

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. E206/91

BETWEEN EXOTIC FRUITS AND FLOWERS
LIMITED PLAINTIFF

A N D AGRICULTURAL DEVELOPMENT
CORPORATION DEFENDANT

R. B. Manderson-Jones for Plaintiff

Lennox Campbell and Douglas Leys
instructed by Ms. Shazeeda Ali
for Defendant.

Heard: January 31, February 1 and 2, 1996
March 18, 1996
March 10, 11, 12, 13, 17, 18, 1997
April 2, 3, 7, and 8, 1997
July 31st, 1998.

CHESTER ORR, J.

The Plaintiff's claim is in respect of an agreement made between the plaintiff and defendant on the 7th May, 1991 by which the defendant agreed to sell to the plaintiff the existing mango crop in Spring Plain lands and to give the plaintiff exclusive possession of the property for reaping the crop from 7th May, 1991 to 30th August 1991 inclusive for a consideration of \$525,000.00 to be paid at the end of the crop or on the 30th September 1991 whichever is the earlier.

2. It was also agreed that during the period of possession by the plaintiff the defendant would in good faith formalize and conclude a lease of 978 acres of the said land to the plaintiff for a term of 49 years at an annual rental of \$489,000.00 for the

land, \$97,000.00 for the infrastructure and \$2,100,000.00 for the mango crop.

3. The plaintiff also entered into a written agreement with the defendant on the 7th May, 1991 whereby in consideration for a promissory note for \$10,000.00 given by the plaintiff to the defendant, the defendant granted to the plaintiff a one month extension of the time for period of possession of the land from 30th August, 1991 to 30th September, 1991.
4. The plaintiff put up a bond for the mango crop in the sum of \$525,000.00 which was duly paid on 30th September, 1991.
5. The defendant by letter written on or about the 7th May 1991, granted the plaintiff exclusive possession of the lands.
6. The plaintiff took possession of the lands on 7th May 1991 and commenced taking off the crop which it had bought.
7. The formalization and conclusion of the lease agreement were commenced in May 1991 between the Attorneys for the parties.
8. In breach of the Agreements the defendant by letter dated 11th July 1991 addressed to the plaintiff unilaterally broke off the formalization and conclusion of the lease.

9. In breach of the Agreements the defendant by letter dated 6th August 1991 purported to determine on that very date the plaintiff's right of possession in the lands.

10. On or about the 9th August 1991 the plaintiff wrongfully entered into the said lands driving the plaintiff's servants off and trespassed and is still trespassing on the lands, unlawfully selling reaping the plaintiff's mangoes thereby converting them to its own use.

The Plaintiff claimed damages, exemplary damages and a declaration that the plaintiff is and was entitled to possession of the said property under the terms of the lease at 2 supra.

The defence denied that there was an agreement as stated at paragraph 1 supra.

The agreement entered into on 7th May 1991 was a memorandum of understanding among the following, the plaintiff on the basis that the plaintiff was a subsidiary of Quest Farm Inc. a company incorporated and existing under the laws of the State of California, the defendant and the National Investment Bank of Jamaica Limited. The agreement contemplated that Quest Farms would be involved in the operations at Spring Plains and further that any agreement between the parties would be effected with Quest Farms being the majority shareholder in the Spring Plains venture.

The agreement at paragraph 2 was denied. Fundamental to the agreement was that Quest Farms Inc. was at all times

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to have the majority shares in the plaintiff. On the 8th July 1991 the defendant was advised by one Hugh Bonnick purporting to represent the plaintiff that Quest Farms Inc. was no longer a part of the venture. The Agreement for the lease could not be formalized for non-fulfilment of these terms. Further it was a term of this Agreement that there was no intention to create legal relations among the parties.

The agreement at 3 supra re the Promissory Note was denied. The defendant allowed the plaintiff to take possession of Spring Plains for a period of 90 days on condition that a lease be agreed between the parties. The said Lease Agreement failing to materialise for reasons aforesaid the plaintiff's right to possession expired by effluxion of time.

