

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)**

GRENADA

CLAIM NO. GDAHCV2025/0041

BETWEEN:

RUBIS WEST INDIES LIMITED

Claimant

and

SYLVESTER QUARLESS

Defendant

Appearances:

Mr. Dylan Charles for the Claimant

Mr. Sasha Courtney for the Defendant

2025: November 10;
December 8, 12.

DECISION

- [1] **MICHEL, M:** The Claimant is a marketer and distributor of petroleum products conducting business in Grenada under the Rubis brand name. The Defendant was an independent operator of two service stations in Grenada under the Rubis brand name, namely, Rubis Grenville Service Station and Rubis Gouyave Service Station (collectively “the Service Stations”).
- [2] The Claimant commenced these proceedings against the Defendant for payment of the sum of \$212,213.66 pursuant to two written agreements (“the Agreements”) in relation to the supply of petroleum products and equipment by the Claimant for the operation of the Service Stations. The Defendant resists the Claimant’s claim on the basis that the Service Stations which were originally registered by him in his personal capacity, were transferred to a company, Quarless Holdings & Investments Ltd (“the Company”), a separate legal entity, which assumed ownership and control of the Service Stations. The Defendant contends that the Claimant has commenced these proceedings against the wrong party.
- [3] The Claimant now seeks summary judgment against the Defendant on the whole of its claim. The grounds of the Claimant’s application are:

- (i) The Defendant has no real prospect of successfully defending the claim;
- (ii) The Defendant's Defence amounts to no more than a bare denial unsupported by evidence.
- (iii) The material facts upon which the Claimant relies have been admitted by the Defendant.
- (iv) The matters in issue are confined to matters of law that admit of no complexity.
- (v) The Claimant knows of no other reason why the disposal of the claim should await trial.

[4] In its application, the Claimant asked that the Court deal with the following issues:

- (1) Whether, in purporting to assign the Agreements unto the Company, a separate legal entity, the Defendant thereby breached the Agreements, which expressly prohibited such assignment without the Claimant's prior written consent.
- (2) Whether, having admitted to assigning the Agreements to the Company without obtaining the Claimant's prior written consent and asserting thereafter an agency relationship with the Company, the Defendant thereby breached the Agreements.
- (3) Whether, in the absence of a valid assignment pursuant to the Agreements:
 - (a) The Defendant, in ceasing business at the Premises for a continuous period exceeding twenty-four (24) hours without the Claimant's prior written consent, as was expressly obligated under the Agreements, thereby breached the Agreements; and
 - (b) The Defendant, in failing, refusing, or neglecting to promptly satisfy invoices issued by the Claimant, thereby breached the Agreements and remains liable for the sums due and owing pursuant thereto.

[5] The Defendant filed a notice of opposition, opposing the Claimant's application on the following grounds.

- (1) The Defendant has a real prospect of successfully defending the claim, and the matter involves substantial disputes of fact and issues of mixed law and fact unsuitable for summary determination.
- (2) The claim is improperly brought against the Defendant personally, when the relevant contractual relations and obligations rested with Quarless Holdings & Investments Ltd., a separate incorporated entity since 2012.

- (3) The Defendant ceased operating the service stations in his personal capacity as of 26th August 2015, following the lawful transfer of the businesses to the said company, and all dealings thereafter were conducted by the Company.
- (4) The Claimant accepted and recognised the Company as the true retailer by its course of conduct, including:
 - (i) Receipt of corporate documents evidencing ownership transfer;
 - (ii) Acceptance of payments and cheques drawn on the company's bank account; and
 - (iii) Correspondence, invoices and leases issued in the Company's name.
- (5) The 2019 Agreement naming the Defendant personally was executed under mistake and/or induced by misrepresentation, as the Claimant's representatives knew the stations were owned by the Company and induced the Defendant to sign what was described as a "standard form" for administrative purposes.
- (6) The Claimant is estopped by conduct or convention from denying the Company's ownership or the Defendant's agency status, having acquiesced in the arrangement for nearly a decade.
- (7) The factual and evidentiary issues (corporate identity, estoppel, course of dealings, and intention of parties) require cross-examination and full trial, and are therefore not suitable for summary judgment.
- (8) Accordingly, the Defendant respectfully requests that the Application for Summary Judgment be dismissed with costs and the matter be allowed to proceed to trial or case management.

The Court's power to grant summary judgment

- [6] The Court is empowered by rule 15.2 of the **Civil Procedure Rules (Revised Edition) 2023** to give summary judgment. The rule provides:

"15.2 The court may give summary judgment on the claim or on a particular issue if it considers that the –

- (a) claimant has no real prospect of succeeding on the claim or the issue; or

- (b) defendant has no real prospect of successfully defending the claim or the issue.”

[7] The test for and approach to summary judgment were explained by George-Creque JA in **Saint Lucia Motor & General Insurance Co. Ltd v Peterson Modeste**¹ as follows:

“Summary judgment should only be granted in cases where it is clear that a claim on its face obviously cannot be sustained, or in some other way is an abuse of the process of the court. What must be shown in the words of Lord Woolf in *Swain v Hillman* is that the claim or the defence has no “real” (i.e. realistic as opposed to a fanciful) prospect of success. It is not required that a substantial prospect of success be shown. Nor does it mean that the claim or defence is bound to fail at trial. From this it is to be seen that the court is not tasked with adopting a sterile approach but rather to consider the matter in the context of the pleadings and such evidence as there is before it and on that basis to determine whether, the claim or the defence has a real prospect of success. If at the end of the exercise the court arrives at the view that it would be difficult to see how the claimant or the defendant could establish its case then it is open to the court to enter summary judgment.”

