[2025] JMCC COMM. 37

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN THE COMMERCIAL DIVISION
CLAIM NO. SU 2021 CD 00158

BETWEEN	**KNOTT FRANCIS EVENTURES LIMITED**	**CLAIMANT**
AND	**MC PRIME SHINE CORPORATE TOUCH LIMITED**	**DEFENDANT**

Ms. Chris-Ann Campbell instructed by Nea/Lex, Attorneys-at-law for the Claimant

Ms. Marsha Chambers instructed by Nigel Jones & Co. Attorneys-at-law for the Defendant

Civil procedure– Breach of contract- Whether the Defendant is in breach of the covenant of quiet enjoyment- Trespass to property- Trespass to goods- Whether the Defendant is liable for conversion- non-payment of rent

IN OPEN COURT

Heard on: 23rd and 24th June, 2025 and 27th November, 2025

STEPHANE JACKSON-HAISLEY J.

INTRODUCTION

[1] The Claimant Knott Francis Eventures Limited (Knott Francis) and the Defendant MC Prime Shine Corporate Touch Limited (MC Prime) commenced their

relationship when they entered into a joint venture agreement (the agreement) on or about January 12, 2020 to operate a kitchen and bar on property situated at 35 Dunrobin Avenue, Kingston 10 and owned by MC Prime. Subsequently MC Prime indicated its intention not to pursue the agreement. Thereafter, they entered into an oral agreement for MC Prime to rent the premises to Knott Francis for Knott Francis to operate the kitchen and bar on the premises.

[2] The Claimant alleges that in August and September 2020 the Defendant locked her out of the premises and so breached the tenancy agreement. The claim is for damages for trespass and conversion, breach of covenant of quiet enjoyment, exemplary damages and interest at 1% above the commercial bank prime lending rate.

[3] The Defendant denies that it was in breach and asserts that the Claimant is the one in breach having failed to pay rent and utilities as agreed and that the Claimant's entitlement to quiet enjoyment was conditional on its commitment to pay rent and utilities as agreed. The Defendant has counterclaimed for the sum of Seven Hundred and Fifty Thousand, Two Hundred and Thirty-Eight Dollars and Ninety-Eight Cents ($750,238.98) for outstanding rent and utilities.

EVIDENCE ON BEHALF OF THE CLAIMANT

Evidence of Tricia Knott

[4] Tricia Knott is the first of three (3) witnesses who gave evidence on behalf of the Claimant. She stated that in her capacity as Director of Knott Francis, she entered into negotiations with the Defendant to rent a kitchen and office space to carry on a catering and project/events execution business however, the focus of the negotiations shifted to a joint venture which was reduced to writing on January 12, 2020. Subsequent to executing the joint venture agreement, renovation work commenced to make the kitchen and office space suitable for the intended

business and the sum of approximately One Million, Five Hundred Thousand Dollars ($1,500,000.00) was incurred to demolish a barber shop and create two (2) office spaces as well as to update the bar, kitchen, dining area and outdoor patio.

[5] Ms. Knott asserted that operations commenced towards the end of February, 2020 and shortly thereafter, she was informed that the joint venture would not be pursued but that the Claimant should take over the operations of the kitchen and bar as a monthly tenant for which the rental was agreed at One Hundred and Twenty-Five Thousand Dollars ($125,000.00).

[6] Ms. Knott indicated that the operations continued until March 2020 when the business temporarily closed as a result of the impact of Covid-19. Nevertheless, the Claimant continued to pay a portion of the rent and utilities with the Defendant's consent and the operations resumed in May 2020 and continued until August, 2020 when locks were placed on the entrance to the kitchen and bar. A lump sum payment was made to the Defendant in order to regain access but in September 2020, locks were again placed on the kitchen, bar and office space barring the Claimant access.

[7] During cross-examination, Ms. Knott denied counsel's suggestion that there were agreements for an increase in the monthly payments. She denied counsel's assertion that she made the decision not to access the building since there was outstanding rental and utilities and instead countered that she was barred from accessing the premises.

[8] She accepted that the parties had a meeting where they discussed increasing the rent however, it was explained that the Claimant was not able to entertain an increase as a result of financial challenges due to curfew and other restrictions imposed by the government.

[9] Ms. Knott asserted that the Claimant lost revenue of approximately Two Million, Five Hundred Thousand Dollars ($2,500,000.00) from the lack of use of the office space to carry on the business of projects/events execution and approximately Two Million, Eight Hundred Thousand Dollars ($2,800,000.00) from the lack of use of the kitchen and bar space that it would have generated for the period September, 2020 to January 2021. She asserted that the Claimant has had to turn down several requests from its customers and clients because it had no space or access to its equipment and also lost perishable stock including ground provisions and vegetables as well as stock in the bar.