The defendant denies that it is breach of any Lease Agreement. It was a fundamental term of the entire Agreement that Quest Farms Inc. would have an input in the venture with their expertise and knowledge. In the circumstances the defendant had no option but to terminate the agreement. The defendant contends that if there was a lease the same did not comply with the Statute of Frauds and is void. The defendant admits reaping the mangoes but denies converting them to its own use. The proceeds of sale of the mangoes were lodged in a current account at the National Commercial Bank and abides the decision of the Court.

The defendant alleged a loss to it of sixty thousand tons of mangoes as a result of the negligence of the plaintiff while in possession of the lands.

It counter-claimed for rental for the period of 90 days and for the plaintiff's use of machinery and equipment while in occupation of the premises. In its reply the plaintiff states that there are sufficient memoranda to satisfy the Statute of Frauds and enumerated the memoranda. It also relied on the doctrine of Part Performance. It denies any agreement for rental save as stated in the lease and denied owing for use of machinery and equipment.

PLAINTIFF'S CASE

Mr. Hugh Bonnick is the Managing Director of the Plaintiff Company hereafter referred to as "EXOTIC". In 1990 there was in existence another company, Spur Tree Farms Limited hereafter "Spur Tree" in which Mr. Bonnick states that he owned all the shares. This company carried on the business of cultivating and exporting flowers. Jamaican Promotions Corporation "Jampro" introduced Michael and Jim Sullivan to Mr. Bonnick as prospective investors. The Sullivans were the representatives of Quest Farms Incorporated, hereafter "Quest" a company situated in California U.S.A. and which was engaged in the business of horticulture. Mr. Bonnick and the Sullivans had discussions which culminated in an agreement which is embodied in a document entitled a Memorandum of Understanding dated 1st December 1990 - Exhibit 2.

The memorandum contains the basic elements of a Joint Venture Agreement between Bonnick representing Spur Tree and the Sullivans representing Quest. The parties agreed to register

two companies in names to be agreed but designated Company A and Company B for purposes of the memorandum. Company B would produce horticultural and other agricultural products and the share capital would be allocated thus:

80% to Quest

20% to the representatives of Spur Tree

The company would be located at a site to be obtained by Spur Tree and agreed to by the parties. The optimum farm would be 200 acres. The capitalization of the project would be no less than U.S.\$5 million. Time was the essence of the entire agreement and six (6) months from the date of signing of the agreement was adequate time to implement the agreement.

A portion of the land at Spring Plain consisting of 978 acres and infrastructure was advertised for lease by the National Investment Bank of Jamaica Ltd., hereafter the N.I.B.J. The defendant, The Agricultural Development Corporation, hereafter "the ADC" was vested with the land. This land was identified as being suitable for the farm and was substituted for the 200 acre farm stipulated in the memorandum Ex. 2.

On December 17, 1990 Mr. Bonnick wrote to Mr. Asgar Ally, then President of N.I.B.J. applying to the Divestment Committee for the entire 800 acres at Spring Plain for use in the project with the Joint Venture Partners. - Exhibit 18

Mr. Ally was the Chairman of the Divestment Committee which was dealing with the lease of lands at Spring Plain. The letter was copied to the President of Jampro whose repre-

sentative was a member of the Committee.

On the 11th January 1991 exotic was incorporated as Compnay B referred to in the Memorandum Exhibit 2. The shareholders were Mr. Bonnicks and Wilhelmina Marston. The share capital was \$1,000 divided into 100 shares of \$1.00 each. Bonnicks held 450 and Marston 50 shares respectively - See exhibits 16 and 17. Mr. Bonnicks stated that no shares were issued to the Sullivans in either Company because the allocation of shares would be based on performance under the Memorandum Exhibit 2. During that month Mr. Bonnicks, Mrs. Marston and Mr. Aaron Parke of Jampro visited the Sullivan's farm in California and observed the operations. Mr. Bonnicks was not satisfied with the capabilities of the Sullivans. He expressed his disquiet to Mr. Ally but the matter was not pursued.