[8] The approach to summary judgment applications was further explained by Pereira CJ in **Myett’s Enterprises Limited v Kimberley Cooke Leigh et al**² as follows:

“At the outset, the judge or master should identify from the pleadings the real issues in the claim and thereafter determine whether, on the pleadings and the evidence provided, these issues can properly be disposed of summarily. It is only those issues which disclose no real prospect of success that ought to be disposed of using the summary procedure under Part 15 of the CPR. It follows that, as Saunders CJ [Ag.] cautioned in *The Bank of Bermuda Ltd. v Pentium (BVI) Ltd. and Landclove Limited*,⁹ [2004 ECSCJ No. 94 (delivered 20th September 2004)] the court should not permit a matter to proceed to trial where the defendant has produced nothing to persuade the court that there is a real prospect that he or she will succeed in defeating the claim brought by the claimant. Furthermore, as Farara JA [Ag.] stated recently in *International Trading Holding Co. Ltd. and Anor v Med Trading Limited*¹⁰ [BVIHCVAP2020/0002 (delivered 11th February 2021, unreported)] citing with approval the decision of the English Court of

¹ Saint Lucia Civil Appeal No. 8 of 2009 (delivered 11th January 2010, unreported) at para. 22.

² BVIHCVAP2020/0005 (delivered 19th May 2021, unreported) at para. 15.

Appeal in *Doncaster Pharmaceutical Group Ltd. and Ors v Bolton Pharmaceutical Company Ltd*,¹¹ *[2006] EWCA 661 Civ.*] in considering an application for summary judgment the court should be alert to the defendant who seeks to avoid summary judgment by making a case look more complicated or difficult than it really is.”

- [9] With these principles in mind, I will now consider the Claimant’s application.
- [10] The relevant question is whether the Defendant has a real prospect of successfully defending the Claimant’s claim in view of the Parties’ pleadings and the evidence before the Court. It should be noted that before this application was filed, the Parties were directed to make standard disclosure and to file witness statements. The Parties were in agreement that in addition to the evidence filed in relation to the Claimant’s summary judgment application, all such evidence that is before the Court including the witness statements filed by the Parties should be considered in the Court’s determination of the Claimant’s summary judgment application.
- [11] Due to the extensive arguments by the parties, I felt it necessary to set out in some detail, the pleadings, evidence and submissions of the parties.

The Pleadings

- [12] As stated earlier, the Claimant’s claim was brought against the Defendant for the payment of outstanding invoices for the supply and delivery of petroleum products and services to the Service Stations pursuant to two agreements. The Claimant avers that the Agreements were made between it and the Defendant. The first agreement was an agreement dated 30th March 2011 with respect to the operation of the Rubis Grenville Service Station which the Claimant contends was extended by letters dated 10th April 2015 and 15th November 2015 respectively and thereafter renewed on a month-to-month basis. The second was an agreement dated 2nd February 2019 made with respect to the operation of Rubis Gouyave Service Station.
- [13] The Claimant avers in its statement of claim that it would present invoices to the Defendant for the supply and delivery of petroleum products to the Service Stations pursuant to the Agreements, which the Defendant acknowledged and paid. It further contends however that the Defendant was presented with several invoices dated in the year 2023, which the Defendant attempted to pay by cheque, which was returned by its bank, as the Defendant did not have the necessary funds on his account to pay the Claimant.

- [14] The Claimant further alleges that due to the Defendant's inability to pay the past due invoices and the Claimant's decision not to extend any further credit, the Defendant closed the Service Stations. The Claimant avers therefore that the Defendant has breached the Agreements by failing to pay sums in accordance with the terms agreed by the parties and by closing the Service Stations for more than 24 hours without the Claimant's consent. The Claimant contends that the relationship between the parties was accordingly terminated by letter dated 16th January 2024.
- [15] The Claimant pleads that by letters dated 8th January 2024 and 15th January 2024, demand was made for past due payments of the Service Stations and by letter dated 25th August, 2024 via its attorneys they also demanded the payment of the sum of \$212,213.66 being the amount due and owing to the Claimant as of 15th January, 2024. It is contended that the Defendant has refused and neglected to pay the Claimant the said sum of \$212, 213.66 or any part thereof.
- [16] The central averments of the Defendant in resisting the Claimant's claim are pleaded at paragraphs 3 and 4 of his defence:
- "3. Paragraph 4 of the Statement of Claim is admitted in so far as the Defendant did sign both written agreements dated 30th March 2011 and 2nd February 2019. However, the Defendant states as follows:
- a. The 30th March 2011 agreement concerned the Grenville Gas Station and was made between Chevron West Indies Limited and the Defendant in his personal capacity; not between the parties as is pleaded. That agreement expired on 2nd April 2014.
 - b. From 3rd April 2014 to 26th August 2015, Chevron West Indies Limited and/or its assigns, carried on business with the Defendant in his personal capacity by way of an ad-hoc arrangement until ownership of the service stations was transferred to the Company. Thereafter, the Defendant operated as an agent for the Company, the lawful owners of the Grenville Gas Station.
 - c. The 2nd February 2019 agreement concerned the Gouyave Gas Station and was made between the Claimant and the Defendant as an agent for the Company.
 - d. In any event, the agreement dated 2nd February 2019, which names the Defendant in his personal capacity, was objectively a mistake and if the Claimant insists that it was not, then it was fraudulently procured, as the Claimant was aware or ought to have been aware that it was the Company who owned that service

station. Further, in the February 2019, Charles Archer, the Country Representative of the Claimant, called the Defendant and told him that he needed to come in to initial the pages of a 'standard agreement' because the agreement had to be sent to Barbados, the headquarters of the Claimant. The Defendant simply went in and signed at the office in Grand Mal aforesaid.

