THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE
COMMERCIAL DIVISION

SAINT LUCIA

CLAIM NO: SLUHCM2023/0004

BETWEEN:

GABLEWOODS MEDICAL CENTRE LIMITED

Claimant

-and-

MEDICAL ASSOCIATES LIMITED

Defendant

Before the Honourable Mr Justice Alvin Shiva Pariagsingh

Appearances:

Ms. Shari-Ann Walker and Ms. Deandra Goss the Claimant
Mr. Leslie Prospere and Mrs. Megan Du Boulay-Lee for the Defendant

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2026: March 04, 05 – Trial
May 15 – Primary Submissions
June 05, 08 – Submissions in Reply
July 13 – Decision

JUDGMENT

INTRODUCTION:

[1] **PARIAGSINGH, J:** - This claim arises out of a long commercial relationship between the parties. The Claimant operated a radiology and medical imaging practice from premises at Tapion Hospital for many years. The relationship began in or around 1996 and was later governed by written lease agreements.

[2] The dispute concerns whether the Defendant was contractually entitled to establish and operate its own radiology facility at Tapion Hospital while the Claimant remained in occupation. The Claimant says the Defendant's conduct breached the parties' longstanding arrangement and the written leases, damaged the Claimant's business, undermined its investment in a CT Scanner and ultimately led to the Defendant serving

Notices to Quit in bad faith. The Claimant accordingly seeks damages for breach of contract and other consequential relief.

[3] The Defendant denies those allegations. It says the Claimant was a tenant, not an exclusive service provider and that the leases did not prevent the Defendant from developing its own hospital services.

[4] Several procedural and evidential issues arose at trial, particularly concerning the Claimant's Supplemental List of Documents[1] and the admissibility and weight of parts of certain witness' evidence. Those issues are dealt with first. I then turn to the substantive issues, namely the nature of the 1996 arrangement, the construction of the written leases, the alleged non-compete obligation, the CT Scanner, repair and maintenance, tacit renewal, the Notices to Quit, bad faith, and damages.

THE PLEADINGS:

The Claim filed on 13 March 2023:

[5] The Claimant was the radiology and imaging service provider at Tapion Hospital and the Defendant, owned and operated the hospital. The Claimant's case is that, from about 1996, the parties had an agreement under which the Claimant would provide radiology, imaging and support services at Tapion Hospital. The Defendant would collect payment from patients and remit the sums to the Claimant monthly, while the Claimant paid rent for occupying the hospital premises.

[6] The Claimant contends this arrangement was later formalised by written lease agreements, including the 2010 Lease Agreement and the 2015 renewal. The Claimant relies on terms which it says required the parties to work symbiotically, prohibited competing services, required the Claimant to provide services on a 24-hour basis and required the Defendant to maintain the premises and common areas.

[1] Filed on 11 April 2025

[7] The Claimant says that although the 2015 lease expired on 31 March 2020, the parties continued acting as though the lease had been renewed for another five years, ending 31 March 2025. It therefore says there was a tacit renewal of the lease.

[8] The Claimant also says that in 2019, the parties agreed that the Claimant would procure a CT scanner to be housed at Tapion Hospital as part of the hospital's services. The Claimant says the Defendant knew the Claimant had taken financing for the CT scanner, involving monthly payments of US$6,000 for 10 years.

[9] The Claimant alleges that the Defendant breached the parties' agreement by setting up competing radiology services from around September 2022. It says the Defendant installed or began commissioning a CT scanner, a solid-state X-ray machine and a portable X-ray machine, erected signage for an alternative radiology department and diverted patients away from the Claimant. The Claimant says this caused confusion among doctors and patients, damaged its reputation, reduced referrals and caused loss of revenue.

[10] The Claimant also alleges that the Defendant breached its lease obligations by failing to maintain the premises. It complains of damage to access pathways, difficulty for wheelchair and stretcher patients, roof/structural problems, and a failure to repair despite requests. It says this disrupted its business and made it difficult or unsafe to provide services.

[11] The Claimant claims damages including US$900,000 for loss of earnings, US$280,000 for relocation of the CT scanner, pecuniary loss, loss of economic opportunity, interest and costs.

The Defence filed on 24 April 2023:

[12] The Defendant denies that the Claimant has proved any oral agreement from 1996. It contends that the parties' relevant relationship was governed by a written lease for the period 1 November 2005 to 31 October 2010, following which the Claimant remained in occupation.

[13] The Defendant disputes the Claimant's interpretation of the non-compete provisions. Its case is that any restriction on competing services applied to the Claimant as tenant, not to the Defendant as hospital owner. It says the preamble about "symbiotic" services and the hospital's vision was not an enforceable promise preventing the Defendant from offering radiology services. It also says the hospital had a system of privileges and credentialing and that other tenants or practitioners could provide overlapping services if approved by the Medical Advisory Board (Committee).

[14] The Defendant admits that the Claimant remained in occupation and continued paying rent but denies that there was a tacit renewal of the lease for five years from 2020 to 2025. It says that, in any event, if the lease was renewed, it could be terminated on notice. The Defendant relies on a Notice to Quit dated 11 April 2023.

[15] The Defendant denies that it agreed to, approved, or knew the financing arrangements for the Claimant's CT scanner. It says it did not agree to be responsible for the consequences of the Claimant acquiring or relocating that scanner.

[16] The Defendant denies that it breached any agreement by installing or operating radiology equipment. It also denies that it diverted patients or caused confusion. Its case is that any loss of revenue suffered by the Claimant was due to the Claimant's own issues, including complaints about the quality, reliability and efficiency of services provided.

[17] On the premises issue, the Defendant denies that it was in major disrepair as alleged or that it failed to maintain the premises. It says if there were structural defects, the Claimant failed to notify the Defendant of same. The Defendant denies that the Claimant's premises were inaccessible and avers that there were multiple access routes and specifically that the pathway to the Claimant's premises was and remains in good condition. The Defendant denies liability for the claimed losses and disputes the amounts claimed.

The Reply:

[18] In reply, the Claimant contends the lease was only part of a wider relationship. It says it relocated from Gablewoods Mall to Tapion Hospital at the Defendant's request so that it could provide radiology and imaging services to the hospital.

[19] The Claimant accepts there was a 2005 written lease but maintains that the broader agreement between the parties existed and that the non-compete obligation applied to both parties. It says the Defendant cannot rely on the fact that it is the hospital owner to avoid the non-compete obligation.

[20] The Claimant says the Notice to Quit was ineffective because it was served after proceedings had begun and after the agreement had already been tacitly renewed. It also says the Defendant acted in bad faith by attempting to terminate the arrangement while trying to provide competing services.

[21] The Claimant repeats that the Defendant's directors approved the CT scanner being brought to and housed at Tapion Hospital. It also repeats that the Defendant's X-ray and radiology services caused confusion and loss.

THE EVIDENCE:

[22] I have considered the evidence of each witness together with the documents, the pleadings and the submissions of the parties. In the interest of brevity, I do not propose to rehearse every part of the evidence. I have summarised the evidence only to the extent necessary to explain my findings on the issues in dispute.

Mr. Aristotle Yague:

[23] Mr. Aristotle Yague gave expert accounting evidence for the Claimant. His report considered the Claimant's revenue and net revenue for the period 2020 to 2025. His evidence showed that the Claimant's revenue increased from XCD $213,545.00 in 2020–2021 to XCD $395,405.00 in 2022–2023, before falling to XCD $189,445.00 in 2023–2024 and XCD $57,140.00 in 2024–2025. His report also showed a fall in net

revenue from XCD $209,960.00 in 2022–2023 to XCD $7,667.00 in 2023–2024, and then to a net loss of XCD $44,912.00 in 2024–2025.

[24] In cross-examination, Mr. Yague accepted that the source documents supporting his calculations were not attached to his report. He also accepted that he did not examine year-by-year audited financial statements, did not independently obtain information from the Defendant or the Inland Revenue and did not analyse whether the fall in revenue was attributed to the Defendant's conduct or to the presence of competitors in the market. His evidence was essentially an accounting summary of figures supplied to him by the Claimant, not a causation analysis.

[25] I accept Mr. Yague as a careful and professional witness within the limits of his instructions. His evidence is useful to show that the Claimant's revenue declined sharply after 2023. I do not, however, treat his report as proving that the decline was caused by any breach of contract by the Defendant. That was outside the scope of his analysis. His evidence is therefore accepted as to the figures and the trend, but not as proof of legal causation.

Dr. Christy Daniel:

[26] Dr. Christy Daniel gave evidence for the Claimant. He is a urologist and former tenant at Tapion Hospital. In his witness statement, he described his own tenancy and his experience with the Defendant. He said he had encountered maintenance issues during his time at Tapion. More importantly for the present claim, he gave evidence about an incident in or around 2009 when he wished to introduce ultrasound or imaging services at Tapion. He said that after initial discussions, he was told that the proposed service would compete with Gablewoods and that duplication of services was not permitted.

