

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Side

Cle/gen/00706/2014

BETWEEN:

ALEX KNOWLES

Plaintiff

AND

STOREAWAY LIMITED

Defendant

Before: The Honourable Mr. Justice Gregory Hilton

Appearances: Dwan Rodgers for Plaintiff

Glenda Roker for Defendant

Hearing Dates: 31st October 2017, 13th December 2017;

Written Submissions: 6th February 2018 and 5th July 2018

**Negligence - Duty of Care (Statutory Duty) – Occupier’s Liability - Interpretation
of Clauses in contract**

DECISION

1. This is a claim in occupier's liability and negligence arising from a fire which occurred at a storage facility owned by the Defendant in which goods owned by the Plaintiff (and stored in the Defendant's storage facility) were destroyed in 2013.
2. The action was commenced by the Plaintiff by a Writ of Summons filed on 27th May 2014. The Statement of Claim provides as follows:

STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times a customer (purported Licensee) of the Defendant Company.
2. The Defendant is and was at all material times a Company duly incorporated under the laws of the Commonwealth of The Bahamas, carrying on the business, *inter alia*, of renting/leasing storage space/facilities.
3. By an Agreement dated the 8th day of August, A.D. 2000, between the Plaintiff and the Defendant (hereinafter referred to as the "**Agreement**"), the Defendant agreed to lease to the Plaintiff storage unit L-36. Further, the Plaintiff, *inter alia*, agreed to pay a deposit of \$225.00 in the currency of The Bahamas and to make payments of \$225.00 per month during the continuance of the License (the licensing fee).
4. According to Section 6 of the Agreement intituled "Licensor's Liability" the Defendant agreed that it "*shall be responsible for keeping the structure of the Building weatherproof and safe for use by the Licensee*".
5. In accordance with the Agreement, the Plaintiff (stored) a significant amount of items that belonged to him and his family.

6. On or about the 19th day of November, A.D. 2013, a fire occurred at the Defendant's storage premises and due to the Defendant's breach of Section 6 of the Agreement, and/or alternately, due to the negligence of the Defendant the fire was able to spread to a number of storage units including the Plaintiff's storage unit L-36.
7. As a consequence of the fire, the Plaintiff's items stored in his unit L-36 were completely destroyed by the fire.
8. Consequently, the Plaintiff wrote a letter dated 25th day of November, A.D. 2013, informing the Defendant of the loss he suffered and seeking remuneration for same.
9. Thereafter, a follow up letter dated the 20th day of January, A.D. 2014, was drawn by Counsel acting on behalf of the Plaintiff and served on the Defendant.
10. By letter dated the 18th day of February, A.D. 2014, Counsel for the Defendant wrote to the Plaintiff denying his claim and entitlement to compensation. .
11. To date, despite formal demand being made by and on behalf of the Plaintiff, in breach of the Defendant's obligations to the Plaintiff, the Defendant has wrongfully failed and/or refused and/or continues to neglect and/or refuse to take any steps towards compensating and paying the amount due and owing to the Plaintiff.
12. By reason of the matters aforesaid, in particular, by reason of the Defendant's breach of Agreement and/or alternately, due to the Defendant's negligence, the Plaintiff has suffered loss and damage.

SPECIAL DAMAGES

ITEM:	Amount:
Framed Pictures	\$900.00
Ceramic Clock	\$150.00
Vases	\$600.00
Jamaican Figurines	\$450.00
Bahamian (Collector) Plates	\$800.00
Santo Domingo Dolls	\$250.00
Bahamian (Collector) Bowl	\$900.00
Framed Paintings	\$6,000.00
Unframed Paintings	\$1,000.00
Haitian Plates	\$250.00
Ballerina Doll (Collectable)	\$500.00
Mounted Fish	\$200.00
Complete Wedge Wood Dish Set	\$2,500.00
Complete Wealthford Crystal (12)	\$3,000.00
Crystal Decanters	\$600.00
Crystal Glasses	\$200.00
Miscellaneous Glassware	\$400.00
Silverware (16 persons)	\$300.00
Extra Large Platter	\$150.00
Chester Draws	\$300.00
Men's Dress Shirts	\$500.00
Men's Suits	\$2,075.00
Jackets	\$800.00
Neckties	\$350.00
Shoes – Men	\$1,500.00
Pants – Men	\$1,200.00
Shirts – Men	\$200.00
Sweaters – Men	\$80.00
Underclothes – Men	\$150.00
Cocktail Dresses – Women	\$2,000.00
Long Dresses – Women	\$1,200.00
Shoes – Women	\$1,000.00
Purses – Women	\$300.00
Sweaters and Jackets – Women	\$150.00
Women's Blouses/Shirts	\$300.00
King Size Sheets	\$400.00

Queen Size Sheets	\$300.00
Comforters	\$350.00
Table cloths	\$450.00
Miscellaneous Children Books	\$70.00
Miscellaneous Toys and Dolls	\$300.00
Medical Traction Set (For Back)	\$600.00

Total	\$45,279.00
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PARTICULARS OF NEGLIGENCE

1. The Plaintiff failed to install any or any functioning or any adequate precautionary measures, such as a sprinkler system, fire alarm, smoke detector etc. to prevent the occurrence or spread of a fire; and
 2. The only security booth and security officer were too far removed from storage unit L-36 and other similar storage units.
13. The Plaintiff claims interest at a rate of ten per centum (10%) under the provisions of the Civil Procedure (Award of Interest) Act 1992.

