COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
COMMON LAW AND EQUITY DIVISION
2018/CLE/gen/01484

BETWEEN

MIZPAH PINTARD MUNROE

Plaintiff

AND

FRANKLYN WILLIAMS

As Executor of the Estate of John Egbert Tertullian

AND Administrator in the Estate of Mizpah Tertullian

Defendant

Before:	The Hon. Madam Justice G. Diane Stewart
Appearances:	Mrs. Kelphene Cunningham KC for the Plaintiff
	Mr. Lessiah Rolle for the Defendant
Judgment Date:	17th March, 2023

JUDGMENT

1. By a Re-Re Amended Originating Summons filed 24th March 2022, the Plaintiff sought the following relief :

    i. A Declaration that the Plaintiff is owed the sum of approximately Sixty-Four Thousand and Nineteen Dollars and Twenty-Two Cents ($64,919.22) being a sum invested in of all that piece of parcel or lot of land described as Lot Number 31, Block 6, Broiling Brook Road situate in the Subdivision of Blue Hill Heights in the Southern District of the Island of New Providence aforesaid ("the said property").

    ii. An injunction to restrain the Defendant whether by himself, his servants and/or agents from eviting the Plaintiff from the said property unless and until the said sum of Sixty-Four Thousand and Nineteen Dollars and Twenty-Two Cents ($64,919.22) or so much thereof as this Court determines to be the actual sum actually due as can be proven by the production of receipts produced.

    iii. Damages: Special and General damages suffered as a result of the Defendant's eviction in the amount of Forty-Four Thousand Nine Hundred and Ninety Dollars Bahamian ($44,990.00)

    iv. That the Defendant be condemned in the costs of this application.

2. The Plaintiff alleged that she renovated the said property based on the Defendant's verbal agreement in 2013 to sell the property to her at a fair market value less the amount spent on the renovations, however, the Defendant reneged on the agreement. The Defendant on the other hand claimed that by the verbal agreement, the property was to be rented to the Plaintiff and was not for sale.

3. The Plaintiff contended that the issues for the Court's consideration were :-

   i. Whether the monies expended by the Plaintiff on repairs to the property were on reliance from the Defendant that she could purchase the property and the monies she spent would be deducted from the purchase price.

   ii. Whether she is entitled to compensation for monies spent improving the Defendant's property?

   iii. Whether her equitable interest can be satisfied?

   iv. Whether the Defendant should be awarded the rent arrears of Thirty Thousand Five Hundred Dollars and paid to have the property cleaned?

   v. Whether she is entitled to damages when the Defendant turned off the electricity prior to obtaining the judgement in the Supreme Court on Appeal from the order of the Magistrates Court.

4. The Defendant contended that the issues for the Court's consideration were: -

   i. Whether there was a verbal agreement to rent or sell?

   ii. Whether the Plaintiff is entitled to a refund for repairs done without the Defendant's knowledge and consent?

   iii. Whether the Plaintiff is entitled to damages for property left in the Home after the Court Eviction Order of 16th March 2018.

5. The facts which are not disputed are:

   i. The Plaintiff moved into the property in 2013.

   ii. The Defendant is the Executor and Administrator of the Estate of the late John Egbert Tertullian and Mizpah Tertullian respectively.

   iii. The property is described as:-

   "All that piece or lot of land situate in the Subdivision known and called Baillou Hill Estates in the Central District in the island of New Providence, The Bahamas and comprising approximately 8,480 sq. feet and bounded on the North partly by Lot Nos. 1B and 2 running thereon Eighty Feet, on the East by Lot No. 30 and running thereon One Hundred and Six (106) Feet, on the South by a Thirty Feet Wide Road and running thereon Eighty (80) Feet, on the West by Lot No. 32 and running thereon One Hundred and Six (106) Feet back to the point of commencement."

   iv. A Grant of Probate in the Estate of John E. Tertullian was issued to the Defendant in 2011 as Executor.

v. The Defendant allowed the Plaintiff to occupy the property.

vi. There was no written agreement executed to sell the property or any signed lease agreement between the parties.