[27] In cross-examination, Dr. Daniel accepted that his tenancy was separate from the Claimant's tenancy and that he was not a party to the Claimant's lease. He had no direct knowledge of the alleged 1996 agreement between the Claimant and Defendant. He also accepted that there was no written proposal, written approval, written rejection, minutes, or other documents supporting his account of the discussions about his

proposed ultrasound service. The persons he said gave and withdrew approval were not called as witnesses.

[28] I found Dr. Daniel to be an honest witness giving evidence about his own experience. However, his evidence has limited probative value on the central issues. His evidence may support the Claimant's broader narrative that Tapion Hospital had, at times, discouraged duplication of ancillary services but it does not prove the terms of the Claimant's lease, the terms of the alleged 1996 agreement, or any binding non-compete obligation owed by the Defendant to the Claimant. I therefore treat his evidence as contextual only.

Dr. Naveen Raj Urs:

[29] Dr. Naveen Raj Urs was the Claimant's principal witness. His witness statement was central to the Claimant's case. He described the history of the relationship between the parties, the Claimant's relocation from Gablewoods Mall to Tapion Hospital, the alleged 1996 oral agreement, the later written leases, the CT Scanner, the Defendant's establishment of its own radiology department, maintenance complaints, the Notices to Quit, and the Claimant's alleged losses.

[30] In his statement, Dr. Urs said that the 1996 oral agreement included terms by which the Claimant would provide radiology and imaging services at Tapion Hospital, the Defendant would collect payments and remit them monthly after deducting rent, and the Claimant would receive referrals from doctors and patients. He also said that the Claimant was to be the exclusive and sole provider of radiology and imaging services at Tapion Hospital.

[31] Dr. Urs gave evidence that the Claimant procured a CT Scanner in 2019 with the Defendant's knowledge and approval. He said the Claimant made a substantial financial commitment on the understanding that the machine would be housed at Tapion Hospital and used in the continued provision of the Claimant's services. He further alleged that the Defendant later undermined that arrangement by establishing its own radiology facility and diverting patients from the Claimant.

[32] In cross-examination, Dr. Urs made several important concessions. He accepted that he was not present in Saint Lucia in 1996, was not then the owner or managing director of the Claimant, was not one of the persons who negotiated the alleged oral agreement and could not personally speak to the terms agreed in 1996. When he attempted to explain what he had been told by predecessors, the Court correctly identified the hearsay difficulty.

[33] He also accepted that he did not participate in the negotiation of the 2005 lease, that the word "exclusivity" does not appear in the 2005, 2010 or 2015 leases, and that he could not authoritatively say that the written leases were a direct copy of the alleged 1996 oral agreement. In relation to the preamble, he accepted that the wording about no new competing services was subject to approval by the Medical Advisory Board (Committee).

[34] On the CT Scanner, Dr. Urs accepted that the alleged agreement with the Defendant was not in writing, that there were no Board minutes confirming approval, and that no Board member was called by the Claimant to prove such approval. He also accepted that the claimed relocation cost of USD $280,000.00 was not supported by invoices, quotations or other proper documentary proof.

[35] On maintenance, Dr. Urs' evidence was mixed. He gave evidence of access problems, ceiling or roof issues, flooding and elevator difficulties. However, he accepted that he had no expert or qualified report proving major structural roof disrepair, and no clear written record proving the full extent of the complaints as pleaded.

[36] I found Dr. Urs to be an intelligent and committed witness who plainly believes the Claimant was treated unfairly. He had real knowledge of the Claimant's business and of events during his own period of management. His evidence is useful on the practical operation of the business, the payment and remittance arrangements, the Claimant's investment in equipment and the commercial impact of the Defendant's new radiology facility.

[37] However, parts of his evidence went beyond what he could properly prove. I give little weight to his evidence where it concerns the precise terms of the 1996 oral agreement,

legal conclusions about breach, alleged exclusivity, hearsay from predecessors and speculative damages. I accept his factual evidence where it is supported by documents or by the Defendant's witnesses.

Mr. Reginald St. Juste:

[38] Mr. Reginald St. Juste gave evidence for the Defendant. He was the Defendant's former Chief Financial Officer. His evidence was important on the financial arrangements between the parties and on the maintenance/access complaints.

[39] In his witness statement, Mr. St. Juste confirmed that the Claimant provided radiology services to Tapion Hospital patients and the general public. He explained the financial arrangement: where the Defendant's patients used the Claimant's services, the Defendant collected payment, deducted rent and remitted the balance to the Claimant. This evidence supported the Claimant's case that there was a long-running commercial relationship involving more than a simple payment of rent.

[40] Mr. St. Juste also gave evidence about the pathway works. He said the works were carried out to clear a blockage which was causing water to back up and that the Claimant's premises were never inaccessible because alternative routes remained available. He also said that two major maintenance incidents, involving a busted pipe and an electrical issue, were dealt with expeditiously.

[41] In cross-examination, Mr. St. Juste accepted that the concrete pathway was one means of access to the Claimant's premises and that it was affected during the works. However, he maintained that the works were temporary and that alternative access remained available. In amplification, he said the works did not take more than three weeks.

[42] He also accepted that there had been water damage affecting ceiling tiles but said that the tiles were replaced and the area painted. He could not produce all the underlying documents or correspondence relating to every complaint, and some of his evidence on maintenance records was based on his recollection and role as CFO rather than documents before the Court.

[43] I found Mr. St. Juste to be generally straightforward and reliable on matters within his direct responsibility, particularly the payment/remittance arrangement and the purpose of the pathway works. His evidence assisted both parties in different ways. It supported the Claimant's case that the parties had a substantial continuing commercial arrangement, but it also supported the Defendant's case that the pathway works were temporary repair works rather than a deliberate obstruction. Where his evidence was unsupported by documents, I give it moderate rather than full weight.

Dr. Martin Plummer:

[44] Dr. Martin Plummer was called by the Defendant. He is a former Medical Director of Tapion Hospital (from late 2019 to 2024) and was involved in the Medical Advisory Committee.

[45] In his witness statement, Dr. Plummer said he could not verify the alleged 1996 oral agreement. He gave evidence about complaints concerning the Claimant's service, including complaints about quality, reliability, timeliness and accuracy. He also referred to a sexual harassment complaint against Dr. Urs and said that the Medical Advisory Committee considered matters relating to the Claimant. He gave evidence that the Defendant eventually decided to establish its own radiology department.

[46] In cross-examination, Dr. Plummer accepted that, between 2015 and 2020, the Claimant was the only radiology and imaging service provider situated on the Defendant's premises. He also accepted that Tapion's physicians, including himself at times, referred patients to the Claimant. However, he did not accept that the Claimant was contractually the hospital's radiology department, stating that there was a separation between the Claimant and the hospital.

[47] His evidence about complaints was less strong. He was unable to produce minutes or clear records of some of the meetings and outcomes he referred to. In relation to the sexual harassment complaint, there was no finding before the Court and no evidence of the outcome of any complaint to the Medical Council. Accordingly, that evidence cannot be treated as proof that the allegation was true.

[48] I found Dr. Plummer useful on the general hospital context, the existence of service concerns, and the Defendant's internal decision-making. His concessions were also important because they confirmed the Claimant's practical role as the sole on-site radiology provider for a period. However, I give limited weight to his evidence about unproven complaints and no weight to his views on the legal meaning of the lease. Contractual interpretation is for the Court.

Dr. Jonathan Romel Daniel:

[49] Dr. Jonathan Romel Daniel was an important witness for the Defendant. Dr. Daniel has been the Chairman of the Defendant's Board from 2015 and had been associated with Tapion Hospital for many years; He was the Medical Director of the Defendant from 2008 to 2013 and a Director of the Board from 2013 to 2015.

[50] In his witness statement, Dr. Daniel said he did not know the details of the alleged 1996 oral agreement. He accepted that the Claimant had a long-standing presence at Tapion Hospital but denied that the Claimant had an exclusive contractual right to provide radiology services. He also said the Defendant had always allowed some duplication of services among practitioners and that the decision to establish the Defendant's own radiology department was approved by the Board and the Medical Advisory Committee.

[51] Dr. Daniel denied that the Defendant agreed to the Claimant's procurement of the CT Scanner in the terms alleged. He said the Claimant's acquisition of the CT Scanner was its own commercial decision and that there was no binding agreement by the Defendant to be responsible for it. He also denied deliberate diversion of patients.

[52] In cross-examination, Dr. Daniel accepted that he came into the picture after the alleged 1996 arrangement and therefore had no direct knowledge of it. He accepted that, when he began practising at Tapion, he interacted with the Claimant for radiology and imaging services. He also accepted that the Defendant established its own radiology facility in or around 2022 and later announced the Dr. Martin Didier Radiology Department to medical practitioners.