AND THE PLAINTIFF claims:-

1. Special Damages **\$45,279.00**; alternately
2. Damages;
3. Interest;
4. Costs; and
5. Such further other relief as this Honourable Court deems just.

Dated this 27th day of May, A.D. 2014

3. The Defendant filed a defence dated 27th July 2014 the particulars of which provides as follows:

DEFENCE

1. The Defendant admits paragraphs 1,2, 3 and 4 of the Statement of Claim.
2. The Defendant neither admits nor denies paragraph 5 of Statement of Claim and the Plaintiff is put to strict proof thereof.
3. The Defendant denies paragraph 6 of the Statement of Claim except that a fire occurred at the Storage Facility during the late hours of November 18th 2013 and the early hours of November 19th 2013. The fire was contained to and affected one block known as Block L.
4. The Defendant neither admits nor denies paragraph 7 of the Statement of Claim and the Plaintiff is put to strict proof thereof.
5. The Defendant denies paragraphs 8 and 9 of the Statement of Claim and the Plaintiff is put to strict proof thereof.
6. The Defendant denies paragraph 10 of the Statement of Claim, except that on the 18th February, 2014, Counsel for the Defendant drafted a letter that was distributed to all persons who had a license to occupy and store items in a unit that was affected by the fire. The said letter was not drafted in response to any claim, and it did not specifically deny anyone entitlement to compensation.
7. The Defendant denies paragraph 11 of the Statement of Claim and the Plaintiff is put to strict proof thereof.
8. The Defendant denies paragraph 12 of the Statement of Claim and the Plaintiff is put to strict proof thereof.

9. The Defendant denies any and all allegations of negligence. The Defendant managed and operated the storage facility within the universally accepted standards and the facility was constructed to International Building Codes and the design of Self Storage Units. Further. At all times, a security guard was on the premises and executed frequent patrols of the premises.
10. At all relevant times, the Defendant was in compliance with The Building Code enacted pursuant to Section 17 of the Building Regulation Act which provides in Section 3703 (3) (a) and (b) that approved automatic sprinkler systems shall be required:
 - a. **“In Groups D and E Occupancy buildings or portions of buildings having an area of more than 1500 square feet and having hazardous uses ...”** and
 - b. **‘In building, or within fire divisions, of building one and two stories in height used for the manufacture, sale or storage of combustible good or merchandise and exceeding 20,000square feet in area....’**

The building housing the storage unit at the Defendant’s storage facility – a Group E Occupancy – is not a building having hazardous uses and it is not a building that exceeds 20,000 square feet in area.

11. In accordance with the License Agreement, at all the relevant times, the Plaintiff was responsible for taking all reasonable and proper precautions against fire occurring on or in the premises. Clause 9 of the License Agreement provides:

“9. The Licensee shall take all reasonable and proper precautions against fire occurring on or in the Premises and shall indemnify the Licensor against all damage to the premises or the Property of any person for the time being the premises arising out or

are occasioned in the course of the use, movement or presence of the Property on or in the Premises and shall if required by the Licensor cover his liabilities under this clause by an adequate policy of insurance.”

Dated the 23rd day of July, A.D., 2014

4. At the trial the Plaintiff called two witnesses including himself and Mr. Durie Demarlus Smith (a security expert and consultant). The Defendant called one witness Ms. Tanya Mackey (the Manager of the Defendant Company) and also relied upon the report of the Police Director of Fire Services Superintendent Walter Evans which was submitted as a part of the Defendants Bundle of Documents.

Plaintiffs Case and Evidence

5. The evidence of the Plaintiff is contained in his witness statement which was relied upon and which is set out below.

Plaintiff's Witness Statement

I, **Alexander Knowles**, of the Eastern District of the Island of New Providence one of the Islands of the Commonwealth of The Bahamas, make Oath and Say as follows:

1. I was born the 21st day of January, 1941, in the Commonwealth of The Bahamas aforesaid.
2. I am a citizen of the Commonwealth of The Bahamas and I am the Plaintiff in this Action.
3. I lived in Haiti for a number of years with my family and during that time we accumulated a lot of family artifacts/items which carry great personal and family worth – sentimental value.

4. In or about the year 2000, my job tenure in Haiti came to an end and my family and I returned to Nassau, The Bahamas to live.

5. In or about 2000 I shipped my family items to The Bahamas. There is produced and shown to me a "Supplemental Court Bundle of Documents" filed herein October 19, 2017, (hereinafter referred to as the "**Supplemental Bundle**"). The documents took me sometime to locate but the documents contained in the Supplemental Bundle document and illustrate items that I had in my possession and when correlated and juxtaposed with the list of items found at **tab 9** of the Court Bundle of Documents filed herein October 19, 2017, (hereinafter referred to as the "**Court Bundle**"), it proves the items that were in storage and damaged and lost in the fire which is the subject of this Action.

