Appeal against the judgment of the Seneschal of the Island Sark, whereby he declared that the means of enforcement for termination of a Lease for a breach of covenant were satisfied, in respect of the provisions of the Leasehold Reform Law (Miscellaneous Provisions) (Sark) Law, 2019. An Appeal application was also made against the stay of eviction order made by the Seneschal, per the provisions of the Evictions (Stay of Execution) (Sark) Law, 2019.

[2021]GRC031

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

IN THE MATTER OF AN APPEAL FROM THE COURT OF THE SENESCHAL OF SARK

C J LA TROBE-BATEMAN (SENESCHAL)

Between:

KAYE JIN MEE CHAR

Appellant

and

HEATHER SNELLING

Respondent

Before: Her Honour Hazel Eleanor Marshall QC, Lieutenant Bailiff, Sitting Alone

Hearing date: 4th August 2021

Judgment handed down: 20th August 2021

The Appellant appeared in person
The Respondent appeared in person by Microsoft Teams

The following statutes and cases are referred to in the judgment:

Legislation:

Guernsey and Sark
Royal Court Civil Rules 2007
Reform (Sark) Law 2008. s.19
Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016.
Court of the Seneschal Civil Rules 2019
Leasehold Reform Law (Miscellaneous Provisions) (Sark) Law 2019
Evictions (Stay of Execution) (Sark) Law 2019

UK
Law of Property Act 1925 ss 146, 196
Leasehold Reform Act 1967
*Interpretation Ac*t 1978 Schedule 1

Authorities:

Guernsey
Domaille v Harbour View Oriental Restaurant Limited (31st July 1996 unreported) 22 GLJ 41

UK
Wilson v Nightingale 8 QB 1034
R v Shurmer 17 QBD 323
Re 1-1A Cowthorpe Road Freehold Ltd v Wahedalley [2017] L&T R 4 (Cty Ct)
Assethold Ltd v 110 Boulevard RTM Co LTD [2017] UKUT 316 (LC)

Other
Sims and Ascroft: *Notices of Assignment and Electronic Communications*, Butterworths Journal of International Banking and Financial Law, September 2020.

JUDGMENT

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1. This is an appeal from the judgment of the then Seneschal of the Island of Sark, Mr C J La Trobe-Bateman, given on 7th May 2021, whereby he declared in favour of the Respondent, Mrs Snelling, that the Lease of the residential property known as Pré de la Ville, made on 24th June 1970 for a term of 60 years at a ground rent, and of which she is the landlord by succession and the Appellant, Miss Char, had become the tenant by succession, was properly determined or had terminated. The appeal is also against his further judgment of 24th May 2021, staying enforcement of any eviction order against Miss Char, consequent upon such judgment until, but only until, after 3 pm on 25th June 2021.

2. Miss Char has appealed the above decisions to this court by a Notice of Appeal dated 22nd June 2021. She contests strongly that the Lease has been validly terminated such that she should be required to leave the premises, and she asserts that the Seneschal was wrong for several reasons, to make the declarations and orders which he did.

3. The right of appeal from the Court of the Seneschal of Sark to the Royal Court of Guernsey (in civil matters, sitting as an Ordinary Court) is conferred by Section 19 of the *Reform (Sark) Law 2008*. However, neither the *Court of the Seneschal Civil Rules 2019* (the **"CSCR")**, nor the *Royal Court Civil Rules 2007* (the "**RCCR**") makes any specific provisions with regard to the procedure for, or conduct of, such an appeal, which is therefore left at large in this court. On the first consideration of the Appeal application, on 25th June 2021, the Bailiff gave directions for the parties' sequential filing and serving of the materials on which they would wish to rely in the Appeal to this Court, with that hearing to take place on the first available date after 31st July 2021. He also granted an application by Miss Char, made on 22nd June 2021, for a stay of any eviction proceedings against her pending determination of the Appeal.

4. Neither party is legally represented here, nor has been during the proceedings before the Seneschal, although Mrs Snelling was apparently then assisted by her husband as her McKenzie Friend. Miss Char has appeared at the Appeal hearing in person, having travelled from Sark. Mrs Snelling is currently in the UK and has appeared in person by Microsoft Teams. Unfortunately, but as is regrettably common with a party or witness appearing in this way using domestic equipment, the connection was insufficiently powerful to sustain both video and audio connection smoothly, and it was quickly agreed that Mrs Snelling should turn off her own camera, and proceed with the Court simply hearing her by audio connection, although I understand that she remained able to see both the Court (myself) and Miss Char on her own screen.

Statutory context

5. This appeal is the first ever appeal concerning the provisions of the *Leasehold Reform Law (Miscellaneous Provisions) (Sark) Law 2019*, ("**the LRMPS Law**") and in particular Section 1 thereof, which came into force as recently as 20th November 2020. The operation of this section, which lays down a particular regime, and requirements, regarding enforcement of the termination of leases for breach of covenant, is therefore a matter of some public importance, and it is therefore appropriate that this court should seek to provide relevant guidance. The case may also be the first appeal in relation to the *Evictions (Stay of Execution) (Sark) Law 2019*, ("**the Evictions Law"**), which also came into force only on 20th November 2020.

6. In brief (and a paraphrase here suffices) the LRMPS Law now requires, by s. 1(3), that before a landlord can enforce the termination of a lease for a breach of any covenant, including non-payment of rent, the landlord must "*serve… a notice*" on the tenant, specifying the relevant breach(es), requiring its or their remedy if that is possible and claiming any reasonable monetary compensation if it is being claimed, and such notice must specify a reasonable period (and any reasonable conditions) within which such remediation must be carried out, or such compensation paid, as appropriate. By s. 1 (4) of the Law, if the tenant does not comply with such a notice, the landlord may thereafter take steps in accordance with the terms of the lease to enforce his or her right of re-entry or forfeiture.

7. Before the Seneschal, Miss Char contended that no such qualifying notice had been served on her by Mrs Snelling. Mrs Snelling contended that a sequence of email letters to which she referred, commencing on 30th October 2020 and ending on 30th January 2021, coupled with a formal written Notice to Quit the premises "*forthwith*" issued by the Prevot at her instruction and dated 1st February 2021, which, together with a paper copy of the 30th January letter, had been personally served on Miss Char by the Prevot on 3rd February 2021, was sufficient to and did comply with the requirements of s.1 (3) of the LRMPS Law. Miss Char disputed that a notice given by email complied, or could comply, with that subsection; in fact, she contended that service by the Prevot of any such notice must be required. She contended further that even if emails could constitute good service of a notice under s 1 (3), the content of the emails on which Mrs Snelling relied did not meet the requirements of that subsection.

8. The Seneschal preferred Mrs Snelling's argument. He held that the requirements of s.1 (3) had been met by, or possibly as evidenced by, the sequence of email communications prior to the Notice to Quit on which she relied, together with the Notice itself, and that consequently Mrs Snelling's actions did effect a valid termination of the Lease. He ordered that the property should therefore revert to Mrs Snelling. This was on 7th May 2021.

9. He then invited written submissions with regard to the question of a stay of execution under the Evictions Law, which gives the Court general discretion, on making an eviction order in respect of premises, to stay or suspend the execution of such order for however long it may think fit, having regard to all the circumstances. Such circumstances include both parties' respective positions (see s.1) but it is also specifically directed that certain matters listed in s.2 must be taken into account under s.1. Mrs Snelling stressed Miss Char's general poor history as a tenant. Miss Char contended that all rent had since been paid (in March 2021), that the required repairs were being carried out and that she had no alternative accommodation. The Seneschal decided that the right order was to give Miss Char one month – specifically until 3 pm on 25th June 2021 – to leave the property, this time limit being to allow for Miss Char to arrange alternative accommodation and to initiate any appeal to this Court. She lodged her Appeal on 22nd June 2021, together with a further application for a stay of the eviction order pending its conclusion.

