In The Supreme Court of Bermuda

CIVIL JURISDICTION

2018: No. 246

BETWEEN :

THE TRUSTEES OF THE HAMILTON PARISH TEMPERANCE FRIENDLY SOCIETY

Plaintiff

-v-

LEROY BEAN
(as Pastor of Transfiguration Ministries)

Defendant

JUDGMENT

Date of Hearing: **1 & 4 March 2024**
Date of Judgment: **8 March 2024**
Counsel for the Plaintiff: **Ms. Sara Tucker, Trott and Duncan Limited**
Counsel for the Defendant: **Mr. Craig Rothwell, Cox Hallett and Wilkinson Limited**

INTRODUCTION

1. The Plaintiff is a group of people who are the trustees of a building known as the Temperance Hall located at 93 North Shore Road, Hamilton Parish. It was built on a lot

of land by the *"contributions of divers benevolent persons."* The land had been given by a Deed of Conveyance of 1 September 1852 to a society called the "Hamilton Parish Temperance Friendly Society." The donation was by the Honorable John Foggo, described in the Deed as *"…one of the members of her Majesty's Council in and for the said Island…"* and his wife, Jane Foggo. The society was formed for *"the promotion of temperance and abstinence from the use of intoxication liquor and the moral and religious education of the young …and to encourage education according to the principles of the Christian Religion among the children who now or hereafter shall reside in the said parish."*

2. The Plaintiff is made up of four people, Marva Bridgewater, Marvin Trott, Melba Smith and Walter Ingham. They have brought this action as the present trustees of the Society and as the landlord of the Temperance Hall. I will refer to them collectively as the Landlord. Pastor Leroy Bean is the named Defendant and he signed the Lease of 1 April 2004 ("the Lease") as "the duly authorized Officer of Transfiguration Ministries."

3. The Plaintiff's claim as pleaded in the Amended Specially Endorsed Writ of Summons of 30 July 2018 is for unpaid rent of $153,000 and mesne profits and possession of the Temperance Hall, referred to by me in this judgment as Temperance Hall or the Property. The Plaintiff sets out a claim for breaches of the Lease by the Defendant, not least that no rent had been paid since the Lease commenced and set out a claim for possession, asserting that the Lease was only for a term of 10 years.

4. In the Defence and Counterclaim, the Defendant denied that any money as rent or otherwise was owed. The defence of the claim by Pastor Bean was primarily based on the wording of the Lease and that by reason of the refurbishment and renovations carried out by the Defendant, as anticipated by the Lease, that the rent had been agreed to be reduced from $900 per month to $100 per month. Under the Lease, the Landlord had covenanted to maintain the exterior of the Property. The Defendant says that by a further oral agreement, that this covenant was exchanged for an abatement of the rent to $100 per month so that

there was no money to be paid. Contrary to the Plaintiff's position that the Lease was for 10 years, the Defendant asserted that the Lease was for a term of 20 years. The Lease, if it is a 20-year term, is due to expire on 31 March 2024 but with a provision that the Defendant gets first option to lease the Property again. This presumably would be at a fair market rent. If it is a 10-year lease as contended for by the Plaintiff, the Defendant would have a substantial financial obligation to the Plaintiff and could be ejected from the Property.

5. The Defendant's Counterclaim seeks a Declaration that the Lease is for 20 years or, in the alternative if possession was to be granted to the Plaintiff as of 2018, the date of the issue of proceedings, that damages be payable to the Defendant in the amount of $162,184.50, that sum being the difference between the cost of renovations which had been carried out in the 14 year period less the benefit of the rent which would have been payable for the period of 14 years' occupation (2004 – 2018).

6. An additional matter has arisen in the course of this litigation. The Plaintiff had put 3 large shipping containers on the Property for a 19-month period in 2022/2023, referred to by the Defendant as "the Container Issue." This was subject to a successful injunction in February 2023 and a claim by the Defendant for general damages and aggravated damages as a consequence of the Plaintiff's trespass and nuisance.