6. Upon successfully shipping my family items to The Bahamas from Haiti we needed to place them in storage, for what we thought would be safe keeping.

7. Consequently, I entered into a contract dated August 8th, 2000, with the Defendant Company Store Away Limited (hereinafter referred to as the "**Contract**"). There is produced and shown to me at **tab 10** of the Court Bundle the pertinent Contract.

8. I stored at the Defendant's facility various family items as set out in the list at **tab 9** of the Court Bundle. At the time when I entered into the Contract, I was never instructed directed or informed to complete a list to leave with or submit to the Defendant. However, I was and am very much aware of what was stored in the storage facility as I personally attended to stocking the storage facility.

9. On or about November 19th, 2013, I was advised that a fire took place at the Defendant's premises and the entire L block of the facility was destroyed by the fire.

10. I wrote a letter dated November 25, 2013, to Store Away Ltd. seeking compensation in the region of \$45,279.00, which was fair compensation for the items lost because the sentimental and personal value could never be replaced. There is produced and shown to me tab 9 of the Court Bundle which is copy of the letter and attaches the list of items that I lost which as I said before correlates with and should be juxtaposed with the items of the Supplemental Bundle.

11. As may be gleaned from the list, there is nothing unreasonable or far-fetched claimed. I am not claiming the loss of a Rolex watch or a diamond necklace. The items lost were realistic in nature and on a balance of probability it is not unreasonable that such items would have been stored in the storage facility.

12. I am seeking reasonable compensation for the value of the lost items which I opine to be \$45,279.00.

13. I never received a response to my letter seeking compensation so I instructed my Attorney Dywan Rodgers to write a demand letter. There is now produced and shown to me tab 5 of the Court Bundle the demand letter dated January 20th, 2014.

14. In response to the demand letter, E. Andrews Edwards Attorney for the Defendant wrote Mr. Rodgers and highlighted Clause 9 of the Contract. There is now produced and shown to me tab 4 of the Court Bundle the response letter dated February 18th, 2014.

15. Clause 9 provides – **“The Licensee shall take all reasonable and proper precautions against fire occurring on or in the Premises and shall indemnify the Licensor against all damage to the Premises or property of any person for the time being the Premises arising out of or**

occasioned in the course of the use, movement or presence of the Property on or in the Premises and shall if required by the Licensor cover his liabilities under this clause by an adequate policy of insurance”.

16. The “**Property**” referenced in Clause 9 under the Contract means “**the Licensee’s personal property**”.

17. I found this text wholly ambiguous and confusing. Nevertheless, I believed Clause 9 when read as a whole to mean that I must use all good common sense not to do anything as it relates to my family items (ie. The Property) that would or could lead to starting a fire and if I did I would have to indemnify the Defendant.

18. What I did not understand this to mean, was that the Defendant could sit back, do nothing, and take no reasonable safety steps and not put anything in place to assist to prevent secure against reduce the risk if a fire. No fire alarms, no fire extinguishers; no hose with water close enough etc.

19. As a consequence of the Defendants failure to have any reasonable safety features in place the whole entire L block was destroyed by fire.

20. According to a letter from Walter Evans, Director of Fire Services, dated April 10th, 2014, “**The investigation into this matter has been completed, and the cause of the fire is undetermined**”. There is now produced and shown to me tab 2 of the Court Bundle the letter from Walter Evans.

21. I state this to say that it cannot be said that I or my Property was the cause of the fire and thus I discharged my duties under Clause 9 of the Contract. Additionally, the Defendant never requested that I take out any form of insurance.

22. As a result of this matter I contacted Mr. D. Demarius Smith an expert in safety among other things. I instructed him to investigate the matter. After attending the Defendant's storage facility and carrying out his investigations into the matter. His observations and findings mirrored those made by me when I attended the premises after the fire.

23. Mr. Smith produced his expert report setting out his findings as an expert, however, I respectfully submit to this Court that it takes no expert to know that having **NO** safety mechanisms in place has to be negligent. There is now produced and shown to me **tab 1** of the Court Bundle the expert report of Mr. Smith.

24. I have occasion since the commencement of the Supreme Court Action to see a letter dated January 17th, 2014, from Walter Evans. According to the letter "**... prior to the incident that took place at the named facility, there existed a water trench around the perimeter for the property which provided an adequacy of water for fire-fighting purposes ... During the incident such water way provided more than sufficient water that was used by the Fire Services**". There is now produced and shown to me **tab 6** of the Court Bundle the letter from Walter Evans.

25. While this may be true and I do not admit it to be true, I respectfully submit that this is in no way adequate as proven by the fact that the whole L block was destroyed by the fire.

26. There were no alarms or mechanism that would allow for early the detection of a fire; hence, it is only after and whenever a fire is discovered **by chance** because no other mechanism to alert you, they would have to call the fire department and then wait on the fire department to use the "**water trench**" referred to an attempt to put out what can only be a blazing/raging fire by the point.

27. There were no fire extinguishers or water hose that the security could have used to putout the fire before it became large enough to destroy the whole of L block.

