

**Judgment 28/2004**

**Universal Limos (Guernsey) Limited v  
Oilfield Consultants International  
Limited – Royal Court – 23 June, 2004**

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**Civil appeal from the Magistrates Court- claim for rent under a tenancy agreement – whether tenant had given notice of termination – doctrine of constructive notice – appeal dismissed, save that the sum awarded was reduced from £1,400 to £1,050.**

**IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY**

The 23rd day of June, 2004 before Alan Robin Winston Hancox, Esquire, E.G.H., C.B.E., Lieutenant Bailiff; sitting alone.

In the appeal of UNIVERSAL LIMOS (GUERNSEY) LIMITED (“the Appellant”) against the decision of the Magistrate’s Court on the 3<sup>rd</sup> July, 2003 in the terms attached hereto;

WHEREAS on the 14<sup>th</sup> June, 2004 THE COURT, having heard Mr Malcolm Margo, Manager, for the Appellant, and Mrs Kathryn Warren, Secretary, for OILFIELD CONSULTANTS INTERNATIONAL LIMITED (“the Respondent”) reserved judgment;

THE COURT this day handed down judgment in the terms attached hereto and DISMISSED the appeal, save that the amount due under the judgment shall be varied to the sum of £1,050.00, and GRANTED the costs of the appeal to the Respondent.

M. A. TOSTEVIN  
Her Majesty’s Deputy Greffier

**IN THE MAGISTRATE’S COURT OF GUERNSEY**

The 3rd day of July, 2003 before Derek Martin Le Page, Esquire,  
Assistant Magistrate.

In the action of OILFIELD CONSULTANTS INT. LTD.  
of Sydney Vane House, Rue du Commerce in the parish of Saint Peter Port against UNIVERSAL  
LIMOS (GUERNSEY) LTD. of Shop Unit, St. Pierre Park Hotel, Rohais in the said parish of  
Saint Peter Port to pay the sum of ONE THOUSAND FOUR HUNDRED POUNDS which the  
plaintiff company claims from the defendant company as shown on the statement of account  
attached to the cause, the plaintiff company claiming interest and costs;

THE COURT, having heard Mrs. Kathryn Warren for  
the plaintiff company, and Mr. Malcolm Margo for the defendant company, awarded judgment in  
favour of the plaintiff company in the sum of ONE THOUSAND FOUR HUNDRED POUNDS  
with costs and with permission to distrain on the effects of the defendant company.

ANNE WOODINGTON  
Her Majesty’s Deputy Greffier

**IN THE ROYAL COURT OF GUERNSEY**

**ORDINARY DIVISION/**

**Between:**

**UNIVERSAL LIMOS (GUERNSEY) LIMITED.....Appellant**

**And**

**OILFIELD CONSULTANTS INTERNATIONAL LIMITED.....Respondent**

**Judgment**

1. The facts giving rise to this appeal are that in the year 2001, the parties entered into a Tenancy Agreement under which the Respondent, Oilfield Consultants International Ltd (Oilfield) leased a share in a private office on the first floor of Place du Commerce, Guernsey, to Universal Limos (Guernsey) Ltd (Limos) at a rental of £700 per quarter in advance. The Agreement was signed on behalf of Oilfield on 30<sup>th</sup> November, and on behalf of Limos on 4<sup>th</sup> December, and the commencement date was specified as 1<sup>st</sup> December. The signature for Limos appears to match that of Mr. John Hercules on the letter sent to the Greffe on 11<sup>th</sup> June, 2004.

2. At the hearing before the Acting Magistrate on 3<sup>rd</sup> July, 2003, Mr. Margo, the father of Mr. Hercules, who appeared for Limos, said unequivocally that he did not dispute that the lease was genuine and so the Magistrate found. However he inferred that Limos could not move in without ‘giving any money’ meaning, presumably, some form of deposit. This is reiterated in the Skeleton Argument filed by Limos on 26<sup>th</sup> March 2004, for the purposes of this Appeal, of which they gave notice on 9<sup>th</sup> July, 2003, within the time permitted by the Magistrate’s Court (Civil Appeals) Rules 1955. In the Skeleton Argument Limos say that they never moved in ‘as there was insufficient security of the shared office facilities tenure’. Moreover they never obtained the keys to enable them to enter the premises. This is disputed by Mrs. Warren on behalf of Oilfield who gives details of the availability of the keys.

