum of thirty thousand dollars (\$30,000.00) for fees outstanding for the year 2018.
- iii. The balance of fees outstanding for May 2021 to October 2021 in the sum of five thousand dollars (\$5,000.00).
- iv. The sum of seven thousand dollars (\$7,000.00) for breach of contract by not continuing the contract for November 2021 and December 2021 and no Notice of Termination issued.
- v. Exemplary damages.
- vi. Aggravated damages.
- vii. General damages.
- viii. Interest.
- ix. Costs.

The Defence

[14] The Third Defendant is a Director of the First Defendant and Senior Partner of the Second Defendant.

[15] The First Defendant, Hove's Court Limited, is a company duly incorporated under the **Companies Act 1995**¹ of Trinidad and Tobago with its registered address situate at No. 15 Gordon Street, Port of Spain in the Island of Trinidad, the Republic of Trinidad and Tobago. The Claimant was a tenant of No. 15 Gordon Street, Port of Spain and the First Defendant was incorporated to manage the said property and its tenants.

¹ Chapter 81:01

- [16] The Second Defendant, Hove and Associates, is a business duly registered pursuant to **Section 5²** of the **Registration of Business Names Act³** with its registered address as No. 15 Gordon Street, Port of Spain.
- [17] The Fourth Defendant is the wife of the Third Defendant and they have been married since September 25, 2010. The Fourth Defendant is also a Director of the First Defendant and the Managing Partner of the Second Defendant.
- [18] By employment contract dated October 1, 2015, Mr. Aaron Knights, a Director of the Claimant, became employed by Hove and Associates in his personal capacity as a Legal Clerk.
- [19] Mr. Knights' salary was five thousand dollars (\$5,000.00) per month and he was offered travel reimbursables and other reimbursables contingent to his position as Legal Clerk up to a maximum of one thousand five hundred dollars (\$1,500.00) per month. Furthermore, whilst the first performance appraisal of Mr. Aaron Knights was good, he received a final warning letter regarding conducting work for other persons in or around the year 2016, subsequent to previous verbal and written warnings about same. Mr. Knights only worked for Hove and Associates as an employee therefore from October 1, 2015 until July 1, 2016.
- [20] Mr. Knights left Hove and Associates preferring to work for his own company. As such, Hove and Associates offered Mr. Knights the opportunity to provide Clerical services for the Second Defendant as a consultant company having later learnt of the incorporation of the Claimant company.
- [21] Mr. Knights was offered a month-to-month tenancy for the occupation of a single office space in Hove's Court Limited known as 'Suite D' with the arrangement that the rent would be set off against the consultancy services rendered by the Claimant to the Second Defendant. In accordance with this

² **Section 5:**

- (1)** Every firm or person required under this Act to be registered shall furnish to the Registrar a statement in writing in the prescribed form containing the following particulars:
- (a)** the business name;
 - (b)** the general nature of the business;
 - (c)** the principal place of the business;
 - (d)** where the registration to be effected is that of a firm, the present given name and surname, any former given name or surname, the nationality, the usual residence, and the other business occupation (if any) of each of the individuals who are partners, and the corporate name and registered or principal office of every corporation which is a partner;
 - (e)** where the registration to be effected is that of an individual, the present given name and surname, any former given name or surname, the nationality, the usual residence, and the other business occupation (if any) of such individual;
 - (f)** where the registration to be effected is that of a corporation, its corporate name and registered or principal office;
 - (g)** if the business is commenced after the commencement of this Act, the date of the commencement of the business.
- (2)** Where a business is carried on under two or more business names, each of those business names must be stated.

³ **Chapter 82:85**

arrangement, the Claimant company would raise invoices which would be sent to the Third Defendant or the Fourth Defendant as representatives of the Second Defendant and the Claimant company would be paid based on the invoices raised.