6. Numerous affidavits were filed by both sides in support of their separate positions.

THE PLAINTIFF'S EVIDENCE

7. The Plaintiff maintained that she was permitted to occupy the property as a licensee with a verbal agreement to purchase the property at a fair market value

8. She saidt:-

> **"Dr. Williams told me that they had no funds in order to repair the building and if I was interested in purchasing the property, his brother, Franklyn the lawyer (the defendant) dealt with legal matters and I should speak with him. From the date the Defendant and I spoke in regard to me purchasing the property and any monies I spent on the repairs to the property would be taken into account when I purchase."**

9. The Defendant never asked her to pay any rent until two years after she had moved into the property.

10. She had approached several attorneys to draft the sales agreement but was not successful in getting any of them to prepare the agreement.

11. The Defendant has not produced any written lease agreement to support his statement that there was only an agreement to rent the property.

12. The claim for rental arrears from 2015 and not 2013 corroborates the Plaintiffs evidence that she entered the premises as a licensee and not under a rental agreement.

13. The property was not fit for occupation and had fallen into a state of disrepair after Mizpah Tertullian was placed in the Geriatrics Hospital. It had become a home for drug addicts and was a nuisance to the neighborhood.

14. Dr. Francis Williams the Defendant's brother called her in early 2013 and told her that a lady with a number of children had approached him about letting her live in the house in order to keep the house secure. She then told Dr. Williams that she as a family member could repair the house and move into the property.

15. They arranged a time to walk through the property and she told Dr. Williams that she would love to buy the property provided it was sold for a decent price in order to keep it in the family.

16. Dr. Williams told her that they had no funds to repair the property, but if she was interested in purchasing the home the Defendant was dealing with all legal matters and that she should speak with him.

17. She spoke with the Defendant and when she asked for a sales agreement he told her that they were family and did not need a sales agreement.

18. She was interested in a written agreement but it never materialized.

19. She cleaned up the property before moving in and commenced repairs and continued repairs once she moved in.

20. The repairs consisted of fixing leaks, windows, removal of bees, repairs to structural damage, plumbing and lights.

21. She was never asked for any rent for approximately two years.

22. The Defendant obtained an order for eviction and proceeded with the eviction without any legal right to the same.

23. The Defendant had the electricity in the house turned off in January of 2018 before he obtained the final eviction order, as a result, she suffered damage. She incurred expenses in having to buy a generator to obtain light and water. She also suffered damage to her appliances.

24. The execution of the eviction order did not comply with the court's directions which mandated that their belongings were to be protected. The Defendant used his position with the government to intimidate and harass her. He refused to allow her to take her belongings.

25. Mr. Kishan Munroe, the Plaintiff's son who lived on the property with his mother affirmed his mother's evidence as to the non-compliance by the Defendant of the court's directions to allowing them proper access to collect their belongings resulting in grave delays to collecting their clothing and personal effects.

26. He also confirmed the damage to the appliances and the incurring of expenses as a result off the Defendant turning off the electricity.

27. They were not allowed to collect all of their belongings and the Defendant's contractor nailed planks over the door.

28. Mr. Calsey Thompson was one of the contractors who made the repairs on behalf of the Plaintiff to the house. He listed the repairs and confirmed that he was paid $15,000.00 for the repairs.

29. Mr. James Sweeting also performed repairs to the house repairing cracks in the columns and corners, reshingling the roof, replace inter alia the boxing, fascia board and rafterss. His estimate was that the Plaintiff spent over $37,000.00 on the project inclusive of work done by other workmen.

30. Under cross-examination the Plaintiff admitted that she did not attempt to reach the Defendant's attorney and she had tried through two lawyers to contact the Defendant regarding the sales agreement without success.

31. She admitted to not showing up on two occasions herself to collect her belongings.

32. She admitted that there was no stay obtained against the eviction order. She denied that she disobeyed the eviction order obtained against her by not vacating in the time ordered.