4. Further and/or alternatively, the Claimant is estopped from denying, by their conduct or otherwise, that they had accepted the Company as the new retailer and were no longer dealing with the Defendant in his personal capacity. As to the estoppel by convention/conduct/agreement:
 - a. In the year 2015, after the Company assumed ownership of the service stations, the Defendant was required by the Claimant to submit all documentation evidencing the transfer of ownership of the service stations to the Company, so that the Claimant could make the necessary changes to their records. Those documents, namely, the certificate of incorporation, and the certificate of change of particulars of business name for both service stations were delivered directly to the said Charles Archer, at Grand Mal, St. George. The Claimant was aware at all material times of the said transfer of ownership of the service stations.
 - b. It was expressly agreed and/or by necessary implication, through the conduct of the Claimant, that it had agreed to conduct business with the Company as the new retailer for the service stations instead of the Defendant in his personal capacity.”
 - c. The Defendant relied upon that agreement by:
 - i. Changing all bank accounts at Republic Bank for each service station, to the name of the Company.
 - ii. Since then, paying invoices submitted by the Claimant using the Company Bank account.
 - iii. As a requirement for the Claimant to continue providing petroleum, the Defendant had to provide proof that he was legally entitled to lease the premises upon which the respective service stations operated. The lease for both service stations were renewed in the name of the new owner, the Company, and not the Defendant in his personal capacity. Both Leases were presented to the Claimant.
 - iv. iv. By lease dated 1st May 2018, made between the Incorporated Trustees of the Church of England in Grenada and the Company, the premises upon which the Gouyave Gas

Station operated was leased to the Company for a period of ten (10) years. By lease dated 24th May 2017 between O'Brien Nyack and the Company, the premises upon which the Grenville Gas Station operated were leased to the Company for a period of five (5) years.

- v. It would be unconscionable and inequitable in the circumstances and result in the Defendant suffering significant detriment if the Claimant was allowed to resile from the agreement/convention at this stage. The Defendant has since 26th August 2015, changed its position based on the above conventions and agreements as to payment and invoicing under the contract."

[17] The Claimant filed a reply to the Defendant's defence. In its reply, it avers that the Defendant failed, neglected and refused to inform the Claimant of the Defendant's corporate restructuring during the period 2011 to 2019. The Claimant further avers that pursuant to clause 11 of the Agreements dated 30th March 2011 and 2nd February 2019, the Defendant is prohibited from assigning the said agreements to any other person or entity without consent and puts the Defendant to strict proof that the same was assigned with the Claimant's consent.

[18] The Claimant further pleads that it denies the contents of paragraph 4 of the Defendant's defence and avers the following:

- (i) The Defendant failed, neglected and refused to inform and or request that the Claimant pursuant to clause 11 of the Written Agreement dated 30th March 2011 assign his rights under the said agreement to any other party. The Claimant puts the Defendant to strict proof that it made any such request to it.
- (ii) The Claimant is unaware and cannot speak to the Defendant's personal affairs and puts the Defendant to strict proof that the Claimant was aware of his business affairs outside of his obligations to it.
- (iii) The Claimant denies that it expressly and or by implication agreed to conduct business with the Defendant's company under the Written Agreement dated 30th March 2011 and puts the Defendant to strid proof of same.
- (iv) The Claimant has always invoiced the Defendant in accordance with the Written Agreements dated 30th March 2011 and the Defendant has never objected to any of the invoices produced to him. The Claimant is unsure

and unaware of the relevance of naming the party paying on behalf of the Defendant. The Defendant's payment arrangement is of no concern to the Claimant and bears no relevance in the instant case.

- (v) The Claimant is also unaware and cannot speak to the Defendant's personal banking practices and payment processes.
- (vi) The Claimant is unaware and cannot speak to the Defendant's actions in relation to the contents of paragraph 4.c.iv.
- (vii) The contents of paragraph of 4.c.v are ambiguous and do not appear to pertain or annex to the subject matter of the Claim and therefore the Claimant is unsure how to respond to same.

The Claimant's Evidence

- [19] The Claimant filed the affidavit of Areen Lewis, Account Executive of the Claimant, evidencing the Claimant's position that the Defendant was the Retailer under the Agreements in his sole capacity and relies on clause 14.1 and 11.1 of the Agreements which provides:

"[14.1] This Agreement is personal to the Retailer. Retailer understands that Company has contracted with the Retailer alone for the purposes of this Agreement and to perform all duties described in this Agreement."