28. In all circumstances, it is my respectful submission that the water trench is not sufficient and it does not take an expert the understand that. By the sole fact the whole of the L block was destroyed demonstrates and fortifies the position that more safety measures needed to be in place and the Defendant breach his duty to all storage facility owners to provide a safe environment to store valuable items – whether sentimental value or money value.

29. The Defendant was negligent and I seek from this Honourable Court compensation for my loss.

30. The contents of this Statement are to the best of my knowledge and information correct and true.

6. Mr. Alex Knowles was cross-examined and the pertinent questions he answered related to the items stored in the Defendant's Storage Unit. That he never gave a list of the items stored to the Defendant until after the fire. That the family photographs and other items were of great sentimental value to him. That the Paintings and other paraphernalia he had collected over the years from Haiti, Barbados, Jamaica and The Bahamas were valuable and he placed a value on the various items which he said was a very conservative value. The inventory of these items were produced at Tab 4 of the Supplemental court bundle of documents with a value of the items and at Tab 9 of the Plaintiff's court bundle of Documents.
7. The other witness for the Plaintiff was Mr. Durie D. Smith and his witness statements and report was relied upon which is set out below.

Witness Statement of Durie D. Smith

I, **DURIE S. SMITH**, OF #17 Silver Gates Subdivision of the Island of New Providence one of the Islands of the Commonwealth of The Bahamas, make Oath and Say as follows:

1. I was born in the Commonwealth of The Bahamas aforesaid.
2. I am a citizen of the Commonwealth of the Bahamas.
3. I was instructed by the Plaintiff herein, Alex Knowles, to attend the *locus in quo* to examine, inspect and provide my expert opinion as it relates to the safety environment of the Defendant facility where the Plaintiff stored his personal items listed at **tab 9** of the Court Bundle of Documents (hereinafter referred to as the “**Court Bundle**”).
4. I am an expert in safety. As it relates to safety and overall safety concerns, including my other professions, my training for/with the Royal Bahamas Police Force and years serving on the police force along experiences make me an expert.
5. Additionally, as may be gleaned from my resume I am involved with Smith & Associates Private Security and Investigations (hereinafter referred to as the “**Company**”). As part of my association with the Company I carry out consultancy work liaising with clients and advising them on safety issues whether it is fire security protection hazards etc. Therefore I am qualified to give expert evidence on the state of the safety measures in place at the Defendant premises.

6. For the purposes of this Supreme Court Action, after attending and inspecting the Defendant storage facility and conducting interviews, I prepared my expert report and along with same I have tendered my resume. There is now produced and shown to me tab 1 my resume and experts report/findings.
7. I rely upon my report and stand by same. The report should be read in conjunction with the Witness Statement as same is to best of my knowledge information and belief correct and true.
8. As a consequence of the instructions received from the Plaintiff, I personally attended the storage facility owned by the Defendant where the Plaintiff informed he stored personal family items that were destroyed in a fire.
9. I inspected the entire premises and met with security officers that worked on the premises.
10. As a consequence, of my visit to the storage facility, I generated my expert report which I rely upon for the purposes of my evidence in chief. It gives my expert opinion which even at a common sense level is that the storage facility owned by the Defendant and where the Plaintiff stored his items was grossly deficient in safety measures.
11. There were no fire extinguishers installed at the units or the security booth, water faucets were minimal on the premises and not positioned so as to be properly utilized in the event of a fire emergency. There were no water hoses on property. The storage units were made of highly flammable material and there were no fire alert devices or fire alarms noted.
12. Accordingly, if there was a fire – it would have to be a discovered by someone because there was no alarms and by that stage the fire may be too large to be contained and the fire department would be necessary.

13. Even if, by chance, the fire was discovered in a timely fashion, there were no means to effectively fight or extinguish same because as stated above, there were no fire extinguishers, no water hoses and the water faucets were minimal and not positioned to properly extinguish the fire that occurred.

14. The above opinion is supported by the fact that by time as the fire was extinguished, it had destroyed the whole L block.

15. I have had sight of the letter dated January 17, 2014, by Walter Evans Director of Fire Services. There is produced and shown to me tab 6 of the Court Bundle the letter from Mr. Evans.

16. According to his letter **“...prior to the incident that took place at the named facility, there existed a water trench around for the property which provided an adequacy of water for fire-fighting purposes ... During the incident such water way provided more than sufficient water that was used by the Fire Services”**.

17. I do not admit or deny that that is this case. However, I do know and can say with all certainty that a **“water trench”** for fire services to use is wholly deficient for the purposes of fire detection and fire prevention.

18. The water trench does not alert anyone to a fire and it does not assist in putting out the fire until the fire services are contacted and they show up.

19. It is my expert opinion that the Defendant in owing a duty to his customers breached that duty failing to provide a safe environment to store their items. The Defendant has done **NOTHING** or bear minimum to protect against fire hazards, and I believe is negligent as a result.

20. The contents of this Statement are the best of my knowledge and information correct and true.

REPORT

I. QUALIFICATIONS

My name is Durie Smith. I am a Security Consultant at Smith & Associates Private Security and Investigations Company Limited. During the past eighteen years, I have worked as an advisor on security measures and asset protection. My experience includes twenty years as a Criminal Investigator, investigating serious offences including those where private insurance companies were involved. In addition, I have Fifteen years of experience as a Crime Scene Investigator and hold certifications up to major case management. I have previously provided court testimony in The Bahamas Supreme Court in matters ranging from Burglary to Homicide as well as House – Breaking at the Summary Level. I have attached a current copy of my resume.