Time Limits

10. At the outset of this hearing, Mrs Snelling raised a point which she has previously raised, namely that Miss Char's Appeal was out of time. She based this on a letter which she had seen which was sent to Miss Char by the Sark Greffier on 25th May 2021, warning her that the period for appeal

was "*40 consecutive days*" from the date of the judgment. She pointed out that this Appeal was made more than 40 days after the Seneschal's principal judgment of 7th May 2021.

11. Miss Char said that this issue had been raised before the Bailiff at the hearing on 25th June 2021. He had made the point that the Appeal was, in fact, brought within 40 days of the second judgment of the Seneschal, so that if the judgment being appealed was regarded as comprising both aspects – substance and stay – it was within that time limit. She also told me that she had been told then that if she needed to apply for an extension of time, the court would so inform her, and it had not done so. Whilst Mrs Snelling did not agree this last point, I do not think it matters, for the following reasons.

12. In my judgment there is nothing in the time limit point for at least three reasons. First, it has proved impossible for either myself, or the Greffier of Sark, or the Greffier of Guernsey (each of whom I have consulted) to locate any provision of law, court rule or even evidence of any origin in *coutûme,* laying down the suggested 40 day time limit. This seems to leave time limits open, in which case they would be viewed as a matter of reasonableness, with the Court simply being careful to prevent abuse of its own process in any situation. It does not appear to me that Miss Char has acted unreasonably slowly in bringing her appeal. Second, the Bailiff's suggested interpretation that viewing the matters before the Seneschal as a single composite case, with the second judgment being its disposal, also appears to me to be well arguable. Third, and in any event, even, if there were a 40 day rule and it was applicable to the first judgment, so that Miss Char was technically out of time and therefore would have to apply for an extension of time to validate her appeal, I would grant such an extension without hesitation. The excess time is very small, the matter is serious, the arguments are not frivolous, the Appellant is in person, and the Respondent has suffered no prejudice, (apart, of course, from not being able to take advantage of the presumed default). In the above circumstances, the time limit point has no merit and can be disregarded.

History

13. Before turning to the issues which arise on the appeal, I should outline the relevant facts and history in a little more detail.

14. The Lease in question is a Lease of a plot of land forming part of the Tenement of Clos de la Ville, made between (1) Maxwell Hyslop Maxwell and Violet Nancie Maxwell and (2) Francis Samuel Tonks and Violet May Tonks for a term of 60 years from 24th June 1970 at a ground rent of £100 per annum (see Clause 1), with five yearly rent reviews at the Lessors' option based on increases in the Guernsey Cost of Living Index (see Clause 5). It was a building lease; the Lessees covenanted by Clause 2(1), within one year, to erect a bungalow on the plot to the Lessors' satisfaction, which bungalow should belong to the Lessors. The Lessees gave various further covenants, so far as relevant, in Clause 2 (2) onwards, including (2) to plant and maintain a dividing hedge on the south boundary, (3) to pay the rent timeously, (4) to pay rates or other suchlike assessments on the property, (5) to insure and keep insured the buildings, (6) not to assign or underlet without Lessors' consent (subsequently amended to provide that consent should not be unreasonably withheld), (7) not to use the property other than as a private residence, and (8) to keep the buildings in good and substantial repair, and so to deliver them up on termination of the Lease. Clause 2(9) provided for the Lessors to have access twice in a year, at convenient daytime hours, for the purpose of inspecting the premises and remedying any wants of repair which the Lessees might have failed to carry out within three months of being given notice of them, and Clause 2 (10) gave the Lessors the actual right to carry out such repairs after the three months' notice if the Lessees had failed to do them and to recover the costs of doing so from the Lessees, "*as rent*" (this is important), after one month. This, though, does not affect the tenant's own obligation to carry out such works. Further Lessees' covenants concerned (11) complying with all statutory requirements with regard to building, (12) not erecting any new buildings or making any alterations to existing buildings without the Lessors' consent, (13) laying out the remainder of the plot as a garden and keeping this clean and tidy and (14) keeping the hedge by the road properly trimmed.

Clause 2(15) regulated entrances to the property, and access to an adjoining property and Clause 2(16) provided that the Lessee would not do or permit anything which might be or become a nuisance or annoyance to the Lessors or to other adjacent occupiers.

15. Clause 3 confirmed the Lessees' right to quiet enjoyment and Clause 4 provided as follows:

> *"….if the rent hereby reserved or any part thereof shall be in arrear for twenty-one days after any of the days whereon the same ought to be paid, whether the same shall have been legally demanded or not, or if there shall be any breach or non-observance of any of the covenants of the Lessees, herein contained, then and in any such event this Lease shall immediately determine and the Lessors may immediately re-enter into and upon the demised premises without prejudice to the rights and remedies of the Lessors in respect of any rent in arrear or of any breach of any of the covenants by the lease herein contained."*

16. By subsequent assignments over the years, Mrs Snelling became landlord under the Lease and Miss Char became the tenant; on 27th March 2012, Miss Char paid £165,000 for the then residue (18 years and two months) of the term of the Lease, and took an assignment of it, binding herself to perform the Lessees' covenants. Mrs Snelling was a party to that Assignment. Miss Char has pointed out and relied upon Clause 6 of that Assignment, which provides that

> *"Any notice may be validly served on the Assignee at the Property……"*

17. Mrs Snelling has complained, both before the Seneschal and this Court, that Miss Char has behaved as a bad and undesirable tenant for the last nine years, with a history of late payment of rent, and failure to carry out required repairs after notification, in particular by a surveyor's report from Messrs Hunt Brewin, in fact dating back to 2014, but more recently in an updated version dated 5th July 2018 consisting of a 6 page list of defects. This list, she pointed out was approved by the Seneschal's Court in an Order of 11th October 2018 as listing the works which she herself would be entitled to enter and carry out under Clauses 2(9) and (10) of the Lease. She had annotated this list to mark items still outstanding, even now, and these did appear to comprise around half of the list. Miss Char had, Mrs Snelling claimed, allowed the property to deteriorate, not kept the garden tidy, and caused a nuisance by leaving food to rot in an unpowered refrigerator, when electricity was cut off to the property because she had not paid the electricity bill, causing a stench and the need for a deep clean of the kitchen - which Mrs Snelling had found when she was eventually able to exercise her entitlement to access, with the physical assistance of the Prevot, in November 2020. Works which Miss Char has done, or is still doing, had been and are of unsatisfactory quality, and in particular were inadequate to address the persistent damp penetration issues which have been affecting the property. Miss Char has failed or been unco-operative about enabling the stipulated landlord's access, and indeed, had not lived at the premises at all before 28th January 2021 – ie until after matters came to a head with regard to her potential eviction - but was residing either in Guernsey or at another Sark property called La Petite Valette. She gave this as her address for service in earlier proceedings. And there have been plenty of these. Mrs Snelling put before the Court a list of occasions between September 2012 and January 2021 on which she had had cause to write to Miss Char about wants of repair, the state of the garden or the hedges, or failure to give access or suchlike, and she listed 8 summonses to the Seneschal's Court between November 2012 and October 2020 as occasions when she had been obliged to go further and take matters to court, and all of which (she said) had been upheld in her favour.