"[11. 1] This Agreement is personal to the Retailer. Retailer understands that Company is leasing its Equipment to Retailer alone, for Retailer to perform all duties described in the Supply Agreement. "

- [20] Ms. Lewis states that by reason of the Defendant's failure, refusal, or neglect to promptly satisfy invoices issued by the Claimant, the Claimant commenced these proceedings against the Defendant claiming, *inter alia* that the said invoices are due and owing on the agreements.
- [21] Ms. Lewis further states that the Defendant in his defence has admitted to having signed the Agreements in his personal capacity and further admitted that he transferred ownership of the Service Stations, thereby purporting to assign the Agreements to the Company (the "Invalid Assignment"). These admissions she states give rise to a clear breach of the Assignment Clauses, which in addition provides as follows:

“[14.2] The Retailer shall not assign any of its rights or obligations (burden or charge) under this Agreement to any other person or entity whatsoever without the prior written consent of Company. Such consent, if given by Company, shall be signed by the duly authorized representative of Company and shall be an amendment to the Agreement.”

“[11.1] The Retailer shall not assign any of its rights or obligations (burden or charge) under this Agreement to any other person or entity whatsoever without the prior written consent of Company. Such consent, if given by Company, shall be signed by the duly authorized representative of Company and shall be an amendment to this Agreement.”

- [22] Ms. Lewis, after setting out the averments in the Defendant's defence and answers to the Claimant's request for information, states that it is clear that the Defendant's Defence amounts to no more than a bare denial, unsupported by evidence, as demonstrated by the Answer to the Request for Further Information. She further states that moreover, the material facts upon which the Claimant relies, namely, that the Defendant breached the Agreements by way of the Invalid Assignment, have been expressly admitted by the Defendant. The facts are not in dispute and it logically follows that the Defendant has no real prospect of successfully defending the claim.
- [23] Ms. Lewis also filed a witness statement on behalf the Claimant in compliance with the Court's case management directions for trial. She refers to various outstanding invoices for supplies to the Services Stations which she says were presented to the Defendant and states that the Defendant failed and/or refused to settle any of them. She further states that on reviewing the Agreements, it was confirmed that liability for the outstanding invoices lies solely with the Defendant in his personal capacity, there having been no assignment of his rights or obligations in respect thereof. This she stated is supported by clauses 14.1, 14.2 and 11.1 of the Agreements.
- [24] Ms. Lewis further states that the Defendant attempted to make part payment of the outstanding invoices to the Claimant by cheque on 15th December 2023 in the amount of EC\$73,150.00; however, upon presentation, the said cheque was returned unpaid, owing to insufficient funds.
- [25] Ms. Lewis states that due to the Defendant's continuing default she gave notice to the Defendant by way of email that his account had been placed on hold pending settlement of the outstanding invoices. She states that in response to the said account hold, the Defendant closed the Service Stations, thereby triggering

termination for default of the Agreements under clause 18(B)(a)(11) of each supply agreement and clause 15(B)(a)(1) of each equipment lease.

- [26] Ms. Lewis further states that in consequence of the Defendant's continuing non-payment and the termination for default as set out above, the Claimant terminated the Agreements by letter dated 16th January 2024.

The Defendant's Evidence

- [27] The Defendant did not file an affidavit in response to the Claimant's application for summary judgment, however, a witness statement was subsequently filed by the Defendant for the trial of the claim which the Court is entitled to have regard to.
- [28] The Defendant in his witness statement evidences his dealings with the Company and the Company's dealings with the Claimant. The Defendant gives evidence in relation to the incorporation of the Company and the transfer of ownership of the Service Stations to the Company. He also explains his dealings with the Defendant in relation to the submission of the incorporation documents to the Claimant's country representative and payment of the Claimant's invoices by the Company. He also explains lease arrangements of the Service Stations by the Company and other corporate dealings between the Claimant and the Company.
- [29] The Defendant also seeks to explain how he came about signing the 2019 Agreement in his personal capacity and how it was allegedly a mistake or misrepresentation by the Claimant. The Claimant further explains the conduct of Rubis over the last eight years and how he and the Company relied on the Claimant's alleged recognition of the Company as retailer over the last eight years.

Claimant's Submissions

- [30] Mr. Dylan Charles, learned counsel for the Claimant, submits that in purporting to assign the agreement unto the Company, a separate legal entity, the Defendant thereby breached the Agreements which expressly prohibited such assignment without the Claimant's prior written consent. Further, having admitted to assigning the Agreements to the Company, without obtaining the Claimant's prior written consent, and asserting therefore an agency relationship with the Company, the Defendant breached the Agreements.
- [31] Mr. Charles submits that an assignment cannot be validly made in breach of the contractual requirement for the prior written consent of the counterparty and relies

on the House of Lords judgment in **Linden Gardens Trust Ltd v Lenesta Sludge Disposals Ltd and others**.³

[32] Mr. Charles submits that the certificates of change of particulars of business name taken by themselves, in law, are incapable of constituting or effecting any assignment of the Agreements and that the Defendant was bound to obtain the prior written consent of the Claimants as expressly required by the assigned clauses, as, relying on the statement in **Linden Garden Trust**, 'it would defeat the legitimate commercial reasons for inserting the contractual prohibition'.

[33] Mr. Charles further submits that in denying the claim, the Defendant contends that the invalid assignment was valid by way of convention, conduct, or agreement, yet it is manifest that none of the same, whether taken severally or conjointly can constitute an assignment. He submits that they are at the highest, acts of mere convenience and cannot prevail against an express contractual clause forbidding assignment, save with the Claimant's written consent.

