



Neutral Citation Number: [2020] EWHC 2247 (Ch)

Case No: PT-2019-000947

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
PROPERTY TRUSTS AND PROBATE LIST (Ch)

RUBY TRIANGLE PROPERTIES LIMITED **Claimant**

And

JESUS SANCTUARY MINISTRIES LIMITED **Defendant**

AND

Case No: PT-2019-001024

JESUS SANCTUARY MINISTRIES LIMITED **Claimant**

AND

RUBY TRIANGLE PROPERTIES LIMITED **Defendant**

The Rolls Building
7 Rolls Buildings
Fetter Lane
London EC4 1NL
Date: 17 August 2020

Before :

MASTER TEVERSON

James Hanham (instructed by **Eversheds Sutherland (International) LLP**) for Ruby Triangle Properties Limited in both claims

Angus R Gloag (instructed on a Direct Access Basis) for Jesus Sanctuary Ministries Limited in both claims

Hearing dates: 8, 9 and 10 June 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The judgment was handed down without attendances required at 10.00 am on Monday 17 August 2020

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MASTER TEVERSON

MASTER TEVERSON:

1. Claims PT-2019-001024 and PT-2019-000947 were listed before me for a 3 day trial commencing on 8 June 2020. Jesus Sanctuary Ministries Limited (“JSM”) is the Claimant in PT-2019-001024 and the Defendant in PT-2019-000947. Ruby Triangle Properties Limited (“RTP”) is the Defendant in claim PT-2019-001024 and the Claimant in PT-2019-000947. There is a counterclaim by RTPL in claim PT-2019-001024.
2. RTP is a special purpose vehicle company which since 25 March 2019 has been registered as the proprietor of an area known as Ruby Triangle located off the Old Kent Road in London. Planning permission was granted for a major development of the area on 6 June 2019.
3. JSM is a church and mission organisation. It has an evangelical focus. The majority of its church members are from Black and Ethnic Minority backgrounds. It has since 2009 occupied and used as a worship centre part of a building known as Property 11 that is located within the Ruby Triangle development area. Its pastor is Pastor Uzor Ndekwu.
4. On 24 October 2019, RTP, by its agents, took possession of the parts of Property 11 occupied by JSM without a court order. On 25 October 2019, JSML was granted in the County Court at Central London a without notice interim injunction ordering RTP to restore it to possession. Possession was restored to JSM at around 8pm in the evening of 25 October 2019 after the police had been in attendance for a number of hours.
5. On the return date, on 6 November 2019, JSM was permitted to remain in possession on terms that, without prejudice to its contention that it was in occupation as a tenant, it pay £68.50 per day in respect of its use and occupation, weekly in arrears. The claim by then issued by JSM in the county court was ordered to be transferred to the High Court in the Property, Trusts and Probate List of the Business and Property Courts of England and Wales. It was allocated claim number PT-2019-0010249 on transfer in. In this claim, JSM seeks a declaration that it is a tenant of the premises and as such enjoys the protection of Part II of the Landlord and Tenant Act 1954. It claims damages for unlawful eviction including exemplary and aggravated damages. It further claims that sums totalling £70,670.25 were unlawfully taken by RTP’s agents from its offices at the time of the unlawful eviction.
6. On 18 November 2019, RTP issued claim PT-2019-000947 having on 31 October 2019, without prejudice to its position that JSM was in occupation as a licensee, served on JSM a section 25 notice and notice to quit by 2 May 2020. RTP, without prejudice to its position that JSM’s occupation was under a permissive licence that had been validly terminated prior to 24 October 2019, applied under section 29(2) of the 1954 Act for an order for the termination of any tenancy held by JSM and protected by Part II of the 1954 Act relying on grounds (a), (b) and (f) of section 30(1) of Part II of the 1954 Act.
7. At the outset of the trial, it became apparent that it would not be possible without the risk of unfairness to both sides to try the issues raised in claim PT-2019-000947. On 4 June 2020, I handed down my judgment on two applications heard on 27 May 2020 in

that claim: an application for judgment in default of defence by RTP and a cross-application by JSM permitting the late filing by it of a defence. I declined to enter a default judgment and gave permission to JSM to rely on its defence notwithstanding its lateness. In my judgment, at paragraph 26, I referred to the possible need to look at the planning history and planning documents to see whether any obligations were imposed on RTP to relocate existing occupants. Mr Hanham, counsel for RTP, very properly drew to my attention that disclosure had not been made by his client of the section 106 agreement entered into alongside the grant of planning permission and that there were additional planning documents not before the court. In those circumstances, after hearing both counsel, I directed that the issues under Part II of the 1954 Act be excluded from the ambit of the trial. Those issues are scheduled to be determined at a second trial commencing on 19 August 2020.