18. Miss Char did not appear to deny the substance of this history, though she did deny that she had not been living at the property at all; she claimed to have been there at times, as well as at other places, in particular, I take it, La Petite Valette. She also denied that the works which she had instructed had been inadequate or of poor quality, except perhaps (I think) where she was saying that they were only temporary measures. She said that there was a dispute between her and Mrs Snelling about whether the works which Mrs Snelling's surveyor required were wants of repair or were, in

fact, improvements to the premises, which she was therefore not required to carry out, particularly in view of the relatively short term of the Lease remaining. However, the only particular item falling in this category which she was able to cite to me at the hearing was a suggested requirement for additional support to a dormer window structure. Nonetheless, she considered that it was reasonable for her to want an independent structural or engineering surveyor's report, rather than just that of Mrs Snelling's general building surveyor. She had paid the outstanding rent, including "repair costs-rent", in March 2021, and her previous failure to pay had been owing to personal financial circumstances which she claimed were not her fault, but which she did not wish to disclose. She accepted that the works of repair in the Hunt Brewin report, insofar as she accepted she should be doing them, were still in the course of being carried out. None of this, though, went to her central point on this Appeal, which was that the requirements of s 1 (3) of the LRMPS Law had not been complied with, either before the Notice to Quit was served or before the Summons was issued, and that this therefore simply precluded Mrs Snelling from enforcing any right of forfeiture or re-entry which she might have, at the time she purported to do so. Her action should have been dismissed on that ground.

19. I have referred to the above history as background. None of it is, indeed, directly relevant to the central issue of construction as to the meaning of s. 1(3) of the LRMPS Law. I have not investigated, and am making no findings about, the truth or the reasonableness of the parties' respective positions in respect of that history. Whilst the history recited by Mrs Snelling, and in particular the number of court cases which have apparently had to take place in the last 9 years does suggest that Miss Char has been an unsatisfactory tenant, I noted that Mrs Snelling had not sought to terminate the Lease and evict Miss Char previously. When I asked her why not, she said that she had come to the end of her tether. I do find this somewhat surprising, although it is of course the case that people can have different levels of tolerance. However, and once again, that is not of any relevance to the matters which I have to determine on this Appeal, for reasons which will appear.

Procedural history

20. The material communications, relied on and referred to by the Seneschal in his decision, took place between 20th October 2020 – which is after the date (9th October 2020) on which Mrs Snelling obtained a money judgment for outstanding rent, interest and costs against Miss Char – and the end of January 2021, when Mrs Snelling instructed the Prevot to serve the Notice to Quit. They will need to be examined later, but the procedural history can be described at this point, and it was as follows. On 8th March, Mrs Snelling issued this Summons against Miss Char, claiming that the Lease had been validly terminated, and seeking an order that the Prevot be instructed to evict Miss Char from the premises forthwith, together with other consequential relief. The Summons was tabled on 12th March 2021.

21. By a letter of 12th March 2021, Miss Char indicated her wish to defend, stating that she had on that day paid the residue of the amount due from her by way of rent, repair costs rent, interest and costs, namely £3,866.09, (this residue being the amount then outstanding under the judgment obtained by Mrs Snelling against her on 9th October 2020), and claiming to have addressed particular items referred to by Mrs Snelling in a letter to her of 21st January 2021.

22. On 9th April, Miss Char filed a document, copied also to Mrs Snelling, headed "*Application for relief against forfeiture of Lease*" which referred to the LRMPS Law and asserted that no sufficient notice of forfeiture pursuant to Part 1 of the Law had been served on her. She asserted that Mrs Snelling's letters of 12th, 20th, 27th and 30th January 2021 did not constitute such an "*application*" to forfeit, which she considered should now proceed formally under the Court of the Seneschal Civil Rules. She asserted that the breaches of which complaint had been made were being rectified, so far as not disputed, and she applied for Mrs Snelling's summons to be dismissed on the grounds of non-compliance with Part 1 of the LRMPS Law; alternatively, she should be granted a sufficient

period of time to enable the necessary works to be completed. It appears that this document was treated as Miss Char's Defences. Mrs Snelling filed a response disputing these points.

23. With the hearing scheduled for 30th April 2021, on 27th April 2021 Miss Char issued the first of two further Summonses of her own in the Court of the Seneschal. This was date stamped by the Prevot on 27th April 2021, and was again described as an "Application for Relief Against Forfeiture…". It reiterated the points about non-compliance with Part 1 of the LRMPS Law, raising the point about email communication being insufficient, denied that Mrs Snelling therefore had any grounds for claiming that the Lease had been terminated, alleged that the breaches had been effectively remedied, but added also, (and importantly) that in any event Miss Char claimed relief from forfeiture, at least pending determination of what she now described a her "Application for Summary Judgment" to determine whether Mrs Snelling's claim had any foundation. In the last resort she invoked the court's discretion under the Evictions Law, to grant a stay of any eviction pending her being able to get the necessary works completed.

24. The second summons, date stamped 28th April by the Prevot, was, indeed, described as Miss Char's "Application for Summary Judgment" and was to dismiss Mrs Snelling's cause based on the Notice to Quit on the grounds that it had no foundation in law. It in fact reiterated all Miss Char's previous arguments about non-compliance with s 1(3) of the LRMPS Law, and also all her previous claims for the grant of a reasonable time to effect repairs, to "relief", and to a stay of enforcement under the Evictions Law. This Summons was supported by a short affidavit, broadly setting out Miss Char's problems with internet access and not being able to read emails or their attachments, in particular between 27th January and around 2nd February 2021. Miss Char also submitted a document of 7 pages consisting of her submissions regarding the absence of any compliant notice to her, under Part 1 of the LRMPS Law, and further reiterating the points already referred to above.

25. It can thus be seen that Miss Char has a somewhat "scattergun" approach to dealing with litigation, at least in these proceedings. I can understand and sympathise with her anxiety to make sure that she upheld or protected her position by any possible available route, and she has, of course, been acting in person. However, this has produced a very complicated and muddling result for the purpose of trying to extract what is actually the essential and operational point of any application, owing to so much duplication and repetition. I therefore have sympathy with the Seneschal, seeking to identify the real essence of the matter at the hearing on 30th April 2021. Being confronted with this somewhat confusing mass of paperwork seems likely to be the explanation for his recorded comment that:

> *"The only matter he would consider was whether the Lease between the parties was validly terminated or determined by the letters from the Plaintiff to the Defendant (in particular the letter of 30th January 2021) and the subsequent "Notice to Quit" by the Prevot on 1 February 2021."*

26. Miss Char in fact made two further applications/summonses to the Court of the Seneschal between the giving of the Seneschal's first judgment of 7th May and his second judgment of 27th May. The first sought to stay the whole of the proceedings under case management powers in the CSCR. The second sought to set aside the 7th May judgment under Rule 51 of the CSCR. However, their basis was, yet again, Miss Char's (by then unsuccessful) assertion that there had been no valid notice served on her under Part 1 of the LRMPS Law. The Seneschal therefore, and quite rightly, treated these as misconceived. Miss Char's remedy, by that time, was plainly by way of appeal.

Notice of Appeal

27. She launched her Appeal on 22nd June 2021, together with an application for a stay of execution (of the eviction) until after her Appeal was dealt with, and which was granted on 25th June 2021 as previously mentioned. Her Notice of Appeal submits, as its grounds, that the Seneschal was wrong

a. first, to hold (as she puts it) that the Plaintiff (Mrs Snelling), was not bound to adhere to the terms of the LRMPS Law,
b. second (again as she puts it) to ignore the fact that there had been no Application for Forfeiture under the LRMPS Law served on her
c. third that the Seneschal never considered her Application for Relief from Forfeiture and
d. fourth, that the Seneschal's decision was founded on an invalid Termination Notice, not properly served, in order to evict the Defendant to the substantial unjust enrichment of the Plaintiff put at £82,500, and the detriment of the Defendant herself.