[10] She asserted that the Claimant was prevented from using the furniture, equipment and appliances purchased for its business which the Defendant converted to its own use. Ms. Knott denied the assertion that it is the Claimant that was unjustly enriched at the Defendant's expense and instead asserted that despite repeated requests, the Claimant has not been allowed to collect and remove its office equipment, furniture and appliances and as a result continues to suffer loss, damage and has been incurring expenses.

Evidence of Tammara Riley

[11] Tammara Riley who was employed to the Claimant for approximately three (3) years averred that the business operated smoothly until March 2020 when it was temporarily closed because of the impact of Covid-19 pandemic. She asserted that after the restrictions were eased and operations resumed, she received a call in August, 2020 from Tricia Knott informing her not to report to work as there were padlocks and chains denying access to the kitchen, bar and office space. She also asserted that on another occasion in September, 2020 when she reported to work, locks were placed on the entrance for the kitchen, bar and office and though efforts were made by Tricia Knott to obtain the keys, they were unsuccessful.

[12] She contended that the refusal to allow the Claimant access resulted in the loss of perishable stock in the kitchen and bar as well as business opportunities from existing and potential clients. She stated further that the Claimant was not allowed to retrieve furniture, equipment and appliances from the office space.

[13] During cross-examination, Ms. Riley accepted that the Claimant owed money in March as well as between August to November, 2020 for rent and utilities. She accepted that Ms. Knott and the employees had access to the keys and could have collected them from the main office where the caretaker would assist in opening and closing. She accepted that the Claimant was allowed to collect perishables but stated that by that time, the items were already spoilt.

Evidence of Jhanelle Gooden

[14] Jhanelle Gooden has been working with the Claimant for approximately six (6) years as a supervisor. She testified that business was going well until March 2020 when the impact of the Covid 19 pandemic caused a temporary closure, however business resumed in May 2020. Ms. Gooden indicated that she arrived at work one day in August, 2020 and saw locks and chains on the kitchen, bar and office space which caused a great setback in the operation for the day. She stated further that she arrived at work on another occasion in September, 2020 and was denied access to the kitchen, bar and office space which resulted in loss of perishable stock including vegetable, ground provision and pantry items.

[15] She pointed out that the Claimant also lost business opportunities for catering and project/events execution business and had to turn down business from existing clients and potential customers because it had no kitchen, bar or office space to carry out its orders.

[16] During cross-examination, Ms. Gooden accepted that the Claimant was indebted to the Defendant between March and October, 2020 for rent and utilities. She

also agreed that that some items including perishables were retrieved from the premises but indicated that not all items were retrieved.

EVIDENCE ON BEHALF OF THE DEFENDANT

[17] Floyd Leroy Campbell, the sole witness for the Defendant, stated that the Defendant wanted to get out of the restaurant business, therefore discussions to have a joint venture partnership commenced with the Claimant to operate the business. He asserted that prior to those discussions, a restaurant, bar and kitchen were already being operated from the premises and the space was outfitted with millions of dollars' worth of equipment, appliances and other items.

[18] Mr. Campbell asserted that a Joint Venture Agreement was signed on January 15, 2020 and the Claimant commenced occupation of the property and paid a monthly sum pursuant to the agreement. He asserted that the parties decided not to continue with the joint venture and instead orally agreed a new arrangement for the Claimant to be a tenant and pay a monthly sum of One Hundred and Twenty-Five Thousand Dollars ($125,000.00) for rent and use of electricity of the premises. He asserted that this monthly payment was for a period of January to May 2020 with an increased sum of Two Hundred and Fifty Thousand Dollars ($250,000.00) for the period June to August 2020 and a reduced sum of Two Hundred Thousand Dollars ($200,000.00) for September, 2020.

[19] He contended that by March 2020, the Claimant breached the agreement by paying only Forty-Five Thousand Dollars ($45,000.00) instead of the full amount and refused to pay its portion of the utility charges resulting in disconnection of the electricity to the premises. He asserted that the Claimant was still operating despite the restrictions imposed by the government and did not obtain approval to pay a portion of the rent and utilities. He further asserted that by May 2020, the electricity was again disconnected as the Claimant failed to make payments of its portion of the utility charges and by that time had accumulated rental arrears. He

stated that by September, 2020, the electricity was again disconnected and the Claimant had a significant outstanding balance in the amount of One Million and Sixty-Nine Thousand, Five Hundred and Forty-Six Dollars and Twenty-One Cents ($1,069,546.21) for rent and utilities.

[20] Mr. Campbell asserted that by mid-September, 2020, the Defendant was forced to protect its investment and mitigate its loss, therefore the Claimant was informed that use of the facility would be suspended until receipt of full payment and locks were not placed on the entrance to the kitchen and bar until towards the end of September, 2020 but were removed when the Claimant made a payment and resumed use of the facility. This statement is however inconsistent with his evidence in cross-examination as he denied Counsel's suggestion that the Claimant was unable to access the premises until a lump sum was paid. Mr. Campbell stated that efforts were made to have the matter settled however, the Claimant failed to settle the outstanding payments and by October, 2020, Ms. Tricia Knott informed the Defendant that the Claimant did not have the financial resources to continue with the operation.

