



In The Supreme Court of Bermuda

APPELLATE JURISDICTION

2020: No. 16

BETWEEN:

ARTHUR HODGSON

Appellant

- and -

KIMALENE INGHAM

Respondent

JUDGMENT

Date of Hearing: 21 April 2022

Date of Ruling: 9 May 2022

Appearances: Arthur Hodgson (In Person), Apex Law Group Ltd. assisted by Ms. Ming for Appellant

Kimalene Ingham, Respondent in Person

Judgment of Mussenden J

Introduction

1. The Appellant Mr. Hodgson appeals against the judgment of the Learned Acting Magistrate Wor. Cassidy (the “**Magistrate**”) dated 18 March 2020. In that judgment the Magistrate found Mr. Hodgson liable for loss of property belonging to the Respondent in the amount

of \$7,426.73 (the “**Chattels**”) as a result of Mr. Hodgson being one of several people who were directly responsible for her Chattels being damaged, having being removed from a room inside the home of his sister Dr. Eva Hodgson (the “**Premises**”) and left outside. The Magistrate also ordered costs of \$60 in favour of the Respondent. The Magistrate allowed Ms. Ingham to amend her claim to add a claim for the return of her \$400 rent deposit.

2. The Record of Appeal was not perfected in this matter although references to the various documents were located on the appeal file. Some pictures were provided to the Court after the hearing on agreement of the parties. Further, I listened to the CourtSmart of the proceedings¹.

Background

3. By way of a written agreement dated 29 September 2017 (the “**Written Agreement**”) Dr. Hodgson and the Respondent agreed that the Respondent could move into a room (the “**Room**”) of the Premises on or around that date. The Respondent did not move in then. In January 2018 the Respondent did move into the Room, purportedly at the request of Dr. Dr. Hodgson for a monthly rent of \$400 for the Room but also to provide some caregiver services for Dr. Hodgson. She brought her Chattels with her including a television, a bed, clothes, a clothes dryer and an outdoor shed. She occupied the Room and some Chattels were located in the Room with her, some Chattels were in other parts of the Premises and the outdoor shed was out in the yard. However, it is now disputed by Mr. Hodgson whether she was a tenant or a licensee of the Premises based on the principle of exclusive possession.
4. On 7 August 2018 Dr. Hodgson asked Mrs. Ingham to move out of the Room and her Premises. Before moving out, Ms. Ingham travelled overseas where she fell ill, remained overseas for a while, but when she returned to Bermuda her Chattels that were inside the Room and Premises had been moved to an outside porch area of the Premises where she

¹ CourtSmart 18 March 2020 Magistrates’ Court 3 Start time 2:45pm

claims they were damaged. By the time Ms. Ingham returned to Bermuda, Mr. Hodgson was then living in the Premises, occupying the Room formerly occupied by Ms. Ingham.

5. Ms. Ingham filed an Ordinary Summons dated 23 September 2019 for breaking in, elder abuse, illegal eviction, invading on privacy, loss of personal items and that she could not get her belongings. The defendant on the Summons was listed as Mr. Hodgson. Ms. Ingham's case was based on the premise that Mr. Hodgson was at all material times a Power of Attorney for Dr. Hodgson. Mr. Hodgson denies that he was ever a Power of Attorney for Dr. Hodgson.
6. The trial in the Magistrates' Court took place on 18 March 2020. This was the same day or the day after that the Bermuda Government issued public statements that in respect of the risks of the Covid-19 Pandemic, people in Bermuda should stay at home as much as possible. Mr. Hodgson explained that he was duty bound to consider the welfare of his employees and himself and therefore his law firm Apex Law Firm was closed and the staff were directed to go home. He went home also. Dr. Hodgson died on 29 May 2020, after the trial and the Judgment.

