LANDS TRIBUNAL FOR NORTHERN IRELAND

LANDS TRIBUNAL AND COMPENSATION ACT (NORTHERN IRELAND) 1964

LANDS TRIBUNAL RULES (NORTHERN IRELAND) 1976

BUSINESS TENANCIES (NORTHERN IRELAND) ORDER 1996

IN THE MATTER OF AN APPLICATION

BT/136/2022

BETWEEN

COOKSTOWN AND DISTRICT MOTOR CYCLE CLUB – 1ST APPLICANT

SIDNEY BELL, MABEL BELL, ALBERT WARWICK & KENNETH LOUGHRIN – 2ND APPLICANTS

AND

JONATHAN HENRY JAMES PORTER – RESPONDENT

Re: Desertmartin Motorcoss Track, Rectory Road, Tullyroan, Desertmartin, Co Londonderry

Lands Tribunal – Henry Spence MRICS Dip Rating IRRV (Hons)

Introduction

1. Cookstown and District Motor Cycle Club ("the 1st applicant") is a private limited company, limited by guarantee.

2. Sidney Bell, Mabel Bell, Albert Warwick & Kenneth Loughrin ("the 2nd applicants") were, at the relevant dates in 1991 and in 2000, directors of the 1st applicant.

3. The applicants' lease a property known locally as Porter's Pit, Rectory Road, Desertmartin ("the premises") and the landlord is Jonathan Henry James Porter ("the respondent").

4. The applicants have submitted a tenancy application seeking the grant of a new lease for the premises. The respondent opposes that application.

Issues to be Determined by the Tribunal

5. The particular matter at issue is the identity of the "proper tenant" under the terms of the lease and their ability to make and pursue a tenancy application.

6. In an agreed Statement of Issues filed by the parties, the Tribunal has been requested to determine the following six issues:

    (i) Whether on the true construction of the lease and in the circumstances of the case the tenant is the 1st applicant?

    (ii) Whether on the true construction of the lease and in the circumstances of the case the tenants are the 2nd applicants as trustees for the 1st applicant?

    (iii) Whether the lease ought to be rectified to substitute the 1st applicant as tenant in place of the 2nd applicants?

    (iv) If the answer to (ii) is in the affirmative, whether the interest of Noel Anderson in the lease has passed by survivorship to the 2nd applicants?

    (v) Which entities or parties are in occupation of the premises demised by the lease?

    (vi) Whether, in light of the answers to issues (i)-(v) above, the applicants or any of them have made a valid tenancy application?

Procedural Matters

7. The applicants were represented by Mr William Gowdy KC assisted by Robert McCausland BL and instructed by Cleaver Fulton Rankin solicitors. Mr Douglas Stevenson BL instructed by Kearney Sefton solicitors represented the respondent. The Tribunal is grateful to counsel for their detailed and helpful submissions.

8. The Tribunal also received evidence from:

   (i) Ms Marlene Sykes, director of the 1st applicant.

   (ii) Mr Robert Loughrin, one of the 2nd applicants.

   (iii) Mr William McKeown, director of the 1st applicant.

   (iv) Mr Frank Porter Senior, father of the respondent.

   (v) Mr John Porter, the respondent.

9. The Tribunal is grateful to all of the participants for their helpful submissions.

Background Facts

10. The reference property is held in folios LY98296, 12386, 12412 County Londonderry.

11. On 1st October 1991 Mr Porter granted a lease of the reference property ("the lease") to the 2nd applicants and to a Mr Jim Miller (since deceased). The lease demised the premises for a term of 10 years from 1st June 1991 in return for the payment of a total sum of £10,000, payable in two instalments, one on the execution of the lease and one on 1st June 1992.

12. On 2nd March 2000 Mr Porter granted a further lease ("the renewal lease"). The renewal lease is expressed to be made between Frank Porter of the one part and the 2nd applicants and Jim Miller of the other part but is executed by the 2nd applicants and Noel Anderson (since deceased). The renewal lease refers to the lease and extends the term to one of 22 years from 1st June 1999, for a total payment, described as rent, of £60,000, of which £30,000 had already been paid, with the remainder to be paid in four equal instalments of £7,500 on 1st September 2000 and on the 1st September for the following 3 years.

13. The renewal lease demised the reference property on the same terms as the lease, save for the length of term and rent and subject to some additional covenants.

14. On 1st June 2011 the respondent became the registered owner of the land in folio LY98296. On 15th November 2012 the respondent became the registered owner of the land in folios 12386 and 12412 County Londonderry. He thereby became the landlord under the renewal lease.

15. On 7th March 2022 the respondent served a Landlord's Notice to Determine on the 2nd applicants and on the widow of Mr Noel Aderson, under Article 6 of the Business Tenancies (Northern Ireland) Order 1996 ("the 1996 Order"). The Notice to Determine opposed the grant of a new tenancy under grounds as set out in Articles 12(1)(a) and 12(1)(c) of the 1996 Order.

16. On 28th September 2022 the 1st applicant lodged a tenancy application.

17. The respondent contended that the 1st applicant was not the tenant under the renewal lease and thus could not validly make a tenancy application.

18. The 2nd applicants subsequently applied to be joined to the tenancy application. The Tribunal hereby approves the joining of the 2nd applicants to the tenancy application.

The Statute

19. Article 6 of the 1996 Order provides:

> "Termination of tenancy by the landlord
>
> 6.-(1) Subject to Article 11, the landlord may terminate a tenancy to which this Order applies by a notice to determine served on the tenant in the prescribed

form specifying the date at which the tenancy is to come to an end (in this Order referred to as the 'date of termination')."

20. And Article 7:

"Request by tenant for a new tenancy

7.-(1) A tenant may, subject to and in accordance with this Article, make a request for a new tenancy where the current tenancy is –

(a) a tenancy granted for a term certain exceeding 9 months, whether or not continued by Article 5, or

(b) …

(c) …

(d) …"

21. And Article 12:

"Opposition by a landlord to a new tenancy

12.-(1) The grounds on which a landlord may make a tenancy application, or may oppose a tenancy application by the tenant, are such of the following grounds as may be stated in the landlords notice to determine in Article 6, or as the case may be, in the landlords notice under Article 7(6)(b), that is to say –

(a) where under the current tenancy the tenant has any obligations as respects the repair and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with those obligations.

(b) …

(c) that the tenant ought not to be granted a new tenancy in view of other substantial breaches by him or his obligations under the current tenancy, or

for any other reason connected with the tenant's use or management of the holding.

