

**IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)**

CLAIM No. DOMHCV2022/0122

BETWEEN:

MINIYA’S CO. LTD

Claimant

- and -

ELVIS STEVENS

Defendant

APPEARANCES:

Mrs. Noelize Knight-Didier, Counsel for the Claimant

Mrs. Zena Moore-Dyer with Mrs Gina Dyer-Munro, Counsel for the Defendant

2025: January 30th

March 5th

July 23rd

2026: February 13th

JUDGEMENT

Breach of tenancy agreement

Validity of unregistered lease

BACKGROUND

- [1] **JAWARA-ALAMI.J**; The Claimant in this matter is Miniya’s Company Ltd., a local company registered under the Companies Act, No. 21 of 1994, Laws of Dominica, with its registered office at St. Johnston’s Avenue, Pottersville, St. George, Commonwealth of Dominica. The Claimant’s Directors are Decima Lavinier and her husband Hilkiah Lavinier. The Defendant is

Elvis Stevens, of Canfield, St. Paul, Commonwealth of Dominica. The Claimant and the Defendant shared a landlord and tenant relationship from 2015 to 2017.

[2] On the 15th October 2020, the Claimant filed a claim form and statement of claim alleging that the Defendant unlawfully terminated two ten-year lease agreements between the Claimant and Defendant dated 14th October 2015 and 14th November 2015 respectively in respect of the premises situated at Savanne Park, Louisville, Commonwealth of Dominica. Further, that the Defendant failed to return the Claimant's security deposits paid under the terms of the lease. The Claimant claims inter alia:

- a) Return of the Security Deposits in the total sum of \$29,000.00
- b) Damages for unlawful termination of lease agreements between the parties dated 14th October 2015 and 14th November 2015.
- c) Pre-judgment interest on all sums found due to the Claimant by the Defendant at a rate to be determined by the Court.
- d) Statutory judgment interest on damages at the rate of 5% per annum.
- e) Costs.

[3] The Defendant was served with the claim on 21st October 2020 and on 19th November 2020, the Defendant filed and served its defence and counterclaim alleging that the Claimant breached the Agreement, and sought reliefs as follows:

- i. Special damages in the total sum of EC \$95,500 consisting of the following:
 - a. Rent from October to December 2017 EC \$43,000.
 - b. Amount due to the Defendant for renovations and improvement EC \$31, 500.
 - c. Replacement costs of the kitchen counter and cupboards EC \$14,000.
 - d. Replacement cost of door and "burglar bars" of supermarket EC \$5,000.
 - e. Costs of repairs to Supermarket EC \$2,000.
- ii. Damages
- iii. Costs

- iv. Further or other relief
- v. Interest at the rate of 5% from the date of judgment.

[4] The matter came up for trial on 29th and 30th January 2025. The Claimant thereafter filed its Closing Submissions and List of Authorities on 5th March 2025. Subsequently, on 11th July 2025, the Claimant filed the Registered Lease Agreements. In response, the Defendant filed an application to set aside the filing of the said evidence on 15th July 2025. The Claimant filed its Notice of Opposition to the Application on 18th July 2025. The Court declined to entertain the application, holding that the filing of the lease agreements after judgment had been reserved amounted to an abuse of the court process.

Claimant's Facts

[5] The Claimant asserts that he entered into two lease agreements to rent two adjoining buildings located on the Defendant's property, for the running of a supermarket and a restaurant respectively on 14th October 2015 and 15th November 2015. Both leases were for a term of ten years that did not contain a termination clause by notice or other express termination clause.

[6] The premises were rented at the monthly rates of \$12,000 and \$2,500 respectively and security deposits of \$24,000 in respect of the first lease and \$5,000 in respect of the other lease were paid to the Defendant upon entering the agreement.

[7] The Claimant asserts that he advanced to the Defendant a further sum of \$31,500, being \$24,000 under the first lease, and \$7,500 under the second lease for renovations to the premises. This amount was credited towards rent, and the Claimant reduced its monthly rent payments by an agreed amount until the full \$31,500 was recovered.

[8] According to Hilkieh Lavinier, the passage of Hurricane Maria on 18th September 2017, damaged the premises, and the stock and property were destroyed and looted. On 19th September 2017, the day after the hurricane had passed; he went to the premises and noticed that the roof of the building, which was the restaurant, was blown off. He also noticed that the plywood sheets, which had been placed on the windows and front door of the premises before the Hurricane, were intact, and so were the burglar bars. He left without opening or entering any of the buildings.

[9] The Claimant emphasize that it intended to continue operations on the premises after repairs were made by the Defendant per the terms of the lease, and the electricity was connected and informed the Defendant of its intention to continue with the lease, but the Defendant failed to have the premises repaired.

[10] The Claimant maintains that the Defendant requested that it clear the building so that he could carry out repairs to the flooring, which had been discussed before the hurricane and through its Managing Director Decima Lavinier. She responded that clearing the building would be too costly and difficult, and suggested that the repairs be carried out by shifting items in the building around, and repairing in sections, but the Defendant did not give a decision to her proposal.

[11] Subsequently, by letter dated the 17th November 2017, the Defendant terminated the lease agreement with the Claimant, claiming that the Claimant was no longer interested in the lease. In the letter, the Defendant threatened to remove the Claimant's property himself if the Claimant failed to vacate the premises.