It can be seen that points a. and b. and the first limb of point d. are really different ways of putting the same point, which is the central point of Miss Char's Appeal against the decision actually, in particular, in the 7th May judgment, that the Lease was validly terminated, and which is the asserted non-compliance with s 1(3) of the LRMPS Law. Her third point (c.) is a procedural point. The second limb of her point d. is a matter which would really be relevant to an application for relief from forfeiture, rather than to arguments as to whether the Lease has in fact been lawfully terminated.

28. It is in her application for a stay of execution that she mentions points going to the second judgment of 28th May, namely the fact that she claims she has no other accommodation if the eviction is enforced against her, and that there are no social services authorities on Sark for her to resort to if she is made homeless.

Procedure – the test for this court to intervene

29. An appeal to this Court from the Court of the Seneschal is an appeal on point of law; it is not a re-hearing, ie it is not a re-run of the case at first instance. It follows that the questions for me are, firstly, whether the Seneschal made an error in point of law or legal principle. With regard to decisions on fact, those are decisions for the court of first instance, and it is only at the extreme, where it is alleged that there was simply no evidence to support a factual decision, that the appellate court can intervene if it accepts such a proposition. (This is not inconsistent, because the question whether or not there is sufficient evidence to support a finding of fact is itself a point of law.) Where the contested decision is the exercise of a discretion, once again, the appellate court can only disturb the discretionary decision of the judge of first instance if satisfied that the discretion has been incorrectly exercised as a matter of law, ie that the decision-maker has failed to take into account some material fact, or has taken into account some immaterial fact (which affected the decision in each case) or that the decision was simply perverse or irrational. Apart from these cases, the appellate court can intervene, also, if it is persuaded that something has gone so badly wrong procedurally with the trial or hearing that this did not take place correctly and was consequently unfair. These are the principles I therefore apply in hearing this Appeal.

The Law - substance

30. I have previously only paraphrased the relevant provision of the LRMPS Law and it is now appropriate to set it out fully. Part 1 is headed "*Relief from forfeiture*". Insofar as material at this point, it reads:

> *(1) A right of re-entry or forfeiture under the terms of a lease for any breach of any covenant in the lease, including non-payment of rent shall not be enforced except in accordance with the following provisions of this section.*
>
> *(2) …*

(3) Where a tenant has breached a covenant of the lease, the landlord must, before taking any steps to enforce such right of re-entry or forfeiture, serve on the tenant a notice

(a) specifying the breach complained of,

(b) if the breach is capable of remedy, requiring the tenant to remedy the breach, and

(c) in any case where it is reasonable to do so, requiring the tenant to make compensation in money for the breach,

and such notice shall specify such reasonable period with which, and such reasonable conditions subject to which, the breach must be remedied or compensation shall be payable, or both, as the case may be.

(4) Should a notice be served in accordance with subsection (3) and should the tenant fail, within such reasonable period and in accordance with such reasonable conditions, as may be specified in the notice, to cease the conduct which constitutes the breach, to remedy the breach if it is capable of remedy and to make reasonable compensation in money, to the satisfaction of the landlord, for the breach, the landlord may take steps in accordance with the terms of the lease to enforce such right of re-entry or forfeiture."

31. In short, under s 1(1), since 20th November 2020 a landlord cannot proceed (as Mrs Snelling has done) to obtain a declaration that the Lease has been determined and instruct the Prevot to exercise his power to evict the tenant, unless s/he has been through the process laid down by sub-section 1(3) and the tenant has failed to comply. The first and main issue in the Appeal is therefore whether the Seneschal was correct to find that Mrs Snelling had complied with the process laid down in s. 1(3).

32. For completeness, I add that ss. 1(5)-(7) of the LRMPS Law provide that a tenant may apply to the Court for relief from forfeiture,

> *"where a landlord is taking steps, by proceedings or otherwise, to enforce … a right of re-entry or forfeiture"*

and for the court's jurisdiction to grant relief from forfeiture, and on what terms. Ss 1(8)-(9) provide jurisdiction to grant relief from forfeiture similarly to sub-tenants, and are of no relevance here. S. 1(10) provides:

> *"(10) This section applies only to breaches of covenant -*
>
> *(a) occurring after, or*
>
> *(b) which occurred before but are continuing as at the date of,*
>
> *its commencement … ."*

Plainly the practical effect of the exceptions carved out by this last sub-section would have been very short-lived, and fortunately (and I think quite rightly) that is not a point which has been taken in this case.

The judgment of the Seneschal

33. At Paragraph 10 of his judgment of 7th May, the Seneschal described the materials which he found to amount to the proper "serving of a notice" as required by the LRMPS Law. This is adequately explained by setting out his judgment, although I do so without the numerical references to the particular copy documents.

> "*10. However, my interpretation of the Law, Part I "Relief from forfeiture" – and this is where I would have wished for some assistance from advocates for the parties – is that all the*

requirements as laid out in (3) (a) (b) and (c) have already been enacted prior to the Notice to Quit as is evidenced by the correspondence, starting with an email dated 30th October 2020, asking for access, and 13th November 2020 – the discovery that the electricity had been turned off due to non- payment and the rotten food in the freezers. At [an email dated 22nd December 2020*] the Plaintiff gives notice that unless the outstanding debts are paid "on or before the 29th December the Lease will be terminated at my option without further warning".*

11. *On 30 December, no payment had been received but the Defendant replied "Please do not terminate the Lease" - and nothing further.*

12. *By email on 12 January 2021 the Plaintiff wrote to the Defendant listing the outstanding breaches and, inter alia, stated "….I am prepared to allow the Lease to continue if you sign the statement below and return this letter by email or post by the 20th January 2021 as confirmation that you will in future adhere to all your obligations under the Lease". This statement required the Defendant to pay all debts, rectify breaches, undertake maintenance, with the final term being "5. I acknowledge that the Leasehold will be terminated if I do not adhere to these terms". The Defendant returned this document on 20th January 2021 with amendments of her own, to which the Plaintiff replied in detail on the 21st, and included " I am not willing therefore to accept your handwritten alterations and "the action I need from you before the 27th January to avoid termination is*

    1) *to re-sign the confirmation without any alterations*

    2) *to pay the outstanding amount of £4,833,95 which is the amount due at 27th January."*

13. *A list of works required by the professional survey followed on 23 January 2021.*

14. *At [an email dated 27th January] the Defendant stated that payment was delayed to which the Plaintiff replied on the same day reiterating that action needed to be taken and giving to the end of the day.*

15. *On 30 January 2021 by email the Plaintiff terminated the lease and submitted an instruction to the Prevot to issue a Notice to Quit which was duly served, together with a hard copy of the termination email, on the Defendant on 3 February 2021 ("A Service").*

16. *In my view, in respect of the Law, the above correspondence certainly (a) specifies the breach(es) complained of and (b) requires the tenant to remedy the breaches.*

All of the above has led me to conclude that proper notice was served on the Defendant, if I take the word (top of page 4 in the Law)"serve" to mean "delivered to" rather than formal "service" by the Prevot. The Law is not specific on this point but the defendant attempted to persuade me that emails do not count as proper notice but I remain unconvinced - there can be no doubt, however, that the Defendant:-

1) *Received the important emails and knew perfectly well what was required to avoid the lease being determined*
2) *Failed within the time given to remedy the breaches or pay the outstanding debt".*

The Issues

34. I identify the following issues as therefore arising on this part of the Appeal, ie the effect of s 1(3) of the LRMPS Law. In a convenient order they are:-

(1) Is service by the Prevot required in respect of a notice under s 1(3) of the LRMPS Law?
(2) What is the effect of Clause 6 of the Assignment of 27th March 2012?
(3) Can a notice under ss 1(3) be constituted or served by email?
(4) If so, did the emails relied on constitute a good notice under s 1(3)?
(5) If so, has such a notice been proved to have been served within the meaning of s 1(3)?

Issue 1 - Is service by the Prevot required?

