

# THE HIGH COURT

[2023] IEHC 473

2023 No. 536P

BETWEEN

**ETHAFIL LIMITED (IN VOLUNTARY LIQUIDATION)**

**PLAINTIFF**

**AND**

**STEPHEN MULVANY**

**DEFENDANTS**

**JUDGMENT of Ms. Justice Eileen Roberts delivered on 28 July 2023**

## **Introduction and relevant background history**

1. This is an application by the owner of a registered property (through its liquidator) for interlocutory relief requiring an occupier of that property (who is alleged to have no entitlement to occupy it), to immediately vacate the property.
2. Ethafil Limited (In voluntary liquidation) (the “**Company**”) is the registered owner of the property in Folio 51988F, Co Dublin, which is known as Birmayne House, Mulhuddart, Co Dublin (the “**Property**”). The Company was registered as full owner of the Property on 25 February 2016. On that same date charges for present and future advances repayable with interest were registered in favour of Independent Trustee Company Ltd (“**ITC**”), who provided finance to the Company to purchase the Property.

3. The Property comprises two parts, Lot 1 and Lot 2. Lot 2 is the subject of these proceedings. The Property is the Company's principal asset. The Property was previously owned by Pierse Contracting Ltd ("**Pierse**") which went into receivership and liquidation following its collapse in 2010.
4. By lease dated 15 May 2012, Pierse, by its receiver, demised part of the Property ("**Lot 2**") to Express Bus Ltd ("**EBL**") for a term of three years from that date at an annual rent of €35,000. A deed of renunciation was executed by EBL on that same date.
5. On 19 February 2015, EBL signed a contract to buy the Property from Pierse for €1,005,990. Mr Jon Griffin assisted in funding the purchase of the Property. Mr Griffin is now a director and shareholder of the Company.
6. When the contract for sale was signed by EBL in February 2015, Kathleen Martin was a director of both the Company and EBL. Her son is Alan Martin, who is referred to later in this judgment. The Company was a subsidiary of EBL at that time.
7. The Company, EBL, and Mr Griffin entered into an agreement dated 11 November 2015 (the "**2015 Agreement**") pursuant to which Mr Griffin agreed to procure the advance to the Company of a loan for the balance of the consideration payable to Pierse to purchase the Property. In return, EBL and Kathleen Martin agreed to procure the transfer to Mr Griffin of the entire issued share capital in the Company. EBL was to be granted a new lease of Lot 2 by the Company.
8. The Company completed the purchase of the Property on 18 December 2015 at which stage the ITC deed of charge was executed and the new lease to EBL commenced.
9. On 24 December 2015 Kathleen Martin resigned as director of the Company and was replaced by Mr Griffin.

10. There were other terms contained in the 2015 Agreement including an Option for EBL to later purchase the Property, but it is not necessary to address these terms for the purposes of the present proceedings. Suffice to say that following litigation and the delivery of two judgments by Mr Justice Allen on 14 May 2021 and 29 October 2021, it was determined by the High Court that EBL was not in lawful occupation of the Property at the time of those judgments. Ultimately a settlement was reached on foot of which EBL agreed to vacate the Property.
11. The present proceedings are closely linked to a series of similar and/or related proceedings brought by the Company against other parties, but this judgment deals solely with the position of the defendant, Stephen Mulvany. Mr Mulvany is in occupation of part of Lot 2. He says he is lawfully in occupation. The Company says he has no entitlement to remain on the Property and seeks an interlocutory injunction compelling him to vacate the Property.

### **The parties and the background to this dispute**

12. The Company's application is grounded on an affidavit of Myles Kirby (the "**Liquidator**"), who was appointed liquidator of the Company at a meeting of its creditors held on 19 June 2019. The Company is insolvent with significant sums owing to creditors.
13. The affidavit sworn by the Liquidator on 8 February 2023 confirms that he entered into a settlement agreement with the EBL on 13 October 2022 (the "**Settlement Agreement**") pursuant to which EBL agreed to deliver up clear and vacant possession of the Property to the Company by 31 January 2023. It is averred at para 6 that when the Liquidator's representatives arrived at the Property on 1 February 2023, the defendant Mr Mulvany was discovered to be in occupation of part of Lot 2. He claimed

