



**Cyma Petroleum (CI) Limited & States of Guernsey
(in its capacity as operator of Alderney Airport)**

Royal Court
On appeal from the Court of Alderney
15th September, 2014

**JUDGMENT
38/2014**

Appeal from the Court of Alderney against a judgment given on 6th June 2013 in regard to a claim concerning the operation of an aircraft refuelling facility at Alderney Airport.

**Approved Text
15.09.2014**

**IN THE ROYAL COURT OF GUERNSEY
(Ordinary Division)**

On appeal from the Court of Alderney

Between:

CYMA PETROLEUM (CI) LIMITED

Appellant

-and-

**STATES OF GUERNSEY
(in its capacity as operator of Alderney Airport)**

Respondent

Hearing date: 1st September 2014

Judgment handed down: 15th September 2014

Before: Her Hon Hazel Marshall QC, Lieutenant Bailiff

Counsel for the Appellant: Advocate T Merrien

Counsel for the Respondent: Crown Advocate J Hill

Cases texts and statutes referred to:

- 1. Court of Alderney (Appeal) Law 1969, Section 2**
- 2. *Hawkins v Greenwood* 1985 2 GLJ 57**

Introduction

1. This is an appeal from the Court of Alderney against a judgment of that Court (Jurats NL Hunter, Chairman, R Blondin and S Barber) given on 6th June 2013, whereby it
 - 1) dismissed the Appellant (Plaintiff's) claim for a declaration that, pursuant to an Agreement said to have been reached in 1995 between the Respondent (Defendant) and the Plaintiff, the Plaintiff had a lease, licence or right of occupancy for 21 years from 1995 over an "area agreed" at Alderney Airport;
 - 2) made no order on the Appellant's additional or alternative claim for damages for loss of the benefit of such bargain or Agreement;
 - 3) granted the Appellant's application for delivery up of a prefabricated wooden office block, there described as the "Portacabin", standing on land at the Airport;
 - 4) ordered the Appellant to remove the Portacabin from States of Alderney property within 28 days of the Order, and further ordered that in the event of non-compliance with this order, the States of Alderney might remove the Portacabin from the land and dispose of or store it as it saw fit, and that (in effect) the Appellant should pay all expenses of such removal;
 - 5) ordered the Respondent to pay £1,442 to the Appellant as compensation representing the value of items of the Appellant's property removed from the Portacabin and destroyed in 2008 (but failed to make any order in respect of the Appellant's claim for interest on such damages);
 - 6) dismissed the Appellant's claim against the Respondent in respect of damage to the Portacabin;
 - 7) ordered the parties to agree a schedule of rents received by the Respondent for the use of the Portacabin from 2nd May 2008 to the date of the Order and that such agreed sums be paid by the Respondent to the Appellant, together with interest, within 28 days of the date of the Order; and
 - 8) made no order for costs, subject to further submissions by the parties within 21 days (none in the event being made).
2. The appeal is against all the above orders except for (3). The Respondent makes two concessions with regard to the scope of the Orders at (4) and (7), but otherwise, and on the matters of real substance, resists the appeal in its entirety.

History

3. The action was commenced by the Plaintiff on 15th October 2009. Defences were tabled on 26th November 2009. It is not apparent why the processes of discovery and so forth took as much as three years but, it was only in September 2012 that directions for witness statements and for trial were made, by consent. Nothing in particular turns on that, except to note that both parties had ample time to assemble evidence in support of any aspects of their cause or defences.
4. At the trial, which took place on 13th and 14th May 2013, Advocate Merrien appeared for the Appellant/Plaintiff (whom I shall call "CYMA"), and Crown Advocate Hill appeared for the Respondent/Defendant (whom I shall call "SoG"). Both advocates have appeared on this appeal.

5. At the trial, the court received witness statements and oral evidence from three witnesses. For CYMA, the witness was Mr Andreas Michaelides, a director of CYMA, who had been personally involved in the matter throughout the relevant period.
6. For SoG the witnesses were Mr Colin Le Ray and Mr Keith Webster. Mr Webster had been employed by SoG in the role of Assistant Airport Manager at Alderney Airport from 1994 until his recent retirement, and had been personally involved in the matter throughout. He had been based in Alderney and was responsible for the everyday running of the Airport but reported to the Airport Director at Guernsey Airport, who held the licence to operate Alderney Airport. Mr Le Ray is the present Airport Director for Guernsey and Alderney Airports but, having been appointed in 2003, he had not been personally involved in the matter throughout. The Airport Director in 1994 had been Mr Le Ray's predecessor, Mr Bridle. SoG had produced relevant documents from archived files, containing correspondence, notes by Mr Bridle and other documents from the time before Mr Le Ray's appointment, and all that material was before the Court of Alderney.

Factual background

7. The claim originates in a long history between the parties, with regard to the operation of an aircraft refuelling facility at Alderney Airport, going back to 1994. The following is an outline, so far as necessary for the purposes of this appeal.
8. In 1994 the CYMA Group of companies were involved in the storage distribution and supply of aviation fuel and aircraft refuelling. Mr Michaelides, an experienced businessman in the petroleum industry and latterly in aviation fuel in particular, was a founder of the Group and a director of companies including CYMA Petroleum Limited, a UK company based there, in Barnet. He was seeking business opportunities for the Group and was looking to secure operating agreements for aircraft fuelling at smaller airports. He visited Alderney in 1994, with a view to securing an agreement there.
9. The position with regard to the operation of Alderney Airport is this. The land on which the Airport stands is owned by the States of Alderney. However, the Airport itself is operated by the States of Guernsey, as a "Transferred Service". The arrangement for "Transferred Services" dates back to the scheme for running and repopulating Alderney in 1947, after its evacuation during the War. Alderney was then having to rebuild itself and, having no existing economy, was not able to fund and provide all essential public services for itself. Guernsey therefore stepped in to do so, under the scheme for "Transferred Services" then put in place. This involved Guernsey providing the necessary funding for such services, and, as the natural corollary, taking over responsibility for, and control of, the running of such services, and receiving any income from them to defray the expenses. The services coming under this arrangement have varied over the years, but the operation of Alderney Airport has always been one such Transferred Service. The Airport has at all material times, therefore, been run and managed by the States of Guernsey, although in consultation with the States of Alderney, in recognition both of the latter's ownership of the Airport land, and its interest in the proper and efficient provision of the service, for the benefit of Alderney. This situation has worked in practice, although its legal and practical consequences may well not be readily evident to an outsider.
10. Mr Michaelides made an approach with regard to the CYMA Group's supplying aviation fuel at Alderney Airport. Mr Bridle made a file note of their meeting, in August 1994, including that

"Mr Michaelides suggested that the Company would require a very long contract or at least protection if it was to go ahead...in order to protect its investment from competition."

