[2024] JMSC Civ 25

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2015 HCV 03423

BETWEEN	**LANS FRANCIS**	**CLAIMANT**
AND	**NOVEL QUEST**	**1ST DEFENDANT**
AND	**HALICON HOLDINGS LIMITED**	**2ND DEFENDANT**

IN CHAMBERS

Ian Davis instructed by IP Davis & Co for the Claimant

1st Defendant appearing in person and on behalf of the 2nd Defendant

Heard: 11 & 12 December 2023 & 22 February 2024

Civil Procedure – Rule 26.3 of Civil Procedure Rules – Whether claim is an abuse of process; section 73 of the Judicature (Parish Court) Act – whether section 73 operates to prevent the bringing of this claim in light of previous claim filed in the Parish Court – Whether claim should be struck out as disclosing no reasonable grounds for bringing claim; Whether the 1st defendant should be removed as a party

MASTER C. THOMAS

Introduction

[1] By way of an application to strike out claim, which was filed on 9 October 2023, the 1st defendant and the 2nd defendant (through the 1st defendant) seek the following orders: -

1. An Order that the First Defendant be removed from the matter as a Defendant;

2. An Order that the Judgment in the Parish Court against the Second Defendant extinguishes any claim the Claimant has against the Defendants;

3. An Order that the Claim of Negligence against the Defendants be struck out;

4. An Order that the Claimant acted in breach of the Employment Contract with the Second Defendant;

5. An Order that the Claimant's ex-parte Notice of Application for Court Orders for Injunctive Relief & Accounting & Production of Documents be extinguished;

6. An Order that the Claimant has no basis for his Claim in this Honourable Court. In the situation, the Claimant's motion for Court Orders in respect of his Claim is a nullity.

[2] The grounds upon which the defendant relies on may be summarised as follows:

i. The claimant's contract is with the 2nd defendant and not the 1st defendant. Further, the Claimant has failed to disclose evidence from which it could be reasonably concluded that the 1st defendant was his employer or that he was contracted to the 1st defendant; (grounds 1 & 5)

ii. The claimant has failed to produce any evidence for a court to conclude that the 1st defendant should be held accountable for the alleged debt of the 2nd defendant; (ground 2)

iii. The claimant is seeking to abuse the processes of the court by trying to re-litigate the issue, as the claimant brought a claim in the Parish

Court against the defendants and the parish court already found that the 1st defendant was not a proper party to the action; (ground 3)

iv. The claimant obtained judgment in the Parish Court for $950,000.00 (ground 6)

v. The claimant is seeking to enforce the Parish Court Judgment in this court but the Parish Court has power to enforce its own proceedings (ground 7). To invite the Supreme Court to enforce the Parish Court Judgment is an abuse of process.

vi. Section 73(3)(c) of the Judicature (Resident Magistrate) Court Act (now Judicature (Parish Court) Act) provides that when the claimant obtained Judgment in the Parish Court, he abandoned any remaining portion of any debt, demand or penalty beyond the sum actually sued for in the plaint and that in the circumstances, the claimant's claim is without merit (grounds 8 & 9)

vii. The claim is in contract and there is no reference in the claim form to negligence on the part of any of the defendants. The claim in negligence is not sufficiently particularised. The claim in negligence should be struck out (ground 11)

The application was supported by an affidavit sworn to by the 1st defendant. The evidence contained in the affidavit was in substance the same as the grounds of the application. The claimant also swore to an affidavit in opposition to the application. I will refer to aspects of the evidence where necessary during my analysis.

The claim

[3] The claimant is a civil engineer. The 1st defendant is the chairman and chief executive officer (director) of the 2nd defendant, a company primarily engaged in the business of construction and land development.

[4] In or around April 2009, there was an agreement for the development of housing lots on property called Willows (formerly Los Castillos) and an apartment complex called Sincere Palms. The claimant alleges that he and the 1st defendant agreed to undertake the projects, that he was engaged in the capacities of project manager and civil engineer partner and that the date for the commencement of these projects was November 2009. He further alleges that the agreement stated that he would receive a monthly stipend of Two Hundred Thousand Dollars ($200,000.00) to cover the costs for travelling, maintenance of his motor vehicle, utility bills and lodging in Mandeville. The claimant asserts that it was also agreed that he would be paid seven and a half (7.5%) percent of the profits from the sale of the units upon completion. After working with the defendants over a period of twenty-one months, by way of letter dated 19 January 2011, the claimant resigned from the projects.