35. Miss Char submitted to this Court, as she submitted to the Seneschal, that the word "serve" in s.1(3) meant formal "service by the Prevot" and that the Seneschal was wrong to reject this argument. She made her submissions on three grounds. First, she relied on the references to the serving of documents contained in the Court of the Seneschal Civil Rules 2019 ("**the CSCR**"), which clearly required or referred to service being effected by the Prevot, and submitted that the word must have the same meaning in the LRMPS Law by analogy. Second, she submitted that as a matter of principle, the termination of a lease was such a serious and formal matter that serious and formal service, such as was effected by the Prevot, must be what was intended. Third, she also submitted that the course of dealings between the parties had been that such documents were served on her by Mrs Snelling previously through the Prevot, and therefore ought only to have been served by that means on this occasion.

36. I am not sure if she made this last submission to the Seneschal, but in any event, it can be rejected as the evidence comes nowhere near suggesting that there was ever any kind of binding agreement by conduct between her and Mrs Snelling, to this effect. In practice, the use by Mrs Snelling of the Prevot's services to serve documents seems to have been because they were then part of court proceedings anyway.

37. As to the former two arguments, the Seneschal declared himself "unconvinced" by these. In my judgment he was quite right. The true construction of the word "serve" in one enactment – the CSCR – is no guide to its necessary, or even intended, meaning in another enactment – the LRMPS Law – concerned with a different subject matter. Neither is the "seriousness" of the subject matter a convincing argument for endowing the word "serve" with any different or more onerous meaning than it would otherwise naturally be taken, in its own context, to have. The concept of "serving" a notice is a perfectly ordinary general concept, and I agree with the Seneschal that in the LRMPS Law, it is to be taken to be used in its natural meaning in the context of serving a notice which is intended to have potential consequences for the contractual rights of the parties. Formal service by the Prevot is not required.

Issue 2 - The effect of Clause 6 of the Assignment of 27th March 2012.

38. Clause 6 of the Assignment of 27th March 2012 to which both Miss Char and Mrs Snelling were parties says that:

> "*Any notice may be validly served on the Assignee* [ie Miss Char] *at the Property…*".

Miss Char argued, as her next point, that this was not what Mrs Snelling had done, and that therefore the emails could not be a valid notice to her on any basis.

39. Mrs Snelling objected that the reason she had not left the notice at the property was because on previous occasions, such notices had not come to Miss Char's attention (as she had not been living at the property) since they had been found there, unopened, months later. This was, in fact, why she had used emails. This is an understandable practical point, but it does not directly answer Miss Char's argument that the Clause 6 procedure is laid down as the prescribed way of serving a

notice on the tenant, and is therefore the way of fulfilling the requirement of s 1(3) of the LRMPS Law to "serve on the tenant a notice".

40. I am not sure if this point was in fact argued before the Seneschal, but if it was, he plainly rejected it, and in my judgment, this was correct. Miss Char's submission is, in effect, that Clause 6 provides the only way in which a notice could be served on the assignee/tenant because it constitutes an agreement to this effect between the parties. However, that is simply not what Clause 6 says. Clause 6 uses the word "may" which is permissive, and not mandatory. What Clause 6 means is that the parties have agreed that if a notice for the purposes of the Lease is in fact given by the landlord to the assignee/tenant by the landlord's leaving it at the property, then the notice will be deemed to have been "*served*" on the assignee/tenant *whether or not the assignee/tenant did actually receive it.* Clause 6 thus provides an agreed reliable "fail-safe" method of service for the landlord, but it does not prevent, or rule out, service being effected by any other means which might be available. However, in any other such case, in order to amount to due "service", the landlord will have to prove not only the giving of the notice but also its actual receipt by the tenant, because "service" connotes both of these elements. Such proof would be made in the usual way, namely by evidence. Clause 6 effectively agrees that if the notice is left at the property, then its due receipt by the tenant, in fact, is presumed.

41. It is somewhat ironic, therefore, that Mrs Snelling's reason for not leaving notices at the property is the very problem from which the terms of Clause 6 were intended to relieve the landlord. However, since Clause 6 is not exclusive, the fact that she did not use the method which it provides is simply not relevant.

Issue 3 - Can a notice under the LRMPS Law s 1(3) be constituted or served by email?

42. Since this is the mode by which Mrs Snelling does claim to have served the necessary notice under s. 1(3) on Miss Char, this is the central question. The Seneschal held, in effect, that it could. Miss Char argued on her Appeal, that even if she were wrong in her two contentions above, nevertheless, a document was required, and emails simply would not do, either in principle, or, at least, in the absence of any proof of receipt. Emails, (she said) could often be unreliable and might disappear, and she cited her own difficulties when she moved from Guernsey to Sark on 27th January 2021, first with internet connections and subsequently with being unable to open attachments, until her technology problems had been resolved.

43. Mrs Snelling supported the decision of the Seneschal, pointing out that emails had become an absolutely normal method of effecting written communications to other people, even for serious business matters. Any ordinary person would, these days, simply assume and take it for granted that a notice could be conveyed in this way, because emails were now used so naturally. She repeated that, in fact, email had proved a more effective way of communicating with Miss Char than leaving letters at the property, but she also pointed out that if one went through the sequence of emails, (as she had shown to the Seneschal, and as she also did in this Court) it could be seen from Miss Char's own responses (in particular those of 20th January and 27th January) that she had, in fact, received the essential communications and in particular those of 12th, 21st and 23rd January 2021; the only one she might not have received was that of 27th January, as this was when Miss Char was moving from Guernsey to Sark and claimed that this had caused her internet and email problems.

Discussion of Issue 3

44. This being, to my mind, the central point in the case, it is appropriate to consider the purpose and context of s 1(3) of the LRMPS Law, and go back to underlying principle. The object of enacting Part 1 of the LRMPS Law, as the Seneschal observed at Paragraph 4 of his judgment was to protect Sark leaseholders from being summarily evicted from their property, and to give landlords an indication of how to proceed in cases of breach of covenant. It was intended to ensure that a tenant

of a leasehold, whose rights might well have significant value in the case of a significant residue, should not be vulnerable to losing those rights because of a breach of his obligations, without being made fully aware of that danger (ie it being clear that the landlord really "means business"), and being given the opportunity to save his position by remedying the breach of his obligations, if he could and would.

45. The Lease in this case shows clearly why this will have been thought desirable. It provides (Clause 4) that the leasehold term – ie the tenant's contractual right to occupy the property – comes to an end automatically ("*immediately*") upon there being a breach of the tenant's covenants in the Lease. This means that there would then be no answer, in law, to the landlord's claim to expel the tenant from the property. By imposing the restrictions of s 1(3), the LRMPS Law ensures that a tenant has a fair opportunity of saving his rights, and it gives the landlord an orderly process for seeking to enforce his own right of forfeiture. What is meant, and therefore required, for the "*serving*" of a good "*notice*" in accordance with the Law must therefore be construed against this background purpose.

46. S. 1(3) lays down that a landlord must "*serve…a notice*" on the tenant with the stipulated content. Whilst the necessary content is laid down in the rest of the sub-section, there is no stipulated or prescribed form for such a notice itself. It could be in the form of a letter, or of a more impersonally expressed document. The LRMPS Law itself gives no guidance as to what will or will not amount to a "*notice*", or to "*serv*[*ing*]" it. Neither is there any guidance on the meaning of these words in the *Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016.* There do not appear to have been any Guernsey cases touching on the subject. The enigmatic reference to *Domaille v Harbour View Oriental Restaurant Limited* (31st July 1996) at 22 GLJ (Guernsey Law Journal) 41 with regard to such notices contains a puzzling reference to s 146 of the English Law of Property Act 1925, but does not indicate any consideration of the point in question here. The words of s. 1(3) therefore can and should be construed as a matter of ordinary meaning and common sense.