to be lawfully in possession and he prevented the Liquidator from recovering possession of the Property. At no time prior to the Settlement Agreement, or during the litigation leading up to it, did EBL disclose the existence of Mr Mulvany, although EBL did, on the eve of signing the Settlement Agreement, disclose the existence of other named parties as being in occupation of Lot 2. Indeed, although EBL vacated the property on 31 January 2023, no mention was made in their correspondence of that date of Mr Mulvany's occupation of the Property (para 24 and tab 9 of the Liquidator's affidavit). Accordingly, the Liquidator's evidence is that the first time he became aware of Mr Mulvany's presence on the Property was on 1 February 2023.

14. Mr Mulvany sent an email on 1 February 2023 (exhibited at Tab 15 to the Liquidator's affidavit) addressed "*To whom it may concern*" in which he confirmed as follows: –

*"I have only recently come aware of the situation between you and the Express Bus. I was very surprised when Express Bus gave me notice to leave Birmayne House. I have operated and do operate my business from here. I have no intention of leaving and have hired Celtic Security Solutions to secure and protect my interests here until the matter is resolved. If you have any questions please contact my solicitor..."*

15. The Liquidator instructed his solicitors to immediately write to Mr Mulvany's solicitors and correspondence was sent to them on 2 February 2023. That letter is exhibited at Tab 10 to the Liquidator's affidavit. It confirmed that Mr Mulvany was not identified in the Settlement Agreement as being one of the parties in occupation of the Property and that he had prevented the Liquidator from taking possession of the Property. It was alleged that Mr Mulvany had no lawful entitlement to occupy the Property and confirmation was sought that he would immediately vacate the Property, failing which

an application would be made for injunctive relief restraining Mr Mulvany from interfering with the Liquidator's right to take possession of and sell the Property.

16. An email was received from Mr Mulvany's solicitor on 3 February 2023 (exhibited at Tab 11) in which he confirmed that he was seeking a consultation with Mr Mulvany over the weekend. The email continued in the following terms: –

*“In interim, it is most unusual of your knowledge of the tenants on the site for such a protracted time, as my client has been a tenant since in or around 2017, with a leasehold with your client Myles Kirby. He has been running a mechanic workshop with an extensive bus repair service for various different companies. Your client clearly did consent to the occupation of my client and has been accepting rent on a monthly basis to date. On that basis, please advise who he should direct the rent to until the matter is resolved”.*

17. At para 31 of his affidavit dealing with that email from Mr Mulvany's solicitor the Liquidator notes as follows:

*“This claim is entirely false. I was not aware of Mr Mulvany's presence on the site prior to 01 February 2023. I certainly did not consent to his occupation, nor enter any letting agreement with him. He has produced no documentation vouching in any way, his claim to an interest in the Premises. Further, I was not appointed as liquidator of the Company until 19 June 2019”.*

18. Correspondence was also sent by the Company's solicitors to EBL's solicitors requesting an explanation as to how Mr Mulvany came to be in occupation of the Property, and why his occupation had not been disclosed by EBL. By letter dated 8 February 2023 (exhibited at Tab 14 of the Liquidator's affidavit) EBL's solicitors

stated that “[W]e are assured by our client that Mr Mulvaney (sic) does not hold any title from our client”.

19. Affidavits have been sworn by the Liquidator’s representative Mr Aidan Devlin, who attended the Property on 8 and 28 February 2023, setting out details of his engagement with Mr Mulvany. Mr Devlin confirms that he attended the Property at approximately 6:45 am on 1 February 2023 for the purposes of securing possession of the Property. The main entry gate was padlocked and closed. The rear entry gate is controlled by a Sim card/keypad controlled electronic sliding gate. Mr Devlin observed a large number of coaches, buses and other vehicles parked in the yard in various states of repair. At approximately 8 am, two men approached Mr Devlin and his colleagues. A man, he now knows to be Mr Mulvany, was one of them. Mr Devlin avers at para 8 of his first affidavit that

*“Mr Mulvany claimed to be operating his business from the site. Mr Mulvany advised that Alan Martin only told him (Mr Mulvany) that he was leaving the site last Friday, January 27<sup>th</sup>. Mr Mulvany said his company was Bus Tec. He claimed that he had been in situ for 6 years.”*