(d) …

(e) …

(f) …

(g) …

(h) …

(i) …"

Authorities

22. The Tribunal was referred to the following authorities:

- Jacobs v Chaudhuri [1968] 2 QB 470
- Nittan v Solent Fabrications [1981] Lloyds Report 633
- Dumford Trading v Oao Atlantrybflot [2004] EWAC 1099
- Gastronome UK v Anglo Dutch Meats [2006] EWCA 1233
- Liberty Mercian Limited v Cuddy Civil Engineering Limited and Cuddy Demolition and Dismantling Limited [2013] EWHC 2688
- FSHC Group Holdings Limited v GLAS Trust Corporation Limited [2019] EWCA Civ 1361 at [75]-[87]

23. And to the following texts:

- Chitty on Contracts 16-065
- Reynolds & Clarke at para 6-027 and 6-028
- Snells Equity paras 16-013 to 16-017 and 16-022

- Wylie - Irish Land Law 3rd edition – para 9.022

The Law

Mr Gowdy KC submitted:

24. There is little dispute about the legal principles applicable on these issues. The debate between the parties relates to the application of these principles to the facts in the subject reference.

25. The Tribunal's attention is drawn in particular to Liberty Mercian Limited v Cuddy Civil Engineering Limited and another [2013] EWHC 2688 (TCC), [2014] All ER (Com) 261 which contains a useful summary of the relevant principles as applied in the context of a mistake as to the name of the party.

26. As summarised in Liberty Mercian a court may correct a mistake as to the description of a party by construction where, when the contract is considered in light of its background and context, it is clear that a mistake was made and that it is clear what correction ought to be made.

27. The principles applying to rectification are summarised in FSHC Group Holdings Limited v GLAS Trust Corporation Limited [2019] EWCA Civ 1361, [2020] Ch 365. Rectification applies where the parties to a written instrument had, at the time of execution, a common intention in respect of a particular matter, which, by mistake, the document did not accurately record.

28. The Tribunal will note the rationale for the rectification remedy as expressed by the Court of Appeal in FHSC at [55]:

> "It is contrary to good faith for a party to take advantage of a mistake made in drawing up a written contract by seeking to apply the contract inconsistently with

what that party knew to be the common intention of the parties when the document was executed."

Mr Stevenson BL submitted:

29. The case law relating to misnomer has identified two principles:

    (i) there must be a clear mistake on the face of the instrument when the document is read by reference to its background or context; and

    (ii) it must be clear what correction ought to have been made to cure the mistake.

30. Further, the mistake must be such that everyone must have known what was actually intended. It is not enough for one party to say I intended to refer to X and not to Y, both parties must have intended to refer to X and not to Y.

31. The court does not lightly find that there has been a misnomer. A synopsis of the cases relating to misnomer demonstrate how reluctant a court is to find a misnomer. In particular, the leading authority of Liberty Mercian makes this very clear indeed.

The Evidence

Mr Gowdy KC

(i) Oral Evidence

32. The applicants called evidence from Marlene Sykes, a director and company secretary of the 1st applicant. Kenneth Loughrin, the second applicant and a former director of the 1st applicant, and William McKeown, a director of the 1st applicant.

33. The respondent called Frank Porter, the respondent's father and lessor of the 1991 lease and renewal lease and the respondent gave evidence himself.

Marlene Sykes

34. Marlene Sykes provided various documents from the books and records of the 1st applicant. In addition, she confirmed that she was not aware of any other motorcycle or motorcross club operating in the Cookstown area, other than the 1st applicant and Cookstown and District Motor Cycle Club (Road Racing) Limited, which was incorporated on 20th September 2002 as a result of the demerger of the Road Racing and Motorcross sections from the 1st applicant. She confirmed that in her 20 years involvement in the 1st applicant, that it had operated as an incorporated club, and had not operated as an unincorporated club.

35. She was not involved in the 1st applicant at the time of either the 1991 lease or the renewal lease, so could not give evidence as to the generis of those documents. The respondent's criticism of Ms Sykes for keeping a "party line" when asked questions about the wording and construction of the lease and renewal lease is unfair. She is a lay witness, who was not involved in drafting either document. The questions of interpretation and meaning of those documents are properly questions of law for the Tribunal, not something on which a witness of fact can properly comment as a matter of evidence.

36. Under cross-examination as to the variations which the respondent had identified in respect of the names used by, or to describe, the 1st applicant. Ms Sykes said that those involved in running the 1st applicant were volunteers, holding down their day jobs, and therefore would not necessarily be able to pay as close attention to such matters as might others.

Kenneth Loughrin

37. Mr Loughrin gave evidence that he had been interested in motorcycle racing in the Cookstown area from when he was a boy. His particular interest was in road racing (the Cookstown 100) rather than motorcross. He had been a director and acted in the role of treasurer for 35 years – 15 years as treasurer in the 1st applicant, then a further 20 years from 2002 as treasurer of the Cookstown and District Motor Cycle Club (Road Racing) Limited. He confirmed that he had never been appointed to the office of trustee in the 1st applicant.

38. He also confirmed he was not aware of any motorcycling clubs in the Cookstown area other than the 1st applicant and, after 2002 Cookstown and District Motor Cycle Club (Road Racing) Limited. His evidence was that the 1st applicant had rented the land on which the motorcross track is now constructed from Frank Porter during the 1980s. The track was rented on a yearly basis, and the 1st applicant paid rent to Frank Porter.

39. By 1991, the 1st applicant wished to negotiate a longer security of tenure. He had a friendly discussion with Frank Porter. The focus of their discussions was on the term of the lease, and the rent to be paid. There was no discussion about who the tenant was going to be. The intention was that there was to be a formalisation of the existing arrangement.

40. He confirmed that the 1991 lease was drawn up by solicitors, and that the signatures to that lease were all directors of the 1st applicant, and were never appointed as trustees. While he answered that he believed that his signature meant that he was personally a tenant, his subsequent answers showed that his understanding was that it was the 1st applicant which was to pay the rent, and that it was the 1st applicant which was to observe the tenant's covenants.

41. His evidence confirmed the written documents – namely that the rents were paid by the 1st applicant.

42. He recounted a further friendly discussion with Frank Porter about the renewal of the lease in 1999/2000. Again, the focus of the discussions was on the term and rent, with no discussion of either the demise or the identity of the tenant. The intention was to continue the ongoing tenancy which had been enjoyed for some time, there was to be no change to the body renting the ground.

43. Mr Loughrin confirmed the identities of the signatures to the renewal lease. He explained that Jim Miller had died, and so Noel Anderson signed in his stead. He confirmed that all the signatories were directors of the 1st applicant.

44. Mr Loughrin again confirmed that the rents reserved under the renewal lease were paid by the 1st applicant. His evidence was that there was never any change to the body renting the ground with the formalisation of the lease and renewal lease.

45. Mr Loughrin's evidence that the 1st applicant had paid the rents throughout, including in the period before the 1991 lease, was not challenged in cross-examination.