[21] He asserted that by the end of October, 2020, it was agreed between the Claimant and Defendant that the tenancy arrangement would end. The Claimant collected some items from the premises with the understanding that the outstanding sums would be settled and the remaining items removed. He contended that as a result of the Claimant's actions, the Defendant suffered financial loss in the amount of Seven Hundred and Fifty Thousand, Two Hundred and Thirty-Eight Dollars and Ninety-Eight Cents ($750,238.98). Despite several demands and requests, the Claimant failed to make payments and collect the remaining items which are still on the premises.

[22] During cross-examination, Mr. Campbell contended that the Claimant was not suspended from the premises. He stated that Ms. Knott indicated that she had no money in her bank account and it was at that time the locks were changed and the

Claimant informed that she should indicate when she is ready to remove the items. He averred that it was agreed that nothing should be removed from the premises without a representative being present as the Defendant still had equipment and furniture in the premises. He disagreed with counsel's suggestion that the new tenant commenced occupation with items left by the Claimant and denied the assertion that the Claimant suffered loss as a result of the Defendant's actions.

SUBMISSIONS ON BEHALF OF THE CLAIMANT

[23] Counsel for the Claimant, Ms. Chris-Ann Campbell submitted that the issues that the Court should consider are (i) whether the Defendant has breached the covenant of quiet enjoyment, (ii) whether the Defendant is liable for trespassing goods (ii) whether the Defendant is liable in conversion and (iv) whether there is any rent due and owing to the Defendant.

[24] Ms. Campbell submitted that section 4 of the Rent Restriction Act (the Act) deals with implied covenants in tenancy as well as lease agreements and submitted that the covenant for quiet enjoyment is applicable whether or not the term is expressly stated and is also applicable in oral arrangements. Counsel referred the Court to paragraph 63 in **Ian Lunan v Rohan Sudine** [2015] JMSC Civ 260 where Anderson J opined that:

> *"The defendant has alleged that the claimant failed to pay rent and did other things, during the course of the tenancy, which were in breach of the lessee's covenants, such as, for example, failure to pay the stipulated rental sum, in full, as and when due. As earlier stated though, even a failure to pay rent, notwithstanding said wording of that express covenant, is not a condition precedent for the performance of that covenant."*

[25] Counsel also relied on **IBP Outsourcing Limited v Unique Four Limited** [2024] JMSC Civ 99, where Wint-Blair J referred to **Jenkins v Jackson** (1888) Ch 71, 74 and **Kenny v Preen** [1963] 1 QB 499 for the definition of the words 'quiet' and 'enjoyment' in a commercial contract and at paragraph 95 she came to the

conclusion that it is a question of fact and degree whether the Claimant's ordinary use of the premises has been substantially interfered with.

[26] Ms. Campbell contended that the Defendant prevented the Claimant from quietly and peacefully using the premises to operate its business which amounted to a substantial interference with the Claimant's possession. It was contended that since the Claimant was still a tenant during the period August and September 2020 and there was no order or judgment for recovery of possession, the Defendant had no right to interfere with the Claimant's possession of the premises. Counsel submitted that the Claimant could not use the premises for the purpose for which it was let and the Defendant is in breach of the covenant of quiet enjoyment. She submitted that the failure to pay rent is not a condition precedent for the performance of the covenant.

[27] As it relates to the issue of trespass, Counsel contended that the law does not require a person complaining of trespass to be the owner of the premises, however, the main issue is whether or not there was unlawful or unjustifiable interference with the plaintiff's property. Counsel relied on **Chisholm and Company Development Ltd. v Henry, Norval, Cleveroy, Kevin Chin, I Will Survive – Owner Person unknown et al** [2022] JMSC Civ 176 and submitted that the Defendant unlawfully and unjustifiably intruded upon the rented premises and unlawfully interfered with the Claimant's lawful possession. She argued that the Defendant should not have arbitrarily entered or interfered with the Claimant's use of the property or forced the Claimant to make payment to regain access.

[28] Counsel submitted that the Court should find the Defendant liable for unlawfully and intentionally disturbing the Claimant's possession, having deprived the Claimant from retrieving its goods until payment is received. Counsel argued that trespass to goods is actionable per se nevertheless, a spreadsheet listing the items to be obtained and pro forma invoices setting out the loss were submitted to support the claim. Counsel referred the Court to paragraphs 36-38 of **Cassandra**

Todd v Ivy Barrett, Claim No. 2008 HCV01681 delivered January 27, 2011 where Simmons J (Ag.) (as she then was) dealt with the issue of trespass to goods.