20. At 8:45 am, representatives arrived from a private security company confirming they had been instructed by Mr Mulvany and “*nobody was getting access*”. The email referred to above was handed to Mr Devlin at 9:15 am. Mr Mulvany permitted Mr Devlin to inspect the site to determine the level of activity on it. Mr Devlin outlines in his affidavit that there were a number of vehicles and scaffolding on the Property. Mr Mulvany advised that there were other companies who had offices on the Property. Mr Mulvany said he would not allow access for the Liquidator’s agents to the Property and that “*he was protecting his interests*” (para 17). In a later affidavit sworn by Mr Devlin on 28 February 2023, he appears to have been allowed to inspect the Property on 15

February 2023 at which point there were a large number of vehicles on the Property.

The Liquidator does not have control of the Property, and this remained the position at the hearing of this application.

21. On 9 February 2023 the Company was given liberty to serve short notice of motion for an interlocutory injunction application.

22. In his affidavit sworn 22 February 2023 in response to that interlocutory injunction application Mr Mulvany makes the following material averments in relation to his occupation of the Property:

- He has occupied one of the sheds and some yard space in Lot 2 “*since 2015*” where he services, repairs and parks his clients’ buses. In addition he operates a 24-hour rescue service from the site (para 4);
- “*In or around 2013*” he began to occupy a small part of the Property being 5 parking spaces, with the use of the workshop in the evenings and weekends on an *ad hoc* casual basis working for himself, parking and repairing buses. At that time he paid €300 per month. He understood EBL “*to be owned and managed by Alan Martin*” (para 5). The court notes that this averment does not confirm to whom the €300 per month was paid. At that time EBL had a three-year lease over Lot 2 which they had obtained from Pierse on 15 May 2012.;
- “*In 2015*” Alan Martin approached Mr Mulvany and told him that EBL was in the process of purchasing the Property. Mr Mulvany asked Mr Martin would Mr Martin lease him some of the area then occupied by EBL (para 6);
- Mr Mulvany “*signed a lease on the 21st December 2015 for 25 years at a rent of €10,000 per annum. Alan Martin represented himself as the principle (sic) in the company who granted me the lease and I had no reason to doubt him. At all times he asked me to pay the rent directly to him, to whom I did...At the offset he*

*requested a deposit payment of €1000, of which I paid directly to him.”* (para 7). A copy handwritten note dated 21 December 2015 is exhibited as exhibit SM1. It says *“Received €1000 deposit for Stephen Mulvany lease”* and appears to be signed by Mr Mulvany and Alan Martin. Somewhat remarkably however, the lease itself is not exhibited, and indeed this remained the position right through the hearing of this application. The date of 21 December 2015 falls between the date of the purchase of the Property by the Company (on 18 December 2015) and the resignation of Kathleen Martin as a director of the Company (on 24 December 2015). The court notes that this description of who Mr Mulvany paid rent to contradicts the correspondence from his solicitor dated 3 February 2023 which alleged a lease and rental payments to the Liquidator.

- *“In or around 2016, even though I had a lease with Ethafil, my own business was only providing a small income, so I sought additional work with Express Bus Ltd as an additional source of income”* (para 8);
- In 2017 Mr Mulvany in partnership with his business partner opened a second site close to Dublin airport (para 9). In 2019 their business (Bus Tec) was registered with an address at the Property (para 10);
- Mr Mulvany says that *“in the section I occupy, I have a number of high-end buses and coaches, in addition to the parking area, have a lock-up workshop with valuable tools, machines and hoists for the business”* (para 12). He says he currently has five people working full-time (para 11).
- Mr Mulvany says he is a stranger to the litigation between the Company and EBL but that *“at all material times during this litigation, Bus Tec was in occupation as a bona fide tenant of Ethafil Ltd...At no time during the lengthy litigation did Myles Kirby or Trinity Asset Management approach me or any member of Bus Tec, or*



*indeed make enquiries regarding my occupation, who I was paying rent to under what terms I had acquired the occupancy”* (para 13). This of course accords with the Liquidator’s evidence that he was unaware of Mr Mulvany’s presence on the Property until 1 February 2023. Mr Mulvany is critical of the Liquidator’s failure to make enquiries (para 14 and 16).