11. The Alderney Transport Committee approved exploring the matter further and conduct of this was handed over to Mr Webster, who showed Mr Michaelides over the island, and the Airport, and discussed with him in more detail how such a facility would operate in practice.
12. In a letter of 16th May 1995 on behalf of CYMA Petroleum Limited, Mr Michaelides wrote to “Alderney Airport... For the attention of Mr J Webster”

“We therefore seek the approval of the Local Government to commence such an operation and we are proposing the following.

“We will register a company in the Channel Islands to be called “CYMA Petroleum (CI) Limited” which will import aviation fuelsby sea to Alderney from its parent company “CYMA Petroleum Limited”.

“The company will require a secure compound within the Airport perimeter where fuel will be stored and aircraft refuellers parked. It will employ two local people who will be trained to handle quality checks, maintain the necessary records and dispense aviation fuels at the Airport”.”

A fuller note by Mr Bridle made in June 1995 records the above, and also that by that time

“Airport Management has also been given to understand that CYMA has requested that the storage compound at the Airport be made available on a rent free basis for at least the first year of operation.”

13. On 16th June 1995, apparently following approval of the proposal by Alderney’s Transport Committee, Mr Webster faxed to Mr Michaelides:

“Further to our discussions over the past 18 months and our telephone conversation today I can now confirm that agreement has been reached to allow CYMA Petroleum to set up a re-fuelling operation at Alderney Airport proving the following points are met:-

- 1) *CYMA Petroleum will set up a local company based in Alderney*
- 2) *Local staff will be employed*
- 3) *After a two year rent free period a rental of 60p per sq ft will be charged on land occupied by CYMA Petroleum.*

“We would in turn agree that CYMA Petroleum would be the sole suppliers of fuel at Alderney Airport”.

“Should you agree to these terms and in an attempt to speed the process up we would like some form of blank “Agreement” form which we could complete to the satisfaction of all parties”.

“....the next stage would be a meeting in Alderney to discuss siting and staffing arrangements”.”

It is principally the letters of 16th May 1995 and this fax response of 16th June 1995 that CYMA relied upon at the trial as the foundation of its claim to a 21 year lease, licence or right of occupation from 1995 of an “area agreed at the airport”.

- 14 The Plaintiff Company (which I now call “CYMA”) was then incorporated on 5th July 1995, and actually began supplying fuel at Alderney Airport in about August 1995, employing local staff. The fuel was brought by sea to Alderney and then transported by road in bowser lorries to the airport. Space at the airport is limited. It is not clear exactly where the fuel bowsers

were then parked or stored at this time, and whether this was north of the hangar or south of the apron. It does not appear that CYMA took on any office accommodation.

- 15 The practical history of the operation was thereafter somewhat chequered. Some immediate concerns about CYMA’s operation were noted and on 31st August Mr Bridle wrote to Mr Michaelides requesting confirmations about CYMA’s operating procedures and also stating

“.....you will no doubt require to run through a full summer season in 1996 before the venture is worthwhile and that the arrangement and facilities should be made permanent.....”.

16. After an incident in February 1996, CYMA were suspended from supplying aviation fuel until they had provided assurances as to the training of their staff and compliance with Civil Aviation Authority requirements. However, it appears that these concerns were then satisfactorily addressed, because on 12th April 1996 Mr Bridle wrote confirming that

“the States of Guernsey’s Board of Administration and the Alderney Transport Committee have agreed in principle that CYMA Petroleum (CI) Limited will be granted sole concession to operate an aviation refuelling service at Alderney Airport for a seven year period on condition that the company complies fully with the requirements set out in the enclosed schedule”

Those requirements were based on identified published guidance on safety and fire prevention with regard to storage of flammable liquids and aircraft refuelling. They referred to a requirement for a “secure compound” for the bulk storage of aviation fuel, whether on or off the airport, (thus envisaging either possibility) and that if bulk storage was off the airport, an appropriate secure compound for overnight storage of the company’s fuel bowsers must be created on the airport. A letter to Mr Michaelides from Mr Bridle on 23rd April 1996 referred to

“establishing the principles which will have to be satisfied for a permanent aviation refuelling service at Alderney Airport and interim arrangements to ensure that the service currently provided by your company can be maintained to the satisfaction of Airport Management and the Health and Safety Executive”.

17. During the latter part of 1996, site investigations took place and drawings were prepared by CYMA’s architects, and development proposals were submitted in December 1996 for the construction of a secure compound for a permanent fuel storage facility, (incorporating therefore hard-standing, protective bunding and an interceptor system) on a site south of the airport apron. However, it was not until August 1998 that these were approved, after consultation with the Transport Committee of Alderney. Commercial terms were then discussed. This took place in correspondence. In a letter dated 3rd August 1998, Mr Bridle proposed, that,

“In recognition of CYMA’s investment in providing a permanent aviation refuelling facility, the Board will be prepared to grant CYMA sole trading rights at Alderney Airport to provide the service for a period of, say, 21 years”.

He observed that CYMA had not so far been required to pay rental charges in respect of its operations at the airport, and said that the Board would be “sympathetic” to a five year rent free period following provision of the permanent facility with, subsequently, a ground rent based on area, or a small levy on fuel sales, becoming payable.

18. Following this letter, negotiations took place in correspondence between Mr Michaelides and Mr Bridle with regard to rent fee periods and the proposed basis of rent, until on 7th December 1998 Mr Michaelides was able to write

“I confirm our agreement to the proposed rental and reviews. Perhaps now that everything has been agreed you will now prepare a draft lease together with definitive plans clearly identifying the position and the boundaries of the area to be allocated to Cyma for the fuelling installation. As soon as we have these, which hopefully will not take as long as the rest of our requests, then we will arrange”

19. In the meantime, CYMA’s operation had continued as before, with intermittent expressions of concern by Health and Safety inspectors.

20. On 23 February 1999 Mr Bridle recorded in a letter to Mr Michaelides that

“Work is progressing on the preparation of the necessary lease agreement. I regret to say that this process is likely to be lengthy and therefore you may wish to consider whether your company would be prepared to commence the project following an exchange of letters.”

This suggestion was not pursued.

21. On 19th August 1999 Mr Bridle wrote to Mr Michaelides saying that

“We are now in the process of completing the formalities to enable CYMA to provide a permanent refuelling installation at Alderney Airport”.

indicating that a security fence should be provided and requesting copies of layout drawings for final approval.

22. On 23rd August he sent to the Clerk to the States of Alderney a draft form of proposed Lease, adapted from one recently used at Guernsey Airport, for approval. This was predicated on the Lessee having built an aviation fuel storage and refuelling area as there described and it contemplated a 21 year lease term, with an initial five year rent free period and rents otherwise as agreed in the previous year’s correspondence.

23. On 25th October 1999, Mr Michaelides proposed submitting entirely fresh drawings.

24. Issues with regard to CYMA’s current operations came to a head in mid 2000, when the Civil Aviation Authority issued a report not only criticising CYMA’s current operations and standards of equipment, but also expressing concerns about the proposed location of the permanent storage facility, south of the apron.