33. No evidence was produced by her of her efforts to obtain permission from the Defendant to effect repairs to the property.

34. Mr. Calsey Thompson only produced a receipt for $10,000.00 and not $15,000.00 as he claimed.

35. Mr. Sweeting noted that when he was repairing the roof that the windows had been recently done.

36. There was no agreement with the Defendant for the Defendant's adult son to occupy the premises. The paintings were only 5-6 feet long and not 15 to 18 feet as the Plaintiff had stated.

DEFENDANT'S EVIDENCE

37. Dr. Francis Williams, the brother of the Defendant averred that he never made any agreement with the Plaintiff to rent to own or sell the property.

38. The Defendant averred that he allowed the Plaintiff to occupy the home subject to a verbal agreement to rent on the conditions that:-

    i. The Plaintiff was to undertake an appraisal of the subject property.

    ii. Upon completion of the appraisal, he would review same and advise the Plaintiff of the rent she was to pay for occupying the property.

    iii. The Plaintiff agreed to take the property as is.

39. By a letter sent to the Petitioner from his counsel, in January of 2015 he advised the Plaintiff that the rent was $500.00 per month and that she would be responsible for all utilities. This letter was received by her son Keshan Munroe who lived with her in the home. The Plaintiff confirmed that she had received the letter. He also advised her to make the necessary arrangements to execute the lease for the home.

40. By a subsequent letter dated the 2nd March 2015 to the Plaintiff's then attorney, she was advised inter alia that if she did not wish to execute the lease agreement she was to vacate by 31st March, 2015.

41. The Plaintiff did not execute the lease and the Defendant relied on the 2nd March letter as a notice to quit and or a revocation of her licence to reside on the property.

42. A grace period was extended until 29th May 2015 to allow the Plaintiff to sign the lease but all rents due from March to May 2015 were to be paid.

43. On 15th May, 2015 Mizpah Tertullian died intestate and letters of administration in her estate were issued to the Defendant.

44. The Defendant claims that the Petitioner was in arrears to the sum of $30,500.00 from May 2015 to June 2021.

45. By a letter dated 19th October 2017 the Plaintiff's attorney wrote to the Plaintiff advising that she was trespassing as she had failed to pay any rent since being let into the property and notice was given to vacate by 31st October, 2017, failing which the locks would be changed.

46. An order was issued from the Magistrates Court ordering the Plaintiff to vacate the premises on or before 16th March 2018.

47. He had to spend $9,918.72 to clean the property after the Plaintiff vacated the property.

48. He denied authorizing the Plaintiff to invest any monies into the premises nor did he promise to provide any sales agreement.

49. He is seeking $40,418.72 from the Plaintiff comprising arrears of rent and the costs of cleaning the property.

50. The only agreement was an oral one which stated:-

    i. The Plaintiff was to undertake an appraisal of the subject property.

    ii. Upon completion of the appraisal, I would review same and advise the Plaintiff of the rent she was to pay for occupying the subject property.

    iii. The Plaintiff agreed to take the property as is.

51. He averred that the electricity to the property was turned off because of an unpaid bill for services consumed by the Plaintiff for which she did not pay.

52. Photographs of the state of the home after the Plaintiff left the property were produced by him.

DECISION

1. WHETHER THERE WAS A VERBAL AGREEMENT TO RENT OR SELL

53. Having reviewed the evidence both in chief and cross-examination, I am satisfied that there was no verbal agreement to sell the home. In the Plaintiff's evidence she averred that she spoke to Dr. Williams about selling the home. He told her that he did not deal with the legal affairs of Mizpah Tertullian the owner of the property, and that she would have to speak to the Defendant. The Plaintiff claims to have spoken with the Defendant whom she stated agreed to sell the house but the Defendant denies this. The law is clear that unless there is some evidence in writing by the person to be bound, one cannot enforce an agreement for the sale of land. There is nothing in writing.

54. The Plaintiff had a relationship with Mizpah Tertullian but she admitted that Mizpah Tertullian did not let her into physical possession of the property even though she spent time inclusive of sleeping there while Mizpah Tertullian lived in the home.