- Mr Mulvany then states (at para 17) that “*..irrespective of the lease granted to me, I have been in business at Birmayne House since in or around 2013 and more specifically in this shed and parking lots in lot 2 since 2015 and in the alternative I have acquired the right to a long-term lease, and the fact that the Plaintiffs acquiesced over this extended period of time irrespective of the reasons should not distinguish (sic) such right”*.
- He says that following the signing of the lease he paid Alan Martin rent of €2500 quarterly with an additional €50 for waste oil collection charge (para 18). While evidence of this is said to be exhibited at SM4, in fact it appears to be exhibit SM3 to Mr Mulvany’s affidavit. This exhibit consists of copy receipts with a date and each noting a payment of €2500 received from Stephen Mulvany. The receipts do not specify what the payments relate to. There is no evidence furnished for any date prior to June 2017 (although the lease was apparently signed in December 2015). There are copy receipts for four quarterly payments exhibited for 2019, 2021 and 2022. There is only one receipt exhibited for 2020. All of these payments appear to have been made to Alan Martin who signed for them. The receipts are not issued on headed paper. All payments appear to have been made in cash. Mr Mulvany says that rates and insurance, cleaning and bins were included in the rental amount, which contradicts his earlier statement on an additional waste oil collection charge.

- Mr Mulvany avers at para 19 of his affidavit that Alan Martin advised him and his father in December 2015 that he (Alan Martin) had purchased the Property and had drafted a lease for signing. Mr Mulvany says that on 21 December 2015 his father collected the lease and paid Alan Martin his requested deposit of €1000. Mr Mulvany then says *“I subsequently signed the lease and returned it to Alan Martin. I have remained in constant occupation since”*. He confirms that the workshop is 500m<sup>2</sup> and 50 parking spaces are available in the yard.
  - Mr Mulvany says he is a stranger to the ITC debenture and any restrictions for the Company on leasing the Property. He says he is also a stranger to the 2015 Agreement. He does not deny that the lease was not stamped but says (at para 23) that *“ I am seeking relief in circumstances I (sic) have been in occupation for a considerable time, continuing in business and paying rent to a person who represented himself as being a representative of the Plaintiff”*.
  - Mr Mulvany does not dispute the evidence given by Mr Devlin regarding Mr Mulvany restricting access to the Property.
- 23.** In his second affidavit sworn on 28 February 2023, the Liquidator rejects any criticism of a lack of due diligence on his part. He says there has been a deliberate campaign by EBL and Alan Martin to conceal any other occupants on the Property from the Liquidator and to frustrate the Liquidator recovering vacant possession for the purposes of completing the sale and the liquidation. The Liquidator denies that he has acquiesced in Mr Mulvany’s occupation of the Property, confirming that he commenced injunctive proceedings one week after he became aware of Mr Mulvany’s presence on the Property. The Liquidator says he has never consented to Mr Mulvany being on the Property, he does not accept Mr Mulvany’s assertions as to occupation, and has never been offered or accepted any rent from Mr Mulvany. He says that he was never

contacted by Mr Mulvany at any time since his appointment on 18 June 2019, even when advertisements were placed on the Property showing it was on the market for sale by the Liquidator until 16 March 2022.

24. Mr Griffin confirms in his affidavit sworn 28 February 2023 that he is the sole shareholder and a director of the Company and that at no time did he ever consent (whether written or otherwise) for the Company to lease the Property to Mr Mulvany. He avers that he was never advised of the existence of a purported lease or Mr Mulvany's occupation of the Property.
25. A similar affidavit of "non-consent" was sworn by Ms Fiona Conroy on 5 April 2023 on behalf of ITC.
26. In his second affidavit sworn 21 April 2023 Mr Mulvany avers that "*at all times I acted in good faith in attaining the said lease and adhering to the conditions therein, and in the alternative I have been in paying monthly occupation three years*" (para 3). He says it was not for him to approach the Liquidator or to defend his position until his position was threatened by sale or otherwise (para 4). He says that the lease gave him security for his business and that he acted on the confirmation by Alan Martin that the Company had purchased the Property prior to signing the lease. This affidavit does not however exhibit the lease. This remained the position even though the Liquidator specifically averred to this omission in his previous affidavit. Mr Mulvany repeats his criticism stating it was "*inconceivable*" that the Liquidator could not gain access to the Property to see who was in occupation bearing in mind that his sales agents, JLL, visited the site.