7. The Container Issue has already been resolved by the court to the extent that the Plaintiff was ordered to remove those containers from the Property and had been restrained from any further trespass for the duration of the tenancy by an Order dated 2 February 2023. This Order was endorsed with a Penal Notice. However the Plaintiff breached that Order which resulted in a further Order of 2 March 2023. Chief Justice Hargun also awarded the costs of those applications to the Defendant. The determination of whether the Defendant should be entitled to compensation for the period commencing September 2021 when the shipping containers where first placed on the Property and it was unable to be used is now a matter for consideration by this court.

THE EVIDENCE

8. It was submitted by the Defendant that the best evidence in this case is the Lease itself and what is says. There were witnesses called by the parties. On behalf of the Plaintiff, the only witness was Miss Marva Bridgewater. She is the daughter of the late Mr. Boyd Smith, who had been the president of the Trustees. She is the vice-president and treasurer and a trustee of the Plaintiff since 2003. She had given a witness statement on 9 March 2020 but under cross-examination expressed that she was unable to recall many of the relevant issues to which her witness statement purported to speak to. Given her demeanor when it came to answering difficult questions, which often consisted of long periods of silence, I found that her inability to recall what had happened 10 years ago was difficult to reconcile with her very firm recollection of matters some of which occurred 20 years ago which favoured the Plaintiff. She recalled being in a meeting of Trustees where they discussed the issue of serving a Notice to Quit on the Defendant in March 2014. Having explained that the Trustees acted as a group, when cross-examined about what the group decided, she said she could not recall. The question had been directed to Miss Bridgewater to inquire about what the Trustees had decided in respect of asking the Defendant for the rent owing for the previous 10 years. She said she could not recall. The Defendant's position was that no rent was asked for because the Trustees knew none was due as a consequence of the agreement for the Defendant to do the refurbishments and renovations and take on the maintenance of the exterior. It is to be noted that there was no documentary evidence before the court which showed that rent had ever been asked for in the period up to the service of a Notice to Quit in 2014.

9. There were no other witnesses called on behalf of the Plaintiff. There was a witness statement of the late Boyd Smith prepared but this was not before the court as evidence. The court then considered the evidence presented on behalf of the Defendant which included various contemporaneous documentation but of a very limited amount.

THE LEASE

10. It was submitted by Mr. Rothwell on behalf of the Defendant that the Lease was for a 20-year term, not the 10-year term contended for by the Plaintiff, and that it was a very straightforward conclusion for the court to reach that it was a lease for 20 years. He submitted that this was the only conclusion which could be reached by a simple reading of the document. Ms. Tucker urged the court to accept that it was for a 10-year period certain; that it was a bad bargain and that as a consequence the Plaintiff had been left with no income.

11. The issue of construction of a contract has been before the Bermuda Courts on many occasions. I would refer to in particular to the Judgment of Mrs. Justice Shade Subair Williams in **Michael Cooke Kuczkiewicz v. HG (Bermuda) Ltd [2018] SC (Bda) 26 Com (19 March 2018)** where the Learned Judge, when considering the construction of company bye-laws, set out the principles and in turn referred to the earlier Bermuda Judgment of Mr. Justice Hellman in **Kingate Global Fund Limited (In Liquidation) v. Kingate Management Ltd. [2015] Bda LR 86** and the references which he made in that Judgment in respect of the construction of a contract. Mr. Justice Hellman quoted Lord Neuberger in the case of **Arnold v. Britton and others [2015] UKSC 36**. When giving the Judgment of the Supreme Court, Lord Neuberger, at paragraph 19, sought to emphasise seven factors to take into account in the interpretation of contractual provisions. I set out the first four which are relevant here.

> *17. First, the reliance placed in some cases on commercial common sense and surrounding circumstances (eg in Chartbrook, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most obviously to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language they use in a contract. And, again save perhaps in a very unusual case, the parties must*

have been specifically focussing on the issue covered by the provision when agreeing the wording of that provision.