3. It is common ground that Limos asked if the start date for the tenancy could be postponed until 1<sup>st</sup> January, 2002. Mrs. Warren agreed to this provided Oilfield received a cheque for the first quarter’s rent, which would thus have run from 1<sup>st</sup> January to 31<sup>st</sup> March, 2002. No such cheque was forthcoming, and neither did she receive a letter, allegedly sent, saying that Limos did not want to take up the lease. No such letter, or a copy of it, was produced by the Appellants at the hearing, or since, the only document being one dated 9<sup>th</sup> April, 2002, sent by ‘John’, possibly Mr. Hercules, saying he had been trying to contact ‘Katie’ (Mrs Warren) on several telephone numbers without success.

4. As there was a Clause in the Agreement providing for one quarter’s notice of termination, and none had been received, on 18<sup>th</sup> February, 2002, Oilfield raised an Invoice for the current quarter’s rent, together with that for the next quarter, 1<sup>st</sup> April to 30<sup>th</sup> June, totalling £1,400. That was the sum claimed in the Petty Debt Summons and was the amount awarded to Oilfield in the Magistrate’s Judgment of the 3<sup>rd</sup> July, 2003. He found that the Agreement signed by the parties respectively on 30<sup>th</sup> November and on 4<sup>th</sup> December was a valid contract, and, in the absence of any evidence of a valid notice of termination (which he rightly held was not constituted by the fax of the 9<sup>th</sup> April), he awarded Oilfield both the agreed rent for the first quarter and that for the second quarter. The original Defendant has now appealed against his findings.

5. The only other matter relevant as background is that by letter of 28<sup>th</sup> August, 2003, H.M Deputy Greffier requested Limos to pay £54, as the cost of the transcript of the proceedings of 3<sup>rd</sup> July, so that these could be furnished to the Appellant under Rule 2 (1) of the Rules, and then delivered to the Respondent under Rule (2). As this had not been paid by 5<sup>th</sup> March, 2004, Oil-field applied (it is not stated under which provision) to strike out the Appeal on the grounds of lack of progress. This application was set for hearing by the Royal Court on 19<sup>th</sup> March. By a surprising coincidence the £54 was paid on the 8<sup>th</sup> March, and, when the matter came before the Deputy Bailiff on the 19<sup>th</sup> the strike-out application does not appear to have been pursued. The Deputy Bailiff then gave careful and specific directions as to the subsequent passage of the Appeal.

6. At the hearing of the Appeal on 14<sup>th</sup> June, Mr. Margo in his capacity as Manager of the Company appeared on its behalf. He maintained that which had been said before in their Skeleton Argument. He emphasised the fact that Limos had never had the keys to the office, and said they had been informed that they would not get the keys until the cheque for the rent was handed over. As this never happened there was not and could not have been a valid contract for the letting of these premises, although Mr. Margo admitted that Oilfields had never specifically refused to hand over the keys.

7. I recognise that in many instances the handing over of the keys to leased premises is symbolic of allowing the lessee to enter them. Equally, on the termination of a tenancy the surrender by the tenant of the keys to the landlord or his agent would signify that the former had yielded up the tenancy. Similar considerations apply to the handing over of possession on a sale. The point now raised, which was not specifically before the Magistrate, is that since the cheque, or other means of payment, had not been handed over, or made, then Limos could not lawfully enter the office whether or not the keys were physically available to be collected.

8. If this proposition were correct it would mean that a tenant could avoid or delay taking possession of a set of premises if, after signing the lease or agreement, he discovered it was no longer convenient, or financially advantageous for him to do so, by the simple expedient of failing to make the agreed payment of rent in advance. An indication that this is what happened here occurs at the end of page 8 of the transcript when Mr. Margo said, in answer to the Magistrate, who was enquiring whether, or when, the supposed notice that Limo were not going to occupy the premises was sent:

“It wasn’t at the very outset, it was within a couple of weeks afterwards, because my son decided that it wasn’t going to be a viable proposition to be at the premises.”