8. JSM has been in occupation of accommodation on the ground floor of Property 11 under the terms of an agreement in writing headed “Church Hire/Rental Agreement made on 3 May 2009 between (1) World Harvest Christian Centre as “the Owner” and (2) Jesus Sanctuary Ministries as “the Licensee”. The period of time of the agreement was from 3 May 2009 to 30 June 2012. The agreement Fee was £25,000 per annum, exclusive of water rates, heating, lighting and cleaning, payable in advance upon signing the document and by yearly advance payments. The agreement gave the Licensee exclusive possession of any part of the premises comprising (1) Auditorium, (2) Two Offices, (3) One Kitchen, (4) Male & Female Lavatories, (5) One Disabled Lavatory, (6) One Reception, and (7) a set designated car park for Jesus Sanctuary GO.
9. JSM remained in occupation after the expiry of the agreement term. In October 2015, World Harvest Christian Centre (“WHCC”), sold its interest in the whole building to OKR Regeneration Limited (“OKR”). Notification of the sale was not however given to JSM until 12 January 2017. JSM continued to deal with WHCC over issues relating to the state of the building including water leakage in particular.
10. On 12 January 2017, Hart Brown Solicitors acting on behalf of OKR enclosed a letter dated 28 October 2015 from Wellers Solicitors on behalf of WHCC to JSM giving notification of the sale to OKR. It was confirmed to Pastor Ndekwu by Pastor Seyi for and on behalf of WHCC that WHCC had sold its interest in 25-27 Ruby Street to OKR as part of planned regeneration of Ruby Street and its surrounding area. At a meeting with Pastor Ndekwu attended by Reverend Babatunde and Pastor Seyi on behalf of WHCC, the rationale behind the sale was explained. Rev Babatunde apologised at the meeting that notification of the transfer was not given to JSM in 2015. It was said there had been an error on the part of the new owners’ Solicitors.
11. WHCC remained in occupation of its part of 25 to 27 Ruby Street. It told JSM it had agreed with the new owners to vacate six months following the approval of the new owners’ planning permission. WHCC said JSM’s tenancy had been transferred over to the new owners. WHCC said any issues relating to repairs should be taken up with the new owner. It said however that on its part, and in good faith, it would resolve the ongoing water leakage issue.
12. By letter dated 25 March 2019, Hart Brown Solicitors notified JSM that OKR had transferred its interest in the land at West Ruby Street to RTP. In the period between 12 January 2017 and 25 March 2019, JSM had fallen into dispute with Mr Thomas

William Pratt, a director of OKR. JSM took particular objection to scaffolding erected at the front of the building without a licence in July 2018. JSM issued proceedings against OKR in the County Court at Lambeth seeking the removal of the scaffolding. Those proceedings were stayed for mediation. According to Pastor Ndekwa, Mr Pratt refused to engage in that process and the scaffolding remained in place. The scaffolding does not block access to the premises. It has in the view of Pastor Ndekwa prevented the membership of the church from expanding.

