

**BARBADOS**

[Unreported]

**IN THE SUPREME COURT OF JUDICATURE**

**HIGH COURT**

**CIVIL JURISDICTION**

**No: 635 of 1991**

**BETWEEN**

**NYLOTEX LIMITED**

**Plaintiff**

**AND**

**BARBADOS INDUSTRIAL**

**DEVELOPMENT CORPORATION**

**Defendant**

**Before the Honourable Mr. Justice William J. Chandler, Judge of the High Court**

**2007: February 1, 26, 27 and 28;**

**March 1, 8, 20, 27;**

**June 22, 25;**

**2008: March 10 and 11,**

**2010: May 7**

**2012: May 30**

**Mrs. Faith A. Seale Q.C. for the plaintiff**

**Mr. Theodore A. Walcott Q.C. with Ms. Verla Depeiza and Ms. Anita Rampaul for the defendant**

**JUDGMENT**

**Introduction**

[1] This is an application by writ of summons filed 17 May 1991 in which the plaintiff claimed damages for breach of contract made on or about 1 June 1990. The plaintiff, **Nylotex Limited (Nylotex)** is a limited liability company incorporated under the **Companies Act Cap 308** as Company No. 5727 with its registered office at No. 2 Newton Industrial Park in the parish of Christ Church. The defendant corporation, **Barbados Industrial Development Corporation (BIDC)**, is incorporated by an Act of Parliament with its principal place of business situate at Pelican House, Princess Alice Highway in the City of Bridgetown.

[2] The action is based on breach of a term which the plaintiff alleged ought to be implied into the contract of tenancy that the premises would be connected to the public supply.

**The pleadings**

[3] The plaintiff, in its still further amended Statement of Claim filed on 26 February 2007, alleged that on 2 May 1990 the defendant offered to rent to the plaintiff, and on the 23 May 1990 the plaintiff accepted, the tenancy of factory premises situate at Newton Industrial Park in the parish of Christ Church. The plaintiff further alleged that it was an implied term of the tenancy that the premises would be able to be connected to the public electricity supply in order to allow the plaintiff to carry on its business of manufacturing light goods using its industrial sewing machines.

[4] In breach of this term, the premises could not be connected to the public electricity supply and as a result the plaintiff was unable to commence full production and suffered loss and damage. The particulars of special damage are:

(1) Loss of net profits for 10 months (\$382,103.00 and overdraft interest for 1 year \$5,545.47 making an aggregate total of \$387, 648.47;

(2) The Plaintiff claimed that sum as damages and interest and costs.

### **The Defence**

[5] In the defence filed on 22 July 2001, the defendant did not admit that on 2 May 1990 it offered to rent the factory premises or that the plaintiff accepted the offer of rent as alleged in paragraph 3 of the Statement of Claim. The defendant denied that there was a tenancy agreement between the parties or tha