Billy McKeown

46. Mr McKeown's unchallenged evidence was that he had been involved in the 1st applicant for more than 40 years. He confirmed that in the 1980s, the 1st applicant rented the land on which the motorcross track had been developed by Frank Porter, and that the rent was paid by the 1st applicant. He confirmed that the "Andrew Chambers Memorial" events were run by the 1st applicant. His evidence was that he was not aware of any change in the entity renting the motorcross track either at the 1991 lease or the 2000 renewal lease.

Frank Porter

47. Mr Porter gave evidence in chief as to the nature of his discussions with Mr Loughrin concerning the 1991 lease. He confirmed that the focus of the negotiations was on

the rent and term, and certain tenant's covenants which he had written out. In cross-examination, he agreed that the intention behind these negotiations was that the Club was looking to reach a longer-term arrangement than the previous informal arrangement.

48. His evidence, which corresponded with that of Mr Loughrin, was that there was no discussion of the identity of the tenant. In cross-examination, he agreed that there was no discussion, because the 1991 lease was to be a formalisation of the previous arrangement. There was no evidence at all to support the argument the respondent now makes that the lease was deliberately drafted with individuals as tenants so that the landlord would have recourse to individuals, rather than the 1st applicant.

49. Again, when dealing with the 2000 renewal lease, Mr Frank Porter confirmed that the focus of those negotiations was on the term and the rent – otherwise, the intention was largely to continue the same lease over a longer period. Agreeing with Mr Loughrin, the identity of the tenant was not something they discussed.

50. He claimed in his evidence in chief that he had never heard of the "Cookstown and District Motor Cycle Club Limited". His evidence here is not credible, particularly in light of the contemporaneous documentary evidence showing that he received rent payments by cheque drawn on an account in that name. He reluctantly accepted what was shown on the face of the documents with the words "if you say so".

51. In cross-examination Mr Porter was taken to the documents showing that rent had been paid by the 1st applicant, and that the 1st applicant had sought planning permission. He had not raised any question or doubt about the 1st applicant's position at that time.

52. In cross-examination he confirmed that "the club" had rented the track from him for a £1,000 per annum before the grant of the 1991 lease, and that the lease and renewal lease were intended to be an extension and formalisation of that arrangement.

Jonathan Porter

53. Mr Porter's evidence in chief sought to present a picture of confusion as to the identity of the entity occupying the motorcross track. In cross-examination, he accepted that he had not looked behind the various variations in the name he had identified to see whether any entities other than the 1st applicant actually existed.

54. In cross-examination Mr Porter was taken to the letters he had sent to the 1st applicant. He had to accept that those letters showed his understanding at that time that the 1st applicant was the tenant of the motorcross track.

(ii) Documentary Evidence

55. At hearing, a number of key historic documents were opened to the Tribunal. These are of particular importance and weight, given that the key events for consideration by the Tribunal are now more than 25 years ago, with obvious implications for witness memories.

56. The first key document is the Memorandum and Articles of Association of the 1st applicant, dated 23rd March 1976, which led to the incorporation of the 1st applicant on 30th April 1976 as company, number NI 11284. The 1st applicant was incorporated as a company limited by guarantee, and the objects clause in its Memorandum includes the following:

> "3(a) To acquire and take over the properties of whatsoever nature and kind, and the liabilities and engagements of the Club hitherto known as Cookstown and District Motor Cycle Club …

3(e) To acquire for any of the purposes of the aforesaid, by purchase, lease, fee farm or otherwise any lands, buildings, tenements or other hereditaments; and to sell, let, grant in fee farm, improve, develop or otherwise deal with any part of the property of the company."

57. The Articles of Association do not make any provision for the appointment of Trustees for or on behalf of the 1st applicant. That is unsurprising – the 1st applicant as a company can hold property in its own right and, indeed, has express power so to do in its objects clause.

58. The overview page from the Companies House website for company NI 11284 records the name of the 1st applicant as "Cookstown and District Motor Cycle Club" and notes its company type as "Private Limited Company by guarantee without share capital use of 'Limited Exemption'". Thus, although the 1st applicant is a limited company, like many incorporated charities or clubs, it is permitted to dispense with the word "Limited" from its name. The 1st applicant's formal name or title is therefore "Cookstown and District Motor Cycle Club Limited" or "Cookstown and District Motor Cycle Club".

59. The next document is the Minute of the first general meeting of the 1st applicant which recorded a resolution that the 1st applicant acquire and take over the assets, liabilities and engagements of the club hitherto known as Cookstown and District Motor Cycle Club.

60. The respondent produces programmes from a key event in the 1st applicant's racing calendar, the "Andrew Chambers Memorial" going as far back as 1986 and 1987. These programmes are issued in the 1st applicant's name, dispensing with the word "Limited"

61. The next key documents to consider are the 1st applicant's financial statements for the year ending 30th September 1991. Note that the Profit and Loss Account shows as "Motor Cross Expense" for "Rent of Track" of £1,000 for that year, and that the Balance Sheet includes a pre-payment of £4,000 for "Lease of Motor Cross Track – Rent Prepaid".

62. The original lease of 1st October 1991 is for a term of 10 years from 1st June 1991, and reserves a rent of £10,000 to be paid in two instalments, one of £5,000 on signing of the lease and the balance of £5,000 on 1st June 1992.

63. The 1st applicant's annual return as at 31st December 1991 confirms that the signatures to the 1991 lease i.e. Sidney Bell, Mabel Bell, Albert Warwick, Jim Miller and Kenneth Loughrin were all directors of the 1st applicant.

64. The balance rent payment is clearly seen in the 1st applicant's financial statements for the year ending 30th September 1992. The profit and loss shows an expense of £1,000 for "Rent of Track", while the payment is now £8,000 i.e. £4,000 from the 1991 accounts, less the £1,000 rent for year 1991-92, plus the £5,000 second rental instalment.

65. There is then a planning application dated 1st July 1996, with confirmation of notice being given to Frank Porter as freeholder. The application is made in the name of "Cookstown and District Motor Cycle Club", not in the names of trustees for an unincorporated club.

66. The next key document is the renewal lease of 1st March 2000. This document was plainly intended to be read with and to incorporate the 1991 lease. It is expressed to be made between "the within named landlord" and "the within named Trustees" and refers to the "within lease". The renewal lease substitutes a term of 22 years from 1st June 1999, in return for a total rent of £60,000. The renewal lease records £30,000 as

having already been paid, with £7,500 to be paid on each of 1st September 2000, 1st September 2001, 1st September 2002 and 1st September 2003.

67. Although the renewal lease expressed to be in favour of the "within named Trustees" i.e. the persons named as trustees in the 1991 lease the signatures are different. The renewal lease is executed by Noel Anderson in place of Jim Miller who had died. No change, however, was made to reflect any change in the identity of the tenant.

68. The 1st applicant's annual return as at 31st December 2000 confirms that Sidney Bell, Mabel Bell, Albert Warwick, Noel Anderson and Kenneth Loughrin were all directors of the 1st applicant.