13. By letter dated 25 March 2019, Eversheds Sutherland (International) LLP (“Eversheds”) acting on behalf of RTP notified JSM that any rent arrears in respect of 25-27 Ruby Street had been assigned by OKR to RTP by a Deed of Assignment of Rent Arrears dated 15 March 2019. The letter referred to RTP as “your landlord”.
14. On 17 April 2019, at the request of Pastor Ndekwa, Eversheds sent a copy of the Deed of Assignment of Rent Arrears to JSM.
15. On Saturday 13 July 2019, an eviction notice was affixed to a wall at the entrance of the premises. It referred to the premises “you are currently illegally occupying”. It said: “You must move from the property by the following date: 25 July 2019”. The notice in the top left corner referred to “Avanton”. It gave an address but no contact details. In the top right hand corner, the notice referred to “Security Risks Specialists” below a logo. JSM’s case is that at that time it had no idea of whom Avanton was.
16. SRS Security put Andrew Chukwuenweniwe, an officer of JSM, in touch with Luka Kelman of Avanton Limited (“Avanton”). Avanton acts as a site development manager in respect of the Ruby Triangle site and other sites in the portfolio of the group. Andrew Chukwuenweniwe registered JSM’s serious displeasure at the eviction notice. Luka Kelman said in response on 19 July 2019, the reason for the eviction notice was because Avanton did not possess any documentation for any tenancy agreement and further it had not received any rent. She said if documentation was sent through demonstrating the right to use the property, it would be reviewed and the eviction notice would “of course” be removed. The eviction notice was one of a number put up on properties on the site.
17. On 23 July, Luka Kelman repeated the request for documentation. She also noted there had been “ongoing disturbance in the form of loud noise/music being originating from around this property”.
18. By letter dated 24 July 2019, Mrs N Ife, signing as “Head of Legal, Jesus Sanctuary Ministries”, wrote back to Luka Kelman stating that the eviction notice giving the church in effect 12 days to vacate was not only an illegal eviction notice but was also a criminal offence and amounted to harassment. She said JSM had been lawful tenants since May 2009 and that a valid tenancy agreement existed. She said Security Risk Specialists and Avanton were two companies unknown to the church. She said the church was under no obligation to provide Avanton with a tenancy agreement as the church did not know who they were or whom they represented. She said the landlord was the only person entitled to evict and must follow the proper legal procedure. She said any attempt to illegally evict the church would result in an injunction being sought and a claim for damages. She said the church had no intention to vacate on 25 July 2019 or at all without a court order.

19. Luka Kelman by email in return attached a copy of the freehold title. She said the property was owned by RTP, “a subsidiary of Avanton Limited (my employer)”. She asked to be provided urgently with a copy of the “valid tenancy agreement” referred to in the letter. She also asked to be provided with evidence of to whom JSM had been paying rent. In her witness statement Luka Kelman says that on the evening of 25 July 2019 at around 9.30pm she received a call on her mobile from a person who proceeded to shout at her. She cut off the caller and blocked his number. After that, the decision was taken by a director of Avanton to refer the matter to Eversheds.
20. On 2 August 2019 Eversheds wrote to JSM’s legal department saying they had been passed its letter to Luka Kelman. Eversheds said they acted for RTP. They asked JSM to note that “Avanton Limited and our client share the same Director and, accordingly, Avanton Limited carry out some management duties on behalf of our client”. Eversheds said no details or evidence of the alleged tenancy agreement had been provided. They said their client required immediate possession but was however mindful that JSM would need to find alternative accommodation. It said their client was prepared to allow JSM to remain in occupation as a bare licensee until 31 August 2019.
21. By letter dated 6 August 2019, Pastor Uzor Ndekwu replied to Eversheds. He referred to attempts being made to harass church members during and after church services. He referred to people on Sunday 28 July, at the door of the children’s department, trying to distract the children by behaving in strange ways. He said they were tying up this incident with Luka Kelman’s claim that neighbours were complaining about their noise. He said the premises around them were occupied by industrial units and other commercial businesses. He said there was “clearly a campaign of calumny to paint the church black and give her a bad name”. Pastor Ndekwu wrote again to Eversheds on 9 August 2019.
22. Eversheds in a letter dated 16 August 2019 marked “Without Prejudice Save as to Costs” repeated that to date JSM had not provided any documentation to substantiate its claims. They said that “whilst JSM might have been in occupation of the premises for some time, the basis of the occupation was still unclear”. On behalf of RTP they offered JSM a short term lease for 1 year, contracted out of the provisions of Part II of the 1954 Act terminable by either party on not less than 3 months’ written notice.
23. Pastor Ndekwu replied by letter dated 28 August 2019. He asked rhetorically how RTP knew JSM were sitting tenants if they had not received any information or documentation from OKR and Hart Brown Solicitors. Pastor Ndekwu’s response to the proposal for a short term lease was that JSM “as sitting tenants for over ten years”, was entitled to not less than one and a half years without break options. This was said to be to enable RTP to comply with London Plan Policies 3:16, which Pastor Ndekwu quoted as stating “the applicant must take all reasonable steps to facilitate the successful relocation of existing occupiers”. Pastor Ndekwu said that the draft lease was also required to cover other outstanding claims and “compensation for the harassment and embarrassment caused by you and Avanton Limited’s attempt to remove us illegally”.
24. After that, there appears to have been no further communication between RTP or Avanton or Eversheds and JSM before early in the morning of 24 October 2019 RTP

