

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT LUCIA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

SLUHCV2019/0556

BETWEEN:

MEDICAL ASSOCIATES LIMITED

Claimant

and

HARBOR CLUB LIMITED

Defendant

Before:

The Hon. Mde. Justice Kimberly Cenac-Phulgence High Court Judge

Appearances:

Mr. Horace Fraser for the Claimant

Mr. Mark Maragh with Ms. Vanessa Pinnock and Ms. Candace Fletcher for the
Defendant

2021: October 13;
October 26; (written submissions)
2022: February 16.

JUDGMENT

[1] **CENAC-PHULGENCE J:** On 14th October 2018, Mr. Billy Rosario (“Mr. Rosario”) was admitted to the Tapion Hospital, a medical facility operated by the claimant, Medical Associates Limited (“Medical Associates”) for medical care and treatment until his discharge on 26th October 2018. Medical Associates alleges that Mr. Michael Wolff (“Mr. Wolff”), Director of Rooms of the defendant, Harbor Club Limited (“Harbor Club”) wrote to Tapion Hospital by email dated 13th October 2018 (“the email”), representing and guaranteeing that Harbor Club would pay Mr. Rosario’s medical bill.

[2] Medical Associates acting on Mr. Wolff’s representation, extended a credit line to Mr. Rosario regarding payment of his medical bill and in so doing acted to

its detriment. Medical Associates presented Mr. Rosario's bill to Harbor Club for settlement which was refused. Despite numerous attempts to have Harbor Club settle Mr. Rosario's bill, the bill remains unpaid. As a result, Medical Associates filed a claim for breach of contract and or promissory estoppel against Harbor Club.

[3] It is Medical Associates' contention that Mr. Wolff held the position of Director of Rooms at Harbor Club and that he had actual or ostensible authority to represent to Medical Associates that Harbor Club would undertake to pay Mr. Rosario's medical bill. By failing and or refusing to pay the medical bill, Harbor Club has breached its obligation to make the said payment.

[4] Harbor Club for its part denies that it is responsible for settling Mr. Rosario's medical bill and prays that Medical Associates' claim be dismissed with costs. Harbor Club's case is that at the material time, Mr. Wolff was a mere Director of Rooms with responsibility for guest room accommodation only and had no finance related function. He therefore had no ability to pledge the credit of Harbor Club. Harbor Club says further that Mr. Rosario was an employee of Almbridge Hospitality, the then management company operating Harbor Club and was not an employee of Harbor Club. Harbor Club says that at no time prior to, during or after Mr. Rosario's treatment did it hold out or represent that Mr. Wolff had the capacity or authority, whether actual or ostensible to pledge its credit whether generally or for the specific purpose of the treatment of Mr. Rosario's personal medical matters. Harbor Club contends that the alleged representation by Mr. Wolff was not made prior to commencement of Mr. Rosario's treatment but was made subsequent to such treatment.

[5] Harbor Club says Medical Associates was negligent and careless and acted unreasonably in relying on Mr. Wolff's representation as Mr. Wolff was at no time held out by Harbor Club as possessing any authority to pledge its credit. Given the designation of Mr. Wolff as Director of Rooms, Medical Associates should have sought to confirm and verify the capacity of Mr. Wolff to pledge Harbor Club's credit before undertaking the treatment.

Preliminary Issue-Evidential Objections

- [6] Subsequent to the case management directions given on 17th December 2020, the defendant filed a notice of objection to documentary hearsay on 3rd March 2021. The objection was in relation to the email dated 13th October 2018 issued by one Michael Wolff, Director of Rooms seeking to pledge the credit of Harbor Club and to obligate Harbor Club to settle expenses of Mr. Rosario, an alleged employee of Harbor Club.
- [7] Though not stated in the notice of objection, in oral submissions at the commencement of the trial, the basis of Harbor Club's objection was submitted as section 51 of the **Evidence Act**¹ ("the Act"). Section 51(1) and (2) provides:
- “(1) This section applies in civil proceedings where the person who made a previous representation is available to give evidence about an asserted fact.
- (2) Where it would cause undue expense or undue delay, or would not be reasonably practicable, to call the person referred to in subsection (1) to give evidence, the hearsay rule does not apply in relation to—
- (a) oral evidence of the previous representation referred to in subsection (1) given by a person who saw, heard or otherwise perceived the making of the representation; or
- (b) a document so far as it contains the previous representation or some other representation to which it is reasonably necessary to refer to understand the previous representation.”
- [8] It was submitted by counsel for Harbor Club, Mr. Mark Maragh ("Mr. Maragh") that Medical Associates has failed to call or even attempt to call the sender of the email, Mr. Wolff and also failed to call the recipient of the email, someone in the employ of Medical Associates. He submitted further that none of the witness statements of Medical Associates addressed whether any of them was the recipient of the said email or had conduct of the email address itself. Even if Mr. Reginald St. Juste ("Mr. St. Juste") was the recipient of the email, or by virtue of his post had conduct of the messaging platform, the failure of Harbor Club to establish this would be tantamount to the court engaging in dangerous speculation in the absence of credible evidence.