II. Purpose and Summary

I have been retained by Meridian Law Chambers, who are counsel for the Plaintiff above captioned, to provide expert testimony in this case. Specifically, I was asked to identify and describe the flaws in the security measures implemented at the Storeaway Limited.

My testimony is based on my expertise as a Criminal Case Investigator; my general knowledge of Crime Scenes; as well as my review of the site post incident and current. I have concluded that installation of Sprinkler Systems to the units attached to a heat sensor would have minimized the loss and damage in this case. My general understanding of the Accidental Fires Act contained in the Statue Laws of the Bahamas chapter (74) is that any Fire resulting from negligence by a party may give rise to liability. On inspection of the premises it was noted that no Fire extinguishers were installed at the units nor in the security booth, additionally water faucets were minimal on premises and not positioned so as to be properly utilized

in the event of a fire emergency. There were also no water hoses on property at the time of the inspection. The storage units examined were constructed of wood with a plastic membrane attached, these materials are highly vulnerable to heat and flame and as a result the lack of Fire extinguishing devices and fire alert apparatuses may have contributed to the severe loss due to the fire in this regard.

Human Error and Judgement Calls

On examining the documents provided by Meridian Law Chambers it has indicated that the Security Officers on duty at the time of the incident had to be alerted to the Fire by passing motorists. The information also suggests that the officers called their control room to report the matter before contacting the Fire Department. The documents further indicate that nothing was done by the security officers to assist in extinguishing the fire prior to the arrival of Fire Department personnel; this may have been in part due to the lack fire extinguishing equipment onsite.

8. Mr. Durie Smith was cross –examined as to his claim to be an expert in fire investigations and the lack of specifics in his report relating to building code requirements in Bahamas Statutes with respect to fire prevention protocols.
He was also challenged to substantiate why he concluded “that the installation of a sprinkler system to the unit would have minimized loss and damage”.

He maintained he was an expert due to his extensive years on the police force investigating crime scenes (including fires) and he also maintained that it was universally understood that to obtain occupancy and licence for this type of structure installations such as water sprinkler systems fire alarms, and fire extinguishers are necessary.

9. The Plaintiff maintained that the Defendant was negligent in failing to have installed adequate fire prevention apparatus and that the total loss of the Plaintiff’s goods due to the fire should be awarded to him.

Defence Case and Evidence

10. The evidence of Tanya Mackey is contained in her witness statements which was relied upon by the Defendant and is set out below:

Witness Statement of Tanya Mackey

I, **Tanya Mackey** of the Western District of the Island of New Providence one of the Islands of the Commonwealth of the Bahamas make oath and say as follows:-

1. I am the Manager of the premises owned by the Defendant Company. I am duly authorized by the Plaintiff Company to swear this Affidavit on its behalf. The information was obtained by me in my aforesaid employment capacity and from sources I verily believe to be true.
2. The Defendant is a company duly incorporated under the Laws of The Bahamas and carrying on business therein as a storage facility on Blake Road in the Western District of the Island of New Providence, aforesaid.
3. The Defendant Company entered into an Agreement with the Plaintiff on the 8th August, 2000 (the "**Agreement**"). The Defendant agreed to licence to the Plaintiff storage unit L-36. Further, the Plaintiff, *inter alia*, agreed to pay a deposit of \$225.00 in the currency of The Bahamas and to make payments of \$225.00 per month for an unspecified term.
4. During the late hours of 18th November, 2013 and early hours of 19th November, 2013, a fire occurred in Block L of the Storage Facility.

5. The fire was contained to Block L of the storage facility. A thorough investigation was conducted by the Fire Services Department of the Royal Bahamas Police Force who determined that “cause of this is listed undetermined”. The Fire Services Department also determined “that prior to the incident that took place at the named facility, there existed a water trench around the perimeter of the property which provided adequacy of water for fire fighting purposes. During the incident such water way provided more than sufficient water that was used by Fire Services.”
6. At all material times, the Defendant Company was in compliance with section 17 of the Building Regulations Act.
7. Further, on the night/morning of the fire, a security guard who was employed with Commando Security, who were contracted to provide security services for the Defendant Company discovered the fire as smoke was emitting from the bottom door of a unit.
8. The Security Officer immediately contacted The Fire Services Department, the Commando Security Control Room and I was also contacted.
9. I arrived to the scene about 5-10 minutes after receiving the call. Upon my arrival, I met the Fire Services Department of the Royal Bahamas Police Force working to extinguish the fire which was contained to one (1) unit being unit L.
10. The Defendant company does not keep a copy of the keys of the units as a security measure. As such, the Security Guards nor Employees would have access to the units.

