



**IN THE SUPREME COURT OF
THE TURKS AND CAICOS ISLANDS**

ACTION NO. CL 46/2017

BETWEEN

1. SANDRA GARLAND)
2. ANTHONY GARLAND) **PLAINTIFFS**

AND

THE ATTORNEY GENERAL OF THE TURKS)
AND CAICOS ISLANDS) **DEFENDANT**

BEFORE RAMSAY-HALE CJ

MR. ARIEL MISICK QC and with him, MS DEBORAH JOHN-WOODRUFFE OF MISICK & STANBROOK FOR THE PLAINTIFFS

MS. CLEMAR HIPPOLYTE, PRINCIPAL CROWN COUNSEL FOR THE DEFENDANTS

DELIVERED ON 1ST MAY 2020

JUDGMENT

1. This is the decision on the Plaintiffs' claim for a declaration that the Defendant is bound by the terms of an agreement to lease premises at Chalk Sound alleged to have been made between the parties in March 2008 which the Plaintiffs claim remains in full force and effect (the "2008 Agreement"); an Order setting aside a lease of the premises subsequently entered into by the parties in March 2012 the "2012 Lease"); restitution of all sums due to the Plaintiffs by virtue of the Plaintiffs having entered into the 2012 Lease because of economic duress or, in the alternative, damages for the tort of intimidation.

The Facts

2. Few of the facts are in dispute as the negotiations that culminated in the construction of what became the Chalk Sound Police Station and the negotiations for the Lease of those premises by TCIG are heavily documented.
3. The narrative begins in 1998 with the grant of a conditional purchase lease of Crown land, known as Parcel 60605/119 Norway and Five Cays, Providenciales, to the First Plaintiff, Mrs. Sandra Garland ("Mrs. Garland") for the purpose of building and operating a store and delicatessen.¹
4. In 2004, was proposed that the Turks and Caicos Islands Government ("TCIG") establish a permanent satellite Police Post on the property. TCIG, being unable to fund the construction of the building,² agreed with her that she would undertake the construction. She submitted a proposal for the police station to the then Minister of Works, the Hon. McAllister Hanchell.³ He responded that TCIG in principle agreed to enter into an arrangement that would facilitate the sub Police Station pending further negotiation and contractual agreement setting out the terms and conditions.⁴
5. Derek Been, then Permanent Secretary in the Ministry of Works on the 14 October 2005, advised Mrs. Garland that, to proceed with the proposed arrangements for lease, TCIG required information with respect to,

¹ Hearing bundle, pp 54 and 55

² Page 71

³ Page 80

⁴ Letter Hanchell to Garland dd 9 February 2005

- (i) the proposed rent per annum and per square foot,
 - (ii) length of term of rental,
 - (iii) proposed construction start and completion dates, and
 - (iv) the terms for purchase of the building by government.
6. He advised further that the Government Valuation Department would prepare an assessment of the proposal which will be taken as a lease agreement to the Executive Council (“ExCo”) for approval.
7. On 17 October 2005, the Hon. McAllister Hanchell, then Minister for Works, acknowledged receipt of Mrs. Garland’s proposal to lease the building to TCIG for 20 years at a starting rent of \$30 psf. He advised that TCIG was evaluating the proposed rate and indicated TCIG’s preference to enter into a lease arrangement with an option to buy at a fixed price. He invited her to send him a draft lease for consideration.⁵ There is no evidence that any draft lease was sent in response to the Minister but Mrs. Garland proceeded with the plans to construct the Police Post, obtaining Outline Development Permission on 29 March 2005⁶ and received confirmation from the police in April 2006 that the proposed drawings were acceptable.⁷
8. Nearly a year later, on 26 September 2006, Mrs. Garland submitted a draft lease to the Hon. Mr. Jeffery Hall, the Minister now responsible for Works, seeking an early response as the lease was “*crucial*” for securing financing for the project⁸. In this iteration of the lease, the rent was expressed as an annual sum of \$177,600 to be paid monthly in advance.
9. Mr. Hall replied that TCIG agreed to lease the building on completion and advised further that,

“...upon completion of the building, the Government's Valuation Officer will be visiting the site to verify the Net Internal Area and to make recommendations to the Ministry for its rental.”

⁵ Hanchell to Garland dd 17 October 2005.

⁶ Page 95

⁷ Page 96

⁸ Page 98

“The Ministry is in receipt of a draft lease agreement for the proposed building; this has been forwarded to the Attorney General's Chambers for ratification.

Once this process has been completed, an officer from the Ministry will be contacting you with further details for the formalization of the lease.”

10. Mrs. Garland’s evidence is that having this agreement for lease in place, she took steps to secure the funding to build the police station. In December 2006, she transferred the property into her name and that of her son, Anthony Garland, the Second Defendant, in order to qualify for the requisite mortgage and on 26 February 2007, they were granted a loan of US\$1.14 million from TCI Bank Ltd, with interest at 9.5% per annum, repayable in monthly instalments of US\$ 14,752.
11. Construction of the police station started in February 2007, in accordance with plans which had been approved by the Police,⁹ but without a concluded agreement for lease.
12. During the course of construction, the police asked for certain changes to the design. On 26 November 2007, she wrote to Minister Hall to advise that the resulting change orders had delayed completion and escalated costs.¹⁰ Under cover of that letter, Mrs. Garland provided the Minister with an updated valuation prepared by Construction Advisory Services Ltd and a further draft lease prepared by her attorneys.¹¹
13. This draft lease provided *inter alia* for rent at US\$277,000 per year payable in monthly instalments commencing 30 November 2007, the date inserted in manuscript, in clause 2¹² which states,

“2 The demise

⁹ Sandra Garland’s Witness Statement, paras 15-32

¹⁰ Paras 32, 33

¹¹ *ibid* page 664,

¹² Page 180

In consideration of the rent and the covenants reserved by and contained
in
this Lease:

“2.1 the Lessor DEMISES to the Lessee:

2.1.1 ALL the Demised Premises;

*2.1.2 EXCEPT AND RESERVED to the Lessee as stated in
Schedule 2;*

*“2.2 for the TERM of 15 years from 30th November 2007
[determinable as provided by
this Lease]; and*

“ 2.3 the Lessee PAYING during the Term;

*2.3.1 the yearly rent of \$277,000.00 [(subject to the provisions for
revision contained in clause 6)] by equal monthly payments in
advance on the first business day of each month (or a proportionate
part) of such payments in respect of the period commencing on 30th
November 2007 to be made on the grant of this Lease;*

*2.3.2 as additional rent the monies payable by the Lessee under
clause 3.3 as from 30th November 2007.”*

14. In her letter, she noted,

*“that the rental payments are scheduled to commence at the end of
November, to accommodate payments to the loan, and we are hoping that we
can submit these documents to the bank in order to procure the additional
funding as soon as possible, so that payments for the loan do not fall into
arrears.”* [emphasis added]

15. I emphasise her statement that rental payments would commence at the end
of November as she repeatedly asserted in later correspondence that payments
under the 2007 Lease were to commence on 1 November 2007.

