**IN THE SUPREME COURT OF THE TURKS AND CAICOS ISLANDS** **ACTION NO. CL 66/16**

**BETWEEN:**

**(1) CARMEN LUCILLE LIGHTBOURN** **PLAINTIFFS**

**(2) SANDRA LIGHTBOURN**

**(3) SAMUEL LIGHTBOURN Jr.**

**-and-**

**DELANO GARDINER** **DEFENDANT**

| | |
|---|---|
| **Before:** | **The Hon. Mr Justice Anthony S. Gruchot** |
| **Appearances:** | **Mr Wendall Swann for the Plaintiffs** |
| | **Mr T Chal Misick for the Defendant** |
| **Hearing Date:** | **18th June and 17th July 2024** |
| **Venue:** | **Court 5, Graceway Plaza, Providenciales.** |

---

**JUDGMENT**

---

1. In May 2011, the Defendant entered into occupation of a single retail unit in a property known as Lucille Lightbourn's Plaza, Downtown, Providenciales, Turks and Caicos Islands ('the Unit'). Title to the property is registered under parcel 60602/22 in the sole name of Carmen Lucille Lightbourn ('Lucille') who is the mother of the 2nd and 3rd Plaintiffs. The property comprises of a number of retail/commercial units.

2. All 3 Plaintiffs gave evidence of an informal agreement whereby various parts of the property have been 'assigned or gifted' to different family members by Lucille. The Plaintiffs say the Unit was gifted to Samuel Lightbourn Jr. the 3rd Plaintiff ('Samuel'). There is no legal paperwork to record the gift but between the Plaintiffs there is no dispute as to this state of affairs. Samuel's evidence, that he had operated an electronics shop from the unit for some 20+ years before deciding to relocate to Miami, Florida in 2011, was not disputed.

3. The Defendant took possession of the Unit on 1 May 2011 and vacated sometime between April and mid-June 2016. None of the witnesses could give any more accurate date. Mr Swann submitted that the Defendant vacated in June 2016, Mr Misick in April 2016. The Defendant says either May or June 2016.

4. The Plaintiffs claim that the Defendant was consistently late in paying rent albeit there is no claim for unpaid rent save for a disputed increase upon which this claim is based.

5. Proceedings were initially commenced by Samuel in his sole name by way of writ issued on 14 April 2016 at which time the Defendant was still in occupation of the Unit. The relief sought under that writ was *inter alia*:

    (1) Possession;

    (2) $30,000.00, arrears of rent;

    (3) $6,300.00 interest on arrears of rent;

    (4) An injunction ordering that the Defendant immediately vacates and thereafter restraining the Defendant whether by himself, his servants, or agents or otherwise howsoever, from entering or using the demise premises without the written consent of the Plaintiff;

    (5) Mesne profits at the rate of $3,500.00 per month or pro-rated from the date of the service of the Writ herein until possession is delivered up;

6. The issues of the injunction and the claim for mesne profits are now academic given that the Defendant vacated the Unit very shortly after the claim was filed, rent (save for that

disputed in the action) being accepted to the date of giving up possession.

7. This claim is predicated on the terms of a formal lease prepared by Sandra Lightbourn, the Second Plaintiff ('Sandra'), which she says she obtained from an attorney and amended to fit the required need and to reflect oral terms agreed between Samuel and the Defendant ('the Lease'). Samuel asserts that at all material times, Lucille and Sandra were acting as his agents. This is denied by the Defendant who says that he negotiated the lease terms with Sandra[1] and did not communicate with Samuel until approximately 1 year into his occupation[2].

8. This is disputed by all the Plaintiffs who say that Samuel negotiated the lease terms with the Defendant and then left the Turks and Caicos Islands. As he was not on Island, he asked Sandra to draw up the Lease reflecting the terms they had agreed and asked her to (initially) collect rents on his behalf[3]. The Plaintiffs all say that Samuel took over the collection of the rent in 2011/12 and Sandra states that the Defendant "*paid late and chasing him for the rent grew to be too much of a burden for me. So, my brother then had to collect the rent*…" however, in her oral evidence she said that Samuel took over dealing with the Defendant in 2015, but she could not be sure[4].