[12] The Claimant alleges that it suffered loss as a result of the Defendant's unlawful termination of the leases, namely, loss of bargain for the remainder of the term of the leases, being the difference between the agreed rate of rent and the market rate of rent for the demised premises. The Claimant asserts that the fair market value would have been the initial rent and approximately 5% increase cumulatively each year.

Defendant's Facts

[9] The Defendant admits to executing two unregistered lease agreements with the Claimant in respect of two adjoining buildings located on the Defendant's property on 14th October 2015 and 15th November 2015 for a term of ten years on both leases.

[10] The Defendant maintains that sometime before 18th September 2017, he secured the building by placing plywood sheets on the glass at the front of the building and the front showcase. On the 19th September 2017, he left his home in Bath Estate, went to the premises, and saw that the Supermarket was still secured, but the roof of the Restaurant was destroyed. He also noticed that the generator in the Supermarket kept the lights on.

[11] The Defendant asserts that the following day, a Director of the Claimant went to the premises, entered the supermarket, turned off the lights and left. The said property was left unattended and was subsequently looted and destroyed.

[12] Subsequent to this, the Claimant refused to pay rent and also refused to allow the Defendant to carry out repairs on the property. The Defendant claims that he approached the Managing Director, Decima Lavinier, and requested that she clear the premises so that he could carry out repairs, but she refused to do so and as a result, the Defendant was unable to repair the premises.

[13] The Defendant asserts that he went to the Claimant's business place in Canfield several times before December 2017 to inquire whether the Claimant was continuing business operation, and again, made requests to the Claimant to clear the building so that the Defendant could clear the building and have it available to the Claimant for rent. The Claimant refused to clear the building to allow repairs, and indicated to the Defendant it was not interested in continuing business there.

[14] Additionally, on 21st November 2017, the Defendant states that he requested in writing that the Claimant clear the premises. In response, the Claimant came to the premises to remove her belongings and in the process of removing their property, the Defendant alleges that the Claimant caused extensive damage to the property, incurring costs.

THE EVIDENCE:

Claimant's Evidence

[15] The Claimant called three witnesses; Decima Lavinier, Hilkiyah Lavinier, and Bernard Eusebe. Mrs. Lavinier's testified that she was interested in continuing to lease the premises and had informed the Defendant of this. She stated that operations could not resume due to the lack of electricity and the need for repairs to the premises after the hurricane. She accepted that the supermarket floor was in a state of disrepair, though this was not her principal concern.

[16] She testified that she removed fixtures and fittings which she had purchased, including cupboards, sinks and air-conditioning units. She admitted that rent was not paid for the

premises for October, November and December 2017. She said that the sum of \$31,500 advanced to the Defendant was used for repairs to the roof, washroom, flooring and painting of the premises. Her last discussion with the Defendant prior to receiving the letter of 17 November 2017 concerned repairing the building and restoring electricity.

[17] Mr. Hilkieh Lavinier testified that he was interested in continuing the tenancy, confirms that after the hurricane, the supermarket building remained intact, and secured, while the restaurant building lost its roof. He testified that he did not enter the buildings but turned off the generator located outside for safety reasons and to conserve fuel.

[18] Mr. Bernard Eusebe testified that he was hired to fill holes in the walls of the supermarket with cement where electrical lines had previously been installed. He stated that he filled the holes on the inside and outside walls of the building but did not carry out any work on the floor and was not engaged to paint the walls.

Defendant's Evidence

[19] The Defendant called three witnesses: Elvis Stevens, Ken Stevens, and Solange Francis. The Defendant, Mr. Elvis Stevens' evidence contained several inconsistencies but remained consistent that the supermarket was secured with plywood before the hurricane and attributed post-hurricane looting and damage to the neglect of the Claimant's directors. He maintained that the Claimant caused damage to the walls but repaired them poorly, yet, later stated that large holes remained in the building.

[20] In relation to the sum of \$31,500, he stated that the said sum was advanced but repaid through rent deductions. However, he later admitted that although it was advanced to him, he was unsure of its purpose. He also initially stated that Mrs. Lavinier was no longer interested in the premises, but under cross-examination accepted that she had not said so and that he had drawn that conclusion from her conduct.

[21] Ken Stevens' evidence was limited, with portions of his witness statement struck out as hearsay evidence. He testified that he assisted in securing the premises before the hurricane and that when he visited the premises the following day, he saw Mr. Lavinier but did not see him enter the supermarket.

[22] Ms. Solange Francis provided a witness summary and testified that she overheard conversations between the Defendant and the Claimant's directors and was aware of funds advanced by the Claimant to the Defendant.

Submissions

The Defendants Preliminary Objection

[23] Learned Counsel for the Defendant raised a preliminary objection on 29th January 2025 on the day of trial, objecting to the lease agreements, disclosed by both sides, on the grounds that the leases were not registered in accordance with the mandatory Registration and Records Act¹. Learned Counsel for the Defendant contends that the leases cannot be admitted into evidence to establish the facts of the said lease upon which the Claimant's claim is based and if the Court upholds the objection, then the Claimant's claim must fail and any other claim arising out of the unregistered lease agreements.