¹Cap. 4.15, Revised Laws of Saint Lucia.

- [9] Mr. Maragh's contention is that the proper procedure pursuant to section 54 of the Act was for Medical Associates to give at least seven (7) days' notice of its intention to adduce the email evidence. That was not done. He also submitted that Medical Associates' contention that the email was treated in depth in Harbor Club's response does not relieve Medical Associates of compliance with section 54 of the Act.
- [10] The defendant's notice of objection filed on 3rd March 2021 was titled 'Notice of Objection to Documentary Hearsay' and stated that it was objecting to the admission into evidence of the email purporting to be issued by one "Michael Wolff". The notice did not make reference to any rule or section of any Act. However, at the start of the trial Mr. Maragh made reference to CPR 28.18 as another basis of his objection stating that the defendant was also objecting to the authenticity of the email. I note though that the defendant did not comply with rule 28.18 which requires that a party who wishes to challenge the authenticity of a document must serve a notice to prove a document not less than 42 days before the trial. If this is not done, he is deemed to admit the authenticity of the document.
- [11] Counsel for the defendant, Mr. Horace Fraser ("Mr. Fraser") in response, took issue with the fact that the notice of objection filed by the defendant did not state the basis for the objection and so he would not have known what to respond to. In any event, Mr. Fraser submitted that the email was central to the case as it is indicative of what transpired and caused Medical Associates to extend the line of credit. He contended that the email was not being tendered for the truth of its contents but to establish that it was sent and represented something on which Medical Associates acted. Nothing about the truth of the email was being relied on.
- [12] In relation to the failure of Medical Associates to give notice in accordance with section 54(1) of the Act, Mr. Fraser referred to the discretion given to the Court in section 54(2) and urged that this discretion should be exercised as the crux of the claim centered on the email which was part of Medical Associates' pleaded case from the beginning and was disclosed at a very early stage in

the proceedings. Harbor Club addressed the email in its pleaded case and witness statement and therefore had adequate opportunity to investigate the email such that its admission into evidence will not be prejudicial to their case. Mr. Fraser also made reference to section 143 of the Act which refers to the Court's discretion to allow documents into evidence despite the fact that the strict rules of evidence have not been complied with.

- [13] Mr. Maragh submitted that Mr. Fraser's reliance on section 44 and 45 of the Act which speaks to relevance cannot be accepted as relevance of a document and hearsay are two independent aspects of admissibility. Though the document may be relevant it ought not to be admitted if there is a failure to satisfy the exception to the hearsay rule. In relation to Mr. Fraser's submission that the Court retains a discretion by virtue of section 143 to allow the document in dispute into evidence, Mr. Maragh submitted that the discretion to disapply the strict rules of evidence can only be exercised if (i) the matter to which the evidence relates is not in dispute or (ii) the application of the provision would cause or involve unnecessary expense or delay. He suggested that neither of these was present in the circumstances of this case as the matter to which the email related was in dispute and in any event the claimant had put nothing before the Court to assist it to determine whether allowing the evidence would cause unnecessary expense or delay.

Analysis

- [14] I start with CPR 28.18. I note that this rule was raised for the first time at the commencement of the trial. No notice to prove as required by the said rule was served on the defendant within the stipulated time frame and therefore it is impermissible to allow Harbor Club to raise this at this stage. The effect of a failure to serve the relevant notice is that Harbor Club is deemed to admit the authenticity of the document. As mentioned previously, not even the notice of objection raised CPR 28.18. Hearsay and authenticity are two distinct concepts and any challenge to authenticity of a document must be made clear and in accordance with the relevant rule.

[15] I do not think there is any dispute that the email is a hearsay document as the maker of the email is not being called as a witness in the matter. The allegation is that the email was received by Medical Associates during the normal course of its business and therefore the submission that the person who received the email was not called as a witness cannot be accepted. The evidence very clearly revealed that the email address to which the email was sent is that of Medical Associates Billing Department to which Mr. Reginald St. Juste ("Mr. St. Juste") as Chief Financial Officer would have had access. Mr. St. Juste in his evidence made clear that Nurse Johanne Maitre ("Nurse Maitre") is not a ward clerk and would not have access to the email. Nurse Maitre who attended to Mr. Rosario on the night in question also gave evidence that although she is not a ward clerk, she would have received that email via an email address to which she has access. The question asked of Nurse Maitre was whether the email from Harbor Club came to an email address that she had access to and she replied yes. I do not think it was necessary for the actual recipient of the email to be called as a witness especially since Mr. St. Juste as the Chief Financial Officer would have access to the email address, 'tapionbilling@gmail.com' and Nurse Maitre confirms receiving the email.