[34] Mr. Charles argues that there can be no effective unilateral assignment of the burden of a contract and relies on the pronouncements of Bingham LJ in **South Group Ltd v Wolf and Wolff**⁴ where it was held that:

"A cannot without the consent of B assign the burden of the contract to C, because B has contracted for performance by A and he cannot be required against his will to accept performance by C or anyone other than A. If A wishes to assign the burden of the contract to C he must obtain the consent of B, upon which the contract is novated by the substitution of C for A as contracting party."

[35] As it relates to the issue of mistake, misrepresentation or fraud raised in the Defendant's defence, learned counsel for the Claimant submits that the Defendant's pleadings wholly fail to particularize any such mistake, misrepresentation or fraud. Learned counsel for the Claimant further contends that that the Defendant has unequivocally admitted to having signed and initialing each page of the said agreement.

[36] In support of his submissions on the lack of particularization by the Defendant of an alleged mistake or fraud committed by the Claimant, Mr. Charles relies on the judgment of the Court of Appeal in **Saint Lucia Motor & General Insurance**⁵,

³ [1993] 3 All ER 417.

⁴ 28 ConLR.

⁵ At para. 16.

where the Court made plain that it is a requirement of pleading that where an allegation of fraud is made by a party, such allegation must be particularized.

[37] Mr. Charles submits that in light of no consent having been obtained from the Claimant and there being no evidence or facts to support an allegation of mistake, misrepresentation or fraud, the invalid assignment by the Defendant constituted a breach of the agreements. Mr. Charles submits therefore that it logically follows that the Defendant's defence discloses no real prospect of success, that the facts of the claim are not in issue, and the matters before the court being confined to questions of law which are of no complexity.

[38] Learned counsel for the Claimant submits that accordingly, in the absence of a valid assignment pursuant to the Agreements, the Defendant is in breach of the Agreements, both by reason of the invalid assignment and furthermore by: (a) ceasing business at the premises for a continuous period exceeding 24 hours without the Applicant's prior written consent, as was expressly obligated under the Agreement; and (b) failing, refusing, or neglecting to promptly satisfy invoices issued by the Claimant.

Defendant's Submissions

[39] Mr. Sasha Courtney, learned counsel for the Defendant, submits that contrary to the submissions of the Claimant, the Defendant has never admitted any assignment pursuant to the Agreements. He submits that the Defendant's witness statement, his pleadings and answers to the Claimant's request for information would all state only that the Service Stations were transferred to the Company. Mr. Courtney submits that it is also accepted by the Defendant that no written consent was sought or obtained. He submits however that crucially, the Claimant never raised any objection to the transfer of the Service Stations to the Company and continued to treat the Company, not the Defendant, as the contracting party.

[40] Mr. Courtney submits that the Claimant's reliance on **Linden Gardens** is misplaced as the Defendant does not rely on an assignment at all, but rather the legal consequences of the parties' conduct after incorporation of the Company.

[41] Mr. Courtney submits that the Defendant's case rests on at least three independent and well-established doctrines:

- (i) Novation by conduct, with the Claimant's knowledge and acceptance;
- (ii) Waiver of any requirement for formal written consent;
- (iii) Estoppel by convention, arising from the parties shared assumption and consistent course of dealing.

Mr. Courtney submits that each of these defences independently defeats summary judgement and that taken together, they make the Claimant's application unsustainable.

[42] Mr. Courtney further submits that the single issue on this application is whether the Defendant has a realistic prospect of defending the claim, not whether the Court prefers one party's interpretation at this stage. This, he submits, must be assessed in the full context of the parties' post-2015 conduct and the Defendant's pleaded defences, not merely through the lens of **Linden Gardens** as submitted by the Claimant.

[43] Mr. Courtney first relies on the law on novation in resisting the Claimant's application. He submits that novation differs from assignment whereby the rights and obligations of a party are extinguished and replaced with the consent of all and the new party takes on both rights and obligations. He submits that an anti-assignment clause does not prevent novation. In making this submission Mr. Courtney relies on the case of **Musst Holdings Ltd v Astra Asset Management UK Ltd**.⁶

[44] Mr. Courtney submits that the principles of novation distilled in simple terms are:

- (a) A novation occurs where a new contract replaces the old one, typically substituting one contracting party for another.
- (b) All parties must agree, but consent may be inferred from conduct, not just written words.
- (c) Whether consent exists is a question of fact.
- (d) A novation will be inferred where it is the only sensible and lawful explanation for how the parties conducted themselves. This reflects the approach in **Evans v SMG Television Ltd**,⁷ where Lightman J held that novation should be inferred where needed to give "business efficacy" to what happened.
- (e) The old authorities also support this approach. In **Re Head**,⁸ the Court of Appeal held that the conduct of the parties following a change in circumstances (there, the death of a partner) was sufficient to establish a novation.

⁶ [2023] EWCA Civ 128 (CA).

⁷ [2003] EWHC 1423 (Ch).

⁸ [1894] 2 Ch 236.