[24] Learned Counsel for the Claimant contends that the Defendant's stance flouts the well-established rule against approbating and reprobating. Given that, the Defendant, in his counterclaim, pleads and relies on the lease agreements and has in his List of Documents, disclosed the lease agreements and agreed to the document being admitted into evidence, by its inclusion in Appendix A of Trial Bundle No. 3. The logical consequence of the admission of the leases into evidence through the Defendant, simply renders the objection moot without further analysis as the Agreements are in evidence and must withdraw his counterclaim.

[25] The Honourable Court declined to determine the preliminary objection at trial but directed that the admissibility of these leases should be addressed in the closing submissions of the parties and it would rule in the course of this judgement.

[26] Having considered the submissions of both sides, the issue to determine at this point is whether the lease agreements are admissible in this suit.

[27] In resolving this issue, the Court must have regard to Sections 4 of the **Registration of Records Act (RRA)**² which provides as follows;

¹ Chapter 19:04 of the 2017 Consolidated Laws of Dominica

² Ibid 1

“4. No deed shall be received in evidence in any proceeding whatever, whether at law or equity in the State, unless the deed has been duly registered.

“Deed” in the Act is defined as including every document in writing relating to land

[28] The effect of Section 4 of the RRA is that any deed which is required by law to be registered, but which has not been registered, is inadmissible in evidence for the purposes of proving the contents of the lease agreements and the Claimant’s case.

[29] It is apparent from the foregoing provision that the leases in question fall under Section 4 of the RRA. It is noteworthy that the provision is mandatorily couched therefore precluding the Court from exercising any discretion, therefore preventing the Court from receiving the leases in evidence. The Claimant has in effect conceded to this provision. I say so because, the Claimant in suit **DOMHCV2025/0056** brought under Section 6 of the RRA with respect to the leases received an order of the Court dated 27th June 2025 as follows;

“The time within which to file the lease agreements between Minya’s Company Ltd and Elvis Stevens dated 14th day of October 2015 and 14th day of October 2015, be extended to the 7th day of July 2025 and that the copies of the said lease agreements be registered in the place of the originals, the originals being irretrievably lost.”

[30] The Claimant filed a notice of filing of the registered lease agreements on 11th July 2025 and the leases were duly registered on 4th July 2025 with the requisite stamp duty paid.

[31] What is of concern is that Learned Counsel for the Claimant at the time of trial did not apply to the Court for an Order to register the Lease Agreements out of time or inform the Court of such an intention or that the originals were irrevocably lost and only copies were in existence.

[32] Learned Counsel for the Claimant, in her submissions argued that it is not too late to have the agreements registered pursuant to the Registration and Records Act and stamped in

accordance with the **Stamp Act**³ since the case has not yet ended, as judgment has not been delivered yet. Further, that the Court has also not yet ruled on the objection and submits that the Court may accept the undertaking of Counsel to have the lease agreements duly stamped and registered and relies on **Musawi v RE International (UK) Ltd. and others**⁴ wherein the Court indicated at paragraph 5 that:

“The usual course adopted by the Court in relation to an unstamped document is to accept an undertaking from the solicitors for the party wishing to put it in evidence to submit it for adjudication and to pay the duty and any interest and penalty found to be due”.

[33] Learned Counsel for the Claimant further submits that there is no reason why the same would not also likewise apply to registration under the Registration and Records Act and undertake to have the lease agreements duly stamped and registered, with urgency, so as to be properly admitted into evidence.

[34] Learned Counsel's argument is flawed in that registration gives a lease legal effect from the date of registration, not retroactively for litigation purposes. While registration perfects legal title going forward, it does not alter the evidential position that existed during the trial. The Court assesses the parties' rights as they stood at the time of the dispute and trial, not as subsequently perfected.

[35] This principle was confirmed In **Soumitra Sengupta v Woods Development Limited**⁵, in which Gordon JA stated the following:

“Let it be said at first that the law is clear that even where parties choose not to take the point of the inadmissibility of an unstamped document that requires stamping, there is a duty on the Court not to admit such a document. Undoubtedly, the thinking behind such a rule is that the Court should not lend itself to be a part of an action that is a fraud on the revenue of the State.”

[36] The learning in the *Soumitra* case was also applied in the Antigua and Barbuda case of King's **Casino Limited v Pizza House Limited**⁶. Where it was held that the Trial Judge

³ Chap. 68:01 Revised Laws of Dominica

⁴ [2007] EWHC 2981 (Ch),

⁵ [2004] Civil Appeal No. 20 of 2003 (Antigua and Barbuda)

⁶ Civil Appeal No. 5 of 2005, [(Antigua and Barbuda)

erred in receiving the unregistered and unstamped lease into evidence and in allowing the respondent to place any reliance on it. Further, that it was not permissible for the Judge to admit into evidence a document that failed to comply with the legal requirements as to form, that was not registered, and that was not stamped.

[37] The Court is guided by the principles enunciated above and will hold that the lease agreements are inadmissible and the preliminary objection of the Defendant is upheld.

The Issues

[38] The issues to be determined in this matter, are as follows: -

- (i) Whether the cause of action should be struck out because the Claimant's had failed to register the leases
- (ii) Whether the Defendant was entitled to terminate the lease agreements
- (iii) Whether the Defendant is liable to the Claimant for the return of the security deposits and for damages for unlawful termination of the leases.