18.Secondly, when it comes to considering the centrally relevant words to be interpreted, I accept that the less clear they are, or, to put it another way, the worse their drafting, the more ready the court can properly be to depart from their natural meaning. That is simply the obverse of the sensible proposition that the clearer the natural meaning the more difficult it is to justify departing from it. However, that does not justify the court embarking on an exercise of searching for, let alone constructing, drafting infelicities in order to facilitate a departure from the natural meaning. If there is a specific error in the drafting, it may often have no relevance to the issue of interpretation which the court has to resolve.

19. The third point I should mention is that commercial common sense is not to be invoked retrospectively. The mere fact that a contractual arrangement, if interpreted according to its natural language, has worked out badly, or even disastrously, for one of the parties is not a reason for departing from the natural language. Commercial common sense is only relevant to the extent of how matters would or could have been perceived by the parties, or by reasonable people in the position of the parties, as at the date that the contract was made. Judicial observations such as those of Lord Reid in Wickman Machine Tools Sales Ltd v L Schuler AG [1974] AC 235, 251 and Lord Diplock in Antaios Cia Naviera SA v Salen Rederierna AB (The Antaios) [1985] AC 191, 201, quoted by Lord Carnwath at para 110, have to be read and applied bearing that important point in mind.

20. Fourthly, while commercial common sense is a very important factor to take into account when interpreting a contract, a court should be very slow to reject the natural meaning of a provision as correct simply because it appears to be a very imprudent term for one of the parties to have agreed, even ignoring the benefit of wisdom of hindsight. The purpose of interpretation is to identify what the parties have agreed, not what the court thinks that they should

have agreed. Experience shows that it is by no means unknown for people to enter into arrangements which are ill-advised, even ignoring the benefit of wisdom of hindsight, and it is not the function of a court when interpreting an agreement to relieve a party from the consequences of his imprudence or poor advice. Accordingly, when interpreting a contract a judge should avoid re-writing it in an attempt to assist an unwise party or to penalise an astute party…"

12. In this case, Miss Bridgewater said that the Trustees had no money and that the Lease effectively had been bad for the Trustees; this in circumstances where the original rent of $900 a month was reduced to $100 per month in consideration of the Defendant restoring the Temperance Hall after it had been struck by Hurricane Fabian in 2003. The rent of $100 was later exchanged in return for the Defendant taking over the Landlord's obligation of maintaining the exterior of the Temperance Hall. Submissions were made on behalf of the Plaintiff that this was an unfair bargain, not least that there was no quantification of the annual maintenance. Further objection was made that the first phase refurbishment and renovations works were done without approval from the Trustees. The submission was that without this approval everything which took place was unauthorized and could not be claimed. This approval was required, it was submitted, not only from the Landlord but extended to obtaining planning permission and a building permit.

13. To deal briefly with the issue of planning approval and building permit, Mr. Paul Lowry, Quantity, Building and Valuation Surveyor, who gave evidence on behalf of the Defendant about the value of the works done, when cross–examined by Ms. Tucker said that after a hurricane no planning permission or building permit would have been required for renovations. Further, Pastor Bean in his evidence made it clear that they had spoken with the Trustees and that the Trustees were fully aware and had approved the renovations and refurbishment before they had commenced.

14. I am satisfied that the position in relation to the term of the tenancy is found in the Lease agreement and it is supported, in so far as it needs to be, by the evidence. I find that a

reading of the Lease establishes that it was for a period of 20 years. I was told that the parties worked together to draw up the Lease. It is evident that this was done over a period of time, possibly first drafted in summer 2003. Hurricane Fabian hit the island on 5 September 2003. The Lease is dated 1 April 2004 and it consists of 5 clauses.

15. The first clause recites a lease of the Temperance Hall for a term of 10 years for $900 per month. The second clause recites the Tenant's usual covenants e.g. to pay rent, maintain the interior, etc and then the third clause recites the Landlord's covenants e.g. maintain the exterior, pay taxes. The fourth clause is the proviso for breach of covenant to pay rent and the right to give Notice to Quit and relevantly the right of the parties to the Lease to amend its terms by mutual agreement.