There were negotiations with the Divestment Committee. Mr. Bonnicks and the Sullivans participated in the negotiations. Exotic supplied the A.D.C. and their Attorney, the Attorney General with copies of its Memorandum and Articles - Exhibits 16 and 17.

The Committee had copies of the Memorandum between Spur Tree and Quest - Exhibit 2. Exotic supplied Jampro with the information required by a Business Plan, Exhibit 19 and Jampro prepared a Project Proposal in respect of Spring Plain - Exhibited 21. This was not prepared by Exotic. The Auditors for Spur Tree prepared a profile of the Company which was sent to Jampro - Exhibit 35.

An oral agreement was reached for the terms of a lease and a Memorandum of Understanding amongst A.D.C., N.I.B.J and Exotic was signed on the 7th May 1991. It is signed by Micheal Sullivan on behalf of Exotic and by representatives of A.D.C. and N.I.B.J. Mr. Bonnicks signed as a witness to Sullivan's signature.

The memorandum states inter alia:

"This Memorandum records the Agreement in principle amongst the A.D.C..... and Exotic Fruits and Flowers Limited a subsidiary of Quest Farms Inc. (hereinafter called "The Company") and N.I.B.J" (emphasis supplied).....

"Whereas the Company is among the top cut flowers producers in the U.S.A. and
has applied for the lease of 978 acres part of Spring Plains....."
(emphasis supplied)

"A.D.C. agrees to

- (a) Spring Plains lease or procure to be leased to the Company approximately 978 acres of land
- (b) Sell stocks of mango and the mango orchard at Spring Plains, Clarendon to the Company."

There were provisions in respect of Farm Equipment and Farm Machinery Centre, Incentives and Rental for the land and Infrastructure.

In respect of the Lease the memorandum states:

"A.D.C and the Company mutually agree:

that the lease should be settled
between the Attorneys and the
Company....."

There was an option for renewal.

"BOND UNDER MANGO CROP

The right of harvesting the existing mango crop by the Company on the payment of \$525,000 at the end of the crop or the 30th September, 1991 whichever is the earlier....."

The final paragraph reads

Conditions:

The parties understand, that this Memorandum represents an understanding with respect to the matters upon which agreement must be reached, creates no legal obligations amongst the parties and is subject to the obtaining of such governmental consents which may be necessary."

On 7th May 1991 Exotic presented a Bond for \$525,000.00 issued by National Commercial Bank May Pen and a Promissory Note to A.D.C. for \$10,000.00 to be paid on 30th September

1991 in consideration of one month's extension of time granted to Exotic to enter upon Spring Plains for the purpose of reaping the mango crop - Exhibit 5. On 7th May 1991 Exotic was put in possession of Spring Plain by letter Exhibit 3 as follows:



AGRICULTURAL DEVELOPMENT CORPORATION

(INCORPORATED UNDER AGRICULTURAL DEVELOPMENT CORPORATION LAW NO. 60 OF 1981 CHAPTER 3-REVISED LAWS OF JAMAICA)

The Conference Centre
14-20 Port Royal Street

CABLES:-
"AGDECOR, KINGSTON"
TELEPHONE: 82-68768/X
21470/9

XXXXXXXXXXXXXXXXXX,
KINGSTON,
JAMAICA.

PLEASE QUOTE
OUR REFERENCE:

Exhibit 3

Exotic Fruits and Flowers Limited
14 Ruthland Drive
KINGSTON 6

Dear Sirs:

POSSESSION OF LAND SITUATE AT
SPRING PLAIN - PART OF ST. JAGO, ST. CATHERINE

This will serve to advise that the Agricultural Development Corporation (ADC) has agreed to place your company into possession of the above captioned lands as of Tuesday, May 7, 1991.

~~Your entry on the aforesaid property is being allowed on the understanding that within a period of 90 days from the date hereof, the ADC and your company will settle the terms of the lease of the above mentioned property.~~

Possession will be for a period of 90 days by the end of which period the leases and other matters referred to herein should have been mutually settled by both parties. In the event that the parties fail to enter into a lease agreement within 90 days or any extension of this period the ADC shall have the right to re-enter the property and re-take possession thereof.