AND on the counterclaim:

- (i) Whether rent is due and payable by the Claimant to the Defendant for the period October, 2017 to December, 2017
- (ii) Whether the Claimant damaged the demised premises upon its departure and if so, to what extent, and what the Defendant entitled to as a result

Whether the cause of action should be struck out because the Claimant's had failed to register the leases

[39] Having held earlier that the leases do not comply with the necessary statutory formalities and are inadmissible, I now turn to determine whether the cause of action must fail because the leases are void being the subject matter of this suit.

[40] In **Villas At Del Rio Limited and Steve Blair v Alexandra Hauptli and Dave Hauptli**⁷ the Court had to determine whether the cause of action should be struck out because the parties had failed to register a seven (7) year lease over registered land. The central issue was the legal effect of such failure, namely; whether the purported lease was complete or

⁷ Belize Civil Case No. 545 of 2013 (unreported) delivered on 19th June 2014

merely legally invalid and ineffectual so that, in law, it was to be treated as not having existed. In resolving this issue, the Court held that: -

“ It is trite law that a lease can be created without any formality (orally or in writing) where, inter alia, exclusive possession is granted of land and rent is paid for the use and occupation of such land, and there exists other badges and incidences of a lease, and a periodic tenancy may be thereby created”.

[41] Furthermore, the position of leases at common law and in equity is conveniently summarized in *Hill and Redman's Law of Landlord and Tenant*, which states that;

“A lease that fails to conform to the statutory formalities nevertheless takes effect as an agreement for a lease, which, if specifically enforceable, will be effective as between the parties. Such an informal lease is known as an ‘equitable lease’.”

[42] The relationship between an agreement for a lease in equity and a yearly tenancy at law is well illustrated by the leading case of **Walsh v Lonsdale** which established that an agreement for a lease is as good as a formal lease in equity, adhering to the maxim "equity looks on that as done which ought to be done." A tenant holding under an agreement for a lease, where specific performance is available, is in the same position as if a legal lease had been executed. Thus, parties under an agreement for lease which is one of which specific performance will be granted are, for most but not all purposes, in the same legal position as regards each other and as regard third parties as if the lease had been granted. Consequently, the lessor is entitled to distrain, and the lessee, on the other hand, is entitled to hold for the agreed term. When the equitable doctrine applies the relation between the parties is sometimes described as being an equitable lease.

[43] In applying the foregoing principle to this case instant, although the lease agreements were not registered in accordance with the relevant statutory provisions which therefore rendered it inadmissible as legal leases. The foregoing authorities make it clear, that while the Claimant cannot rely on the actual lease agreement, the Court must consider whether there is other evidence, which may support the conclusion that there was a contract between the Parties.

[44] The evidence establishes that the Claimant was the tenant of the Defendant, having entered into two lease agreements. The monthly rents were \$12,000.00 for the

supermarket and \$2,500.00 for the restaurant and the Claimant duly paid its rent each month from date of entry into the premises⁸, which said rent was accepted. The Court is therefore satisfied that a tenancy relationship existed between the parties notwithstanding the absence of registration. The rights and obligations of the parties fall to be determined on that basis.

[45] It is well established in **Martin v Smith**⁹ that;

“If the intended tenant goes into possession with the landlord’s consent a tenancy at will arises, and if the tenant then pays rent, which is accepted, he becomes a yearly or other periodic tenant depending on the period with reference to which rent is paid.”

[46] Moreover, Halsbury laws of England¹⁰ further state that;

“A contract of tenancy may be created orally by any words which express the intention of entering into legal relations and which grant exclusive possession for a fixed or periodic term ~~Alington v Booth (1856) 3 Jur NS 50.~~”

[47] Having regard to the foregoing, the Court is of the firm view that the parties even without the lease have created a periodic tenancy from month to month and a valid contract therefore exists. In saying this, the cause of action survives and the Court must now consider the substantive issues in dispute. These are whether the Defendant lawfully terminated the tenancy and whether the Defendant was entitled to retain the Claimant’s deposit following termination.

Whether the Defendant was entitled to terminate the lease agreements

[48] The Defendant testified that he terminated the tenancy because, in October and November 2017, he made several visits to the Claimant’s location in Canfield, seeking confirmation as to whether the Claimant intended to continue operating the business. The Defendant

⁸ Trial Bundle 2. Witness statement paragraphs 5-10 witness statement of Decima Lavinier

⁹ (1874) LR 9 Ex 50

¹⁰ Landlord and Tenant (Volume 62 (2022), paras 1-595; Volume 63 (2022))

further testified that he requested the Claimant to clear the contents of buildings “A” and “B” in order to facilitate repairs, after which the premises would be made available for the Claimant to resume occupation. The Claimant’s directors, however, refused to comply.