[22] A rental agreement was drafted on the July 1, 2016 as between the First Defendant and Mr. Knights for the term of one (1) year from July 1, 2016 until July 31, 2017 at a rate of two thousand five hundred dollars (\$2,500.00) per month. However, this was never executed between the Parties and a Notice to Quit was served on Mr. Knights on November 11, 2016 as effective from December 1, 2016.

[23] Later, Hove and Associates entered into written consultancy agreements with the Claimant. These agreements are as follows:

- i. From January 1, 2017 until June 1, 2017.
- ii. From September 18, 2017 until December 17, 2017.
- iii. From December 1, 2019 until November 30, 2020.

[24] When the last consultancy agreement expired on November 30, 2020, Hove and Associates with the Claimant agreed to move forward on a “pay as you go” basis, based on work actually completed for Hove and Associates by the Claimant. The Claimant would raise an invoice based on work done for any given period and Hove and Associates would pay for the works done, said works being Clerical in nature as a Law Clerk.

[25] With respect to a written tenancy agreement for Suite D, this was first entered into on January 3, 2017 between Hove’s Court Limited and the Claimant. This tenancy agreement was only for the use of Suite D for the purpose of being used as an office space. No use of any other room was provided for in the tenancy agreement. The other rooms in the downstairs area where Suite D was located were offices for rent to other persons and a conference room for the benefit of the Second Defendant or with my permission if the Claimant asked me. This conference room was previously Suite E which was also rented out to a sole practitioner.

[26] All written monthly tenancy agreements entered by the Parties were for this same office space and continued as month-to-month tenancies on these terms where there was no written agreement. The continued agreement was that the costs of rent could be set off against the consultancy fees based on invoices raised for services rendered. These written agreements are as follows:

- i. Dated January 3, 2017 for January 1, 2017 until December 30, 2017.
- ii. Dated January 2, 2018 for January 2, 2018 until December 30, 2018.
- iii. Dated December 1, 2019 for December 1, 2019 until November 30, 2020.

[27] In or about June 2021, the Third Defendant met with Mr. Aaron Knights and Ms. Mary Cudjoe of the Claimant company in his capacity as a Director of the First Defendant to discuss moving forward with the consultancy agreement between the Claimant and Hove and Associates on a pay as you go basis instead of a set off as against the rent.

[28] The Third Defendant also agreed to reduce the rent being paid by the Claimant for Suite D to two thousand five hundred dollars (\$2,500.00) from three thousand five hundred dollars (\$3,500.00) due to the financial constraints brought on by the COVID 19 Pandemic. The Claimant agreed to invoice for work actually done for Hove and Associates and the Third Defendant agreed on behalf of Hove and Associates to pay for work actually completed once invoices were received.

[29] The Claimant was frequently late on its rental payments. Additionally, the staff of Hove and Associates was beginning to grow to the extent that the Third Defendant required the use of the office space that the Claimant occupied so on September 30, 2021, a Notice to Quit was issued by Ms. Antonya Pierre, Attorney-at-Law, on behalf of Hove's Court Limited, the landlord, and served on Mr. Aaron Knights, Director on behalf of AKEL, the tenant.

[30] There was no conflict of interest on the part of Ms. Pierre as the then Attorney-at-Law working on the estate of Mr. Aaron Knights' deceased mother was Mrs. Jennifer Farah-Tull, Attorney-at-law.

[31] On October 29, 2021, Mr. Knights sent a text message to the Third Defendant stating he would be leaving on December 1, 2021 but this was not in accordance with the Notice to Quit.

[32] The Claimant refused to leave the subject premises on October 30, 2021 in accordance with the properly issued Notice to Quit. As such, as a Director of Hove's Court Limited, the Fourth Defendant duly reclaimed the premises by changing the security code to restrict entry on November 1, 2021. Nevertheless, the Claimant was advised by letter of even date of the reasonable opportunity to collect all belongings within seven (7) days. None of the possessions were removed or damaged prior to the Claimant's collection of same on November 5, 2021.