69. There is a clear documentary trail showing that the rents reserved under the renewal lease were paid by cheques drawn on an account in the name of "Cookstown and District Motor Cycle Club Limited".

70. Finally, in the realm of documentary evidence, the 1st applicant relies on the letters sent by the respondent to the 1st applicant on 14th May 2021 and 27th May 2021 addressed respectively to "Cookstown and District Motor Cycle Club (Motorcross Section)" and "Cookstown and District Motor Cycle Club". These letters show that at that time the respondent had no difficulty in recognising that the 1st applicant (rather than the 2nd applicants) was the tenant under the renewal lease, and treated the 1st applicant as the entity bound by the tenant's covenants.

71. The applicants also place reliance on the documents showing that the 1st applicant, as a corporate entity, was the entity for which accounts were produced, which was registered for VAT and Corporation Tax, and which discharged rates and water bills.

72. The 1st applicant asks the Tribunal to note the weight which Leggatt J stated ought to be placed on documents rather than oral evidence in Gestmin SGPS SA v Credit Suisse (UK) Limited [2013] EWHC 3560 (Comm), as endorsed by McAlinden J in Carberry v Ministry of Defence [2023] NIKB 54.

(iii) Analysis

73. The documentary and oral evidence leads clearly to a number of key factual findings.

74. The first is that the 1st applicant was from 1976 and at the time of the 1991 lease and the 2000 renewal lease the only motorcycling or motorcross club in the Cookstown area. After 1976 there was no separate unincorporated association. The evidence of the applicants' witnesses on this point was unchallenged.

75. The second key finding is the 1st applicant rented the ground which became the motorcross track from Frank Porter for a number of years before the 1991 lease, paying him a rent of £1,000 per annum. Again, the evidence of the applicants' witnesses on this point was not challenged. This finding – that the 1st applicant was in occupation of the ground, and paying Mr Frank Porter rent – must lead the Tribunal to the finding that there was a yearly tenancy between Mr Porter and the 1st applicant during the period before the 1991 lease.

76. The next key finding is that the negotiations that led to the 1991 lease and the 2000 renewal lease were intended to lead to a formalisation or extension of the existing informal arrangement – the tenancy from year to year. It was common case between Mr Loughrin and Mr Porter that the focus of their discussions were on rent and term. They did not discuss the demise or parties. They did not need to because their common intention was not to change the pre-existing tenancy relationship.

77. The next set of key findings relates to the rents reserved under the 1991 lease and the 2000 renewal lease. Both leases provided for rents to be paid in instalments of a lump sum, rather than as traditional, periodic rents. As a matter of fact, the initial rental instalments were paid for both the 1991 lease and the 2000 renewal lease before either document was executed. The contemporaneous documents, confirmed by the evidence of the applicants' witnesses, show that those rents were paid by the 1st applicant. Given the lapse of time, and the contemporaneous records, no weight can properly be given to the doubts which the respondent's witnesses attempted to cast on this point.

78. The final key finding is that throughout the 1st applicant's use and occupation of the motorcross track, Messrs Porter were fully aware that the entity using the track was the 1st applicant. They were given and held on to, programmes from the "Andrew Chambers Memorial" for various years, issued in the name of "Cookstown and District Motor Cycle Club". Mr Frank Porter received rental payments by cheques drawn on an account in the name of "Cookstown and District Motor Cycle Club Limited". Mr Frank Porter was notified of (and confirmed that he was aware of) a planning application in the name of "Cookstown and District Motor Cycle Club". When the question of the renewal of the tenancy first arose, the respondent had no difficulty in writing to "Cookstown and District Motor Cycle Club" as his tenant. Any confusion of which the respondent now complains has been confected, after he ceased to be willing to consider the grant of a new tenancy.

(iv) Construction/Misnomer

79. In light of the above the Tribunal should find that the following form part of the background or context to the 1991 lease:

    (a) That the 1st applicant was the only entity operating as a motorcycle/motorcross club in and around Cookstown.

    (b) That the 1st applicant was the existing periodic tenant of the motorcross track and had been paying rent to Frank Porter.

(c) That the underlying intention of the negotiations between Frank Porter and Kenneth Loughrin was to formalise and extend the existing periodic tenancy

(d) That there was at no stage any discussion of a change to the tenant.

(e) That the first instalment of the rent to be reserved under the 1991 lease had been paid to Mr Porter by the 1st applicant.

80. In addition to these matters the following formed part of the background of context to the 2000 renewal lease:

(a) The 1st applicant had obtained planning permission to regularise its use of the motorcross track.

(b) The 1st applicant had paid the significant advance payment of the rent reserved by cheque drawn on its account in the name of "Cookstown and District Motor Cycle Club Limited".

81. Against these factors, it is both clear that the reference to the named trustees is a mistake and it is clear that the 1991 lease needs to be corrected by reading the tenant as the 1st applicant. The other issues and corrections identified by the respondent are all part and parcel of the same error, and their correction is obvious – to change the standard wording for trustee – tenants used to the standard wording for a corporate tenant.

82. The present case is not one of two competing entities which exist. There is only one possible entity as tenant – the 1st applicant. There is no unincorporated association with trustees. Thus the facts of the present case are closer to the cases where there was correction of a misnomer such as Almatrans SA v The Steamship Mutual Underwriting Association (Bermuda) Limited [2006] EWHC 2233 (Comm), [2007] Lloyds Rep 104, rather than Liberty Mercian where there were two separate entities which actually existed.

83. The position is even stranger for the 2000 renewal lease. It is plain from the four corners of that document that something has gone wrong with the identity of the tenant, even before considering the background or context. The tenant is identified as "the within named trustees", i.e. the individuals named as trustees in the 1991 lease, yet a different body of individuals sign the 2000 renewal lease. Had this anomaly been noticed and questioned at the time of the renewal lease by an officious bystander, the issue would have instantly been clarified that the club was incorporated and its directors were signing the lease. When the background and context are considered, it is plain that the reference to the tenant as trustees for an unincorporated club is a mistake, and that it is corrected by substituting the 1st applicant and making the consequential corrections to the lease.

84. The 1st applicant submits that the documentary and oral evidence leads clearly to the conclusion that in their true construction, the tenant under the 1991 lease and the 2000 renewal lease is the 1st applicant.

(v) Rectification

85. Having regard to the documentary and oral evidence summarised above, the Tribunal must find that there was a continuing common intention between the parties that the tenant was to be the 1st applicant. The starting point is the periodic tenancy. This can only be construed as a periodic tenancy between Mr Porter and the 1st applicant. It is then plain from the evidence of both Frank Porter and Kenneth Loughrin that they shared a common intention as they negotiated the 1991 lease and the 2000 renewal lease that those were to extend and formalise the existing tenancy relationship – thus while they had no need to name the tenant, it was plain that the common intention was that the tenant was to remain the 1st applicant.