9. In his first affidavit sworn in support of a summons for an injunction filed on 25 April 2016 Samuel states:

> *"Sometime on or about May 1, 2011, I entered into an agreement with the Defendant through my agents, Carmen Lucille &/or Sandra Lightbourne to lease the Property to the Defendant for an initial period of 2 years.*
>
> *The Defendant duly executed the said agreement, thereby agreeing to its terms. I refer to* ***pages 1 to 6*** *being a copy of the said agreement."* (Emphasis in original)

10. Samuel asserts in his second affidavit, filed in response to an application to strike out the

[1] See paras. 13 to 15 *infra*.
[2] See para. 29 *infra*.
[3] But see para. 48 *infra*.
[4] See also para. 13 *infra*.

claim, that:

> *"Sometime after the defendant was in occupation, and I was resident in Miami, a lease document was drawn up and signed by my mother and my sister, based on what I had told my sister was agreed with the defendant. It is this document to which the defendant now refers, to say that he has no contract with me."*

11. Sandra states in her affidavit filed in respect of the strike out application:

> *"We created the [L]ease with Delano based on the terms he had agreed with Sam. We did not negotiate with him over the terms of the Lease. The Lease exhibited the defendant's affidavit reflects what the defendant negotiated with Sam."*

12. Lucille, in her witness statement says:

> *"Sometime in the early 2011, Sam relocated to Miami, and rented his space to the defendant.*
>
> *They agreed on the terms, and Sam subsequently asked me to sign a lease, that there would be a written record of the arrangements between them. The lease was duly drawn up and signed by the defendant.*
>
> *I played no part in negotiating the terms with the defendant. In fact, I do not recall ever having any discussion with the defendant regarding rent, or the space. Neither do I recall collecting any rent from him."*

13. The Defendant's primary point was that he never contracted with or even spoke to Samuel when the terms of the Lease were being negotiated and that at all material times, he dealt with Sandra. His evidence was that he negotiated the Lease terms with and paid rent to Sandra (or possibly on occasions to Lucille) for the first 8 months to a year until Sandra asked him to make payments directly into Samuel's bank account.

14. That was the basis of his application to strike out the claim i.e. that he never entered into any contract with Samuel.

15. In his affidavit filed in support of his application to strike out the claim the Defendant

stated that he was not aware of Samuel being the lessor or of Lucille and Sandra acting as his agent until this was pleaded in these proceedings.

16. An amended writ and statement of claim was filed on 22 October 2020. The document records that leave to amend was granted by Agyemang CJ on 20 October 2020. There is no application in the Court file for leave to amend and the writ and statement of claim were not only amended but the first and second Plaintiffs were added. There is no application on the Court file in that respect either. The minute of the hearing on 20 October 2020, which was in respect of the Defendant's application to strike out the claim, is signed by the Chief Justice and records the following:

> *"UPON THE COURT OBSERVING that the issue raised in Mr Misick's submissions may be cured by the Plaintiff adding Sandra Lightbourne and Carmen Lucille Lightbourne as Plaintiffs."*

17. No order was made at that time, the minute recording that the decision was reserved. I was not directed to any decision having been handed down. On 7 December 2021, Simons J dismissed the strike-out application (by consent) suggesting that no decision on the application before the Chief Justice had been handed down. He went on to give leave in the following terms:

> *"The plaintiff is granted leave to amend the writ and statement of claim, which amended writ and statement of claim have already been served on the defendant."*

18. It appears that the above has been taken by the parties as also granting leave to add the first and second Plaintiffs and the matter has proceeded accordingly. Additionally, Simons J gave leave to the Defendant to file an amended defence. An amended defence was included in the trial bundle purportedly in accordance with the leave granted. That amended defence was not dated or filed although the date section records 2021.