- [33] On November 5, 2021, the Mr. Aaron Knights visited Hove's Court to collect the personal belongings of the Claimant. None of the Claimant's possessions and/or personal belongings were removed or damaged prior to the Claimant's collection of same on November 5, 2021.
- [34] Mr. Knights sent a letter dated November 4, 2021 to one of the Attorneys-at-Law employed with the Second Defendant and did not write to the Third Defendant. A response to the letter dated November 4, 2021 was not proffered as the circumstances rendered a response unnecessary. That is, Mr. Knights advised that he registered a change of address in the Companies Registry of the Ministry of the Attorney General and Legal Affairs and would come to collect the Claimant's belongings on or before November 8, 2021 pursuant to the Notice to Quit.
- [35] By letters dated December 4, 2021, the Claimant sent pre-action protocol letters to the First and Second Defendant.
- [36] By letter dated December 10, 2021, the Defendants' Attorney-at-Law acknowledged receipt and advised that responses would be forthcoming.
- [37] By letter dated December 10, 2021, the Claimant demanded a response be sent no later than December 17, 2021.
- [38] By letter dated December 17, 2021, the Defendants' Attorney-at-Law provided a substantive response and there was then an ensuing exchange of correspondence until January 22, 2022.
- [39] The Defendants' Attorney-at-Law responded to the Claimant's pre-action letters to the best of their ability based on the information disclosed and presented by the Claimant. The Second Defendant is aware that his Attorney-at-Law requested that the Claimant disclose alleged emails and documents in order to proffer a proper response. However, the Claimant refused to disclose same and insisted that he would present it "in our pleadings" and "when we go to court", as shown in the Claimant's letter dated January 20, 2022, in complete disregard for the objectives of the pre-action protocols practice directions to encourage the exchange of early and full information about the prospective legal Claim, to enable Parties to avoid litigation by agreeing on a settlement of the Claim before the commencement of proceedings and to support the efficient management of proceedings under the Civil Proceedings Rules where litigation cannot be avoided.
- [40] Furthermore, the Claimant unilaterally decided to no longer provide any consultancy services to the Second Defendant after Mr. Aaron Knights visited Hove's Court to collect the personal belongings of the Claimant on November 5, 2021, pursuant to the Notice to Quit. No services were provided and therefore no invoices were raised by the Claimant so no monies were owed to the Claimant for consultancy services.

[41] As such, neither the Third Defendant nor any of the Defendants made any assurances and/or promises to continue any contractual arrangements with the Claimant for the year 2022.

[42] The Claimant by virtue of its agents, Mr. Aaron Knights and then Ms. Mary Cudjoe were aware at all material times of the arrangement with respect to tenancy and consultancy and at the time of the Claimant's departure from Hove's Court Limited, there were no outstanding consultancy fees owed.

The Evidence

[43] The Claimant filed four (4) Witness Statements but only two (2) witnesses, Mary Cudjoe and Edward Elliot gave evidence at trial. It should be noted that Mr. Knights represented the Claimant and cross-examined witnesses on behalf of the Claimant. He was not cross examined by the Defendants.

Aaron Knights

[44] Mr. Knights' evidence was generally consistent with his pleaded case. He asserted that in June 2016 the Claimant and the Defendants agreed to new 'commercial arrangements' whereby the Claimant would provide Clerical and Industrial Relations services to the Defendants and the Claimant would be permitted to operate its business on the first (1st) floor of the premises⁴. He also stated that prior to the new contractual arrangements between the Claimant and the Defendants referred to above, his employment as a Clerk was not terminated nor did he tender his resignation from the job.

[45] He testified that between June 2016 to January 2017, there was no formal rental agreement between the Claimant and the Defendants, however rents were deducted from the Claimant's retainer fees and the remainder paid to the Claimant. The Termination Certificate was not filed with the National Insurance Board until November 2017. In December 2016 the Claimant's office was relocated to the ground floor, however the same contractual arrangement for the payment of rent and consultancy services remained.