[49] The Defendant also asserted that the Claimant’s directors refused to recommence operation of the supermarket after the hurricane, notwithstanding that the supermarket itself was not damaged. In summary, the Defendant’s evidence is that the Claimants ceased paying rent, which he believed was an indication that they were no longer interested in continuing the business. He further stated that the Claimants would not permit him to repair the floor damage that existed prior to the hurricane, contending that it was too costly to remove their equipment from the building. The Defendant testified that he said to Mrs. Lavernier, “You are not paying rent and you still do not want to clear the building for me to repair the floor.”¹¹ He further stated that Mrs. Lavernier advised him to make a claim on his insurance for rent. Thereafter, he consulted his attorney, who caused a letter to be sent to the Claimant in November 2017, following which the Defendant left the island in December 2017.

[50] The Claimant’s directors, for their part, testified that they intended to continue with the tenancy, but that the Defendant failed to finalise arrangements to repair the premises, which they contended was his obligation. They stated that they were in discussions with the Defendant concerning the necessary repairs and acknowledged that he had requested them to remove their belongings from the building even before the hurricane in order for the flooring repairs previously discussed to be executed. Mrs. Lavernier admitted that clearing their belongings would have been at their own expense and would have been an extremely difficult and costly exercise. She further stated that the repairs could have been properly undertaken by shifting items within the building and carrying out the work in sections.

[51] Mrs. Lavinier confirms that their suggestion to repair the floor was less costly and that she had informed the Defendant that they were not willing to bear the expense of clearing the building. She claims that she believed that they were still in discussions about the

¹¹ Defendant’s witness statement. page 21 Trial Bundle 2

arrangements for repair; but instead, they received a letter from the Defendant's lawyer terminating the tenancy on 21st November, 2017.¹²

[52] This brings me to the central question, whether the Defendant's termination of the tenancy was lawful. I have already found that the relationship between the parties had evolved into a monthly periodic tenancy. It is trite law that such a tenancy may be terminated by either party only upon the giving of proper notice corresponding to the period of the tenancy. This principle was affirmed in ***Maconochie Bros Ltd v Brand***¹³ and more in ***Harler v Calder***¹⁴ where the Court of Appeal confirmed that a periodic tenancy arises by conduct and endures until lawfully terminated by appropriate notice.

[53] In ***Harler v Calder*** the Court further held that the determination of a monthly tenancy requires **"not less than one month's prior written notice in accordance with statutory requirements; no other formality is required."** In the case of ***Queen's Club Garden Estates Ltd v Bignell***¹⁵, Lush J observed that; **"in any periodic tenancy whether yearly, quarterly, monthly, or weekly, the notice to quit must expire at the end of the current period."**

[54] The law is clear that the Defendant was obligated to give the Claimant only one-month notice. The issue is whether the Defendant complied with this requirement. The Defendant caused his solicitors to issue a letter of termination of the tenancy dated 21st November 2021¹⁶ directing that the Claimant vacate the premises by 24th November 2021. If this is the case, the Defendant had unlawfully terminated the tenancy but the story does not end there. By a letter¹⁷ dated 23rd November 2017, the Claimants requested that the notice period be extended to six weeks to allow them sufficient time to safely move their goods from the premises. This request was granted, by a letter dated 11th January 2018, the Defendant was informed by the Claimant's attorneys that the keys had been returned on 31st December 2017. It is therefore fair to conclude that the Defendant's initial unlawful termination was effectively remedied by the extension, and the Claimant received approximately two months' notice instead of the one month required by law.

¹² Page 6, Trial Bundle 2. Witness statement of Decima Lavinier

¹³ [1946] 2 All ER 778

¹⁴ (1988) 21 HLR 214

¹⁵ [1924] 1 KB 117

¹⁶ Exhibit No. 1, Trial Bundle No. 3, Page 15.-letter of termination from Dyer & Dyer Solicitors dated 21st November 2017

¹⁷ Exhibit No. 2, Trial Bundle No. 3, Page 15.-letter of termination from Harris Harris & Didier Attorney at law dated 23rd November 2017

[55] It is also relevant at this point to consider the Claimant's conduct after Hurricane Maria. While it is undisputed that the hurricane struck in September 2017, causing widespread damage and an island-wide loss of electricity, the Claimant's subsequent failure to pay rent for October, November, and December cannot be overlooked. They contended that the Defendant was responsible for restoring electricity and repairing the premises; however, the non-payment of rent constitutes a separate issue that must be carefully considered in assessing the parties' respective rights and obligations.

[56] According to *Halsbury's Laws of England*, a tenant in principle remains liable to pay rent even where the premises have become unusable, unless the lease contains a rent suspension clause in the event of damage or destruction. This approach was affirmed in **Bank of New York Mellon (International) Ltd v Cine-UK Ltd and other**¹⁸, where landlords sought summary judgment for rent due under commercial leases during the COVID-19 pandemic and the associated statutory restrictions. The tenants argued that enforced closures prevented them from trading. The Court granted summary judgment to the landlords, holding that tenants remained liable for rent, VAT and contractual interest. The Court held that:-

"In times of uncertainty the law must provide a solid practical and predictable foundation for the resolution of disputes... Contractual rights are to be evaluated by applying settled principles to the contract in question. Legal certainty remains paramount."

[55] Similarly, in **Matthey v Curling**¹⁹ it was held that, in the absence of an express stipulation, destruction of the premises by fire does not necessarily suspend a tenant's liability to pay rent. For this reason, commercial leases commonly include an express clause providing for the suspension of rent in such circumstances.