19. On 18 April 2023, the Registrar gave directions up to and including trial and ordered *inter alia*:

> *"2. Defendant to file and serve amended defence on plaintiffs' attorney on or before 9th May 2023.*

*3. Plaintiff to file and serve a reply to the amended defence on or before 12th May 2023."*

20. A further amended defence was included in the trial bundle. This again does not appear to have been filed and is not dated, but the date section records 2023. A reply to the amended defence was also included in the trial bundle dated 30 December 2021 yet references a re-amended defence. This appears to have been filed on 22 May 2023.

21. The amended writ claims *inter alia* the following relief:

    a) $28,000, being arrears of rent from 1st November 2011 to 30th June 2016;

    b) $14,138.68, being contractual interest on arrears or rent to 30th June 2016;

    c) Contractual interest on total sums due, from 1st July 2016 to the date the matter is resolved by the court.

**The Defendant's Defence**

22. In the original defence and carried through the amendments, the Defendant relied on the averment that he did not enter into any agreement with Samuel, but that he "*entered into a lease agreement with Carmen Lucille and/or Sandra Lightbourn as Lessor*".

23. Paragraph 2 of the original statement of claim pleads:

    *"The Defendant agreed to pay the Plaintiff [Samuel] a rent of $2,000 payable on the first business day of each month commencing on May 1st, 2011 for three months of the term and $2,500 thereafter."*

24. In response the Defendant concedes that the increase was a term of the agreement he entered into with Carmen Lucille and/or Sandra Lightbourn, but that the increase was waived by Sandra.

25. At paragraph 5 of the original statement of claim, it is pleaded that "*[T]he rent payable under the tenancy is $2,500*". In response the Defendant pleaded "*Paragraph 5 is denied; save that the Defendant was required to continue paying $2,000 per month pursuant to an oral agreement between the Lessor and the Defendant*."

26. In the amended statement of claim the pleading in paragraph 23 *supra* changed to:

> *"12. The third Plaintiff wanted to rent the space for $2,500/month, but conceded to the [D]efendant's plea to allow him to pay $2,000/month for 3 months, to allow the Defendant to have a bit more cash to put into the business. After the first three months of the term, the rent was to be $2,500/month for the following nine months, and $3,000/month after that.*
>
> *…*
>
> *18. The defendant failed to honour the agreement, and continued to pay $2,000 per month, despite that the agreement had subsequently been put in writing, and the increase in rent clearly stated.*
>
> *19. Upon the expiry of the two-year term stipulated in the written document, the [D]efendant held over for a further three years, still only paying $2,000/month, and still paying that inconsistently."*

27. In response the Defendant pleads in his amended defence:

> *"Paragraph[s] 18 & 19 [are] denied; save that the Defendant was required to continue paying US$2,000.00 per month pursuant to Lease Agreement between the Lessor and the Defendant and further agreed between Lucille Lightbourne/Sandra Lightbourn and the Defendant."*

28. In essence the Defendant avers that when the increase in rent fell due, he spoke to Sandra and he says it was agreed that the increase would not be applied due to a tough economic situation in the Turks and Caicos Islands.

29. In his witness statement the Defendant stated:

> *"In 2012 the TCI was still going through a recession and the economic situation was tough; it was during this time for the first time I received a call from Sam Lightbourn asking about increased rent payment. I advised him because of the economic situation and in discussion with Sandra Lightbourn i[t] was agreed that the rent will remain at US$2000.00 per month.*
>
> *…*
>
> *The next time I heard from Sam about the rent increase was in 2015; after being*

*in the unit the better part of four years he contacted me to say he wished to raise the rent, he came to the store and insisted if I could not pay an increase then I should leave the premises."*

30. He goes on:

*"On December 23rd, 2015, Samuel came by my store again and told me he wanted to raise the rent and said that he knew that I could not afford to pay the increase, so he is giving me 3 weeks to move out, after he spoke to me briefly, he gave me a termination of lease letter with his name on it."*

31. In her affidavit in opposition to the strike-out application Sandra makes no reference to any conversation where she agreed that the increase in rent would be waived. In her oral evidence under cross-examination, she stated that she did not serve any notice of rent increase. In response to the question "*You told him he could continue to pay $2,000.00?*" her response was "*He said he couldn't afford it and Sam took over*". Sandra agreed that rent of $2,000.00 had been accepted over a long period and in fact for the duration of the Defendant's occupation of the Unit. She went on to say again that there had been a conversation with the Defendant about an increase in rent, but he said he could not afford it and $2,000.00 was continued to be accepted.