[5] Proceedings were initiated in the Supreme Court by way of a claim form and particulars of claim filed on 9 July 2015. The claimant claims against the 1st and 2nd defendants for damages in the sum of Fifteen Million and Eight Hundred Thousand Dollars ($15,800,000.00) for monies owed to him arising from the contract between the parties. The claimant also seeks an order restraining the defendants from parting with and or disbursing and or diminishing the proceeds of the sale of their interest in the Sincere Palms Development to LCCM Investments Limited without the permission of the court.

[6] In the defence, which was filed on 27 August 2015, the defendants contend that the terms and conditions as agreed with the claimant as extracted from the contract are as follows: -

- You will receive $200,000.00 per month as a stipend.

- You will be supplied with gasoline per month to a maximum of $30,000.00 to facilitate the performance of your duties as well as vehicle maintenance costs of $30,000.00 every three (3) months.

- You will be responsible for the proper execution of the two (2) ongoing projects; Sincere Palms and Los Castillos as well as any other projects assigned.

- A full description of your duties, responsibilities and performance targets has been set out in the contract specification and description document which will form the basis of your contract.

- On satisfactory achievement of the agreed objectives set out in the duties, responsibilities and performance criteria, 7 ½ % of net profit after tax from each project will be allotted to you on completion and collection of funds.

- The contract can be terminated by either party if the agreed objectives are not attained or by either party giving three (3) months' notice in writing. If termination occurs, you will, however, be entitled to a proportion of the 7 ½ % of net profit after tax for each project, arrived at by prorating the period of your engagement from 1 November 2009 to termination as a proportion of the duration of the project.

[7] The defendants contend that at all material times the claimant was contracted to the 2nd defendant and not to the 1st defendant and was never an equitable partner in the 2nd defendant. Further, all payments to the claimant was the responsibility of the 2nd defendant and the 1st defendant was not engaged in any financial transaction with the claimant and could not have liquidated a portion of any debt allegedly owed to him. The defendants maintain that the Parish Court determined, upon an application to set aside default judgment, that the 1st defendant was not a proper party to the suit and that the judgment was entered against the 2nd defendant only. Consequently, the 1st defendant is not indebted to the claimant as the transaction was made between the 2nd defendant and the claimant. Further, it is contended that the 2nd defendant was not able to pay the outstanding sums due to depleted financial condition.

[8] The Parish Court proceedings to which the defendants refer in their defence was instituted on 28 February 2014 by the claimant in the Sutton Street Parish Court for the sum of Eight Hundred Thousand Dollars owed to him for his stipend. On 16 July 2014, judgment was entered in default in the following terms: -

1. Judgment in the sum of $800,000.00 with interest accruing at 3% daily from the 9th day of December, 2013 to the date of Judgment under the Law Reform (Miscellaneous Provisions) Act, and 6% from the date of judgment under the Judicature (Resident Magistrates) Act;

2. Costs in the sum of $11,016.00.

The claimant alleges that to date, the defendants have failed to honour the judgment of 16 July 2014.

The submissions

[9] Written and oral submissions were made by both parties. The submissions of the defendants were in substance a reflection of the grounds set out in the application and therefore I will not rehearse them, save to say that it was also submitted that the 2nd defendant is a company and can enter into a contract in its own right. The defendants' submissions in summary were that: (i) the claims relate to two separate causes of action; and (ii) in the alternative, relying on the case of **Talbot v Berkshire County Council** [1993] 4 All ER 9, the instant case falls within the exception to the abuse of process principle in **Henderson v Henderson** [1843-60] ALL ER rep 378.

Discussion and Analysis

[10] It seems to me that the grounds raise the following issues:

(i) Whether the 1st defendant ought properly to be removed as a defendant;

(ii) Whether in light of the proceedings in the Parish Court, section 73 of the Parish Court Act is applicable and operates to prevent the institution of these proceedings;

(iii) Whether the claim ought to be struck out as a result of abuse of process;

(iv) Whether the claim in negligence should be struck out as disclosing no reasonable grounds for bringing the claim.

An order was also sought that the claimant had acted in breach of the employment contract, but that, it seems to me, would have required the bringing of a counterclaim or a separate claim for breach of contract against the claimant.

[11] I propose to deal with the issues (ii) and (iii), which relate to the striking out of the entire claim since if these are determined in favour of the defendants, they will be dispositive of the application and by extension the entire claim.

