

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**COMMON LAW AND EQUITY DIVISION**  
**2025/CLE/GEN/00304**

**BETWEEN**

**MOGUL TRADING LIMITED**

**Claimant**

**AND**

**STORE AWAY LIMITED**

**Defendant**

**Before:** The Honourable Justice Camille Darville Gomez

**Appearances:** Mr. Ashley Williams for the Claimant  
" Mr. Donovan Gibson for the Defendant

**Hearing Date:** 11th July, 2025

**RULING**

**DARVILLE GOMEZ, J**

- [1.] I heard this application in my capacity as Duty Judge on 11 July 2025.
- [2.] The Claimant, Mogul Trading Limited, seeks judgment on admissions against Store Away Limited for possession of commercial premises situated on Blake Road, New Providence (the "Property"). The Defendant was initially granted a 10-year lease commencing 1 March 1998, which expired on 28 February 2008. No renewal or extension was executed thereafter. Nonetheless, the Defendant remained in occupation with the Claimant's tolerance, and the parties operated under a de facto arrangement.
- [3.] The Claimant contends that this post-expiry occupation constituted a tenancy-at-will, now lawfully terminated by written demand letters dated 22 April, 2025 and a final one given on 6 May, 2025.

- [4.] The Defendant, while acknowledging the absence of a current lease and the Claimant's right to possession, seeks leniency—a reasonable period to terminate its sub-tenancies, relocate its business, and avoid operational collapse.

### **The Application**

- [5.] The Claimant filed a Notice of Application (the "Application") for judgment on admissions on 27<sup>th</sup> May, 2025 supported by an Affidavit of Madeliene Todd on the same date for the following reliefs:

- (i) A declaration that the Defendant is a tenant-at-will and that such tenancy has been lawfully terminated;
- (ii) An Order for possession of the premises situate on the western side of Blake Road, New Providence;
- (iii) An Order for mesne profits from the date of termination of the tenancy-at-will until delivery of possession;
- (iv) Costs of this application and
- (v) such further or other relief as the Honourable Court deems just.

- [6.] A Certificate of Urgency was filed and the grounds for the urgency were as follows:

- (i) The Defendant has admitted in its Defence that it is a tenant-at-will and such tenancy has been lawfully terminated by the Claimant.
- (ii) The Defendant remains in occupation of the premises without legal right and has failed to deliver possession.
- (iii) The Department of Inland Revenue (DIR) has issued a notice indicating that the subject property may be subjected to public auction due to unpaid taxes.
- (iv) The continued occupation by the Defendant obstructs the Claimant's ability to resolve tax arrears and jeopardizes the Claimant's proprietary interest in the subject property.
- (v) The threatened auction by DIR constitutes an immediate and irreparable risk of loss to the Claimant if possession is not obtained forthwith.

### **The Pleadings**

- [7.] The action was commenced by the Claimant by a Fixed Date Claim on 23<sup>rd</sup> April, 2025 against the Defendant for the following reliefs:

- (i) a declaration that the Defendant is a tenant-at-will and that such tenancy has been lawfully terminated;
- (ii) an Order for possession of the Premises;
- (iii) An order for the payment of all arrears of turnover rent, to be assessed;

- (iv) An Order for the payment of all outstanding outgoings not limited to but inclusive of taxes and utilities;
- (v) Damages for breach of covenant to produce all operational records and data used to calculate Gross Turnover;
- (vi) Mesne profits from the date of termination until delivery of possession;
- (v) Interest under the Supreme Court Act;
- (vi) Costs on a full indemnity basis;
- (vii) Consequential damages;

[8.] The Statement of Claim averred as follows:

#### Parties

1. The Claimant is the registered owner and Landlord of premises situated on the western side of Blake Road in the western district of New Providence (hereinafter referred to as "the Premises").

#### The Lease

2. The Defendant is a limited liability company which has been in occupation of the Premises.
3. By a written Lease dated the 1<sup>st</sup> day March, 1998 (the "Lease") recorded in the Registry of Records at volume 7311, pages 42 to 62 the Claimant leased the Premises to the Defendant for a fixed term of ten (10) years commencing the 1<sup>st</sup> day of March, 1998 and ending on the 28<sup>th</sup> day of February, 2008.
4. The Lease provided, inter alia:
  - That the Defendant shall pay Turnover Rent calculated at 90% of Gross Turnover;
  - That the Defendant shall pay all outgoings, taxes, utilities and assessments assessed on the Premises;
  - That the Landlord shall be entitled to re-enter the Premises for non-payment of rent or any breach of covenant without requirement for formal notice.

