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IN THE GRAND COURT OF THE CAYMAN ISLANDS

IN OPEN COURT



CAUSE NO. 363 OF 2007

BETWEEN: KIM AVALON SAMUELS

PLAINTIFF

AND: BARRINGTON INVESTMENTS LTD.

1ST DEFENDANT

AND: VERNON BARRINGTON WEBB JR.

2ND DEFENDANT

Coram: The Hon. Mr. Justice Foster

Appearances: Mr. Delroy Murray of Murray & Westerborg for the Plaintiff
Mr. Marcus Baldwin of Ritch & Conolly for the Defendants

Heard on 15th, 16th and 17th December 2008

JUDGMENT

1. This is a dispute concerning a restaurant known as the Corner Restaurant on Eastern Avenue, George Town (which I shall refer to as "the Premises"). The Plaintiff, Mr. Samuels, occupies the Premises as tenant. He has, apart from a period of approximately 5 months immediately following Hurricane Ivan in

1 September 2004, been in occupation of the Premises since about 1991 or 1992
2 and carries on a successful restaurant business there.

3
4 2. The Premises were previously owned by Mr. Samuels' father, Vernon Barrington
5 Webb Sr., but in 1997 a company, Barrington Investments Ltd., the first
6 Defendant ("the Company"), was incorporated by Mr. Samuels' father. The
7 shareholders of the Company are (1) Mr. Samuels' father, (2) Mr. Vernon
8 Barrington Webb, Jr. (who I shall refer to as Mr. Webb Jr.), who is the half
9 brother of Mr. Samuels, and (3) and (4) Mr. Samuels' two half sisters. Mr.
10 Samuels is not, however, a shareholder.

11
12 3. There is unfortunately an ongoing family dispute in which the principal
13 protagonists at least in this case are Mr. Samuels and Mr. Webb Jr. who, as well
14 as being a shareholder, is a director of the Company. It is accepted that in all
15 material respects in this matter Mr. Webb Jr. was acting on behalf of the
16 Company, although that was not necessarily at all times known to Mr. Samuels.
17 Accordingly the claim against Mr. Webb Jr. personally was formally discontinued
18 and the statement of claim amended to remove Mr. Webb Jr. as Second Defendant
19 with leave of the Court.

20
21 4. There was conflicting evidence about when Mr. Samuels first became aware of
22 the existence of the Company and of the fact that it had become the owner of the
23 Premises and therefore his landlord. There was also some evidence that Mr.

1 Samuels felt aggrieved that he had not been made a shareholder of the Company
2 incorporated by his father along with his half brother and his two half sisters.

3
4 5. Apart from Mr. Samuels and Mr. Webb Jr., the only other witness at the trial was
5 Mr. Edgar Webb, sometimes known as Leroy Webb (who I shall refer to as "Mr.
6 Edgar Webb"), who is a first cousin once removed of both Mr. Samuels and Mr.
7 Webb Jr. Mr. Edgar Webb is apparently involved in several types of business but
8 is principally engaged in construction, of which he has many years experience.

9
10 6. The case turns on exactly what happened after the Premises sustained substantial
11 damage, particularly, but not exclusively, to the roof, as a result of Hurricane Ivan
12 and what was or was not agreed about the repair of the Premises and Mr.
13 Samuels' continued occupation thereof.

14
15 7. Although Mr. Samuels has occupied and operated his restaurant from the
16 Premises and paid rent for some 16 or 17 years there has never been a formal
17 lease. Initially Mr. Samuels paid the monthly rent to his father who at that time
18 was the owner of the Premises and who had verbally agreed to allow Mr. Samuels
19 to occupy, initially part of the Premises, and subsequently the whole Premises.
20 Later on Mr. Webb Jr. started collecting the rent for the Premises from Mr.
21 Samuels. Their father was elderly and Mr. Samuels seems to have thought that
22 Mr. Webb Jr. was simply collecting the rent on behalf of their father. From about
23 1997 Mr. Webb Jr. was in fact collecting the rent on behalf of the Company

1 which had become the registered proprietor of the Premises, although Mr.
2 Samuels was apparently not made aware of and did not realize that initially. It
3 was not entirely clear from the evidence precisely when Mr. Samuels first became
4 aware of the existence of the Company and that it had become his landlord but
5 when he did he became more concerned about his security of tenure and the
6 question of a formal lease was raised.

7
8 8. In early 2002 after requests by Mr. Samuels, the Company, through Mr. Webb Jr.,
9 did produce a draft lease to Mr. Samuels. The draft lease clearly identified the
10 Company as being the lessor of the Premises. Mr. Samuels asked his attorney,
11 Mr. Delroy Murray, to review the draft lease on his behalf and as a result various
12 changes were proposed by Mr. Murray. These were incorporated into an amended
13 draft, which Mr. Samuels returned to Mr. Webb Jr. However, nothing more
14 substantive was heard from Mr. Webb Jr. concerning the draft lease, despite
15 prompting by Mr. Samuels from time to time, just, accordingly to Mr. Samuels,
16 the occasional assurance that "the lawyers" were dealing with it. According to
17 Mr. Webb Jr. the Board of the Company had made a definite decision not to
18 proceed with the lease, although Mr. Samuels does not appear to have got that
19 message.

20
21 9. The Premises were extensively damaged by Hurricane Ivan. It was Mr. Samuels'
22 case, in summary, that shortly after the Hurricane he agreed with Mr. Webb Jr.
23 that he would repair the Premises at his own cost but on the basis that the

1 Company would repay him as soon as payment of the insurance on the Premises
2 was received and in consideration of the Company giving him a 10 year lease. He
3 also claims that he made Mr. Webb Jr. aware that the costs of repair would be in
4 the region of \$70 - \$75,000 and that this money had been earmarked for another
5 restaurant project Mr. Samuels had in West Bay.