The Trial

7. On the same day of 18 March 2020 as the Government statements about the Covid-19 Pandemic, the case was called for trial in the Magistrates' Court. The Magistrate proceeded with the trial in the absence of Mr. Hodgson and instead relied on a Defence and Counterclaim that he had filed in the matter.
8. According to the CourtSmart, at the trial, Ms. Ingham gave evidence and provided some supporting evidence as part of her claim for illegal and wrongful eviction. She provided the Written Agreement duly signed by her and Dr. Hodgson. She explained that she did not move into the Room in September 2017 as the Room and/or Premises had roof issues. She understood that there was a break-in at Dr. Hodgson's house sometime after the date of the Written Agreement. (the "**First Break-in**"). She stated that Dr. Hodgson called her in

January 2018 and told her that she is getting weak and she needs someone to come live with her which she did. She stated that she moved into the Room about the middle of January 2018 at \$400 per month paying Dr. Hodgson \$100 per week. She removed Dr. Hodgson's books from the room and painted the room. Ms. Ingham stated that she paid her rent and was providing care giving services for Dr. Hodgson.

9. Ms. Ingham stated that she kept locking the Room door noting that Dr. Hodgson's nephew Jelani had keys to the Premises. She stated that she went overseas in May 2018 for a vacation when an unidentified "*they*" broke in. (the "**Second Break-in**"). She did not remember missing anything from that break-in. On 23 July 2018 her Room was broken into again and she reported it to the Police who came and investigated (the "**Third Break-in**"). She exhibited some pictures describing where the lock on her Room door had been forced open and the door pulled off the hinges. Later, an incident occurred when she found water on her clothes in a closet and on the carpet. She reported this to Dr. Hodgson. Some items were damaged then. She provided some estimates for those damaged items stating that it was about \$3,000 worth of damage.
10. On 7 August 2018 Dr. Hodgson told her that she would have to find somewhere to live as a family member needed somewhere to live. She got the impression that the family was blaming her for the First Break-in as a reason for Dr. Hodgson wanting her to move in. Thus they now wanted her to move out. In any event, Dr. Hodgson allowed her to stay there until she found somewhere else to live. Therefore she continued to stay there, on occasion going to church with Dr. Hodgson, Mr. Hodgson and their sister.
11. In October 2018 she went overseas again when she ended up getting sick. She contacted Dr. Hodgson by phone and wrote her a letter. She stated that on 14 November 2018 she emailed Dr. Hodgson and her employer as she was remaining overseas longer than she planned. She did not get a response from Dr. Hodgson. However, she kept in contact with Dr. Hodgson, speaking to her around February 2019 when Dr. Hodgson told her that her Chattels were put on the porch. She asked why her Chattels were on the porch when Dr. Hodgson told her that Jelani and Mr. Hodgson put them there. In April 2019 she returned to Bermuda. She was still sick and off work. She went to the Premises where she saw her

Chattels out in the open. She was heartbroken that her Chattels were put out illegally as she had no court papers about being evicted.

12. Ms. Ingham stated that Mr. Hodgson was Power of Attorney for Dr. Hodgson. Thereafter she had various correspondence or communication with Jelani and separately with Mr. Hodgson to find out how she could get her Chattels which were being blocked in by other items on the porch of the Premises.
13. Ms. Ingham stated that she decided to go to Mr. Hodgson at Apex Law Firm when she asked him that since he had kicked her out could he help her and why was he making his problem her problem. Mr. Hodgson replied why should he have to find somewhere else to live when he could live in his sister's house. He suggested she go to Financial Assistance. She stated that Mr. Hodgson was in charge of everything and dictated to his son.
14. As a result of her Chattels being damaged on the porch she was making a claim for the Chattels and she produced invoices for the value of replacement Chattels. She stated that she had nowhere to live and nowhere to put her Chattels.

The Magistrate's Judgment and Reasons

15. The Magistrate issued an ex tempore judgment at the conclusion of the trial and at a later date she issued a written Judgment with reasons in which she made findings as follows:
 - a. Mr. Hodgson and Ms. Ingham agree that the Premises are owned by Dr. Hodgson and that Mr. Hodgson is known to be her Power of Attorney.
 - b. Mr. Hodgson and Ms. Ingham both agree that the Plaintiff resided in the Room at the Premises with Dr. Hodgson and that the monthly rent was \$400 per month.
 - c. She was satisfied that Mr. Hodgson was a party to the illegal removal of the Plaintiff's property, that he resides in the Room formerly occupied by the Plaintiff, that he is the Power of Attorney for Dr. Hodgson and since he had not refuted this in his Defence and Counterclaim, he was properly recorded as the Defendant in the proceedings.