55. There is no doubt that the Plaintiff conducted repairs to the property and the house, and I accept that it had to have been with the initial acquiescence of the Defendant as he allowed her into possession. It is also accepted that the reason for the Defendant allowing the Plaintiff into possession was to guard against further deterioration of the property and to prevent vagrants from squatting in the building.

56. The Defendant reimbursed the Plaintiff for an outstanding electricity bill which was paid by her upon moving into the premises. This reimbursement showed that the Defendant maintained ownership of the property and did not intend to sell, because if he had intended to sell, this sum would have been acknowledged by him as a deduction in the overall purchase price.

57. I am also satisfied that if there was an agreement to sell the premises to the Plaintiff there would have been some draft of a sales agreement generated by one of the parties. I find it curious that the Plaintiff could not get any of her attorneys to draft an agreement and to send to the Defendant or his attorney for their review and to support her contention that there was a verbal agreement.

58. Upon a review of the documents produced, there was no admission by the Defendant of any agreement to sell and I accept that there was none.

59. I accept also that there was an intention by the Defendant to rent the premises to the Plaintiff. The documents sent albeit nearly two years later confirmed the intention of the Defendant. Of course this was denied by the Plaintiff. There is no requirement that there must be an agreement in writing signed by the parties to prove a lease agreement. The letters sent by the Defendant or his agents over the life of this matter supports his position that he intended to lease the property to the Plaintiff on certain conditions and nothing else.

60. Dr. Williams in his cross-examination stated that the Plaintiff said that she was interested in renting/occupying the home. He admitted to seeing her on a few occasions on the property but denied that she had been caring for his aunt Mizpah Tertullian.

61. He thought it was a good idea that the Plaintiff could live in the home and rent it for a little value and carry out some repairs. By this arrangement they would have someone to protect the property from vandals and stop the complaints from the neighbors. The Plaintiff would be responsible for conducting the repairs in lieu of paying the market rent for a four or five bedroom house which he believed would be for $2,000.00 to $3,000.00 per month.

62. Dr. Williams gave a detailed description of the state of the house before the Plaintiff was let into possession to support his contention that the house was in a serious state of disrepair.

63. The Defendant maintained that his requirement for an appraisal was to determine what rent could be obtained for the premises.

64. The property was appraised at $180,000.00.

65. The Plaintiff's counsel never raised the alleged agreement to sell in his letter to the Defendant's counsel and only sought compensation for the sum spent on repairs to the

property. The Plaintiff at trial abandoned the claim that there was an agreement to purchase the property and only made submissions as to the right to be reimbursed for the cost of the repairs.

66. The Defendant conceded that minimal repairs were to be deducted from the rent; and that the Plaintiff would carry out the minimal repairs in exchange for paying a minimal rent.

67. I am satisfied that the Defendant through the evidence led has proven on a balance of probability that there was an intention to rent, but there was no acknowledgement of this by the Plaintiff until her counsel sought reimbursement for the improvements made to the property in 2018.

68. In seeking the reimbursement there is an acknowledgement that she was not a purchaser but a tenant of the Defendant.

2. WHETHER THE PLAINTIFF IS ENTITLED TO COMPENSATION OR A REFUND OF MONIES SPENT TO REPAIR THE HOUSE.

69. The Plaintiff in her evidence avers that she spent some $64,915.22 on repairs to the house. She avers that she did so based on the verbal agreement to sell her the premises and that the sums spent would be deducted from the sales price.

70. She further avers that the Defendant acquiesced and permitted her to spend these sums knowing that he had no intention of selling the house.

71. She further submitted that after obtaining the Magistrate's Court eviction order and before the Supreme Court rendered its judgment on appeal the Defendant had the electricity turned off which caused damage to her appliances and necessitated her purchasing a generator.

72. She submits that her equitable interest should be satisfied and relies on **Yeman's Row Management Ltd and others v Cobbe [2008] VKHL** 55 which supports that she is entitled to a quantum merit claim as it was not her intention to gratuitously benefit the Defendant.