[46] A written rental agreement between the Parties was entered into on January 3, 2017 for the first-time whereby the Claimant agreed to pay to the Defendants rent in the sum of three thousand five hundred dollars (\$3,500.00) per month. The Parties also entered a written consultancy contract by which the Defendants agreed to pay to the Claimant the sum of seven thousand dollars (\$7,000.00) monthly for services rendered. This arrangement continued from July 2, 2017 until September 17, 2017. The consultancy fee was increased to seven thousand five hundred dollars (\$7,500.00) by written agreement dated September 18, 2017.

⁴ Paragraph 8 of the Witness Statement of Aaron Knights

- [47] In or about December 2017 the Claimant and the Second Defendant orally agreed to enter into another contract, this time reverting to their yearly consultancy agreement where the new consideration reduced from seven thousand five hundred dollars to six thousand dollars (\$7,500.00 - \$6,000.00). The Third Defendant speaking for the Second Defendant told him in his capacity as the Managing Director for the Claimant that he could not afford to pay the seven thousand five hundred dollars (\$7,500.00) but wanted the Parties to continue into the new year of 2018 with the arrangements.
- [48] On July 10, 2018, the Second Defendant wrote a letter on the request of the Claimant confirming the contractual agreement including the retainer fees between the Parties. On January 2, 2018, the Claimant and the First Defendant entered a tenancy agreement for the year of 2018.
- [49] On November 26, 2019, the Claimant and the Second Defendant entered a consultancy agreement where the consultancy monthly retainer fee reduced from six thousand dollars to three thousand five hundred dollars (\$6,000.00 - \$3,500.00). All arrangements remained the same as highlighted above.
- [50] On December 1, 2019, the Claimant and the First Defendant entered into another monthly tenancy agreement for the period December 1, 2019 until November 30, 2020.
- [51] In or around December 1, 2020 until June 2021, the Claimant and the First Defendant continued with the same terms as the last written tenancy dated December 1, 2019 where the Claimant will continue to occupy the ground floor, Suite D office space and all facilities and/or restroom and/or kitchen and/or conference room at a rental consideration of three thousand five hundred dollars (\$3,500.00).
- [52] On June 25, 2021, the Third Defendant organised a meeting between the Directors of the Claimant (Ms. Mary Cudjoe and Mr. Aaron Knights) and himself in his respective capacities as the Managing Director of the First Defendant and the Principal Attorney-at-Law of the Second Defendant. This meeting was held to discuss the Claimant and the Defendants' continued operations working together. The Third Defendant told the Claimant's Directors that the monthly retainer fee of three thousand five hundred dollars (\$3,500.00) will continue and that the Parties can look towards another year of doing business in 2022.
- [53] On the said June 25, 2021, the Third Defendant agreed to reduce the monthly tenancy from three thousand five hundred dollars to two thousand five hundred dollars (\$3,500.00 - \$2,500.00). The Third Defendant also indicated to Ms. Cudjoe and Mr. Knights that they can review the rent in December 2021 and will continue the monthly tenancy for the year 2022. The Claimant stated that the Third Defendant even discouraged him in the presence of Ms. Cudjoe from moving elsewhere as Hove's Court is a good business place for the Claimant.

[54] He was served with a Notice to Quit on September 30, 2021 and on November 1, 2021 he was locked out of the premises.

Mary Cudjoe

[55] Ms. Cudjoe, co-director of the Claimant, testified that she became acquainted with the Claimant when she was introduced to him at the subject premises on or around October 2018. On August 9, 2019 she was appointed Secretary of the Claimant and assisted Mr. Knights with his contractual responsibilities to the Defendants – performing Clerical work assigned to him by the Defendants.

[56] Ms. Cudjoe stated that on June 23, 2021, she attended a meeting between Mr. Knights and Mr. Hove Masaisai, the Third Defendant herein at Suite E of the Defendants' offices, next to the Claimant's tenanted space, Suite D. She asserted that at that meeting Mr. Masaisai told them that he would reduce the rent for Suite D from three thousand five hundred dollars to two thousand five hundred dollars (\$3,500.00 - \$2,500.00) and the oral consultancy whereby Knights would continue to provide Clerical services into 2022.