The Respondent Oilfield, through Mrs. Warren substantially repeated the matters stated in the Court below and in her previous written submissions. Additionally she confirmed that Mr. Hercules had arranged for a telephone to be installed with the number 728818, which was listed in the telephone directory, a matter which was confirmed prior to the hearing in Mr. Hercules’ letter of 2nd June, 2003.

9. One further point made by Mr. Margo in this Appeal was that as the Agreement in this case was in reality for a sub-tenancy, there was no evidence to show that the head landlords had granted permission for Oilfield to sub-let. Mrs Warren said the General Manager of the Gas Company, who were the head landlords had given verbal permission for this, and she produced a letter dated 9<sup>th</sup> July, 1999, to show that she had informed him of a previous office sharing arrangement. I accept her statement on this point, but in any event I consider that nothing which occurred between the head landlords and Oilfield had the effect of vitiating this Agreement.

10. I have considered the parties’ submissions with great care. Having done so I have no hesitation in finding that there was ample documentary and oral evidence on which the Magistrate

was entitled to find that the Agreement was genuine. He directed his mind to the issue raised by Limos that they had given notice that they would not be taking up the tenancy and, in so doing, clearly accepted Mrs. Warren's evidence that she had received nothing of this nature. The Magistrate found that no such letter had been sent and that no proper notice of termination had been given. In doing so he took into account that had such documentation existed there had been ample time, prior to the hearing, for it to be produced by the Defendant. Subject to the matter I am about to mention, in my judgment the Magistrate was fully justified in arriving at these findings. The Appellant, Limos, have not been able to point to any misdirection or non direction that would in any way vitiate these findings.

11. The Magistrate then considered Clause 4 of the Agreement and decided that the full rigour of its provision in express terms for one quarter's notice of termination by either side should be applied. Strictly in law the Agreement had not been complied with. But is it just and equitable that when the Plaintiff already knew that the Defendant had not entered on the premises that it should demand the full period of notice? The Magistrate said in his Judgment that even if the 9<sup>th</sup> April fax amounted to valid notice it would not have commenced to operate until the beginning of the June Quarter. That would clearly be so if Clause 4 had stated that a quarter's notice was required to be given at the end of a Quarter and not during the currency of a Quarter. But it did not so provide.

12 I then ask myself the question: What is the purpose of Notice? It is to give the opposite party a reasonable opportunity to re-let, for example a room in a hotel, to give a professional man, such as a doctor, an opportunity to fill a vacancy created by a cancellation, or a landlord an opportunity to re-let premises leased. Under the doctrine of constructive notice the law may imply that the party to whom notice is required to be given did have notice if the circumstances of the case justify a finding that he should have known that the other party wished to terminate the contract.

13. In the instant case by the time she sent the demand for two quarters' rent Mrs. Warren, who effectively and physically represented Oilfield in Guernsey, well knew that Limos were not intending to occupy. No other conclusion is possible given that the premises were shared and that she had to pass through that let to Limos in order to get to her own office. When did she know this? I infer that it certainly must have been obvious no later than the 14<sup>th</sup> February, by which time Limos had not set foot inside their office for a month and a half. A quarter from then would expire on 15<sup>th</sup> May, 2002, not the 30<sup>th</sup> June, 2002. Under the doctrine of constructive notice, then, I find that credit should be given to the Appellant for one and a half months' rent, which I calculate at £350.

14. Subject to the observations in the preceding paragraph I conclude that the Magistrate's decision was perfectly right, but that the amount due under the Judgment should be £1,050. Under the power given in Rule 6 (1) of The Magistrate's Court (Civil Appeals) Rules 1955 I vary the determination of the Magistrate's Court dated the 3<sup>rd</sup> July, 2003, by substituting for the £1,400 awarded, the figure of £1,050. Save to this limited extent this Appeal is dismissed. As the Respondent has substantially succeeded I adjudge that the Appellant should pay the costs of this Appeal.

A.R.W.Hancox  
Lieutenant Bailiff  
23<sup>rd</sup> June 2004