by persons acting on the instructions of a director of Avanton took possession of the premises used and occupied by JSM.

25. JSM applied the following day to the County Court at Central London to have possession reinstated. The application was supported by a witness statement of Pastor Ndekwu dated 25 October. There was attached to the witness statement a copy of the Church Hire/Rental Agreement (“the Rental Agreement”). An order requiring possession to be given back by RTP to JSM was made by Deputy District Judge Duncan on 25 October.
26. JSM regained possession of the premises at around 8pm in the evening of 25 October. In a letter dated 29 October 2019 to Sky Solicitors Limited, the solicitors then acting for JSM, Eversheds said the Property was unsafe and in danger of imminent collapse. They said it was out of genuine concern that their client secured the property on Thursday 24 October 2019 as there was a serious risk of personal injury and/or death. The property was said not to be fit for occupation. In reply, Sky Solicitors Limited stated they found that explanation hard to believe and surprising in view of the fact that by letter dated 16 August 2019 a new one year draft lease had been offered for consideration.
27. This explanation for the eviction was repeated by Mr Peter Murphy, Avanton’s Development Director in his witness statement dated 31 October 2019. In paragraph 17, Mr Murphy said it could be seen from photographs attached to his statement that the building was in an extremely dilapidated state and condition. He said this was “a key reason why RTP secured the property on 24 October 2019”.
28. It was accepted before me on behalf of RTP that the Rental Agreement gave rise to a tenancy in favour of JSM as opposed to a licence. In my view that concession was correctly made. It was also accepted that JSM was in occupation for the purposes of a business, the purpose of the occupation being an activity carried on by a body of persons within section 23(2) of the Landlord and Tenant Act 1954.
29. As a result of these concessions, it was submitted on behalf of RTP that two consequences followed. First, that when the contractual term of the Rental Agreement expired on 30 June 2012, the agreement was continued under section 24(1) of the 1954 Act on the same terms as the Rental Agreement but subject to the terms of Part II. Secondly, that the eviction on 24 October 2019 was unlawful and prima facie gave rise to an entitlement to damages.
30. The Claim which is now claim PT-2019-001024 was issued in the County Court at Central London on 25 October 2019. It sought declarations that JSM was the legal occupant of the property and had been illegally evicted. It sought an order restoring JSM to possession of the property and permanent injunctions against RTP prohibiting it from further evicting JSM. Damages were sought for “trespass, breach of covenant, reputational damage and wasted staff”. Under the heading “Value”, it was stated that, subject to further review, JSM expected to recover more than £5,000 but no more than £8,000.
31. The amount of the claim increased substantially when the particulars of claim were served on or about 12 November 2019. The particulars of claim included a further claim that monies totalling £69,570.25 had been unlawfully taken and converted by

RTP's agents at the time of the unlawful eviction. The monies alleged to have been taken by RTP's agents were:-

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|---|------------|
| (i) monies collected from parishioners on 23 October 2019 | £680.25 |
| (ii) monies collected in relation to a pilgrimage to Israel | £56,890.00 |
| (iii) monies donated by parishioners (approximately) | £12,000. |