[29] It is contended that the Defendant converted the Claimant's stock to its own use and benefitted from the renovations done by the Claimant and has been unjustly enriched. Counsel relied on the decision of **Johnson-Dennie (Rowena) v Emmanuel (Insp W) et al** [2023] JMCA Civ 40 where Straw JA referred to the case of **The Commissioner of Police and another v Vassell Lowe** [2012] JMCA Civ 55 which set out the law relating to conversion at paragraphs 35-37. It is submitted that the Defendant took and retained the Claimant's property without authorization and exercised control over the items.

[30] Counsel argued that the Defendant agreed to the Claimant paying a portion of the rent since the business was impacted by the Covid-19 pandemic. She contended that there were no oral or written agreement for an increase in rent and the Claimant has complied with the agreement to pay a portion of the rent. On the other hand, it is contended that the Defendant has interfered with the Claimant's quiet enjoyment, converted the Claimant's assets for its own use and trespassed on the property while the Claimant remained a lawful tenant.

SUBMISSIONS ON BEHALF OF THE DEFENDANT

[31] Counsel for the Defendant, Ms. Marsha Chambers contended that the issues for determination are (i) whether the Defendant is entitled to the sum owed for outstanding rental payments and (ii) whether the Defendant is liable to the Claimant for any alleged breach of Covenant of quiet enjoyment, trespass and/or conversion.

[32] Counsel relied on Section 4 of the Act and argued that the implied terms fix the tenant with an implied obligation to pay rent on the due date. She contended that the Claimant has failed to produce any evidence demonstrating a challenge to the sum of Seven Hundred and Fifty Thousand, Two Hundred and Thirty-Eight Dollars

and Ninety-Eights Cents ($750,238.98) in outstanding rent and utility charges and submitted that the Claimant is bound by the implied obligations of the tenancy agreement. She averred that in the absence of any express provisions and any proof of payments of the outstanding sums, the Claimant is entitled to pay the outstanding rent. She referred the Court to paragraph 48 of **New Pineapple Shopping Centre Ja. Limited v Dawkins Brown and Other** [2025] JMCC COMM 20.

[33] As it relates to breach of quiet enjoyment, trespass and conversion, Counsel contended that the Defendant did not suspend the Claimant's use of the kitchen and bar and the Claimant's witness, Ms. Tricia Knott admitted that she had keys to the premises. Counsel averred that the evidence is also clear that the caretaker Mr. Reid, would open the premises once an employee appears. Counsel stated that in light of the absence of any correspondence or evidence to support the Claimant's assertions of being locked out of the premises there were no substantial interference with the use and enjoyment of the premises. Reliance was placed on **ADS Global Limited v McLean Holding Limited** [2022] JMSC Civ 114 where Staple J (Ag.) (as he then was) discussed the law on breach of quiet enjoyment as well as **Walton Richards v Woman Detective Corporal Campbell and the Attorney General** Suit No. C.L.R. -019/1996 where Williams J discussed trespass and conversion. It is submitted that in the absence of any correspondence and/or evidence to demonstrate that there was substantial interference with the use of the enjoyment of the premises, it cannot be found that the Defendant was in breach of the implied covenant of quiet enjoyment, trespass and conversion.

[34] Ms. Chambers contended that any claim for special damages arising from the allegation that the Claimant was unable to operate her business due to being denied access cannot be sustained as the Claimant has not presented any evidence to support special damages. Counsel referred the Court to **Trudy-Anne Silent-Hyatt v Rohan Marley & Anor** [2023] JMCA Civ 24 at paragraph 25 which states:

"*It is trite law that special damages must be specifically pleaded and proved…..*"

[35] Ms. Chambers argued that various arrangements and demands were made for the Claimant to remove the items from the tenanted premises, however the Claimant failed and/or neglected to remove the items and conceded that the Defendant was operating a bar and kitchen and that items belonging to the Defendant formed part of its operation. Counsel argued that the invoices and spreadsheet presented with items allegedly lost, purchased and or owned by the Claimant with no relevant receipt to corroborate is insufficient to show that the Defendant has trespassed and/or converted the items for its own use.

[36] Counsel submitted that the Claimant has not submitted any proof that there was wilful and wrongful interference by the Defendant or that the Defendant had an intention to deny the Claimant right of ownership of the goods. Counsel argued that the requirements to establish trespass have not been established in accordance with the authorities and that a claim for conversion must be specifically proven.

[37] Ms. Chambers submitted that the Defendant has sufficiently demonstrated that the Claimant has failed to comply with the oral arrangement entered between the parties and is bound to settle the amounts outstanding. It is contended that the Defendant is not in breach of the covenant for quiet enjoyment as there is unchallenged evidence that the Claimant did not cease to operate its business and there is no evidence that the Defendant converted items allegedly lost, purchased or owned by the Claimant to its own use and purpose.

ISSUES

[38] The issues for the court's determination are:

(a) Whether the Claimant is entitled to damages for breach of the covenant of quiet enjoyment
(b) Whether the Defendant is liable for trespass, conversion and exemplary damages
(c) Whether the Defendant is entitled to the sums claimed on its counterclaim.