16. On 27 November 2007, Minister Hall and the Garlands executed the draft lease, hereinafter referred to as the 2007 Lease (the “2007 Lease”). it was common ground between the parties at trial that the lease had no legal force or effect as the Minister had no authority to bind TCIG.
17. In his evidence, Mr. Hall explained that he signed this Lease “*on the basis that [he] agreed the terms in principle, subject to the approval of Cabinet.*”¹³
18. On 28 November 2007, the Minister presented the 2007 Lease to Cabinet which approved, “*in principle, a lease agreement to take effect 1 February 2008, subject to the lease being vetted by the Attorney General’s Chambers prior to its execution.*” Cabinet also approved the insertion in the Lease of an option to purchase, in the event TCIG wished to acquire the facility at the end of the 15 year lease.¹⁴ [emphasis added]
19. According to Ms. Yaa McCartney, the Crown Counsel seized with the preparation of the Lease, the AGC’s process when vetting leases,

“11. ...is to look at each provision and advise whether legally TCIG would want to undertake the proposed obligation. What is done is a comparison of the rights and obligations of the lease drafted by the Landlord and the Standard TCIG Lease provisions. We determine whether we can accept any of these and ascertain whether although not in line with our standard provisions that nevertheless the provisions are reasonable.

“12. If we find that they are not reasonable based on TCIG's resources, manpower and even the Budget, or finances, we would raise these concerns with the relevant Ministry for their instructions. The Permanent Secretary within the relevant Ministry would indicate to the Chambers, TCIG's position in light of the highlighted observations and or recommendations.”

20. With respect to the 2007 Lease, Ms. McCartney states that,

“13. Upon perusing the Sandra Garland lease it was noted that the terms of the lease were unreasonable. The lease included provisions requiring TCIG

¹³ At para 13 of his Witness Statement

¹⁴ *ibid* page 593

to maintain the interior and exterior of the building, the latter normally being the Lessor's obligation under a lease; it also required TCIG to take on the responsibility of painting and decorating the exterior of the building every three (3) years; TCIG was also required to pay interest of 6% above First Caribbean's base interest rate on rent unpaid after 7 days and to pay interest on late rent where the Lessor refused to accept rent payment due to other breaches of a lease. TCIG was also obligated to finance the building insurance.

“14. Moreover, the annual rental proposed in the Lease submitted by Mrs. Garland was stated as US\$277,000.00 annually and the option to purchase clause gave TCIG the opportunity to purchase the property after 15 years of renting at 10% discount of the market value. These two rather unfavorable clauses were highly contentious between the parties...The annual rent was also an issue as it was double the market value rent for the property at that time and conflicted with the advice of the TCIG valuation department....

.....

.....

“19. After reviewing these provisions and rendering legal advice in respect of same, the Chambers received instructions from Mrs. Maureen Williams former PS Works and Utilities, Mr. Delton Jones former Permanent Secretary in the Ministry of Finance and Mr. Arthur Been Under Secretary within the Ministry of Finance to draft a new lease.”

21. In February 2008, the Attorney General’s Chambers (“AGC”) prepared a standard TCIG lease in which the essential terms were significantly different to those contained in the 2007 lease (“AGC Lease”). The most significant difference was the \$10,000 per month reduction in the rent reserved under the 2007 lease, as AGC’s lease stipulated a monthly rent of \$11,990 based on an internal TCIG valuation dated 19 February 2008¹⁵ which assessed the annual rental value of the property as US\$143,880 per year, half the amount sought by Mrs. Garland. The commencement date was to be 1 February 2008, in line with Cabinet’s directions, an option to purchase at a fixed price was introduced and the responsibility for insuring the premises was placed on the

¹⁵ *ibid* page 584

Garlands. The option to purchase was designed to take into account the monies paid by TCIG as rent over the period. As Ms. McCartney observed in her evidence,

“TCIG was concerned that at a rental rate of US\$277,000.00 annually for 15 years it would have covered the value of the property and would effectively be paying for the building twice.”

22. This February iteration of the lease was rejected by Mrs. Garland *in toto*.¹⁶ She took particular issue with the commencement date which she insisted was 1 November 2007 as in the “*agreed lease*” - contradicting both the assertion in her letter of 26 November 2007 and the provisions of clause 2.1.3 of the 2007 Lease which states that the commencement date of the lease was 30 November 2007 - and with the rent reserved under the AGC Lease, insisting that that the rent had been agreed at \$277,000 per annum. She further rejected the proposed option to purchase at a fixed price, deriding its inclusion in the following terms:

*“In any event to set a fixed purchase price now for a building that could be rented for 15 years or more is nonsensical, as any such price must refer to market conditions at the actual time of purchase.”*¹⁷

23. Mrs. Garland copied her response to Mr. Hall among others. Mr. Hall’s comment on the negotiations included trenchant criticism of the AGC:

*“On 4th March 2008, Sandra Garland copied me, the Premier, the Permanent Secretary for Finance, the Deputy AG and the Commissioner of Police in on a letter she had written to the Attorney General’s Office in reply to theirs dated 26th February 2008. I attach a copy of the letter dated 4th March 2008 [2-3]. The Attorney General’s Chambers, instead of vetting the lease to ensure it complied with legal formalities, **sought to vary the terms approved by Cabinet significantly and re-negotiate terms which had already been agreed with Sandra Garland.** Sandra Garland expressly rejected all of the suggested changes.”*¹⁸ [emphasis added]

¹⁶ Sandra Garland’s Witness Statement, para 41 at page 679

¹⁷ P 203 of the Bundle

¹⁸ Witness Statement para 11

24. It was, of course, not right to say that Cabinet had approved the 2007 lease in its November meeting. It had only approved *in principle* a lease agreement to take effect 1 February subject to it being vetted by TCIG's by the Attorney General's Chambers, whose remit it is to provide legal advice to the Government.