32. Further details were provided on behalf of JSM by Pastor Ndekwu in a Reply to Request for Further Information served in January 2020. The first sum is explained to have been the total of the collections from services held on Wednesday 23 October 2019. These monies are said to have been counted on the same day. The third sum represents estimated Thanksgiving and Food Bank donations from parishioners. It was explained by Pastor Ndekwu that at the time the claim was filed most of the donors were away on the Israel trip. Following their return, it was determined that the actual amount of the donations was £13,150.00. It was said this sum was collected over a period of time and was uncounted at the date of the alleged removal. It was said the amounts of £680.25 and £13,150.00 were contained in two separate envelopes. Those envelopes were kept in the desk drawer in the Accounts/Treasury Office which door was locked at the end of the day – Wednesday 23 October 2019.
33. The sum of £56,890 was said to be money raised for charitable donations in connection with the trip to Israel. It was said to have been raised for charity over some eight months. It was said to be all in cash. It was said to be kept in the second drawer in the Accounts/Treasury Office arranged in £50, £20, £10 & £5 denominations.
34. It was stated by Pastor Ndekwu that the monies were discovered to be missing immediately on re-entry into the property at around 8pm on Friday 25 October 2019 when it was discovered that the Accounts/Treasury Office had been broken into and ransacked.
35. The key evidence relied upon by the JSM in support of its claim that these monies were taken by the RTP's agents is CCTV footage from its three internal CCTV cameras.
36. I was provided by JSM with video evidence in five tranches D(4)(a) to (f). These show three persons who were identified in evidence before me as Steven French, Simon O'Donnell and a locksmith Curtis Turner entering the premises at around 4.52am from the street by removal of the lock to the reception area front door and shutter from the outside. They show Mr O'Donnell and later Mr French in a corridor area, in which musical instruments are stored on one side, trying to gain access to rooms off that corridor using different keys. These are the doors to the Account's office and the Pastor's office. D(4)(d) shows the locksmith Mr Turner successfully undoing or breaking the lock to the Accounts office and Mr O'Donnell going into that office with Mr Turner still at the door. D(4)(e) shows the same happening in relation to the Pastor's office.
37. The two clips did not show Mr O'Donnell coming out of each office or therefore for how long Mr O'Donnell remained in each office. A further CCTV sequence was provided to me showing Mr O'Donnell entering the Account's office and then coming

out after about 25 seconds. He then waits for the locksmith to open the door to the Pastor's office. He goes into that office and comes out of the Pastor's office after about 20 seconds.

38. D4(f) is the last clip in the sequence. It shows Mr French and Mr O'Donnell going out of the building and then after some minutes coming back into the reception area from the street. Mr French is putting up a notice in the window of the reception area. Mr French can be seen handing Mr O'Donnell what appears to be a bundle of notes. Mr O'Donnell puts the bundle on the table in the reception area and starts to count out a number of notes. He counts out around 20 notes. He puts the remainder of the bundle of notes in Mr French's trouser back-pocket whilst Mr French is continuing to put up the notice.
39. Mr French gave evidence before me. He was cross-examined thoroughly and fairly by Mr Gloag. Mr French is not a certified bailiff. He agreed he had no qualifications entitling him to enter premises. He said he was contacted by telephone by a director of Avanton to do the job. He was in contact with Simon O'Donnell by telephone. He and Mr O'Donnell looked at the property from the street the day before. They met Mr Turner outside the property on 24 October. Mr French said the last CCTV sequence showed him trying to attach a laminated notice to the window. He said he was asked by Mr O'Donnell for cash to pay the locksmith. He said in his witness statement the money being counted out by Mr O'Donnell was money he [Mr French] brought with him to the site. He strongly denied any allegations of theft. It was put to him by Mr Gloag in cross-examination that he had cash but no wallet. He replied saying he thought he had a wallet.
40. I am satisfied that Mr French was a truthful witness who did not himself steal any money from the premises. Whether or not the money seen being given by him to Mr O'Donnell came from a wallet or was simply a bundle of notes, I accept Mr French's evidence that this was money he brought along to pay the locksmith. Mr French himself is not shown on the CCTV as having entered either the Accounts office or the Pastor's office.
41. Mr Turner, the locksmith, also gave evidence before me. Mr Gloag cross-examined him. Mr Turner came across as a direct and straightforward witness. He is an independent locksmith. He was brought in to gain access to the premises. He was paid in cash around £300. He said he charged a little extra as he was asked to remove two internal locks. Mr Turner's livelihood depends on customers relying on him not to cause unnecessary damage or take goods or monies when working at premises. Mr Gloag made it clear that no allegation of theft was being made against Mr Turner.
42. Mr O'Donnell was not called to give evidence and did not provide a witness statement. Mr French said Mr O'Donnell was from the travelling community and could not read or write. He said Mr O'Donnell was not very educated and doesn't give evidence or "do this kind of stuff".
43. In some cases, it is open to the court to infer from the failure of a person to give evidence that he has behaved dishonestly. In the present case, the court has the CCTV footage. The footage does show Mr O'Donnell going into both offices. He was in each office for less than 30 seconds. He is not seen carrying envelopes. He is not wearing clothing that would enable concealment of large amounts of cash. Mr