73. By the sums spent on the repairs the value of the Defendant's property would have increased.

74. The Defendant accedes that permission was given to affect only minor repairs. He did not learn of the repairs until after they were completed. He avers that as established in **Hart v Windsor (1843) 152 ER 1114,** there is no implied warranty to lease a house fit for habitaton _. He further relies on **Southwark London Borough Council v Mills and others; Baxter v Camden London Borough Council [1999] 4 All ER 449,** where Lord Hoffman stated:-

> **"The tenant takes the property not only in the physical condition in which he finds it but also subject to the uses which the parties must have contemplated would be made of the parts retained by the landlord."**

Lord Millet also stated in Southwark:-

> **"[The Plaintiff] takes the property as he finds it and must put up with the consequences. It is not to be supposed that the landlord is going to alter the construction, unless he consents to do so. He would say to his tenant, "You must take it as it is or not at all."**

75. Further, he relies on **British Anzani (Flexstowe) Ltd. v International Marine Management (UK) Ltd. [1979] 2 All ER 1063** where the court stated:-

> **"The landlord's obligation to repair premises does not arise until the tenant has notified him of want of repair, such notification must have been given before the set-off can arise; and secondly that the set-off must be for a sum which is not to be regarded as unliquidated damages, that is, it is a sum certain which has actually been paid and in addition its quantum has either been acknowledged by the landlord or in some other way can no longer be disputed by him, as, for instance, if it is the subject of an award on a submission to arbitration.**

76. He maintains that in the absence of any notice and due to there being no agreement as to the cost of the repairs, the Plaintiff is not entitled to any refunds or compensation. I am satisfied that there was no notice of any of the repairs given to the Defendant.

77. In Halsbury Laws of England it states that :-

> **"At common law, there is in general no implied warranty on the part of a landlord that the demised premises are fit for the purpose for which they are taken; and, therefore, on the letting of an unfurnished dwelling house or flat, there is no implied warranty on the part of the landlord that it is in a reasonably fit state for habitation, or that it may lawfully be used for the purpose for which it was let"**

78. Further even if the person in occupation is there as a licensee, it was held in **Morris – Thomas v Petticoat Lane Rentals (1986) 53 P & C.R; 238 CA**, that it was not an implied term of a licence of an old bacon-curry oven that it should be fit for the sale and storage of antiques. This decision "doubted" **Wettern Elective Ltd. v Welsh Development Agency (1983) 1QB 796** which had held that there was an implied term in a licence of a newly constructed factory that it was of sound construction and reasonably suited for the intended purpose.

79. In **Milo Butler & Sons Investments Co. v Monarch Investments Ltd. (1988) BHS J. No. 107** in a lease of premises where there was a covenant by the Landlord to maintain the main structure and all exterior parts including the roof in good and tenantable repair. Notice had been given to the landlord of the need for certain repairs, upon the landlord failing to carry out the repairs, the tenant affected the necessary repairs. The court held that the Plaintiff had breached its covenant to repair, they were held responsible for the cost of the repairs, and the cost was to be deducted from the rent due.

80. In **Smith v Marrable (1843) 152 ER 693 however, Parke B** stated:-

> **"This case involves the question whether, in point of law, a person who lets a house must be taken to let it under the implied condition that it is in a state fit for**

decent and comfortable habitation, and whether he is at liberty to throw it up, when he makes the discovery that it is not so."

"These authorities appear to me fully to warrant the position, that if the demised premises are incumbered with a nuisance of so serious a nature that no person can reasonably be expected to live in them, the tenant is at liberty to throw them up. This is not the case of a contract on the part of the land lord that the premises were free from this nuisance; it rather rests on an implied condition of law that he undertakes to let them in a habitable state."

Also, Lord Abinger in Smith stated:-

"A man who lets a ready-furnished house surely does so under the implied condition or obligation—call it which you will—that the house is in a fit state to be inhabited."