[57] Cudjoe testified that while Knights was in occupation of Suite D, on November 1, 2021, upon their return to the premises in the afternoon they discovered that they had been locked out since the security code for entry to the building had been changed. She contacted Mrs. Masaisai who informed her that the Claimant was evicted and that arrangements should be made for the collection of files and documents belonging to the Company. On November 5, 2021, Ms. Cudjoe returned to the premises where she was admitted and allowed to remove all items from Suite D belonging to the Claimant.

[58] In cross-examination Ms. Cudjoe acknowledged that she had neither annexed any documents to her Witness Statement in support of evidence of a contract between the Claimant and the Defendants for the rental of Suite D in 2019 or at any time; she also asserted that she was not aware of the terms of the tenancy between the Claimant and the Defendants including the provision of one (1) months' Notice for the termination of same. Cudjoe also testified that she was able to remove all of the Claimant's belongings on November 5, 2021.

Alfred Elliot

[59] Mr. Elliot testified that on the morning of November 1, 2021, he visited the Claimant's office on the subject premises to retain the Company to perform Clerical services on his behalf. He testified that he, Mr. Knights and Ms. Cudjoe left the office at 11:30a.m.

Evidence for the Defendant

[60] Trishauna Scarlett Hove Masaisai, the Fourth Defendant, is the wife of the Third Defendant and a Director of the First Defendant; she gave a Witness Statement on behalf of the Defendants.

[61] Mrs. Masaisai testified that Aaron Knights in his personal capacity was employed by Hove and Associates as a Legal Clerk. A letter of Offer of Employment dated October 1, 2015, containing the terms of employment was signed by Mr. Knights, accepting said terms on October 20, 2015 but his employment began October 1, 2015.

[62] Mr. Knights' salary was five thousand dollars (\$5,000.00) and he was offered travel reimbursement and other expenses contingent to his position as Legal Clerk up to a maximum of one thousand five hundred dollars (\$1,500.00) per month. Furthermore, while the first performance appraisal of Mr. Aaron Knights was good, he received a final warning letter regarding conducting work for other persons in or around the year 2021, subsequent to previous verbal and written warnings about same. Mr. Knights only worked for Hove and Associates as an employee therefore from October 1, 2015 until July 1, 2016.

[63] This witness testified that Mr. Knights left Hove and Associates to work for his own Company; thereafter Mr. Masaisai retained the Claimant to do Clerical work for the Second Defendant. Knights was offered a month to month tenancy for the occupation of a single office space in Hove's Court Limited known as Suite D with the arrangement that the rent would be set off against Consultancy services rendered to the Second Defendant. In accordance with this arrangement, the Claimant Company would raise invoices which would be sent to her or Mr. Farai as representatives of the Second Defendant and the Claimant would be paid based on the invoice. She indicated that she wrote a letter dated June 28, 2016 to Scotiabank Trinidad and Tobago Limited in order for Knights to obtain a loan but he was not her employee at the date that this letter was written.

[64] Mrs. Masaisai testified that a rental agreement was drafted on July 1, 2016 between the First Defendant and Mr. Knights for the term of one (1) year from July 1, 2016 until July 31, 2017 at a rate of two thousand five hundred dollars (\$2,500.00) per month. However, this was never executed between the Parties and a Notice to Quit was served on Mr. Knights on November 11, 2016 as effective from December 1, 2016.

[65] Hove and Associates entered into written consultancy agreements with the Claimant. These agreements are as follows:

- i. From January 1, 2017 until June 1, 2017.
- ii. From September 18, 2017 until December 17, 2017.
- iii. From December 1, 2019 until November 30, 2020.