47. Early English authority (*Wilson v Nightingale* 8 QB 1034 and *R v Shurmer* 17 QBD 323), held that the phrase "*serve ... a notice*" indicates that such notice must be in writing, and cannot be merely oral. ("*Give notice*" without specifying written notice, could be either). The word "*served*" connotes at least some degree of formality, but the important point is that service requires not only the deliberate act of the notice-giver intended to be the "*serving*" of the relevant notice, but also the actual receipt of the notice by the intended recipient, fixing him with knowledge of the notice's contents. Both these elements must be shown, for due "*service*" to be effected.

48. In English law, the concept of proper "*service*" developed to take account of changing modern circumstances and conditions, such as the use of the postal service. This caused provisions to be included in statutes (such as s. 196 of the Law of Property Act 1925) to lay down convenient presumptions, or even rules, as to whether or when due "*service*" would be taken to happen if the post were used. But also, just as with Clause 6 of this Lease (as discussed above), it was always possible for parties to lay down, by their own contract, rules as to what would be presumed to amount to good service of notices between themselves. The law also developed to accommodate modern technology: see, eg *Hastie and another v McMahon* [1990] 1 WLR 1575 which held that under the former English Rules of the Supreme Court, Order 65 r 5(1) the "*service*" of documents generally (ie other than an originating process, or where personal service was specifically required), facsimile transmission could be used, provided that it could be proved that the document in a complete and legible state had, in fact, been received by the person to be served.

49. I mention the above very brief account, not as any form of authority or analogy with the position here, but to show that the basic principle as to what is due "*service*" of a "*notice*" is that there must be some writing, embodying the required contents of the notice, which has been intentionally sent by (or on behalf of) the "server" as such a notice, and (and importantly) which is also proved to have been received by the relevant recipient, either as a fact (the basic principle) or in accordance

with some deeming provision which applies to the situation, either by act of law or by the parties' own agreement.

50. The question is then how the above approach can, or should, apply to emails. Emails are a form of electronic writing. They have some similarities to a fax. There seems to be no reason why the requirements of good "service" of a notice should not be construed so as to recognise service by email, always so long as the basic requirements of the sending of the requisite written notification, and the actual receipt of that required written notification, are proved as fact. The LRMPS Law was drafted in 2019 and brought into effect in 2020, and thus at a time when emails had, as Mrs Snelling submitted, already become a totally accepted everyday method of business-like communication between people - the equivalent to letters - even with regard to matters of serious implication. This is the case in Sark as much as anywhere else. There seems, therefore, to be no reason why Chief Pleas should not have intended that giving a notice by email should be within the terms of s 1(3) of the LRMPS Law, always so long as the general requirements of serving notice (ie the inclusion of the required contents, and the proven sending and receipt of the communication) were met. There is also force in Mrs Snelling's point that in the present day, any ordinary person, knowing that they had to serve a notice, would think it quite natural and normal to use email communication to do so. Laws should be as readily comprehensible and operable as possible, and it should not be necessary for an ordinary person to have to seek a legal opinion to check whether a very natural and normal interpretation can be correct.

51. I am therefore inclined to conclude that the Seneschal was correct to hold that, in principle, Mrs Snelling was able to serve notice under s 1(3) by the use of email unless there is something by way of legal authority to convince me otherwise. There are some English authorities on the point whether notices can be given or served by email, which do not go all one way but as to which the balance of authority appears to support the use of emails for written notices as being valid in general principle: see the Article: *Notices of Assignment and Electronic Communications* by Hugh Sims QC and Richard Ascroft in Butterworths Journal of International Banking and Financial Law, September 2020. The most notorious decision to the contrary is that of HH Judge Dight in *Re 1-1A Cowthorpe Road Freehold Ltd v Wahedalley* [2017] L&TR 4, in which he concluded that a landlord's counternotice under the statutory provisions of s 21 of the English Leasehold Reform Act 1967 could not be served by email because a signature (presumably, therefore, a wet ink signature) was required, and because service of an original was implicitly required by the terms of the Act, and the relevant emails, being .pdf files, were necessarily copies. However, this decision depends on a close examination of a peculiarly English statute, and has not been without criticism. In *Assethold Limited v 110 Boulevard RTM Company Limited* [2017] UKUT 316 (LC), where the statutorily required giving of a copy of a claim notice was done by email, *Cowthorpe Road* was emphatically distinguished by HH Judge Behrens, on the grounds that his own case was concerned with copies and no signature was required, and he saw no reason why, as a matter of general principle, emails could not be used as a means of giving, or serving, a document. As I have said, it appears to me, therefore, that the general academic and judicial view in England, although not authoritative at a high judicial level, is in favour of email being a permissible mode of serving a notice, and although this is in the context of the English *Interpretation Act 1978* Schedule 1 stating explicitly that

> "'*Writing' includes typing, printing, lithography, photography and other modes of representing or reproducing words in a visible form…*"

and there is no such provision in either Guernsey or Sark statute law, to hold that writing has such an extended meaning – ie that the essence of a requirement for writing is that of the production of words in visible form - seems to me to accord with general and reasonable common sense.

52. I conclude, therefore, that the Seneschal was correct to hold that a notice under s 1(3) of the LRMPS Law can, as a matter of law, be served in the form of an email. That decision, however, does not dispense with the requirements that, to constitute proper service at all, the communication must be

found (ie proved as fact) to have been actually received by the intended recipient tenant, and that its contents must meet the stipulated requirements. This latter is a point which I have not yet considered, and it is convenient to go deal with it now.

Issue 4 - Did the contents of the emails relied on amount to the notice required under s 1(3) of the LRMPS Law?

53. The Seneschal held that they did: see Paragraph 16 of his judgment.

54. By section 1(1) of the LRMPS Law, s. 1(3) is applied to "*breach of any covenant in the lease including non-payment of rent*". For reasons which will explain later, I will examine the Seneschal's conclusion separately in relation to the covenant to pay rent and the other covenants of which breach alleged and which are principally repair and maintenance, and similar covenants.

(i) Repairing and similar covenants

55. With regard to the latter, it is the letters of 12th January 2021 and the follow up letter of 23rd January 2021 attaching the Hunt Brewin Report of 5th July 2018 with annotations as to what was outstanding, which contain the materials which the Seneschal appears to have relied on as amounting to a notice complying with s 1 (3). If the second letter is included, these materials complied with s. 1(3)(b) in that they required the breaches to be remedied.

56. I will assume, for present purposes only, that they fulfilled s.1(3)(a). I would not regard a bald list of the relevant covenants in the Lease, even coupled with statements such as "NOT MAINTAINED" or MULTIPLE AND CONTINUING BREACHES", such as found in the letter of 12th January to amount to a sufficient "specifying" of the breaches complained of, but I will assume for the moment that any deficiency in this respect was cured by the follow up letter of 23rd January 2021 and its attachment, and that this additional information could cure any original deficiency and render the combined communications a good "notice" for the purpose of those sub-subsections. However, what seems to me to be completely missing and what the Seneschal appears not to have considered, is the further final requirement in s 1(3) to

"specify such reasonable period within which….. such breach …. must be remedied".

I can see nothing in any of the emails on which reliance was placed in the case which meets this requirement with regard to the repairing (and suchlike) breaches.

57. Mrs Snelling submitted that she had not laid down any such requirement because it was obvious that the length of time it would take to get the works done would depend on the availability of builders in Sark, which was simply unknown, and that instead she had required, in her 21st January letter, that by 30th January, Miss Char should produce a letter confirming her instructions to her chosen builder, IBC, that they would carry out all the works required by the Hunt Brewin Report. She submitted that this was less onerous and more reasonable than laying down some timetable for doing the works, but in the event, even this had not been complied with.