[56] No such express stipulation exists in this case, and I accordingly find that the Claimant's obligation to pay rent was not suspended for the supermarket. The evidence establishes that the hurricane did not destroy the supermarket, which remained structurally intact. Any further damage resulted from the aftermath of the hurricane, particularly to the floors. In any event, the

¹⁸[2021] EWHC 1013 (QB)

¹⁹ [1922] 2 AC 180

damage was not substantial. The floors were defective prior to the hurricane, and what was required was the removal of mud and cleaning. The evidence discloses no deterioration to the premises such as would engage the Defendant's repairing obligations. Notwithstanding this, the Defendant nevertheless attempted to carry out repairs to the supermarket, but those efforts were frustrated by the Claimant's refusal to remove their equipment so as to permit the works to be undertaken. The Claimant made the continuation of their business conditional upon the restoration of electricity and the repair of the floors, yet they declined to relocate their equipment to facilitate the works, contending that such relocation would be an expensive exercise. I therefore consider whether it was within the Defendant's control to restore electricity to the premises, and I find that it was not.

[57] By contrast, the position in respect of premises B, being the restaurant, is materially different. The evidence establishes that the restaurant sustained substantial damage as a result of the hurricane, in that the roof was blown off. Under the terms of the lease, responsibility for repairs lay with the Defendant, pursuant to the repairing covenant, save for covenants relating to fitness for habitation. The loss of the roof clearly constituted deterioration of the demised premises and accordingly triggered the Defendant's duty to repair.

[58] In **Holding Management Investment Ltd v Property Holding and Investment Trust Plc**²⁰, it was held that a duty to repair arises where the condition of the demised premises has deteriorated, and that its scope depends upon the covenant, the condition of the premises at the date of demise, the nature of the defect, and the cost of repair.

[59] This approach is consistent with Bahamian authority, in **Milo Butler and Sons Investment Co Ltd v Monarch Investments Ltd**²¹, which held that a tenant was not liable for rent equivalent to the cost of necessary repairs where the landlord had failed to discharge his repairing covenant. In the present case, the hurricane damage to the restaurant clearly engaged the Defendant's repairing obligations, and his failure to repair cannot found a claim for rent to the extent that non-payment reflected the cost of essential remedial works.

²⁰ [1990] 1 All E.R. 938,945

²¹ (1998), Supreme Court, The Bahamas, No 10 of 1989 (unreported) [Carilaw BS 1998 SC 115]

[60] Accordingly, I conclude that the Defendant was entitled to terminate the tenancy. The termination was based on the Claimant's failure to pay rent and their refusal to remove their equipment to permit repairs. Their explanation that they were awaiting repairs by the Defendant and the restoration of electricity is unpersuasive. In the aftermath of a natural disaster, the restoration of electricity was not within the Defendant's control and could not reasonably have been achieved by him.

[61] Moreover, Section 13 of the **Tenancies and Rent Control Act**²² provides that **"a tenant of any premises shall be entitled to have electricity supplied to himself directly without the consent of the landlord, who shall not hinder any such undertaking by the tenant."** It was therefore open to the Claimant to take steps to secure an independent electricity supply, and the failure to do so cannot reasonably be attributed to the Defendant.

[62] The resultant effect is that the Claimant's failure to pay rent and their refusal to remove their equipment so as to permit repairs amounted to a refusal to perform their contractual obligations and therefore constituted repudiatory conduct²³. To repudiate is, in ordinary usage, to refuse to discharge or acknowledge a debt or other obligation. The Defendant was entitled to accept that repudiation and to treat the tenancy as terminated. The termination of the tenancy was accordingly lawful and justified.

Whether the Defendant is liable to the Claimant for the return of the security deposits

[63] The next issue for determination is whether the Defendant is liable to the Claimant for the return of the security deposits. It is settled that a tenant is frequently obliged to pay a deposit to be held for the duration of the lease as security against the non-payment of rent and other breaches of obligation by the tenant²⁴. In this case, documentary proof establishes that the Defendant received security deposits totalling \$29,000 and the Defendant had admitted in his

²² Chap 54:72 of the Laws of Dominica

²³ *Duppa v Mayo* (1668) 1 Wms Sound 282, 287

²⁴ *Encyclopaedia of Forms and Precedents LANDLORD AND TENANT (RESIDENTIAL TENANCIES)* vol 23(1)

witness statement that he received the deposit. What is therefore in issue is whether he has a right to withhold the return of the deposits as he claims in his defence and counterclaim.

[64] It is settled that such deposits are ordinarily held as security for the due performance of the tenant's obligations under the lease, including the payment of rent and compliance with covenants. In light of my earlier finding that the Claimant repudiated the leases by failing to pay rent; by refusing to remove their equipment to permit repairs; and that the Defendant was entitled to accept that repudiation and terminate the leases, which was lawful. Therefore, based on my findings and the fact that the Claimant has failed to pay rent for a period of three months, it follows therefore that in those circumstances, the Defendant was entitled to apply the security deposits towards the arrears of rent.