25. In assailing the AGC for changing the terms of the 2007 Lease, Mr. Hall appeared to have forgotten his original advice to Mrs. Garland that,

"... upon completion of the building, the Government's Valuation Officer will be visiting the site to verify the Net Internal Area and to make recommendations to the Ministry for its rental."

and seemingly failed to appreciate that AGC had done precisely what he said would be done, and obtained the opinion of the Government's Valuation Officer and then recommended that the building be rented at a rate of US\$143,880 per year.

26. The following day, 5 March 2008, Minister Hall took the matter back to Cabinet, raising it by oral mention.¹⁹ At that meeting, he circulated all documents and correspondence between the Attorney General's Chambers and Sandra Garland, with respect to the lease of the premises. The Cabinet Minute records that the Minister advised *"that at a previous Cabinet meeting, approval was granted for the lease of the above mentioned premises that was to commence 1 November 2007, however... the annual sum of \$277,000.00 was not approved and he was hereby requesting Cabinet's approval of same."*

27. According to the Minute, the Minister further noted, *"that Mrs. Garland in the correspondence was requesting TCIG to undertake responsibility of insurance payments as well as rental payments to be retroactive from November 1, 2007."*

28. Mr. Hall recalls that Cabinet expressly approved the sum of US\$277,000 per year as rental payment, advised that the insurance should be Mrs. Garland's

¹⁹ Cabinet Minute at p 594 of the Bundle

responsibility and directed him to negotiate a January 2008 commencement date.²⁰ Mr. Hall states that he did so, calling her on the same day to tell her that Cabinet had approved the Lease to commence 1 January 2008 but she would have to bear the burden of insuring the premises and she agreed.

29. Mrs. Garland, in her evidence, also asserts that she agreed to Cabinet's terms and immediately proceeded to arrange insurance cover for the building through an insurance broker, Mr. Martin Regan. In support of her evidence, she exhibited email correspondence between her and Mr. Regan sometime before 1 pm on 5 March 2008 in which she requested that Mr. Regan provide her with a policy of insurance for the building.
30. This is the agreement - that the lease would commence 1 January 2008 at a rental of \$277,000 per annum paid monthly for a term of 15 years' subject to the Garlands being responsible for insuring the premises - that the Garlands contend was reached on 5 March 2008 and on which they rely in these proceedings.
31. On 19 March 2008 TCIG paid the sum of \$69,250.00 as and for rent. In her evidence, Mrs. Garland says she believed was payment of rent from January 2008 in accordance with the 5 March Agreement.
32. The email she wrote to the Minister on 8 June 2008, however, flatly contradicts that assertion. In it she stated,

"You had told me that cabinet had approved my Lease and that monthly payments would be in accordance with the Lease. However, after speaking with your PS, Mrs. Williams about the outstanding 3 months' payment, I understand that Mrs. Williams followed your instructions and started the monthly rental payment from February 2008 instead of November 2007. Therefore the loan is still outstanding for November, December and January." [emphasis added]
33. The Permanent Secretary responded on behalf of the Ministry and sought to clarify the instructions the Ministry had received from Cabinet:

²⁰ Jeffery Hall Witness Statement, para 326

*“Dear Sandra,
In another effort I will share with you the instructions that I received in regards to your Lease payment.*

Cabinet in its Meeting held on November 28th, 2007 "approved in principle a lease agreement between the Government of the Turks and Caicos Islands and Ms. Sandra Garland, to take effect February 1st. 2008, subject to the lease being vetted by the Attorney General Chambers prior to its execution.

It further approved for an option to purchase clause be inserted in the lease, which the Government might wish to acquire the facility at the end of the 15-year lease."

Consequently, I dealt with the situation as follows:

Three months -----\$69,250.00 (February, March, April).

One month-----\$23,083.33 (May)

One month -----\$23, 083.33 (June)

One month -----\$23.083.33 (July)

*I do hope that this now settles the concern. Ms Sandra, this was very clear instructions from Cabinet that I carried out and thought that all was well." I am sorry for any inconvenience that may have been caused by the Ministry."*²¹

34. Mrs. Garland replied by email of the same date,

*“According to the Lease Agreement, rental payments were due from **Nov 30, 2007** to meet loan payments. I am still awaiting rental payment for November, December and January **which the Minister told me he instructed you to pay.**”*

²² [emphasis added]

35. In her *viva voce* evidence, Mrs. Garland was unable to explain why she was seeking payment of back rent in that email but it is plain to me, looking at the

²¹ P 754 of the Bundle

²² Page 754 of the Bundle

correspondence as a whole, that a 1 January commencement date was never negotiated with Mrs. Garland per Cabinet's directions.

36. As at 1 July 2008 then, there was no agreement as to the date of commencement of the lease and Mrs. Garland continued to operate under the misapprehension that her draft lease of 2007 represented a binding agreement with TCIG.

37. Not to be deterred, and perhaps because of the representations he had made to Mrs. Garland, Mr. Hall made a renewed attempt in the Cabinet Meeting of 14 July 2008 to have TCIG agree to pay rent arrears to November 2007 but this was again firmly rejected by Cabinet. At that meeting, Cabinet advised that,

“1. It approved the addition of a clause to the lease to allow the government the right to purchase the building at market value at any time after the expiration of three years but no later than 7 years. Valuations will be agreed between the parties concerned within three months of the Government opting to exercise its purchase option.

“ 2. It granted approval, that should TCIG fail to exercise this option then it would have to allow the lease to run its course as proposed by the Lessor at the end of 15 years at a cost of market value less 10% discount.

“3. it approved for the lease in respect of the Police Station at Chalk Sound to be based on the standard government lease to be drafted by the Attorney General's Chambers.

“4. The Ministry of Works advised that it did not approve the Landlord's claim of payment of rent to be retroactive to November 2007.” [emphasis mine]

38. No further reference was made to the commencement date of the lease.

39. Although it was submitted by Mr. Misick QC in closing, that the commencement date for the lease was 1 January 2008, having been agreed by Mrs. Garland at the earliest on 5 March or by July latest, his submission is unsupported by the evidence.