16. The language used in the fifth clause, set out in paragraph 18 below, in my view establishes, and I so find, that this was a Lease for a period of 20 years at a rent of $100 per month for the consideration of the Defendant carrying out refurbishments and renovations as approved. Pastor Bean gave evidence that the agreement set out in clause 5 was reached because both parties knew in 2004 that extensive renovations were required to Temperance Hall. In order to allow a sufficient time for the reduction in rent to off-set the cost of renovations, a 20-year lease was agreed. I accept this evidence.

17. Pastor Bean was cross-examined on this and various issues which were in contention and he was firm and clear in his responses. I find that his evidence on the issues was coherent in the context of the issues and supported by the contemporaneous documentary evidence, albeit sparse, and the facts, not least about the work which was done in regard to refurbishments and renovations. The other witnesses who were called to support that this work was done were cross-examined; Mr. Sherman Darrell, Mr. Darren Knights and Mr. Paul Lowry. All these witnesses supported the fact and extent of the refurbishments and renovations and the value of that work. Mr. Darrell and Mr. Knights who worked on the refurbishments and renovations gave evidence and having read their witness statements and observed them on cross-examination, I unreservedly accept their evidence. The work started in the spring of 2004. Mr. Lowry estimated work was done to the value of $279,000 as of November 2004. In regard to the written report of the Plaintiff's own witness, Mr

Steven Daniels of Daniels' Construction, who was not called but whose written statement was agreed, valued the work at $154,000, albeit that his review was many years later in March 2017 and did not take into account some of the works which had been carried out, not least the installation of a concrete floor in place of the timber floor. The issue of whether there were any refurbishments and renovations carried out is answered by this evidence and it makes no difference that Mr. Lowry and Mr. Daniels differ in quantum. The work was done, on the evidence of both parties, and the condition precedent to obtain the reduced rent of $100 per month was satisfied.

18. Clause 5 of the Lease sets out the following:

> **"IT IS AGREED as follows:**
>
> **(1)That approved first phase refurbishments and renovations be undertaken by the Tenant to the premises and bathrooms to bring to a tenable (sic) state.**
>
> **(2)That consideration for the said refurbishments and renovations of the first phase to be offset against rents as long as such is agreed upon by the Landlord and the Tenant.**
>
> **(a)It is mutually agreed upon by the Landlord and Tenant according to the above clause (2) that reimbursement associated with phase one's extensive cost of refurbishments and renovations that the rental agreement amount of $900.00 per month be amended to $100.00 per month for a 20 year period."**

19. Pausing here, it is clear that the Lease contemplated the refurbishments and renovations, described as the first phase, and then established that the rent would be reduced to $100 per month for a 20 year period. The refurbishments and renovations having been completed by the time that Mr. Lowry did his evaluation in November 2004, the rent was then to be $100 per month for a Lease of a 20-year term. It may even be that the word 'approved' as it appears in the Lease is reciting approval already given by the Plaintiff, a matter which the Plaintiff denied had occurred. The Plaintiff said that the Defendant had

failed to obtain approval and sought to rely on this so as to debar the Defendant from establishing a 20-year term. I have in any event already found that there was approval given by the Plaintiff and the actual meaning to be given to this word has become moot.

20. Clause 5 goes on to provide:-

> **"(3) Further second phase approved additions to the premises which include attachment of new bathrooms and meeting room with a third phase of a second floor unit may be undertaken by the Tenant.**
>
> **(4) That upon expiration of the lease agreement that the Landlord will award the Tenant, his servants' agents' invitees or licensees first preference with regards to releasing the building.**
>
> **(5) The Tenant will be responsible to pay insurance for the interior furnishings. Notwithstanding clause 3(1) in addition may elect to assist in exterior insurance.**
>
> **(6) In the absence of any disagreement to the contrary and in the event that after the expiration of the existing lease agreement the Landlord does not renew the lease with the Tenant that any agreed upon cost associated with the second phase refurbishment, renovations or additions to the premises be reimbursed by the Landlord to the Tenant."**

21. There was no second phase and the only part of this clause which is relevant is the obligation of the Plaintiff to offer the Defendant a first refusal of a new tenancy, with the implied term of the new rent being a fair market rent.