Whether the Claimant is entitled to damages for breach of the covenant of quiet enjoyment

[39] There is no dispute that the Claimant entered into an oral agreement with the Defendant for the rental of the Defendant's premises. The Claimant contends that the Defendant prevented it from operating by placing locks on the entrance to the bar, kitchen and office space which caused an inability to operate its business which amounted to a breach of covenant of quiet enjoyment. The Defendant denies the Claimant's allegation and instead stated that though locks were placed on the premises, the Claimant was aware that the keys were with the caretaker and still had access the premises.

[40] The covenant for quiet enjoyment as discussed in the Halsbury's sets out the following:

> *It has long been established that, if a landlord demises property to a tenant and does not enter into express covenants for title or for quiet enjoyment, certain promises are implied by him by the use of the word 'demise', namely that he is entitled to grant some term in the demised premises and that the tenant is to have quiet enjoyment of the premises. Such promises are also implied by the use of equivalent words of letting.*
>
> *In a formal lease, and in an oral letting or an agreement for a lease which operates as a present rather than a future demise, there is implied one single covenant for quiet enjoyment, under which the tenant is entitled to be put into possession of the premises which are leased to him at the outset of his tenancy, and to remain quietly in possession of them throughout the term of the tenancy. This covenant may be broken either by lack of title or by the eviction of the tenant by the landlord. An express covenant for quiet enjoyment excludes an implied covenant to the same effect. Halsbury's Laws of England Landlord and Tenant (Volume 62 (2022), paras 1-595; Volume 63 (2022), paras 596-1219; Volume 64 (2022), paras 1220-1957)10. Other Covenants (1) Covenant for Quiet Enjoyment441. Implied covenant for quiet enjoyment.*

[41] Section 4 of the Act provides for implied covenants in tenancy agreements whether they are oral or in writing. Section 4 stipulates as follows:

> *"4. In every tenancy agreement or lease made on or after the 1st day of November, 1979, whether orally or in writing, in respect of controlled premises, except in the case of any tenancy agreement which contains express provisions to the contrary, the landlord and the tenant shall be deemed to have inserted the covenants set out in the First Schedule and shall be bound by thorn covenants."*

[42] The First Schedule of the Act sets out the elements of the covenant for quiet enjoyment as follows:

> "*The landlord agrees-*
>
> *(b) to permit the tenant on his paying the rent and fulfilling his other obligations under the tenancy peaceably and quietly to occupy and enjoy the premises without any interruption by the landlord or any person rightfully claiming under or in trust for him".*

[43] It was an implied term of the oral rental agreement that the Claimant is entitled to quiet enjoyment of the premises. In order to succeed on a claim for a breach of covenant of quiet enjoyment, it must be shown that the act or the omission of the Defendant significantly interfered with the tenant's ordinary use of the premises. The interference should therefore be substantial. In the landmark case of **Southwark London Borough Council v Mills and others: Baxter v Camden London Borough Council** [1999] 4 All ER 449, the Court summarized the principles at paragraph 57 of the judgment as follows:

> *"57. What the case emphasises is that tenants really take the premises as they find them. Even if there is substantial interference with the use and enjoyment of a premises, the landlord can only be held liable for breach of the covenant where the acts or omissions of himself or persons claiming through him or under his authority are substantial. According to Lord Hoffman in the Southwark London Borough Council case, it is always a question of fact and degree (emphasis mine) in determining whether there was a breach of the covenant".*

[44] The Claimant contends that around the third week in August, 2020, locks were placed on the entrance to the kitchen, bar and office space and access was

granted only after a lump sum payment was made. Mr. Campbell on behalf of the Defendant denied that he placed locks on the doors, but he accepted having said that the Defendant decided to suspend use of the premises. He did not explain how he effected this suspension.

[45] When taxed further in cross-examination, Mr. Campbell admitted that locks were placed on the entrance to the kitchen, bar and office space towards the end of September, 2020 and that this was done in order to protect the Defendant's investment and mitigate loss. Further, that though locks were placed on the entrance to the kitchen, bar and office space, the keys were always accessible from the caretaker who resides on the premises. The Claimant's witnesses have also accepted that there were instances when they were allowed inside the premises through the caretaker. Mr. Campbell also accepted that he gave instructions not to allow the Claimant's representatives in the premises without a representative from the Defendant being present. Though access was granted, there were restrictions which also included a lump sum payment for outstanding rent before the locks could be removed.

[46] Anderson J in **Ian Lunan v Rohan Sudine** [2015] JMSC Civ 260, on which the Claimant relies, dealt with the issue of non-payment of rent at paragraph 63 emphasizing that a failure to pay rent is not a condition precedent to the breach of the covenant for quiet enjoyment.

[47] It is agreed that the Claimant had some access to the premises, but the fact that locks were placed on it prevented her from free access as she had to depend on the caretaker to give her access to the premises. The access was restricted and it prevented her from being able to continue with her usual business. These restrictions significantly impacted its continued use of the premises for the purpose for which it was rented. The Claimant was not able to operate the kitchen and bar and generate any income. The Defendant's action substantially interfered with the

Claimant's use of the premises and constituted a breach of the covenant of quiet enjoyment.