[65] The Claimant have failed to establish any entitlement to the return of the security deposits. The rent properly due was three months' rent in respect of the supermarket only, at \$12,000.00 per month, amounting to a total of \$36,000.00. I confine this finding to the supermarket because the evidence establishes that the roof of the restaurant was damaged by the hurricane and against that background, a landlord is not in breach of an obligation to repair premises in the possession of a tenant unless and until the landlord has notice of the want of repair. See **Makin v Watkinson**²⁵. The obligation to repair arises whenever the landlord has knowledge of defects amounting to disrepair, whether or not that knowledge is communicated by the tenant. In the present case, the evidence shows that the Defendant became aware of the damage to the roof of the restaurant immediately after the hurricane and had an obligation to repair the roof. The Defendant's failure to repair the roof made the premises uninhabitable and as such rent was not due.

[66] In view of the foregoing, I find that the Claimant's claim for damages for unlawful termination and for the return of the security deposits is accordingly dismissed. The Claimant is not entitled to damages for unlawful termination of the leases and the Counterclaim of the defendant with regards to the recovery of the rent due succeeds.

²⁵ (1870) LR 6 Exch 25

The Counterclaim

Whether the Claimant damaged the demised premises upon its departure and if so, to what extent, and what is the Defendant entitled to as a result

- [67] By way of Counterclaim, the Defendant asserts that the Claimant is in breach of the oral agreement made between October to December 2015, whereby the Claimant agreed to and advanced to the Defendant the total sum of EC \$31,500.00 so that the Defendant could carry out renovations and improvements to the demised premises.
- [68] The Defendant also asserts that it was further agreed that the Defendant would repay the said sum of EC \$31,500.00, after the said renovations and improvements were completed. Such renovations and improvements included building of kitchen counters and cupboards. The Defendant claims that he repaid to the Claimant the said EC \$31,500.00 as agreed, as it was a term of the said agreement that the renovations and improvements paid for by the Defendant would be the property of the Defendant. Further, it was agreed that any damage caused to the demised premises by the Claimant would be the responsibility of the Claimant and argues that the Claimant is not entitled to the security deposit as its director destroyed all the kitchen cupboards and counter sink, electricals and all the work that was done which the Claimant was paid for.
- [69] The Claimant denies the assertions of the Defendant, and states that its directors erected the kitchen cupboards, and counters when they took possession of the demised premises at their own expense and used their own contractors. Mrs. Lavinier testified that the cupboards and counters were not a part of the premises and did not belong to the Claimant. She also testifies that the advance payment was used towards building the roof as they had to construct the roof from scratch, washroom, the flooring, the tiling and to paint the building. Under cross-examination she maintains that the bar counter was not a permanent structure and it was constructed by her brother whom she provided the design to.
- [70] The Defendant testified that the sum of \$31,500.00 was paid to the Claimant's brother to carry out repairs to the restaurant and that he did not himself receive the money. However, under cross-examination, he admitted that the advance was paid to him by cheque. This is

corroborated by Exhibits 6, 7, and 8 at pages 22 to 25 of Trial Bundle No. 3, which are National Bank of Dominica cheques made payable to the Defendant. On a balance of probabilities, I find the Claimant's account in relation to the \$31,500.00 to be the more plausible. I further accept Mrs. Lavinier's evidence that she contracted her brother to install the kitchen cabinets. Accordingly, those works did not form part of the renovations as alleged by the Defendant.

[71] According to **Hill and Redman's Law of Landlord and Tenant** ²⁶; The principle, therefore, is that: -

“Where an article, such as machinery, has been attached to the demised premises by the lessee so as to become a fixture for the purpose of trade and it is a chattel perfect in itself; independently of its union with the soil and can be removed without being entirely demolished or losing its essential character or value, the lessee is entitled, in the absence of agreement to the contrary, to sever it from the premises and to remove it.”

[72] It has long been established in **Pro-Jam Ltd v Gibraltar Trust Ltd** ²⁷, Chester Orr J held that as an exception to this rule, a tenant is entitled to remove any trade, ornamental or domestic fixtures attached by him; these are classified as 'tenant's fixtures. Trade fixtures are those items that have been affixed for the purpose of carrying on a particular trade, for example air conditioning units, mirrors, kitchen stoves and window blinds.

[73] The principle laid in **Pugh v Arton**²⁸, is that the tenant had a right to remove the fixtures, which he placed on the premises, but that right of removal only continues during the term of the tenancy, and if he does not remove them during his tenancy his right ceases. In applying these principles to the present case, the items installed by the Claimant, including refrigeration equipment, shelving, counters and other business fittings, were affixed for the purpose of carrying on their supermarket and restaurant business. They therefore fall within the category of trade fixtures, which the Claimant was entitled at common law to remove them, provided that such removal took place during the subsistence of the tenancy and without causing substantial damage to the premises.

[74] The evidence herein establishes that the tenancy continued until December 2017 when the Claimant removed its fixtures and equipment from the premises. The removal was therefore

²⁶ Page 1025

²⁷ Supreme Court Jamaica (1997) 34 JLR 65,

²⁸ PUGH v. ARTON. (1869) L.R. 8 Eq. 626

effected during the term of the tenancy and within the period permitted by law. In these circumstances, the Claimant did not lose its right of removal.