[53] He accepted the importance of the lease's "symbiotic" language, but maintained that the Claimant was not the exclusive radiology department of the hospital. His evidence on this point was somewhat defensive. At times, he appeared to draw fine distinctions between the Claimant being the main provider, a provider to the hospital, and the hospital's radiology department. Still, his evidence was consistent with the documentary position that there was no express exclusivity clause in the lease.

[54] I found Dr. Daniel reliable on the Defendant's Board-level position from 2015 onward, including the decision to establish the Defendant's own radiology department and the Defendant's position on the CT Scanner. His evidence is of limited value on the alleged 1996 agreement because he was not involved at that time. I accept his evidence that the Defendant did not agree to fund or underwrite the Claimant's CT Scanner. I also accept that he confirmed facts which assist the Claimant, namely the long practical relationship between the Claimant and Tapion and the Defendant's later establishment of a competing radiology facility.

ISSUES FOR DETERMINATION:

[55] Following the trial and the submissions of the parties, there are two sets of issues to be determined. There are procedural and evidential issues which I propose to deal with first and then the substantive issues.

[56] The procedural and evidential issues which arise for determination are as follows:

1) Whether the Claimant's 40 late/supplemental documents should be admitted into evidence.

2) Whether parts of Dr. Naveen Urs' paragraphs 22, 26, 29, 30, 32, 33, 38 and 50 witness statement are admissible.

3) Whether Dr. Christy Daniel's evidence is admissible or relevant.

4) Whether the Claimant's Notice of Objection should be considered and, if so, whether parts of the Defendant's witness evidence should be excluded.

5) Whether the amplified evidence should be treated as reliable and what weight it should carry.

[57] The substantive issues which arise for determination are as follows:

1) Whether there was a commercial arrangement between the Claimant and the Defendant in or around 1996, and what terms of that arrangement have been proved.

2) Whether the 1996 arrangement was absorbed into the later written leases or survived as a separate ancillary agreement.

3) Whether the written leases, properly construed, prohibited the Defendant from establishing or operating its own radiology facility.

4) Whether the Defendant breached the lease by establishing and operating its own radiology department at Tapion Hospital.

5) Whether there was a binding agreement between the parties concerning the CT Scanner.

6) Whether the Defendant breached its repair and maintenance obligations under the lease.

7) Whether the lease was renewed after 31 March 2020, and if so, on what terms.

8) Whether the Notices to Quit were valid and effective.

9) Whether the Defendant acted in bad faith.

10) If liability is established, whether the Claimant has proved recoverable damages.

11) Costs.

ANALYSIS:

Procedural and Evidential Issues:

[58] I will resolve the procedural and evidential issues first.

Issue 1- Whether the Claimant's 40 late/supplemental documents should be admitted into evidence.

[59] Having considered the parties' submissions, I admit the forty documents contained in the Claimant's Supplemental List of Documents, but subject to the observations on weight and costs set out below.

[60] The Defendant's objection is a serious one. The Claimant filed its Supplemental List of Documents on 11 April 2025, the same date fixed for the filing of witness statements, without the affidavit required by CPR 28.12(4). The Defendant submits that the documents all predated standard disclosure and ought to have been identified by a reasonable and proportionate search at the standard disclosure stage. On that footing, the Defendant says this was not a case of proper continuing disclosure but an attempt to introduce documents late which should have been disclosed earlier.

[61] The Defendant also relies on CPR 28.13(1), which provides that where a party fails to give disclosure by the date ordered, that party may not rely on or produce the undisclosed document at trial without the Court's permission. The Defendant submits that because the Rules specify a consequence for non-compliance, CPR 26.9 cannot be used as a general cure. It also points out that there was no application for relief from sanctions, no supporting affidavit, and no proper explanation for the default.

[62] I accept that the Claimant failed to comply with CPR 28.12. The breach was not trivial. The absence of the affidavit mattered. It deprived both the Defendant and the Court of a proper explanation as to when the documents came to the Claimant's attention, why they were not disclosed earlier and why they were only produced at the witness statement stage. The documents were important to the Claimant's case and should have been disclosed in accordance with the Rules.

[63] I do not accept, however, that the breach must automatically lead to exclusion of the documents. CPR 28.13(1) does not impose an absolute bar. It prevents reliance on the documents without the Court's permission. The Court therefore retains a discretion, to be exercised in accordance with the overriding objective and the need to deal with the case justly.

[64] The Claimant submits that CPR 28.12 imposes a continuing duty of disclosure, that the missing affidavit was a procedural defect rather than a fatal flaw and that the Court may cure the defect by granting permission. It also says the documents were served on 11 April 2025, several months before trial and that the Defendant did not object until the first day of trial, notwithstanding the pre-trial review in September 2025.

[65] The Claimant further relies on CPR 28.17 and the Court's case-management powers. It says the documents are relevant to the central issues, that exclusion would cause serious prejudice to the Claimant and that the Defendant had sufficient time to consider and respond to them. It also relies on the overriding objective and submits that procedural rules should serve, rather than defeat, the just determination of the claim.

[66] The Defendant's answer is that the authority relied on by the Claimant, **Boyea v Boyea**[2], is distinguishable. In that case, the supplemental disclosure was found to have complied with CPR 28.12(2) and (3). Here, no affidavit was filed explaining when the documents came to the Claimant's attention or when notice was given. The Defendant submits that, if the documents are admitted, little or no weight should be attached to them because their provenance has not been properly explained.

[67] In my view, the proper question at this stage is, whether the Claimant's breach caused incurable unfairness to the Defendant. I am not satisfied that it did. The documents were served in April 2025, approximately eleven months before the trial in March 2026. The Defendant had the opportunity to raise its objection before trial and did not do so. That delay does not cure the Claimant's non-compliance but it is relevant to whether exclusion is now the fair and proportionate result.

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[2] SVGHCV2019/0175 (unreported)

[68] I therefore admit the forty documents by permission of the Court.

[69] The Claimant's failure to comply with CPR 28.12 remains a serious matter. It caused unnecessary argument and trial management difficulty. Although I do not exclude the documents, I will take the Claimant's non-compliance into account when considering costs.

Issue 2- Whether parts of Dr. Naveen Urs' paragraphs 22, 26, 29, 30, 32, 33, 38 and 50 witness statement are admissible.

[70] I also treat Dr. Urs' witness statement with care. During the trial, the Court identified several passages as problematic, in particular paragraphs 22, 26, 29, 30, 32, 33, 38 and 50. Parts of those paragraphs do not contain evidence of fact in the ordinary sense. They combine factual assertions, opinion, submission and conclusions which are for the Court to determine.

[71] The Claimant submits that those paragraphs are admissible because Dr. Urs was speaking from his personal involvement, experience, observations, business records and understanding of the parties' dealings. It says paragraphs 26 and 29 concern his knowledge of the CT Scanner, paragraph 30 concerns his observation of declining revenue, paragraphs 32 and 33 concern the Defendant's alleged competition and the continuation of obligations after March 2020, paragraph 38 concerns his observations of the Claimant's business and paragraph 50 relies on figures derived from the Claimant's financial records.

[72] The Defendant submits that the evidence goes too far. It says Dr. Urs was not involved in the 1996 discussions and cannot give first-hand evidence of the formation or terms of the alleged 1996 oral agreement. The Defendant also says that parts of his statement are opinion, hearsay, legal submission, speculation, or an impermissible expansion of the Claimant's pleaded case.

[73] I accept that Dr. Urs may give evidence of matters within his own knowledge, including the Claimant's later business operations, the parties' course of dealing, documents he saw or used, and events in which he personally participated. However, he was not a

first-hand witness to the making of the alleged 1996 oral agreement. The Claimant acknowledges in its reply submissions that Dr. Urs was not present in 1996 but says he later gained knowledge from predecessors and from the parties' consistent conduct. That may explain the source of his understanding, but it does not convert his evidence into first-hand evidence of the terms agreed in 1996.

[74] Paragraph 22 is admitted only in a limited way. Dr. Urs may speak to his own experience of the Claimant's operations, referrals and dealings with patients and physicians. However, he cannot speak for "the public", all patients, or all referring physicians. To the extent paragraph 22 asserts that the Claimant was generally recognised by those groups as Tapion's designated radiology department, I give that evidence limited weight unless supported by independent evidence.

[75] Paragraphs 26 and 29, which concern the CT Scanner, are admitted. Dr. Urs appears to have had personal involvement in the 2019 procurement process. However, any assertion that the CT Scanner was procured pursuant to an "exclusive" arrangement, or under a legally binding "understanding" with the Defendant, is a conclusion which must be tested against the pleadings, the documents and the other evidence.

[76] Paragraphs 30, 32 and 33 require the Court to separate fact from argument. Evidence that the Claimant's revenue declined after the Defendant opened its own radiology facility is admissible as factual evidence. However, statements that the Defendant "breached" the agreement, acted unlawfully, or was legally prohibited from doing what it did are conclusions for the Court. I give no weight to those parts as evidence.