- d. She was satisfied that Mr. Hodgson had notice of the hearing and failed to appear for trial without notice or excuse.
- e. The (Written) Agreement dated 29 September 2017, put in evidence, duly signed by Dr. Hodgson and Ms. Ingham did create a valid contract (for Ms. Ingham to live in the Room as a tenant) between the parties pursuant to the Landlord and Tenants Act 1974 with Dr. Hodgson as the landlady and Ms. Ingham as the tenant. The Agreement was for exclusive use for part of the Premises, namely the Room with a lock on the door, which Ms. Ingham was entitled to use to the exclusion of the landlady.
- f. Dr. Hodgson owed a duty of care to Ms. Ingham. This extended to Mr. Hodgson and his son Jelani Hodgson whom the Plaintiff gave evidence were involved in Dr. Hodgson's affairs.
- g. Ms. Ingham had accepted that Dr. Hodgson had asked her to move from the Room and Premises but was assured by Dr. Hodgson that she would be given time to find a new place to live while she continued to pay the monthly rent. She had some receipts but others were lost as a result of her Chattels being moved. The Magistrate found that there was no evidence that Mr. Hodgson, as a Power of Attorney for Dr. Hodgson or Dr. Hodgson herself had followed proper protocol to evict Ms. Ingham. Thus, the eviction and the removal of the Chattels was unlawful and amounted to an illegal eviction.
- h. Mr. Hodgson was one of several people who removed the Chattels from inside the Premises to outside the Premises where they were damaged and for which Ms. Ingham suffered significant financial loss of \$7,426.73. Thus, Mr. Hodgson was one of the people who caused the damage to her Chattels.
- i. Mr. Hodgson's counterclaim for mense profits for Ms. Ingham not vacating the Room and Premises and leaving her Chattels behind was not made out as Ms. Ingham had produced emails sent to Mr. Hodgson requesting access to her Chattels and also indicating that the Chattels were blocked in by other items.
- j. Ms. Ingham's claim for \$400 for loss of rent deposit was a claim that should be brought against Dr. Hodgson, not Mr. Hodgson.

- k. The Court made no order in relation to the claims for breaking in, elder abuse and invading on privacy as they were for another jurisdiction of the Court.

Law on the Procedure of Civil Appeals

16. The Civil Appeals Act 1971 section 14 provides as follows:

“Determination of appeals

14 (1) Subject to any other provision of law, upon the hearing of an appeal the Court may allow the appeal in whole or in part or may remit the case to the court of summary jurisdiction to be retried in whole or in part and may make such other order as the Court may consider just.

(2) All appeals to the Court shall be by way of re-hearing on the record, and shall be by notice of appeal, and no writ of error or other formal proceedings other than such notice of appeal shall be necessary.

(3) The Court shall have power to draw all inferences of fact which might have been drawn in the court of summary jurisdiction and to give any judgment and make any order which ought to have been made.

(4) No appeal shall succeed on the ground merely of misdirection or improper reception or rejection of evidence unless in the opinion of the Court substantial wrong or miscarriage of justice has been hereby occasioned in the court of summary jurisdiction.

(5) The Court shall, on the hearing of an appeal, have all the powers as to amendment and otherwise possessed by the Court in the exercise of its original jurisdiction, together with full discretionary power to receive further evidence upon questions of fact, either orally or by affidavit or deposition.”

17. Under the Civil Appeals Act 1971 the Court has broad powers in the conduct of an appeal. The appeal is a re-hearing on the record, the Court can draw all inferences of fact which might have been drawn in the court of summary jurisdiction and the Court has full

discretionary power to receive further evidence upon questions of fact, either orally or by affidavit or deposition.

Appellant's Submissions

18. Mr. Hodgson relied on his affidavit sworn 8 February 2022.

19. The thrust of Mr. Hodgson's evidence and submissions was that there was no evidence before the Court to cause it to find that he was the Power of Attorney for Dr. Hodgson who was alive at the time of the Court proceedings and the judgment. Further, he was never a Power of Attorney for Dr. Hodgson. On that basis, the Magistrate erred in law in making the findings that she did based on the unproven fact that he was the Power of Attorney. The judgments should be set aside.