- [45] Relying on **Musst**, Mr. Courtney submits that whether novation can be inferred from conduct is entirely a factual question. He submits that this alone shows why summary judgment is inappropriate. The Court must examine the parties conduct overtime to determine whether a novation occurred. Thus, he submits, **Musst** makes the following principle unmistakably clear and directly applicable to the present facts: even if a contract requires written consent before a transfer, the other party may waive that requirement, including by behaving as though the transfer is accepted.
- [46] Mr. Courtney submits that this is precisely what happened in the present case – the Claimant accepted the Company as the contracting party for years, dealt exclusively with the Company, and never suggested that written consent had not been obtained. That prolonged and unquestioned course of dealing is wholly irreconcilable with the Claimant’s present position and is the strongest possible evidence of consent, waiver, and shared assumption.
- [47] Finally, Mr. Courtney submits that **Musst** confirms that even if the Court were not satisfied that there was a novation, the judge in that case was still entitled to find an estoppel by convention. Lady Justice Falk at paragraph 88 in **Musst** stated: “There was an understanding that had crossed the line, conveyance to Musst of an expectation of reliance, actual reliance and the necessary element of unconscionability.”
- [48] This passage Mr. Courtney submits is directly relevant here – the Claimant knowingly treated the Company as the contracting party, the Defendant relied on that shared understanding for almost a decade, and it would now be plainly unconscionable for the Claimant to reverse its position and attempt to impose personal liability on the Defendant.
- [49] Mr. Courtney submits that the Claimant’s pleading at paragraph 2 of its Reply, that it was “unaware” of the 2015 transfers, creates a central factual and credibility dispute. Knowledge, he submits, is at the core of novation, waiver, and estoppel. He submits that this dispute cannot be resolved on affidavit evidence and requires cross-examination and that this fact alone makes summary judgment inappropriate.
- [50] Mr. Courtney submits that a dispute about what the Claimant actually knew is factual, credibility-based, evidence-heavy and absolutely requires cross-examination. The Claimant’s knowledge post 2015 is central to the defences that have been mounted.

Reply Submissions

- [51] Mr. Charles, learned counsel for Claimant, submits in reply that the Defendant has wholly failed to identify novation as an issue in its pleadings. Such an omission he submits is inimical to the elementary fairness which requires that each side knows what points the other side will take through its pleadings. He submits that it is plain that the Defendant's attempt to advance the issue at this late stage in the proceedings amounts to an ambush upon the Claimant. He submits that as contemplated by the Court of Appeal in **Shaista Trading Company Limited d.b.a. Diamond Republic v First Caribbean International Bank (Barbados) Limited**: "Indeed, pleadings serve the useful purpose of delineating the boundaries of the case being advanced so as to avoid a party being ambushed."⁹
- [52] Mr. Charles submits that the parties have conducted their pleadings and filed their supporting evidence on the footing that the material issue in dispute is that of assignment. Mr. Charles submits that, having failed to plead the issue of novation, the Defendant is not rightly permitted to advance the same at this stage in the proceedings. Such reliance on novation is an attempt to advance a wholly new issue into the proceedings to the prejudice of the Claimant's application.
- [53] Mr. Charles submits that whether the Defendant seeks to rely on assignment, novation by conduct, waiver of the contractual requirement for written consent, or estoppel by convention arising from a shared assumption and course of dealings, the Defendant has, in effect, attempted to mislead the Court by suggesting that the introduction of novation could alter the Court's determination of the material facts, which remain undisputed.
- [54] Mr. Charles submits that nevertheless, in support of its attempt to advance novation, the Defendant relies on **Musst**, however, that authority undermines the Defendant's position. Therein, he submits, the court made plain that clear and unequivocal evidence of an intention to effect a novation is essential in order to discharge the requisite standard of proof.
- [55] Learned counsel for the Claimant submits that the Defendant has wholly failed to establish the requisite clear intention necessary for a novation. The evidence relied upon, namely, payment of invoices by the Company and the transfer of leases to which the Claimant was not a contracting party, are insufficient to sustain a case in novation. Mr. Charles submits that, given that the pleadings and evidence are complete, such that the Defendant is no longer entitled to file additional evidence, that the matter has been case managed with pre-trial directions issued and the time for any additional applications having elapsed, it is manifest that a full trial would

⁹ ANUHCVP2018/0021 (delivered 26th April 2021, unreported) at para. 38.

bring nothing further to light, and the remaining issues are matters of law, properly determinable on this application.

- [56] In response to the issues of waiver of the contractual requirement for written consent and estoppel by convention arising from a shared assumption and course of dealings, learned counsel for the Claimant submit that the Defendant has pleaded no factual basis capable of particularising either doctrine.

Discussion

- [57] Having considered the evidence before the Court in the context of the pleaded cases of the parties and having considered the extensive submissions of the parties, I agree with learned counsel for the Defendant that this is a matter not suited for summary judgment.
- [58] I agree with learned counsel for the Defendant that when the Defendant's defence and evidence is put into context, the Defendant's case is not simply that there was an assignment to the Company, which the Claimant contends is invalid, rather, the Defendant relies on the legal consequences of the parties conduct after the Company was incorporated

Mistake/Fraud

- [59] As it relates to the Defendant's pleadings on the issue of mistake or fraud, I do agree with the submissions of learned counsel Mr. Charles for the Claimant that the Defendant's pleas of mistake and fraud are not sustainable and that it is unlikely that on their own, they would stand up to an application for summary judgment. George-Creque JA made in plain in **Saint Lucia Motor and General Insurance v Peterson Modeste**¹⁰ that where an allegation of fraud is made, particulars must be given. The Defendant has given no particulars of any alleged fraud on the part of the Claimant and there is no evidence before the Court on which an allegation of fraud could properly be made out.