It is hereby agreed that a separate agreement will be negotiated in respect of support facilities on site including farm equipment, farm implements, Farm Machinery Centre (FMC), the Mango Orchards and Packing House.

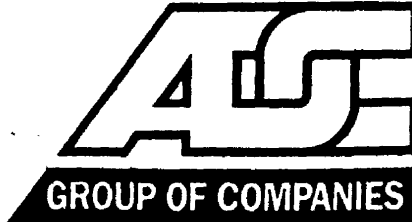
.....
For: Agricultural Development Corporation

(Chairman/Group General Manager)

On the 8th May 1991 Exotic received a letter from
A.D.C. Exhibit 4 with enclosure:

4
11

Exhibit 4
4



Sustaining Agriculture, Supporting the Nation
A Government Corporation

Jamaica Conference Centre, 14 - 20 Port Royal St., P.O. Box 552, G.P.O., Kingston, Jamaica, W.I.,
Tel: (809) 922-1470 - 9, Fax: (809) 922-1787, Telex: 'A.D.C. 2341'

8th May, 1991

Exotic Fruits & Flowers Limited
14 Ruthland Drive
KINGSTON 6

Dear Sirs:

Consequent on the divestment of St. Jago Farms to Exotic Fruits and Flowers Limited, we forward herewith letter dated May 7, 1991, from McNair Limited which is self-explanatory.

Yours truly,
ADC GROUP OF COMPANIES

A handwritten signature in cursive script that reads 'Claire M. Vermont'.

Claire M. Vermont
Corporate Secretary

Attachment

11a.

McNair Limited MAY 07 1991

EXPORTERS/IMPORTERS

40 First Street, Newport West; P.O. Box 114, Kingston 11, Jamaica, W.I.

Bankers: National Commercial Bank Ja. Ltd. 124 Harbour St., Kingston, Jamaica

Cable Address: "Margaret". Fax: 923-6105

Telephones: 923-7776, 923-6576

MAY 07 1991

May 7, 1991.

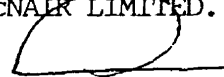
Mr. Claude Stewart
General Manager
ADC Group of Companies
Jamaica Conference Centre,
14-20 Port Royal Street,
Kingston.

Dear Mr. Stewart,

With further reference to our letter dated May 6th.

Based on a visit to St. Jago Farms yesterday by our representative, the first reaping of Tommy Atkins Mangoes should take place on Wednesday May 15th for collection Thursday May 16th.

Sincerely Yours,
McNAIR LIMITED.



M. B. McNair (Mr.)
DIRECTOR

MEMcN:sw

When the company took possession the packing house was in a state of disrepair. It was cleaned, refrigerator rooms serviced and equipment repaired. The company duly reaped mangoes which were marketed by Jamaica Export Trading Company Ltd., Jetco, a company other than that recommended by A.D.C. in Exhibit 3. Quest had no input in the operation of the property.

In June 1991 Quest gave Exotic a cheque for U.S. \$5,000.00 as earnest money. This cheque was dishonoured on presentation to the bank.

Spur Tree then made a demand on Quest for Specific Performance of the Agreement under the Memorandum of Understanding-Exhibit 2. Spur Tree received reports that Quest was not capable of undertaking the joint venture. Time being of the essence of the agreement, Spur Tree terminated the Memorandum of agreement with Quest, Exhibit 2 on 30th June, 1991.

On 8th July 1991 the Sullivans were removed as Directors of Exotic - see Exhibit 15. By letter Exhibit 9, the plaintiff advised Mr. Ally accordingly and on 9th July, 1991 - the plaintiff wrote to the Minister of Agriculture seeking his assistance - See Exhibit 10.