[48] The Claimant asserts that as a result of its inability to access the premises, it was unable to carry on project/events resulting in loss of revenue of approximately Two Million Five Hundred Thousand Dollars ($2,500,000.00). It is further contended that the Claimant lost an approximate sum of Two Million, Eight Hundred and Eighty Thousand Dollars ($2,880,000.00) that it would have earned for the period September 2020 to January 2021. The Claimant vacated the premises in October because it was unable to pay the rental sum so any claim for projected income subsequent to October could not be entertained. These sums are significant sums and the Claimant has not shown how it arrived at these figures. Although not strictly speaking Special Damages, the Claimant would have been required to show proof of how it arrived at those figures which it has failed to do.

[49] The Claimant also claimed loss of perishable stock from the kitchen including ground provisions, vegetables and pantry items including juices, alcoholic and non-alcoholic beverages and mixes used to make cocktail from the bar. Although there was evidence that they were able to retrieve some of the items, there was an indication that by the time of retrieval some items were already spoilt. There is no estimate of the cost of these items and the evidence of the Claimant in this regard is that the necessary documentation to justify the loss including sales reports and receipts are on the Defendant's property for which the Claimant has no access.

[50] Counsel for the Defendant submitted that without proof, the Claimant is not entitled to the sums claimed. However, Ms. Knott in her viva voce evidence asserted that the Claimant would generate an average amount of One Hundred and Ninety Thousand Dollars ($190,000.00) per week in sales. Based on Ms. Knott's position in the company I am of the view that she is in a good position to give an idea of the sales each week, and this evidence remained unchallenged by the Defendant.

[51] I take into account the unchallenged evidence that at the time the Claimant was locked out of the premises she had stock in the premises and find that it is more likely than not that she would have been able to earn the sum she spoke of if she was not deprived of access to the premises. I am prepared to make an award of One Hundred and Ninety Thousand Dollars ($190,000.00) per week. I accept that the Claimant was barred from the premises in both August and September and so I am prepared to make an award for one week in August and one week in September, 2020 being two weeks in total amounting to Three Hundred and Eighty Thousand Dollars ($380,000.00) for the loss arising from the breach of the covenant of quiet enjoyment.

Whether the Defendant is liable for trespass, conversion and exemplary damages

The issue of trespass

[52] The Claimant seeks damages for both trespass to property and trespass to goods and submitted that the Defendant should not have arbitrarily entered the premises and interfered with the Claimant's use of the property or its chattel without consent whilst it was still a tenant and so the Defendant's actions amount to trespass.

[53] Edwards JA in the Court of Appeal decision of **Harold Francis Jnr and Elvega Francis v Dorrett Graham** [2017] JMCA Civ 39 discussed the tort of trespass at paragraphs 83, 85 and 86 as follows:

> *[83] The tort of trespass to land is defined by the learned authors of Clerk & Lindsell on Torts, 17th edition, paragraph 17-01 as consisting of "…any unjustifiable intrusion by one person upon land in possession". It is generally described as an interference with possession. The right to sue in trespass is therefore based on actual possession or the right to possession.*
>
> *[85] Any person in possession of, or who has a right to possession of land, may bring an action for trespass to land…*

> [*86] To be successful, the plaintiff suing in trespass would also have to prove that the defendant actually entered on the land whilst they were in possession. The tort is actionable per se, so there is no need to prove actual damage, but if there is damage, in order to quantify the amount beyond nominal damages, actual damage will have to be proved..."*

[54] Therefore, the right to bring an action in trespass is based on possession and not ownership so a person in possession can bring an action even against the owner or as in this case the landlord of the property. Having found the Defendant to be in breach of the covenant of quiet enjoyment, he would also have committed a trespass on the Claimant's property. Trespass in and of itself, without proof of damage only attracts nominal damages. However, the Claimant has proven loss for which I have already made an award for breach of quiet enjoyment so I would not be prepared to award a further sum for trespass.

[55] With respect to the trespass to goods, this is also actionable per se, without proof of actual damage. The Claimant herein is saying that there was damage. Trespass to goods has similar elements to the tort of conversion and so the interference with the Claimant's property will be dealt with under the tort of conversion.

The issue of Conversion

[56] The Claimant has claimed the sum of Eight Hundred and Sixty-Nine Thousand, Two Hundred and Forty-Seven Dollars and Fifty-Seven Cents ($869,247.57) as an approximate value of capital expenditure for equipment, assets, furniture, fittings and appliances that were left at the premises. A spreadsheet listing the estimated value of suitable replacement items was tendered by the Claimant as exhibit 6.