#### Post-Lease Occupation

5. Upon the expiration of the Lease on the 28<sup>th</sup> day of February, 2008 no renewal or written extension was executed by the parties.
6. The Defendant continued in occupation of the Premises with the tolerance and at the behest of the Claimant, who periodically made demand for compliance and rent.
7. The Defendant therefore occupies the Premises as a tenant-at-will and not under any fixed term or periodic tenancy.

#### Legal Status of Tenant-at-Will

8. A tenant-at-will is one who occupies premises with the permission of the Landlord but without a fixed term or legal entitlement to remain, and such tenancy is revocable by the Landlord at any time.
9. Further, or in the alternative, the Claimant avers that following the expiration of the written Lease on 28<sup>th</sup> February, 2008 the Defendant continued in occupation by consent and on terms materially consistent with the expired Lease, including but not limited to payment of rent and provision of turnover-related disclosures, such that the Claimant is entitled to enforce those terms under the tenancy-at-will.
10. The Claimant has elected to terminate such will and demand possession of the Premises.
11. The Defendant is in material breach of its obligations as former tenant under the Lease and current occupant by virtue of:

- Failure to pay rent as calculated on Turnover Rent terms;
  - Failure to supply turnover certificates for multiple periods;
  - Failure to pay outgoings including utilities, taxes and services;
  - Failure to provide operational and financial data previously requested for the purpose of verifying Gross Turnover.
12. The Claimant has issued multiple demands requesting compliance, financial disclosure and payment. These have been ignored or refused by the Defendant.
13. As a result the Claimant has exercised its right to terminate the Defendants' tenancy-at-will and seek immediate possession of the Premises along with rent arrears and damages.

[9.] The Defendant in its Defence filed on the 21<sup>st</sup> May, 2025 averred as follows:

1. The Defence is filed on behalf of the Defendant and the paragraphs referenced herein are to the numbered paragraphs in the Statement of Claim endorsed on the Fixed Date Claim issued herein on the 23<sup>rd</sup> May 2025.
2. Paragraphs 1 and 2 are admitted by Defendant.
3. The Defendant admits Paragraph 3 but avers that at the time of the execution of the Lease Mr. Larry Ferguson, who is the current beneficial owner of the Defendant, was not at the material time a shareholder, officer or director of the Defendant.
4. Regarding Paragraphs 4 and 5 the Defendant avers that subsequent to the expiration of the Lease, Mr. Larry Ferguson became the beneficial owner of the Defendant and entered into a verbal agreement with the Claimant to pay a monthly rent of \$10,000.00.
5. Save for the fact that the Defendant continued in occupation of the Premises the remainder of Paragraph 6 is denied and the Claimant is put to strict proof thereof.
6. Paragraphs 7 and 8 are admitted by the Defendant.
7. Paragraphs 9 and 11 are denied and the Defendant repeats Paragraph 4 above.
8. Paragraph 12 is denied and the Claimant is put to strict proof thereof.
9. Except as hereinbefore specifically admitted, the Defendant denies each and every allegation contained in the Statement of Claim as though the same were herein set out and traversed seriatim.

### **The Evidence**

[10.] The Claimant filed a supplemental Affidavit of Madeliene Todd on 26<sup>th</sup> June, 2025 and a second Supplemental Affidavit on 3<sup>rd</sup> July, 2025.

[11.] The Defendant similarly filed an Affidavit on 12<sup>th</sup> June, 2025 and a Supplemental Affidavit on 1<sup>st</sup> July, 2025. It was sworn by its Accountant, Don Johnson who had been employed in that position since October, 2024.

### *The Defendant*

[12.] Mr . Johnson had this to say in his original Affidavit:

- “7. The President and beneficial owner of the Defendant, Larry Ferguson had a stroke in 2017 but his health deteriorated drastically late last year. He has been in and out of the hospital and inactive from the business since last year.
8. While we accept that the Claimant has a right to vacant possession, we are appealing to the Court to permit a reasonable period for the Defendant to advise its clients, locate an alternative and suitable location to store the valuable possessions of many of our customers.
9. There currently exists no property that is outfitted with storage units that can meet the requirements of the Defendant to operate its business efficiently. Therefore, in order for the Defendant to continue operating, a large tract of land would have to be purchased or leased and storage facility would have to be designed and constructed. This process involves a number of steps including but not limited to engaging an architect to draw plans, obtaining the necessary permits and approvals, securing adequate financing and obtaining the requisite insurances.
10. Vacating the premises without the Defendant having the opportunity or a reasonable time to source an alternative arrangement would in essence close the business down. We would be liable to customers who have already prepaid for the space, we have no ability to secure their belongings and we would have terminate all of the employees. The impact on the Defendant is draconian and thus we are asking the Court to be considerate of the technical nature of our business and proceed cautiously so as to minimize the irreparable damages that can result from a sudden departure.”