Novation

- [60] I agree with the Defendant's submissions in relation to the law on novation. In circumstances of this case, if a novation occurred, the effect would be that with the consent of the all the parties, the Defendant has been substituted as the contracting

¹⁰ At para. 16.

party in relation to the Service Station Agreements. I accept that this novation could occur even where there is a clear non-assignment clause in a contract.

[61] The parties however are in complete disagreement as to whether the Defendant can rely on novation at this stage in the proceedings. The Claimant's view is that to raise it now would amount to ambush as it was not previously foreshadowed. The Claimant's position is that pleadings are closed and evidence has been filed for trial and novation was not initially raised in response to the Claimant's summary judgment application. The Defendant's view on the other hand is that although novation is not specifically mentioned in its defence, sufficient facts have been pleaded to support novation as a defence. The Defendant further argues that in any event, it has pleaded facts in relation to the conduct of the parties that properly raises the issue of estoppel by convention.

[62] For reasons which will become apparent below, at this stage, I do not consider it necessary for me to resolve whether the Defendant can properly advance novation as a defence to determine the present summary judgment application. I do note, however, the pronouncements of Henry JA in **Harbour Club et al v McMillan Monrose dba Tropical Decoration**,¹¹ which appear to support to the Defendant's position; however, I will take the point no further.

[63] What is clear though, is that the Defendant has pleaded a further or alternative defence of estoppel by convention.

Estoppel by Convention

[64] The Defendant further pleaded in his defence or alternatively pleaded in his defence, that the Claimant is estopped from denying, by their conduct or otherwise, that they accepted the Company as the new retailer and were no longer dealing with the Defendant in his personally capacity.

[65] The learned authors of **Halsbury's Law of England**¹² explain estoppel by convention as follows:

"Where two parties act, or negotiate, or operate a contract, each to the knowledge of the other on the basis of a particular belief, assumption or agreement (for example about a state of fact or of law, or about the interpretation of a contract), such that it would be unfair to resile from it, they may be estopped from resiling from that belief, assumption or agreement. This is known as 'estoppel by convention', reliance being based

¹¹ SLUHCVP2023/0027 (delivered 9th December 2024, unreported).

¹² Vol. 47 (2021) at para. 383.

on common assumption or agreement between the parties (the 'convention'). There can be no estoppel by convention where, although both parties are labouring under a common mistaken apprehension, it cannot be said that they have acted on the basis of that apprehension. Nor can the doctrine be invoked to deny a party the protection of a statute from the terms of which contracting out is not possible. In order for an estoppel by convention to arise, the relevant assumption or agreement must be communicated by one party to the other, either by words or conduct, and the estoppel raiser must have acted in reliance on the subscription of the other to it, such that it would be unfair for the other now to resile from it, by reason of the adverse effect his reliance would have on him if the other resiles, by comparison with the position that would obtain if he had not been induced thus to rely on the convention.

An unfounded assumption may form the basis of estoppel where, although neither party believed it to be true, both have knowingly acted upon a conventional hypothesis. Where two parties agree that a commercial instrument is to be taken as founded on a certain fact, and the position of one by that agreement is altered, the other ought not to be allowed to deny it. Estoppel by convention is not confined to an agreed assumption as to fact, but may be as to law.”

[66] In **Tinkler v HMRC**,¹³ the UK Supreme Court approved **HMRC v Benchdollar Ltd**,¹⁴ where the court applied a five point test to establish whether or not an estoppel by convention arose, in that: (1) the common assumption must be expressly shared between parties rather than merely understood in the same way; (2) the expression of the common assumption had to be such that the party alleged to be estopped might properly be said to have assumed some element of responsibility for the other party's understanding of it; (3) the common assumption must have been relied on to a sufficient extent; (4) that reliance must have occurred in connection with some subsequent mutual dealing between the parties; and (5) any detriment or benefit arising from the common assumption must be sufficient that it would be unjust or unconscionable for the person alleged to be estopped from asserting the true legal or factual position).

[67] Turning back to the present case, the Defendant pleaded particulars of the estoppel by convention/conduct/agreement. The Defendant avers that in the year 2015, after the Company assumed ownership of the Service Stations, the Defendant was required by the Claimant to submit all documentation evidencing the transfer of ownership of the Service Stations to the Company so that the Claimant could make the necessary changes to their records. Further, the Defendant contends that it was

¹³ [2021] UKSC 39.

¹⁴ [2009] EWHC 1310 (Ch).

expressly agreed and/or by necessary implication, through the conduct of the Claimant, that it had agreed to conduct business with the Company as the new retailer for the service stations instead of the Defendant in his personal capacity.

[68] The Defendant in his witness statement evidences these pleadings. He states that from 26th August 2015 the Company became the lawful owner and operator of both Service Stations and he ceased operating them in his personal capacity. He states that he acted thereafter only as Director and authorized agent of the Company.

[69] The Defendant's further evidence is that the Claimant was fully aware of the change in ownership of the Service Stations since 2015. He states that he submitted the Company's Certificate of Incorporation and both Certificates of Change of Particulars to Rubis's office at Grand Mal, St. George's to the Claimant's local representative. He states that the Claimant accepted these documents and continued to do business with the Company as the recognised retailer of petroleum products. He further states that from 2015 onwards, all payments to Rubis were made from the Company's corporate account at Republic Bank, and all invoices were addressed to the Company or the respective Service Station names.