22. The Plaintiff sought to make an amendment at the trial to bring in what they considered a new issue of whether the Lease was personal to Pastor Bean. Mr. Rothwell of the Defendant consented to this, perhaps on the basis that he was confident that again the Lease was clear as the capacity he had when he was named as the Tenant. Having allowed the amendment and heard submissions on the point, I am satisfied that the Lease was not personal to Pastor Bean. Not least from the evidence he gave that it was on behalf of Transfiguration Ministries but that the Lease, while reciting in the heading that the Tenant

is “Leroy Bean Pastor of Transfiguration Ministries” it is then signed “Leroy Bean Pastor duly authorized Officer of Transfiguration Ministries.” The Ministry is an unincorporated body and it is evident that this was signed by him on behalf of the group of people who make up the Ministry, some of whom gave evidence and who had worked on the refurbishments and renovations of the Temperance Hall.

23. This issue of the Lease being personal to Pastor Bean appears to have been made to support an argument that Pastor Bean never spent any money himself and had no receipts to show the expenditure and so the Defendant could not rely on clause 5(3).

24. Put bluntly, this is a hopeless point as there was in reality no dispute that the work had been done and who paid for it has no relevance in the context of a Lease which on its face is signed by the Pastor on behalf of Transfiguration Ministries, the tenant which , as a group, paid for or carried out the work voluntarily in order to refurbish and renovate Temperance Hall.

25. The Landlord’s right to receive the $100 per month rent was exchanged for the Defendant taking on the onerous covenant to maintain the exterior of the building. Ms. Tucker submitted that this was a bargain which could not be sustained as there had been no quantification of what it cost to maintain the exterior. I can take judicial notice of the fact that to maintain the exterior of a building like Temperance Hall located as it is next to the water’s edge on the North Shore would cost more than $1200 per annum.

26. Another point which was raised on behalf of the Plaintiff was that there had been an unauthorized sub-letting of the Property to another religious group but this point was abandoned having had the evidence there was at best a licence granted to that group for a few hours on just several occasions and in circumstances where, even if there had been an oral sub-letting arrangement, there was no prohibition in the Lease which would have debarred the Defendant from doing that. Such licence arrangements were permissible as is clearly implied by clause 5(4) of the Lease where there is an express reference to Licensees. Further, a term not to sublet cannot be implied. Section 6 of the Landlord and

Tenant Act 1974 sets out that such an implied term is only applicable to residential leases of less than 3 years as provided for by section 4(1).

27. The Plaintiff further complained of a failure to provide evidence of payment of insurance for the interior of the Property. Given there is no requirement under the Lease to insure, there can consequentially be no obligation to provide evidence of insurance. The submission that this was a breach of an express term must fail. It was the Defendant's risk whether to insure the interior furnishings or not.

28. In the circumstances recited above and on the findings which I have made, no rent is due to the Plaintiff under the Lease from the Defendant and there has been no breach of the terms of the Lease which would entitle them to possession before the expiry of the Lease. As regards the Counterclaim, this was premised on the possibility that the Court might find that there was only a 10-year lease arrangement. As the court has determined that the Lease was for a term of 20 years, the claim for reimbursement of the monies in the amount of $162,184.50 spent on refurbishments and renovations falls away.

THE CONTAINER ISSUE

29. The Defendant seeks the award of damages in respect of the Container Issue. The issue of damages has been pending since the Injunction was obtained. The Defendant relies on the affidavit evidence previously filed in support of the Injunction and the second application to the court arising from a breach of the first court order of 2 February 2023 which had been endorsed with a penal notice.

30. The Defendant explained in his two affidavits, dated 25 November 2022 and 22 February 2023, to which he referred in his witness statement, that the Plaintiff had placed 3 large shipping containers on the Property and they refused to move them for a 19-month period from 4 September 2021 to 26 March 2023. The first two containers were placed there on 4 September 2021 and, despite repeated requests from him for their removal, a third

container was added in late September 2022. The presence of the containers had the effect that the Property was essentially unusable for that period as they prevented car parking and no services could be held there, be it to worship or to have a funeral or wedding service.