Ground 1

20. Ground 1 is that the Magistrate failed to exercise her discretion to adjourn the matter in light of the national emergency due to the risks factors of Covid-19 pandemic and pursuant to the Court Circular No. 4 of 2020 dated 17 March 2020. Mr. Hodgson submitted that instead of adjourning the matter or entering default judgment, the Magistrate instead held a full trial while he and his staff abided the guidance of the Government and the Court.

21. Ms. Ingham submitted that the Magistrate was correct to hear the matter as Mr. Hodgson did not appear or send any correspondence to the Court to provide the Magistrate with an explanation and/or seek an adjournment.

Analysis

22. I have reviewed Circular No. 4 of 2020 entitled "**Covid-19 Precautionary Measures**" which provided General Measures as well as measures for each of the Magistrates' Court and the Supreme Court. In respect of the Magistrates' Court, there was a measure that

stated that requests for adjournments by lawyers and parties because of health concerns would be given consideration. There was a measure that stated that lawyers and parties should not expect that their matters will be heard or will have a hearing date scheduled unless the urgency of the matter requires such, to be determined by the presiding Magistrate.

23. In my view, the Learned Magistrate was correct to exercise her discretion as she did to proceed with the hearing. Mr. Hodgson had not attended Court to seek an adjournment and he had not corresponded in anyway with the Court to inform the Magistrate about his circumstances. Therefore, the Magistrate had no basis not to proceed and was none the wiser that Mr. Hodgson failed to appear because of the Covid-19 pandemic.

24. In light of those reasons, I dismiss this ground of appeal.

Grounds 2a, 2d, 2e

25. Ground 2a is that the Magistrate misdirected herself on the question of law and fact when considering whether or not a contract existed between himself and Ms. Ingham.

26. Ground 2d is that Mr. Hodgson was found to be a Power of Attorney of a third party not named as a party to the action, but was nevertheless found to be liable in an action he knew nothing about. Mr. Hodgson submitted that he was never a Power of Attorney.

27. Ground 2e is that the Magistrate drew inferences of fact where there was either no evidence or not sufficient evidence which justified the inference that were drawn that Mr. Hodgson was a Power of Attorney for Dr. Hodgson when he was not.

28. In his affidavit evidence, Mr. Hodgson stated that he had never met Ms. Ingham until after she commenced these proceedings in the Magistrates' Court. I should note here that Ms. Ingham disputes this as in her evidence at trial she said that she attended church on several occasions with Mr. Hodgson. Before then, he had absolutely no dealings with her

whatsoever. Thus he was never in a contractual relationship with her. Further, as he was never a Power of Attorney for Dr. Hodgson he was never in a contract with Ms. Ingham.

29. Mr. Ingham accepted that the Written Agreement was between Dr. Hodgson and herself conceding that there was no agreement between Mr. Hodgson and herself. She submitted that Mr. Hodgson was a Power of Attorney for Dr. Hodgson but she accepted that she had provided no document to evidence the alleged Power of Attorney. In submissions she stated that Dr. Hodgson had said that Mr. Hodgson was a Power of Attorney so she discussed matters with him in that capacity. Further, she conceded that, contrary to the Judgment, there was no agreement between Mr. Hodgson and her that he was a Power of Attorney for Dr. Hodgson.

Analysis

30. In my view, there was no evidence before the Magistrate to satisfy herself to the required standard that Mr. Hodgson was a Power of Attorney for Dr. Hodgson. The highest that this point can be put is that (a) Ms. Ingham was told this by Dr. Hodgson and, (b) the Magistrate somehow accepted that there was an agreement between the parties that Mr. Hodgson was a Power of Attorney. In my view, the Magistrate erred in coming to this conclusion based on the evidence before her. Further, at the appeal hearing Ms. Ingham conceded that there was no agreement between Mr. Hodgson and her that there was an agreement that he was a Power of Attorney for Dr. Hodgson. In my own review of the evidence, there is no credible evidence that Mr. Hodgson was a Power of Attorney for Dr. Hodgson and certainly the Power of Attorney document, if it existed, was not a part of the evidence. That is unsurprising on the basis that it is clear it never existed. In light of those reasons, I am not satisfied that Mr. Hodgson was a Power of Attorney for Dr. Hodgson.