40. The fact is that Mrs. Garland continued to assert in correspondence with the Governor in September 2008 and April 2009,²³ in which she repeated her complaint that she had been “*told rentals would begin in February 2008, ...without any negotiation with ourselves...*” and asserted that she was still without a lease “*despite the [2007] lease being verbally agreed on many occasions.*” [emphasis added]
41. In her *viva voce* evidence, she said that when she wrote those emails she was seeking a lease in terms of the alleged 5 March agreement made with Cabinet, an apparent attempt to put a gloss on those emails which, in my view, they cannot bear.
42. The correspondence between the Minister, Mrs. Garland and Permanent Secretary Williams after the 13 March 2008 makes it clear, in my judgment, that Mrs. Garland was unaware of the proposed January start date as she continued to insist on rent as of 1 November 2007 and continued to protest the *fait accompli* presented to her by TCIG in emails to the Governor in 2008 and 2009.
43. It follows that her recollection - and his - that she agreed with him that the lease would commence on 1 January 2008, is not accurate. While I do not think that Mrs. Garland was trying deliberately to mislead the Court, I have approached her evidence with caution. It may be that time has blurred her memory.
44. If indeed the Minister had told Mrs. Garland that Cabinet had approved the 2007 Lease, and that payments would reflect a 1st November start date, and had also told her that he had instructed the PS to pay rent commencing November 30, as Mrs. Garland asserts in the emails referred to above,²⁴ then I would be driven to conclude that the Minister had been less than candid with her.
45. Before I leave this issue, I would observe that, the inconsistency between the documentary evidence, which showed that the date of commencement in the

²³ *ibid*, pages 691

²⁴ Paragraphs 31, 33 *supra*

2007 lease was 30 November 2007, as Mrs. Garland reminded Mr. Hall,²⁵ and Mrs. Garland's later assertions that the agreed date was 1 November 2007, reinforced the need to approach her evidence with caution.

46. With respect to insuring the premises, the 5 March correspondence with the insurance broker, taken at face value, might lead to an inference that she began the process of acquiring insurance for the premises in response to the phone call that Mr. Hall says he made but, having considered all the evidence, and bearing in mind the need to approach Mrs. Garland's evidence with caution, I say that it is more likely than not that she procured the insurance because she was required to do so by the mortgagee and not TCIG.
47. The Letter of Commitment offered by the Bank in February 2007 expressly required, as part of its security documentation, that the “[a]ssigned All Risk Builders Insurance be converted to Comprehensive Commercial Insurance coverage for the full-appraised value of the property to include both the building and contents noting TCI Bank Limited as first mortgagee.”
48. Once the building was complete, the obligation was triggered. This was the obligation she wished TCIG to assume but she was always required by the mortgagee to acquire and maintain insurance and the fact that she contacted Mr. Regan on 5 March is not evidence, in my view, that she was either aware of, or had accepted, the stipulation made by Cabinet.
49. I am fortified in my conclusion, that she obtained the insurance because her mortgage obliged her to do so, by her assertion to the Governor in her email of September 2008, that

“I have ensured that all other conditions for this mortgage facility are in place, including property insurance.”
50. I note here the observation of John Mezzanotte CPA, a consultant engaged by TCIG in 2010 to provide financial recommendations with respect, *inter alia*, to the lease of the Chalk Sound Police Station that the sum of \$277,000, reserved in the 2007 Lease as and for rent, already included a sum to cover

²⁵ Paragraphs 13 and 14 *supra* : “rental payments are scheduled to commence at the **end** of November”
Sandra Garland and Anthony Garland v The Attorney General of the Turks and Caicos Islands CL 46/2017

the projected costs of insuring for the building ²⁶ which might make one wonder if the negotiations were carried out in good faith. I will return to his report later in the judgment.

51. In any event, the evidence of Mr. Hall and Mrs. Garland with respect to the contents of that phone call has been so undermined by the contemporaneous documents that I place no weight on it at all. I reject Mrs. Garland's evidence that she purchased the insurance because she had agreed to Cabinet's stipulation that the Lessors bear the obligation for insuring the premises.
52. In its July meeting, in which Cabinet again rejected the proposition that there was an agreement to pay rent from November 2007, Cabinet proposed an *additional* term which would allow for the purchase of the building after 3 years, at market value.
53. In its meeting of October 2008, Cabinet considered submissions made by the AG's Chambers and ²⁷ approved a commercial purchase lease with payments based on the current market value of the premises, amortized over the term of the lease with Government having the option to purchase within three to seven (3-7) years.
54. In July 2009, TCIG commissioned an independent valuation to be obtained in respect of the property. The valuation was undertaken by BCQS and assessed a market value for the property of US\$1,350,000.00 and a current rental value of US\$135,000.00 per annum.
55. None of the documents disclose that these decisions of Cabinet were ever discussed with Mrs. Garland who, as I have already said, continued to pursue an executed lease in terms of the 2007 Lease throughout 2008 and 2009.
56. In August 2009, the British imposed direct rule on the Islands after allegations of systemic corruption within TCIG. Ms. McCartney recalls that, after the suspension of the TCI Constitution in 2009, TCIG was forced to devise and implement robust fiscal and monetary controls in order to curtail a rapidly declining economy. According to Mr. Delton Jones, former TCIG Chief

²⁶ Page 709

²⁷ Yaa McCartney's witness statement para 22

Economist and Permanent Secretary in the Ministry of Finance, TCIG had reached a point where it could not pay many of its bills for basic public services and it was unable to increase borrowing. The government's revenues had collapsed from \$220m or thereabouts in 2008/09 to about \$120m in 2010/11.

57. On 12 September 2009, Mrs. Garland wrote to Mr. Martin Stanley, then Acting Governor and Chief Executive of the Interim Government, again outlining her position and informing him of the need for an executed lease. She acknowledged the Government's financial predicament but expressed her desire to be put in a position to settle with her creditors by obtaining an executed Lease.
58. In late September 2009, Mrs. Garland received a letter from Mr. Been in which he advised her that TCIG had obtained a valuation to calculate the appropriate amount to be paid for the purchase of the freehold of the Property. He proposed a market value for rent of \$135,000.00 per annum based on that valuation. She rejected his proposal and reminded him of the 2007 valuation of \$1.9 million from Construction Advisory Services and suggested that "*a more reasonable and fairer review could be around \$1,600,000.00,*" indicating a willingness to execute a lease on new terms. No consensus was reached.
59. A further valuation was commissioned by TCIG's Valuation office in 2010 wherein the Deputy Chief Valuation Officer concluded that the current market value of the property was US\$174,000.00 per annum, which would have produced a monthly rent of \$14,500.
60. In October 2010, Mr. Mezzanotte, to whom I have already referred, met with Mrs. Garland and perused all correspondence and documents relating to the construction and letting of the Chalk Sound Police Station. He noted that the monthly rental she demanded was based upon a projection of her monthly outflows including mortgage payments, insurances and maintenance and not on the market rate for a comparable property or on the basis of obtaining a fair market return on her investment. He noted further, that the valuation of \$1.9 million which she had received from Construction Advisory, was not based

on the property's market value, but on the capitalisation of a lease under which rent of \$277,000 per annum was reserved.