86. That continuing common intention is corroborated by the fact that the rent paid ahead of the execution of both the 1991 lease and the 2000 renewal lease was paid by the 1st applicant and accepted by Frank Porter. It is further corroborated by the fact that

until the respondent refused to grant a new tenancy, no issue was raised by the respondent or his predecessor in title to rent being paid by the 1st applicant, nor a planning application in the name of the 1st applicant, and by the fact that the respondent issued correspondence to the 1st applicant clearly treating it as the tenant under the lease and not as a trespasser or unauthorised assignee.

87. Other than the terms of the 1991 lease and the 2000 renewal lease, there is no evidence whatsoever of any change to that common intention. There is no evidence insisting on individuals as tenants, rather than a company. There is no basis to find that there was a change to the common intention before the leases were signed. Indeed, the fact that there is evidence, primarily from the payment and acceptance of rent, that the common intention that the 1st applicant was to remain as tenant continued after the execution of the leases, undermines any suggestion that the common intention changed.

88. Thus, on the evidence it is clear that there was a continuing common intention that the tenancy relationship was intended to remain as it always had been, between Frank Porter and the 1st applicant. The 1991 lease and 2000 renewal lease clearly fail to give effect to that common intention, and now ought to be rectified accordingly.

(vi) Conclusions on the Issues

89. As previously noted the parties had agreed six issues for determination. The applicant summarises the position on each of them.

(1) Whether on the true construction of the lease and in the circumstances of the case the tenant is the 1st applicant

90. For the reasons previously set out the 1st applicant submits that it is clear on the documentary and oral evidence that this is indeed the case.

(2) Whether on the true construction of the lease and in the circumstances of the case the tenant is the second, third, fourth and fifth applicants as trustees for the 1st applicant

91. It is accepted that this is an option which is open to the Tribunal for consideration but the 1st applicant submits that this finding is artificial in light of the analysis of the evidence in the case, in particular the clear evidence of the payment and acceptance of the rent.

(3) Whether the lease ought to be rectified to substitute the first applicant as tenant in place of the second, third, fourth and fifth applicants

92. This issue only arises if the Tribunal is against the applicants on construction. For the reason previously set out the 1st applicant considers that the lease ought indeed to be rectified.

(4) If the answer to 2 is in the affirmative, whether the interests of Noel Anderson in the lease has passed by survivorship to the second, third, fourth and fifth applicants

93. It is common case that if this issue arises the answer is “yes”.

(5) Which entities or parties are in occupation of the premises demised by the lease

94. It now seems to be common case that the 1st applicant has been in occupation throughout.

(6) Whether, in light of the answers to issues 1 to 5 above, the applicants or any of them have made a valid tenancy application

95. In light of the arguments previously set out, the applicants contend that the 1st applicant is in truth and substance the tenant and that the Tribunal is seised of a valid application made by the 1st applicant.

Mr Stevenson BL

(i) Evidence

96. The respondent considers each of the five witnesses in turn.

97. Ms Sykes explained that she had been appointed treasurer of the 1st applicant in or around 2003. She was not involved with the 1st applicant at the time of the grant of the lease nor of the renewal lease. Her evidence thus is of no real assistance as to what the parties' intentions were at the time of the grant of the lease or the renewal lease. She gave evidence that the 1st applicant's annual accounts recorded the rent for the lease as having been paid by the 1st applicant. There were no bank statements provided evidencing the payment at that time. She gave evidence that the 1st applicant's bank accounts and cheque journal evidenced payment of the rent due under the renewal lease. She also gave evidence that the entity through which the motorcross activities had been run was the 1st applicant.

98. In cross-examination, the lease and the renewal lease were put to her. Given she was not involved when these documents were negotiated, agreed or signed, her evidence on the meaning of the documents is not, in truth, really of any significance. Nonetheless, she refused to accept that the lease did not refer to the 1st applicant. This was notwithstanding: the 1st applicant was not named in the lease; the parties' names on the front page of the lease; the persons named as parties in the lease; the reference to trustees in the plural; the signature of the lease by all of the individuals; the reference to "executors administrators and assigns"; and the joint and several covenants. Instead she repeated, what the respondent submits sounded like a "party line", that whilst the lease referred to the person therein named, it meant Cookstown and District Motor Cycle Club Limited. She maintained that position too in relation to the renewal lease which, as the Tribunal will be aware, made no mention of the 1st applicant. The respondent obviously says that Ms Syke's reading of the lease and the renewal lease is unsustainable and that a fair reading of either document could not

possibly lead anyone to believe the tenant thereunder was the 1st applicant, Cookstown and District Motor Cycle Club Limited.

99. The initial correspondence issued by the 1st applicant's solicitors was put to Ms Sykes. The solicitor's letter of 28th May 2021 states, "Our clients the trustees of Cookstown Motor Cycle Club" and refers to the lease as being between Mr Frank Porter and the parties named in the lease, with no mention of the 1st applicant. The letter states "We act on behalf of the Trustees of Cookstown Motor Cycle Club", again making no mention of the 1st applicant. The solicitor's letter of 24th August 2021 is in the same terms, with again no mention whatsoever being made of the 1st applicant. By letter dated 3rd September 2021 the respondent's solicitors sought specific confirmation of for whom the applicant's solicitors were acting. On being asked this specific question, the solicitors did not reply stating they were acting for the 1st applicant. Instead, in their letter they stated, "Please note that our clients are the Trustees of Cookstown Motor Cycle Club and they have not sought to assign, underlet or otherwise part with the possession of the Property or any part thereof".

100. In response to the question of why there was no reference at all to the 1st applicant in this correspondence, Ms Sykes said that the solicitor had made a mistake. When it was put to her that experienced solicitors would know the difference between a company and individuals, Ms Sykes said she could not speak to that. She said that the lack of reference to the 1st applicant in the lease was also a mistake, as was the lack of reference to the 1st applicant in the renewal lease. That is, her argument was that there was a mistake by two separate firms of solicitors over a 30 year time period in multiple documents (the lease, the renewal lease and at least three letters from the applicant's solicitors). That argument, only needs to be stated to show how unsustainable it is.

101. It was put to Ms Sykes that various documents issued over the years did not refer to the 1st applicant. Ms Sykes was taken to correspondence from Miller Shearer & Black solicitors in 2006, the club website, invites offered to Frank Porter, entry forms,

regulations, a letter to Jonathan Porter, membership forms, none of which referred to Cookstown and District Motor Cycle Club Limited. Ms Sykes said that the club was referred to as Cookstown and District Motorcross Club or variations thereof, and that, in her view, nothing turned on the fact the documents did not refer to Cookstown and District Motor Cycle Club Limited,

102. Mr Loughrin then gave evidence. He confirmed that the 1st applicant company was formed in 1976. He said that the premises had been used for racing prior to the lease being signed for a payment of £1,000 per annum. He was on good terms with Mr Porter. He was the person who negotiated the terms of the lease with Mr Porter. He said they agreed there would be a lease for a term of 10 years at a rent of £1,000 per year. He was taken to the lease by counsel for the 1st applicant and to his signature on the lease. He was asked by the 1st applicant's counsel whether he considered he was personally going to be a tenant. He replied "oh yes" i.e. that he did think he would be a tenant. He confirmed that the rent due under the lease was paid by the 1st applicant.