11. In accordance with Clause 9 of the Agreement, at all relevant times, the Plaintiff was responsible for taking all reasonable and property precautions against fire occurring on or in the premises.
 12. Pursuant to 14.2 of the Agreement, the Licensor gave no warranty that the premises were legally and physically fit for the purpose of storage or property.
 13. The Defendant company denies any allegations of negligence or breach of duty of agreement as the Defendant discharged its obligation pursuant to the Agreement.
 14. I believe that the facts contained in this witness statement are correct and true to the best of my knowledge, information and belief.
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11. Ms Mackey was cross – examined and indicated that's she was not present when the fire started, and that she could not say how long the fire was going before she was called by the security of the Defendant.

She stated that she could not say what was done to put out the fire but that six (6) fire trucks were present when she arrived at the scene some 5-10 minutes after she had seen called by the security.

She denied the suggestion that the fire prevention apparatus at the site was deficient.
 12. The Defendant relied upon the Agreement executed between the Plaintiff and the Defendant and in particular clauses 9 and 14 (2) which are set out below.

Clause 9: Fire Precautions

“The Licensee shall take all reasonable and proper precautions against fire occurring on or in the Premises and shall indemnify the licensor against all damage to the Premises or the property of any person for the time being the Premises arising out of or occasioned in the course of the use movement or presence of the Property on or in the Premises and shall if required by the licensor cover his liabilities under this clause by an adequate policy of insurance.”

Clause14 (2) General

“The Licensor gives no warranty that the premises are legally or physically fit for the purposes specified in clause 2 hereof.”

13. The Defendant's maintains that it was not negligent and that it was not obligated to have the storage unit covered by insurance. The Defendant also maintains that there was no legal requirement for the building to contain fire safety precautions such as automatic sprinkler systems, smoke control systems or fire extinguishers and that by virtue of the Agreement the Plaintiff stored the goods at his own risk.

The Defendant also maintained that the Plaintiff failed to provide proof that the goods/property noted in the inventory list was actually stored in the Unit and that there was no independent verification of the value of those goods.

ISSUES

14. a) Whether the Defendant owed a duty of care to the Plaintiff to provide a reasonably safe storage facility.
- b) Whether the Defendant was legally obligated to install any functioning or adequate precautionary measures (such as

sprinkler systems, fire alarms, smoke detectors fire extinguishers) to the storage unit rented by the Plaintiff.

- c) Whether the Plaintiff substantiated his claim for damages.

THE LAW

NEGLIGENCE - OCCUPIER'S LIABILITY

15. Occupier's Liability is not a strict or absolute duty to prevent any and all damage to an invitee or licensee. The Law was succinctly put by the Sawyer J. (as she then was) in the case of Cox v. Chan [1991] BHS. J.No.110. At paragraph 21 of the decision, she stated:

“It is clear from the decided cases including Indermaur v. Dames, that the duty of care which a person like the defendant owes to a person like the plaintiff is not an absolute duty to prevent any damage to the Plaintiff but is a Lesser one of using reasonable care to prevent damage to the plaintiff from an unusual danger of which the defendant knew or ought to have known and, I may add, of which the Plaintiff did not know or of which he could not have been aware. If it were otherwise then the slightest alleged breach of such a duty would lead to litigation and could, perhaps hamper the progress of quite lawful and needful business.”

16. In Wayne Anthony John v. February Point Resort Estates Ltd. Allen, J. (as she then was) stated the following:

“there are three components of negligence, namely, the existence of a duty of care owed by the defendant to the plaintiff; the failure to attain that standard of care, prescribed by law resulting in a breach of such duty; and damage, which is causally connected to

such breach and recognised by the Law, has been occasioned to the plaintiff.”

17. Whether or not a duty of care exists is a matter of Law and where it is found that a duty of care exists it requires a Defendant to take reasonable care to avoid omissions or acts which as a matter of reasonable foreseeability are likely to injure or cause damage to any person who is so closely and directly affected by the Defendant’s acts or omissions that he ought reasonably to have them in contemplation when he directed his mind to the acts or omissions.

A duty of care, in this case is also imposed by the Building Regulations Act and the Bahamas Building Code; And the Plaintiff can, (if it is proven), therefore rely on breach of statutory duty of care and breach of common Law duty of care.

18. Section 17 of the Building regulation Act Chapter 200 (under which the Building Code Regulations 2003 are published) mandates that specific standards are required to be met in specific buildings to ensure safety, including safety from fire.

Section 17 states:

“17. The Minister shall from time to time publish a code, to be known as the Building Code, which shall specify the standards required, the methods of construction and building and the material to be used in any building operation, including provisions as to plumbing and electrical installations in any building and as to all such other matters of whatsoever nature for which in the opinion of the Minister it is desirable in the interest of the safety, including safety from fire, health and welfare of persons in and about any building, that provision should be made.”

19. Chapter 9 of the Building Code Regulations specifies the requirements of buildings classified as “Group E” occupancies which is the type of building relevant in this case.

Section 901 of the Building Code defines Group E occupancy as follows:

“Group E occupancy shall include storage and industrial uses as follows:

DIVISION 1: Storage occupancy shall include warehouses storage buildings, freight depots, public garages of any size where repair work is done.....

DIVISION 2: Industrial occupancy shall include factories, assembly and manufacturing plants processing mills, laboratories, Loft buildings and similar uses.”