[77] Paragraph 38 is also treated with caution. In that paragraph Dr. Urs says he "verily believes" that the Defendant has been actively diverting patients. A witness statement is not an affidavit and belief evidence is generally of limited value unless the witness sets out the facts on which the belief is based, and those facts are admissible. To the extent paragraph 38 gives specific factual examples within Dr. Urs' own knowledge, I will consider them. To the extent it merely states his belief or conclusion that patients were being diverted, I give no weight to it.

[78] Paragraph 50 concerns damages. The Defendant submits that it contains speculative projections, opinion evidence and figures based on a spreadsheet prepared by an in-house accounts manager who was not called as a witness. The Claimant says the figures come from its financial records and that the Court can determine what weight should be attached to them.

[79] I do not exclude paragraph 50 in its entirety. However, Dr. Urs is not an expert on loss assessment or future revenue projections. His evidence on damages must therefore be treated as lay evidence from a director of the Claimant. The Court has separate expert accounting evidence from Mr. Yague on actual revenue figures. I will therefore consider paragraph 50 only to the extent it is supported by the financial records, Mr. Yague's evidence, or other independent material. Unsupported projections or broader compensation figures advanced by Dr. Urs will be given little weight.

Issue 3- Whether Dr. Christy Daniel's evidence is admissible or relevant.

[80] The Defendant asks the Court to treat Dr. Christy Daniel's evidence as irrelevant and, in parts, hearsay. It submits that his evidence concerns his own tenancy, his own office and his own attempt to offer ultrasound or imaging services. The Defendant says those matters do not directly prove the terms of the Claimant's lease, the alleged 1996 agreement, or the Claimant's losses. It also submits that paragraphs 13 to 15 contain hearsay because they recount statements allegedly made by Dr. Richardson and Dr. Surage, neither of whom was called as a witness.

[81] The Claimant submits that Dr. Christy Daniel's evidence is relevant because he was also a tenant of the Defendant and gave evidence about the Defendant's approach to duplication of services and competing medical services at Tapion. The Claimant says paragraphs 13 to 15 concern direct conversations which Dr. Christy Daniel personally had with Dr. Richardson and Dr. Surage. It also submits that the Defendant did not properly put to him that those conversations did not occur.

[82] I decline to strike out Dr. Christy Daniel's statement in its entirety. His evidence may have some relevance as background, particularly in relation to the alleged practice at

Tapion concerning duplication of services and the Defendant's general approach to tenants.

[83] However, I do not treat his evidence as proof of the Claimant's contractual terms. His tenancy was not the Claimant's tenancy. His discussions about ultrasound services were not the 1996 arrangement between the Claimant and Defendant, nor were they the 2005, 2010 or 2015 leases between those parties.

[84] I also treat the conversations with Dr. Richardson and Dr. Surage with caution. They may be considered as evidence that those conversations took place and that Dr. Christy Daniel received certain instructions or information. They do not prove, without more, that the Defendant owed the Claimant a contractual obligation not to permit competing services.

[85] I therefore admit Dr. Christy Daniel's evidence for the limited purpose of background and context. I give it limited weight on the central contractual issues.

Issue 4- Whether the Claimant's Notice of Objection should be considered and, if so, whether parts of the Defendant's witness evidence should be excluded.

[86] The Claimant objects to portions of the witness statements of Dr. Jonathan Romel Daniel and Dr. Martin Plummer and to the letters attached to those statements which concern complaints about the Claimant's services and an allegation of sexual harassment. The Claimant submits that these matters are irrelevant, prejudicial, scandalous and outside the live issues because the Defendant did not plead that the lease was terminated for poor service or sexual harassment.

[87] The Defendant submits that the evidence is relevant because the Claimant pleaded loss of revenue, damage to reputation, loss of goodwill and loss of referrals. The Defendant says its Defence specifically pleaded that any reputational harm, loss of referrals, or loss of revenue was caused by the Claimant's own actions or inaction. It also relies on pleaded complaints concerning quality, reliability, efficiency and the sexual harassment complaint.

[88] I accept the Defendant's admissibility argument. Once the Claimant alleged that the Defendant's conduct damaged its reputation and caused loss of referrals, the Defendant was entitled to answer that any reputational or referral difficulty was caused, or contributed to, by complaints about the Claimant's own service. That evidence is therefore relevant to causation, reputation, goodwill and damages.

[89] That said, admissibility is not the same as proof. The complaint evidence may show that complaints were made and that the Defendant says it had concerns about the Claimant's service. It does not, without more, prove that the complaints were true.

[90] The sexual harassment material requires particular care. The Claimant points out that Dr. Plummer accepted in cross-examination that neither he nor the Defendant's witnesses provided proof of the complaint and that he did not know the status or outcome of any complaint before the Medical and Dental Association. On the evidence before me, I make no finding that the allegation was proved.

[91] I therefore admit the evidence for the limited purpose of the Defendant's pleaded response on reputation, referrals, causation and damages. I do not admit it as proof that the complaints, including the sexual harassment complaint, were true. Its weight will be assessed accordingly.

Issue 5- Whether the amplified evidence should be treated as reliable and what weight it should carry.

[92] The Court granted permission at trial for Dr. Urs to amplify his evidence. The amplification included his evidence that Dr. Sanchez of St Jude's Hospital had referred a patient for a CT scan, that the patient did not attend the Claimant's facility, and that Dr. Sanchez later told him the scan had been done at the Defendant's new facility.

[93] The Defendant submits that this evidence is hearsay, and possibly double hearsay, because neither Dr. Sanchez nor the patient was called. The Defendant says the

evidence depends on what Dr. Sanchez allegedly told Dr. Urs and may also depend on what Dr. Sanchez was told by someone else.

[94] The Claimant submits that the evidence is not hearsay because Dr. Urs was giving evidence of a direct conversation which he personally had with Dr. Sanchez. It says the conversation itself is within Dr. Urs' personal knowledge.

[95] I admit the evidence, since permission to amplify was granted at trial. However, its use is limited. Dr. Urs can give evidence that he had a conversation with Dr. Sanchez and what Dr. Sanchez told him. But because neither Dr. Sanchez nor the patient gave evidence, I give limited weight to the evidence as proof that the patient was in fact diverted to the Defendant's facility.

Substantive Issues:

[96] I now turn to the resolution of the substantive issues in the claim.

[97] The resolution of this dispute turns upon three sequential questions. First, what commercial arrangement, if any, was concluded between the parties in or about 1996? Secondly, what effect did the subsequent written leases have upon that arrangement? Thirdly, properly construed, do those written leases impose upon the Defendant the contractual restraint for which the Claimant contends? The remaining issues largely depend upon the answers to those questions.

Issue 1- Whether there was a commercial arrangement between the Claimant and the Defendant in or around 1996, and what terms of that arrangement have been proved.

[98] The Claimant's case is that, before 1996, it operated its radiology practice from Gablewoods Mall and relocated its practice to Tapion Hospital pursuant to an oral agreement with the Defendant. According to the Claimant, the parties agreed that it would provide radiology, diagnostic imaging and related support services from the Defendant's premises; that those services would form part of the services offered by Tapion Hospital to patients and the public; that the Defendant would collect payment and remit the sums to the Claimant on a monthly basis after deducting rent; and that the

Claimant would receive referrals from physicians practicing at or associated with the hospital. The Claimant further contends that an essential term of this arrangement was that it would be the sole provider of radiology and diagnostic imaging services at Tapion Hospital.

[99] In its Reply, the Claimant expands upon that case by pleading that it relocated its primary place of business to Tapion Hospital at the Defendant's request and that the lease of the premises was ancillary to the broader commercial arrangement under which it undertook to provide radiology and imaging services for the benefit of Tapion Hospital. It contends that the written leases formalized only its occupation of the premises and did not exhaust the parties' contractual relationship. The Claimant therefore relies on the alleged 1996 arrangement to show that the non-compete restriction was always intended to bind both parties.

[100] The Defendant accepts that some commercial arrangement existed which enabled the Claimant to relocate to and to operate from Tapion Hospital in or around 1996. Its case is narrower as I understand it. It says the arrangement was simply that the Claimant leased a designated part of the Defendant's premises at an agreed monthly rent for the practice of radiology and imaging services. The Defendant denies the wider oral service agreement alleged by the Claimant and, in particular, denies any oral term granting exclusivity or preventing the Defendant from later establishing its own radiology service.

[101] In my view that distinction is important and is at the heart of the dispute. It is one thing to prove that the Claimant came into occupation of part of Tapion Hospital in 1996. It is another to prove that the Defendant made a binding oral promise that the Claimant would be the sole and exclusive provider of radiology and imaging services at Tapion Hospital. The former is supported by the history and the conduct of the parties. The latter requires clearer proof.