Whether in light of the proceedings in the Parish Court section 73 of the Parish Court Act is applicable and operates to prevent the institution of these proceedings;

[12] Section 73 of the Judicature (Parish Court) Act provides:

> "73. – (1) A plaintiff shall not divide any cause of action for the purpose of bringing two or more suits in any court.
>
> (2) Any plaintiff having a cause of action for an amount which exceeds one million dollars, for which, but for such excess, a plaint might be lodged under this Act may, subject to subsection (3) abandon the excess and thereupon shall, on proving his case, recover to an amount not exceeding one million dollars.
>
> (3) Where pursuant to subsection (2) a court determines a cause of action –

(a) The judgment of the court upon such plaint shall be in full discharge of all demands in respect of such cause of action;

(b) Entry of the judgment shall be made accordingly; and

(c) The plaintiff shall in all cases be held to have abandoned any remaining portion of any debt, demand or penalty beyond the sum actually sued for in the plaint."

In my view, the issue of whether the provisions of section 73 of the Parish Court Act preclude the bringing of these proceedings can be dealt with briefly in that the Parish Court Act governs proceedings in the Parish Court. I agree with Mr Davis that it does not bind the Supreme Court. The principal legislation that governs proceedings in the Supreme Court is the Judicature (Supreme Court) Act. Section 73 of the Parish Court Act would be applicable only where the claimant had attempted to bring another claim in the Parish Court. The claim in this court could therefore not be struck out by operation of section 73.

Whether the claim ought to be struck out as being an abuse of the process of the court

[13] There is no dispute that rule 26.3(1)(b) of the Civil Procedure Rules **("CPR")** empowers the court to strike out a claim as being an abuse of process. The basis for the defendants' contention that the bringing of these proceedings is an abuse of process is the judgment that was obtained in the Parish Court proceedings in July 2014.

[14] Finality in litigation is a core principle of the administration of justice. It is for this reason that the three related principles of cause of action estoppel, issue estoppel and **Henderson v Henderson** abuse of process have been formulated by the court. As Morrison JA (as he was then) in **National Commercial Bank JA Ltd v**

Justin Ogilvie [2015] JMCA Civ 45 stated, “these are among the methods used by the Court to protect its process. They are applied to prevent litigants from seeking to re-litigate matters that have already been decided between the parties”. These all form part of the doctrine of res judicata. The learned authors of Halsbury’s Laws of England, Civil Procedure (Volume 11) (2020) explain the doctrine of res judicata thus: -

> The doctrine of res judicata provides that, where a decision is pronounced by a judicial or other tribunal with jurisdiction over a particular matter, that same matter cannot be reopened by parties bound by the decision, save on appeal. It is most closely associated with the legal principle of ‘cause of action estoppel’, which operates to prevent a cause of action being raised or challenged by either party in subsequent proceedings where the cause of action in the later proceedings is identical to that in the earlier proceedings, the latter having been between the same parties (or their privies), and having involved the same subject matter. However, res judicata also embraces ‘issue estoppel’, a term that is used to describe a defence which may arise where a particular issue forming a necessary ingredient in a cause of action has been litigated and decided, but, in subsequent proceedings between the same parties involving a different cause of action to which the same issue is relevant, one of the parties seeks to reopen that issue. For this reason, res judicata has been described as a portmanteau term which is used to describe a number of different legal principles with different juridical origins upon which the courts have endeavoured to impose some coherent scheme only in relatively recent times.

[15] In the **National Commercial Bank** case, Morrison JA observed that the rule in **Henderson v Henderson** is “closely allied to the principles of cause of action and issue estoppel”. The rule in **Henderson v Henderson** has its foundations in the

following speech of Wigram VC in **Henderson v Henderson** [1843-60] All ER Rep 378 (pages 381-382):

> In trying this question, I believe I state the rule of the court correctly, when I say that where a given matter becomes the subject of litigation in, and of the adjudication by, a court of competent jurisdiction, the court requires the parties to that litigation to bring forward their whole case, and will not (except under special circumstances) permit the same parties to open the same subject of litigation in respect of the matter which might have been brought forward as part of the subject in contest, but which was not brought forward only because they have, from negligence, inadvertence, or even accident, omitted part of their case. The plea of res judicata applies, except in special case, not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of the litigation and which the parties, exercising reasonable diligence, might have brought forward at the time.