25. No doubt in consequence, Mr Bridle wrote to Mr Michaelides, on 14 July 2000 indicating that airport management had now identified an area of land to the rear (north) of the hangar as being a possible site for CYMA’s “depot” and inviting proposals as to the construction of the permanent facility on that site. On 28th July 2000, he wrote again, insisting on CYMA’s compliance with CAA recommendations, indicating that the bulk storage of fuel “*will have to be located off airfield*”, repeating the proposal that there could be an operational area behind the hangar.

26. On 18 August 2000 Mr Michaelides replied confirming that the new proposed site might be suitable. On 9 September 2000 he again wrote, confirming that

“I am currently negotiating to purchase some land adjacent to the airport to the east of the hangar”

indicating his intention to construct a compound with hard standing for the bowzers, etc on that land, and stating that he expected a satisfactory conclusion to this in the near future. He added

“we will be seeking the agreement and approval of all parties before concluding any final agreement or commencing any works”.

27. Shortly afterwards on 25th September 2000, Normandie Health and Safety inspected and composed a very critical report on CYMA’s operation at Alderney Airport. Correspondence and negotiations about these matter ensued over the following months. The upshot was that, in May 2001, CYMA was obliged to remove any bulk storage of fuel to an off airport site provided by the States of Alderney (the “Crusher” site), at Braye Harbour, but was permitted to bring its bowser in, on a temporary basis, to park on an area to the west of the hangar which was laid to concrete for that purpose. This was recorded as still to be pending the provision of an appropriate “permanent” facility.
28. It was during this time, between about January and August 2001 that CYMA (although it may technically have been CYMA Petroleum Limited rather than CYMA Petroleum (CI) Limited) acquired, from Billy Pickles, the office portacabin which is also the subject of this action. It is accepted that this is a demountable structure, and not to be regarded as having become part of the land at Alderney Airport. Mr Michaelides paid £12,500 in cash for this office as well, he says, as giving Billy Pickles £7,637.50 worth of aviation fuel. The Portacabin was standing on an area of land at the airport which has not been exactly identified in this appeal, but which both Advocates agreed was not situated on any land ever considered as a potential site for a permanent fuel storage installation. It did, however, provide proper office facilities for CYMA’s activities at the airport, they having previously been conducted largely from the cabin of one of its bowzers, by then effectively permanently parked. This had been a point of some criticism by Normandie, who had stated that a proper office facility should be provided.
29. Billy Pickles had been paying ground rent for the land occupied by the Portacabin to SoG as operators of the Airport. CYMA took over these rental payments. SoG accepts that it knew, approved and accepted this change of ground tenant.
30. CYMA’s operations then continued, on this basis, until 2005. The only matters of note in the interim are that on 17th June 2002 the States of Alderney wrote to Mr Michaelides apologising about the slow progress with regard to acquiring land at the airport for CYMA’s fuel storage, and asking for a note of the total area which would be required for the facility. In February 2003 the States of Alderney wrote again to Mr Michaelides, this time with concerns regarding the Crusher site, but incidentally confirming that *“purchase of land adjacent to the airport for a potential storage site had now been completed”*. In response to this, Mr Michaelides sent a plan drawing of the compound which CYMA would require for approval.
31. On 4th January 2005, it appears that Mr Michaelides lost patience with the slow progress. He wrote a letter to the States of Alderney, alleging that they were in breach of a legally binding agreement made between CYMA and the States of Alderney and Guernsey in 1995, to grant to the company a solus aviation fuelling agreement at Alderney Airport, which included a plot of land for a storage facility, for a period of 21 years. He apparently demanded the plot of land, east of the airport, which the States of Alderney had acquired.
32. In February 2005, the Health and Safety Executive issued Prohibition Notice against CYMA in respect of its operations decanting fuels at the Crusher site. A similar notice was issued on 3rd March 2005 and a further notice, prohibiting storage of Avgas at the site was issued on 5th April 2005. This effectively closed down CYMA’s operation. Appeals against those notices, made to the Court of Alderney, were unsuccessful, on 2nd June 2005. A further appeal to this court was dismissed on 20th March 2006.

33. In the meantime, on 31st May 2005, the Law Officers of the Crown wrote, on behalf of SoG to Mr Michaelides, responding to his claim of 4th January. They denied the existence of any such legally binding agreement as alleged and stated that CYMA's operations at Alderney Airport were conducted merely by permission of the SoG, which permission could therefore be withdrawn at any time. Notice was therefore given, in the most wide ranging terms that CYMA's permission to enter on the airport and carry on a refuelling operation, and any rights in connection with this, were therefore withdrawn. The letter also purported to terminate "*the rental of the Portacabin from the States of Guernsey*", and to deal with a final apportioned rental payment, up to the date of the letter. CYMA was given permission to enter the airport to retrieve its "personal property" by appointment, such right to be exercised within one month failing which it was stated that the SoG reserved the right to dispose of all such property without incurring any liability to CYMA and to recover the costs of disposal.
34. Mr Michaelides responded by a letter of 16th August 2005, reaffirming his claim to a binding agreement with effect from 1995, asserting ownership of the Portacabin, refusing to vacate the company's sites, requiring the States to take court proceedings for any eviction, and threatening to commence legal proceedings on CYMA's part in respect of the claimed agreement and for damages. Although it was suggested in later correspondence in 2006 that instructions had been given for eviction proceedings to be taken against CYMA, none ever in fact were.
35. CYMA neither removed its property from the Portacabin, which was left with office equipment and other items inside it, nor did it remove the Portacabin itself. It continued to try to pay the rent, but its payments were not accepted.
36. Mr Michaelides said that he complained of a burglary of the Portacabin during August 2005 when his office was ransacked. In March 2006, when Alderney Electricity Limited were looking for office space at the airport, Mr Webster decided to allow them to use the Portacabin, taking the view, he said, that it had been "abandoned" by CYMA. He changed the locks in order to do so. AEL moved in, and moved all CYMA's property into the rear rooms only. When Mr Michaelides discovered this, he objected vehemently, and AEL moved out again, after about three weeks.
37. In May 2008, on the instructions of Mr Le Ray, who was looking to gain space at the Airport, and who said he regarded the property as having been abandoned, owing to CYMA's non-compliance with the 31st May 2005 Notice, the Portacabin was emptied of its contents. It appears that this may have been as a result of expressions of concern that it was a fire risk. Photographs were taken and an inventory written up, although much of this is unspecific, referring to "junk". It is common ground that Mr Michaelides was later given 7 bags of company papers and the hard drive from its computer, but that the remaining items were all, either immediately or within a further couple of months, disposed of at the rubbish tip. It is the loss of this property which forms part of the subject matter of this case.
38. Once again, Mr Michaelides visited, in June 2008, and objected to this interference with CYMA's property. Once again, on 3rd June 2008, Mr Le Ray returned a cheque by which Mr Michaelides attempted to pay rent and gave CYMA a "last opportunity" to remove both the portacabin and its contents [sic], failing which they would be disposed of without further notice.
39. However, the Portacabin remained in situ, because of CYMA's claims. There was a dispute about how much it deteriorated, and how much deterioration was as a result of weathering, or vandalism or actually caused by SoG personnel (as Mr Michaelides believed).
40. In mid 2009, Mr Webster needed space for builders to store items, and to use as a rest room, and he decided to authorise use of the Portacabin for this. Once again, Mr Michaelides

found out and objected, and the builders were moved out. In evidence Mr Michaelides accepted that there had only been a little damage by the builders. However, later he had been called to the site again, he says, because the front of the portacabin had been damaged. He says it had been “bulldozed”. He blamed SoG.