### **Submissions of the parties**

27. The Company says that Mr Mulvany is trespassing on the Property. It says the Liquidator did not grant Mr Mulvany any permission to be on the Property nor has the

Liquidator received any rent from Mr Mulvany. They argue that any entitlement which Mr Mulvany may have derived from EBL would have expired with the relinquishing by it of any rights to the Property and its commitment to deliver up vacant possession to the Company by 31 January 2023. Furthermore, they argue that in circumstances where the High Court found that EBL was not in lawful occupation of the Property at the date of those judgments, Mr Mulvany, who appears to have been permitted to occupy part of the Property by EBL, must similarly be in unlawful occupation of the Property. The Company says that Mr Mulvany has no credible or stateable basis to remain in occupation and that the Company, as landowner, must be entitled as of right to injunctive relief to restrain his continued trespass.

- 28.** The Company says that the actions of Mr Mulvany in preventing the Liquidator's agents from accessing any part of the Property (and not simply the area occupied by Mr Mulvany) is an even more egregious interference with the Company's rights as the lawful owner of the Property.
- 29.** Considerable emphasis was placed by counsel for the Company on the fact that Mr Mulvany has never exhibited the purported lease on foot of which he says he occupies the Property. While it would appear that a copy of this document may have been exchanged between the respective solicitors at some point, for some reason unknown to this court, Mr Mulvany has never exhibited the lease on which he is relying. I address that issue later in this judgment. The Company says that Mr Mulvany cannot rely on a lease he does not exhibit. Furthermore, they say that even if he could so rely, that lease was never stamped and cannot be produced and relied on in court for that reason. They also say that the purported lease appears to be void for uncertainty as the area demised was not adequately defined and there was no map attached. The purported lease does not appear to have been executed at all by Mr Stephen Mulvany but rather by a "P.

Mulvany” and references to Mr Mulvany’s name are incorrectly spelt as “Mulvaney” including in the signature block.

- 30.** Counsel for the Company highlighted the negative pledge clause in the ITC debenture created on 18 December 2015 (three days prior to the date of the purported lease). He also referred to the terms of the 2015 Agreement whereby the Company undertook not to sell, lease or dispose of any assets or the Property without the prior written consent of Mr Jon Griffin. Mr Griffin has confirmed on affidavit that he did not consent to the occupation of the Property or any part of it by Mr Mulvany and indeed was entirely unaware of Mr Mulvany’s occupation of the Property prior to 1 February 2023.
- 31.** Counsel for the Company also argued that there was a complete lack of reality to the terms of the purported lease. He says that the court is being asked to believe that some three days after completing the purchase of the Property, the Company (having previously agreed to grant a lease of Lot 2 of the Property to EBL) then entered into a lease with Mr Mulvany of part of Lot 2 pursuant to a document which was clearly prepared and executed without any input from its solicitors, in breach of its obligations under the ITC debenture and the 2015 Agreement and through Alan Martin, who had no authority to bind the Company. Furthermore, it is argued that the terms are so uncommercial as to be simply not credible – a 25-year commercial lease with no provision for a rent review and no service charge. No lease has been registered for Mr Mulvany as a burden on the folio for the Property.
- 32.** The Company also highlights that any purported lease is fundamentally void as it appears to have been signed by Alan Martin, on behalf of the Company. The evidence in these proceedings is that Mr Martin was not at any time a director or officer of the Company and had no authority whatsoever to execute any documentation on behalf of

the Company or to bind the Company to any agreement, let alone a lease for a term of 25 years.