[66] When the last consultancy agreement expired on November 30, 2020, Hove and Associates with the Claimant agreed to move forward on a 'pay as you go' basis, based on work actually completed for Hove and Associates by the Claimant. The Claimant would raise an invoice based on work done for any given period and Hove and Associates would pay for the works done, said works being Clerical in nature as a Law Clerk.

[67] With respect to a written tenancy agreement for Suite D, this was first entered into on January 3, 2017 between Hove's Court Limited and the Claimant. This tenancy agreement was only for the use of Suite D for the purpose of being used as an office space. No use of any other room was provided for in the tenancy agreement. The other rooms in the downstairs area where Suite D was located were offices for rent to other persons and a conference room for the benefit of the Second Defendant with her or her husband's permission if the Claimant asked. This conference room was previously Suite E which was also rented out to an Attorney-at-Law.

[68] All written monthly tenancy agreements entered into by the Parties were for this same office space and continued as month to month tenancies on these terms where there was no written agreement. The continued written agreement was that the rent could be set off against the consultancy fees based on invoices raised for services rendered. These written agreements were as outlined below:

- i. January 3, 2017 for January 1, 2017 until December 30, 2017.
- ii. January 2, 2018 for January 2, 2018 until December 30, 2018.
- iii. December 1, 2019 for December 1, 2019 until November 30, 2020.

[69] In or about June 2021 the Defendants agreed to reduce the Claimant's rent due to the effect of the COVID 19 Pandemic. The Claimant was often late in paying rent and the room was needed because of the expansion in the size of the Defendants' staff. Accordingly, a Notice to Quit was served on Mr. Knights on September 30, 2021 on behalf of AKEL, the tenant.

[70] She denied that any Defendant made assurances to the Claimant that the tenancy and consultancy would continue into 2022. She also denied that any consultancy fees were owed the Claimant at the time of termination of the consultancy.

[71] In cross-examination Mrs. Masaisai could not recall whether the Claimant was indebted to the Defendants during the period January to December 2021. She asserted however that she was aware that there were times when rent was owed by him and denied that Mr. Knights was unaware that he owed rent. This

Defendant could not say whether the Claimant had been paid for services provided by it in 2018. She indicated that while she discussed with her husband reduction of the Claimant's rent because of the Pandemic, they did not discuss the consultancy agreement. She however insisted that the tenancy was month to month and not year to year.

Farai Hove Masaisai

[72] This Defendant's witness was generally consistent with the Defendants' pleaded case.

[73] In cross-examination, Mr. Masaisai asserted that the Claimant submitted invoices for payment for consultancy services. He denied that during the June 2021 meeting he agreed to continue the consultancy and tenancy into 2022.

Analysis and Conclusion

[74] My approach to determining the issues in this case is outlined in the helpful guidance provided by Lord Ackner in the Privy Council's decision of **Horace Reid v Dowling Charles and Percival Bain**⁵:

"...where the wrong impression can be gained by the most experienced of Judges if he relies solely on the demeanour of the witnesses, it is important for him to check that impression against the contemporary documents, where they exist, against the pleaded case and against the inherent probability or improbability the rival contentions, in light in particular of the facts and matters which are common ground or unchallenged, or disputed only as an afterthought or otherwise in a very unsatisfactory manner. Unless this approach is adopted there is a real risk that the evidence will not be properly evaluated and the trial Judge will in the result have failed to take proper advantage of having seen and heard the witnesses."

Issues

[75] Has the Claimant established on a balance of probability that:

- (a) He is owed the sum of thirty thousand dollars (\$30,000.00) for consultancy fees for the year of 2018?
- (b) He is owed the sum of five thousand dollars (\$5,000.00) in fees for the month of May to October 2021?
- (c) He is owed the sum of seven thousand dollars (\$7,000.00) in fees/breach of contract for the months of November and December 2021?

⁵ PC Appeal No. 36 of 1987

(d) He is owed the sum of forty-two thousand dollars (\$42,000.00) for breach of contract/outstanding fees for the year of 2022?