41. This action was then launched, shortly afterwards.

The Law

42. The Appellant’s right of appeal to this court is given by Section 2 of the Court of Alderney (Appeal) Law 1969. It is on point of law only, which it is why it is appropriate that this court now sits with judge alone and without Jurats.
43. The test to be applied on an appeal such as this is common ground. To interfere with the decision of the court below, the appellate court must be satisfied either that the lower court erred in law (ie legal principle), or that there was no sufficient evidence to support a material finding of fact. This is because the question whether or not there *is* evidence sufficient to support a finding of fact is, itself, a question of law. The application of this latter principle is often described as there being “no evidence” to support a finding of fact. However, to treat that literally is misleading, because the test is not that of “no” evidence but of “no sufficient evidence”.
44. As to what is sufficient evidence, the parties are again agreed that the test is described in *Hawkins v Greenwood* 1985 2 Guernsey Law Journal 57, as being

“The court would not interfere with the findings of fact made by the court below unless it was satisfied that there was no evidence before the court upon which it could *reasonably* have arrived at those findings of fact, or that it was for any other reasons the findings of fact of the court below were perverse” (emphasis added).

The point, which I fully accept and adopt, is that the issue for the appellate court is whether the findings of fact made by the court below are conclusions to which that tribunal could reasonably have come on the basis of the evidence before it, whether or not the appellate court itself agrees with those conclusions or would have made the same findings.

45. Advocate Hill submits that it is important to bear in mind when considering criticisms of the findings or reasons of the court below, that the Court of Alderney is a court of lay Jurats, who, in that jurisdiction, are judges of both law and fact. He therefore submitted that it is neither appropriate nor, indeed, sufficient, to criticise findings of the court below that there had been “no evidence presented” to it in support of a particular point on the basis that one could see that there clearly *had* been some such evidence, so that that statement was obviously wrong. Plainly, he submitted, that phraseology was the court expressing, in laymen’s terms, only the fact that it had found that any pertinent evidence was either insufficient or unconvincing.
46. He submits that it is therefore important to look at the substance of the court’s decision and its ultimate conclusions, rather than focus too exactly on the reasons which are expressed, and which may be infelicitous, especially to the eyes of a trained lawyer. One should consider whether the ultimate finding is “wrong” in the sense of not being a finding which could reasonably be justified on the basis of all the evidence which was before the court and the submissions made, rather than examining, over-critically, whether the reasons expressed for any such finding were fully sufficient to justify it. Therefore, he submitted, it is not sufficient for the Appellant to complain that the court below had apparently failed to take into account some matter in reaching its findings as expressed, without also showing that the court below could not have come to the particular conclusion on the basis of other available evidence.

47. I accept the point that I am dealing with a decision of a lay tribunal, and that I should accordingly be careful to interpret it fairly, with that point in mind. However, I am not satisfied that the principle can be stated quite as forcefully as Advocate Hill would have it. The danger in that (as Advocate Merrien submits) is that it risks leading the appellate court into the error of substituting its own judgment for that of the lower court.
48. With regard to any complaint that the lower court failed to take any matter of evidence into account, the first question must, in my judgment, be whether, in all the circumstances that seems to have been the case. However, I accept that Advocate Hill is correct in that such a finding alone is not sufficient for success in the appeal, and the appellant must then go further and show that the decision of the lower court was thereby affected, and was flawed as a result. What course the appellate court will then take must depend on the particular circumstances, and also, in a case such as this in particular, its recognition that decisions of fact are matters for the lower court. If, therefore, the appellate court is able to conclude confidently that the matter allegedly not taken into account either would not have affected the lower court's actual decision, or was bound to have affected it in a particular way, it can give effect to that conclusion. If it is unable to say whether and if so how, consideration of the matter not taken into account would have affected the findings of fact in the case, then the position is more difficult, and the court might have to remit the case back to the court below for further consideration.
49. Before turning to the grounds of appeal and my decision, I observe that the Court of Alderney was here faced with a difficult case, especially for a lay court. They were being asked to adjudicate both on rights to occupy land and on claims of damage to property. The differences in law between a lease and a licence, and between a right to occupy land and (in contradistinction) a right to use it, are concepts which have exercised highly trained lawyers. With regard to the Portacabin, although this was being used like a building in practice, it was agreed that it was not part of the land but was an item of personal property. In law, it therefore had the character of a large box rather than a building, which is somewhat counter-intuitive. The position was further complicated by the fact that all the actual land in question was owned by the States of Alderney, whilst the only Defendant in the case was the States of Guernsey.
50. The factual background was also complicated. There were three aspects to the history between the parties, namely CYMA's actual fuel supply activities at the airport, the proposal that it would build a "permanent" fuel storage installation, and the Portacabin. Advocate Hill was urging that it was important to regard these three as distinct, and in particular to have regard to the fact that it was not SoG that owned the land. Advocate Merrien, on the other hand, was arguing that the whole factual situation should be looked at in the round, such that CYMA could and did make out its claim against SoG. Each side was urging, in support of its own case, that the other side's evidence was full of inconsistencies. Mr Michaelides was also, plainly, an excitable witness. The task which faced the court was therefore not a clear or straightforward one.