[70] The Defendant states that the Claimant cannot now claim that he was personally responsible for the fuel supply debts. He states that he and the Company both relied on the Claimant's continued recognition of the Company as retailer for more than eight years, during which:

- (i) The Company invested in leases and business improvements;
- (ii) The Claimant accepted payments and deliveries without objection; and
- (iii) All financial dealings were carried out through the Company.

Therefore, it would be inequitable and unconscionable for the Claimant now to reverse that position and attempt to treat him personally as debtor.

[71] Considering the law on estoppel by convention, all of the above in my view are bases for further interrogation by the Court as to whether the elements of estoppel by convention are made out whereby the Claimant is estopped from insisting that the Defendant is personally liable for outstanding payments to the Claimant for products supplied to the Service Stations. In my view, the Court would have to embark upon a fact-sensitive inquiry, looking at the conduct of the parties, and make factual findings, to determine whether estoppel by convention properly arises.

[72] In **Comodo Holdings Limited v Renaissance Ventures Limited et al**,¹⁵ Blenman JA explained the bounds of the summary judgment procedure as follows:

“It is trite that the summary judgment procedure is unsuitable for claims or issues which would necessitate the court embarking upon a “mini-trial” or to resolve issues which ought to be properly tried. Indeed Lord Woolf in *Swain v Hillman* stated that the summary trial procedure should be kept to its proper role. ‘It is not meant to dispense with the need for a trial where there are issues which should be investigated at the trial.’ I am in total agreement with this statement.”

[73] Blenman JA further explained that:

“It is the law that a respondent to a summary judgment application is not required to prove his case to a high standard. It will suffice to show that his case may succeed even though it is improbable. Authority for this proposition is found in *Swain v Hillman*; and *Three Rivers District Council v Bank of England*. I agree with Mr. Flynn, QC’s complaint that the Comodo’s pleaded case could not be said to be fanciful or have no real prospect of success.”¹⁶

[74] Having considered the pleadings and the evidence before the Court, in my view, at a minimum, by raising the issue of estoppel by convention, the Defendant has sufficiently pleaded a basis upon which the Court may interrogate whether or not he is proper party to the proceedings and that it is the Company, and not the Defendant in his personal capacity which is liable to make outstanding payments to the Claimant.

[75] To resolve the issue of whether there was a common assumption between the Parties that the real party contracting with the Claimant was the company, and reliance by the Defendant on this assumption and detriment, would require the Court to make certain factual findings as to the conduct of the parties based upon the evidence adduced by the parties. I agree with the submission of learned counsel for the Defendant that questions of credibility properly arise which could undoubtedly be probed in cross-examination of the witnesses. The court would therefore be called upon to make factual findings on important issues that may ultimately be determinative of the claim. It would therefore be impermissible for this court on a summary judgment application, to embark upon what would amount to a mini-trial, to conclude that no such conduct could be inferred on the evidence. The Defendant has put forward evidence as to a course of dealings between the parties and it is ultimately a triable issue as to whether an estoppel arises.

¹⁵ BVIHCVAP2014/0032 (delivered 3rd May 2016, unreported) at para. 86.

¹⁶ *Ibid* at para. 91.

[76] There is a serious dispute between the parties as to who is liable to make outstanding payments to the Claimant. The Claimant, in my respectful view, has narrowly construed the issue on the case on the basis of its contention that the Defendant signed the Agreements in his personal capacity for the supply of the petroleum products to the two Service Stations. The Claimant further avers that the Defendant's position in its defence amounts to an invalid assignment under the Agreements, to the Company. In my view, whether the Defendant's actions in law amount to an invalid assignment would have to be considered having regard to all the circumstances of the case and is not an issue which can be properly answered on the present application.

[77] This view is supported when one considers the Defendant's contention that for over eight years, since 2015, the dealings in relation to the Service Stations were with the Company, which took over the Service Stations from the Defendant. This, the Defendant contends, was the basis of a common assumption between the parties on which the Defendant has relied, that the Company is the true contracting party with the Claimant and it would be unjust or unconscionable for the Claimant to resile from this position. It may very well turn out after the trial of the claim that the trial judge concludes that there was no common assumption that the Company took over obligations to the Claimant, but it cannot be said that the defence put forward is fanciful and does not properly raise issues fit for trial.

[78] This is sufficient for me to conclude that the Claimant has not demonstrated that the Defendant has no real prospect of successfully defending its claim. In the circumstances, the Claimant's application for summary judgment must be refused.

Costs

[79] As it relates to the issue of costs, the general rule is that cost should follow the event, and I see no reason why I should depart from the general rule. Having heard the parties on the issue of costs, I would order that the Claimant pay the Defendant's costs on the summary judgment application in the sum of \$2,000.00 on or before 24th December 2025.

Disposition

[80] In light of the foregoing, I make the following orders:

- (i) The Claimant's application filed on 28th August 2025 for summary judgment against the Defendant on the whole of the claim is refused.

- (ii) The Claimant shall pay the Defendant's costs of the application for summary judgment in the sum of \$2,000.00 on or before 24th December 2025.
- (iii) The matter shall be set down for further case management on 22nd January 2026..
- (iv) The Claimant shall have carriage of this order.

[81] I wish to thank leaned counsel on both sides for their very helpful oral and written submissions.

Carlos Cameron Michel
High Court Master

By the Court

Registrar