103. Mr Loughrin was also the person involved in negotiating the renewal lease. He again referred to the renewal lease being agreed in friendly circumstances with Frank Porter, whereby they agreed the length of term and the rent. He said that in 2002 there had been a split between the motorcross and road racing fraternities, and that he had not been involved with the motorcross since that time. Importantly, at no point in his evidence did Mr Loughrin say that the reference to him in the lease or renewal lease was a mistake.

104. In cross-examination, Mr Loughrin said that the lease had been prepared by the club's solicitors, Millar Shearer & Black. He accepted that the lease did not refer to the 1st applicant. He said that there had been no conversations with Frank Porter about any company being the tenant under the lease. On the renewal lease, he again said that this had been prepared by Millar Shearer & Black and that it did not refer to the 1st

applicant. He again said there had been no conversation with Frank Porter about any company being the tenant under the renewal lease.

105. He confirmed that the signatures to the renewal lease were all road racing people, that none of them had been involved with the motorcross since 2002, and that none of them, including himself, wanted a new lease of the premises. He was happy for the 1st applicant to get a new lease but he was not involved with the 1st applicant and did not want a new lease in his name.

106. Mr Billy McKeown then gave evidence. He spoke to when the premises were first used for motorcross. He said he was appointed as a director of the 1st applicant in 2005 but had been involved with motorcross for 50 years. He estimated that the premises were first used in or around 1997/98, that there had previously been a different track outside Cookstown, and that other motorcross enthusiasts identified the premises as a possible location. He said he was not involved with Frank Porter in negotiating the lease or the renewal lease.

107. Mr Frank Porter was the first witness called from the respondent. His evidence was of a piece with Mr Loughrin – namely that they agreed the terms of the lease and the renewal lease between them in a friendly way, that he did not have solicitors acting in either lease, that there was no mention made of any company. He said he was unaware of the 1st applicant and that as far as he was concerned the persons who were parties to the lease were the persons who had signed them.

108. Under cross-examination it was put to Frank Porter that he had been paid rent for the premises before the lease was signed and that payments of rent for the lease and the renewal lease were made by the 1st applicant. Frank Porter's response was "if you say so", he said that he did not worry himself with where the rent was paid from, and that all cheques for his farm were given to his wife who lodged all his cheques.

109. Mr Jonathan Porter was next to give evidence. His evidence was of less significance as he, like Ms Sykes and Mr McKeown, was not involved in the lease or renewal lease. He explained that when he was first approached about the grant of a new lease he did not know who the tenant was under the lease. He said that so far as he was concerned the tenant was the persons named in the renewal lease. He referred to the list with the various different names used to refer to the entity using the premises. He said there was total confusion on who the entity was that was using the premises.

110. The substance of Jonathan Porter's cross-examination was on the letter where he referred to Cookstown and District Motor Cycle Club (Motorcross Section) and it was put to him there was no reference to the persons named in the renewal lease. That point, such as it was, is not of any significance, given the letter did not refer to the 1st applicant either.

111. The respondent submits the relevant points to be taken from the evidence are:

(i) Motorcross had been run from the premises since in or around 1978.

(ii) The initial arrangement was a loose one. Money was paid to Frank Porter for the use of the premises.

(iii) In 1991 Mr Loughrin and Frank Porter had conversations about the grant of a lease. They were on friendly terms and agreed the term and rent.

(iv) Frank Porter was entirely unaware of any company then being in existence. Indeed, he was unaware of any company until it became an issue in the subject proceedings.

(v) The lease was drawn up by the club's solicitors, Millar Shearer & Black. It did not mention the 1st applicant as the tenant or at all, but named the persons therein as tenants.

(vi) The rent for the lease was paid by the 1st applicant.

(vii) The negotiations for the renewal lease and how it was drawn up followed the same form as the lease – it was agreed between Mr Loughrin and Frank Porter.

(viii) The rent due under the renewal lease was paid by the 1st applicant.

(ix) When the dispute between the parties began, the applicant's solicitors referred to the tenant under the lease and the renewal lease not as being the 1st applicant, but rather as the individuals named in those documents.

The Questions

112. The respondent first considers questions 1 and 3 as they relate to the identity of the tenant of the premises.

Question 1: Whether on the true construction of the lease and in the circumstances of the case the tenant is the 1st applicant

113. There are no difficulties of construction in this case. Both the lease and the renewal plainly provided that the parties therein named are the tenants. The 1st applicant's contention is that there has been a misnomer and that the lease and renewal lease should be construed as to referring to the 1st applicant.

114. The court does not lightly confer that there has been a misnomer. It is submitted that this is for two interrelated reasons (i) as the parties have committed their agreement to writing, they should be held to the written document. If the law is to readily rewrite formal legal documents, it would be a recipe for confusion and invite litigation, and (ii) a finding of a misnomer is a very consequential finding. It means that the party who is on the face of an agreement bound by it, is no longer bound, and the other party to the agreement is then regarded as being in a contract with a different party from that on the document. It is no small matter to substitute one contracting party for a different one.

115. Both points apply in this case. On point (i) the lease and renewal lease are formal legal documents prepared by solicitors. On point (ii) its no small matter for the Lands Tribunal to find that the tenant to the lease and the renewal lease is not the people therein named but is instead the 1st applicant. Consider, for example, the position at the time of the lease. The accounts for the 1st applicant for the year ending 30th September 1991 show it as having net assets of £17K (including prepaid rent of £4K) with cash in that figure of £12.5K. Motorcross is obviously a dangerous sport. If an accident had happened to a rider or spectator at that time and Frank Porter was facing a claim as the owner of the premises, having the 1st applicant as tenant would offer him next to no protection whatsoever given its meagre resources. That remains the position today; if the 1st applicant is the tenant rather than the individuals set out in the renewal lease, then the respondent will have less effective redress if something goes wrong at the premises. What the 1st applicant is seeking is thus not some mere administrative matter of no consequence. It is asking the Tribunal to make a very significant finding and a significant rewriting of the agreement made.

116. The case law has identified two principles (i) there must be a clear mistake in the face of the instrument when the document is read by reference to its background or context, and (ii) it must be clear what correction ought to have been made to cure the mistake. Further, the mistake must be such that everyone must have known what was actually intended.