32. In response to the question "*[D]id you say that he could just pay $2,000.00*", her response was "*No, I just accepted it*."

**Discussion**

33. The issue as to who is the correct plaintiff has to a great degree been dealt with by the addition of Lucille and Sandra as Plaintiffs. However, insofar as I have to make a determination, I prefer the evidence of the Plaintiffs. The Defendant was in email communication with Samuel from as early as January 2013, explaining his difficulties in making rent payments. Also, his attorney was in communication with Samuel regarding the termination of the Lease in 2016, prior to the claim being issued, in that correspondence Mr Misick states:

*"Our firm represents the above named individual relating to the lease of a*

*commercial space from you.*

*We have been instructed that you now seek to repossessed (sic) the premises and terminate the lease arrangement. We are further told that you have given our client less than the requisite notice to vacate the property and require it to be surrendered to you by the 12th January 2016.*

*We write for and on behalf of our client that you should reconsider your position and allow the required 90 days[‘] notice for our client to surrender the premises; this is the normal notice period when a commercial lease is being terminated…”*

34. There is no mention in the above or any subsequent correspondence that the Defendant did not know of Samuel’s purported interest in the Unit or that he was the *de facto* ‘landlord’. The first time the issue was raised was in the defence and the application to strike out the claim filed on 8 August 2018, over 2 years after the claim had been filed. I find that whilst the legal position is that the Unit is owned by Lucille, Samuel has an agreed beneficial interest in it and it is controlled by him. I find that the general terms of occupation were agreed by Samuel and the Defendant and a formal lease was drawn up based on those general terms, formally creating the leasehold interest. Adding the first Plaintiff cured any defect in the writ and statement of claim and the claim has proceeded accordingly.

35. As noted above, the claim is predicated on the terms of the Lease.

36. Both Sandra and Samuel confirmed in their oral evidence, that what was being claimed was an increase of $500.00 per month said to have been agreed to be applied after the first 6 months of the lease period i.e. from 1 November 2011 to April/June 2016 albeit the amended statement of claim pleads:

*“The third Plaintiff wanted to rent the space for $2,500/month, but conceded to the [D]efendant’s plea to allow him to pay $2,000/month for 3 months, to allow the Defendant to have a bit more cash to put into the business. After the first three months of the term, the rent was to be $2,500/month for the following nine months, and $3000/month after that.”*

37. In his closing submissions, Mr Swann attached a spreadsheet calculation which suggests that the alleged debt as of 1 June 2016 had increased (or had been recalculated) to be $19,000.00 plus $34,414.30 in interest making a total of $53,414.30, however, he submits in his narrative the following:

> *"The calculations are shown on the spreadsheet attached, which indicates that, pursuant to the purported lease, the debt has accumulated to $88,971.62 as at 30th June 2024. And the plaintiff seeks judgment in that amount."*

38. Notwithstanding the above, Mr Swann goes on to submit the following:

> *"By contrast, the defendant accepts that no notice was required for the extension of the purported lease, since clause 3.2 provides for it to be extended automatically, when no notice has been provided under that sub-clause. If the purported lease was automatically extended at the expiration of the first term in 2013, then, as a matter of common practice, the defendant must further accept that the rent would have also increased, and the plaintiff suggests that it is reasonable to expect that it would have increased by at least a further $500/month. The purported lease clearly indicates that the defendant contemplated this further increase in rent after just one year of his occupation. The plaintiffs see no reason for the agreement to be extended without an increase in rent. Therefore, the plaintiff asks the court to find that the rent would have increased from 1st May 2013 to $3000/month, having found that the purported lease was automatically extended pursuant to clause 3.2 thereof.*
>
> *The calculation of the additional sums shown on a separate spreadsheet[5], amounting to US$53,414.30 for a total judgment sum of overdue rent and accrued interest, of US$142,385.92.*

39. I do not propose to deal with Mr Swann's submissions[6] with regard to a further increase to $3,000.00 after the 1st year as this was not something that was explored at trial. It was accepted by the Plaintiffs that there had been no election by them to seek the increase to

[5] Not attached to the written submissions.
[6] At para. 38 *supra*.