58. However, in my judgment, this is simply not relevant to the question whether s 1(3), which is a requirement of statutory Law, has been complied with. The terms of s 1(3) are clear, and in my judgment they must be complied with, even if, in any particular circumstances, literal compliance may not seem to be the most practical way forward. If the landlord wishes to avail him or herself of the ability to enforce a right of re-entry s. 1(3) lays down the steps which must be taken before he or she will be legally permitted to do so, and it is not for the landlord, or the court, to hold that some alternative step, not stated in the sub-section itself is good enough to comply with the actual terms.

59. An alternative possibility is that the Seneschal considered that on any basis, a more than reasonable time had elapsed since the previous occasions on which Mrs Snelling had notified Miss Char that she must get on with the relevant works, but they had not been done. However, that is only a possible inference from the Seneschal's judgment, rather than being a matter which he actively considered as a reason supporting his decision (in which case he would have explained it). Once again, though, there appears to be nothing amounting to the clear expression of a time period asserted to be reasonable, during which the works ought reasonably to have been done, and failing which the landlord is threatening to proceed. Moreover, any such reasonable period has to be identifiably "*specified*" and not just taken to have been allowed in practice. Reasonable though that might appear to be, it is not what the Law has laid down. For the court to be able to hold that s 1(3) has been complied with, there simply must be materials which can be identified as constituting compliance with the various requirements of s 1(3), and, therefore "*specifying*" the relevant reasonable time as part of a "*notice*".

60. It follows that, on any basis, the emails in question did not comply fully with s 1(3) in respect of the repairing obligations, nor any of the covenants other than that for the payment of rent. The position in relation to this last is, however, different.

(ii) Covenant to pay rent(s)

61. As regards the application of s 1(1) and s 1(3) to the covenant to pay rent, it will be recalled that the breach complained of was the non-payment of a sum consisting of rent and (and mostly) "repairs costs-rent" (under Clause 2 (10)), for which a court judgment for the total sum of £5,151.32 including interest and costs, had been obtained by Mrs Snelling against Miss Char on 9th October 2020. As a matter of the court judgment (not, of course, the obligation in the Lease itself) this sum was to be paid by 13th November 2020, but it had not been paid then, and court interest at 8% per annum accrued from this time. Mrs Snelling's letter of 22nd December 2020 demanded payment of outstanding sums (then £5,194.22, with interest accruing at the daily rate of £1.13), or, at least, a satisfactory response as to when payment would be made. It was ignored until an email of 30th December, threatening "termination" of the Lease was sent by her, at which point a holding response was sent by Miss Char (showing that these emails had been received). £400 was then paid. On 12th January, Mrs Snelling's email drew clear attention to the fact that the sum then due was £4,818.15, referring to her accompanying longer letter of the same date, which demanded payment of the "full outstanding debt" by 27th January 2021 as part of the set of conditions to which Mrs Snelling there required Miss Char to sign her agreement, if the Lease was not to be terminated (ie forfeited). Miss Char clearly received this letter, because she sent it back about a week later, with various amendments (described as "clarifications") to Mrs Snelling's requirements. (This therefore did not, contrary to Miss Char's assertion, constitute any "agreement" between them). One of these amendments was to the date for payment being only "as close to" 27th January "as possible".

62. Mrs Snelling refused to accept any such amendments and reiterated clearly in her response of 21st January 2021 that Miss Char was required to

> "*pay the outstanding amount in the sum of £4,833.95, being the amount due as at 27th January*"

(the addition representing daily interest, previously notified). This email was again undoubtedly received by Miss Char, because there was a response to its contents, and that of the follow up email of 23rd January 2021, on 27th January 2021 at 11.54 in the morning. No sums were paid by the deadline of 27th January 2021.

63. On the basis of the above evidence, the Seneschal was, in my judgment, entitled to find not only that the relevant breach of covenant (the covenant to pay sums designated as rent, which were

clearly included within the judgment sums) had been "specified", and the remedying of this breach (by payment) had been required, but also that the further requirements of s 1(3), to

> "*specify such reasonable period within which such breach should be remedied*"

had been met. Looking only at the email of 12th January, Miss Snelling clearly specified that payment must be made by 27th January, and she had previously given the sums involved. She again specified the exact sum due by her email of 21st January. Whilst 27th January was only a few days later, in the context that this rent had been unpaid and outstanding for several months, when it should always have been paid on time as stipulated by the Lease, and that payment, unlike repairs, is not an action which requires a length of time to execute, it could not be said that such timescale was unreasonable. The rents which were all along due to Mrs Snelling were not paid within that time.

64. Valid notice under s 1(3) was therefore given as the Seneschal found, albeit, in my judgment only in respect of the breach of the covenant to pay rent. That, however, does not matter. The service of a valid notice cleared the way for Mrs Snelling to take proceedings to enforce her right of re-entry, and this she did, on 8th March 2021. The Seneschal was therefore entitled to find, as he did in his judgment of 7th May 2021, that the Lease was validly determined and that, in effect, Mrs Snelling was entitled to proceed to enforce her right of forfeiture.

Issue 5 – Were the emails constituting notice received and therefore "served"?

65. I refer specifically to this issue for completeness as it is one of the requirements for proving due service of a notice. I have dealt with the evidence of actual receipt by Miss Char of the emails which are relied on as constituting the required notice in the course of reciting the sequence of the emails above, particularly in Paragraphs 61 and 62.

Further points on s 1(3) – general.

66. I have dealt, above, with the material issues arising in this case, as regards considering material compliance with s 1(3), insofar as necessary to support my decision, but as this is the first case arising under this section I think it appropriate to mention one or two more general points, as they may be helpful guidance.

67. First, my decision above has dealt with only the repairing and maintenance covenants and the covenants to pay rent in this Lease, and I have not made any finding about the correctness (or otherwise) of any of the other allegations of breach. For example, it has been argued that Miss Char has been in breach of Clause 2(7) of the Lease because she has not lived in the property. However, Clause 2(7) is a covenant

> "*not to use the demised premises <u>otherwise</u> than as a private residence*" (emphasis added)

and merely not residing in the property is not necessarily the same thing. The question is fact specific. I emphasise that I am making no finding on this point, but I mention it (a) to illustrate that findings of breach of covenant require examining the terms of the Lease carefully and (b) to emphasise that my actual decision cannot be taken as implying any greater findings than I have actually made.

68. Second, as I have already pointed out, a good notice under subs. 1(3) must "*specify the breach*". "*Specify*" requires something rather more informative than simply referring to the covenant in question and stating that there has been a breach of it. Whilst "specifying" may not require minute detail, it is important that the tenant is notified as to what act or omission is being complained of. A good test is therefore to imagine that the words "*in that…..*" are added to a notification that there

has "*been a breach of covenant*" as a general statement, and then to complete the sentence as it would be necessary to tell the tenant what he or she is claimed to have done wrong.

69. Third, the subsection states that the tenant must be required to remedy the breach, "*if ... capable of remedy* (see subs.1.(3)(b)), as well as requiring that a reasonable time for such remedy must be specified by the landlord's notice. Of course, if a breach of covenant is not capable of remedy, then it would be otiose to specify a time for it to be remedied. However, the question of what is "capable of remedy" may not always be clear. If, for example, if the rent is not paid on time as stated in the covenant, then, on one view, that breach is not capable of remedy at all, but that would, be too strict an interpretation. It seems to me that the intention of the Law is to give the tenant, who is put on notice, the opportunity to mend his ways and not to lose his rights, always so long as he can put the landlord back, substantially, into the position the landlord would, and should, have been in if the covenant in question had not been broken. Whether a breach is treated as "capable of remedy" would therefore fall to be construed with this in mind, and with a realistic view of what, in substance, amounted to "remedying" the position for the landlord.