[16] In **Hon Gordon Stewart OJ & Ors v Independent Radio Company Ltd & Anor** [2012] JMCA Civ 2, Hibbert JA (Ag) (as he then was), in canvassing some of the authorities on abuse of process, considered the Privy Council decision of **Johnson v Gore Wood & Co** which, he was of the view, provides "a helpful analysis of **Henderson v Henderson** abuse of process'. He summarised the decision of the Privy Council thus:

> Their Lordships allowed the appeal holding that although the bringing of a claim or the raising of a defence in later proceedings might, without more, amount to abuse if the court was satisfied that the claim or defence should have been raised in earlier proceedings, **it was wrong to hold that a matter should have been raised in such proceedings merely because it could have been. A conclusion**

> **to the contrary would involve too dogmatic an approach to what should be a broad, merits-based judgment which took account of the public and private interests involved and the facts of the case, focusing attention on the crucial question whether, in all the circumstances, a party was misusing or abusing the process of the court by seeking to raise before it an issue which could have been raised before**. Their Lordships also held that while the result might often be the same, it was preferable to ask whether in all the circumstances a party's conduct was an abuse and then, if it was, to ask whether the abuse was excused or justified by special circumstances… (Emphasis supplied)

[17] In the earlier case of **Clarence Ricketts v Tropigas SA Ltd & Ors** SCCA No 109/99 (delivered 31 July 2000), Langrin JA had also considered the **Henderson v Henderson** abuse of process principle. In canvassing the authorities, he considered the case of **Talbot v Berskshire County Council** [1993] 4 All ER 9 in which Smith LJ in the English Court of Appeal considered the circumstances in which **Henderson v Henderson** abuse of process principle would not apply. In that case, Smith LJ stated:

> The mere fact that a party is precluded by the rule from advancing a claim will inevitably involve some injustice to him, if it is or may be a good claim; but that cannot of itself amount to a special circumstance, since otherwise the rule would never have any application. **The court has to consider why the claim was not brought in the earlier proceedings. The plaintiff may not have known of the claim at that time (see for example Lawlor v Gray [1984] 3 All ER 345, where the claim for interest by the revenue which the plaintiff sought to pass on to the defendant had not been made at the time of the earlier proceedings; or there may have been some agreement between the parties that the claim should be held in abeyance to abide the outcome of the first set**

> **of proceedings; or some representation may have been made to the plaintiff upon which he has relied, so that he did not bring the Claim earlier. These would be examples of special circumstances, though of course** they are not intended to be an exhaustive list. (Emphasis supplied)

The court in **Clarence Ricketts** also found that a judgment by consent or default is as effective as an estoppel between the parties as a judgment whereby the court exercises its mind on a contested case.

[18] Based on the authorities outlined above, in considering whether this claim is an abuse of process, I must take a "broad merits-based approach" including considering whether any special circumstances for not applying the principle exist.

[19] The claimant in his affidavit in opposition to the application stated that he was informed by his then attorney-at-law that the judgment in the Parish Court would not extinguish his rights to any future claims against the defendants as they were "two distinctly separate causes of action". Mr Davis has submitted that these two causes of action are for breach of contract for outstanding monthly stipend due and payable (in the Parish Court); and (in the Supreme Court) for recovery of monies owed resulting from profits the claimant should have received upon completion of the profits which were not yet due at the time of the institution of the Parish Court proceedings.

[20] It appears to me that the two claims arose out of the same contract between the parties that was entered into sometime in April 2009. There is nothing in the particulars of claim or the claimant's affidavit in opposition to the application which supports Mr Davis' contention that the two claims are based on two separate contracts, that is, one contract for payment of a stipend and another contract for the payment of profits. Also, it seems to me that an action for sums due and owing for a stipend is not a cause of action but a remedy resulting from a breach of contract.

[21] It is the claimant's pleadings that he resigned in January 2011, and in his resignation letter he asked that all the monies owing to him should be paid in full. It is also his pleading that by way of letter dated 19 January 2011, he wrote to the 1st defendant demanding payment of Sixteen Million and Eight Hundred Thousand Dollars ($16,800,000.00) being the sum total of outstanding stipend and his share of the profits due to him. He would therefore from that date have had it in his contemplation as to the amount that he was claiming. However, the response of the 2nd defendant by way of letter dated 12 September 2013, which was exhibited to the claimant's affidavit in opposition, is significant. That letter was written by the 1st defendant in his capacity as chairman/chief executive officer of the 2nd defendant. It stated in part, as follows: -

> Mr Francis was for a period engaged in the capacities as Project Manager and Civil Engineer under an arrangement where a monthly stipend was paid to him and a percentage of the profits of both projects would have been paid on completion. Under the monthly arrangement there is a balance of approximately $800,000.00 still owed to Mr Francis **while the agreed share of profits is yet to be determined since both projects have been on hold since 2011 and have experienced major overruns** … 2010 however, the relationship with Mr Francis was ended owing to the low level of activity on both projects.
>
> Recently, there have been very positive developments for both projects with arrangements almost finalised to restart Sincere Palms by November of this year with completion expected by June 2014. The Willows is expected to be revitalised by the receipt of critical government approvals in time to take advantage of the traditional Christmas high sale period for the category of properties being offered.