6
7 10. The case put by Mr. Webb Jr. for the Company was very different. He claimed
8 that the understanding given to him was that the repairs to the premises would
9 cost about \$20,500, which was what the Company approved, that Mr. Samuels
10 would vouch the cost through presentation to Mr. Webb Jr. of periodic receipts
11 and that Mr. Samuels would be refunded the cost through abatement of the rent
12 until the cost was paid off. He denied that there was any agreement or even
13 discussion about a 10 year lease or that he had been told about Mr. Samuels' West
14 Bay restaurant project.

15
16 11. Counsel for Mr. Samuels and counsel for the Company both agreed that there
17 were effectively 3 issues to be determined namely: firstly, whether there was an
18 agreement for Mr. Samuels to repair the Premises himself in consideration of
19 being refunded for the cost of such repairs out of the insurance proceeds and
20 being given a 10 year lease. That would also involve determination of the amount
21 of repair costs which had been agreed. Secondly, whether the fact that no detailed
22 terms of the alleged 10 year lease were expressly agreed or in writing prevents
23 Mr. Samuels from claiming to be entitled to such a 10 year lease or whether the

1 Company is estopped from denying that. Thirdly, whether the Company, through
2 Mr. Webb Jr., was aware that the funds to be used by Mr. Samuels to repair the
3 Premises had already been allocated by him for another purpose and whether Mr.
4 Samuels can recover compensation for being deprived of the funds which he had
5 intended to expend on that other purpose, namely the restaurant project in West
6 Bay.

7
8 12. Regrettably the evidence of Mr. Samuels, as supported to a large extent by Mr.
9 Edgar Webb, was in significant and material respects directly contradicted by the
10 evidence of Mr. Webb Jr. Accordingly both counsel rightly accepted that to a
11 great extent the resolution of this dispute depends upon my assessment of the
12 credibility of the witnesses. I shall therefore summarise their evidence and give
13 my assessment of it, including my view as to its consistency and plausibility as
14 well as considering the witnesses' demeanour.

15
16 13. Mr. Samuels' evidence was that approximately 2 weeks after Hurricane Ivan he
17 was told by his cousin, Mr. Edgar Webb, that he had recently met Mr. Webb Jr.
18 who had told him that there were insufficient funds available at that time to repair
19 the Premises but that if Mr. Samuels would like to repair the Premises at his own
20 costs he would be refunded out of the process of insurance once they became
21 available. Mr. Samuels also said that Mr. Edgar Webb told him that Mr. Webb Jr.
22 had said that if Mr. Samuels wanted to do this he should give Mr. Webb Jr. an
23 estimate of the cost of repairing the Premises. According to Mr. Samuels he then

1 went with Mr. Edgar Webb to the Premises, Mr. Edgar Webb inspected the
2 damage and produced a rough handwritten estimate of the approximate costs of
3 repair which he assessed as being in the region of \$70,000 - \$75,000. Mr.
4 Samuels evidence was that not long thereafter he and Mr. Edgar Webb both went
5 to meet Mr. Webb Jr. at his house when Mr. Webb Jr. repeated to him that if he
6 had the repairs to the Premises carried out at his own cost he would be repaid out
7 of the insurance proceeds when they became available. Mr. Samuels claimed that
8 he said he would only be prepared to do this if he was given a 10 year lease of the
9 Premises in consideration for doing so. He also claims that he presented Mr.
10 Webb Jr. with the rough handwritten estimate of the costs of repair which Mr.
11 Edgar Webb had prepared and which Mr. Webb Jr. accepted. Mr. Samuels
12 further said in evidence that he made it clear to Mr. Webb Jr. that the money
13 which he would have to spend on the repairs to the Premises had been earmarked
14 by him for completion of another restaurant which he was in the course of having
15 built on land in West Bay which he had agreed to lease.

16
17 14. The evidence of Mr. Edgar Webb was largely consistent with the evidence of Mr.
18 Samuels. According to him he had been asked by Mr. Webb Jr. to provide him
19 with a rough review of a quote for repairs which were to be carried out on a house
20 on Crewe Road belonging to the Company which Mr. Webb Jr. was concerned to
21 be sure was reasonable. Mr. Edgar Webb said that he did this and produced a
22 rough handwritten assessment of the cost of the work to be carried out on the
23 Crewe Road house at that time which he calculated to be approximately \$20,500.

1 Mr. Edgar Webb said he then went himself to meet Mr. Webb Jr. to give him this
2 rough assessment and that in the course of the meeting he asked Mr. Webb Jr.
3 what he was proposing to do about repairing the damage to the Premises. Mr.
4 Edgar Webb denied that he had been asked by Mr. Samuels to do this but said he
5 simply did so of his own accord as he happened to be speaking to Mr. Webb Jr. It
6 was, according to Mr. Edgar Webb, at that time that Mr. Webb Jr. informed him
7 that he, presumably meaning the Company, did not have sufficient funds available
8 at that time to meet the cost of repair of the Premises but that if Mr. Samuels
9 would like to pay for the repairs himself he would be repaid out of the insurance
10 proceeds when available. According to Mr. Edgar Webb, Mr. Webb Jr. told him
11 that if Mr. Samuels wanted to do this he should come to meet him and bring an
12 estimate of the cost of repairing the Premises with him.