Section 907.1 of the Building Code Regulations under the rubric “Fire Protection and hazards” states:

“Automatic sprinkler systems, smoke control systems, fire extinguishers and standpipes be as set forth in chapter 37.”

20. Chapter 37 of the Building Code regulations specifically deal with Fire Protection.

The relevant sections of this chapter (with regard to the present case) are sections; 3701.1; 3701.2; 3702; 3703.1; 3703.1 (3) (a) and (b); 3705; 3705.1 (c); 3705.2; 3709.1; 3709.2; 3711.9 (d) (1). They are set out below:

Section 3701.1 – Scope

“This chapter prescribes requirements for fire protection equipment in building and structures regulated by this code.”

- “(a) APPLICATION: Every building subject to compliance with the Code, shall comply with the requirements of applicable sections of this chapter.
- (b) Any Building added to, repaired or altered as set out in Section 104 of this code shall comply with requirements of this chapter.”

Section 3702 – Automatic Fire – Extinguishing System

Section 3702.1 – General

- “(a) Approved automatic – sprinkler systems in accordance with NEPA 13 shall be installed and maintained as provided in this chapter, except that the Building Control Officer may require or may permit approved alternative automatic fire extinguishing systems, to be used in lieu of sprinklers as provided in paragraph 3802.2 (b) herein.
- (b) The installation of fire extinguishers or standpipes shall not pre-empt or mitigate the requirements for automatic fire extinguishment systems required by this chapter.

Section 3703 – Automatic – Sprinkler Systems

Section 3703.1

“In new buildings altered to increase the area or height, and in existing buildings, approved automatic sprinkler systems shall be installed as required by the BCO and the Director of Fire Services, and maintained in accordance with the following paragraphs except that the BCO and the

Director of Fire Services may require or permit a fire extinguishing system, as set forth in section 3702, to be used in lieu of such sprinkler system. The areas referred to shall be the areas set forth in "Groups of Occupancy," as allowable floor areas for the various types of construction. Combustible goods or merchandise shall include those made of wood, cloth or rubber; those containing flammable liquids; those packed with excelsior, paper or moss; and other goods or merchandise of equivalent or greater combustibility. Approved automatic sprinkler systems shall be required as follows:-

Section 3703.1 (3) (b) GROUP E OCCUPANCIES

"In Building, or within fire divisions, of buildings one and two stories in height used for the manufacture, sale or storage of combustible goods or merchandise and exceeding 20,000 square feet in area....."

Section 3705 – STANDPIPES

"Wet standpipes having a primary water supply constantly or automatically available at each hose outlet shall be provided as required in this section in buildings hereafter erected, or existing buildings altered to increase the area or height or existing buildings where in the occupancy has changed."

Section 3705.1 (c)

"One or more interior standpipes not less than 4 inch interior diameter for buildings not exceeding four stories in heightshall be required as follows:

In every building of industrial, institutional, Hazardous, Storage, or mercantile occupancy where required by the BCO or Director of Fire Services.”

Section 3705.2

“The number of standpipes and hose stations shall be such that all parts of every floor are can be reached within 20 feet by nozzle connected to not more than 75 feet of hose connected to a standpipe.

Section 3709 – Portable Fire Extinguishers

Section 3709.1

“Where required: Portable fire extinguisher shall be installed and maintained in buildings intended for commercial or multi – residential occupancy.”

Section 3709.2

“At least one extinguisher shall be provided for every 2,000 square feet of floor area in locations to be decided by the Director of Fire Services.

Section 3711 – Alarm, Fire Detection and Smoke Venting Systems

Section 3711.9 – Alarm system based on occupancy

Section 3711.9 (d) (i)

“Building in Group E – Division 1 occupancy shall have approved manual stations, or an automatic system which shall activate a continuous signal.”

ANALYSIS

21. The Plaintiff claims that the Defendant owed a duty of care to the Plaintiff on the grounds that the Plaintiff was a licensee under a storage contract dated 8th August 2000, and that the Defendant breached the duty of care to provide adequate protection or security of the Plaintiff's stored items and failed to provide a reasonably safe storage facility by failing to install any functioning or adequate precautionary measures such as a sprinkler system, fire alarm, smoke detector, fire extinguishers etc.
22. The Defendant submits that it was under no obligation to provide any functioning or adequate precautionary measures such as a sprinkler system to the storage unit and that by virtue of clauses 9 and 14 (2) of the Agreement the Plaintiff was aware of possible dangers from fire and failed to insure his own goods against that possible eventuality.
23. For the purposes of this decision the relevant clauses in the Agreement being clauses 6,9 and 14 (2) are set out here:

Clause 6. – Licensor's Liability

- “6.1 The Licensor shall be responsible for keeping the structure of the Building weatherproof and safe for use by the Licensee except that the Licensor shall incur no liability to the Licensee except following notice by the Licensee of such failure of responsibility and allowing responsibility for the entry of unauthorized persons into the Building or any loss occasioned by such person.
- 6.2 The Licensor shall not be liable for the death of or injury to the Licensee or his employees or agents or for damage to the Property or any property or for any losses or claims demands actions proceedings damages costs or

expenses or other liability incurred by any of them in the exercise or purported exercise of the rights granted by Clause 2 or Clause 10 hereof.