[102] The Claimant relied on **Skynet Ltd et al v Global Skynet International Ltd et al**[3], **Reardon Smith Line Ltd v Hansen-Tangen**[4], **Premier Beverage v Edmeade Joyce**[5], and **Investors Compensation Scheme Ltd v West Bromwich Building Society**[6]. It submits, relying on those authorities, that commercial contracts must be construed objectively and purposively, having regard to the background known to the parties at the time of contracting.

[103] The Defendant relied on **Chitty on Contracts**[7] for the proposition that contracts may be made by word of mouth but the party relying on such a contract must prove which statements or stipulations were intended to have contractual effect. The Defendant also relied on **Articles 1133 to 1137 of the Civil Code of Saint Lucia**[8], including the rule that the party claiming the fulfilment of an obligation must prove it and that the best evidence of which the case is susceptible should be produced. It also referred to **Articles 1161 to 1163**, including the principle that proof may be by testimony in commercial matters, subject to the Court's assessment of the evidence.

[104] I accept the principles emerging from the authorities relied upon by both parties. A commercial agreement is not construed in a vacuum. Rather, the Court considers the factual matrix and the commercial purpose of the transaction. However, where the existence or content of an alleged contractual term is itself disputed, the Court must first determine, on the evidence, whether the term formed part of the parties' bargain. Commercial common sense may assist in interpreting contractual language that has been established, but it cannot be used to create a contractual term that the evidence does not prove.

[105] An oral commercial agreement can be proved by testimony, the parties' conduct and surrounding documents. The law does not require every commercial bargain to be

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[3] AXAHCVAP2018/0012
[4] [1976] 3 All ER 570
[5] ANUHCV2006/0266
[6] [1998] 1 All ER 98
[7] Paragraphs 281, 771 and 772 of Chapters 4 and 12
[8] Cap. 4.01 of the Revised Laws of Saint Lucia.

reduced to writing. However, the burden remains on the party asserting the oral agreement to prove both its existence and its terms on a balance of probabilities. That burden rests on the Claimant.

[106] The Claimant's principal witness on this issue was Dr. Urs. In his witness statement, he said that the Claimant was based at Gablewoods Mall before relocating to Tapion Hospital. According to him, in 1996 the parties entered into an oral agreement for the Claimant to provide radiology, imaging and support services at Tapion Hospital. He also said that it was a further term of that agreement that the Claimant would be the exclusive and sole provider of those services and that the intention was for the Claimant's services to become the X-ray/radiology department of Tapion Hospital.

[107] I have already addressed the admissibility and weight of parts of Dr. Urs' evidence. For present purposes, the difficulty is clear. Dr. Urs was not present when the alleged oral agreement was made. In cross-examination, he accepted that he was not in Saint Lucia in 1996, was not then the owner or managing director of the Claimant, was not one of the persons who negotiated the agreement, had not named those persons in his witness statement and could not personally speak to the terms of the alleged oral agreement.

[108] I accept that evidence. It does not mean that Dr. Urs was being untruthful. He was giving evidence based on what he later came to know from company records, discussions with others and the subsequent course of dealing. The Claimant also explains that Dr. Coventry Louisy, whom it identifies as the person who entered into the agreement on its behalf, is deceased.

[109] That explanation is understandable, but it does not cure the evidential gap. Dr. Urs may give evidence about the company's later operations, invoices, referrals, payments, occupation and his own dealings with the Defendant. He cannot, however, give first-hand evidence of what was said and agreed in 1996. His evidence on the precise terms of the alleged oral agreement, especially exclusivity, must therefore be treated with caution.

[110] The Claimant submits that the Defendant has offered no competing explanation for how the Claimant lawfully came into occupation at Tapion Hospital. That submission has force, but only to a point. It is a fair inference that the Claimant did not occupy part of Tapion Hospital by accident. There must have been some agreement or permission allowing it to relocate and operate from the Defendant's premises.

[111] The Defendant's witnesses support that limited inference. Mr. St. Juste accepted that the Claimant provided radiology and imaging services to Tapion Hospital. He also accepted that, as far as he knew, there was no other radiology and imaging service provider occupying the Defendant's premises apart from the Claimant, save for Medical Imaging operating within the Claimant's unit.

[112] Dr. Plummer's evidence also assists the Claimant to a limited extent. He accepted that, from 2015 to 2020, the Claimant was the only radiology and imaging service provider situated on the Defendant's premises. He also accepted that physicians working with Tapion Hospital sometimes referred patients to the Claimant and that he himself did so. He did not, however, accept that the Claimant was contractually the hospital's radiology department. His evidence was that there was a separation between the Claimant and the hospital.

[113] Dr. Jonathan Romel Daniel gave similar evidence. He said he knew nothing about the 1996 oral agreement, having come into the picture in or around 1998. He accepted that he interacted with the Claimant for radiology and imaging services, both for his own patients and for the Defendant's patients. However, he denied that the Claimant's services functioned as the hospital's radiology department in the way advanced by the Claimant. He said the Claimant was the main provider, but not the only provider.

[114] I therefore find that the evidence establishes a long-standing commercial relationship. The Claimant was not a stranger to the hospital. For more than two decades the Claimant operated from the Defendant's premises as the principal on-site provider of radiology and diagnostic imaging services. Physicians practising at or associated with Tapion Hospital referred patients to the Claimant. The Defendant collected fees on the

Claimant's behalf, deducted rent from those collections and remitted the balance. The Claimant's operations became integrated into the day-to-day functioning of the hospital and plainly formed an important component of the services available to patients. These facts demonstrate a close and mutually beneficial commercial relationship extending well beyond the simple grant of a right to occupy premises.

[115] That finding, however, does not establish an enforceable oral exclusivity clause. The Court is careful not to convert a practical business arrangement into a binding contractual prohibition. The issue, however, is whether the Defendant bound itself orally in 1996, not to compete with the Claimant or not to permit any other provider of radiology and imaging services at Tapion Hospital. The burden of proving that additional obligation rests squarely upon the Claimant.

[116] I am not satisfied that the Claimant has proved that wider term. No witness before the Court was present when that alleged term was agreed. Dr. Urs candidly accepted that he was not present when the alleged agreement was concluded, was not involved in its negotiation and could not speak from personal knowledge as to the terms agreed. He explained that Dr Coventry Louisy who negotiated on behalf of the Claimant is now deceased. The documentary evidence does not fill the gap. No contemporaneous 1996 document records exclusivity. The later leases do not use the word “exclusive”. Dr. Urs accepted in cross-examination that the word “exclusivity” does not appear in the 2005, 2010 or 2015 leases and that he could not authoritatively say that those leases were “copy and paste” versions of the alleged 1996 oral agreement.

[117] The Claimant submits that exclusivity was commercially obvious. It says it would have made no commercial sense for it to relocate from Gablewoods Mall to Tapion Hospital if the Defendant could later compete with it in the same service area. I understand the commercial point, but commercial sense is not a substitute for evidence. The Court is not deciding what would have been prudent for the Claimant to secure. It is deciding what the parties actually agreed. A term as significant as exclusivity, particularly one restricting a hospital owner’s future ability to develop its services, requires clear proof.

[118] The Claimant also relies on subsequent conduct and the later leases. It says those leases affirmed what had already been practised by the parties and preserved a non-compete obligation through the preamble. That argument is better considered when construing the written leases. Subsequent conduct and later documents may assist in understanding the relationship, but they do not, without more, prove the exact terms of an oral agreement made almost a decade earlier.

[119] The Defendant also submits that the Claimant has impermissibly expanded its pleaded case because paragraph 3 of the Statement of Claim did not plead that the 1996 oral agreement contained an express exclusivity term. The Claimant responds that the non-compete issue was pleaded in paragraph 4(ii) of the Statement of Claim and in paragraphs 2 and 4 of the Reply. Although the Defendant is correct, I do not need to decide the issue on pleading technicality. I am prepared, for present purposes, to treat the non-compete argument as being before the Court, since it was addressed by both parties at trial and in submissions. Even then, the problem remains one of proof more than pleadings.

[120] Having considered the evidence as a whole, I find that, in or around 1996, the parties entered into a commercial arrangement pursuant to which the Claimant was permitted to relocate its practice from Gablewoods Mall to Tapion Hospital, occupy part of the Defendant's premises and provide radiology and diagnostic imaging services from that location. The subsequent course of dealing, the Defendant's partial admission, the later leases, the payment arrangements and the evidence of the witnesses all support that finding.

[121] I am not satisfied, however, that the Claimant has proved the full 1996 oral service agreement alleged by Dr. Urs. In particular, I find that the Claimant's evidence falls short of establishing that the Defendant orally agreed that the Claimant would be the exclusive and sole provider of radiology and imaging services at Tapion Hospital, or that the Defendant would be prohibited from establishing its own radiology facility in the future.