O'Donnell between entering each office is fully in view of the CCTV. He can be seen on his mobile for a few seconds. He looks as if he is waiting around to inspect each office. In the last footage, he is provided with money by Mr French which he then counts out. That money came from the person of Mr French who had not been in either of the offices.

44. In my judgment, the CCTV footage, does not show that monies were taken by any of the three persons who entered the premises.
45. The sums alleged to have been removed total £70,720.25. The disappearance of the monies is said to have been discovered on the evening of 25 October 2019 when re-entry to the premises was obtained.
46. The disappearance of the monies was not referred to by Pastor Ndekwu in his witness statement dated 4 November 2019. That witness statement was made over a week after the JSM was back in the premises. The issue of the disappearance of the monies was not raised by Sky Solicitors Ltd with Eversheds. From this, it is reasonable to infer they were not instructed by JSM that over £70,000 had been stolen from the premises in the course of the unlawful eviction.
47. When it was put to Pastor Ndekwu in cross-examination that the theft was not referred to in his witness statement of 4 November 2019, there was a long pause. His eventual response was that the court proceedings at that time were concerned with the injunction ordered by the county court. I would have accepted that answer if the sums in question had for example been limited to the Wednesday collections. I cannot accept that if around £70,000, or anything like it, was found to have gone missing on the evening of 25 October 2019, this would not have been raised either with JSM's solicitors or with the court.
48. The disappearance of the money was not reported to the local Police. When this was put to Pastor Ndekwu in cross-examination, he said the Police had not allowed JSM to obtain re-entry to the premises for over four hours after the court order had been obtained on 25 October 2019. He said if the police were hopeless to enforce a court order, why go back to the same Police. I can understand and believe JSM had little or no confidence in the Police as a result of the time it took to regain possession after the court order was obtained, and that there was a perception (justified or not) the police were siding with the owners, but this does not to my mind explain the non-reporting of such a serious theft, if only, to obtain a crime reference number.
49. The removal of the monies was first raised and alleged in the Particulars of Claim filed on 12 November 2019. This was two and a half weeks after the regaining of possession.
50. The allegation of burglary was included among many other complaints in a lengthy letter dated 26 November 2019 sent by Pastor Ndekwu to Mr Sadiq Khan, the Mayor of London and copied to the Metropolitan Police Commissioner amongst others. The letter treats Mr Thomas William Pratt of OKR as the main villain. He is linked to and said to be in league with Avanton Limited and RTP. Pastor Ndekwu says in his letter that JSM did not involve the local police because of the way the police officers had deferred to the wish of Mr Pratt on 25 October 2019.

51. In summary, the CCTV evidence does not evidence monies being stolen. Further, the disappearance of the monies was not raised until the Particulars of Claim were served on 12 November 2019. The fact that the Wednesday collection monies remained unbanked at the time of the entry into the premises early in the morning of Thursday 24 October is understandable. It is much harder to understand why the substantial donations for the mission in Israel and the sum for the 2019 Thanksgiving both collected over an extended period of time had not been banked. The church may have wanted to keep the mission money separate but one would expect there either to be a separate account or an accounting system able to record sums donated for a specific or restricted purpose.
52. The only documentation produced relating to the two larger amounts consists of two schedules both prepared after the event. The first is a handwritten list headed "Donations for Workers Missions and Rabbais in Israel". It has three columns with the names, amount and signature of donors. The second is a typed schedule headed "Donations for 2019 Thanksgiving Ceremony Stolen by Ruby Triangle Agents on 24/10/2019". It lists 8 church groups and an amount for each. The total is £13,150. In manuscript, there appears a form of certification. It states "I Abraham Isewede Donated that £13,150.00 for the group". The Treasurer of the church was not called to give evidence. Mr Abraham Isewede was not called. No donors were called. The only evidence was that of Pastor Ndekwu.
53. In *Re H* [1996] AC 536 Lord Nicholls stated at pages 586-7:-