31. The evidence was that even though Covid cases were still prevalent in September 2021, the guidelines issued by the Government of 10 September 2021 permitted indoor and outdoor events with attendees needing to have a SafeKey. So by that date there was no reason for the Property not to be used, save for the obstruction caused by the containers. By February 2022, the size of permitted large groups increased from 20 to 100, which included weddings and funerals. The timing of the placement of the containers was inconvenient and aggravating for the Defendant as the relaxing of the Covid restrictions should have meant that full use could again have been made of the Property.

32. The Defendant seeks damages for the inability to use the demised premises in the total amount of $21,030 consisting of (a) 19 months at $900 per month totaling $17,100 for breach of contract and (b) aggravated damages of $3,930.

DAMAGES FOR BREACH OF CONTRACT

33. Mr. Rothwell on behalf of the Defendant submitted that while there is no express covenant for quiet enjoyment in the Lease, it is settled law that a like covenant or contractual obligation of similar effect is implied from the mere contract of letting. He referred the court to the textbook, Hill and Redman's Law of Landlord and Tenant, para 2947 et seq. (LexisNexis edition) which sets out that where the ordinary and lawful enjoyment of a property is substantially interfered with by the acts or omission of the landlord or those lawfully claiming under the landlord, the covenant is broken. This was not contested by the Plaintiff. The placing of the containers, unlawfully as the then Chief Justice found, was a spiteful and unworthy act of the Plaintiff and the values that its members profess to hold. It was a positive act of interference which was a clear breach of the Lease.

34. Damages for breach of contract and tort are generally calculated as that sum of money which will put the party who has been injured in the same position as he/she would have been if he/she had not sustained the wrong. If a lessee is evicted owing to the invalidity of the lease, he/she can recover the value of the term. It was submitted that the effect of the Plaintiff's breach was similar to that of an eviction as the Property was rendered largely unusable and the loss could be by the value that parties had put on the Property in the Lease, $900 per month; that $900 was the appropriate multiplicand and the 19 months inability to use the property was the appropriate multiplier.

35. It was submitted that a similar outcome on damages could be reached by an alternative approach which has been adopted by the courts in property disputes, relying upon the first rule in **Hadley v Baxendale [1854] EWHC Exch J70**. Tenants are able to recover as damages the rents which they would have made from subletting the property but for the breach of the covenant by the landlord, citing **Mira v Aylmer Square Investments [1990] 1 EGLR 45 at 47**. The test as to whether subletting by the Defendant was foreseeable is a low one – *"not unlikely"* which *"denotes a degree of probability considerably less than an even chance but nevertheless not very unusual and easily foreseeable."* The Defendant had allowed licensees to use the Property in the past for a short period and a licence fee of $900 could foreseeably have been obtained for this period.

36. A further approach suggested by Mr. Rothwell was that of relying on the increasing tendency of the courts to assess the damages for a breach of contract on the principle of the sum of money which would have been arrived at between the parties by agreement for a voluntary release of the contractual restriction. He referred again to Hill & Redman's Law of Landlord and Tenant, at para 2990; that had a fee been agreed for the Plaintiff to store 3 containers taking up the whole of the front lawn and causing such a high level of inconvenience to the Defendant so rendering the Property unusable for church services, the monthly fee would have been equivalent to the rent of $900.

37. In the circumstances of the uncontested facts and as previously found by the court, the 3 shipping containers were unlawfully placed there by the Plaintiff and for that 19-month period there was an inability to use the Property. I find that the appropriate measure of Damages to be awarded in the circumstances is that based on the monthly rent of $900. This was the original estimate by the parties of a fair market rent back in 2003 before Hurricane Fabian hit and in 2018, having regard to the refurbishments and renovations which were carried out, I accept that the Defendant's claim is a fair one. It could well have been, if there had been valuers engaged as to what was a fair market rent in 2018 for Temperance Hall, that the figure could have been higher. The Plaintiff also had the use of the Property for its own benefit, the storage of their shipping containers. It was submitted that a fair monthly rental value of the Property for the storage of the shipping containers would have been $900. Regardless of which of the three alternative methods submitted by Defendant which I could have chosen, I think that taking the monthly figure of $900 is a fair basis on which to assess the damages. Accordingly, the damages awarded, whether measured as a consequence of a breach of contract or a tort, are in the amount of $17,100.