Issue 2- Whether the 1996 arrangement was absorbed into the later written leases or survived as a separate ancillary agreement.

[122] Having concluded that there was a commercial arrangement between the parties in or around 1996 but not the full oral exclusivity agreement alleged by the Claimant, I next consider the legal relationship between that arrangement and the later written leases.

[123] The issue is not whether the parties had dealings beyond the grant of a tenancy. Plainly, they did. Rather the question is whether the 1996 arrangement was incorporated into and governed by the written leases, or whether it survived as a separate ancillary agreement existing alongside them.

[124] The point is important because the Claimant's case is not simply that it occupied premises at Tapion Hospital. Its wider case is that its occupation formed part of a broader arrangement under which it provided radiology and imaging services to Tapion Hospital on a protected basis. The Defendant's answer is that the later written leases governed the parties' relationship and that the Claimant cannot rely on a free-standing oral arrangement to add obligations which do not appear in the written leases.

[125] The Statement of Claim pleads that the parties entered into the 1996 arrangement for the Claimant to provide radiology, imaging and support services to Tapion Hospital. It further alleges that, on 1 April 2010, the parties entered into a lease agreement "to formalise the occupation of the premises by the Claimant." The Statement of Claim also asserts that the lease contained terms requiring the parties' services at the hospital to operate symbiotically, prohibiting competing services, and requiring that those services be offered on a 24-hour basis.

[126] In the Reply, the Claimant advances the case more broadly. It alleges that it relocated from Gablewoods Mall to Tapion Hospital at the Defendant's request to provide the services and that "the lease of the premises was ancillary to the agreement between the parties for the Claimant to provide the Services to the Tapion Hospital." It says it will rely on the 1996 arrangement to show that the non-compete restriction was always intended to apply to both parties.

[127] The Defendant submits that the Claimant's pleaded case is uncertain. It points out that the Statement of Claim describes the written lease as formalising the Claimant's occupation of the premises, whereas the Reply characterises the lease as ancillary to a broader service agreement. The Defendant contends that, whatever the nature of the earlier arrangement, the written leases became the governing agreement and superseded any prior informal arrangement.

[128] The Claimant, by contrast, submits that the written leases were never intended to erase the commercial relationship which had existed since 1996. It says the leases affirmed what the parties had already practised for many years, namely that the Claimant provided medical imaging and radiology services to Tapion Hospital and that the preamble preserved the non-compete obligation and the parties' symbiotic relationship.

[129] The written leases must therefore be examined carefully. The 2005, 2010 and 2015 leases contain a preamble stating that Medical Associates Limited was conceived as a premier private medical facility, with the objective of providing quality medical care to the public. The preamble records that each individual unit was expected to work symbiotically with the other units, with Tapion Hospital and with the pharmacy, to provide excellent service and enhance the general interests of the organisation. It also states that the Defendant's vision could be compromised if, among other things, a functioning unit set up a competing service. Under the heading "General", it states that there should be no "new" competing services offered on a "commercial" basis without the approval of the Medical Advisory Committee.

[130] The leases define the demised premises, the term, the rent and the parties' obligations. Clause 3 contains the Lessee's covenants, including the covenant to use the premises only for the approved purpose, subject to the Lessor's written permission. Clause 4 contains the Lessor's covenants, including quiet enjoyment, structural repair and upkeep of the common areas. Clause 5 deals with termination and renewal, including the requirement for a written renewal request by the Lessee not less than 60 days before the expiration of the term. The leases deal expressly with damage to the premises and exclusion of liability for certain losses. With specific regard to the 2015

lease, it identifies the "Agreed Purpose" as the practice of Medical Diagnostic Imaging Services while the earlier leases stated the agreed purpose as the practice of Gablewoods Medical Center.

[131] These leases were not informal memoranda. They were the formal instruments by which the parties regulated the Claimant's continued occupation of the premises.

[132] The Claimant submits that the leases must be construed objectively and purposively, in light of the commercial background known to the parties. The Claimant says that, when the leases are read as a whole and against the parties' long commercial relationship, the proper conclusion is that the parties intended to operate symbiotically and without competition.

[133] The Defendant relies on **Chitty on Contracts** for the proposition that, where an oral agreement is alleged, the Court must determine what statements or stipulations were intended to have contractual effect. It also relies on **Articles 1133 to 1137** and **Articles 1161 to 1163 of the Civil Code of Saint Lucia**, including the requirements that the party asserting an obligation must prove it and that the best evidence available should be produced. The Defendant also submits that the Court must apply the ordinary meaning of the contract unless that would produce absurdity or inconsistency and must not rewrite the parties' bargain under the guise of interpretation.

[134] I accept the Claimant's submission that these leases cannot properly be interpreted in isolation from the commercial circumstances in which they were executed. By the time the 2010 and 2015 leases were entered into, the parties had worked together for many years. That history forms part of the factual matrix against which the leases must be construed. However, the factual matrix performs an interpretive rather than a creative function. It does not entitle the Court to disregard the language used by the parties, or to treat an unproved oral term as having been incorporated into a written lease simply because doing so would accord with commercial common sense from one party's perspective.

[135] The main evidential difficulty for the Claimant remains the evidence of Dr. Urs. In his witness statement, he said that the exclusivity term allegedly agreed to in 1996 was formalised in the preamble of the lease. That assertion was challenged in cross-examination.

[136] Dr. Urs accepted that he was not present when the 1996 oral agreement was made. He also accepted that he was not one of the persons who negotiated it, had not identified those persons in his witness statement and could not personally speak to the terms agreed in 1996. He further accepted that he was not a director or shareholder of the Claimant at the time of the 2005 lease and did not participate in the negotiation of that document.

[137] Those concessions are significant. The Claimant asks the Court to find that an oral exclusivity arrangement was later formalised in the written lease but the witness who made that assertion did not participate in the 1996 arrangement or in the negotiation of the 2005 lease. Dr. Urs may speak to the parties' subsequent course of dealing, but he cannot give direct evidence that the parties intended the written lease to incorporate the alleged oral exclusivity term agreed in 1996.

[138] The Claimant also relies on the parties' course of dealing. It says that for many years the parties operated on the basis that the Claimant provided radiology and imaging services at Tapion Hospital. I accept that the course of dealing forms part of the factual background. It explains why the preamble refers to radiology and ancillary services and why the Claimant's agreed purpose under the 2015 lease was Medical Diagnostic Imaging Services. However, the course of dealing does not answer the legal question. It proves that the Claimant operated as a provider of radiology and imaging services from the Defendant's premises. It does not prove that the written leases incorporated a separate, enforceable oral promise that the Defendant would not compete.

[139] The Court therefore concludes that the earlier commercial relationship informed the written leases and continued in the parties' practical dealings only to the extent reflected in the leases themselves and in the performance of their respective obligations. The

evidence demonstrates continuity of the commercial relationship. It does not demonstrate the survival of an independent contract imposing a free-standing obligation on the Defendant not to establish radiology services of its own. The prior relationship remains relevant as background to the construction of the leases, but it does not itself create an additional non-compete obligation beyond those which the parties subsequently reduced to writing.

[140] The Claimant's alternative case is that the lease was ancillary to a wider service agreement. I understand the commercial point. This was not an ordinary lease of office space. The Claimant was operating a radiology and imaging practice from within a hospital, and that commercial setting matters.

[141] However, describing the lease as "ancillary" does not prove a separate enforceable agreement. The Court would still need clear evidence of that agreement's parties, terms, duration, termination provisions, relationship with the written leases and the obligations imposed on each side. Those matters have not been proved.

[142] The pleaded 1996 arrangement included matters such as the supply of services, collection of payments, monthly remittance, rent, set-off and referrals. Some of those matters may have continued as part of the parties' practical dealings. The real issue, however, is whether there was a surviving ancillary agreement that prohibited the Defendant from competing with the Claimant.

[143] I am not satisfied that such an agreement has been proved. There is no document recording it, no first-hand witness to its formation, no clear evidence of its duration or termination provisions, and no clear evidence that it survived the written leases as an independent source of obligations. Most importantly, there is no reliable evidence that it contained a binding non-compete obligation on the Defendant.

[144] That conclusion is reinforced by the written leases themselves. They contain detailed provisions governing the parties' rights and obligations. Had the parties intended to impose a continuing restriction on the Defendant's ability to develop

radiology services, one would have expected such an obligation to be identified expressly. It was not.

[145] The Claimant submits that it would have made no commercial sense to relocate from Gablewoods Mall to Tapion Hospital without exclusivity. That is a strong commercial narrative, but it does not prove agreement. It may have been commercially sensible for the Claimant to seek exclusivity. That, however, does not establish that the Defendant agreed to confer it by means of a separate ancillary contract.

[146] I therefore find that no separate ancillary agreement survived independently of the written leases so as to prohibit the Defendant from competing with the Claimant.