13
14 15. Mr. Edgar Webb's evidence as to what then took place was the same as Mr.
15 Samuels' evidence. He was adamant that Mr. Webb Jr. had agreed that Mr.
16 Samuels should proceed with the work of repairing the Premises on the basis of
17 the rough estimate of \$70,000 - \$75,000 which he had prepared and given to Mr.
18 Samuels to produce to Mr. Webb Jr. His recollection was clear that Mr. Webb Jr.
19 was satisfied with that rough quote and had agreed that Mr. Samuels would be
20 repaid the costs of repair from the insurance proceeds as soon as they were
21 available. He also recollected that Mr. Webb Jr. agreed that Mr. Samuels would
22 be given a 10 year lease of the Premises when the repair work was finished. Mr.
23 Edgar Webb said too that he recollected that Mr. Samuels told Mr. Webb Jr. that

1 he had intended to use the money he would now be using to meet the cost of the
2 repairs of the Premises to complete the building which he was having constructed
3 in West Bay on land he was leasing but since he was carrying on an existing
4 established business from the Premises he thought his priority should be spending
5 his money on repair of the Premises rather than on the West Bay project at that
6 time.

7
8 16. Mr. Webb Jr.'s evidence was quite different. He denied ever meeting Mr.
9 Samuels and Mr. Edgar Webb together at his house at any time. He said that his
10 first meeting at his house was with Mr. Edgar Webb when Mr. Edgar Webb
11 turned up unannounced and asked him what he was proposing about repairing the
12 Premises. Mr. Webb Jr. claimed that he was given to understand that Mr. Edgar
13 Webb had come to see him about that at the request of and on behalf of Mr.
14 Samuels. According to his evidence he told Mr. Edgar Webb that there were
15 insufficient funds available at that time to meet the cost of repair of the Premises
16 but that if Mr. Samuels wished to meet the cost himself he could do so but that he
17 would need to see an estimate of the cost first.

18
19 17. Mr. Webb Jr. said that his second meeting was again with Mr. Edgar Webb alone
20 when Mr. Edgar Webb returned to Mr. Webb Jr.'s house with a rough handwritten
21 estimate of the cost of repair of the Premises totalling \$20,500. He denied
22 absolutely that the handwritten estimate (a copy of which was in evidence at the
23 trial and the original of which was produced to me shortly after the end of the

1 trial) was an assessment or review of the cost quoted to him for repairs to the
2 house on Crewe Road and said that he had never asked Mr. Edgar Webb to
3 consider the cost of repairs to be or being carried out on the house on Crewe
4 Road. Mr. Webb Jr.'s evidence was that he took the estimate of \$20,500 "to the
5 Board" of the Company and that, although he would normally have insisted on a
6 formal typed and signed estimate, because he was dealing with "family" the
7 Board authorised him to accept the rough handwritten quote and to authorise Mr.
8 Samuels to proceed on the basis of that quote totalling \$20,500.

9
10 18. Mr. Webb Jr. said he had a third meeting at his house which was with Mr.
11 Samuels alone when subsequently Mr. Samuels came to see him about the repair
12 of the Premises. According to Mr. Webb Jr. he told Mr. Samuels that the repair
13 estimate prepared by Mr. Edgar Webb was acceptable to the Board and that Mr.
14 Samuels would be repaid for the cost of repair he would incur through an
15 abatement of the rent of the Premises. Mr. Webb Jr. said he also insisted that he
16 should be provided by Mr. Samuels with regular invoices or receipts for the cost
17 of the repair work as it proceeded. At that time the rent was \$1,400 per month
18 and according to Mr. Webb Jr. he agreed with Mr. Samuels that the rent would be
19 halved to \$700 per month until the repair cost was refunded. Mr. Webb Jr. denied
20 emphatically that there had been any discussion of a 10 year lease or about Mr.
21 Samuels' restaurant project in West Bay.

22

1 19. According to both Mr. Samuels and Mr. Edgar Webb, after their meeting with Mr.
2 Webb Jr., Mr. Edgar Webb commenced work on the repairs to the Premises with
3 his construction crew at the request of Mr. Samuels on the basis that Mr. Webb Jr.
4 had agreed with Mr. Samuels the rough estimate of \$70,000 - \$75,000, and, as far
5 as Mr. Samuels was concerned, on the basis that he would be repaid from the
6 insurance proceeds when they were received and given security of tenure by way
7 of a 10 year lease once the repair work was completed. Mr. Samuels started
8 making payments to Mr. Edgar Webb to account of the cost of the work on 3rd
9 October 2004. Mr. Edgar Webb issued him with receipts for his payments, copies
10 of all of which were produced at the trial. By 1st November 2004 Mr. Samuels
11 had made 9 such payments to Mr. Edgar Webb in varying amounts ranging from
12 the initial payment on 1st October 2004 of \$3,500 to a payment of \$10,000. On
13 2nd November 2004 Mr. Edgar Webb produced to Mr. Samuels a formal typed
14 estimate for the cost of repair of the Premises in the total of \$69,940. It was
15 accepted by Mr. Samuels that Mr. Webb Jr. was never provided with a copy of
16 this document. On 15th January 2005 Mr. Edgar Webb issued to Mr. Samuels a
17 formal final bill for the repair work to the Premises in the total of \$68,540. This
18 final bill notes that "due to lack of funds, shingles for roof and pavement were not
19 completed". By that time Mr. Samuels had paid to Mr. Edgar Webb the same
20 total \$68,540.00 in respect of the work on the Premises. That total is vouched by
21 the receipts given by Mr. Edgar Webb by Mr. Samuels.