> It is expected therefore that these developments will soon put us in a position to begin liquidating the approximately $800,000.00 owed to Mr Francis under the monthly arrangements and **at the end of both projects whatever is due to him under the profit share arrangement will be finalised.** (Emphasis supplied)

[22] It seems to me that this letter would have given the impression that the profits could not be determined at the time of the writing of the letter because the projects had been hold and had not yet been completed. It therefore seems to me that given that almost three years had passed since the claimant's resignation and given that the stipend would have been ascertainable and payable upon his resignation, the claimant brought the action in the Parish Court. It is my view that having regard to the 1st defendant's letter dated September 2013, it would not have been unreasonable for the claimant to have delayed in bringing an action to recover his share of profits in light of the indication that one project would have ended in 2014 and no time frame was given for the completion of the other, and most importantly, at the end of both projects the claimant's share of the profits would be finalised. I, therefore, agree with Mr Davis' submission that the letter gave the impression that the claim for a share of the profits should be held in abeyance until the projects were finalised and the profits determined. I am of the view that the letter was a representation upon which the claimant relied to his detriment in delaying to bring his claim for a share of profits, a claim which in any event could not have been brought in the Parish Court due to the monetary jurisdictional limits of that court. Indeed, it appears from the particulars of claim that it was the claimant's fear that the 1st defendant was about to sell its interest in one of the developments that prompted the institution of these proceedings. I therefore am of the view that in these circumstances the bringing of the instant claim is not an abuse of process.

Whether the claim in negligence should be struck out as disclosing no reasonable grounds for bringing the claim

[23] The contention by the defendants is that there are no facts or law which show negligence and therefore the claim in negligence is a nullity. In the grounds of the application, it is stated that the elements of negligence are not sufficiently particularized as to give rise to a reasonable cause of action and that the claimant cannot conflate contract and negligence in the same claim.

[24] The provisions of rule 26.3(1)(c) of the **CPR** are clear that the court may strike out a claim as disclosing no reasonable grounds for bringing the claim. In **Sebol Ltd & Ors v Ken Tomlinson** SCCA No 115/2007, (delivered 12 December 2008), Dukharan JA in our Court of Appeal stated that "before a claim can be struck out it must clearly be obvious that no reasonable cause of action is disclosed". In this case, the claimant has asserted six particulars of negligence to support his claim in negligence including "failing to take any reasonable care in discharging of the obligations to the claimant pursuant to the terms of their agreement". I am of the view that the claimant having pleaded particulars of negligence in support of his claim for negligence, it is for the court at trial to determine whether these particulars have been made out and therefore whether the defendants were negligent.

[25] In relation to the contention by the defendants that breach of contract and negligence cannot be conflated, Phillips JA in the case of **Medical and Immuniodiagnostic Laboratory Limited v Dorett O'Meally Johnson** [2010] JMCA Civ 42 considered the authorities on this issue and concluded as follows:

> So, unless inconsistent with its terms or specifically excluded, I agree with Lord Goff in **Henderson & Ors v Merrett Syndicates Ltd** [1994] 3 All ER 505 when he also said:
>
> > "…the common law is not antipathetic to concurrent liability, and that there is no sound basis for a rule which

> automatically restricts the claimant to either a tortious or a contractual remedy."

There is nothing placed before me to suggest that the bringing of this claim in negligence is inconsistent with or specifically excluded by the terms of the contract.

Whether the 1st defendant ought properly to be removed as a Defendant

[26] Rule 19.2 of the CPR empowers the court to make an order for a person to cease to be a party if the court considers that it is not desirable for that person to be a party to the proceedings. The principal contention of the 1st defendant for seeking the order is that the 2nd defendant is separate from the 1st defendant.