[16] I agree with Mr. Maragh that Medical Associates failed to comply with section 50(2) of the Act and Mr. Fraser by the tenor of his submissions conceded as much. I also agree with Mr. Maragh that section 143 of the Act cannot be called in aid to waive the rules of evidence in this case as no evidence was led by Medical Associates to show that the matter to which the email relates is not genuinely in dispute or that the application of section 51 would cause or involve unnecessary expense or delay. This is supported by the case of **Paul Hackshaw v St. Lucia Air and Sea Ports Authority**.²

[17] The troubling issue is that the email is hearsay as it was written by one Michael Wolf who is not a witness in this matter. The exclusion of hearsay from admission at trial is one of the oldest and most fundamental rules of

²SLUHCv2008/0827 at para 36.

evidence. It is understood that out of court statements, oral or written, documents included are generally inadmissible if offered for their truth. There are however many exceptions to the hearsay rule such that one writer suggests that these exceptions essentially swallow the rule. It is therefore vital to establish the purpose for which the email is being relied on or sought to be admitted into evidence.

- [18] Out of court statements offered for things other than their truth are not subject to exclusion as hearsay as provided for in section 48(2) of the Act. Section 48(2) states that 'where evidence of a previous representation is relevant otherwise than as mentioned in subsection (1) that subsection does not prevent the use of the evidence to prove the existence of an asserted fact.
- [19] Section 48(1) provides that evidence of a previous representation made by a person is not admissible to prove the existence of a fact that the person intended to assert by the representation. Therefore, if the email is being admitted to prove the fact that it was sent and received by Medical Associates and this is what they relied on to give the line of credit in relation to Mr. Rosario, then it is admissible. If the purpose for admission of the email is to prove the truth of the representations made in the email, then it is inadmissible.
- [20] As the author of an Article titled: **"Email Evidence: Overcoming the So-Called "Self Serving Hearsay" Objection"**³ expresses, 'an email that describes matters discussed during a particular meeting or event would be admissible as circumstantial evidence that the meeting or event took place. It could also be used to establish the email's effect on its recipient or merely that the email was sent or received by a particular person on a particular day.
- [21] In this case, I accept Mr. Fraser's submission that the email is not being put forward for the truth of its contents but rather to establish that the email was received and on the basis of what it contained, Medical Associates took a

³Oregon State Bar Litigation Journal, Janet Lee Hoffman and Andrew Weiner, Spring 2015.

particular course of action. That to my mind renders the email admissible under section 48(2) of the Act.

[22] I make one observation. The purpose of raising evidential objections early is to put the other side on notice but such objections are useless if the other party does not know the precise basis for the objection thereby effectively returning to the days of trial by ambush when he is forced to respond at trial to matters which were not raised prior.

[23] Having dealt with the evidential objections, I now turn to the issues to be decided

Issues

[24] The issues for the Court's determination are:

- (i) Whether Mr. Michael Wolff had actual or ostensible authority to pledge Harbor Club's credit?
- (ii) Whether Medical Associates was put on enquiry as regards the representation made by Mr. Wolff and was negligent and unreasonable for failing to do so?

As the issues are somewhat linked, I will address them together.

The Law

[25] I have extracted the following relevant paragraphs from **Halsbury's Laws of England** on the law of agency:

"The relation of agency typically arises whenever one person, called the 'agent', has authority to act on behalf of another, called the 'principal', and consents so to act. **Whether that relation exists in any situation depends** not on the precise terminology employed by the parties to describe their relationship, but **on the true nature of the agreement or the exact circumstances of the relationship between the alleged principal and agent.**⁴

The relation of agency is created by the express or **implied agreement of principal and agent**. The relation can also be created **by ratification by the principal of the agent's acts done on his**

⁴Halsbury's Laws of England/Agency (Volume 1 (2017))/1. Nature and Formation/(1) The Relation of Agency/1. Nature of the relation of agency.

behalf. Express agency is created where the principal, or some person authorised by him, expressly appoints the agent, whether by deed, by writing under hand, or orally. **Implied agency arises from the conduct or situation of the parties,** or by operation of law, for example from necessity.⁵

The doctrine of 'holding out', also known as apparent or ostensible authority, is based on estoppel. Such agency by estoppel arises where one person has acted so as to lead another to believe that he has authorised a third person to act on his behalf, and that other in such belief enters into transactions with the third person within the scope of such ostensible authority. In this case the first-mentioned person is estopped from denying the fact of the third person's agency under the general law of estoppel, **and it is immaterial whether the ostensible agent had no authority whatever in fact, or merely acted in excess of his actual authority.** The principal cannot set up a private limitation upon the agent's actual authority so as to reduce the ostensible authority, for, so far as third persons are concerned, **the ostensible authority is the sole test of his liability.** If, however, the agent is held out as having only a limited authority to do, on behalf of his principal, acts of a particular class, the principal is not bound by an act outside that authority even though it is an act of that particular class. **The onus lies upon the person dealing with the agent to prove either real or ostensible authority, and it is a matter of fact in each case whether ostensible authority existed for the particular act for which it is sought to make the principal liable.** Holding out is something more than estoppel by negligence; **it is necessary to prove affirmatively conduct amounting to holding out. No representation made solely by the agent as to the extent of his authority can amount to a holding out by the principal.**⁶