22

1 20. Also produced at the trial was a typed bill addressed from Mr. Samuels to Mr.
2 Webb Jr. dated 27th January 2005 for "restoration" of the Premises in the same
3 amount of \$68,540.00. However, for some reason which was not made entirely
4 clear, this was never given or sent to Mr. Webb Jr. At one point in his evidence
5 Mr. Samuels sought to explain this by saying that he was at that time in no
6 particular hurry to recover this cost, although that seems somewhat inconsistent
7 with his claim that being deprived of this money was prejudicial to his
8 progression of his West Bay restaurant project. However, in or about March
9 2005. Mr. Webb Jr. informed Mr. Samuels that the insurance proceeds had been
10 received but had been spent on repairs to other property. Mr. Samuels has never
11 been repaid the cost of repair of the Premises. He resumed occupancy of the
12 Premises sometime in late January 2005 but after he had been in been in
13 occupancy again for about 9 months, by letter dated 1st November 2005 he was
14 given notice by the Company's then attorneys to vacate the Premises on or before
15 1st December 2005. This resulted in separate proceedings being brought by Mr.
16 Samuels (Cause 77/2006) and an injunction was granted against the Company
17 from proceeding to take possession of the Premises. Those proceedings were
18 subsequently stayed pending the outcome of this action.

19
20 21. During the course of the work on the repairs of the Premises sometime in
21 November or December 2004 Mr. Webb Jr. visited the site and was shown the
22 work in progress by Mr. Edgar Webb. Mr. Samuels was also apparently present.
23 According to Mr. Edgar Webb, Mr. Webb Jr. had no problem with the work being

1 carried out, which included raising the roof of the Premises slightly in order to
2 create an attic. Although there was no evidence that the cost of the work was
3 discussed, both Mr. Samuels and Mr. Edgar Webb said in evidence that Mr. Webb
4 Jr. was quite satisfied with what was being done. Mr. Webb Jr. said that he
5 simply observed the work and made no comment save to request again that he be
6 provided with invoices or receipts as the work was carried out. Both Mr. Samuels
7 and Mr. Edgar Webb denied this.

8
9 22. Mr. Webb Jr.'s second affidavit (all of the affidavits were treated as witness
10 statements) exhibited a report dated 21st August 2007 by DDL Studio Ltd.,
11 Quantity Surveyors, expressing the opinion that the cost of the repair work to the
12 Premises in 2004 would have been \$32,906.26. It was argued on behalf of the
13 Defendants that this was support for Mr. Webb Jr.'s contention that the repair cost
14 which he approved was \$20,500 and not \$70,000 - \$75,000 as claimed by Mr.
15 Samuels and Mr. Edgar Webb. Unfortunately the author of the DDL Studio Ltd.
16 report apparently left the jurisdiction almost a year ago and was not made
17 available to be cross-examined on his report at the trial. The report was anyway
18 subject to significant criticism by Mr. Edgar Webb, particularly on the basis that it
19 takes no account of the fact that in the months immediately after Hurricane Ivan
20 the costs of building materials and labour were dramatically inflated for obvious
21 reasons and erroneously proceeds upon the basis that costs as at August 2007 are
22 the relevant costs. It was also pointed that there is no indication in the report that
23 the author of the report even visited the Premises, still less inspected the details of

1 its construction. In addition, in his letter dated 8th August 2007 instructing DDL
2 Studio Ltd. to prepare the report, Mr. Webb Jr. made various comments about the
3 work, including his own assessment of the costs of specific items of material and
4 of labour, which was clearly inappropriate in instructing a purportedly
5 independent expert. In all the circumstances I do not consider it appropriate or of
6 assistance to have regard to the DDL Studio Ltd. report and I have not taken it
7 into account.

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9 23. Accordingly, in summary the evidence of Mr. Samuels, supported by Mr. Edgar
10 Webb, was that there was an agreement with Mr. Webb Jr. that he would repair
11 the damage to the Premises, the cost of which he says was agreed to be in the
12 region of \$70,000 - \$75,000, at his own expense, and that he would be repaid the
13 cost out of the insurance proceeds once they became available. As a condition
14 and in consideration of this he says he was to be granted a 10 year lease of the
15 Premises. He also says he made Mr. Webb Jr. aware that the money which he
16 would be spending on the repairs to the Premises had already been earmarked for
17 his West Bay restaurant project. On the other hand the evidence of Mr. Webb Jr.
18 was that the agreement was that Mr. Samuels would pay for the damage to the
19 Premises, which was estimated to be in the region of \$20,500, that Mr. Samuels
20 was to produce regular receipts to vouch the costs of the repairs and would be
21 refunded that cost by an abatement of the rent whereby he would pay only half the
22 rent until the cost was repaid. He denied categorically any other agreement or
23 that Mr. Samuels' West Bay project was discussed.