31. Further, I extend my finding on this point to also find that there was no contractual relationship between Ms. Ingham and Mr. Hodgson. Ms. Ingham's agreement(s) was with Dr. Hodgson. I allow Ground 2a.

32. Ground 2d complains that the Magistrate found Mr. Hodgson to be liable in this action on the basis that he was a Power of Attorney for Dr. Hodgson. In her Judgment, the Magistrate found that Mr. Hodgson as Power of Attorney on behalf of Dr. Hodgson wrongfully evicted Ms. Ingham. Further, the Magistrate found that Ms. Ingham suffered a loss of property of \$7,426 as a result of Mr. Hodgson conducting an unlawful eviction on behalf of Dr. Hodgson. In light of my finding that Mr. Hodgson was not a Power of Attorney then I quash these findings by the Magistrate as Mr. Hodgson did not have liability for any eviction by Dr. Hodgson. I allow Ground 2d.

33. The Magistrate stated in her Judgment that she found that on the evidence Mr. Hodgson was one of several others that removed the Chattels from the Room. The Magistrate then found that Mr. Hodgson had done this on behalf of Dr. Hodgson “and also by the Defendant himself.” I have reviewed the evidence and listened to the Courtsmart. Ms. Ingham, who was not present when the Chattels were removed from her Room, said in her evidence that she got that information from Dr. Hodgson. During the course of the trial, the Magistrate cautioned Ms. Ingham several times about giving hearsay evidence preferring direct evidence from Ms. Ingham herself. However, on this point of who moved the Chattels out of the Room, the Magistrate fell into error into accepting the hearsay evidence of Ms. Ingham, of what she heard from Dr. Hodgson, as the truth of the matter, namely that Mr. Hodgson was one of the people that moved the Chattels out of the Room. In the absence of that hearsay evidence there is no evidence that Mr. Hodgson was one of the people that moved the Chattels out of the Room. On that basis, there is no evidence to support a finding of damages against Mr. Hodgson. I allow Ground 2e.

Ground 2b and 3

34. Ground 2b is that the Learned Acting Magistrate erred in law in that she did not consider that the Ms. Ingham was not a tenant of Mr. Hodgson as she did not fall under the definition of a tenant pursuant to the Landlord & Tenant Act 1974 which states as follows:

“tenant” in relation to a contract of tenancy means the person who as between himself and the landlord is entitled to exclusive possession of the premises.

35. Ground 3 is that the Magistrate erred by taking into account, which she should not have, the (Written) Agreement as it was evidenced by the letter dated 23 September 2019 in which it is expressed by Ms. Ingham that the contract was brought to an end as a result of the roof problem. Thus, on the evidence no new or varied agreement was produced.
36. Mr. Hodgson submitted that the Magistrate did not consider the relevant case authorities that sets out the distinction between a licensee and a tenant and the application of exclusive possession per cited the judgment of Windeyer J case in the High Court of Australia in *Radaich v Smith* (1959) 101 CLR 209 at 222 which was cited with approval by Lord Templeman in *Street v Mountford* [1985] 1 AC 809.
37. Ms. Ingham submitted that she executed the Written Agreement with Dr. Hodgson and they intended that there be a valid tenancy. They had both signed the Written Agreement which was in evidence. On my view of the Written Agreement, it is a template document entitled “Agreement” with generic phrases about a tenancy relationship. It has blank spaces for the parties to fill out the specific wording to complete the particular sentence. The Written Agreement uses words and phrases in the context of a tenancy including landlord, tenant, premises, rent, tenancy, the method to terminate the tenancy, the obligations of the landlord in respect of the exterior of the premises and the obligations of the tenant in respect of the interior of the premises.

Analysis

38. The Landlord and Tenant Act 1974 set out the definition of a tenant as described above.

39. In *Street v Mountford* Lord Templeman said as follows:

“In the case of residential accommodation there is no difficulty in deciding whether the grant confers exclusive possession. An occupier of residential accommodation at a rent for a term is either a lodger or a tenant. The occupier is a lodger if the landlord provides attendance or services which require the landlord or his servants to exercise unrestricted access to and use of the premises. A lodger is entitled to live in the premises but cannot call the place his own.”