[57] During cross-examination, Ms. Knott asserted that since the receipts for the items listed on the spreadsheet were left in the office, she obtained an estimated value for the items lost. Tendered as exhibit 5 is an estimate from Nev East Suppliers in the sum of Five Hundred and Nineteen Thousand, Four Hundred and Ninety-Two Dollars and Forty-Four Cents ($519,492.44) listing the asset and furniture to be replaced. Also tendered as exhibit 4 is Proforma invoice No. 1173238 from Azan

Supercentre in the sum of Two Hundred and Twenty-Five Thousand, Six Hundred and Seventy-Five ($225,675.00) which lists the current prices for the appliances to be replaced.

[58] Ms. Knott accepted that during the period September 2020 to November 2020, arrangements were made to remove several items including the perishable items from the subject property however, she asserted that not all the items were removed. It is contended that the Defendant converted the Claimant's stock for its own use, benefitted from the renovations done by the Claimant and has been unjustly enriched. The Defendant denies the allegation and has instead countered that prior to the Claimant's occupation of the premises, it was outfitted with furniture, fittings and equipment as the business was a going concern. Mr. Campbell has asserted that it is the Claimant that benefited from the Defendant since it inherited stock for the bar which belonged to the Defendant.

[59] Having reviewed the evidence, Mr. Campbell did not deny that the Claimant commenced operation with her own stock and items for the business. He has instead asserted that there was no need for her to take anything because the kitchen was fully stocked. He also stated that he could not be sure if she brought anything afterwards. I am prepared to accept Ms. Knott's version of events that although arrangements were made to remove the items, there was a requirement to settle the outstanding sums first. This is also evident from a letter from MC Prime Shine Corporate Touch Limited to Knott Francis Events dated December 31, 2020, where the Claimant was notified to make arrangements to settle the outstanding sum before the items could be collected.

[60] In the Court of Appeal decision of **Johnson-Dennie (Rowena) v Emmanuel (Insp W) et al**, Straw JA set out the law in relation to conversion highlighting that conversion includes wilful interference with any chattel in a manner inconsistent with the right of another person. The Claimant herein, in order to establish the tort of conversion, is required to prove that the Defendant either wilfully or wrongfully

exercised control over property which belonged to her. I accept that the actions of the Defendant prevented the Claimant from accessing the property to retrieve items which belonged to her and that he even went ahead and allowed other persons to access the premises while she still had her belongings there. This renders the Defendant liable for the tort of conversion.

[61] The Claimant should be compensated for items which were wrongly converted by the Defendant. I accept that this included equipment, assets, furniture, fittings and appliances. Although she has not presented the actual cost for the items, she has done the best she could in the circumstances, which is to provide invoices. I am prepared to accept the estimated invoices tendered by the Claimant as exhibits 4 and 5 to support the claim for the replacement items. The proforma invoice from Azans Super Centre was for the sum of Two Hundred and Twenty-Five Thousand, Six Hundred and Seventy-Five Dollars ($225,675.00) and the estimate from Neveast Supplies Limited amounted to Five Hundred and Nineteen Thousand, Four Hundred and Ninety-Two Dollars and Forty-Four cents ($519,492.44) totalling Seven Hundred and Forty-Five Thousand, One Hundred and Sixty-Seven Dollars and Forty-Four Cents ($745,167.44). I am prepared to award that amount to the Claimant.

The issue of exemplary damages

[62] In its Particulars of Clam filed April 14, 2021 under the heading Particulars of breach of covenant of quiet enjoyment, trespass and exemplary damages, the Claimant states the following:

> *(i) The Defendant acted in a very high-handed and contumelious manner with the intent of embarrassing the Claimant and causing her to suffer humiliation, mental anguish and distress.*
>
> *(ii) The conduct of the Defendant in all the circumstances was oppressive high-handed and unlawful.*
>
> (iii) …

[63] The House of Lords in **Rookes v Barnard** [1964] AC 1129 at pages 1226 – 1227 laid down three categories of cases where exemplary damages may be awarded:

> *"The first category is oppressive, arbitrary or unconstitutional action by the servants of the government. I should not extend this category- I say this with particular reference to the facts of this case-to oppressive action by private corporations or individuals. Where one man is more powerful than another, it is inevitable that he will try to use his power to gain his ends; and if his power is much greater than the other's, he might, perhaps, be said to be using it oppressively. If he uses his power illegally, he must of course pay for his illegality in the ordinary way; but he is not to be punished simply because he is the more powerful. In the case of the government it is different, for the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service. It is true that there is something repugnant about a big man bullying a small man and, very likely, the bullying will be a source of humiliation that makes the case one for aggravated damages, but it is not, in my opinion, punishable by damages. Cases in the second category are those in which the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff. I have quoted the dictum of Erle C.J. in Bell v. Midland Railway Co.134 Maule J. in Williams v. Currie 135 suggests the same thing; and so does Martin B. in an obiter dictum in Crouch v. Great Northern Railway Co.136 It is a factor also that is taken into account in damages for libel; one man should not be allowed to sell another man's reputation for profit."*

[64] The Claimant did not advance any submissions to substantiate a case for exemplary damages and having reviewed the facts, there is no evidence that this claim falls within the realm of cases for exemplary damages. The Claimant would not be entitled to any award under this head.