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24. As I have already mentioned, 10 receipts dated from 1st October 2004 to 22nd November 2004 in the total amount of \$68,540 were issued by Mr. Edgar Webb to Mr. Samuels and copies were produced at the trial. Both Mr. Samuels and Mr. Edgar Webb confirmed in their evidence that this total sum had been paid by Mr. Samuels to Mr. Edgar Webb in respect the repair work to the Premises carried out by Mr. Edgar Webb for Mr. Samuels. Although Mr. Edgar Webb was cross-examined as to the reasonableness of this cost for the repairs, particularly having regard to the report from DDL Studio Ltd. to which I have already referred, it was not suggested to either Mr. Samuels or to Mr. Edgar Webb that the sum of \$68,540 had not in fact been paid by Mr. Samuels to Mr. Edgar Webb in respect of the cost of the repairs to the Premises. There was no suggestion that the receipts were not genuine or that the monies had not been paid by Mr. Samuels to Mr. Edgar Webb for that purpose. It was pointed out by counsel for the Company that Mr. Edgar Webb's formal estimate dated 2nd November 2004 was issued to Mr. Samuels some time after several of the payments by Mr. Samuels as evidenced by the receipts had already been made. However, Mr. Webb Jr. himself said in relation to the disputed handwritten estimate in his possession that because the matter involved "family" the strict formalities were not being observed and in my view that could also explain the very informal arrangements between Mr. Samuels and Mr. Edgar Webb. I did not consider the timing of the issue of the formal estimate dated 2nd November 2004 to be significant. In fact Mr. Edgar Webb argued strongly that the amount he charged for the repair work

1 was fair and reasonable at the time, namely in the 3 or 4 months immediately
2 following Hurricane Ivan when materials and labour were in very short supply
3 and the costs thereof were extremely high and I accepted his evidence in that
4 respect. In all the circumstances and having regard to the probabilities, I am
5 satisfied that Mr. Samuels did indeed pay the total sum of \$68,540 to Mr. Edgar
6 Webb in respect of the repairs to the Premises.

7
8 25. However, the question is, of course, whether Mr. Webb Jr. approved expenditure
9 of that order on repairing the Premises. As I have already explained, Mr. Webb
10 Jr.'s position is that the handwritten estimate for \$20,500 is the estimate which he
11 was given in respect of the cost of the repairs to the Premises and is the estimate
12 which he took to the Board, whose approval thereof he passed on to Mr. Samuels
13 and on the basis of which he says he was proceeding throughout. Mr. Samuels
14 and Mr. Edgar Webb contend that Mr. Webb Jr. had approved an estimated cost
15 of repair of some \$70,000 - \$75,000 as set out in a rough estimate prepared by
16 Mr. Edgar Webb and produced to Mr. Webb Jr. at their meeting. That estimate is
17 no longer available. Mr. Edgar Webb explained that he had kept that estimate
18 after the meeting with Mr. Webb Jr. at which, he and Mr. Samuels contend, it was
19 agreed, but that all of his records relating to the repair work on the Premises were
20 thrown out by him not long after the work was completed in January 2005. It was
21 clear from his evidence, including his comments about his habit of keeping
22 receipts and other documentation in the glove box of his car, that Mr. Edgar Webb
23 administers his construction business on a very informal and casual basis with

1 little or no record retention or organisation. He said that he had never expected
2 that there would be a dispute about the work he did on the Premises and that he
3 had disposed of all his records shortly after the job finished, as he usually did.
4

5 26. The dispute about the estimated cost of repair of the Premises is obviously very
6 unfortunate; it is also very unfortunate that the estimate of \$70,000 - \$75,000 on
7 which Mr. Samuels and Mr. Edgar Webb rely is not available, unlike the estimate
8 for \$20,500 on which Mr. Webb Jr. relies. Mr. Edgar Webb was adamant that the
9 handwritten estimate for \$20,500 on which Mr. Webb Jr. relies was nothing to do
10 with the Premises but was the rough assessment of the cost of repairs quoted to
11 Mr. Webb Jr. for the Crewe Road house, produced by him as a result of Mr. Webb
12 Jr.'s request that he review the cost which Mr. Webb Jr. was being quoted for
13 those repairs. Mr. Webb Jr. contended that that estimate could not have related to
14 the Crewe Road house because the total cost of the work on that property had
15 ultimately been in the region of \$90,000.00 and the rough estimate was for only
16 \$20,500. This was not explored in the evidence as much as it might have been.
17 However, it did become clear that the Crewe Road house, which prior to
18 Hurricane Ivan had been a 6 bedroom house was, some time after the Hurricane,
19 converted into apartments. Hurricane Ivan was on 11th September 2004 and no
20 one disputed that the handwritten estimate for \$20,500 was produced within only
21 a couple of weeks of that date. There was no evidence as to when the decision to
22 convert the 6 bedroom house into apartments was made or when the construction
23 work to implement that decision was first quoted for. However, it does seem

1 probable to me that at a stage very shortly after the Hurricane the priority was
2 likely to have been on rendering the 6 bedroom house wind and water tight,
3 including rectifying electrical damage, and that the rough assessment of \$20,500
4 most likely related, and was intended to relate, only to such initial work and not to
5 the subsequent much more major work of converting the property into apartments.
6 If that is correct it would explain why the assessment concerned was in the region
7 of \$20,500 and not in the region of \$90,000 and therefore could indeed have
8 related to the Crewe Road property at that time as Mr. Edgar Webb strongly
9 contended.

10
11 27. No other member of the Board of the Company was called as a witness to support
12 Mr. Webb Jr.'s evidence that he took the estimate of \$20,500 to the Board of the
13 Company for their approval. Since Mr. Webb Jr.'s two sisters are members of the
14 Board that would not have been difficult to do if Mr. Webb Jr.'s evidence in that
15 regard was correct. Of course, acting as he was on behalf of the Company, Mr.
16 Webb Jr. had every incentive to claim that it was the significantly lower \$20,500
17 estimate rather than the \$70,000 - \$75,000 estimate that he had approved on its
18 behalf. In my view it is also inherently unlikely that Mr. Samuels would have
19 spent over \$68,000 of his own money on the repairs to the Premises, as I have
20 concluded that he did, if he had not believed that he had approval from Mr. Webb
21 Jr. to incur costs of that level. It also seems to me less probable, particularly if, as
22 Mr. Webb Jr. contended, Mr. Samuels was resentful of the fact that he had been
23 excluded from participating in the Company and Mr. Samuels felt he had a poor