It was submitted on behalf of Mr. Street that the court cannot in these circumstances decide that the agreement created a tenancy without interfering with the freedom of contract enjoyed by both parties. My Lords, Mr Street enjoyed freedom to offer Mrs Mountford the right to occupy the rooms comprised in the agreement on such lawful terms as Mr Street pleased. Mrs Mountford enjoyed freedom to negotiate with Mr Street to obtain different terms. Both parties enjoyed freedom to contract or not to contract and both parties exercised that freedom by contracting on the terms set forth in the written agreement and on no other terms. But the consequences in law of the agreement, once concluded, can only be determined by consideration of the effect of the agreement. If the agreement satisfied all the requirements of a tenancy, then the agreement produced a tenancy and the parties cannot alter the effect of the agreement by insisting that they only created a licence. The manufacture of a five pronged implement for manual digging results in a fork even if the manufacturer, unfamiliar with the English language, insists that he intended to make and has made a spade.

My Lords, the only intention which is relevant is the intention demonstrated by the agreement to grant exclusive possession for a term at a rent. Sometimes it may be difficult to discover whether, on the true construction of an agreement, exclusive possession is conferred. But where as in the present case the only circumstances are that residential accommodation is offered and accepted with exclusive possession for a term at a rent, the result is a tenancy.”

40. In my view, Dr. Hodgson and Ms. Ingham by way of the Written Agreement intended for there to be a tenancy as Ms. Ingham was to have exclusive possession of the Room for which the evidence is that she was able to lock the door. In applying *Street v Mountford*, by allowing Ms. Ingham to lock the Room door, it appears that Dr. Hodgson was not going to exercise unrestricted access to and use of the Room once Ms. Ingham rented it. I do not accept Mr. Hodgson’s submissions that Ms. Ingham was not a tenant of the Room because she had so many Chattels that some must have been in other parts of the Premises and the storage shed was in the yard. The critical point was that it was intended that she had exclusive possession of the Room when the Written Agreement was executed in September 2017.

41. However, there were several circumstances that affected that intention to create a tenancy. First, Ms. Ingham decided not to move into the Room in September 2017 because there was a leaky roof as evidenced by Ms. Ingham’s own letter dated 23 September 2019. In

my view, the Written Agreement was frustrated by the fact of the leaky roof and it was never acted upon, thus ending the Written Agreement.

42. Second, Ms. Ingham stated that in January 2018 Dr Hodgson called her and asked her to move into the Room and Premises in order to provide care to her as she was 92 years old and in need of an in-house caregiver. However, the evidence supports a finding that the terms of the Written Agreement remained the same in that the rent of \$400 per month still applied and it appears that Ms. Ingham was still entitled to lock her Room door. In my view, from January 2018 there was an oral agreement between Dr. Hodgson and Ms. Ingham which comprised the terms of the earlier Written Agreement and the new term that Ms. Ingham provide some caregiver services to Dr. Hodgson (the “**Oral Agreement**”).

43. I have given consideration to *Street v Mountford* where Lord Templeman said the following:

“Occupation by service occupier may be eliminated. A service occupier is a servant who occupies his master's premises in order to perform his duties as a servant. In those circumstances the possession and occupation of the servant is treated as the possession and occupation of the master and the relationship of landlord and tenant is not created; see Mayhew v. Suttle (1854) 4 El. & Bl. 347. The test is whether the servant requires the premises he occupies in order the better to perform his duties as a servant. "Where the occupation is necessary for the performance of services, and the occupier is required to reside in the house in order to perform those services, the occupation being strictly ancillary to the performance of the duties which the occupier has to perform, the occupation is that of a servant;" per Mellor J in Smith v. Seghill Overseers (1875) L.R. 10 Q.B. 422, 428.”