[13.] Again in the Supplemental Affidavit sworn by Don Johnson on behalf of the Defendant he explained more of the Defendant’s business as follows:

- “3. Store Away is a limited liability company established under the Companies Act bearing the number 44098. Exhibited hereto and marked “DJ.1” is a copy of the Certificate of Good Standing for 2024.
4. Store Away Limited trades as Store Away Limited and is in the business of rental of warehouse/storage units. Exhibited hereto and marked “DJ.2” is a copy of the Business License Certificate. Exhibited hereto and marked “DJ.3” is a copy of The Certificate of Registration.
5. Store Away Limited operates over 765 self-storage units on 3.5430 acres, located on Blake Road. Currently, Store Away Limited has leased 700 of the units to various third parties. Some of tenants have already paid for the unit for six months in advance, some tenants have actually paid for the entire year but the majority are on a month to month tenancy. Exhibited hereto and marked “DJ.4” is a copy our Lease Agreement that we require each tenant to sign.
6. Exhibited hereto as a bundle and marked “DJ.5” are aerial photos of the entire property so that the court can have some visual of the physical layout of the buildings, roadways etc.
7. In order to terminate the Lease, Clause 13 states that we have to give one month’s notice in writing. The property only has one entry which is also used to exit the property. There

is security at the entry and thus persons entering have to log in and log out. This can cause a blockage of traffic on Blake Road and thus we usually only permit three vehicles at a time to enter. If a tenant has to clear their unit, it would usually take the entire day to do so because the roadways between the buildings are very narrow.

8. Therefore, it is impossible to have 700 tenants evicted simultaneously as those would create chaos. The process of evicting each tenant would have to be done on a staggered basis perhaps by sections to avoid congestion within the property and on the main Blake Road.
9. I have no personal knowledge of Store Away ever being a property manager for Mogul as alleged by Ms. Todd in her Supplemental Affidavit. I have always known Mogul to be our landlord despite the fact that there was no written Lease Agreement and thus payments were made to Mogul represented rent.
12. While we accept that the Claimant has a right to vacant possession, we are appealing to the Court to permit a reasonable period for the Defendant to provide the contractual notice to terminate each lease, provide an opportunity for the tenants to retrieve their possessions and seek an alternative and suitable location to operate its business.

[14.] The Claimant has filed three Affidavits in support of its application for judgement on admissions and have exhibited: (i) the fixed-term Lease Agreement; (ii) a letter entitled “final demand for compliance, disclosure” and payment dated 22<sup>nd</sup> April, 2025 in which the production of *inter alia*, Profit and Loss Statements for the years 2023 and 2024, VAT filings for 2023, 2024 and Q1 2025 with corresponding bank statements and the most recent rent roll; (iii) a second letter dated 6<sup>th</sup> May, 2025 entitled Tenant-at-Will Demand & Request for Outstanding Disclosures in which demand was repeated for the production of the items requested in the earlier letter.

[15.] Madeliene Todd, a Director of the Defendant in her original Affidavit filed said as follows:

- (i) The Defendant Store Away Limited, filed a Defence on the 21<sup>st</sup> day of May, 2025 where it admitted being in occupation of the premises as a tenant-at-will.
- (ii) The fixed term lease between the parties expired on the 28<sup>th</sup> February, 2008 and no formal renewal or extension has been executed. There is exhibited hereto marked “MT.1” a copy of the said lease.
- (iii) By letter dated the 22<sup>nd</sup> April 2025 the Claimant has since terminated the tenancy-at-will and has demanded possession. There is now exhibited hereto and marked ‘MT.2’ a copy of the said demand letter.
- (iv) The Defendant has failed and/or refused to deliver possession and continues in unlawful occupation of the premises.
- (v) The Department of Inland Revenue has issued a notice threatening to auction the subject property due to alleged unpaid taxes. This creates a significant and immediate risk to the Claimant’s proprietary interest.

- (vi) This application is made pursuant to Rule 14.1(5)(a) of the Supreme Court Civil Procedure Rules, 2022 which permits a party to apply for judgment where an admission is made in a statement of case. The Defendant's admission of tenant-at-will status supports the Claimant's entitlement to judgment.
- (vii) The Claimant further relies on Rule 17.4(3) of the Rules which permits urgent applications to be brought where delay would defeat the purpose of the application. In this case, an urgent hearing is necessary to prevent irreparable harm.