By letter dated 11th July 1991, Exhibit 11, the Divestment Committee advised the plaintiff that it was unable to continue the negotiations. There was further correspondence. Quest desired to proceed with the project - Exhibit 24 and the

Defendant's Attorney, the Attorney General sought from the Attorneys for Quest a replacement of the Bond given by Exotic and indicated that the Draft - agreements for the divestment would be delivered for their comments - exhibit 26.

By letter dated 6th August 1991- Exhibit 12, A.D.C. gave notice to the plaintiff to quit and deliver up possession of the premises. The plaintiff was ejected from the property on the 16th August 1991. At this time an estimated 60 tons of mangoes were unreaped.

On the 30th September, 1991 A.D.C. claimed under the Bond given by Exotic for \$525,000.00 and was paid by the bank. That same day Exotic paid the sum of \$10,000.00 under the Promissory Note, Exhibit 5. In cross-examination Mr. Bonnicks denied that he had held out the Sullivans to the Divestment Committee as the principal investors in Exotic which would operate Spring Plain. He denied that the Memorandum Exhibit 1 was executed on the basis that Exotic was a subsidiary of Quest. He admitted however, that Exotic by itself was not able to finance the enterprise.

THE DEFENCE

Two officers from Jampro gave evidence - Mrs. Margaret Mais, a Marketing Executive stated that she was acquainted with Spur Tree Farms. In 1996 Mr. Bonnicks indicated his desire to sell the farm and as a worse case scenario he would consider a joint venture. Mike and Jim Sullivan who were in the horticultural business in the U.S.A. indicated an interest

in burying a farm in Jamaica to cultivate flowers for export. He introduced them to Mr. Bonnicks. The Sullivans came to Jamaica and she accompanied them to Spring Plain with the Bonnicks. Jampro requested and received Credit Reports on Quest from two international entities.

Spring Plain which was up for divestment had a mango crop ready for harvesting. Mr. Bonnicks and the Sullivans wanted to take possession of Spring Plain in order to market the products quickly. Quest was important because they were going to bring finance to the arrangement. Each company supplied a profile of itself for delivery to the other company. The profile from Spur Tree indicated that it could not handle the project on its own. The Sullivans had shipped two containers of equipment to Jamaica for the project see Bill of Lading - Exhibit 38. The shipment arrived on the 23rd July 1991 which was after the relationship between the parties had turned sour. The Sullivans requested another company to pursue the project.

Mr. Aaron Parke a Senior Director in the Agro-Division of Jampro stated that in 1989-90 Jampro was promoting joint venture businesses between local and foreign potential investors. Jampro invited interested parties to apply for Spring Plain with a view to putting people together. Spring Plain and Quest were applicants. He visited Quest Farm holdings in California, United States of America with Mr. Bonnicks and Mrs. Marson. His impression was that it was a good farm, fully operational. He duly reported to the President of Jampro. He visited Quest Farms for a second time with Mr. Hugh Small,

a Minister of Government and a delegation from Jampro. Mr. Bonnick did not accompany them.

Jampro prepared the Business Plan Exhibit 21 in which the technical parameters for the proposal were supplied by the potential joint venture partners. Jampro's role was to put this business proposal in quantifiable terms. The information at page 1 as to the ownership of Exotic would have been supplied by the joint venture partners. He was unable to state how this information was given. Jampro did not check on its accuracy.

Mr. Asgar Ally was then the President of N.I.B.J. one of whose main functions was the privatisation or divestment of government assets. He outlined the procedure for Divestment was as follows:

There was a Divestment Committee which was comprised of other members of the Board of N.I.B.J. and a representative of the Ministry or Agency which owned the Asset. Prior to the divestment of Assets the staff of N.I.B.J. would do an assessment of the assets for possible divestment. The Board would review the reasons recommended for divestment and make a submission to Cabinet which would then decide which assets should be divested and advise N.I.B.J. accordingly.