61. According to Mezzanotte's report, there was a suggestion by Mrs. Garland that it was possible to refinance the mortgage over a longer term of 20 to 25 years an interest rate of 6.5% to 7.5% on terms that would allow her to settle the outstanding balance plus any other outstanding liabilities which the lender was prepared to include therein, but it appears from her evidence, that Mrs. Garland had indicated that she was not amenable to the idea.
62. On 9 November 2010, Mr. Wilson, then PS of Works and Mr. Jones, then PS Finance, wrote to Mrs. Garland indicating that TCIG was undertaking an initiative to reduce its rental obligations, and proposing a rent reduction of approximately 20%. The letter stated,

"This review indicates that some of the monthly charges are either above valuation or not with the prevailing market value or the going rate for like premises, which in the current economic slowdown, has seen a significant rate reduction.

*As a result, the Ministry in an effort to obtain a more favourable and competitive rate are requesting that all existing and potential landlords reexamine their commercial lease terms with the Government **as it would not be prudent for the Government to pay such rates if we are to adequately maintain public servants and security.***

Our initial proposal seeks to reduce all rental payments by 20%. However, it must be clearly stated and understood, that our proposal will not be limited to 20%. We recognize and appreciate your commercial interest; however, we are seeking a fair approach for all, which is to pay market rental rates. We anticipate a response prior to the close of business on 18th November 2010.

To that end, a standard lease highlighting our criteria will be forwarded to you shortly for perusal.

We look forward to a continuing and mutually beneficial relationship."

63. On 15 November 2010, Mrs. Garland indicated her willingness to negotiate a rent reduction in light of the fact that TCIG was not in a financially viable position and could not maintain the existing rent payment of US\$23,083.33 per month.
64. It is unclear from the documents before the Court what transpired between the parties, if anything, between November 2010 when Mrs. Garland agreed to a rent reduction and December 2011. What is disclosed by the documents is that another internal valuation was commissioned by TCIG. That valuation, dated 5 December 2011, put the annual rental value at \$97,848 or \$8,154 per month. On the 19 December 2011, the TCIG (the Police) gave Notice to Quit the premises on 30 January 2012.
65. In an email to TCIG's Chief Financial Officer, Mr. Hugh McGarel- Groves, sent the day after she received the Notice, Mrs. Garland expressed surprise at being served with a notice to quit as she had been given no prior indication that TCIG intended to cease renting the premises.²⁸ In that email she stated,
- "I am aware that the government is in a very difficult situation and I am willing to meet with you to discuss a rental reduction to help in [t]his dire circumstance."*
66. In January 2012, Mrs. Garland received a new draft lease from the AGC.²⁹ A meeting was held between Ms McCartney and Mrs. Garland to discuss the terms of the proposed lease. Ms McCartney attended the meeting with a TCIG representative, one Mr. Roger Harvey. Mr. Anthony Garland attended with his mother as did Mr. Andrew Newlands, an attorney-at-law and partner in a local law firm, described by Mrs. Garland as her manager and her boss.
67. The discussion points from the meeting were summarised by Ms. McCartney in an email to Mrs. Garland dated 14 February 2012, in which Ms. McCartney noted, *inter alia*, that Mrs. Garland had indicated that she was '*not prepared to rent the property for less than ... US \$10,400 per month*' and that Ms

²⁸ Hearing Bundle, page 757

²⁹ Hearing Bundle, page 563 on

McCartney had advised her in turn *'that the rent was a sticking point for TCIG and it was unlikely that a higher rent would be accepted.'*³⁰

68. Although Ms. McCartney invited Mrs. Garland to indicate whether her account of the meeting was accurate, she did not. It appears from Ms. McCartney's email of the 22 February 2012 that Mrs. Garland again wrote to the CFO, Mr. McGarel-Groves to take issue, not with the accuracy of Ms. McCartney's memorandum of their encounter, but with the accuracy of certain statements made by Ms. McCartney during the course of the meeting.
69. Ms. McCartney addressed these issues in an email to Mrs. Garland on 22 February 2012, in which she wrote,

"With respect to your email to Hugh McGarel-Groves transmitted February 14, 2012, allow me the opportunity to clarify the following:

"1. I informed at our meeting on February 3rd that the Chambers were informed by the former P/S for works that you had received financial assistance from TCIG towards the development of the Chalk Sound Station. I added further that we had not seen any evidence of this hence unlike the first draft lease, a clause providing for repayment would not be included in the current draft. I pointed out however that we do have on file information which suggested that the former Minister Hanchell arranged for the land to be prepared and a septic system installed at TCIG expense with respect to a trailer which was to be placed on the property. I showed you the invoices which you stated could possibly relate to something else and that it did not show infatically (sic) that Government had paid for the services. In concluding the issue, I stated that we have no evidence in the file to support that you had an advance from TCIG towards the development therefore there would be no reference to this in the draft lease. Based on the foregoing, I believed the issue was resolved in the meeting, however, I am to now understand from your email to Mr. Groves that you desire this matter to be looked into further?"

³⁰ Hearing Bundle, pages 744-745

“2. I mentioned that the former Commissioner said he became aware of the development during its later stages because you mentioned that the RTCIPF knew of the project from its Inception. In any event, I do not think this is relevant to the current negotiations and it certainly does not diminish from TCIG's efforts to conclude a lease agreement with you. I emphasised this point at our meeting, and I hope as we both agreed at the meeting to move beyond the past to concluding a lease acceptable to both parties.”³¹

70. Mrs. Garland in her evidence recalls,

“ I was adamant that I could not agree to the unilateral changes in the terms of the agreement to lease, but Anthony and I were informed, and this is not reflected in Ms McCarthy's summary, that we "could take it or leave it" but given the poor state of the rental market and the fact that as a built for purpose police station with jail cells and all of the other peculiarities required by a police station, we attempted in despair to raise the rental price to US\$10,400.00. TCIG would not move on any of their terms, they were cast in stone. They insisted that the agreement entered into with me be varied unilaterally, with all improved terms in their favour.”

71. In that email Ms. McCartney offered a monthly rent of US\$8,400, indicating that her instructions were that *‘TCIG cannot justify going beyond this figure’*.