[16.] In Madeliene Todd's Supplemental Affidavit she detailed the actions of the principals of the Defendant, Larry and Brenda Ferguson which she says shows a pattern of sabotage, delay and deception amongst other accusations. Further, she pointed out contradictions in the Don Johnson Affidavit by reference to the audited financials of the Defendant which showed the purchase of 10 acres of commercial land in Freeport, Grand Bahamas for the express purpose of constructing a storage facility. She has sought an order piercing the corporate veil to join Larry Ferguson and Brenda Ferguson as Intended Defendants, an Order for production and/or specific performance for the Claimant company to provide the operational data requested on 22<sup>nd</sup> April, 2025.

[17.] In Todd's second Supplemental Affidavit she has refuted some of the claims in the Johnson Affidavit and has reiterated her position that the Defendant is a trespasser and has urged the Court to order immediate vacant possession.

### **Submission by the Claimant**

[18.] Under Rule 14.4(1) of the Civil Procedure Rules, 2022 (the "CPR") it provides that "any party may apply for judgment on the basis of an admission made by another party, either in a statement of case or otherwise in writing."

[19.] The Claimant submitted that (i) the Defendant has admitted in writing and in pleadings that it occupies the premises as a tenant-at-will; (ii) the Claimant has lawfully terminated the tenancy; and (iii) the Defendant has refused to vacate.

[20.] Therefore, the Claimant submitted that this admission by the Defendant entitles it to: (i) a declaration of the legal status of the tenancy; and (ii) an order for possession, as no lawful tenancy subsists.

[21.] The Claimant has invited the Court in the circumstances to grant such judgment having regard to the scope of the admission which it says is dispositive of: (i) the Defendant's status; (ii) the termination of any right to occupy; and (iii) the Claimant's right to possession. The Claimant has asserted that there is no factual dispute on these issues requiring a trial.

- [22.] The Defendant has relied upon the case of **Ramnarace v Lutchman [2001] UKPC 25** which is a case from Trinidad and Tobago which concerned a tenancy-at-will. The Court held that a tenancy-at-will is determinable by either party at any time and upon its determination, the possession becomes adverse to the owner. The case affirmed that where possession continues after a tenancy-at-will is terminated, there is no lawful entitlement to remain and the landlord is entitled to reclaim possession immediately.
- [23.] The Claimant also relied upon **Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd [1997] AC 749 (HL)** where it was said that *“If a notice would be understood by a reasonable recipient as exercising the right intended, minor errors in form or wording will not invalidate it.”* The Claimant submitted that if applied in the instant action, any notice issued by the Claimant even if informal or lacking technical precision is effective if the Defendant understood that the tenancy was being terminated. This case the Claimant submitted insulates it from arguments over form where the substance and intent were clear.
- [24.] The grant of judgment on admissions under order 27 rule 3 of the Rules of the Supreme Court was considered locally in **Munroe v Bahamasair Holdings Ltd. [2004] BSCS 131**. In that case, the Defendant had expressly admitted liability orally and in writing leading the Plaintiff to forego trial and proceed solely on quantum. When new Counsel later attempted to resile from the admission on the basis that it was made in error, the Court rejected the attempt. For reasons that do not apply in the instant action, the authority reinforces the principle that a clear unequivocal admission once made and relied upon entitles the other party to judgment where no triable issue remains. Despite the fact that this case was decided upon the Rules of the Supreme Court the same principle would apply to rule 14.4 of the CPR, viz., admissions may ground immediate judgment without trial.
- [25.] Therefore, the Claimant concluded that no trial is necessary because the Defendant has admitted being a tenant-at-will and has acknowledged the Claimant’s right to terminate and recover possession. Accordingly, the Claimant sought:
- (i) a declaration that the Defendant is and was a tenant-at-will.
  - (ii) an Order for possession of the premises.
  - (iii) Costs of the application on an indemnity basis.
  - (iv) Directions for further hearing to assess mesne profits, rent arrears and damages.
- [26.] However, the Claimant in its Supplemental Submissions broadened the reliefs sought as follows:
- (i) Enter judgement on admissions;
  - (ii) Declare the Defendant in unlawful occupation as of 6 May 2025;
  - (iii) Award mesne profits from that date to present;
  - (iv) Order vacant possession forthwith;



- (v) Direct disclosure of VAT returns, rent rolls, license agreements, and rental deposit records to assist with just and fair determination of mesne profits;
- (vi) Order deposit funds be paid into court;
- (vii) Award damages for trespass and breach of quiet enjoyment;
- (viii) Award indemnity costs; and
- (ix) Grant such further or other relief as this Honourable Court deems just.