As has been previously stated, the authority of the agent may be derived expressly from an instrument, either a deed or simply in writing, or may be conferred orally. **Authority may also be implied from the conduct of the parties or from the nature of the employment.**⁷

The authority of an agent may be confined to a particular act or be general in its character. **It will extend not only to acts expressly authorised but also to subordinate acts which are necessary or ordinarily incidental to the exercise of the express authority and to acts within the agent's ostensible authority...** As between the agent and his principal, an agent's authority may be limited by

⁵Halsbury's Laws of England/Agency (Volume 1 (2017))/1. Nature and Formation/(4) Formation of Agency/(i) Circumstances in which Agency may Arise/14. How agency is created.

⁶Halsbury's Laws of England/Agency (Volume 1 (2017))/1. Nature and Formation/(4) Formation of Agency/(iv) Agency by Estoppel/25. Apparent authority.

⁷Halsbury's Laws of England/Agency (Volume 1 (2017))/2. Authority of the Agent/(1) Derivation and Extent/29. Derivation of agent's authority.

agreement or special instructions, but, **as regards third persons, the authority which the agent has is that which he is reasonably believed to have, having regard to all the circumstances, and which is reasonably to be gathered from the nature of his employment and duties.**"⁸(my emphasis)

[26] From the above, I distil the following principles which I believe are relevant to this case:

- (i) Whether a relationship of agency exists in any situation depends on the true nature of the agreement or the exact circumstances of the relationship between the alleged principal and agent.
- (ii) Apparent or ostensible authority is based on estoppel. Such agency by estoppel arises where one person has acted so as to lead another to believe that he has authorised a third person to act on his behalf, and that other in such belief enters into transactions with the third person within the scope of such ostensible authority.
- (iii) The onus lies upon the person dealing with the agent to prove either real or ostensible authority, and it is a matter of fact in each case whether ostensible authority existed for the particular act for which it is sought to make the principal liable.
- (iv) It is necessary to prove affirmatively conduct amounting to holding out. No representation made solely by the agent as to the extent of his authority can amount to a holding out by the principal.
- (v) The authority of the agent may be derived expressly from an instrument, either a deed or simply in writing, or may be conferred orally. Authority may also be implied from the conduct of the parties or from the nature of the employment.

[27] Actual authority results from a manifestation of assent expressly or impliedly made by the principal to the agent that the agent should represent the principal. It may be given by means of words or writing. Actual authority is solely focused on the relationship between principal and agent to which the

⁸Halsbury's Laws of England/Agency (Volume 1 (2017))/2. Authority of the Agent/(1) Derivation and Extent/30. Extent of agent's authority.

third party is a stranger. Although founded on the principal's assent, the conferral of authority is judged objectively with regard to the object of the authority and to the usages of trade or business.

[28] Apparent or ostensible authority is a legal relationship between the principal and the third party created by a representation made by the principal to a third party, intended to be and in fact acted upon by the third party, that the agent has authority to enter into a contract on behalf of the principal of the kind within the scope of the "apparent" authority such that the principal becomes liable to perform any obligations arising from such contract.⁹ The representation when acted upon by the third party by entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract.¹⁰

[29] In the context of this claim, to find that Mr. Wolff had ostensible authority to act on Harbor Club's behalf, the following must be established-(i) that Harbor Club made a representation to Medical Associates by words or conduct that Mr. Wolff could act on its behalf; (ii) that Medical Associates relied on that representation to its detriment and (iii) that Mr. Wolff had the authority to bind the credit of Harbor Club and therefore Harbor Club is liable for Mr. Rosario's medical bills.

Analysis of Evidence

[30] There were two witnesses for the claimant, Mr. Reginald St. Juste and Nurse Johanne Maitre.

[31] Mr. Reginald St. Juste is the Chief Financial Officer at Medical Associates and has overall responsibility for the operations of the Tapion Hospital including all aspects of its financial management. Mr. St. Juste provides an overview of what he says is standard procedure for admission of patients for treatment as relates to payment. He says that it is a practice of Medical Associates to assist patients who at the time require urgent medical care but are unable to meet

⁹See *Freeman & Lockyer v Buckhurst Park Properties (Mangal) Ltd.* [1964] 2 QB 480 at 503.