72. Negotiations continued with respect to divers provisions in the draft lease which are recorded in an exchange of emails between Mrs. Garland and Ms. McCartney. In the course of those exchanges, Mrs. Garland made salient observations with respect to divers clauses in the draft lease to which she took objection and other clauses whose inclusion did not make commercial sense to her, one such example being the requirement to give the TCIG 3 months’ notice to quit in the event the premises were sold.

73. In a further email sent on 1 March 2012, Ms McCartney reminded Mrs. Garland that the Notice to Quit, which had been extended for one month, expired on that day and that the lease needed to be urgently executed.³² On 2

³¹ Page 746 of the Bundle

³² Hearing Bundle, page 763

March 2012, the lease was executed by the Garlands and then Governor Damian Todd (the “2012 Lease”).

74. The 2012 lease was on TCIG’s standard terms. Material provisions important to the Garlands as lessors which had been included in the 2007 Lease and which the Garlands contend Cabinet had agreed in March 2008³³ did not appear in the 2012 Lease: the rent was \$8,400 instead of the provision for interest at 6% over base rate FCIB (Bahamas) Bank Ltd payable by TCIG on rents and other monies as from the date they became due until paid was removed and no allowance for interest on unpaid rent was made; the fixed term was altered to 5 years; an option to terminate with 3 months’ notice or payment of 3 months’ rent in lieu of notice was included, the upward rent review clause was removed as was the option to purchase.

75. According to Mrs. Garland,

“[TCIG] insisted that the agreement entered into with me be varied unilaterally, with all improved terms in their favour. We could not afford to make alterations to change the use of the Property to rent out as residences or offices or retail space, Anthony and I were coerced and left with no option by to enter into the new lease on 2nd March 2012.”

76. In 2017, TCIG requested an extension of the 2012 Lease on the same terms. The Garlands sought legal advice in 2017 and were advised that they had a viable claim to challenge the validity of the 2012 lease. These proceedings were subsequently issued.

The Issues

77. The first issue for resolution is whether there was, at 5 March 2008, a binding agreement for lease which required the TCIG to accept a lease of the premises at Chalk Sound in terms of the 2007 Lease, save for the amendments Cabinet required with respect to the 1 January 2008 commencement date and the obligation of the Lessors to insure the building.

³³ The putative “2008 Agreement”

78. If that question were determined in favour of the Garlands, the agreed issues for resolution are whether the 2012 Lease is void for lack of consideration or should be set aside as being procured by economic duress or by the tort of intimidation committed against them by TCIG.

The Submissions

79. Mr. Misick referred the Court to the authority of *RTS Flexible Limited v Molkerei Alios Muller GmbH* [2010] UKSC 14 at 45, 48 and 50 from which he draws the principle that whether a binding contract exists, depends on what was communicated between the parties by their words and conduct and whether, objectively assessed, what was communicated leads to the conclusion that they intended to create a binding legal relationship and had agreed all terms that they wanted or that were, in law, essential for that purpose.
80. Learned Queen's Counsel submitted that there was a binding agreement as at 5 March as evidenced by the oral and written communications and documents made between the parties. The terms of that agreement were that the lease would be for a period of 15 years, at a rent of \$227,000 per annum payable in monthly instalments with an option to purchase the property at the end of the term at a discounted value with the obligation for insuring the premises being the Garlands'. He submits that, objectively viewed, the remaining terms of their agreement to lease were those in the 2007 Lease, as it was clear from the Cabinet Minute of 5 March 2008 that Cabinet had not required that the remaining terms of the 2007 Lease be renegotiated.

The Commencement Date

81. The Plaintiffs' pleaded case is that the lease commenced on 1 January 2008 by agreement of the parties following Cabinet's meeting of 5 March 2008. In his oral submissions, Mr. Misick argued that the commencement date was agreed Mrs. Garland on either 5 March in the telephone call alleged to have taken place between her and Minister Hall, or by the latest July 2008 when

Mrs. Garland received the email from PS Williams setting out the rental payments³⁴ and made no further demand for arrears.

82. Despite the evidence of both Mr. Hall and Mrs. Garland that he told her that Cabinet had proposed and she had agreed the 1 January commencement date, the weight of the evidence is, as I have found, to the contrary and shows that no accord was reached that the lease would commence on 1 January 2008. Rather, Mrs. Garland continued to assert that the rent was due from the 1 November 2007 in emails to the Minister and his PS up to July 2008 and continued to protest the *fait accompli* presented to her by TCIG in emails to the Governor in 2008 and 2009, as set out in paragraph 41 above.

83. In *Marshall v. Berridge* (1881) 19 Ch D 233 (not cited to the Court) Lush LJ observed,

*“There must be a certain beginning and a certain ending, otherwise it is not a perfect lease, and a contract for a lease must ... contain those elements. (i) Date of Commencement (a) The date on which the lease commences must be certain or capable of being made certain **before** the lease takes effect.”*

84. A lease with no ascertainable commencement date is void. Where no commencement date is expressed, a term might be implied under the general principles for implying terms into contracts:

“ a contract for a lease is enforceable notwithstanding that the commencement of the term may be expressed by reference to the happening of a contingency which is at the time uncertain provided that, at the time that the contract is sought to be enforced, the event has occurred and the contingency has happened” per Evershed J in *Brilliant v. Michaels* (1945) 1 All ER 121 (also not cited).

85. In her email to Mrs. Garland, PS Williams explained that her instructions were that the lease would commence on 1 February 2008. The PS, however, paid 3 month’s rent on that March date, so there is room to suggest that she was paying arrears which assumed a January start date. But even if that were so,

³⁴ At p 754 of the Bundle

the facts that I have found do not support a finding that an accord - an objective common intention that the lease would commence on either 1 January or 1 February - was reached.

86. While it appears that Mrs. Garland ultimately stopped pursuing the Permanent Secretary for the arrears, acquiescence, particularly so late in the day, is hardly agreement.
87. Mrs. Garland neither agreed the 1 January date Cabinet proposed, as she asserted in her evidence, nor the 1 February date which Cabinet had stipulated when it approved the lease in principle. There was no provision in the 2007 Lease for it to commence on some contingency, as, for example, whenever the building was handed over to TCIG or when the first payment of rent was made, so in the absence of evidence to show that a commencement date was agreed, the agreement was void.