[27] One of the most fundamental principles of company law is that on incorporation, a company becomes a separate legal entity. Section 4 of the Companies Act makes it clear that a company has the capacity, and the rights, powers and privileges of an individual. and distinct from its members. This is the bedrock upon which company law rests. A veil is drawn between the company's personality and that of its shareholders. There is a plethora of case law that reiterates this point that a company is capable of enjoying rights and being subject to liabilities different from those enjoyed or borne by its shareholders (see **Salomon v Salomon & Co Ltd** [1897] AC 22 Eng HL, **Macaura v Northern Assurance Co** [1925] AC 619).

[28] Professor Andrew Burgess in his text, Commonwealth Caribbean Company Law distinguishes between separate legal personality and limited liability. At page 91, he states: -

> Another fundamental company law concept which must be discussed in the context of separate legal personality is the concept of limited liability. Separate legal personality and limited liability are disparate, but interrelated, corporate law concepts. In order to understand fully many corporate law doctrines therefore, it is

> important to establish the distinction between separate legal personality and limited liability.
>
> As has just been seen, separate legal personality concerns the company's capacity to acquire legal rights and incur legal responsibilities in its own name. This implies that the shareholders of a company are entitled without more to the company's rights nor are they liable for its obligations. Put another way, the concept of separate legal personality means that it is the company, not its shareholders, which must enforce rights acquired by it and the company, and not its shareholders, which is liable for obligations incurred on its behalf. The concept of limited liability under the Companies Acts, on the other hand, operates to allow a company ultimately to recover a contribution from its shareholders equal to the value as determined by the directors at which the shares held by the shareholder is issued, to enable the company to discharge its obligations. Limited liability, in other words, describes the extent to which a company can require its shareholders to make a financial contribution based on the value of the shares issued to him to meet the company's liabilities. As such the concept of limited liability is a logically distinct concept from separate legal personality."

[29] It is the claimant's contention, by way of paragraph 5 of his particulars of claim that he and the 1st defendant agreed to undertake development of housing lots on property called Willows and an apartment complex called Sincere Palms. In his affidavit in opposition to the application, he stated at paragraph 10 that he brought an action in the Parish Court for outstanding accrued monthly stipends which were due and payable pursuant to the agreement between him and the 1st and 2nd defendants. At paragraph 11 of the affidavit, he stated that by way of a written contract between himself and the 1st and 2nd defendants, it was agreed that he would be paid a percentage of the profits upon completion of the project. The defendants' response in their defence was to deny paragraph 5 of the particulars

of claim. They averred, among other things, that all discussions held with the claimant were done by the 1st defendant in his capacity of chairman and chief executive officer of the 2nd defendant and at no time in his personal capacity. As stated previously, at paragraph 5 of the defence the terms and conditions "as extracted from the contract" were outlined. Although all the parties seemed to be relying on the contract, neither attached the contract to their pleadings. In this regard, it is significant that the letter of 22 April 2015 by the claimant's then attorney to the defendants' then attorney, in asking that the defendants' then attorney "forward a copy of the contract between the parties as promised before the court" suggests that the claimant did not have a copy of the contract in his possession, but the defendants did.

[30] The court is therefore faced with two competing contentions: on the one hand that the contract was between the claimant and the defendants and on the other, that the contract was between the claimant and the 2nd defendant. The defendants had also stated in their defence that the Parish Court Judge had found that the 1st defendant was not a proper party. The claimant did not avail himself of a reply to address this issue. Also, the 1st defendant argued that the claimant's resignation letter was addressed to Halicon Holdings which is evidence that the contract was between the claimant and the 2nd defendant. However, this document was not in evidence before the court. Nonetheless, in light of my view that there is one contract being relied on in respect of both claims, in circumstances where it was not denied by the claimant that the Parish Court had made that finding, it seems to me that the finding of the Parish Court would operate, by virtue of the doctrine of issue estoppel to bind the parties. Also, I am of the view that it is not insignificant that the letter of 22 April 2015 (see paragraph 29 above) from the claimant's then attorney referred to the claim as "Lans Francis & Halicon Holdings Ltd" in circumstances where the plaint had been filed against 1st and 2nd defendants. In light of the foregoing, I am of the view that the 1st defendant should be removed as a party to this claim.

Conclusion

[31] In light of the foregoing, I order as follows:

(i) The 1st defendant is removed as a party to the claim;

(ii) The reliefs sought at paragraphs 2-6 of the application are refused.

(iii) Each party shall bear his own costs.

(iv) Leave to appeal is refused.