AGGRAVATED DAMAGES

38. The actions of the Plaintiff in relation to the Container Issue not only constituted a breach of the covenant for quiet enjoyment but it was submitted that they were also amounted to the torts of trespass and private nuisance. Mr. Rothwell submitted that in such cases aggravated damages can be recovered for injury to proper feelings of dignity and pride and aggravation generally, as can exemplary damages in appropriate cases where there has been intimidation. There is also the inconvenience which the Defendant suffered. However, as regards the tort of intimidation, this can only be actionable if the party intimidated responds to the threat; if he/she does not respond then there is no claim. Further the category of cases where exemplary damages are awarded are very restricted and not applicable in this case.

39. Here the Plaintiff did not force the Defendant to quit the Property and the Plaintiff did not profit from their own tort. It was a case of a Landlord, in circumstances where they had already commenced an action for what they believed was their right to recover unpaid rent

and possession of their property, deliberately choosing to deprive the Defendant of the use of the Property and causing inconvenience the Defendant. This necessitated the Defendant to apply for injunctive relief from the court. The torts of trespass and nuisance were committed by the placing of the containers on the demised property; these were deliberate, provocative and unrepentant actions of the Plaintiff, carried out in full view of the local community given that the containers were visible from the road. It was submitted that this was an affront to the dignity and pride of Pastor Bean and his Ministry, causing anxiety, inconvenience and distress and that such behaviour warrants an award of aggravated damages. I agree. The behaviour of Mr. Lionel Raynor, then one of the Trustees, directly after the first court hearing when the Injunction was ordered, was further relied on to support a claim for aggravated damages. The Chief Justice having determined that the containers were wrongfully there and having ordered their removal, Mr. Raynor said to Pastor Bean that he would not be moving anything and then stated, in front of Pastor Bean's church leaders, *"Smile, little boy."* These are the uncontested facts relied upon by Mr. Rothwell of behaviour which support an award of aggravated damages.

40. I note that the awards made in this area are not significant. In the wrongful eviction case of **Smith v Khan (2018) EWCA Civ 1137**, an amount of £1,500 for aggravated damages was awarded. Uplifting the award of £1,500 in that case to a 2024 value using the inflation table from Kemp and Kemp and doubling the pound sterling figure to obtain the dollar value of this English award produces an award of $3,930. I find that the reference to this English authority appropriate. There are many cases in the English law reports where separate awards for aggravated damages are made in circumstances where the landlord has behaved inappropriately, not least where they cause suffering, distress and anxiety. I accept that the methodology for uplifting prior awards using the inflation table to obtain the present day value is also appropriate. The law as established in Bermuda in the case of **Wittich v Twaddle (1979) Civil Jurisdiction No 117**, as upheld in the later case of **Coller v Hollis (1983) Civil Jur. No. 200**, establishes that regardless of the prevailing exchange rate, the pound sterling award is doubled to get to the Bermuda dollar equivalent. In the **Smith v Khan** case, the wife of the named tenant had been wrongfully evicted and her clothes and other belongings put in plastic bags but in a damp place so that all were

destroyed and the property wrongfully re-let to a third party so she could not get back in. In this case, there was a 19-month period where the Ministry was unable to use the Property as bargained for and where Plaintiff sought to insult and demean the leader of the Ministry which had performed their part of the bargain. Having regard to all of the facts, I consider that an award in the amount of $4000 is appropriate as aggravated damages.

41. In the circumstances of this case and having regard to the findings which I have made, I dismiss the Plaintiff's claim and grant the Defendant's Declaration that the Lease was made for a 20-year period. I award the Defendant Damages in the total amount of $21,100. I can see no reason why the costs should not follow the event but if the parties wish to be heard on the issue of costs, they should apply to the court within 7 days of the date of this judgment.

Dated 8th March 2024

Jeffrey Elkinson
ASSISTANT JUSTICE
SUPREME COURT OF BERMUDA