Clause 9 – Fire Precautions

9. The Licensee shall take all reasonable and proper precautions against fire occurring on or in the Premises and shall indemnify the Licensee against all damages to the Premises or the property of any person for the time being the Premises arising out of our occasioned in the course of the use movement or presence of the Property on or in the Premises and shall if required by the Licensor cover his liabilities under this clause by an adequate policy of insurance.

Clause 14-2

14-2 “The Licensor gives no warranty that the premises are legally or physically fit for the purposes specified in clause 2 hereof.”

24. While clauses 6, and 14 (2) purport to absolve the Defendant from any liability to the Plaintiff for any damage or loss suffered to the Plaintiff’s stored goods. These clauses must be read subject to section 40 of the consumer Protection Act Chapter 337 C which states:

40. (1) A person shall not by reference to –
- (a) any term of a contract
 - (b) a notice given to persons generally; or
 - (c) particular persons,

exclude or restrict his liability for death or personal injury resulting from negligence.

(2) In the case of other loss or damage, a person shall not so exclude or restrict his liability for negligence except in so far as the term or notice satisfied the requirement of reasonableness as provided for in section 17.

(3) Where a term of a contract or notice purports to exclude or restrict liability for negligence, the fact that, that person agrees with it or is aware of it is not of itself to be taken as indicating his voluntary acceptance of any risk.

25. Thus in my view the Defendant cannot rely upon clauses 6 and 14 (2) to absolve itself of liability if it was otherwise negligent.
26. With regard to clause 9 of the Agreement, this clause clearly alerted the Plaintiff to the possibility of danger of fire and enjoined the Plaintiff to take any reasonable precautions against fire occurring on the stored premises. However, this clause could only be interpreted as obligating the Plaintiff to ensure that the goods which he stored would not be a cause of fire and, in my view, did not absolve the Defendant from any negligence (if such negligence occurred by the Defendant) resulting in loss or damages to the Plaintiff's goods.
27. Thus if the Plaintiff had stored goods in the unit which were hazardous or dangerous (self-combustible) which caused a fire and damaged the Defendants premises then the Plaintiff would be liable for any loss suffered by the Defendant.
28. Likewise the Defendant would be liable to the Plaintiff for any loss or damage (due to any negligence by the Defendant) to the Plaintiff's goods.

29. I accept the Defendant's submissions that due to the size of the storage unit in the "L Block" there was no statutory requirement under section 3703 of the Building Code for the Defendant to have had an automatic – Sprinkler system.
30. However, with respect to: Standpipes and hoses required by section 3705; Portable Fire extinguishers required by section 3709; And Alarm Systems required by section 3711 there was a statutory requirement to have these provided in the Defendant's storage building by the Defendant and leased to the Plaintiff.
31. There was, on the evidence adduced, no alarm system at the property; The portable fire extinguishers were kept at the security booth and/or office and were not provided for every 2,000 square feet of floor area as required by section 3709; The evidence of the Mr. Durie Smith was that standpipes and water hose outlets were minimal and not adequate so that all parts of the floor area could be reached within 20 feet by a nozzle connected to not more than 75 feet of hose as required by s. 3705.2 and no water hoses were on the premises.
32. Had there been a fire/smoke alarm system in place, and an adequate amount of fire extinguishers and water hoses on site, then it would have been possible for the Defendant's security personnel to attempt to douse the fire and/or possibly contain it until the fire truck engines arrived thus possibly minimising any loss or damage to the Plaintiff's goods.

The evidence adduced could not verify how long the fire started before the security personnel were alerted to it; nor how long after they discovered the fire did they contact the fire department; as no security personnel gave witness statements or testified at the trial.
33. It is the Court's view that the Defendant was in breach of the statutory duty of care to provide adequate precautionary measures to protect against fire required by the Building Code

regulations, and that the exemption from liability clauses in the Agreement cannot be used by the Defendant to escape liability for the loss and damage suffered by the Plaintiff.

34. With respect to the Plaintiff's claim of special damages in the amount of \$45,279.00. This amount is claimed as contained is a list of inventoried items which were shipped by the Plaintiff on his return to the Bahamas from Haiti in 2000. The list of items contained assorted men's and women's clothing, crystal, china, framed and unframed paintings souvenir and miscellaneous items many with sentimental value.
35. There was not adduced any receipts for these inventoried items nor any specific reference as to costs of these items. The court is unable to verify the actual costs or replacement value of the items lost due to the fire.
36. In the absence of any evidence to the contrary, the court accepts that the inventoried list of items was what were stored in the storage unit; The Court also accepts that it is possible to award damages in the absence of receipts and invoices, but before so doing would wish to hear submissions from counsel in this regard.

CONCLUSION

37. I find that the Plaintiff's claim succeeds on the ground that the Defendant was negligent and did not provide a reasonably safe and adequate protection of the Plaintiff's stored goods, by failing to provide statutorily required fire extinguishers, adequate stand pipes and water hoses and an alarm system.
38. The amount of damages to be awarded to be determined after further submissions.

39. Costs to the plaintiff to be taxed if not agreed.

Dated this 22nd day of November 2018, A.D.,

The Hon. Mr. Justice Gregory Hilton