33. Counsel for the plaintiff relied on the comments of Laffoy J in *Pasture Properties v Evans* [1999] IEHC 214 where she stated that it is “*axiomatic in trespass cases that damages are not an adequate remedy*”. He also relies on *Patterson v Murphy* [1978] ILRM 85 where Costello J held that a landowner will only be “*deprived of an Injunction in very exceptional circumstances*”.
34. Counsel for Mr Mulvany submits that Mr Mulvany’s occupation has always been one of a bona fide nature and that if this occupation is deemed to be on a non-formal basis, it is one of a long-term business occupation, and in that way creates the right to a long-term occupancy.
35. Counsel’s submissions purported to put before the court a description of leases held by various parties, including Mr Mulvany. However, there is no lease before the court and counsel cannot give evidence to counteract that evidential difficulty. Counsel stated that Mr Mulvany has carried on business in the Property since in around 2013 and that his business is of a high visual impact on the site. He says it is wholly implausible that the Liquidator was unaware of this occupancy. He says in submissions that Mr Mulvany has continued to pay monthly rent to “*the plaintiff’s agent, Alan Martin*”. However, there is no evidence provided to establish that Mr Alan Martin is an agent of the plaintiff. The evidence before the court shows clearly that Mr Martin is neither a director nor officer of the Company nor was he ever at any point such a director or officer.
36. Counsel for Mr Mulvany argues that this court must, in the interests of justice, look behind the settlement reached between the Company and EBL before it can make a

decision on the occupancy of Mr Mulvany as Mr Mulvany was not considered in this settlement, although a lease was in place and a long-term occupancy was in existence. He argues that there has not been sufficient testing of the affidavit evidence and he referred to the decision in *R.A.S. Medical Limited v The Royal College of Surgeons in Ireland* [2019] IESC 4, [2019] 1 IR 63 where the Supreme Court held that the onus is on the party wishing to urge the court not to accept affidavit evidence, to ask the court to take measures such as granting leave to cross examine, so that the credibility or reliability of the evidence can be tested as to its accuracy.

37. Counsel for Mr Mulvany submits that Mr Mulvany could easily transfer rental payments directly to the Liquidator's account. He submits the damages would not adequately compensate Mr Mulvany for the disruption to his business. He says the location of the business is of paramount importance, as is the continuance of it. Any disruption or loss to his service and business would be detrimental to his livelihood.

#### **Analysis and the decision of this court**

38. It is accepted by the Liquidator in this case that although the relief framed is to restrain trespass, he is in essence seeking a mandatory order requiring Mr Mulvany to vacate the Property. Therefore, the Liquidator must meet the higher threshold of a strong case that is likely to succeed at the trial. The Company is the registered freehold owner of the Property.
39. In *Keating & Co. Ltd v The Jervis Street Shopping Centre Ltd* [1997] 1 IR 512, Keane J stated at p. 518 that a landowner was prima facie entitled to an injunction to restrain trespass:

*“It is clear that a landowner, whose title is not an issue, is prima facie entitled to an injunction to restrain trespass and that this is also the case where the claim is*

*for an interlocutory injunction only. However, that principle is subject to the following qualification explained by, Balcombe LJ in the English Court of Appeal in Patel v W.H. Smith (Eziot) Limited [1987] 1 W.L.R. 853 at p. 859: –*

*“ However the defendant may put in evidence to seek to establish that he has a right to do what would otherwise be a trespass. Then the court must consider the application of the principle set out in American Cyanamide Company v Ethicon Ltd [1975] AC 396 in relation to the grant or refusal of an interlocutory injunction”.*

- 40.** The essential question for the court in this case is whether Mr Mulvany has put forward evidence to establish that he has or at least arguably has a right to do what would otherwise be a trespass. If he has not done so, the Liquidator is entitled to the interlocutory order which he seeks. If Mr Mulvany has put forward such evidence, and only in that event, this court should then proceed to consider the balance of convenience and the balance of justice. Mr Mulvany has advanced two alternative arguments. Firstly, that he has a valid 25-year lease to remain in occupation. Alternatively, he argues that he has been in occupation of the Property for in excess of five years and thus is entitled to remain there having acquired rights to do so. These alternative positions adopted by Mr Mulvany are inconsistent. It is most unusual that a party who genuinely believes he has a valid 25-year lease would not simply rely on that lease given that it would be the best evidence of his entitlement to remain in occupation. If Mr Mulvany had produced a lease and sought to rely on it, he would clearly have raised an issue regarding the validity of his occupation. However, this is not what has happened in this case. While Mr Mulvany and his solicitors have referred to a “lease” in correspondence and while it appears a document has been exchanged between solicitors, no lease has ever been exhibited by Mr Mulvany with the result that



there is no evidence of any such lease before the court. While there were arguments made regarding the inadmissibility of a lease which is unstamped or other arguments regarding the fact that Alan Martin had no lawful authority to negotiate leases on behalf of the Company (and thus there has been no compliance with s. 4 of Deasy's Act 1860), I do not have any basis to consider these arguments in circumstances where there is simply no lease before the court.