Issues (a), (b) and (c)

[76] It should be noted at the outset that the burden of proof of these claims lay with the Claimant; the Claimant is required to make out its case on a balance of probability, failing which its case would be dismissed⁶.

[77] The Claimant's case is that in December 2017 the Parties entered into an oral contract for the provision of consultancy services for 2018 on the same terms provided for in the written contract for provision of said services in 2017, save for the reduction in payment for services provided from seven thousand five hundred dollars to six thousand dollars (\$7,500.00 - \$6,000.00)⁷. In support of this claim he also relies upon a letter written by the Second Defendant at his request, which stated that the Claimant provided consultancy services to the former at a retainer fee of six thousand dollars (\$6,000.00) per month⁸. The Defendants have denied that they are liable for this sum and demanded that the Claimant disclose unpaid invoices for this period.

[78] In order to resolve this issue, I first had regard to the terms of the 2017 agreement dated September 18, 2017 which the Claimant indicated that the new agreement was modelled on, save for the change in consultancy fee. By **Clause 2** of the 2017 agreement, the Consultant, (the Claimant), was required to submit an invoice for payment for services. The Claimant was required to provide services as mutually agreed between the Parties for a maximum period of six (6) hours a day, five (5) days a week, or as mutually agreed. The Consultant was also required to 'add value to the law firm by ensuring that the law firm is paid and/or collects a minimum of thirty thousand dollars (\$30,000.00) per month for the duration of the agreement'⁹. This agreement ended by effluxion of time in December 2017.

[79] The Claimant adduced no evidence of invoices for work done during this period to support its claim. The onus of proof that the Company was owed this sum lay with the Claimant who was required to adduce invoices, bank statements, cheques stubs or other evidence in support of this claim especially where, as here, the Defendants were denying that they were indebted to AKEL. Ms. Cudjoe, a fellow Director of the Company who assisted Mr. Knights in performing his contractual responsibilities to the Defendants, and who would be in a position to state whether fees were owed for work done in 2018 and May until June 2021, was silent on the issue. She was also in a position to produce invoices for such alleged work, but did not testify on the issue. Mr. Knights produced no evidence to support the Claimant's case that the Company

⁶ **Phipson on Evidence** 20th Edition paragraph 6-06

⁷ Paragraph 23 of the Amended Statement of Case

⁸ Paragraph 24 of the Amended Statement of Case

⁹ **Clause 2(b)**

was owed this sum. The last consultancy contract ended in 2020; the Parties agreed that the Claimant continue to perform services for the Defendants but disagreed as to the terms of the arrangement. The Defendants asserted that at this time there was a 'pay as you go' arrangement, whereby the Claimant would provide services as needed, invoice for same and be paid. The Claimant adduced no evidence in support of its claim that he was owed five thousand dollars (\$5,000.00) for work done in May and June 2021. It is important that the Company, through its witnesses did so, especially where there was no written documentation governing this period.

[80] In the circumstances I hold that the Claimant has not discharged the burden of proving these claims.

Issue (d)

[81] The Claimant pleaded that, on June 25, 2021, the Third Defendant made an oral promise to Mr. Knights in the presence of Ms. Cudjoe, that the contract for consultancy services and the rental of Suite D would continue for the remainder of 2021 and for 2022. In breach of that promise, a Notice to Quit was served on the Claimant on September 30, 2021, demanding that the Claimant vacate the rented space by October 31, 2021. The Claimant was locked out of the premises on November 1, 2021, and retrieved its belongings on November 5, 2021. The Claimant based its claim for breach of contract to provide Clerical services and breach of the tenancy agreement on this promise.

[82] Ms. Cudjoe's evidence was not helpful to the Claimant on this issue since, apart from stating that the promise was given, she was unaware of the current rental agreement. She gave no evidence of the services provided for November and December 2021, nor the invoices produced for such work, nor were any such documents put before the Court.