The grounds of Appeal

51. The grounds of appeal fall into sections, which I will deal with in a convenient order.
- 1. Finding that the Appellant had no "lease, licence or right of occupancy for 21 years from 1995 agreed at Alderney Airport" as claimed.**
52. This relates to the first and second heads of claim. In relation to these, the court of Alderney expressed its findings to be that on review of the evidence given by all the witnesses, the Court was "*presented with no evidence to confirm the existence of a Lease at the airport for a period of 21 years, or any other period of time*". It referred expressly to

- i. the letter from CYMA Petroleum of 7th December 1998 to Mr Bridle, stating “*perhaps now that everything has been agreed, you will prepare a draft lease with definitive plans... for the fuelling installation*”,
- ii. the letter from Mr Bridle to CYMA (CI) Limited dated 23rd February 1999 referring to “*work.....progressing on the preparation of the necessary lease agreement*”,
- iii. the internal memorandum of 24th August 1999 from Mr Bridle to the Clerk to the States of Alderney enclosing the suggested draft form of lease for approval by the States of Alderney, and
- iv. the letter dated 6th September 2000 from CYMA (CI) Limited to the Clerk to the States of Alderney referring to CYMA’s current negotiations to purchase land adjacent to the airport with the intention of creating a fuel storage, etc compound upon it, commenting that the court “*must determine [this] as being an alternative to utilisation of Airport land*”

It then stated that in the absence of any correspondence to the contrary, it must conclude that

“whilst a lease might have been discussed and correspondence exchanged in which it was mentioned, a lease was never progressed and/or signed by either the States of Alderney or CYMA Petroleum Limited”

and that

“no evidence was presented to the court that any lease had ever been signed by any of the parties or registered at Alderney Land Registry”

53. The grounds of appeal in respect of this finding make the following criticisms.

- i. The Court erred in assuming, as it is submitted it plainly did, that a lease must be in writing, when there is no such legal requirement.
- ii. It failed to consider and have regard to correspondence referring to a ground rent and to the payment of rent by CYMA and to SoG’s own witnesses’ evidence that rent had been paid by CYMA (and this was not a fee for operating the fuel concession).
- iii. It failed to consider, at all, and therefore to make any finding about, the other bases of the Appellant’s claim, namely the claim to a lease otherwise than in writing, or a licence or right of occupancy, despite having acknowledged this as an issue in dispute.
- iv. It failed to make any finding in regard to the claim for damages, because of its error in finding that the absence of any written lease disposed of this aspect of the claim entirely.

54. Advocate Merrien elaborated on these submissions in argument. He suggested that the Court’s apparently erroneous assumption that a lease had to be written had led it to ignore, for example, Mr Webster’s fax of 16th June 1995 to Mr Michaelides, with references to rent free periods and subsequently charges by reference to square footage being clearly evidence capable of indicating a lease otherwise than in a formal written document. He further submitted that in the light of the accepted fact, referred to in the judgment, that CYMA had actually supplied fuel at the airport for years under *some* agreement, the court had ignored the

fact that this function itself involved the occupation of land, and it had therefore given no consideration to the possibility of CYMA having the rights which it claimed, by way of a licence or other right to occupy.

55. Advocate Merrien also prayed in aid the evidence of Mr Le Ray accepting that the SoG had charged and accepted rent from CYMA which, he submitted, showed that the agreement for the provision of aviation fuel must have included an occupation element. (That payment of rent, of course, related to the ground rent for the Portacabin.)
56. Advocate Hill stressed, once again, the point which the Respondents have been at pains to emphasise throughout, namely that the Defendant in these proceedings is the States of Guernsey, whilst the land is owned by the States of Alderney, who are not a party to the proceedings. He suggested that in the light of these facts, the Court's decision not to give relief in respect of "*a lease licence and or right of occupancy for 21 years from 1996 agreed at Alderney Airport*" against SoG was entirely correct.
57. He further submitted that when the whole of the matters decided by the Court were considered, they had plainly referred to the possibility of a "licence and/or right to occupy" as well as a "lease" as they used this phrase in their adjudication on the matter. They must therefore be taken to have had this possibility in mind. Their failure to refer expressly to evidence about payments of "rent" could not be taken to have adversely affected the overall decision because this point had been addressed in the evidence and the submissions of the Advocates.

Discussion

58. It is, of course, notable that the court's expressed reasons focus firmly on the issue of a "lease" and also on the absence of a written document. The essence of the Appellant's complaint is that the court did not, therefore, consider the possibility of its having the rights claimed under an oral agreement for a lease, or an agreement for a licence or for some other (if there could be) right to occupy.
59. Reading the oral submissions of the Advocates, it is easy to see why the court might have done this. Whilst Advocate Merrien did explain, in general terms, the difference between a lease and a licence, as possibly denoting differences of exclusive or possibly shared occupation, the general thrust of his submissions was to stress the apparent authority of SoG as Airport Manager, in running the airport and conducting all negotiations, and how SoG should therefore be found to have had the authority to grant, and indeed did grant, the rights claimed by the Appellant, "*whether you want to call it a licence or a right to occupy, or a lease, matters not*" (emphasis added). Advocate Hill was, throughout, generally using the terminology of leases and stressing the point that, as the land belonged to the States of Alderney, consequently "the States of Guernsey has no right or ability to grant a lease *or a licence*" (emphasis added), and he indeed invited the court to make that an initial finding of fact. It is perhaps not surprising, therefore, that the Court gave reasons for this issue, focussing on the question of land ownership and leases, without expressly dealing with the rather more refined and elusive concept of a licence.
60. However, on a fair examination of the decision of the Court in all the circumstances, and bearing in mind that it is the decision of a lay court and not of lawyers, I am satisfied that the Court did give consideration to whether the correspondence and other evidence gave rise to some right, of whatever nature, as claimed by the Appellant, albeit not being a formal written lease, and implicitly concluded that it did not do so.
61. It is important, in considering this, to bear in mind that the key attribute of the right which CYMA was claiming to enforce, whether against SoG as airport manager, or against the States of Alderney, was a right of occupation of land at the airport **for 21 years** from 1995.

62. In its judgment, the Court referred generally to the submissions of the Advocates and to the oral evidence received. Under “Background” it referred to the two letters (16th May 1995 and 6th June 1995) which were those expressly stated by Mr Michaelides to have constituted the “agreement” on which he relied. It recorded the subsequent operation of an aviation refuelling service by CYMA from 1995 “from various temporary sites” at the airport, and the change to the “Crusher” site in 2001, and the termination of this “agreement” in 2005.
63. Under “Facts not in Dispute” the court referred to the 2001 move of operations to the Crusher site as being because CYMA were “*instructed to cease their operations from locations based at the Airport*”. That was clearly only with regard to the bulk fuel storage aspect of CYMA’s operations. It is this kind of slightly loose expression which illustrates the need for sensible interpretation of the expressed decisions of lay courts, rather than seeing it as any indication of flawed reasoning.
64. The Court noted the facts with regard to the acquisition of the Portacabin from Billy Pickles, and it also noted that it was not in dispute that the land at Alderney Airport is owned by the States of Alderney.
65. Under “Facts in Dispute”, the Court asked itself the full and correct question on the present point, namely

“Was there an Agreement in place which granted the plaintiff a lease, licence and/or a right to occupy for 21 years from 1995 at Alderney Airport?”

Thus it was clearly conscious of the fact that the dispute was framed in such terms, and this is, in my judgment, an indication that it was intending to consider those terms.