41. I also believe that Mr Mulvany's argument that he is entitled in some way to a "renewal" of tenancy rights because he has remained in the Property for a period of years, is misconceived. Section 16 of the Landlord and Tenant (Amendment) Act 1980 states that a tenant "*shall be entitled to a new tenancy in the tenement beginning on the termination of his previous tenancy*". Section 5 of that Act defines what is meant by a "*tenement*". It includes a requirement that the premises in question "*are held by the occupier thereof under a lease or other contract of tenancy express or implied or arising by statute*". The existence of a tenancy, and its termination, are necessary prerequisites to any renewal of the tenancy. In the present case the only evidence proffered of a tenancy is a purported lease which has not been put before the court, and where there is no suggestion it has ever been terminated by the Company. If Mr Mulvany does not have a valid lease or has not occupied the Property under any other tenancy with the consent of the owner (and the evidence of both the Liquidator and Mr Griffin is that they never consented to his occupation on behalf of the Company) then Mr Mulvany has not provided a basis which would entitle him to acquire any renewal rights. He does not acquire those rights simply by virtue of his occupation or trading.
42. I do not believe in all the circumstances that Mr Mulvany has established a fair issue regarding the validity of his occupation, such as would override the clear entitlement of the Company to possession of the Property as the lawful registered owner. Mr Mulvany

has, for reasons unknown to this court, failed or refused to exhibit his purported lease. It is clear from the decision of the Supreme Court in *RAS Medical Limited* that the mere fact that a document is exhibited in an affidavit does not, in and of itself, turn that document into admissible evidence. However, when there is no document at all exhibited to a court, there is simply no evidence on which the court can proceed referable to that alleged document. Mr Mulvany has never communicated with the Liquidator or offered to pay rent to him. Indeed, he did not even make his presence on the Property known until the Liquidator sought to re-enter on foot of the Settlement Agreement with EBL, who previously held a lease over the entire of Lot 2. This appears, from his affidavits, to have been a deliberate tactic on his part. While I accept that Mr Mulvany may have been in occupation of the Property for some time, this occupation alone would not entitle him to any renewal rights in the absence of some tenancy arrangement which had been terminated following the required period of continuous business user. There is no such evidence before the court.

43. In circumstances where I find that Mr Mulvany has simply not produced sufficient prima facie evidence of his entitlement to occupy the Property, I believe that the Company is entitled to the injunctive relief sought.
44. I believe that should Mr Mulvany succeed at the trial of this action, he could be compensated by an award of damages in respect of any disruption to his business consequent upon having to vacate the Property.
45. The decision of this Court therefore is to grant the interlocutory injunction sought by the plaintiff and to make an order in the terms of paras 1 and 2 of the Notice of Motion. I propose to put a stay on the enforcement of this order until 1 November 2023 in order to facilitate Mr Mulvany leaving the Property.

46. I will not make an order in the terms of paras 3 and/or 4 of the notice of motion. These reliefs were not pursued at the hearing. This matter should proceed to trial in the ordinary way and Mr Mulvany will have an opportunity to adduce evidence of his entitlement to occupy the Property including on foot of his alleged lease, which he failed to exhibit on affidavit in this application. He will also be able to supplement his evidence to advance his arguments in relation to any renewal rights he believes have accrued in his favour.
47. As to costs, my provisional view is that the defendant, having been entirely unsuccessful in resisting the application for interlocutory relief, should be responsible for payment of the plaintiff's legal costs, same to be adjudicated in default of agreement. As the reliefs sought at para 3 and 4 were not pursued at the hearing they did add anything further to the time taken to hear this matter. If the defendant wishes to contend for a different form of costs order, he should file short written legal submissions by 3 October 2023. The plaintiff will have one week to reply (by 10 October 2023). If the defendant does not file submissions, this provisional costs order will become final. In the event that submissions on costs are filed by the parties, I will list this matter for mention at a date to be advised in order to deal with those submissions.