44. In my view, when Ms. Ingham moved into the Room in January 2019 under the Oral Agreement, the intention of the parties was still to create a tenancy between Dr. Hodgson and Ms. Ingham based on the principal point that Ms. Ingham was to enjoy and did enjoy exclusive possession of the Room. Further, the added duty to provide caregiver services did not alter the relationship to become one of occupation by a service occupier. On the evidence before the Court, there appears to be a hybrid situation of a tenancy and occupation by a service occupier. However, on the one hand I am inclined to resolve the test of whether the servant requires the premises he occupies in order the better to perform his duties as a servant in the negative by drawing the inference that Ms. Ingham did not need to live there in order perform caregiver duties. On the other hand, in respect of a

tenancy, Ms. Ingham was still required to pay the \$400 per month and still was entitled to lock her Room door thus enjoying exclusive possession of the Room for which she was paying a monthly rent.

45. However, that is not the end of the matter because that landlord and tenancy relationship under both the Written Agreement and the Oral Agreement was between Dr. Hodgson and Ms. Ingham. There is no evidence whatsoever that the tenancy agreements were between Mr. Hodgson and Ms. Ingham and I have already stated Mr. Hodgson was not a Power of Attorney for Mrs. Hodgson. In light of the reasons set out above, I allow Ground 2b.

46. Ground 3 complains that the Magistrate erred in taking into account the Written Agreement because it was frustrated by the roof problem and that no new or varied agreement was produced. In my view, the Magistrate erred in relying on the Written Agreement to establish that there was a tenancy agreement between Dr. Hodgson and Ms. Ingham. However, as I have stated above there was an Oral Agreement between them establishing a tenancy. In any event, neither agreement was with Mr. Hodgson. In light of the reasons set out above, I allow Ground 3 as the Written Agreement should not have been taken into account for the purpose that it was used.

Ground 2c

47. Ground 2c is that the Magistrate failed to consider the pictorial evidence which showed the abundance of the possessions of Ms. Ingham were clearly too much to be accommodated in a room that was exclusive to the Ms. Ingham.

48. Mr. Hodgson submitted that because of the amount of property that Ms. Ingham had, she had to be living throughout the house and therefore there was not exclusive possession. He pointed out various pictures showing the items in or about the premises.

49. Ms. Ingham submitted that her Chattels included a bed, a wooden bench, two plastic tubs containing clothing and 3 suitcases which were all kept in the bedroom. She maintained that in respect of the Room, she had a key to lock the door, did lock the door and others

did not have unrestricted access to it. She had a clothes dryer which was kept in the living room and a shed which was located in the yard.

Analysis

50. I do not accept Mr. Hodgson's submissions that Ms. Ingham was not a tenant of the Room because she had so many Chattels that some must have been in other parts of the Premises and the storage shed was in the yard. For reasons stated above, I found that Ms. Ingham had exclusive possession of the Room and thus was a tenant of Dr. Hodgson but not a tenant at any point of Mr. Hodgson. The pictorial evidence was of no assistance to determine this ground.

51. In light of the reasons above, I dismiss this ground of appeal.

Conclusion

52. For the reasons above, I allow the Appellant's appeal on Grounds 2a, 2b, 2d, 2e and 3 with the result that I set aside the Magistrate's Judgment that Mr. Hodgson is liable for the \$7,426 in damages. In summary, I am not satisfied: (a) that Mr. Hodgson was a Power of Attorney for Dr. Hodgson; (b) that there was any other contractual relationship between Ms. Ingham and Mr. Hodgson to find liability against Mr. Hodgson; and (c) that there is any proper evidence that Mr. Hodgson moved the Chattels out of the Room.

53. I note that the Magistrate found the amended claim of \$400 for loss of rent deposit in the favour of Ms. Ingham. However, it is not entirely clear that she found Mr. Hodgson to be liable as she later decided that as Dr. Hodgson was not a party to the proceedings then she could not make an order against her. For clarity, if the Magistrate had found Mr. Hodgson liable for the loss of the rent deposit then I quash such finding as Mr. Hodgson was not the landlord or Power of Attorney for the landlady as explained above.

54. In respect of the costs awarded in the Magistrates Court I quash that order as Mr. Hodgson has been successful on appeal.

55. Unless either party files a Form 31TC within 7 days of the date of this Ruling to be heard on the subject of costs, I exercise my discretion to make no order for costs.

Dated 9 May 2022

**HON. MR. JUSTICE LARRY MUSSENDEN
PUISNE JUDGE OF THE SUPREME COURT**