[75] I therefore find that the fixtures removed by the Claimant were lawfully removed as tenant's fixtures and did not become part of the realty vesting in the Defendant. However, the authorities have held that the right of removal was subject to an obligation not to cause substantial damage to the premises. The Claimant would therefore be liable in the event that any damage was occasioned by the removal of the fixtures.

[76] The Defendant asserts that the Claimant damaged the walls of the supermarket, by leaving big holes in the wall, which was repaired by rough workmanship. He states that after he returned to Dominica and carried out repairs to tidy up and fix that damage, the total cost incurred was \$5,000.00.

[77] Decima Lavinier testifies that she removed everything on the premises that she paid for, such as the cupboards, kitchen counters, face basin, and bath and the stainless sinks, she brought in from the USA. Under cross-examination, she admits that she dug the walls to remove the pipes that were attached to the fridge and other equipment but contracted a contractor who cemented the holes and believed that he did a neat job

[78] The Claimant's witness Bernard Eusebe testified that he found holes in the walls of the supermarket caused by the Claimant and he used three bags of cement to repair the holes but admits that it was not painted, as that was the job of the painter. Under cross-examination, he states that he blocked holes on the wall and the floor, effectively saying, "Wherever there was lines running, pipelines and waterlines and so on, that's what I used the cement for". He concludes that it was not rough work, he covered the walls to look like the rest of the walls but did not paint it as that was not in his job description

[79] The Defendant testifies that he found the works of Mr. Eusebe to be very unprofessional and stated that the holes where the air conditioning were are still on the outside of the building. The repair also remained unpainted. Again, on the balance of probabilities, I find that in the course of removing their fixtures and equipment, the Claimant caused damage to the premises beyond

fair wear and tear. The Defendant is therefore entitled in principle to recover damages for breach of the Claimant's repairing and yielding-up obligations under the tenancy.

[80] The object of damages in such a case is to place the landlord, so far as money can do so, in the position he would have been in had the tenant complied with his obligations. In **Joyner v Weeks**²⁹ the proper measure of damages is the reasonable cost of putting the premises into the condition in which they ought to have been left.

[81] The appropriate measure of damages is therefore the reasonable cost of repairing the damage caused by the removal of the fixtures and equipment, limited to restoring the premises to their former condition and excluding any element of improvement or betterment. The burden lies on the Defendant to prove both the existence of the damage and the reasonable cost of repair. According to the holding in **Perestrello e Companhia Limitada v United Paint Co Ltd**³⁰ "**such damages constitute special damages and must be specifically pleaded and strictly proved. Special damages are no more than an example of damage which is special in the sense that fairness to the Defendant requires that it be pleaded**".

[82] In the present case, the Defendant's counterclaim merely lists the replacement costs of the kitchen counter and cupboards as \$14,000, without producing any receipts or supporting evidence. The authorities are clear that where special damages are pleaded, it should be made clear what type of damage is alleged; what knowledge the Defendant possessed at the time when the contract was made which placed that type of damage within the reasonable contemplation of the Defendant; how the Defendant is alleged to have possessed that knowledge at that time and how the special damages claimed are calculated. According to **Halsbury's Laws of England on DAMAGES**, the Claimant must plead and particularise any item of damage, which represents 'out-of-pocket' expenses, or loss of earnings incurred prior to the trial, and which is capable of being substantially calculated to an exact figure.

[83] In the absence of pleaded particulars of the cost of repairs, supported by invoices, estimates, or expert evidence, the Court is unable to assess the quantum of the Defendant's loss. Although

²⁹ [1891] 2 QB 31

³⁰ [1969] 1 WLR 570

I find that the Claimant caused damage to the premises, the Defendant has failed to discharge the burden of proof as to the amount required to remedy that damage. At common law, the measure of damages is the sum necessary to put the premises in the state of repair in which the tenant ought, under the covenant, to have left them.

[84] It follows that the Defendant is not entitled to recover special damages for the cost of repairs in the absence of proper pleading and proof. At most, the Defendant would be entitled to nominal damages. I find that an award of nominal damages is appropriate in this matter. It is trite law that a court may award nominal damages where a claimant has suffered a wrong actionable per se but has not proved any actual loss. In such cases, nominal damages are granted not because the wrong caused no damage, but because the claimant has failed to provide adequate proof of its extent.

[85] In the final analysis therefore, I find as follows:

- [1] The Claimant's claim for damages for unlawful termination of the tenancy and for the return of the security deposits is dismissed.
- [2] The Defendant's counterclaim succeeds in part.
- [3] I find that three months' rent was due in respect of the supermarket. The amount payable by the Claimant is to be offset against the rental security deposit, leaving a balance of \$7,000.00 owing to the Defendant.
- [4] I also find that no rent was due in respect of the restaurant at the relevant time.
- [5] The Defendant's claim for special damages fails for non-particularisation.
- [6] The Claimant shall pay nominal damages in the sum of \$3,000.00 to the Defendant.

[7] The Claimant shall pay the costs of the action to the Defendant, to be taxed if not agreed within 21 days from today. In respect of the Defendant's counterclaim, each party shall bear its own costs.

[8] Statutory interest of 5% on the judgement sum from date of judgement to date of payment.

The Court renders its apologies for the delay in delivering this judgement.

Justice Zainab Jawara-Alami
High Court Judge

BY THE COURT

REGISTRAR