66. Of its expressed “Findings of the Court” as already set out, the first four are references to evidence clearly showing that no formal lease agreement had been entered into. However, the fifth, ie the reference to the letter of 6th September 2000, is then used as evidence from which the court made a finding of fact that CYMA was regarding this as an alternative to utilisation of airport land. Since this point is irrelevant if the issue is merely whether or not there ever was a written lease, it can only have been included because the court was considering evidence of whether CYMA itself believed that it had the rights which it was claiming to have obtained on any other basis, this being evidence suggesting that it did not.
67. Whilst the court referred to the correspondence in the context of demonstrating that the matter of a lease had merely been discussed and negotiated and was never finally pursued, this shows that the Court had had regard to the terms of the further correspondence generally.
68. Finally, the terms of the Court’s adjudication on this point are, to my mind instructive. It states that

“The court acknowledges that whilst here was an arrangement in place for the provision of aviation fuel by [CYMA] there was no lease, licence or right of occupancy for 21 years from 1995 agreed at Alderney Airport”

thus plainly recognising the concurrent existence of some contractual arrangement regarding the supply of fuel (which it finds existed), but contrasting this with any form of right of occupation of land at Alderney Airport for 21 years from 1995, (which it finds did not exist). In my judgment, this shows that whilst the court did focus on the absence of any formal written agreement, particularly involving the States of Alderney as land owner, it nonetheless took account of the evidence regarding the arrangement for supply of fuel and plainly concluded that, whatever the terms of that arrangement were, they did not confer a lease,

licence or right of occupation for 21 years from 1995, which was what the Appellant was claiming.

69. This was a conclusion of fact, based on the evidence and one to which the Court was entitled to come. For that reason I would dismiss the appeal.
70. However, in case I am wrong about the above, I consider the matter further on the assumption that the Court did, despite its allusions, overlook the appellant's alternative bases for putting its claim to a right of occupation for 21 years from 1995.
71. Assuming that the Court of Alderney did overlook these bases of claim as real alternatives requiring separate consideration, when it should have done so, then plainly the Court erred in law. The question then becomes, does that error entitle the Appellant to claim, as it does, that it should be granted the declaration sought in its cause?
72. This depends on what the outcome would or might be if the Court had considered the evidence and made express decisions on those alternative bases. If I am able to reach a confident conclusion as to what their decision must necessarily have been, then, whether that would be favourable or adverse to the Appellant, I can make a determination of the point now, accordingly. If I can only conclude that upon such consideration the Court *might* have reached a different conclusion, favourable to the Appellant, then it would almost certainly be appropriate for me to remit the case back to the Court of Alderney to make, or make clear, its determination on those further points. One frequently finds it said, in appeal decisions, that if the appeal court is in as good a position as the court below to exercise a discretion or make a judgment which is required but has not been made, then it can do so at the appeal level. That, however, is where both courts comprise legally qualified judges. Bearing in mind the nature of the Court of Alderney, and the principle that decisions on matters of fact are for the Court below and not for this court, I should, I judge, be scrupulous not to usurp the function of the Court below and risk substituting my own judgment of fact for that Court's in the exercise to which I now turn.
73. I ignore, in the Appellant's favour the fact that it is the States of Alderney rather than SoG which is the landowner, and I consider the matter on the basis that if the SoG made a relevant agreement with CYMA, then CYMA would at least be able to call on SoG to honour that agreement insofar as was within its own power to do so, or it was not lawfully prevented from doing so by the States of Alderney.
74. The three further suggested bases for CYMA's claim of right are: a lease otherwise than in writing, or a licence or the conferring of a right of occupation, in each case for 21 years from 1995.
75. The elements of a lease or tenancy, whether written or oral are the grant of exclusive occupation of a defined area of land, for a defined term at a rent (either expressly agreed or capable of formulation and quantification).
76. I have carefully examined the evidence, and I find that it is quite plain that there is no evidence which could, in fact, suffice to found a finding of fact that there was an agreement for a right of occupation for 21 years from 1995, of any land at Alderney Airport, conferred upon CYMA, on any of the alternative bases which it is possible that the Court of Alderney may not have considered. The following are the most salient points in this regard.
77. Leaving aside the Portacabin for the moment, it is plain from the correspondence and witness evidence that no sufficiently precise boundaries for any area of land occupied or proposed to be exclusively occupied by CYMA were ever agreed. That alone would prevent the creation of any informal lease.

78. It is also plain from examination of the evidence, that there was never any agreement, certainly at that time, as to any duration of any right of occupation by CYMA and in particular 21 years. There is no mention of this in the letters relied upon by Mr Michaelides. In fact, in his own original written evidence, where he states categorically that the agreement on which he relies occurred in about July 1995, he stated only “*As far as I was concerned it was this was for a period of 21 years*”, and does not suggest that this was the subject of actual agreement at the time. Clear reference to a 21 year duration only appears later in the story, and is only accepted by SoG in 1998/9, in connection with the negotiations intended to lead to a formal lease of land for the purpose of construction of a permanent bulk fuel storage facility. In context, this fixed term, which appears in the draft lease, was plainly intended to be in consideration for the expenditure which CYMA would incur upon such construction. This had not happened in 1995 and in the event it never did.
79. Whilst a rent is mentioned in the early correspondence, once again, this was in the context of an intended bulk storage installation. The evidence showed that rent was never charged in respect of CYMA’s use of airport land in connection with its fuel supply activities, in contrast to its occupation of the Portacabin. However, the latter only occurred in 2001.
80. The position regarding the Portacabin did not and cannot have affected the position with regard to any right for 21 years. Mr Michaelides case has never been specific as to the area of land as to which he was claiming a right to occupy for 21 years from 1995, but latterly it has focussed on the Portacabin. It appears to have seemed to Mr Michaelides, and it was even submitted by Advocate Merrien, that the payment of this ground rent somehow crystallised the claimed grant of a 21 year (from 1995) “lease, licence or right of occupation” in favour of CYMA, at least in relation to the Portacabin. That is the only basis on which it could be argued that payments of “rent” in regard to this, from 2001 onwards, founded CYMA’s claim to such a right. However, this is an impossible contention. All that happened was that CYMA bought the Portacabin, as a chattel, and were accepted by SoG as Airport Manager as the assignee (in effect) of whatever interest Billy Pickles had previously had in the land on which the portacabin was standing and for which it was paying a ground rent. There was no suggestion that this had been for any fixed term lease, and in principle, therefore, that interest was merely a periodic tenancy, either annual or quarterly (the rental payments being apparently paid quarterly). Without more CYMA could not, therefore, be in any better position. Nothing more was ever agreed.
81. Whilst an agreement amounting to a mere licence to occupy or to use land can possibly be found to exist in the absence of the precise requirements for a tenancy, set out above, the agreement claimed here must rest on a finding of an actual agreement for such a licence, being of 21 years’ duration from 1995. Thus, the comments above with regard to the absence of evidence of any agreement as to duration apply equally. It is not clear how any “right of occupation” could arise otherwise than through a licence, but the position would be the same.
82. The only right which was actually accorded to CYMA originally was a permission to use land at the airport, as agreed, to provide a “temporary” re-fuelling service pending conclusion of an intended agreement with regard to the construction of a permanent bulk storage facility. As such, it was never more than a licence, connected with the permitted re-fuelling activity, and terminable on appropriate notice in accordance with usual principles, although this was not, in the event, a matter which the Court of Alderney was called upon to adjudicate upon, in view of the way in which the Plaintiff’s claim was made out.
83. CYMA was subsequently accepted to be ground tenant of the ground on which the Portacabin stands, but that was an entirely separate matter, and operated only as an informal periodic tenancy.