Whether the Defendant is entitled to the sums claimed on its Counterclaim.

[65] The Defendant in its Defence and Counterclaim filed on January 24, 2024 asserted that the Claimant failed and/or neglected to pay rent lawfully due and owing in the sum of Seven Hundred and Fifty Thousand, Two Hundred and Thirty-Eight Dollars and Ninety-Eight Cents ($750,238.98). Ms. Knott contended that instructions to

pay a reduced sum was obtained from the landlord however, she did not provide any evidence to support this assertion. She also asserted that the business was temporarily closed as a result of the restrictions imposed by the Government due to the impact of the Covid-19 pandemic and this negatively impacted income. Mr. Campbell denied that the Claimant received instructions to pay a reduced rent. During cross-examination, he accepted that the Claimant approached him in March 2020 to discuss a reduced rental payment however, the Defendant did not agree to a reduced payment. He argued that around that time, the Claimant commenced paying the sum of Forty-Five Thousand Dollars ($45,000.00) but that was without consent.

[66] It is a fact that the Covid-19 pandemic negatively impacted the country round about March 2020 and restrictions including curfews were imposed. These restrictions would have negatively impacted the Claimant's business which operated as a restaurant and bar. The imposition of curfews resulted in the reduction of nightly sales from the bar and lunch orders as only essential workers were permitted to go to work. It would certainly have been reasonable for Mr. Campbell to reduce the rent, but he could not be forced to do so. It does not appear from the evidence that there was consensus on this reduction of rent.

[67] Ms. Knott accepted that rent and utilities are outstanding and she also accepted that the accumulation of utilities resulted in disconnection of the electricity. In her email dated September 17, 2020 to the Defendant, she suggested a payment plan to clear the sum of Six Hundred and Forty-Four Thousand, Five Hundred and Forty-Six Dollars and Twenty-One Cents ($644,546.21) towards the outstanding arrears for rent and utilities whilst continuing with operations. She indicated a willingness to get back on track with the payments and requested that an implementation of an amortized rate of Two Hundred Thousand Dollars ($200,000.00) be applied for the period June, 2020 to January 2021. The email of September 17, 2020 sets out Ms. Knott's payment proposal as follows:

September 25	- $100,000.00	- against arrears
October 2	- $200,000.00	- rent
October 16	- $100,000.00	- against arrears
October 30	- $200,000.00	- rent
November 13	- $100,000.00	- against arrears
November 27	- $200,000.00	
December 11	- $100,000.00	- against arrears
December 28	- $100,000.00	- against arrears
January 5	- $200,000.00	
January 15	- $150,000.00	- against arrears
January 29	- $200,000.00	

[68] By email of September 19, 2020, Ms. Ralliford on behalf of the Defendant respondent to the email and indicated that consideration has been given for the rent for September to December 2020 to be at a rate of Two Hundred Thousand Dollars ($200,000.00) per month and she requested that the rent for September, 2020 as well as utilities be paid in full by September 21, 2020. Permission was also given to proceed with the payment proposal as outlined in Ms. Knott's email from October 2, 2020. There is no evidence to show that the Claimant was allowed back into the premises and based on the evidence from Mr. Campbell, the Claimant gave up the tenancy in October 2020. The Claimant is therefore required to pay the rental sums up to the time of giving up the property

[69] I take note of the Defendant's letter to the Claimant dated December 31, 2020, which states that only a sum of Sixty Thousand Dollars ($60,000.00) was received however the sum of Seven Hundred and Fifty Thousand, Two Hundred and Thirty-Eight Dollars and Ninety-Eight Cents ($750,238.98) remains due and outstanding. I find as a fact that the sums set out by the Defendant are due and outstanding to the Defendant.

[70] The Claimant is therefore liable to the Defendant for the outstanding rent in the sum of Seven Hundred and Fifty Thousand, Two Hundred and Thirty-Eight Dollars and Ninety-Eight Cents ($750,238.98). Judgment on the Counterclaim is for the Defendant.

[71] My Orders are as follows:

1. Judgment on the Claim is for the Claimant in the sum of One Million One Hundred and Twenty-Five Thousand, One Hundred and Sixty-Seven Dollars and Forty-Four Cents ($1,125,167.44) plus interest at a rate of six percent (6%) from June 3, 2021 to the date of Judgment.
2. Judgment on the Counterclaim is for the Defendant in the sum of Seven Hundred and Fifty Thousand, Two Hundred and Thirty-Eight Dollars and Ninety-Eight Cents ($750,238.98) plus interest at the rate of six percent (6%) from January 24, 2024 to the date of Judgment.
3. Each party to bear its own cost.

……..
Stephane Jackson-Haisley
Puisne Judge