$3,000.00 and Samuel gave oral evidence that he never exercised any such option. It is common ground that the Defendant has never paid $2,500.00 and I repeat that both Sandra and Samuel say that the claim that is advanced is just in relation to the purported rent increase to $2,500.00, i.e. an increase of $500.00 per month after month 6 and not month 3 as pleaded.

**The Lease Agreement**

40. Section 46 of the Registered Land Ordinance (Cap. 9.01) ('RLO') provides:

> **Registration of leases**
>
> 46. A lease for a specified period exceeding two years, or for the life of the lessor or of the lessee, or a lease which contains an option whereby the lessee may require the lessor to grant him a further term or terms which, together with the original term, exceed two years, shall be in the prescribed form, and shall be completed by—
>
> (a) opening a register in respect of the lease in the name of the lessee;
>
> (b) filing the lease; and
>
> (c) noting the lease in the incumbrances section of the register of the lessor's land or lease.

41. Both Mr Swann and Mr Misick in their closing written submissions have changed their position as to their pleaded and argued cases and on the basis that the Lease would be caught by, but did not comply with the above provisions.

42. S.46 RLO is subject to the provisions of section 14 of the Stamp Duty Ordinance (Cap. 19.05) ('SDO') which provides that:

> **Non-admissibility etc of instruments not duly stamped**
>
> 14. (1) No instrument chargeable with stamp duty **shall be received in evidence in any proceedings whatsoever except**—
>
> (a) criminal proceedings; or

(b) civil proceedings by the Collector to recover stamp duty or a penalty payable under this Ordinance, or be available for any other purpose whatsoever unless such instrument is duly stamped:

Provided that an instrument which is not duly stamped may be received in evidence in civil proceedings before a court if the court so orders upon the personal undertaking of an attorney to cause—

(i) such instrument to be stamped in respect of the stamp duty chargeable thereon; and

(ii) any penalty payable under section 8 in respect thereof to be paid.

(Emphasis added)

43. The above provisions were brought to the attention of the parties and counsel by the Court. Sandra and Samuel gave evidence that they had no knowledge of these provisions albeit, in her witness statement, Lucille states:

*"I am the registered proprietor of Parcel 60602/22 Norway and Five Cays, Providenciales, upon which the Lightbourn Family erected a building, known colloquially as Lucille Lightbourn's Plaza. The building is divided up to create spaces intended for the exclusive use and control of individual members of the Lightbourn Family.*

*Because of my status as* ***a registered proprietor of the property, I was required to execute all registerable instruments regarding the property****, and because I signed a lease document on behalf of my son, Sam, my name was added as a plaintiff in this matter, despite that the dispute only involves Sam and Mr Gardiner."* (Emphasis added)

44. The above suggests that despite her oral evidence, Lucille was aware of the requirement to register the Lease.

45. The statements of claim in each iteration rely upon the terms of the Lease and in essence seek to enforce those terms. Mr Swann, in his closing submissions, took a different direction in light of the observations made by the Court. In those submissions he relies on

what he submits was "*a verbal contract between the parties*". He submits that:

> *"… the Defendant rented the Third Plaintiff's property, and has failed, for a period of 5 years and 2 months of his occupation, to pay the rent agreed verbally, and/or stipulated in an attendant written document."*

46. The above submission is a marked change to the way the Plaintiffs' case has been pleaded and argued and he seeks to avoid the omission of registration and stamping of the Lease by describing it as 'an attendant written document'. He goes on:

> "*…that the [D]efendant rented the premises from the Third Plaintiff by verbal agreement.* ***The [D]efendant occupied the premises before a document was subsequently drawn up as evidence of the agreement between the Third Plaintiff and the [D]efendant*** *The [D]efendant brought this document to the court's attention by exhibiting it to his affidavit filed on the 8th August 2018[7], in support of his summons to strike out the original claim, and until the last hour of the trial, it was referred to as the lease.*" (Emphasis added)