[83] The documentary evidence in the case shows that there were tenancy agreements up to November 2020. Thereafter the Claimant continued paying rent on a monthly basis to the Defendants. The Defendants were entitled to terminate the tenancy with one (1) months' Notice as done here. There is no other evidence in the case to support a legally binding obligation on the part of the Defendants to either continue the tenancy or the contract for legal services.

[84] In **Dr. Peter Martin v Anthony Sirjoo**¹⁰, the Court opined:

"A periodic tenancy has a prefixed term which continues indefinitely at the end of each term until it is determined by either Party and both the Landlord and Tenant reserves the right to determine the tenancy by giving regular Notice."

¹⁰ CV2014-04838 paragraph 21

[85] A month to month tenancy was created after the last written tenancy agreement expired in November 2020. The tenancy could now be terminated by either side giving one (1) months' Notice which was done here. Once a valid Notice was given the Claimant which satisfied the legal requirements for such Notice, the tenancy could be lawfully terminated. In **Merryl See Tai (t/a Kayak Centre), Trinikayak Limited and Paddles Limited v Chaguaramas Development Authority**¹¹, Donaldson-Honeywell J (as she then was), described the elements of a valid Notice thus:

“56. A monthly or other periodic tenancy is determinable by Notice to Quit, which, in the absence of special stipulations, should be given so as to expire at the end of any complete period of the tenancy, and should be at least equal to the length of the period, that is to say, in a monthly tenancy a month's Notice¹². Accordingly, in the present case of a monthly tenancy, the tenancy is determinable by one months' Notice and therefore the period of Notice given in the Defendant's Notice to Quit is valid.

57. The second element of the Notice in dispute is to whom the Notice should have been addressed. The Claimants' case is that the Notice should not have been addressed to Merryl See Tai, Paddles Limited but should instead have been addressed to Kayak Centre Ltd or Trinikayak Ltd because those were the businesses actually operating at the location at that time. According to the Claimants it was those two businesses and not Paddles Limited that were the Tenants.

According to Hill and Redman's Law of Landlord and Tenant¹³, a Notice to Quit must be reasonably clear and certain but will not be invalidated by minor factual inconsistencies. The learned Authors further stated that¹⁴:

“The Notice need not be addressed to the intended recipient (be that Landlord or Tenant) by name, provided it is properly served on him. An error as to the given name of the Tenant will not invalidate the Notice, again providing that the Tenant is not misled. A Notice addressed to the Directors of a Limited Company may be a good Notice to the Company.

The form of Notice is immaterial, provided that it indicates, in substance and with reasonable clearness and certainty, an intention on the part of the person giving it to determine the existing tenancy at a certain time. Thus, the use of language which is ambiguous and lame is immaterial, provided that the Party to whom it is given could not be misled as to the intention of the giver.”

¹¹ CV2015-00705 paragraph 53

¹² *Halsbury's Laws of England, Landlord and Tenant* (Vol 62, 2012) paragraph 234

¹³ Paragraph 4446-4447

¹⁴ Paragraphs 4461 and 4447

[86] I therefore hold that the month to month tenancy thus created was validly terminated.

[87] Similarly, there was no written consultancy agreement after November 30, 2020. The onus lay on the Claimant to establish that a new consultancy with a retainer fee of three thousand five hundred dollars (\$3,500.00) monthly was created after June 2021. Again, there is no evidence in the form of invoices, or proof of work done, to establish the existence of this contract. An essential element of a contract, consideration, has not been proved by the Claimant; as a result, its claim for remuneration under this head for the remainder of 2021 must fail. There is also no evidence to support the claim that this retainer fee was to continue in 2022.

[88] Accordingly the Claim for forty-two thousand dollars (\$42,000.00) must also fail.

[89] In the circumstances I make the following Orders:

- i. Judgment for the Defendants against the Claimant.
- ii. The Claimant's case is dismissed.
- iii. The Claimant do pay the Defendants prescribed costs on the total sums claimed (eighty-four thousand dollars (\$84,000.00) in the sum of twenty thousand eight hundred dollars (\$20,800.00).

Joan Charles

Judge