"The balance of probability standard means that a court is satisfied an event occurred if the court considers that, on the evidence, the occurrence of the event was more likely than not. When assessing the probabilities the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probabilities"
54. Lord Nicholls made clear this does not mean that where a serious allegation is in issue, the standard of proof required is higher. It does, however, mean that the inherent probability or improbability of an event is itself a matter to be taken into account. In my judgment it is not established on the balance of probabilities that the monies were taken by the Defendant's agents from JSM's offices.
55. For those reasons, I dismiss the claim in conversion.
56. I turn to the claim for damages for unlawful eviction. As special damages, JSM claims to have suffered costs of £850 in hiring a locksmith to regain access to the premises on 25 October 2019 and to replace the locks and keys removed from the two offices. There is no invoice supporting that claim. I will however allow that claim in full. The Claimant will have had to change its locks. It will no doubt have needed several sets of replacement keys.
57. No other claim for general damages was advanced. JSM was put to the trouble and inconvenience of having to apply to the County Court for an order restoring its possession. It is entitled in my view to its costs of this claim up to and including the hearing in the County Court of 6 November 2019 on the indemnity basis. It was also

kept out of the premises for around 40 hours. It had to wait outside for between 3 and 4 hours after the court order was produced. I will award £1,500 general damages to reflect that loss of amenity, nuisance and distress and inconvenience.

58. It was accepted by Mr Gloag that as a limited company, JSM is precluded by the decision of the Court of Appeal in *Eaton Mansions (Westminster) Limited v Stinger Compania De Inversion SA* [2013] EWCA Civ 1308 from recovering aggravated damages. The Court of Appeal upheld the principle that because an award of aggravated damages is designed to compensate the successful claimant for distress and injury to feelings caused by the defendant's conduct, in the case of a company, this is not a possibility. I am bound by that decision. No attempt was made before me to distinguish it.
59. The court does have power to award exemplary damages where the defendant's conduct has been calculated to result in a profit for itself which might exceed the compensation payable to the Claimant. This is the second category referred to by Lord Devlin in *Rookes v Barnard* [1964] A.C. 1129. This category has been applied to cases where a potential profit has been made available to a landlord by the departure, tortuously engineered, of a protected tenant.
60. On behalf of RTP, it was submitted that there was no cynical disregard of JSM's rights either with a view to profit or at all. It was submitted that notwithstanding requests for its production by Avanton and Eversheds, at the time of the taking of possession, JSM had not produced any proof that there was a tenancy agreement.
61. I accept that the Rental Agreement had not been produced. It was however known by RTP and its agents that JSM had been in occupation for a long period and that the premises were in active use as an evangelical church. There were large banners outside the building to that effect.
62. In taking possession without a court order I have no doubt that RTP and its agents regarded itself as taking a calculated risk. The agents and individuals used were not regulated bailiffs or enforcement officers. The decision to take possession in this way was likely to be particularly sensitive given the nature of the use of the premises as a place of worship.
63. There was at least in part a profit motive behind the decision. It may not have been the sole motive. I accept there was some concern too about the state of the building although not sufficient to preclude the offer of a new short term lease with a 3 month break clause on either side.
64. The motives of RTP and its agents were or included wanting to avoid having to spend further management time dealing with the JSM or attempting to negotiate further. RTP clearly wanted to avoid if it could the expense and time of court proceedings. It hoped to avoid further negotiation including the issues to which protection under Part II of the 1954 Act might give rise.
65. I accept there are some significant mitigating factors. JSM was unwilling to document its occupation. It was offered in August 2019 a short term tenancy excluded from Part II of the 1954 Act but with a 3 month break clause.