47. That submission cannot be sustained. The original statement of claim filed on 12 April 2016 commences as follows:

> *"By a written agreement made on or about April 29, 2011, the Plaintiff through his agents let to the Defendant property owned by the Plaintiff all that part of the building known as Lucille Lightbourn's Plaza situated in [D]owntown Providenciales Turks and Caicos (sic) for an initial term of 2 years from May 1, 2011 to April 31, 2013."*

48. In the amended statement of claim it is pleaded that:

> *"Sometime after the [D]efendant was in occupancy, and as the third Plaintiff was resident in Miami, the third Plaintiff drew a Lease document to reflect the arrangement he had with the [D]efendant and requested the second [P]laintiff to have it executed.[8]*

[7] This is not correct. The lease was first filed in the action when it was exhibited to Samuel's affidavit in support of an application for an injunction, filed on 25 April 2016 albeit that copy was not signed.

[8] In his oral evidence Samuel said that he had asked Sandra to draw up the Lease, a statement with which Sandra agrees.

*The Lease document was executed by the parties, and backdated to include the entire period the [D]efendant would have been in occupation for the premises The Lease document was signed by the first and second Plaintiffs (the first [P]laintiff being the registered proprietor of the land upon which the building was erected), and the second [P]laintiff, like the third [P]laintiff, having unregistered interests in the property."*

49. The above is not supported by the evidence.

50. I find that the claim was based on the Lease and not on any verbal agreement. At trial, it was confirmed that the Defendant took occupation on 1 May 2011 after the Lease was signed. That finding is supported by Samuel who states in his first affidavit, sworn to support the application for an injunction/possession:

*"Sometime on or about May 1, 2011, I entered into an agreement with the Defendant through my agents, Carmen Lucille &/or Sandra Lightbourn to lease the Property to the Defendant for an initial period of 2 years.*

*The defendant duly executed the said agreement, thereby agreeing to its terms. I refer to* ***pages 1-6*** *being a copy of the said agreement."* (Emphasis in the original)

51. Further, in the amended statement of claim it is pleaded that:

*"The Plaintiff delivered the keys to the [D]efendant personally, and the [D]efendant took possession of the premises on 1st May 2011.*[9]

52. Mr Swann seeks to suggest in his closing submissions and contrary to the pleaded case that the Lease was not in the form described in the RLO and further that the identity of those signing was not verified in accordance with s.108 RLO. He does this to support his

[9] In his oral evidence, Samuel stated that he gave the Defendant the keys in April 2011 but also suggested that the Defendant had the keys since from the end of March but gave no explanation as to why he was moving away from his pleaded case and affidavit evidence. In his second affidavit Samuel states *"I moved to Miami at the end of December 2010, and returned to Providenciales for a function in honour of my mother, which was on the 23rd of April 2011. I returned to Miami in May 2011.*
*While here at that time, the defendant and I agreed that he would rent the space from me. He paid the initial deposits to me and I directed that he paid the monthly rent to my sister Sandra, as I would be resident in Miami. I delivered the keys to him personally, and he took possession on the 1st May 2011."*

new submission that:

> *"Consequently, in the circumstances of this case,* ***the parties cannot enforce the purported lease****, which is not in the form prescribed by the Registered Land Ordinance, and therefore could not have been registered. Nevertheless, the [P]laintiffs assert that the purported lease may be relied on to the extent that it is merely a record of the verbal agreement made between the [D]efendant and the Third Plaintiff."* (Emphasis added)

53. Mr Swann seeks to reduce the Lease essentially to what he says is a memorandum of understanding of what was verbally agreed between Samuel and the Defendant. He submits:

> *"The [D]efendant signed the purported lease, though improperly, intending that it indicated his agreement to all its terms and conditions."*

54. I cannot accept that submission. As I have noted, the claim is based on the Lease. The only move away from that was when the Court raised the issue of the requirements for the RLO and the SDO. There is no evidence that if the Lease had been submitted for Registration it would not have been accepted by the Registrar,[10] the departure from the prescribed form being only minor, or alternatively, that it would have been rejected for certain reasons which would have been rectified and re-submitted.