117. The court does not lightly find that there has been a misnomer. The quoted cases relating to misnomer demonstrate how reluctant a court is to find a misnomer. In particular the facts of the leading case of Liberty Mercian make this very clear indeed.

118. On the question of whether there was a clear mistake, the starting point is of course the terms of the lease and the renewal lease. The following points are made:

(a) The names of each of the individuals is set out. It is not thus a case where, as in Gastronome or Nissan, one company entity has been incorrectly described. It is not a slip of the pen in the naming of the tenant.

(b) Each of the individuals has signed the lease.

(c) The lease refers throughout to the "Trustees". It would make no sense for the 1st applicant to be referred to as the "Trustees" plural.

(d) The lease refers to the Trustees' respective executors, administrators and permitted assigns. "Executors and administrators" is a reference to the personal representatives of a deceased person. The reference to executors and administrators would make no sense if the tenant was to be a company.

(e) Clause 3 states that the tenants "hereby jointly and severally covenant". That wording only makes sense if there is more than one tenant.

(f) The 1st applicant's solicitor's correspondence referred to previously. If there was a "clear mistake" then why was this not clear to the 1st applicant's solicitors when the present dispute started? Why was it not clear when the 1st applicant's solicitors were specifically asked to confirm who their client was. That is, the argument that the 1st applicant was the tenant was not clear to the 1st applicant's own solicitors when the point was specifically asked of them.

(g) In his evidence in chief Mr Loughrin said that he considered he was personally bound by the lease. At no point did he say there was a mistake in the lease, much less a clear mistake.

119. It was also, plainly, not clear to Frank Porter that there was a clear mistake. He had never heard of the Cookstown and District Motor Cycle Club Limited. This entity was not mentioned or discussed by Mr Loughrin when they were discussing the lease and renewal lease. How can it possibly be said that Frank Porter clearly thought the tenant would be a company of which he was completely unaware.

120. In short, neither of the persons who were actually parties to the lease and renewal lease said there was a mistake in these documents. How can the 1st applicant possibly then argue there was a mistake?

121. The 1st applicant argues that prior to the lease being signed it was the entity using the premises and the lease was meant to codify that relationship. That argument got nowhere near establishing there was a "clear mistake".

122. The respondent says that what the evidence establishes is that Frank Porter knew prior to the lease being signed that the premises was being used by local people who ran a Motorcross Club. He was a local farmer. He did not know anything about any company. The fact he was willing to grant a lease to people running "the club" is not the same thing as saying he was willing to grant a lease to a particular corporate entity. The lease as presented to him by the Clubs solicitors looked like a perfectly standard lease for a club, whereby the lease is taken in the name of persons who are Trustees of the club. The 1st applicant may argue that the club intended for the property to be in the 1st applicant's name, and there was no intention for the lease to be in the names of the trustees as they are therein named. Even if the Tribunal were to accept the argument that this is what the club intended, that is still not enough to show that Frank Porter clearly intended the lease to be in the name of Cookstown and District Motor Cycle Club Limited. He knew nothing of this corporate entity. There was, therefore, no "clear mistake".

123. Further, when one considers the second requirement for a misnomer, namely what the correction ought to have been, it points up again that there was no "clear mistake". The relatively few misnomer cases which do succeed typically are where a corporate entity name has been wrongly recorded in one or two parts of a document. The misnomer argument in this case is not a matter of a rereading of a wrong name in one part of a document. The argument would mean doing considerable violence to the construction of the lease and renewal lease. There would have to be:

(a) A rereading of the front page of the lease to read references to Sidney Bell, Mabel Bell, Albert Warwick, Jim Miller and Kenneth Loughrin as references to Cookstown and District Motor Cycle Club Limited.

(b) A rereading of the first page to the same effect.

(c) A rereading which removes references to "hereinafter together call the Trustees".

(d) A rereading which removes reference to "their respective executors administrators and permitted assigns".

(e) A rereading which removes references to the covenants being "joint and several".

(f) A rereading which removes reference throughout the lease on more than 20 occasions to "Trustees".

(g) A rereading which has an execution page referring to the 1st applicant, and to the lease being executed on its behalf.

(h) A rereading of the renewal lease which removes reference throughout to "the Trustees".

(i) A rereading which removes references to the covenants being "joint and several".

(j) A rereading which has an execution page referring to the 1st applicant, and to the renewal lease being executed on its behalf.

124. The respondent thus submits that the misnomer argument cannot possibly succeed. It is a very high hurdle to establish a misnomer case, and the 1st applicant gets nowhere near clearing that hurdle.

Question 3: Whether the lease ought to be rectified to substitute the 1st applicant as tenant in place of the second, third, fourth and fifth applicants

125. As to the claim in rectification, how could the 1st applicant argue there was an "outward expression of accord" that the 1st applicant should be the tenant, or "clear and unambiguous evidence" that the 1st applicant should be the tenant whenever (i) the 1st applicant's own solicitors did not initially consider the 1st applicant to be the tenant; and (ii) Mr Loughrin accepts he did not discuss any corporate entity with Frank Porter and said in his evidence he considered himself to be bound.

126. The respondent thus submits that the 1st applicant's claim that there is a misnomer in the lease or the renewal lease, and its claim for rectification are completely devoid of merit.

Question 2: Whether on the true construction of the lease and in the circumstances of the case the tenant is the 2nd applicants as trustees for the 1st applicant

127. The respondent accepts that this point is more debatable than questions 1 and 3. It is not clear from the face of the lease or the renewal lease that they were held on trust, or for whom they were held on trust. As previously explained the obstacles in the way of making out a misnomer/rectification case are very considerable, and the 1st applicant has come nowhere near clearing those obstacles. The respondent accepts that there are not the same obstacles in the way of making a finding that the lease and renewal lease were held on trust for the 1st applicant. This is because a finding that the lease and renewal lease were held on trust does not mean rewriting the lease and renewal lease, and does not mean replacing the tenants therein with the 1st applicant, or affecting the obligations owed by the 2nd applicants to the respondent.

128. The respondent further accepts a finding that the lease and renewal lease were held on trust for the 1st applicant would be consistent with the description of the parties to these leases as trustees with Mr Loughrin's evidence that he considered himself personally bound by the lease, as a trustee is, and with the 1st applicant being the entity paying the rent etc. at the premises. That is the way most clubs operate – title in the name of the trustees, day to day operations carried out by the club. The fact that the 1st applicant is a company of course does not mean property cannot be held

on trust for it, and a finding the leases were held on trust for the 1st applicant is also consistent with the leases appearing in the accounts of the 1st applicant, as it would be the beneficial owner.