Issue 3- Whether the written leases, properly construed, prohibited the Defendant from establishing or operating its own radiology facility.

[147] I now turn to the central contractual issue in this claim, namely whether the written leases, properly construed, prohibited the Defendant from establishing or operating its own radiology facility at Tapion Hospital. The answer depends not upon the Court's view of what commercial arrangement would have been desirable, but upon the objective meaning of the leases.

[148] The Claimant says the preamble to the lease is central to the bargain. It submits that the preamble records the commercial purpose of the relationship: the units at Tapion Hospital were to work symbiotically, essential services such as radiology were not to be duplicated, and there were to be no competing commercial services. On that basis, the Claimant says the Defendant breached the lease by establishing its own radiology department.

[149] The Defendant says the Claimant gives the preamble more force than it can properly bear. The Defendant relies on **Black's Law Dictionary, Orr v Mitchel**[9], **Grey v Pearson**[10], and **Krys et al v New World Value Fund Limited et al**[11]. The thrust of its

[9] [1893] AC 238
[10] (1857) 6 hl Cas. 61 quoted at P 85 of the Interpretation of Contracts 2nd Edition by Kim Lewison
[11] BVIHMCAP2013/0017

submission is that a preamble may assist interpretation where there is ambiguity but the preamble is not an operative covenant. Alternatively, if it has contractual effect, it is directed to tenants and not to the Defendant as landlord. The Defendant also says the clause is not an absolute prohibition, since it expressly contemplates approval by the Medical Advisory Committee.

[150] The relevant wording appears in the introductory section of the leases. The preamble records that Medical Associates Limited was conceived as a premier private medical facility, with the objective of providing quality medical care to the public. It states that the various medical units are expected to function "symbiotically" with one another, with Tapion Hospital, and with the pharmacy, to provide excellent service and enhance the general interests of the organisation.

[151] The preamble then states that the Defendant's vision could be compromised if, among other things, one or more units provided substandard service, a functioning unit set up a competing service, services were not available at the expected times, or a unit was reluctant to cross-refer when it would be prudent to do so. It then states that Medical Associates expects certain conduct from its tenants. Under the heading "General", it provides that there should be no "new" competing services offered on a "commercial" basis without the approval of the Medical Advisory Committee.

[152] The Claimant submits that the lease must be construed objectively and purposively, taking into account the surrounding circumstances known to the parties.[12]

[153] The Defendant relies on authorities which mark the limits of the Court's interpretive exercise. It cites **Black's Law Dictionary** on the function of a preamble, including the principle that a preamble may assist where there is doubt, but cannot control clear operative words. It also relies on **Orr v Mitchell, Grey v Pearson, Krys et al v New World Value Fund Limited et al**, **Attorney General v River Doree Holdings Ltd, Shogun Finance Ltd v Hudson, Sir Kim Lewison's text on contractual**

[12] See Skynet Ltd et al v Global Skynet International Ltd et al, Reardon Smith Line Ltd v Hansen-Tangen; Premier Beverage v Edmeade Joyce; and Investors Compensation Scheme Ltd v West Bromwich Building Society

interpretation, and **Arnold v Britton**. The common thread is that the Court must start with the words used, give effect to the operative provisions and avoid rewriting the bargain in the name of commercial common sense.

[154] I accept the principles of contractual interpretation relied upon by both parties. The Court's task is to ascertain the objective meaning of the language which the parties have chosen to express their agreement. That exercise requires consideration of the agreement as a whole and in its commercial setting.

[155] The Court does not accept the Defendant's submission that the preamble is of no contractual significance. It is physically part of the lease and was placed at the front of the document for a reason. It therefore forms part of the lease and cannot simply be disregarded. The preamble assists the Court in understanding the purpose and background of the agreement. It explains the Defendant's vision for the hospital and the type of conduct expected within the hospital community. It also explains why ancillary services such as laboratory and radiology services were important to the hospital's operations.

[156] However, the Court must still give proper weight to the operative covenants. The operative clauses use the language of legal obligation: "The Lessee hereby covenants", "The Lessor hereby covenants", and "It is hereby mutually agreed." Clause 3 contains the Lessee's covenants. Clause 4 contains no covenant by the Defendant, as Lessor, not to compete with the Claimant. There is also no express covenant that the Defendant must refer all radiology work to the Claimant, or that the Claimant is to be the exclusive radiology provider at Tapion Hospital.

[157] That distinction between the preamble and the operative clauses is significant. Where the parties intended to impose binding obligations on the Lessee, they did so in clause 3. Where they intended to impose binding obligations on the Lessor, they did so in clause 4. The alleged non-compete obligation on the Lessor does not appear in clause 4 or elsewhere in the operative covenants.

[158] I therefore find that the preamble is relevant as an aid to construction and as part of the commercial setting. However, I do not find that it creates a legally enforceable obligation by the Defendant never to establish radiology services of its own. Nor do the provisions contain any express or implied covenant imposing such a restraint.

[159] Furthermore, the wording relied on by the Claimant also points against the wider construction advanced. The critical sentence does not say, “The Lessor shall not compete with the Lessee.” It does not say, “Medical Associates shall not establish a radiology department.” It does not say, “The Claimant shall be the exclusive provider of radiology and imaging services.” It says that there should be no “new” competing services offered on a “commercial” basis without the approval of the Medical Advisory Committee.

[160] That wording has three important features. First, it appears in a section dealing with the conduct expected from tenants. The natural reading is that the restriction is concerned with what tenants may do within the hospital compound. Secondly, the wording is not absolute. It expressly contemplates that new competing commercial services may be offered if approval is obtained. Thirdly, the approval mechanism is the Medical Advisory Committee. The existence of an approval mechanism itself suggests a managerial policy capable of adaptation rather than an immutable contractual restraint.

[161] This point was put to Dr. Urs in cross-examination. He accepted that the provision gave the Medical Advisory Committee the power to determine whether there would be competition among tenants and also accepted that he was a tenant at the time. That answer is not conclusive of construction, which is for the Court, but it is consistent with the ordinary reading of the clause.

[162] The Claimant’s commercial argument is a powerful one. It says that it would have made no commercial sense for it to relocate from Gablewoods Mall to Tapion Hospital, invest in its practice, provide 24-hour support and build goodwill as the hospital’s radiology provider, if the Defendant could later establish a competing facility.

[163] I understand the force of that submission. The Claimant was providing an important ancillary service to Tapion Hospital. A reasonable businessperson might indeed have expected some degree of protection before relocating substantial equipment and goodwill into premises owned by another. That commercial expectation is entirely understandable. However, the Court's function is not to determine what protection would have been commercially desirable. It is to determine what protection the parties actually agreed to confer.

[164] The preamble reflects the parties' shared objective of operating the various units within the hospital in a cooperative and mutually supportive manner. It recognises that the hospital's vision could be compromised if a functioning unit established a competing service and emphasises that the units were expected to operate symbiotically.

[165] I accept that the parties intended the relationship to be mutually beneficial. The Claimant benefited from operating its radiology and imaging practice at a private hospital, while the Defendant benefited from having those services available to patients and medical practitioners on a 24-hour basis. However, "symbiotic" is not synonymous with "exclusive". It denotes cooperation and mutual benefit, not the surrender of by one party of its right to develop its own services.

[166] The Claimant's construction would place a substantial restriction on the Defendant's management of a private hospital. It would prevent the hospital owner from developing or restructuring its own radiology services even if the Board considered that necessary for patient care, efficiency, quality, or the hospital's wider business. If the parties intended such a restriction, I would expect it to be stated clearly in the operative provisions of the lease. It was not.

[167] The Claimant also relies on evidence that it was treated or recognised as Tapion's X-ray or radiology department. It points to signage, referrals, the long course of dealing, and the fact that patients and physicians associated the Claimant with radiology services at the hospital.

[168] I accept that, for many years, the Claimant was the principal on-site provider of radiology and imaging services. I also accept that some persons may have referred to it, practically or informally, as the hospital's radiology department but practical description is not the same as contractual obligation. A sign saying "X-Ray", or evidence that the Claimant was the main radiology provider, does not create an exclusivity covenant.

[169] Dr. Christy Daniel's evidence also provides some support for the Claimant's narrative that Tapion discouraged duplication of ancillary services. However, his evidence concerns his own proposed ultrasound service and his own dealings with the Defendant. It does not prove that the Defendant covenanted with this Claimant not to compete. At most, it shows that the hospital had, at times, discouraged duplication of services by tenants.

[170] The Claimant also puts the case by implication. It says that even if the lease does not expressly prohibit the Defendant from competing, such a prohibition should be implied from the preamble, the long relationship, the Claimant's relocation, and the need to give business efficacy to the agreement.