Insurance

88. That the Lessor bear the burden of insuring the building was a term which was important to TCIG. Mrs. Garland contended that she made this concession, but she failed to discharge the burden of proving on a balance of probabilities that she obtained the insurance because she agreed this term with TCIG and not because it was a condition of her mortgage.

All other terms agreed or immaterial

89. I also reject the assertion that apart from the commencement date and the insurance, all other terms set out in the 2007 lease were agreed by Cabinet. There is no question in my mind that Cabinet intended to execute a lease on TCIG's standard terms. When Mrs. Garland's proposed lease was submitted to Cabinet and a lease approved in principle, the TCIG machinery for the preparation of a TCIG standard lease was invoked. Cabinet's decision was communicated to the Ministry of Works by the Clerk to Cabinet for action and through the Ministry to the AGC.
90. While the Cabinet Action Minute of 5 March 2008 is faintly obscure with respect to the Option to Purchase, on my reading of the Minute, Cabinet gave approval for the *AGC Lease* to be amended, to reflect the option to purchase

set out in the 2007 lease, signalling Cabinet's intention to execute a standard TCIG lease³⁵ in the terms set out in the AGC draft. That draft also provided for interest at the rate of 2% on unpaid rent and for the obligation for exterior building maintenance to be the Lessors, which were other terms beside the insurance which were also important to TCIG.

Whether an executed Lease required for parties to be bound

91. Mr. Misick submits that the parties' negotiations were not subject to contract and that, as all terms were agreed, an executed Lease was not required for the agreement to be binding. I have found, as a matter of fact, that all terms of the lease were not agreed, but the suggestion that either of these parties considered the execution of a lease to be a mere formality is untenable in any event. It is clear on the evidence that both parties considered that an executed lease was required for them to be bound. I say so for the following reasons:
92. This was a commercial lease for a prospective term of 15 years. A registrable lease was required under the law, required by Mrs. Garland as security for her loan and required by TCIG as part of the usual government machinery in which leases are drafted by the AGC for the Governor's signature. Nothing in Cabinet's conduct and the subsequent instructions sent to the Permanent Secretary of the Ministry of Works and to the AGC suggest an intention to depart from its established processes, and I say so despite its rejection of the valuation provided by its valuation office. Execution of a TCIG standard lease was necessary for the agreement to be binding.
93. Mrs. Garland was always aware of this as it was very clearly communicated to her by Mr. Hall and Mr. Hanchell that the terms of any lease would be subject to a valuation by TCIG's valuers and subject to review by the AGC before it could be concluded. Though Mrs. Garland was not represented by Counsel, she was hardly unsophisticated in commercial matters as evidenced by the content of her emails. She was aware that, absent an executed lease containing all the terms agreed by both parties, there was no binding agreement.

³⁵ The Action Minute reads as follows: "[Cabinet] granted approval for Clause 7 of the AGC lease "Option to Renew and Purchase" the terms of an option to purchase at a discounted price as set out in Schedule III of the agreed lease."

Conclusion

94. Although TCIG paid rent, it was not in accordance with the agreement Mrs. Garland asserted, and although she accepted rent, she continued to protest that arrears were owed. The payment of rent by itself is insufficient to infer an intention to be bound by the terms of a lease and certainly not in the circumstances where,
- (i) all the terms the parties regarded as essential had not been agreed,
 - (ii) TCIG had consistently communicated its intention to contract on the basis of its standard lease,
 - (iii) TCIG had, by its conduct in refusing to prepare a final draft of a lease for execution in terms of the 2007 Lease, clearly signalled that it did not agree to be bound by the terms of the 2007 Lease, and
 - (iv) both parties were of the view that a lease expressing all the terms of their agreement had to be executed in order to be binding.
95. I accept Ms. Hippolyte's submission that, in the circumstances where TCIG took possession of the premises and paid rent monthly under an agreement to lease which was not yet concluded, a periodic tenancy arose which was terminable on 30 days' Notice. The simple fact is that Mrs. Garland should have been astute to secure a signed agreement for lease before she started construction of the premises. She failed to do so and whatever losses she may have suffered as a result cannot now be remedied.

Was the 2008 agreement lawfully rescinded by entry into the 2012 lease?

96. Though academic in light of the facts that I have found, for the sake of completeness I will deal shortly with the status of the 2012 Lease if I were wrong, and a binding agreement for lease on the terms of the 2007 Lease, subject to the amended provisions for the date of commencement and the obligation to insure, had been entered into the parties on 5 March 2008, the so-called 2008 Agreement.

97. It is, of course, possible, as the Crown submits on the strength of a number of authorities, to rescind and regrant a lease but the question would be, is that is what the parties intended? In the circumstances where the case for TCIG is that they did not intend on 5 March to create a binding agreement for lease in the terms of the 2007 Lease for the reasons already outlined, it would be difficult, to say the least, to infer any intention on the part of TCIG to rescind a non-existent agreement and replace it with a new one.
98. The Crown's case is, and I have accepted, that the parties remained in negotiation, seeking to settle the terms of a Lease that both parties were willing to execute, right down to March 2012 when the 2012 Lease was executed.

Was the 2012 Lease obtained by duress

99. Assuming a binding agreement arose on 5 March 2008, the second challenge to the 2012 Lease made is that it was procured by economic duress and should be avoided by the court.
100. In *DSND Subsea Ltd*, Dyson J set out what must be established to make out a claim for economic duress at para 131 of the judgment,

“The ingredients of actionable duress are that there must be pressure, (a) whose practical effect is that there is compulsion on, or a lack of practical choice for, the victim, (b) which is illegitimate, and (c) which is a significant cause inducing the claimant to enter into the contract: see Universe Tankships of Monrovia v ITWF [1983] AC 336, 400B-E, and The Evia Luck [1992] 2 AC 152, 165G.”

101. The Learned Judge also stated that,

“In determining whether there has been illegitimate pressure, the court takes into account a range of factors. These include whether there has been an actual or threatened breach of contract; whether the person allegedly exerting the pressure has acted in good or bad faith; whether the victim had any realistic practical alternative but to submit to the pressure; whether the victim protested at the time; and whether he affirmed and sought to rely on

the contract. These are all relevant factors. Illegitimate pressure must be distinguished from the rough and tumble of the pressures of normal commercial bargaining.”

102. The authorities establish that a threat to breach a contract is generally to be regarded as illegitimate where the party knew that it would be in breach of contract if the threat were implemented: see *Kolmar A.G. v Traxpo Enterprise Pty Ltd* [2010] EWHC 113 Comm at para 92. If it were that TCIG knew it had entered into a binding lease on 5 March 2008, the threatened breach of the lease by giving Notice would be illegitimate if TCIG was acting in bad faith in order to gain an advantage of the Garlands, knowing they were in a position of extreme financial vulnerability.