1 relationship with Mr. Webb Jr., that Mr. Samuels would go to meet Mr. Webb Jr.
2 at Mr. Webb Jr.'s house on his own to discuss the Premises. In my opinion it is
3 much more probable that Mr. Samuels would have gone to meet Mr. Webb Jr. to
4 discuss the repair of the Premises taking Mr. Edgar Webb with him. Mr. Edgar
5 Webb was the one, who by all accounts, had prepared an estimate for the cost of
6 repair of the Premises and, having regard both to the relationship between Mr.
7 Samuels and Mr. Webb Jr. and to the fact that the purpose of meeting was to
8 discuss the repairs to the Premises, I consider it more probable that the meeting at
9 which the cost of repair was discussed and agreed was a meeting which all 3 were
10 present as contended by Mr. Samuels and Mr. Edgar Webb in their evidence. In
11 the circumstances I have concluded on a balance of probability that the estimate
12 which was discussed and approved by Mr. Webb Jr. was the rough estimate for
13 \$70,000 - \$75,000 of which Mr. Samuels and Mr. Edgar Webb gave clear
14 evidence and not the assessment of \$20,500. I accepted Mr. Edgar Webb's
15 evidence that the latter related to work on the Crewe Road house.

16
17 28. Mr. Webb Jr. was adamant in his evidence that he made it clear to Mr. Samuels
18 that he would require to see receipts or other vouchers in support of the ongoing
19 costs of the repair of the Premises as the work proceeded. This was denied by
20 both Mr. Samuels and Mr. Edgar Webb. Mr. Edgar Webb was very clear in his
21 evidence that his method of operating his construction business was to agree a
22 cost for the work concerned and then to proceed on the basis that it was entirely
23 up to him how that cost was expended. He said that whether he required 6 or 8

1 bags of cement to carry out the work was entirely a matter for him and that
2 provided his final bill came within the total cost agreed he did not consider it
3 necessary to produce interim invoices or vouchers. He was quite adamant about
4 this. He did, of course, issue receipts for payments made by the client as he did to
5 Mr. Samuels in respect of the payments which Mr. Samuels made. It was not
6 made entirely clear by Mr. Webb Jr. precisely what receipts he was, according to
7 him, expecting to receive from Mr. Samuels or when. Clearly, even on Mr. Webb
8 Jr.'s own evidence the matter was or would be proceeding in an informal way and
9 if, as I have concluded, Mr. Edgar Webb was present at the only meeting between
10 Mr. Samuels and Mr. Webb Jr. it seems most improbable to me that Mr. Edgar
11 Webb would have agreed, given his operating method and approach, to the
12 production of regular interim invoices or receipts or the like such as might be
13 expected in a more formal building contract.

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15 29. The evidence of Mr. Samuels and Mr. Edgar Webb was that Mr. Webb Jr. agreed
16 that Mr. Samuels would be repaid the cost of the repairs out of the proceeds of the
17 insurance of the Premises once they were available. There was no evidence about
18 the level of insurance over the Premises, although Mr. Webb Jr. did say that all of
19 the properties owned by the Company turned out to be under insured but that
20 would not have been known to Mr. Webb Jr. at the time of the meeting with Mr.
21 Samuels and Mr. Edgar Webb. However, if as I have determined, it was being
22 assumed by all 3 men concerned that the cost of the repairs to the Premises was
23 going to be in the region of \$70,000 - \$75,000, it seems to me more probable than

1 not that the agreement was indeed that Mr. Samuels would be repaid that sum out
2 of the insurance proceeds rather than that he would be repaid that sum by
3 allowing him to pay half rent until it was paid off. The rent then being paid by
4 Mr. Samuels in respect of the Premises was \$1,400.00. Paying off the sum of
5 \$70,000 - \$75,000 to Samuels at the rate of \$700.00 per month would take over 8
6 years and I consider that is unlikely to have been acceptable to Mr. Samuels. In
7 my judgment on a balance of probability it was more likely to have been agreed
8 that Mr. Samuels should be repaid his cost of carrying out the repairs to the
9 Premises out of the insurance proceeds when they became available and I
10 accepted the evidence of Mr. Samuels and Mr. Edgar Webb in that respect.

11

12 30. It was clear from the evidence of Mr. Samuels and of Mr. Webb Jr. that the
13 question of Mr. Samuels' security of tenure and the need to formalize his
14 occupation of the Premises had been under consideration since at least early 2002.
15 The oral evidence of Mr. Webb Jr. concerning the draft lease presented to Mr.
16 Samuels in early 2002 was somewhat surprising. He said that he and the other
17 members of the board of the Company, presumably meaning his 2 sisters, were
18 very annoyed when Mr. Samuels took the draft lease to his attorney for advice
19 and returned it to Mr. Webb Jr. with suggested amendments. He said that it was
20 for that reason that the Company had decided to proceed no further with the draft
21 lease. If that explanation is correct, it does seem to me rather unreasonable and
22 was consistent with the slight undercurrent which I detected in the attitude and
23 demeanor of Mr. Webb Jr. that somehow Mr. Samuels was not entitled to protect