The Staff of N.I.B .J. would prepare the documentation for the acceptance of bids by public tender. There may be an Investment Seminar for possible Assets as there was in the instant case. In this event N.I.B.J. would work with Jampro

to market the assets at the Seminar. Applicants would be chosen from the Seminar. The Staff of N.I.B.J. in co-operation with Jampro and the Divestment Committee would evaluate the prospective applicant and if more than one recommend the most suitable ones in order of priority. Evaluation of the applicant's financial standing was usually done by Jampro. Resort would be had to reputable financial house. The terms of divestment would be set out and submitted to Cabinet for approval. If approved, N.I.B.J. would proceed to implement the divestment in accordance with the terms of approval.

He could not recall how many bids there were. Spur Tree either bid or indicated an interest in Spring Plain. Mr. Sullivan acted on behalf of Quest. Quest attended the Seminar and made a formal bid. Quest was the successful entity selected on the basis of the Seminar.

Prior to submission to Cabinet he met Sullivan and his group about 2 or 3 times with the Staff of N.I.B.J. who were handling the divestment. After the Committee recommended Quest as the best applicant and Cabinet advised accordingly, the Staff and himself met with the Board of the Divestment Committee and the Board of N.I.B.J. to formally approve the terms and conditions of the divestment.

The Sullivans attended meetings when the Committee discussed the terms and conditions. He thinks both Sullivan and Bonnick attended the same meeting a few times. He, Ally, was not present at all the meetings, Mr. Bunting the Vice President of N.I.B.J. would preside in his absence.

As far as the Divestment Committee and Staff were concerned, they were dealing with Quest which they evaluated in terms of its capability in executing the project. The minority partner with Quest was Spur Tree. The decision to acquire a local partner was that of Quest, not of the Committee. When a foreign partner acquires a local partner, the local partner facilitates a more harmonious implementation of the project in terms of relationship and understanding of local conditions. Where certain Government Consents are required the local partner would deal with this requirement. The Committee felt that Spur Tree on its own did not meet the requirements for the divestment of Spring Plain and as such could not implement the project on the grounds of financial capability, marketing and transportation arrangements which were the main factors.

The memorandum of Understanding comes into being when the negotiations are completed. It forms part of the submission to Cabinet and is always subject to the decision of Cabinet which can reject, add, alter or delete any of its terms.

The Memorandum Exhibit 1 bears his signature. As he recalls there would have been a legal agreement setting out the terms and conditions incorporating the terms of the Memorandum.

A.D.C. was the executing Agency for Spring Plain. The land was bought by N.I.B.J. and then handed over to Agro 21.

Between the signing of the Memorandum and the preparation of the Contract there was the question of reaping of mangoes. Exotic was given temporary possession to reap the mangoes which were ready for reaping. The company was to identify and bring in equipment to develop the property and to indicate to N.I.B.J what progress was being made. Exhibit 1 - Memorandum Page 4 conditions - such governmental consents which may be necessary: Rights for water arrangements from the Ministry of Agriculture would have to be obtained also the transfer of buildings which were owned by N.I.B.J.

A dispute developed between the foreign and local partners. N.I.B.J. received the letter Exhibit 9 indicating that Spur Tree would take over the property and that Quest was no longer involved in the project. On receipt of this letter he immediately summoned a meeting of the Committee which met and obtained legal advice. Based on this advice the Committee sent the letter to the plaintiff advising that it was unable to continue the negotiations. The Committee received correspondence from the Attorneys for Quest Exhibit 24 and for the plaintiff Exhibit 29. No negotiations took place after the receipt of this letter, everything was put on hold.

The Committee on the basis of legal advice, advised A.D.C. and N.I.B.J. to take full control of the property.

In cross-examination he stated that the view of the Committee was that the property was divested to Quest primarily.

The local partner was an internal corporate relationship. From start to finish the Committee was dealing with Quest.

He was asked "If the application by Quest was approved why was the Memorandum of Understanding with the Plaintiff Company?" He replied, "Because during the process of discussion Quest indicated to the Committee that they would form a local company with Spur Tree that was not the initial decision, that came afterwards. The Committee felt good to have a local partner for reasons already given."