### Analysis

[27.] The Defendant's Defence filed on 21 May 2025 expressly admitted its tenancy-at-will status and the Claimant's right to vacant possession.

[28.] The Affidavits of the parties outlined the following:

- The Claimant exhibited the expired lease, the termination notices with the requests for operational disclosures.
- The Defendant, through its Accountant, Don Johnson, described Store Away's storage business operations, logistical constraints, and potential hardship from abrupt eviction.

[29.] Despite these averments, the Defendant does not dispute:

- That the Claimant owned the property;
- That the lease has expired without renewal;
- That there are rental arrears;
- That possession must be surrendered.

[30.] It is undisputed that Rule 14.4(1) of the CPR provides that judgment may be granted where a party makes an admission in a statement of case or otherwise in writing.

[31.] I refer to the case relied upon by the Claimant, **Ramnarace v Lutchman [2001] UKPC 25**, where the Privy Council held that a tenancy-at-will is terminable at any time, and any continued possession thereafter becomes adverse. This ruling remains authoritative and applies directly here.

[32.] There was never any allegation by the Defendant that the termination was flawed for any reason, therefore, the Court was not required to consider the case cited of **Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd [1997] AC 749** authority on this issue. Thus, the Claimant's final notice dated 6<sup>th</sup> May, 2025 effectively terminated the tenancy.

[33.] The Court considered the local authority cited by the Claimant of **Munroe v Bahamasair Holdings Ltd [2004] BSCS 131** reinforced that where an unequivocal admission is made and relied upon, judgment may be granted without trial absent any triable issue.

- [34.] The Court acknowledged the Defendant's appeal for a reasonable period to wind down its operations, including contractual obligations to subtenants and logistical barriers due to the property's physical layout. The Defendant's accountant explained that there is no property outfitted with storage units that can meet the requirements of the Defendant to operate its business efficiently. Therefore, it would be required to purchase or lease a large tract of land for the purposes of construction.
- [35.] This appeal for a reasonable period in order to facilitate this is unrealistic and unfeasible.
- [36.] The Defendant ought to have given its subtenants notice either in April, 2025 or May 2025 after receipt of the demand letters from the Claimant. However, the Defendant chose to continue in occupation without giving the thirty (30) day notice which Mr. Johnson explained is the period required in the License Agreement under clause 13; or, without complying with the requests for the production of the requested documentation.
- [37.] The Defendant has failed to demonstrate to this Court any attempt to comply with the production requests so that the Claimant could ameliorate its position with the Department of Inland Revenue.
- [38.] Consequently, the Claimant is now faced with possible penalties from the Department of Inland Revenue including the sale of the Property by auction as a result of unpaid taxes.
- [39.] The Defendant's operational concerns cannot override the Claimant's proprietary rights—especially where the Defendant continued to collect payments from licensees while failing to remit rent to the Claimant.
- [40.] The Defendant has benefited from extended possession and failed to discharge financial obligations or produce requested documentation. No further delay is justifiable.

### **Conclusion and Disposition**

- [41.] Accordingly, for all of these reasons, I make the following orders:
- (i) Judgment on admissions in favour of the Claimant.
  - (ii) Declaration that the Defendant has been in unlawful occupation of the Property as of 6<sup>th</sup> May, 2025.
  - (iii) The Defendant shall deliver immediate possession of the Property to the Claimant.
  - (iv) The Defendant shall produce the following documentation forthwith:
    - (a) 2023 and 2024 Profit and Loss Statements;
    - (b) 2023, 2024 and Q1 2025 VAT filings with corresponding bank statements;
    - (c) The most recent rent roll;
    - (d) Monthly utility bills for the past twelve (12) months (gas, electricity and water)

- (e) Copies of any non-storage lease agreements currently in force (if applicable)
- (f) The most recent real property tax bill and all outstanding or unpaid tax notices;
- (g) Copies of the general and casualty insurance policy over the Property;
- (h) Copy of the current Storage Rental Agreement.
- (v) The parties are to agree necessary transitional arrangements to ensure that the Defendant has the necessary access (where required) in order to comply with the court's Order for production of documentation.
- (vi) The parties are at liberty to apply if necessary where arrangements cannot be agreed.
- (vii) Costs to be paid by the Defendant to the Claimant to be assessed if not agreed between the parties.
- (viii) Further directions to be given at the Case Management Conference.

Dated the 16<sup>th</sup> day of July, 2025



**Camille Darville-Gomez**  
**Justice**