¹⁰See also *East Asia Co Limited v PT Satria TirtatamaEnergindo* [2019] UKPC 30 at para 41 and 42.

the immediate associated costs. From some patients Medical Associates accepts guaranteed IOUs signed by the patient or next of kin and in others as in Mr. Rosario's case, it accepts letters from the patient's employer guaranteeing payment. In Mr. Rosario's case, Mr. St. Juste says an email was received from his employer guaranteeing payment of his medical bills on his behalf. He says Medical Associates acted in good faith and admitted Mr. Rosario for treatment. The email he says forms part of the official financial records.

[32] Mr. Rosario was discharged without his medical bills being settled. Mr. St. Juste says that letters and emails to Harbor Club requesting payment of Mr. Rosario's medical bills were forwarded to Harbor Club for payment with no success. He says he made several calls to the then Financial Controller who requested that he submit the relevant invoices and to one Mr. Shaun Cepal, allegedly the owner's representative, who requested a copy of the email authorising the guaranteed payment be sent to him.

[33] Ms. Johanne Maitre ("Nurse Maitre") is a practicing registered nurse employed with Medical Associates attached to the emergency room and was one of the registered nurses on duty throughout the month of October 2018 taking care of patients who came to the health facility for treatment or who were admitted for medical care.

[34] On 13th October 2018 at approximately 3:45 p.m. Mr. Rosario visited the emergency room at Tapion Hospital accompanied by two other individuals. She says she made a payment request for the respective fees to be paid by Mr. Rosario for his visit. After the deposit was paid by Mr. Rosario (using a credit card) he was attended to by the ER Physician. Mr. Rosario was informed that he needed to undergo a CAT Scan and X-ray after which he would have been admitted. Nurse Timatre says Mr. Rosario expressed his inability to fund the required procedures and indicated that he would contact his employer Harbor Club.

- [35] Nurse Maitre says she subsequently received an email from Mr. Wolff who indicated that he was the Director of Rooms in the employ of Harbor Club and that Harbor Club would be responsible for Mr. Rosario's medical bills. On receipt of this, Mr. Rosario was taken to get the requested procedures done. Nurse Maitre says that at the time of Mr. Rosario's discharge on 26th October 2018 his medical bills had not been settled.
- [36] The defendant's only witness was Mr. Lester Scott ("Mr. Scott"), the Managing Director of Harbor Club. Mr. Scott reiterates the contentions as stated in Harbor Club's defence. It is his evidence that given the alleged designation on the email purporting to come from Mr. Wolff of Director of Rooms, which email is denied, Medical Associates was put on enquiry to determine whether Mr. Wolff had the capacity and authority to pledge Harbor Club's credit and to confirm this with management of Harbor Club. He says further that Medical Associates should also have called to confirm the authenticity of the email and says that the email does not appear to have emanated from Harbor Club's email system. He does not say why he says so.
- [37] Mr. Scott says that prior to the commencement of the claim, Harbor Club had in response to a letter from Medical Associate's lawyer denied the claim and had given its reasons. Mr. Scott exhibits the Notice of Directors filed at the Registry of companies and Intellectual Property that Michael Wolff is not and never was a director of Harbor Club.
- [38] Mr. Scott's evidence is that at no time did Harbor Club contract the services of Medical Associates for itself or on behalf of any third party. Mr. Scott says Harbor Club never signed anything obligating it to pay for Mr. Rosario's medical services. According to Mr. Scott, Medical Associates carelessly accepted an email from a source it did not know and failed to verify. That more so, Mr. Rosario commenced paying for his own medical care and then later indicated his inability to pay which should have alerted them to ensure that proper due diligence and protocols were followed in light of the fact that Harbor Club was purported to assume that liability.

[39] The claimant's evidence falls short of what is required to prove its case. There is no evidence in this case that Harbor Club gave Mr. Wolff any actual authority to act on its behalf be it in writing or orally. The question which remains to be determined is whether Medical Associates was entitled to act on the email representation from Mr. Wolff that Harbor Club would pay Mr. Rosario's medical bill. Medical Associates to my mind could only do so if it is established that there was a relationship of agency between Harbor Club and Mr. Wolff.

[40] The question in this case is not one of actual but ostensible/apparent authority. It is accepted that an individual may have ostensible authority to act on behalf of a company but as submitted by the defendant in its written submissions, this can only arise where the company, and not merely the alleged director represents to a third party that the person has been vested with the authority to act on its behalf. Absent this, the company would not be liable for or bound by the acts of the person unless these acts are subsequently ratified by the company. An agent on his own cannot clothe himself with ostensible authority.¹¹ Article 1630 of the **Civil Code** supports this as it provides that: "The principal is liable to third parties who in good faith contract with a person not his agent, under the belief that he is so, **when the principal has given reasonable cause for such belief.**" The highlighted words illustrate the crux of the matter.