81. The home was abandoned and in an obvious state of decay. Both parties were aware of this. Evidence was led of the removal of existing furnishings which were beyond repair in the property prior to the Plaintiff moving into the house.

82. The Plaintiff was let into occupation initially as a licensee but subject to a lease to be agreed where the Defendant stated that the rent would be $500.00 per month. I accept that there was no implied warranty or condition that the house was fit for habitation or that the house needed to be fit as it was evident that it was not. Both parties agreed this and the Plaintiff accepted its condition.

83. It was agreed that because of the condition of the home, certain repairs would be carried out. The Defendant said "minor" repairs, the Plaintiff stated that such repairs as necessary to make it habitable and the cost of which would be deducted from the purchase price. As noted earlier, I do not find that there was an agreement to sell, so what must be decided is whether the repairs which were effected could be deducted from the rent to be paid to the Defendant.

84. It was agreed by the Defendant that certain repairs could be effected and by his failing to charge rent for over twenty months it is accepted by the court that he through his omission to charge rent until March 2015, accepted the responsibility for the repairs as a substitute for the cumulative rent for that period.

85. The Defendant produced evidence that he wrote to the Plaintiff in January 2015 setting out what the rental terms would be. No rent was charged from the time the Plaintiff was let into occupation until January 2015 and which period was subsequently deferred to March 2015.

86. By the Defendant's evidence, the Plaintiff was let into possession in July or August of 2013. It would have been a total of twenty months to March 2015. If rent were payable it would equate to $10,000.00.

87. The Plaintiff in her evidence averred that she spent as follows:-

    a. **Cleaning the home prior to moving in** **$6,357.91**

b.	**Repairs – C. Thompson**	**$13,000.00**
c.	**Repairs – C. Thompson**	**$3,302.63**
d.	**Miscellaneous Repairs**	
	i. Instillation of water pump	**$854.07**
	ii. Repairs after rent had been demanded and not paid.	
	a. Michael Williams	**$ 2,311.56**
	b. James Sweeting	**$36,509.71**
	c. Mark Campbell	**$2,370.81**
e.	**Total**	**$63,852.62**

88. Of the items listed above, I am satisfied that only those items which related to repairs to the house up to March 2015 are to be calculated and deducted from any rent due and a determination made as to any balance outstanding.

89. Upon a review of the evidence I am satisfied that the sum of $14,150.47 was the cost for necessary repairs to the home prior to March 2015 and when deducted from the rent due the balance is $4,750.47 which is to be paid by the Defendant to the Plaintiff. I find that as the Defendant had agreed that the Plaintiff could conduct repairs and had not fixed a rent prior to January 2015, it is fair that any necessary repairs which improved the condition of the house prior to that date must be considered and accepted as reasonable.

90. As of April 2015, the Plaintiff knew the position of the Defendant with regard to her continued occupation of the home. Despite this, she continued to remain in occupation and continued to effect repairs and did not pay any rent. She could not maintain that they were necessary to make the place habitable as she had been living there since mid-2013. Obviously these repairs were effected under her mistaken belief that the premises would be her property. Further, in the letter written to her counsel she was advised that she had agreed to take the place as it was. Further she did not notify the Defendant of the need for any of the repairs post January of 2015.

91. I am satisfied that there was no obligation of the Defendant to make the home habitable, and particularly where it was acknowledged that the Plaintiff would take the property as is, subject only to the agreement initially to effect certain repairs. This agreement by the evidence did not extend beyond January 2015. I therefore find that the Plaintiff is only entitled to $4,750.47 being the balance of the cost of the initial repairs up to January 2015 after deducting the rent from the total costs incurred to March 2015. There was no notice of the need for further repairs given and not responded to allow the Plaintiff to effect such repairs. If the Plaintiff wished to effect repairs post January 2015 she should have notified the Defendant and obtained his permission. She did not and cannot expect him to now pay her for them particularly when she was not paying any rent for her occupation of the property.