At the time of signing of the Memorandum he was not aware that Quest was not a shareholder in Exotic. His understanding was that Quest held 80% and Spur Tree 20% of the shares in Exotic. He could not recall having received information from the Attorney as to the factual situation. He could not recall if the Committee had ascertained the correct shareholding, he had not done so.

Before they went into the formal contract documents had to be produced to verify the shareholding but they had not reached that stage. He could not say whether or not the statement in the Memorandum, Exhibit 1 that Exotic is a subsidiary of Quest is a mistake. Whether it was true or false was not material at that stage. There were discussions with Quest after the breakdown.

The advertisement for the Divestment of Spring Plain, Exhibit 39 was basically on the same terms as that with Quest. He anticipated Cabinet approval for divestment to Quest, they had met most of the requirements. The Committee refused to permit Exotic to reap the mango crop although it had been paid for. This was based on legal advice. He could not recall the date Cabinet approval was received. He was confident that Cabinet would approve the submission based on past practice. In re-examination he stated that he could not recall if Cabinet approval was obtained as the matter was handled by Mr. Bunting after a while. In this case the relevant Minister was the Prime Minister who would say go ahead and he would speak to Cabinet. On that basis the Committee would go ahead.

Mr. Peter Bunting then Vice President of N.I.B.J. stated that he was a member of the Enterprise team under the Government's privatisation programme. This entity appears to be the same as the Divestment Committee. The plaintiff company, Exotic was selected by the team. A particular feature of the company was its access to a tremendous amount of marketing expertise through Quest which the representatives of Exotic said was the parent company. In addition to expertise Quest had considerable experience in growing cut flowers and various horticultural products in the U.S.A. He participated in at least two meetings with Exotic. At the first meeting in February 1991 Micheal Sullivan and his brother Sullivan and Mr. Bonnick represented the company.

At the second meeting Micheal Sullivan and Mr. Bonnicks represented the company. The Sullivans played the principal role in the negotiations and were the principal spokesmen in the meetings which he attended. The negotiations ended in the Memorandum of Understanding, Exhibit 1. It is so called because it sets out the common understandings of the parties at that point. However it is still conditional on a whole number of things happening subsequently before they would reach the point of a Contract.

There was a certain urgency to deal with the current crop of mangoes which was ready to be reaped. The representatives of Exotic were concerned that if they were going to have ultimate possession of the mango orchard, it would be very desirable to treat with the immediate crop rather than having it sold to a third party as had been done before.

In cross-examination he said that Exotic applied by a proposal document. The team had the services of an Attorney up to the time when the memorandum was signed. The representatives of Exotic informed the team that the majority of shares in that Company was owned by Quest. N.I.B.J. did not check on the occurrence of this statement at that stage. It would have checked at the stage prior to contract. He could not say whether the statement in the Memorandum Exhibit 1, that Exotic was a subsidiary of Quest was a mistake. The team dealt with Exotic on the basis that it was 80% owned by Quest.

Mr. Lloyd Dawkins an Agromist with A.D.C. accompanied by the police evicted the plaintiff from Spring Plain on the 15th August 1991 and took charge of the property. Reaping of mangoes commenced during the following week and he observed that the mangoes were infested with maggots which was due to failure to spray at the appropriate time.

Mr. Colin Greenwood an Auditor gave evidence of the value of usage of certain machinery and equipment at Spring Plain during the period 8th May 1991 to 16th August 1991. He assessed the value with the assistance of a Valuator. The total cost charged for usage is \$195,940.15. \$130,000 of this amount was the cost of refurbishing of 5 items leaving a balance of \$65,940.15.

In Cross-examination he stated that the rates for usage were based on a daily rate for some items and a monthly rate for others. The rates were suggested by experts whom he consulted. He was of opinion that the manner in which the cost of usage was arrived at was adequate. This was based on the experience and expertise of the persons he consulted. They did not give him a formula for the rates. He inspected the equipment more than once. The judgments were made between May and June 1991. He did not have the list indicating damage to the equipment. The cost of refurbishing was arrived at by Consultation with the experts.