[41] In the context of this case, the question is "Did Harbor Club make representation whether in word or by its actions so as to lead Medical Associates to believe that it authorised Mr. Wolff to act on its behalf in relation to the payment of Mr. Rosario's medical bill and that Medical Associates, acting on such belief, accepted the email from Mr. Wolff which was within the scope of such ostensible authority?

[42] To determine this, one must examine the nature of the relationship between Medical Associates, Harbor Club and Mr. Wolff, if any and the conduct and

¹¹See Phillip Brelsford et al v Providence Estate Limited et al, MNIHCVAP2016/0008; 2016/009; 2016/0010 and 2016/0011 at para [40].

situation of the parties; and assess therefrom the authority which Medical Associates could reasonably have believed Mr. Wolff to have, having regard to all the circumstances.

[43] There is no evidence of any previous course of dealings between Harbor Club and Medical Associates where Mr. Wolff had acted in a similar manner and this had been sanctioned by Harbor Club. In fact, in cross-examination, Mr. St. Juste admitted that he only knew Mr. Wolff on paper and had never spoken to him nor had he emailed him. He suggested that there were emails sent to Mr. Wolff by his department but could not point to any in the evidence before the Court.

[44] Mr. Rosario presented at the Emergency Department at about 3:45 p.m. according to Nurse Maitre's evidence. The first payment on admission of \$800.00 was made by Mr. Rosario on 13th October 2018 by way of a Visa Credit Card. The email allegedly sent by Harbor Club from Mr. Wolff was sent at 8:18 p.m. on 13th October 2018. The email read and was presented as follows:

"Dear Tapion Billing department,

Thank you for treating our Food and Beverage manager Billy Rosario, this email is to confirm that Harbor Club St. Lucia guarantees payment of bills.

Please invoice us, many thanks!

Thank you & Kind Regards,

Michael Wolff
Director of Rooms

Harbor Club St. Lucia, Curio Collection by Hilton"

[45] When it was suggested to Mr. St. Juste that it was the hospital's duty to verify the email, he responded as follows: 'when Mr. Rosario came to hospital, he was questioned as to the mode of payment, he asked that we contact Harbor Club and we contacted Harbor Club and because it was evening time we asked that they send us some form of authorisation and they sent us the

email.’ From his response it is not clear who the ‘we’ he speaks of refers to. This evidence was also not part of his evidence in chief and runs counter to the evidence of Nurse Maitre who suggested in evidence in chief that it was after Mr. Rosario had paid the initial deposit of \$800.00 and he was told about having to undergo further medical procedures that he indicated his inability to pay and that he would contact his employer. There is no mention from her about anyone from Medical Associates contacting Mr. Rosario’s employer. I also find it curious that Mr. St. Juste as the Chief Financial Officer was not made aware that Mr. Rosario only expressed an inability to pay after he had already paid the initial deposit and was told that he needed to have other procedures done. Mr. St. Juste said in cross-examination that he was not aware of this but that it is possible.

[46] When I examine the email, I find it a bit curious as it hardly resembles official communication coming from an entity such as a hotel. Medical Associates should also have been alerted to the fact that this email was only forthcoming after Mr. Rosario indicated his inability to pay and had already paid an initial \$800.00 on his own. This should have alerted Medical Associates to the fact that it ought to have verified the email communication, more so as it arrived at 8:18 p.m. Mr. St. Juste suggested in cross-examination that if he received an email such as the one from Mr. Wolff, he would honour it because of the relationship with the business sector. It is not clear what that relationship is. At some other point in the cross-examination when it was suggested to Mr St. Juste that if it were the case that Mr. Rosario only indicated that he would contact his employer after he had indicated that he could not pay, this should have raised a red flag, he answered, ‘Yes it would and at that point I would have contacted Harbor Club’.

[47] Mr. St. Juste in cross-examination said in relation to a suggestion that Medical Associates had a strict pay before treatment policy that discretion was used based on familiarity, status, knowledge of the client and that they tried to accommodate their business partners. In relation to the business sector, he also said that he would grant credit to those he thought credible and that one is supposed to know the client. When asked whether he would give credit to a

company he did not know, he responded that he would do further investigations before saying yes or no. Mr. St. Juste's evidence confirmed that he was the one who had the final say for granting credit. Later on, he suggested that if the situation was not life-threatening, several persons could approve the grant of credit in relation to patient treatment, the operations manager, the supervisor of the department in question, the Chairman, Dr. Daniel or he, Mr. St. Juste.

[48] At another point in the cross-examination, Mr. St. Juste responded in the affirmative to the question of whether all email authorisations pledging credit would first have to be verified by the supervisor of ward clerks or the ward clerks. It was unclear to me after the various questions and responses as to the procedure for approval of the grant of credit. Mr. St. Juste's responses were at variance, for on the one hand he suggested that he had the final say on granting credit and on the other hand, it was the ward clerks' job to verify the email authorisations pledging credit. Yet in the case of Harbor Club, this was not done, and he said he did not see the need to.