Relief from forfeiture – the Seneschal's further order for eviction.

70. Thus far, therefore, I would dismiss Miss Char's appeal. However, her third stated ground of appeal is that the Seneschal, having found that the Lease had been forfeited and determined and that Mrs Snelling was entitled to proceed with the enforcement of her right to recover possession of the property, then failed to consider her (Miss Char's) application for relief from forfeiture.

71. What the Seneschal did was to declare that the Lease had been validly determined and to order that the property revert to Miss Snelling, "*subject to any application for a stay of eviction".* He directed the parties to make written submissions to him on the stay point, and subsequently gave a written judgment, dealing only with this point. He stated that he treated Mrs Snelling's complaints about Miss Char's history as a tenant as, in effect, an application for immediate eviction. He noted Miss Char's three points as being (1) that the rent had now all been paid, (2) that she had no alternative accommodation and (3) that she maintained that the property had not, in fact, deteriorated. He then said that:

> *"Judgment on the question whether the lease was validly terminated having been delivered, I do not consider that 1) or 3) have much relevance to the stay of eviction question and therefore it remains to me to fix a date and time for the Defendant, Miss Char, to vacate the property, taking into account her declaration that she has no alternative accommodation immediately available.*"

He then made the order mentioned above, suspending the eviction for one month from the date of his judgment.

72. Subs. 1 (5) of the LRMPS Law entitled Miss Char to make an application for relief from forfeiture "*in the landlord's proceedings*", or indeed in separate proceedings. In fact, as noted above, she made two such applications within Mrs Snelling's proceedings, on 7th and 27th of April 2021. Even if the first (7th April 2021) was framed in terms which appeared to relate it to allowing a reasonable time to remedy the breaches of covenant, its general tenor as an application for relief from forfeiture was clear. The second (27th April 2021) was wider and referred to the tenant's right to seek relief from forfeiture more generally. In any event, Miss Char was acting in person, and her intention to claim the benefits of s.1 of the LRMPS Law, which is headed "Relief from forfeiture", was really pretty clear. Nowhere, however, does the Seneschal consider Miss Char's application for relief from forfeiture; he considers only the matters which would be relevant to a suspension of an eviction order, under the Evictions Law.

73. I do not think it can be said that the Seneschal in fact did consider Miss Char's applications, but that, on the evidence before him, he effectively made a decision to refuse relief from forfeiture.

First, this is simply not what he did, and, in my judgment, if he had concluded that he could and should dismiss such an application in such a summary fashion, he would have said so. Second, his remarks quoted above about the matters which he though fit to take into consideration seem to me to demonstrate positively that he did not give any consideration to Miss Char's application for relief from forfeiture, even to dismiss it, because the matters which he says would not have much relevance to a stay of eviction would have relevance to the merits of an application for relief from forfeiture.

74. It also cannot be said that considering the merits of a claim for suspension of an eviction order is the equivalent of considering the merits of granting relief from forfeiture, because the results are simply not the same, nor are they equivalent. If Miss Char were to be granted relief from forfeiture, even if that were on extremely stringent terms as to her punctilious performance and observation of her tenant's covenants in the future, as the court might well think fit to impose, the effect is that Miss Char regains the right to occupy the property for the whole of the remaining term of the lease (now some 9 years) at the current ground rent (which is somewhat in excess of £1000 a year). That is a valuable asset, albeit it may not have the value, which Miss Char attributed to it, of a pro-rata attribution of the premium which she paid in March 2012 to the remainder of the term she then acquired, and which she has previously put, therefore, at about £82,500. Its value could still be significant, though, and it is that asset, albeit that it comes with the burden of observing the attached covenants, which Miss Char would lose if it were forfeited. She is entitled to ask the court to consider enabling her to keep her entitlement to that valuable asset, even if on whatever terms the court might think fit to protect her landlord from continued aggravation and damage caused by any behaviour of hers, in breach of covenant. That is not the same as being given a period (of weeks) before being required to move out.

75. Miss Char simply has not been given the opportunity to make out the case that she should be allowed that chance, and that relief, from total forfeiture. The merits of such a case on her behalf require the consideration of rather different matters from, simply, the relative positions of the parties and all the circumstances on the assumption that the underlying position is that the landlord (Mrs Snelling) is entitled to require Miss Char to move out, immediately, and the valuable asset has already been lost. In considering only a stay of the eviction order, the Seneschal only addressed this latter position.

76. Whilst I have come to the above conclusion, I nonetheless express my sympathy with the Seneschal as to the difficulties which I am sure he found in trying to work out what the effect of the paperwork in this case really was, and what issues he had to determine. He lamented that he did not have the assistance of Advocates, and this is quite understandable. In my judgment the omission to deal separately with Miss Char's expressed application for relief from forfeiture was an unfortunate mishap, and certainly, in all the circumstances, no great criticism of the Seneschal who otherwise handled what must have been a difficult case most effectively.

Conclusion

77. In my judgment, therefore, Miss Char's appeal succeeds as to the point that her application for relief from forfeiture has not been considered and requires to be considered and properly determined. That is not a decision which, as an appellate court, I can now make, exercising my own discretion. The discretionary judgment is that of the court below, and I could only substitute my own discretion if all the necessary materials to make the relevant decision were before me from the court proceedings below. However, they are not. As indicated, that determination requires a proper consideration and a discretionary decision on all relevant evidence, such as the value of the asset which would be forfeited, the consequences of such forfeiture, the seriousness of Miss Char's behaviour complained of and the likelihood that she will now, in fact abide properly by her tenancy obligations, the conditions for her obtaining relief which could of ought to be imposed or met, etc, etc, and evidence on these topics is not before this Court.

78. The proper order for me to make is therefore to dismiss Miss Char's Appeal with regard to her contention that the Lease has never been validly determined at all (ie to confirm that the Lease has been validly determined under s 1(3) of the LRMPS Law), but to allow her appeal as to her contention that her application for relief from forfeiture of the Lease has not been considered, determined and disposed of, and to remit that application back to the Seneschal of Sark for consideration and a reasoned decision - whatever that may be.

79. That consideration will necessarily take place in all the circumstances as they will apply before the Court of the Seneschal when that issue comes to be decided, necessarily including both the history and Miss Char's conduct as lessee in the interim. Since the original decision in May, the former Seneschal of Sark has retired, and a new Seneschal has been appointed and sworn in. As the decision which is required on Miss Char's application is a completely independent and self-contained decision, that will cause no problem. The procedure to be adopted for the determination of Miss Char's application for relief from forfeiture will also be a matter for the new Seneschal and her Court.

80. It follows, finally, that the question of any appeal against the terms of the Eviction Order made by the former Seneschal on 24th May 2021 does not arise, as that Order also falls away. If Miss Char is granted relief from forfeiture it will not do so; if she is refused relief from forfeiture, then any such question will have to be determined afresh. I therefore make no comments with regard to the order of 24th May 2021 which was, on any basis, an exercise by the Seneschal of his discretion.

Costs

81. That leaves only the question of costs. The parties have not been legally represented, and so I would expect the only costs to be court fees. Since Miss Char has been unsuccessful with regard to her contention as to the validity of the actual determination of the lease in law, and since the application of a tenant for relief from forfeiture in principle carries with it the obligation to meet the landlord's costs, I consider that the proper order would be that Miss Char should pay Mrs Snelling's costs of and incidental to the Appeal. However, if either party (although it is obviously more likely to be Miss Char) wishes to contend that a different order is appropriate, then they have liberty to apply to this court to vary that order, within 7 days of receipt of this judgment.

Hazel Marshall QC
Lieutenant Bailiff

Dated 20th August, 2021