3.WHETHER THE DEFENDANT IS ENTITLED TO RECOVER RENTAL ARREARS

92. The Defendant is claiming $51,918.72 comprised of $42,000.00 for arrears of rent and $9,918.72 for the cost to clean the premises. It is axiomatic that in a lease arrangement the tenant is obliged to pay the agreed rental sum. If there is a failure to do so, the landlord is entitled to recover the arrears upon termination of the tenancy. In this matter, the Plaintiff claims to have not been acting as a tenant but potential owner of the property. She has abandoned that claim in the action and seeks only reimbursement for the cost of the repairs. She claims to have improved the home to the sum of $63,852.62. Some of these costs were not for structural improvements but for cleaning and painting which did not affect the value of the property.

93. I am satisfied that the cost for cleaning the debris of the property is a general cost of a landlord at the end of a tenancy less any security deposit which is usually one month's rent and kept for this very purpose. I hereby order that only $500.00 of the cost is recoverable.

94. As for the arrears of rent, I deduct the sum of $4,750.47 as determined above from the amount owed by the Plaintiff and order that the balance of $37,249.53 is due and owing to the Defendant and to be paid within 90 days of this ruling.

4. RECOVERY OF DAMAGES ARISING OUT OF THE EVICTION PROCESS

95. The Plaintiff knew as early as April of 2015 that if she failed to pay the rent she would be evicted. She did not pay the rent. The Defendant incurred expenses in evicting her. She incurred expenses in unsuccessfully resisting the eviction. She purchased a generator. I order that she be allowed to collect the generator if she has not already done so. As for the balance of damages claimed, I am satisfied that both parties delayed in attempting to meet to allow the Plaintiff to remove her belongings. Further upon a review of the evidence provided of damages suffered as a result of the eviction, I do not accept that they are recoverable by the Plaintiff as at the time the electricity was turned off the Plaintiff was a trespasser on the property as an eviction order had been obtained and which had never been stayed, accordingly she had no right to have electrical power supplied to the property from where she had been evicted. There was no contractual obligation to Kishan Munroe in order for any damages to flow if there had been any breach. In any event, he too was trespassing like the Plaintiff. Further no damages are recoverable for mental stress on a breach of contract claim. Finally many of the value of the items are mere estimates without any proof of loss and actual cost of replacement. Despite the apparent harshness of this finding, the Plaintiff cannot expect to enjoy the use of the property without compensating the owner and expect to receive damages for her remaining there unlawfully.

96. By the order of the Magistrate's court which was never stayed, the Plaintiff was ordered to vacate the premises by March 16th, 2018. Any time spent on the premises thereafter would have been as a trespasser and she would not have been entitled to any compensation for monies spent.

97. The Plaintiff, although she appealed the Magistrate's order failed to obtain a stay of the same. The Supreme Court upheld the Magistrate's court order.

98. The evidence led showed that there were various dates fixed for collection of her belongings, which were not kept by both sides.

99. Finally I hereby order that save as specifically ordered herein the Plaintiff's re-re-amended originating summons is dismissed and the Defendant is entitled to three quarters of his costs of this action to be taxed if not agreed and the Plaintiff is entitled to her costs for issue 2.

CONCLUSION

100.

i. The sum of $4,750.47 is payable to the Plaintiff by the Defendant as the balance of the costs incurred after settling the rent owed to March 2015.

ii. There was no verbal agreement to sell the property to the Plaintiff. There was an intention by the Defendant to lease the property to the Plaintiff which was ultimately acknowledged by her.

iii. The balance of the cost of the repairs to the property is not recoverable as no notice was given to the Defendant of the need for these repairs and no approval was given to effect such repairs.

iv. Only $500 of the cleaning cost is recoverable by the Defendant.

v. The Plaintiff is allowed to remove the generator purchased by her within 30 days from the date hereof at her own expense.

vi. The Defendant is entitled to three quarters of his costs of this action and the Plaintiff is entitled to her costs for issue 2.

vii. Save as ordered herein, the Plaintiff's re-re-amended originating summons is dismissed.

Dated this 17th day of March, 2023

Hon. Madam Justice G. Diane Stewart