84. In the light of the above factors, and having considered all the remaining evidence, I am perfectly satisfied that, on the evidence presented to the Court of Alderney, there is no possibility that the court could reasonably come to the conclusion that CYMA had, by agreement with SoG (whether or not on behalf of the States of Alderney), a right of occupation of any land at Alderney Airport for 21 years from 1995, on one of the bases claimed in the Cause but not being a written lease. It follows that I am satisfied that even if the Court fell into error in not directly considering such alternatives, that would have made no difference to its eventual decision.

85. The Appeal in that regard will therefore be dismissed for that reason as well.

(2) Further or alternative claim for damages for loss of benefit and or breach of such agreement.

86. In the light of my decision on the appeal on the first head of claim the appeal on the second head of claim does not arise.

(3) Order for delivery up of the Portacabin

87. There is no appeal against this order.

(4) Order that the Portacabin is removed from States of Alderney property within 28 days, and that if not, the States of Alderney are entitled to remove it, store or dispose of it and make charges against the Appellant.

88. The appeal against this order is that it was not an order which the Court of Alderney could properly make in a case to which the States of Alderney were not a party.

89. Advocate Hill indicated that he would not seek to uphold this order, and it could simply be treated as deleted from the relief granted, although he was at pains to emphasise his position, that these were powers which the States of Alderney could in fact exercise on its own account in any event.

90. I consider that the point taken on appeal here is correct, and this order was made perhaps in an excess of enthusiasm by the Court below. As to whether or not Advocate Hill's express reservation is correct, I make no comment, as it is not a matter for this case.

91. The appeal in relation to this order is therefore allowed for the reasons given.

(5) Order that the Defendant pay £1,442 to the Plaintiff as compensation for the items of the Defendant's property admittedly removed and disposed of by it in May 2008.

92. The sum ordered to be paid was the value appearing in CYMA's accounts balance sheet for "fixtures and fittings" in July 2005.

93. The grounds of appeal here object that the court referred to the "absence of evidence as to the value of" this property, thereby ignoring the evidence of Mr Michaelides, who had prepared a Schedule of items of property which he said had been left in the Portacabin after CYMA was forced to cease operations, and were never removed by him. The total amounted to £18,409. His evidence was that he knew the value of his property, and these figures were accurate.

94. I accept Advocate Hill's point that I should treat the Court's reference to "absence of evidence" as meaning "absence of other convincing evidence".

95. The Court did refer to the Schedule of contents, so it did not ignore this. It commented that it was given no evidence to substantiate the values placed on the items in the Schedule. In fact, the only such evidence was the assertion of Mr Michaelides. The Court of Alderney was therefore, by plain implication, stating that it did not find the unsupported opinion of Mr Michaelides sufficient to satisfy it that, on balance of probability, the figures given were reliable values for the relevant goods, at the relevant time.
96. This is a finding of fact. It depended on the Court's assessment of the likely reliability of Mr Michaelides' statements. It was not obliged to simply to accept his evidence, if it found it unconvincing. It was entitled to take into account his apparent reliability (and I note, for example, that a reduction in the value of one item by 90% from £700 to £70 was immediately made by Mr Michaelides in cross examination as having been a "mistake"). The Court will also have formed a view, as it was entitled to do, of whether Mr Michaelides was providing an appropriately objective assessment of the then value of the items, rather than an inappropriate replacement cost, or the original purchase price, or including value for any suggested special value to his company. The court also had the May 2008 photographs.
97. In my judgment, it is impossible to say that the Court could not reasonably reject Mr Michaelides' figures, or even had no evidence upon which to do so. Once it did so, the question was what evidence it did have enabling it to form an assessment of the quantum of loss to CYMA, bearing in mind that this quantum was for CYMA to prove.
98. The court lighted on the figure in CYMA's own 2005 accounts which referred to or included the property in question, namely "fixtures and fittings". It explained that it was taking that figure. As it had enquired about this figure during the hearing, its thoughts in this respect must have been apparent to the parties, so that any comments on this possible approach could have been aired. None was.
99. That figure does provide some evidence of value. No doubt the court was conscious of the fact that the book value of property might be conservative. On the other hand, it was also no doubt aware that this value had been attributed to the relevant property some three years before the relevant date.
100. The court plainly took the view that, on the state of the evidence, this figure even as an approximation, was the best evidence which it could rely on as representing at least the likely value of the goods which had been destroyed by the Defendant, on balance of probability. In the time honoured phrase, the court "did the best it could". In my judgment, on the state of the evidence, it is impossible to say that that there was no evidence to support its finding, or that it was one to which it could not reasonably have come.
101. The appeal in respect of this order is dismissed.

(6) Order dismissing the Plaintiff's claim for compensation in respect of damage to the Portacabin.

102. The grounds of appeal in respect of this are that the Court erred in finding that "*no evidence was presented to the Court of damage to the Portacabin*" and stating subsequently that "*without substantiating evidence the Court finds it impossible to determine responsibility for any damage that may have been caused*". It is argued that this ignored oral evidence of the damage to the Portacabin, the photographs of its deteriorated state, especially on the entrance side, and the evidence of Mr Michaelides that the damage had occurred when CYMA was excluded from the site by SoG, and that the front of the building had been "bulldozed". Accordingly the Court of Alderney should have found that SoG were liable for this damage and awarded damages for this.