103. While the Notice would amount to a breach of the agreement said to have been struck in 2008, it was not, in my judgment, a decision taken by TCIG in order to apply illegitimate pressure on the Garlands as it was not done in bad faith with the intention of harming the Garlands’ economic interests but in response to its own financial straits. The demand was not only reasonable and made in good faith, it was a fiscal imperative.

104. The reality was as Mr. Desmond Wilson, then acting PS in the Ministry of Works stated:

“...it became critical to renegotiate the rental agreement as TCIG simply could not meet this commitment.”

...

...

“After a report from the Ministry of Finance indicating that Commercial Leases were not sustainable at the exorbitant rates...all leases [had] to be renegotiated to reflect the actual market value of the premises being rented otherwise the only possible option given the dire economic climate would be to terminate these leases and cover any reasonable costs which reasonably ensued on account of termination.”

105. The valuations which TCIG commissioned as required by its own internal processes as well as Mr. Mezannotte’s Report, clearly indicated that the original rental sum was unjustified and unsustainable, even in 2008. This was

flagged by the AG's Chambers who tendered that advice to Cabinet when the 2007 Lease was sent to them for vetting. By 2010, TCIG's ability to pay its bills was severely compromised. In TCIG's straitened circumstances the rent was, in a word, unaffordable. Quitting premises for which the rent had become for the Police unsustainable, given its budgetary constraints, was a reasonable decision in all the circumstances and one that I am satisfied was taken *bona fide* as part of TCIG's efforts to reduce its expenditure across the board which included pay cuts within the civil service.

106. Mrs. Garland acknowledged TCIG's financial position and appeared willing to do her part to alleviate the financial burden on the TCIG stating, in her email to Mr. Wilson and Mr. Jones:

"On the face of it, I have no problem agreeing to a rent reduction, seeing that it would greatly assist the government in its financial dilemma."

107. And in her response to Mr. McGarel-Groves,

"I am aware that the government is in a very difficult situation and I am willing to meet with you to discuss a rental reduction to help in [t]his dire circumstance."

108. Having expressed her willingness to assist by accepting a lower rent, her only request was that she be given a lease stating the original rent so she could present it to other lending institutions that she wished to approach to in order to refinance her mortgage, a proposition which could not, on any view, be seriously entertained.

109. I am also not persuaded that the Garlands had no practical alternative but to concede to TCIG's threat to breach the agreement to lease and accept a lower rent than previously agreed. Although Mrs. Garland asserted in correspondence and in her evidence before this Court that the building was "*purpose built*" as a police station and that "*there [was] very little else it can be used for*"³⁶

³⁶ P 758

110. I find it difficult to accept that proposition for the following reasons: Mrs. Garland's original plan was to construct a building on those premises. Her evidence was that she engaged an architect to prepare concept drawings to include plans for a convenience store, a Laundromat and rental units for commercial use. Architectural drawings to a cost of \$34,000 were commissioned and approval for a sign bearing the legend Chalk Sounds Plaza was approved. The plans that were prepared by the architect for the Plaza were submitted to TCIG with the proposed interior layout for the Police Station to be included in the building as already designed. No new building design was undertaken.
111. On the face of it, the only changes to the plan that were made to accommodate the police were in the layout of the internal partitions and the addition of the cells to the back. Apart from the cells for which a commercial tenant might have no use unless they wanted a secure storage area, there is nothing about the space that would make it unsuitable for the commercial uses to which Mrs. Garland had originally intended to put it.
112. I hope I might take judicial notice that in retail tenancies the tenant usually bears the cost of fitting out the space so that it meets their business needs. I therefore give little if any weight to the evidence of her contractor, Mr. Phillip Handfield, who stated that,
- “The cost of modifications to alter the purpose of the building to office or retail space or for residential use would be extremely expensive. For me to carry out those modifications, it would costs in excess of \$100,000.00”*
113. Modification for residential use might have been costly but not so for a commercial tenancy.
114. Further, the Garlands could, if they believed the government was solvent and making an illegitimate demand, have resisted the pressure by pursuing practical legal redress, as Ms. Hippolyte submits. Although Mrs. Garland said that she did not have legal advice, it was open to her to seek it. Her manager, Andrew Newlands, who had been engaged in the project at various stages and was present at the meetings with Ms. McCartney when the terms of the 2012 Lease were being negotiated and copied into all relevant correspondence, was

a partner in a law firm. Mr. Newlands says he did not offer legal advice but that did not prevent her from seeking it. Mrs. Garland's protest that she didn't know he was a practicing attorney rings hollow when considered in light of the fact that it was Mr. Newlands who handled the conveyance of a half interest in the property to her son in order for her to qualify for the mortgage.

115. Her failure to seek legal advice and institute proceedings against TCIG when TCIG's economic and political stability was restored is evidence from which I infer that she had affirmed the contract. In arriving at that conclusion, I adopt and adapt Hammond J's observation in *Pharmacy Care Systems*, that it must be wrong to wait 5 years to endeavor to set aside the lease when no good and sufficient cause has been shown for the delay

Was The 2012 Lease Procured By Intimidation?

116. The analysis and conclusion remain the same with respect to this alternative ground: the notice to quit was not given to coerce the Garlands to enter into the 2012 lease but given because TCIG and, by extension, the Police could not reasonably afford to continue to make the payments because of the pressure on the economy at the time³⁷.
117. The Garlands did not protest but were, as Ms. Hippolyte submitted, full participants in the effort to reach an amicable solution.

Was The 2012 Lease Procured By Mistake?

118. The thrust of the argument under this head is that, if the parties genuinely but mistakenly believed that no binding agreement had been struck in 2008, then it would be open to the Court to find that the 2012 Lease was entered into as a result of a common mistake and set it aside on that ground.
119. On the facts of this case, there is no room for the Court to consider whether the parties were laboring under a common mistake as to their rights when the 2012 Lease was executed.

³⁷ Desmond Wilson's Witness Statement, paras 5, 21, 22

ORDER

120. The Plaintiffs' claim is dismissed. Costs follow the event, and the Plaintiffs are to pay the Defendant's costs, such costs to be taxed or agreed.

DATED THE 1ST DAY OF MAY, 2020

Sgd.

RAMSAY-HALE CJ