1 his own interests if that meant questioning, still less challenging, the views or
2 actions of Mr. Webb Jr. Mr. Webb Jr. was clearly very annoyed that Mr. Samuels
3 has apparently sided with his step-mother in a family dispute about the
4 guardianship of their father, which it seems is a source of considerable acrimony
5 between Mr. Samuels and his step-mother on the one hand and Mr. Webb Jr. and
6 his 2 sisters on the other hand. It seems to me quite reasonable and
7 understandable that Mr. Samuels should be concerned to protect his interests as
8 tenant of the Premises, which he had by then occupied for some 10 years or so,
9 particularly having regard to the fact that it was no longer his father with whom
10 he was dealing as owner and landlord but was now the Company, in which Mr.
11 Webb Jr. appeared to be playing the leading role. In my view it is improbable that
12 Mr. Samuels would be willing to expend the kind of money which was being
13 discussed from his own resources on the repairs to a property which did not
14 belong to him without a clear assurance that he would be given significant
15 security of tenure in return, even if it was agreed that the money he would be
16 spending would be repaid to him in due course out of the insurance proceeds.
17 Furthermore, if, which I accept, Mr. Samuels had in his mind intended to use such
18 resources on the restaurant project which he had already commenced in West
19 Bay, it seems to me more than likely that he would have mentioned that to Mr.
20 Webb Jr. when discussing the proposal that he should use such funds to meet the
21 cost of repairing the Premises instead. I therefore conclude on balance that it
22 probably was agreed that in consideration of Mr. Samuels meeting the cost of
23 repairing of the Premises himself he would be granted a 10 year lease of the

1 Premises once the repairs had been carried out. I also accept the evidence of Mr.
2 Samuels and Mr. Edgar Webb that Mr. Samuels did at least mention to Mr. Webb
3 at their meeting that he had previously earmarked the money which he would now
4 be using to repair the Premises for his restaurant project in West Bay. It was my
5 understanding from the evidence that the restaurant building in West Bay was in
6 fact being built by Mr. Edgar Webb's construction business and that it was
7 because Mr. Webb Jr. was impressed with the way the building had withstood the
8 hurricane that, according to Mr. Edgar Webb, he had asked Mr. Edgar Webb to
9 take a look at the cost which was being quoted to Mr. Webb Jr. in respect of the
10 repairs to the house on Crewe Road. If that is correct, that seems to me another
11 reason why it is probable that Mr. Samuels' West Bay project would have been
12 mentioned at the meeting at Mr. Webb Jr.'s house along with Mr. Samuels'
13 financial commitments in respect of that project.

14
15 31. It was argued strongly on behalf of the Defendant that even if it was stated by Mr.
16 Webb Jr. on behalf of the Company that in consideration of Mr. Samuels meeting
17 the cost of repair the Premises himself he would be granted a 10 year lease of the
18 Premises, there was no or at least insufficient agreement about the terms of such a
19 lease to constitute an enforceable agreement in that regard. It was said that there
20 was nothing in writing as required by the Registered Land Law and that such a
21 vague agreement was meaningless and could not be implemented. On the other
22 hand it was argued for Mr. Samuels that there was an agreement that could be
23 implemented or at least that the Company through Mr. Webb Jr. was estopped

1 from denying that it was obliged to grant Mr. Samuels a 10 year lease since he
2 had, to the knowledge of the Company, acted in reliance upon that assurance to
3 his detriment. It was said on behalf of Mr. Samuels that the parties to such a
4 lease, namely Mr. Samuels and the Company were known, the identity of the
5 property to be leased, namely the Premises, was known and the duration of the
6 lease, namely 10 years was known. As far as the rent agreed to be paid pursuant
7 to such a lease was concerned, it was submitted that it could be inferred that the
8 current rent of \$1,400.00 or at least a reasonable rent in that region was
9 understood to be the intention by implication.

10

11 32. In my view the evidence established that Mr. Samuels incurred the significant
12 expense of repairing the Premises himself in the expectation given to him by Mr.
13 Webb Jr. that he would be given security of tenure in the form of a 10 year lease
14 of the Premises. It seems to me that this is a clear example of a case in which a
15 person has expended money on the property of another in the expectation,
16 induced or encouraged by the owner of the property, that he would thereafter be
17 allowed to remain in occupation, in this case as a tenant for another 10 years,
18 whereby an equity is created such that the Court will protect that person's
19 occupation of the property and the Court has power to determine in what way the
20 equity so arising should be satisfied (see *Inwards v Baker* [1965] 2QB 29 as
21 approved in *Denson v Bush and Another* [1980-83] CILR 41 and *Solomon v*
22 *Solomon* [1988-89] CILR 144). In my judgment Mr. Samuels clearly acted to his
23 detriment (in meeting the cost of repair of the Premises himself) to the knowledge

1 of and with the agreement of Mr. Webb Jr. on behalf of the Company in the
2 expectation induced by Mr. Webb Jr. that he would be granted a 10 year lease of
3 the Premises on the completion of the repair work. This was with the background
4 that Mr. Samuels had, obviously to the knowledge of Mr. Webb Jr., been the
5 tenant of the Premises for the past 12 or 13 years and had been carrying on a
6 restaurant business from the Premises during that time. Mr. Samuels said in
7 evidence that he would not have agreed to carry out the repairs and meet the costs
8 himself if he was not to be granted a 10 year lease. In my judgment the
9 knowledge and the actions of the parties in all the circumstances were such as to
10 create an equity which the Court should protect, namely Mr. Samuels' continued
11 occupation of the property as tenant for a period of 10 years from the time when
12 the work was completed and he resumed occupation, without objection, in
13 January 2005. To put it another way, in my opinion, the circumstances are such
14 that the Company, through Mr. Webb Jr., is by its actions now estopped from
15 denying Mr. Samuels such a 10 year lease of the Premises. I therefore make the
16 declaration which Mr. Samuels seeks in his amended Statement of Claim.