At the beginning the negotiations between the parties were amicable and there was a spirit of expediting the conclusion

of the Agreement. As a result from his standpoint matters of this sort were finalised in a spirit of consensus if not reasonableness. He was more concerned with reasonable figures than an expert assessment. He was not present when consensus was reached.

FINDINGS

There was an oral agreement for a lease. Under the Statute of Frauds the agreement is unenforceable by action unless some memorandum or note thereof is in writing and signed by the party to be charged. The memorandum is to be found in the Memorandum of Understanding, Exhibit 1. This document does not state all the material terms of the Lease. The duration of the lease is not stated and there is a misdescription of the plaintiff. In addition it indicated that the terms of the Lease should be settled by the Attorneys, it is subject to certain conditions and creates no legal obligations between the parties. I find that agreement had not been reached between the parties.

The sale of the mango crop is relevant in this regard. A bond was required to cover the cost of the crop. The imposition of a time limit for reaping the crop is inconsistent with the grant of a Lease for 49 years. The evidence for the defence indicates that temporary possession was given for the purpose of reaping the crop. It is difficult to appreciate the concern of the defendant as to the time for reaping if a Lease had been granted. Remedy is available for permanent

damage to the reversion which may have occurred during the reaping.

I find that there was no sufficient memorandum to satisfy the requirements of the Statute. There is no act of part performance which would point to a oral contract.

The declaration sought is not granted.

Re: Eviction of the plaintiff

The plaintiff was put in possession of the property as of Tuesday 9th May 1991 on the understanding that within a period of 90 days the terms of the lease would be settled. See Exhibit 3. The plaintiff gave a Promissory Note in consideration of a month extension of time granted to the plaintiff to enter the property and reap the existing crop. See Exhibit 5.

This Note like the Memorandum of Understanding, Exhibit 1 exhibits shoddy work by the Draftsman. Possession was given for 90 days from the 7th May, 1991. Normally this period would expire on the 6th August 1991. The Note states that the period should have expired on 30th August, 1991 and refers to the Borrower's obligation to repay the Bond by 30th August 1991. The Memorandum of Agreement stipulated payment by the 30th September 1991 at the latest. A proper interpretation of the Note is for an extension of one month, of the period ending on 6th August, 1991.

The period for possession would therefore expire on the 5th September 1991. Eviction took place on 15th August, 1991. The defendant was not entitled to evict the plaintiff on that date and is liable for Breach of Contract and Trespass.

DAMAGES

The plaintiff's claim is for the value of 60 tons of mangoes unripened. The only evidence of value is the sale of 500 tons for \$1.7 million = \$3,400.00 per ton.

Value of 60 tons =	\$204,000.00
Value of 2,400 lbs. (stored)	3,642.85
Payment of staff allowed =	22,672.00
No evidence of payment for security	-----
Total	<u>\$230,314.00</u>

I award the sum of \$20,000.00 for Damages for Trespass.

The Claim for Exemplary Damages is misconceived. There is no evidence that the defendant calculated to make a profit from the sale of the mangoes nor from leasing the land to Quest, the foreign company.

COUNTER-CLAIM

No evidence was led in support of the Counter-Claim. The claim for 60,000 tons of mangoes is without merit. The crop was sold to the plaintiff who paid for same. The plaintiff suffered loss as a result of the premature eviction.

There is no reference in the Memorandum of Understanding nor in the evidence to an agreement for payment of Rent or for usage of the machinery and equipment during the period of temporary possession by the plaintiff. Mr. Campbell stated, contrary to the pleadings, that the claim for rent was a guide for any amount that may be awarded for damage during the

occupation by the plaintiff. There is no claim for such damage. The Counter-Claim fails. There will therefore be judgment for the Plaintiff on the Claim for \$250,314.85 and on the Counter-Claim with costs to be agreed if not taxed.

Order that the amount lodged by the defendant in current account 131011814 at the National Commercial Bank being the proceeds of the sale of the mangoes be paid to the plaintiff.