[49] Adding to the inconsistencies, when asked whether anyone in the ward clerks department had verified the email, he responded that the email was sent in retrospect the next morning after the supervisor contacted Harbor Club. This is different to what had hitherto been the evidence that the email had been sent on the night of 13th October 2018. In fact, the very email relied on by Medical Associates contradicts that bit of Mr. St. Juste's evidence. His only explanation for the obvious omission to state that efforts were made to engage Harbor Club prior to treatment, was that his witness statement was not comprehensive and he was relaying the facts as he recalled them.

[50] When asked whether he or anyone from his team had attempted to verify the email received, Mr. St. Juste said no because they did not see the need to as it was coming from a business place. He said he did not think it was unusual that the email came from a director of rooms as he had worked at a hotel before and if one of the guests had an incident, the head of security could make the decision. Recalling Mr. St. Juste's previous response when asked whether he

would give credit to a company he did not know, it is rather interesting that he admitted that he had no knowledge of the internal approval processes of Harbor Club as it related to pledging of its credit and yet thought there was no need to carry on any further enquiries or verification of the email.

[51] Mr. St. Juste while suggesting that he knew Harbor Club, did not know who the financial controller was. He said in cross-examination that after the incident he spoke to one Mr. Cepal to whom he was asked to direct his queries. He admitted to knowing Mr. Cepal and one Michael Matthias but he did not know that Mr. Matthias was the Financial Controller of Harbor Club. This to my mind strongly supports the conclusion that there was no relationship between Harbor Club and Medical Associates to support the acceptance of the email without more. Mr. St. Juste also agreed with counsel Mr. Maragh that in some circumstances, except in emergencies, employers paying for employees' treatment would normally present a formal letter on letterhead, but it depended on the relationship that Medical Associates had with the business sector. Quite interestingly, in cross-examination, Mr. Maragh suggested to Nurse Maitre that she had no idea whether the email which she received was a valid email and she responded that 'the email came with the Harbor Club letterhead and was signed by Mr. Wolff who is the operations manager of Harbor Club'. This is not supported by any of the evidence presented in chief or even by the email document itself being relied on by Medical Associates. The email did not come on a letterhead, Mr. Wolff was stated as Director of Rooms and the email was not signed as Nurse Maitre said in cross-examination.

[52] It is a general principle of law that a person who contracts with a company in good faith is not bound to enquire into whether acts of internal management have been regular and may assume that acts within its constitution and powers have been properly performed-the indoor management rule. As submitted by the defendant in its submissions, this general rule is limited in its scope. This limitation was described in the case of **Northside Developments Pty Ltd. v Registrar General**¹² and it was made clear that the indoor management rule is

¹²[1990] 170 CLR 146.

dependant on the operation of normal agency principles and only where on ordinary principles the person who purports to act on behalf of the company is acting within the scope of his actual or ostensible authority.

- [53] The words of Dawson J in **Northside Developments** were approved in **Akai Holdings Ltd. v Kasikornbank Public Co Ltd**¹³ and are instructive:

“The correct view is that the indoor management rule cannot be used to create authority where none otherwise exists; it merely entitles an outsider, in the absence of anything putting him upon inquiry, to presume regularity in the internal affairs of a company when confronted by a person apparently acting with the authority of the company. The existence of an article under which authority might be conferred, if it is known to the outsider, is a circumstance to be taken into account in determining whether that person is being held out as possessing that authority. ... In other words, the indoor management rule only has scope for operation if it can be established independently that the person purporting to represent the company had actual or ostensible authority to enter into the transaction. The rule is thus dependent upon the operation of normal agency principles; it operates only where on ordinary principles the person purporting to act on behalf of the company is acting within the scope of his actual or ostensible authority.” (my emphasis)

- [54] In its written submissions, the claimant argued that the holding out on the part of Harbor Club was the job title that Mr. Wolff held which suggested that he had authority along the lines of a senior manager if not an actual director. Counsel, Mr. Fraser submitted that Medical Associates was entitled to rely on the representation of Michael Wolff who seemed to have had executive responsibility and whose general authority was not known to them. Director of Rooms he said is an executive title which suggests involvement with management of Harbor Club's business. It is also counsel's contention that there was nothing so unusual about the transaction that could have put Medical Associates on enquiry that Mr. Wolff did not have ostensible authority and their belief that Mr. Wolff did was not dishonest, reckless or irrational.