17
18 33. Where such an equity has been created the Court has power to determine in what
19 way the equity so arising should be satisfied. In the present case I consider it
20 should be satisfied by the grant of a 10 year lease of the Premises by the Company
21 in favour of Mr. Samuels from late January 2005. That would now mean granting
22 Mr. Samuels a 6 year lease from now (January 2009) until January 2015. I direct
23 that the lease should run to 31st January 2015. That, of course, does not preclude

1 the parties agreeing to extend the period of the lease at any time should they wish.
2 As far as the rent is concerned, my view is that, as submitted by Counsel for Mr.
3 Samuels, in equity the rent should be in the region of the existing rent of \$1,400
4 per month but that allowance should be made for changes in market rental rates.
5 There was a further report by DDL Studios Ltd. before me at the trial on the
6 valuation of the Premises which assumed a rental income as at March 2007 of
7 \$2,600 per month. In all the circumstances I consider that it would be fair and
8 reasonable for the rent to continue at \$1,400 per month until 31st January 2009
9 increasing to \$1,700 per month with effect from 1st February 2009 for the year to
10 31st January 2010 and then increasing to \$2,000 per month for the year from 1st
11 February 2010 to 31st January 2011. Thereafter the rent for the final 4 years of
12 the lease with effect from 1st February 2011 should be reviewed having regard to
13 market rental levels at that time for property such as the Premises. If the parties
14 are unable to agree to the rent at that time (whether revised upwards or
15 downwards) the rent should then be determined by a firm of independent
16 surveyors (other than DDL Studios Ltd.) at the joint cost of the parties the identity
17 of such surveyors to be agreed between the parties and failing such agreement to
18 be nominated by the then President of the Cayman Islands Chamber of
19 Commerce. The determination of such independent surveyors should be final.
20 The said lease should only be terminable by the Company in the event of a
21 serious, material and persistent breach of its terms by Mr. Samuels. Any stamp
22 duty and registration fees payable in respect of such lease should be paid as to one

1 half by Mr. Samuels and one half by the Company, each party to bear their own
2 legal costs of the production of the lease, if any.

3
4 34. There remains the question of Mr. Samuels' claim that, because he had previously
5 earmarked the money which would be required to be spent on the repair of the
6 Premises for his restaurant project in West Bay, as a consequence of such money
7 not being paid to him by the Company he sustained loss and damage. I have to
8 say that the basis of this claim was never entirely clear to me. It appears that Mr.
9 Samuels had sufficient financial resources to meet his obligations in respect of the
10 West Bay restaurant project notwithstanding the payments he required to make to
11 Mr. Webb Jr. for the repair of the Premises. In his evidence he expressly
12 disavowed any claim in respect of loss of profits in respect of his West Bay
13 restaurant. There was no evidence that he required to borrow funds to meet his
14 obligations in respect of the West Bay project and accordingly he made no claim
15 in respect of the cost of financing or in respect of other costs. He gave evidence
16 of the rent which he paid pursuant to the lease dated October 2004 in respect of
17 the land in West Bay on which the new restaurant was built but, as I have said, he
18 was apparently able to meet that obligation notwithstanding the costs he was
19 incurring on the repairs to the Premises and no claim in respect of the West Bay
20 rent was pursued. As I have already pointed out, Mr. Samuels seems to have been
21 in no great hurry to recover from the Company the cost he had incurred on the
22 repairs to the Premises after he was informed by Mr. Webb Jr. sometime in March
23 2005 that the insurance proceeds had been used for other purposes. He remained

1 in occupation of the Premises, and seems to have made no formal claim for
2 payment by the Company until sometime after he received notice to vacate the
3 Premises in November 2005 and matters came to a head. In all the circumstances,
4 although I am satisfied that Mr. Samuels in all probability did mention to Mr.
5 Webb Jr. his West Bay restaurant project and the fact that the money he would
6 have to spend on repair of the Premises had been earmarked for that project, I
7 consider that it is not clear and has not been sufficiently established what the
8 financial consequences of paying for the repair of the Premises, if any, to Mr.
9 Samuels as far as his West Bay project was concerned were nor what, if any, loss
10 was suffered as a result of non-payment by the Company. In my opinion any
11 claim in respect thereof is, at least as currently pleaded, too vague, unspecific and
12 remote to be substantiated and, in so far as it was ultimately pursued in any event,
13 was not made out.

14
15 35. However, in my judgment the cost of repairs to the Premises, namely \$68,540 was
16 payable by the Company to Mr. Samuels at least by 31st March 2005. It is agreed
17 between the parties that the principal sum now owing to Mr. Samuels is \$43,340
18 as there was a period of 18 months during which Mr. Samuels did not pay the rent
19 of \$1,400 per month and accordingly the sum of \$25,000 falls to be deducted
20 from the principal sum of \$68,540. Mr. Samuels is therefore entitled to payment
21 of \$43,340 with interest thereon at the official prescribed rates from 1st April 2005
22 to date and thereafter on this Judgment from this date until payment and I so
23 order.

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36. It is also appropriate, in my view, in the circumstances that the Company should pay the greater part of Mr. Samuels' costs of this action. Mr. Samuels has not been successful in his claim for damages but he has been successful in his claim for payment of the cost of repairs to the Premises and his claim for a declaration that he is entitled to a 10 year lease. I therefore order that the Company should pay 2/3 of Mr. Samuels' costs of this action, such costs to be taxed on the standard basis if not agreed.



Foster J.

Dated the 21st day of January 2009