Question 4: If the answer to 2 is in the affirmative, whether the interest of Noel Anderson in the lease has passes by survivorship to the second applicants

129. There is no debate on this point. The interest of Noel Anderson did pass to the 2nd applicants.

Question 5: Which entities or parties are in occupation of the premises demised by the lease

130. The respondent submits that one can easily see why, given the various names that were used in communications by the 1st applicant, the respondent was under considerable confusion as to the entity that was in occupation of the premises. The respondent accepts, however, that motorcross activities have been run through the 1st applicant.

Question 6: Whether, in light of the answers to issues 1-5 above, the applicants or any of them have made a valid tenancy application

131. The respondent submits that the answer to this is indisputably no. Given the misnomer and rectification cases cannot succeed, the 1st applicant is not the tenant under the renewal lease and this cannot bring a tenancy application.

132. The most that the 1st applicant can say is that the 2nd applicants held the renewal lease on trust for it. Even if that is right, it is still not enough to make the 1st applicant's tenancy application valid, as it cannot make a tenancy application when it is not the legal tenant, the tenancy applications must be made by the trustees, namely the 2nd applicants. Reynolds & Clarke at paragraph 105 comments:

"It is to be noted that section 41(1) [Art 30(1) in the 1996 Order] does not, for all purposes, substitute the beneficiaries for the tenant. Thus any notice served in accordance with the Act must be served by or upon the "tenant" which will be the trustees, not the beneficiaries. Similarly, the making of any application for a new tenancy must be by the trustees rather than any of the beneficiaries save in the case of partners …".

133. In the trust scenario, the 2nd applicants' tenancy application is, however, not valid as Mr Loughrin made clear that neither he nor the other 2nd applicants want to pursue any tenancy application. That is, an application has apparently been lodged in their names for a new tenancy that they do not want. The respondent questions how, given they do not want a new tenancy, they came to be added to proceedings. Whatever about that, the fact that they do not want a new tenancy means their tenancy application, if it was ever validly made, is not being and cannot be pursued.

134. The respondent therefore says there is no valid tenancy application before the Lands Tribunal and the application ought to be dismissed.

The Tribunal

The Law

135. The Tribunal was referred to several authorities relating to the law on misnomer and there was little dispute between the parties as to the legal principles to be applied. Rather the debate between the parties related the application of these principles to the facts in the subject reference.

136. Mr Gowdy KC summarised the principles:

(i) A court may correct a mistake as to the description of a party by construction where, when the contract is considered in light of its

background and context, it is clear that a mistake was made and it is clear that correction ought to be made.

(ii) Rectification applies where the parties to a written instrument had, at the time of execution, a common intention in respect of a particular matter, which by mistake, the document did not accurately record.

137. Mr Stevenson BL:

(i) The court does not lightly infer there has been a misnomer.

(ii) There must be a clear mistake on the face of the instrument when the document is read by reference to its background and context.

(iii) It must be clear what the correction ought to have been.

(iv) The mistake must be such that everyone must have known what was actually intended.

Application of the Legal Principles

138. A summary of the applicant's submissions:

(i) The 1st applicant was the only entity operating as a motorcycle/motorcross club in and around Cookstown.

(ii) The 1st applicant was the existing periodic tenant of the motorcross track and had been paying rent to Frank Porter.

(iii) The underlying intention of the negotiations between Frank Porter and Kennth Loughrin was to formalise and extend the existing periodic tenancy.

(iv) At no stage was there a discussion about a change to the tenant.

(v) The first instalment of the rent to be reserved under the 1991 lease had been paid to Mr Porter by the 1st applicant.

(vi) The 1st applicant had obtained planning permission to regularise its use of the motorcross track.

(vii) The 1st applicant had paid the significant advance payment of the rent.

139. A summary of the respondent's submissions:

(i) Motorcross had been run from the premises since in or around 1978.

(ii) The initial arrangement was a loose one. Money was paid to Frank Porter for the use of the premises.

(iii) In 1991 Mr Frank Porter and Mr Kenneth Loughrin had conversations about the grant of a lease. They agreed the rent and term.

(iv) Frank Porter was entirely unaware of any company then being in existence. He was unaware of any company until it became an issue in these proceedings.

(v) The lease was drawn up by the club's solicitors. It did not mention the 1st applicant as the tenant or at all, but named the persons therein as tenants.

(vi) The negotiations for the renewal lease and how it was drawn up followed the same form as the lease.

(vii) The 1st applicant's own solicitors did not initially consider the 1st applicant to be the tenant.

(viii) Mr Loughrin did not discuss any corporate entity with Mr Porter and he considered himself to be bound.

140. Was there therefore a clear mistake and were the parties to the leases aware that there was a clear mistake? The Tribunal finds the following to be relevant:

(i) Both the 1991 lease and the 2000 renewal lease were drawn up by the club's solicitors. They were clearly not aware of any mistakes.

(ii) Both leases provide that the parties named therein are the tenants.

(iii) There is no mention of the 1st applicant in any of the documentation.

(iv) Each of the individuals named have signed the leases.

(v) Mr Loughrin and Mr Porter, the parties who negotiated the leases, were not aware of any mistake.

(vi) The 1st applicant's own solicitors, in the subject proceedings, were initially not aware of any mistake.

141. The Tribunal is reluctant to find that a misnomer has occurred unless there is clear evidence in support of a misnomer and all of the parties were aware that a misnomer had occurred. That is clearly not the case in the subject reference.

The Questions

Question 1: Whether on the true construction of the lease and in the circumstances of the case the tenant is the 1st applicant

142. For the reasons listed previously the Tribunal finds that the 1st applicant is not the tenant.

Question 2: Whether on the true construction of the lease and in the circumstances of the case the tenant is the 2nd applicants as trustees for the 1st applicant

143. The Tribunal finds that the 1991 lease and 2000 renewal lease were held on trust for the 1st applicant and this is consistent with the description of the parties to these leases as trustees. "Trustee" is mentioned over 20 times in the leases.

Question 3: Whether the lease ought to be rectified to substitute the 1st applicant as tenant in place of the second, third, fourth and fifth applicants

144. For the reasons given previously the 1st applicant should not be substituted as tenant in place of the 2nd applicant.

Question 4: If the answer to 2 is in the affirmative whether the interest of Noel Anderson in the lease has passed by survivorship to the 2nd applicants

145. The interest of Noel Anderson has passed to the 2nd applicants.

Question 5: Which entities or parties are in occupation of the premises demised by the lease

146. It was accepted that motorcross activities in the premises had been run by the 1st applicant and they are therefore in occupation.

Questions 6: Whether, in light of the answers to issues 1-5 above, the applicants or any of them have made a valid tenancy application

147. In light of the Tribunal's findings on Question 2, the Tribunal would invite further legal submissions from the parties as to whether a valid tenancy application has been made. These submissions should be made within eight weeks of the date of issue of this decision.

31st July 2025 **Henry Spence MRICS Dip.Rating IRRV (Hons)**
Lands Tribunal for Northern Ireland