- [55] The claimant relies on the case of **East Asia Co. Limited v PT Satria Tirtatama Energindo**¹⁴ in support of these submissions. That case however

¹³[2010] HKCFA 64 at para 59.

does not assist Medical Associates. The case concerned the validity of a purported agreement (the HOA) for the sale by East Asia Company Ltd. (EACL) to PT Satria Tirtatama Ebergindo (PT Satria) of EACL's only asset-its shares in BEL-Bali Energy Limited. The HOA was signed by one of EACL's three directors, J and witnessed by H, a director of BEL. J was also a director of BEL. PT Satria contended that the HOA was valid as J had ostensible authority to act on behalf of EACL. The Privy Council agreed with the Court of Appeal of Bermuda that J did not have ostensible authority to enter into the HOA on behalf of EACL for the following reasons: (i) EACL did not hold J out to PT Satria either expressly or impliedly, as having any authority to enter into a transaction such as the HOA on its behalf; (ii) PT Patria had not relied on any representation by EACL as to J's authority but had relied on J's representations and assurances which was not sufficient and (iii) PT Satria would not be entitled to rely on any ostensible authority of J because it had been put on inquiry as to his lack of actual authority given the many unusual features of the transaction.

[56] The case does not support the claimant's submission that the job title, Director of Rooms suggested that Mr. Wolff had authority akin to a senior manager. Before the Board, counsel for PT Satria argued that the titles of J and H indicated their executive responsibility. The Board found that although J had been styled as Chief of General Affairs and H as Chief Executive Officer of BEL, neither of them had been appointed as chief executive officer or managing director of EACL.¹⁵ Perhaps it would have been reasonable to assume apparent authority by virtue of the title given to an agent where the particular title is one which is known to be a senior management position.

[57] Mr. Wolff was stated to be the Director of Rooms, a position which in and of itself does not suggest any connection to financial matters or that this position is one which is ordinarily involved in financial matters and authorised to bind the company or is a senior management position. The evidence of Mr. Scott, in cross-examination was that he did not agree that Mr. Wolff held a senior

¹⁴[2019] UKPC 30.

¹⁵See East Asia Co at para [56].

position. He said based on the job description, Mr. Wolff had responsibility for room accommodation. Hence it is strange that Mr. Wolff would be the one communicating with Medical Associates when the hotel should have a fully functional accounts department. I would think it odd that a big establishment like Harbor Club would allow staff to bind the company's credit in that manner. I cannot accept the argument that the job title Director of Rooms suggests senior management as the first thing that comes to mind is reservations or house-keeping. Director of Rooms is not a commonly known designation and from my research it refers to someone who ensures that guests at a resort have the best possible experience.

- [58] Mr. St. Juste in cross-examination admitted to not having had any prior experience treating any employee of Harbor Club prior to Mr. Rosario presenting for treatment. Having not had any previous dealings with Harbor Club in relation to payment of medical bills or dealings with Mr. Wolff for that matter and being in receipt of an email, not a formal letter on the letterhead of the company, Medical Associates ought to have verified with the company that indeed the email was sent on its behalf and that Mr. Wolff had the requisite authority to bind the company. None of that was done. Mr. St. Juste agreed with Mr. Maragh in cross-examination that in hindsight, it would have been the financially prudent course to have verified the email. Given the manner in which this email was presented to Medical Associates-it appears to have been sent from Mr. Wolff's personal work email address, the time at which it was presented, the fact that it was only forthcoming after Mr. Rosario had already paid the deposit and only after he was told he had to pay for further treatment and the fact that Medical Associates had had no prior dealings with Harbor Club or Mr. Wolff, Medical Associates ought to have been put on inquiry that it needed to do further checks to verify the contents of the email and safeguard itself. In addition, there is no evidence of any representation being made by Harbor Club whether orally or by its conduct, to Medical Associates as regards Mr. Wolff's authority to act on behalf of Harbor Club. I therefore find based on the law and the evidence presented that Mr. Wolff was not acting as an agent of Harbor Club with actual or ostensible authority when the alleged email was sent.

Conclusion

[59] Having examined the evidence in this case, I find that Medical Associates has failed to advance any evidence capable of discharging its burden of proof. It must be remembered that it is for the claimant to prove that the agent had actual or ostensible authority. The burden is not on the defendant. Medical Associates has failed to establish on a balance of probabilities that Mr. Wolff had authority whether actual or ostensible or apparent to bind Harbor Club.

[60] In the circumstances, Medical Associates' claim is dismissed with prescribed costs to be paid by Medical Associates to Harbor Club in the sum of \$5,587.20.

[61] This matter should serve as a caution to Medical Associates that before it accepts guarantees to pay from business establishments on behalf of employees or from other entities that it does the necessary background checks to ensure that (a) the communication received is from a legitimate source and is bona fides and (b) that the person communicating on behalf of the business establishment or entity is authorised to make the representation which they seek to make. It is hoped that the relevant checks and balances will be put in place to avoid further incidents such as occurred in the case of Mr. Rosario.

**Kimberly Cenac-Phulgence
High Court Judge**

By The Court

Registrar