66. I consider however that looking at all the circumstances, a relatively modest award of exemplary damages should be made against RTP in favour of JSM. In determining the amount, I have taken into account:-
- (i) RTP knew that JSM had been in occupation for a considerable time;
 - (ii) RTP treated JSM as a tenant for the purposes of giving notice of assignment in order to be able to collect any rent arrears;
 - (iii) the notice of eviction did not provide a reasonable notice to vacate;
 - (iv) activity such as a place of worship was capable of being protected under Part II of the 1954 Act;
- However
- (i) the Rental Agreement was not produced before possession was taken on 24 October 2019
 - (ii) no rent or use of occupation monies were being tendered by JSM;
 - (iii) a short term lease to regularise occupation was offered to JSM by RTP in August 2019.
67. In these circumstances, I will make an award of exemplary damages in favour of the JSM in the sum of £6,250. That equates to 3 months' rent.
68. That leaves RTP's counterclaim for rent. It is convenient to divide this claim into two periods. The first period is from 12 January 2017 to 25 March 2019. This is a claim by RTP as assignee for any rent arrears owed to its predecessor OKR.
69. The Deed of Assignment of Rent Arrears dated 25 March 2019 between OKR and RTP refers in Schedule 2 to occupational leases. In relation to Property 11 (part), in column A, the lease is recorded as "Undocumented". In column D, under the heading "Arrears £" is written "NA". Arrears is defined in clause 1.1 of the Deed as "the sums set out in column "D" of schedule 2 to this deed.
70. It is accepted the assignment takes effect subject to equities by reason of section 136 of the Law of Property Act 1925. Such equities may include an equitable right to set off against rent an unliquidated claim for damages for breach of landlord's obligations under the Rental Agreement.
71. Prior to the assignment, there were a series of unresolved disputes and issues between Mr Pratt of OKR and JSM. No rent was ever paid to OKR. JSM claims the right to set off £23,873.00 for repairs to leaking roofs, £12,200 for damage to musical instruments, £7,763.69 for alleged tapping by WHCC of JSM's electricity and £90,000 as a result of loss of earnings due to members leaving the church due to the scaffolding.
72. I regard the £90,000 loss of membership claim as untenable. The remaining amounts are in whole or in part arguable set-offs. As a matter of construction of the Deed dated 25 March 2019, I do not consider that any arrears of rent relating to Property 11 (part)

were assigned under the Deed. No amount was specified. Prima facie “NA” means “No arrears”. For that reason, the issues of set off do not arise. If I am wrong to treat the Deed as ineffective to assign any rent arrears, in relation to Property 11, I would not have allowed this part of the counterclaim to have been determined without there being directed an account and inquiry relating to rent arrears and the alleged equitable set-offs. This part of the rent counterclaim was not properly pleaded or particularised before the Court.

73. By reference to the Landlord and Tenant (Covenant) Act 1995, the set-off does not operate against arrears of rent that fall due after the assignment of the reversion, unless the lease provides for it: see the judgment of Lord Justice Neuberger on this point in *Edlington Properties v JH Fenner & Co* [2006] EWCA Civ 403; [2006] 1 WLR 1583.
74. I conclude:-
- (i) JSM is entitled to a declaration it has a tenancy that was protected by Part II of the 1954 Act;
 - (ii) JSM is entitled to remain in possession until that tenancy is determined in accordance with Part II;
 - (iii) JSM’s claim for conversion is dismissed;
 - (iv) JSM is entitled to recover £850 as special damages for unlawful eviction and £1,500 general damages arising out of the taking of possession on 24 October 2019;
 - (v) JSM is entitled to its costs of recovering possession on the indemnity basis in the County Court up to and including the hearing on 6 November 2019;
 - (vi) JSM is awarded exemplary damages of £6,250;
 - (vii) JSM is liable to pay arrears of rent without interest from 25 March 2019 to 6 November 2019. It may set off the special, general and exemplary damages awarded to it against that liability.
 - (v) JSM must continue to pay rent at the daily rate of £68.50 so long as it remains in occupation.