103. The Notice of Appeal seeks the orders originally sought in the Cause. The original cause claimed judgment for the costs of repairs to the “Office”, to be assessed upon delivery up of the Office to the Plaintiff. In the alternative, as the arithmetic shows, it claimed the alleged value of the Portacabin as damages for conversion, in the sum of £55,000. This figure was the amount of a budget quotation obtained by Mr Michaelides in September 2009 for a new Portakabin Titan Building, delivered to Barnet in the UK (CYMA UK’s offices).
104. Supporting the decision of the Court, Advocate Hill argued that the Court was not saying, in either passage, that it had no evidence that the Portacabin was damaged at all, but was saying, rather, that it had no evidence of how the damage to the Portacabin was caused or occurred, and that in the absence of such evidence it could not find that SoG was responsible for the damage. He submitted that this was entirely justified on the basis that CYMA had been given several opportunities to retrieve or protect its own property, and had not done so. (I note that although the SoG letter of 31st May 2005 terminated CYMA’s rights in respect of occupation of land at the airport, and required removal of its property, it did not purport to require removal of the Portacabin itself, the writer apparently being under the impression that this was rented out to CYMA. It was only by SoG’s later letter of 21st April 2006, CYMA having claimed ownership of the Portacabin in the interim, that notice was clearly given to remove that structure.)
105. I accept Advocate Hill’s submission with regard to the meaning of the Court’s judgment. They found that they had no evidence sufficient to enable them to make findings of fact as to how any damage had been caused or occurred, (and they had no evidence of the costs of any necessary repairs, even if they had). They also found that in the absence of such evidence, they could not find that SoG was responsible for any damage. Insofar as that phrase referred to factual responsibility, then that was purely a finding of fact, ie that CYMA had not proved to the satisfaction of the Court that SoG itself caused the damage. Insofar as that phraseology referred to legal responsibility, it was a matter of mixed law and fact.
106. In my judgment, however, there are no grounds for this court to interfere with that conclusion. The court was plainly of the view that it could not determine, in any concrete respect, how any aspect of damage to the Portacabin had occurred, whether by human action (and if so by whom) or perhaps by the elements. This aspect of the case was very much a question of fact, it cannot be said that the Court’s overall response was outside the scope of a possible reasonable conclusion, or was perverse.
107. During the time in question the relevant goods – the Portacabin – were on property owned by the States of Alderney but managed by SoG without their approval and effectively against their wishes. Whether or not SoG were properly described as “involuntary bailees” of the Portacabin when they did not own the land on which it stood may be a moot point, but in any event, any duty of care which they owed in respect of it to its owner, here taken to be CYMA, although it may well have been CYMA Petroleum Limited, could not be higher than that of an involuntary bailee. An involuntary bailee owes a duty to the owner of the property not to damage it deliberately, but beyond that he owes only a very minimal duty, probably best expressed as not to act with “gross negligence” towards it; he does not owe any duty of care positively to keep it safe.
108. In respect of the property inside the Portacabin, SoG had admitted deliberately destroying that, but it made no similar admission as to any damage caused to the Portacabin itself. It merely admitted having purported to authorise others (AEL in 2006 and the builders in 2009) to use the Portacabin and having had it cleared out, in 2008.
109. It was in those circumstances that CYMA had to prove on balance of probability either that SoG had itself damaged, or had authorised damage to the Portacabin, or that the Portacabin had been damaged in a manner which was fairly attributable to fault by SoG in the sense of

gross negligence with regard to it. It was Mr Michaelides' approach that, in all the circumstances SoG must be responsible for the ultimate deteriorated state of the Portacabin on any basis. The matter was not, however, as simple as that.

110. It is true that SoG admitted that it had changed the locks on the Portacabin, and to that extent forced an entry, on two or three occasions (admitting AEL, admitting the men who cleared the Portacabin, and admitting the builders) but it seems that on at least the first two occasions keys were returned and in the circumstances, it would not be unreasonable for the court to have considered any damage caused by this to be too minimal to take account of. I would not, therefore, allow the appeal simply on that basis, which would be little more than a technicality.
111. Otherwise, the evidence with regard to the damage to the Portacabin was very sketchy. The specific elements seemed to be a dispute as to the early period about the door, and whether this had been damaged or had merely never fitted properly. Mr Michaelides admitted that there was "very little" damage caused when the builders used the property. The main complaint, in his eyes was the damage to the front, apparently at a later time, and for which he accused SoG. Mr Le Ray and Mr Webster denied any damage and considered that the deterioration of the Portacabin had been caused by the elements and lack of maintenance.
112. In those circumstances, the Court's decision that it was unable to find it satisfactorily proved that SoG was responsible for the damage complained of was a perfectly reasonable one. It was plainly not satisfied that SoG had itself caused or authorised any material damage. By implication it was not satisfied, simply on the basis of Mr Michaelides' evidence (and the assessment of its reliability was a matter of fact for that Court) that it could sufficiently identify any damage caused by anyone purportedly authorised by SoG to enter the Portacabin, most particularly, perhaps, the builders. Its instinct was plainly, also, that this was not a case in which SoG would be strictly responsible for any damage arising to the property, in whatever circumstances that might have occurred. As to that, its instinct was correct. It found, therefore, that there was no basis to hold SoG responsible for any damage.
113. I should add that even if the court had found that SoG bore some responsibility for damage to the Portacabin, or some of such damage, then on the state of the evidence before the Court of Alderney, I cannot see how this could have resulted in anything more than an award of nominal damages. A damages award would have required assessment of the diminution in value of the Portacabin consequent upon the damage for which SoG was proved to have been responsible. The only evidence before the court was the original cost of the (by now many years old) Portacabin in 2001 (ie £12,000 in cash and perhaps £7,637.50 worth of aviation fuel) and a budget cost for a new replacement, in 2009, of £55,000. None of this would have enabled the Court to come to a proper conclusion as to the likely diminution in value of the Portacabin. Although the original cause had claimed an assessment of the costs of repairs after delivery up, this was not advanced at the trial and, in effect, the claim had become one for the supposed value of the Portacabin itself.
114. In the circumstances I will dismiss the appeal against this order.

(7) Order in respect of agreeing a schedule of Rents received by SoG from 2nd May 2008 until date of Order.

115. The objection here is that the Court had no jurisdiction to order anything to be agreed, and that the Plaintiff had claimed an account of rents received by the Defendant. It is also notable that the order only referred to the period after 2nd May 2008, when the Portacabin was cleared out by SoG, rather than including the earlier occupation of AEL.

116. I observe in passing that the Court clearly regarded the disgorging to it of any profit made by SoG out of its property as being an appropriate measure of compensation to CYMA with regard to what had occurred.
117. Advocate Hill conceded that an account would indeed, really, be the appropriate order, but by the time of the of this hearing, that matter appeared to be academic, as the Defendant had searched its records and ascertained that it had never received any rents in respect of the Portacabin after terminating CYMA's interests, either from Alderney Electricity Limited or anyone else.
118. In the circumstances an appeal on that point is now academic and otiose, as CYMA's claim in this regard was never advanced on any other basis.

(8) No order for costs and failure to award interest.

119. It was submitted that the court was wrong not to award interest on any damages payable to the Plaintiff.
120. Advocate Hill pointed out that the limit of small claims jurisdiction in Alderney is £2,500 and that it is the practice of that court not to award costs, or interest. The sums in question would in any event be very small, and he invited the court not to consider this point further.
121. There is force in Advocate Hill's final submission but in my judgment I can and should treat the Court's decision as an exercise of its discretion in respect of costs and interest in any event, and as to this, there are no sufficient grounds for this court to interfere.

Conclusion

122. The result is that this appeal is dismissed except in the limited respects mentioned above.
123. I will order the Appellant to pay the Respondent's costs of the Appeal on the usual recoverable basis unless either the parties agree an alternative order, or I am notified that the parties either require a hearing or will make written submissions on costs.