55. The effect of non-registration of the Lease is that it was not completed[11]. There was therefore no formal lease agreement on which to base the claim as Mr Swann points out in the submission set out at paragraph 52 *supra*. As I have set out above, Mr Swann seeks to persuade me in his written closing submissions, that accordingly, the document can be admitted as evidence of the terms of an oral agreement made between Samuel and the Defendant and he therefore seeks to use it to underpin the claim.

56. In my judgment that argument fails for the following reason. Section 14 of the SDO[12]

[10] Section 106 RLO provides: (1) Every disposition of land, a lease or a charge shall be effected by an instrument in the prescribed form **or in such other form as the Registrar may in any particular case approve, and every person shall use a printed form issued by the Registrar unless the Registrar otherwise permits**. (Emphasis added)
[11] See para. 40 *supra*.
[12] Set out in para. 42 *supra*.

makes it clear that any instrument chargeable with stamp duty shall not be admitted into evidence in any proceedings whatsoever. Whilst section 14 SDO has a saving provision, the Plaintiffs did not seek to avail themselves of it. I therefore hold that the Lease is inadmissible as evidence. Whilst I agree that Mr Swann's argument may have had some force if the Lease had been stamped, it was not and that is, in my view fatal to its admissibility.

57. Although I have not been referred to any authority, I am fortified in coming to the above conclusion by the decision in **Pearce -v- Cheslyn**[13] in which the court held that an unstamped lease to which objection was taken to its introduction into evidence, could be admitted into evidence as it was annexed to another document which referred to its terms and which itself had been stamped. Lord Dedman CJ held:

> *"The question here was, whether proper evidence was given of the demise. We think the agreement between the plaintiff and the defendant incorporated the earlier one, and, with that incorporation, constituted a perfect lease on the terms of the earlier agreement. The instrument drawn up between the plaintiff and the defendant had a stamp sufficient for a lease: the objection, therefore, as to the want of stamp on the agreement to which it referred, seems to us unfounded."*

58. Had the lease above been sought to be entered into evidence without the stamped agreement then it would not have been admissible. See **Duck -v- Braddyll.**[14]

59. Also:

> *"A properly stamped instrument is not rendered inadmissible by containing a reference to another instrument which is not properly stamped, but the other instrument is not thereby itself made admissible."*[15]

60. Mr Misick submits that in the absence of the Lease being registered the Defendant would have entered into occupation of the Unit as a tenant at will, which by acceptance of the

[13] (1835) 11 ER 772.
[14] (1824) M'Cle 217; (1824) 148 ER 92.
[15] Halsbury's Laws of England – Taxation Law (Volume 99(2024), paras 1-770; Volume 99A (2024), paras 771-1246) > 6. Stamp Taxes > (2) Stamp Duty > (ii) The Charge to Stamp Duty > A. Nature of the Charge > 1136. Several instruments; one stamp.

rent became a monthly periodic tenancy. He did not explain how he said the conversion of a tenancy at will to a periodic tenancy came about. In the event, I do not agree. The Defendant took possession of the Unit in accordance with the Lease. The failure to pay the requisite stamp duty on the written agreement makes it inadmissible in evidence and the claim based upon it must fail.

61. Mr Misick's argument fails as if the Court were to imply a tenancy at will or a periodic tenancy in circumstances where the provisions of the RLO and the SDO have not been complied with in respect of a formal lease between the parties, it would make those provisions otiose. Likewise, if the Court were to follow Mr Swann's submission that the Lease could be viewed by the Court in order to determine the terms of the agreement such that an action could be brought, the provisions again would be otiose.

62. The failure to have the Lease stamped and registered is fatal to the claim and it is therefore dismissed.

**Disposition**

63. The claim is dismissed.

64. The Plaintiffs shall pay the Defendants costs to be taxed on the standard basis if not agreed.

**31st January 2025**

**The Hon. Justice Anthony S. Gruchot**
**Judge of the Supreme Court**