[171] To the extent that the Claimant's submissions may be understood as inviting the Court to imply such an obligation into the lease, I decline to do so. The lease is capable of coherent commercial operation without implying an exclusivity covenant. The proposed term is neither necessary to give the lease business efficacy nor so obvious that it goes without saying. It would also introduce significant uncertainty as to its scope, duration and operation – matters which the parties could readily have addressed expressly had they intended such a bargain.

[172] The Claimant further argues that it would be unjust to allow the Defendant to rely on a committee it controls to approve its own competition. I understand the concern. If the clause were an exclusivity covenant in favour of the Claimant, the Defendant could not fairly defeat that covenant by approving its own breach but that assumes the very point

the Claimant must prove. I have found that the clause is not an exclusivity covenant in favour of the Claimant.

[173] On the ordinary wording, the approval mechanism is part of the hospital's governance structure. It does not give the Defendant a veto. Even if the Defendant's evidence of Board or Committee approval is accepted, I would not base my decision solely on approval. My primary finding is that the clause did not impose a non-compete obligation on the Defendant. If I am wrong about that, the approval wording would still make it difficult for the Claimant to establish an absolute prohibition.

[174] The Defendant also says there had always been duplication of services or specialties at Tapion Hospital. I do not need to resolve every example. The existence of several doctors in the same specialty does not necessarily prove that the hospital permitted competing departments in the sense alleged here but even if radiology is different from ordinary consultancy services, the question remains whether the lease prevented the Defendant from establishing its own radiology facility. For the reasons given, I find that it did not.

[175] The Claimant's argument based on good faith and cooperation does not alter the conclusion. Good faith may regulate the exercise of existing contractual rights. It does not ordinarily create a major non-compete obligation where the written lease does not contain one. The lease did not require the Defendant to notify or consult the Claimant before developing its own radiology department.

[176] My findings on this issue are therefore these. The preamble forms part of the lease and may be used as an aid to construction. It records the commercial context, the hospital's vision and the expectation that tenants would operate in a way that supported the hospital and other units. However, it does not create a free-standing covenant by the Defendant not to compete with the Claimant.

[177] The operative covenants do not contain any non-compete obligation binding the Defendant. The wording relied on by the Claimant is directed principally to tenants, is expressed as an expectation of conduct, and is expressly qualified by the possibility of

approval from the Medical Advisory Committee. The phrase “symbiotically” supports a cooperative commercial relationship, but it does not mean “exclusively”.

[178] I therefore find that the written leases did not expressly or impliedly prohibit the Defendant from establishing or operating its own radiology facility at Tapion Hospital. It follows that the Claimant has not proved breach of contract merely by showing that the Defendant established such a facility.

Issue 4- Whether the Defendant breached the lease by establishing and operating its own radiology department at Tapion Hospital.

[179] The next issue is whether the Defendant breached the lease by establishing and operating its own radiology facility at Tapion Hospital, including by installing imaging equipment and offering X-ray and related services.

[180] The conclusions reached on Issues 1 to 3 substantially determine this issue. Having found that the Claimant has not established either (i) a separate surviving ancillary agreement containing a non-compete obligation, or (ii) that the written leases themselves prohibit the Defendant from establishing its own radiology department, it follows that the Defendant's establishment of its own radiology facility cannot, without more, constitute a breach of contract.

Issue 5- Whether there was a binding agreement between the parties concerning the CT Scanner.

[181] I next consider whether the parties agreed that the Claimant would acquire or procure a CT Scanner to be housed at Tapion Hospital and whether any such agreement makes the Defendant liable for the Claimant’s costs connected with the CT Scanner, including relocation costs.

[182] Dr. Urs says that, in or around 2019, the parties agreed that the Claimant would procure a new CT Scanner for use at Tapion Hospital as part of the radiology and imaging services provided by the Claimant. He says the Defendant knew of and approved the acquisition; that the Claimant committed to monthly payments of USD $6,000.00 for ten years only after he made a presentation to the Defendant’s Board; that

the Board agreed the Claimant would continue to provide CT Scanner services; and that the machine was procured on the mutual understanding that it would be housed at Tapion Hospital for the exclusive provision of those services. The Claimant contends that, because the Defendant later established its own radiology department and required the Claimant to vacate, the Defendant should bear the costs connected with the CT Scanner, including estimated relocation costs of USD $280,000.00.

[183] The Defendant, on the other hand, denies any such agreement. It accepts that the Claimant acquired, or sought to acquire, a CT Scanner. However, it says this was the Claimant's own commercial decision. The Defendant says it was not a party to the CT Scanner lease agreement, did not contractually approve the acquisition and did not agree to fund, indemnify, reimburse, or compensate the Claimant for acquiring, operating, financing, maintaining, or relocating the machine.

[184] The difficulty for the Claimant is that Dr. Urs' evidence did not withstand cross-examination. Dr. Urs accepted that the alleged agreement concerning procurement of the CT Scanner was not in writing. He described it as a verbal agreement. He also accepted that the alleged Board decision that the Claimant would continue to provide CT Scanner services was not in writing, that he had no Board minutes confirming it and that no Board member who allegedly gave approval was called to testify.

[185] Dr. Urs also accepted that the alleged "understanding" referred to in paragraph 29 of his witness statement was not in writing. When asked whether he had any witness who could confirm that understanding, he first answered no and then said his legal adviser could confirm it. That legal adviser was not called.

[186] Those answers are significant. The Claimant asks the Court to find a binding agreement concerning a substantial piece of medical equipment and long-term financial obligations. If the Defendant had agreed, directly or indirectly, to assume responsibility for the Claimant's procurement of the CT Scanner, one would expect clearer evidence of that agreement. The evidence does not provide it.

[187] The Claimant also relies on Exhibit NRU17, described as the CT Scanner lease agreement. That document supports the Claimant's case that it entered into, or intended to enter into, a serious financial arrangement for the machine. It contains obligations concerning delivery, installation, training, maintenance, repairs, customs and clearance, energy costs, consumables, radiology interpretation fees, room preparation, staffing, construction, electrical works, HVAC and other related expenses.

[188] However, that document does not prove an agreement between the Claimant and the Defendant. On its face, the Defendant is not a party to the CT Scanner lease. The obligations in that document are obligations between the equipment lessor and the Claimant. They are not obligations undertaken by Medical Associates Limited.

[189] There was also an issue at trial about the form of the document. The copy first placed before the Court had been redacted and the Court made clear that a party could not unilaterally redact a document placed before the Court. An unredacted version was later provided. More importantly for present purposes, Dr. Urs accepted in cross-examination that the version before the Court was unsigned. He said a signed version could be provided but no fully executed version was then in evidence.

[190] I do not place decisive weight on the redaction issue, since it was dealt with during the trial. The more material point is that, whether signed or unsigned, the CT Scanner lease was not an agreement with the Defendant. It does not show that the Defendant agreed to fund, guarantee, indemnify, or compensate the Claimant in relation to the CT Scanner.

[191] The Defendant relies strongly on the Claimant's letter dated 6 January 2020. In that letter, the Claimant wrote to the Chairman and Board of Medical Associates Limited seeking renewal of the premises lease. The letter referred to the history of the Claimant's association with Tapion Hospital and to upgrades made over the years. It then explained that Medical Imaging wished to remove its CT Scanner from the premises. The Claimant stated that, to remedy that situation and improve the service, it had "actually acquired" a newer, faster and more modern multi-slice CT Scanner to replace the old scanner. It

further stated that the scanner should be on island in the third week of January 2020 and could be commissioned shortly thereafter.

[192] Dr. Urs was cross-examined on that wording. It was put to him that, by the date of the letter, the Claimant had already decided to acquire the CT Scanner. Dr. Urs sought to explain that the Claimant was still in discussions and that the wording meant the machine was reserved or ready, not necessarily fully paid for.

[193] I accept that there may be practical differences between reserving a machine, entering into a lease, paying for it, shipping it, and commissioning it. Even so, the letter is telling. It was written in the language of a decision already made by the Claimant. The Claimant did not write, "we seek your approval to acquire a CT Scanner." It wrote that it had "actually acquired" one and that it should be on island shortly.

[194] That language is more consistent with the Defendant's case than the Claimant's. It suggests that the Claimant was informing the Defendant of a decision already taken, while also seeking renewal of the premises lease so that its bankers would release funding. It does not read as acceptance by the Defendant of a proposal, or as evidence that the Defendant had agreed to assume responsibility for the Claimant's costs.

[195] The Claimant also relies on the WhatsApp thread between Dr. Urs and Dr. Jonathan Romel Daniel, together with correspondence at Trial Bundle 4 pages 208 to 210. It says those documents show that the Defendant was informed of and aware of the process being undertaken to improve the services offered at Tapion Hospital.

[196] I accept that the Defendant had knowledge. The evidence shows that the Defendant, through Dr. Daniel and/or the Board, was aware that the Claimant was seeking to acquire, or had acquired, a new CT Scanner. It would be unrealistic to find otherwise but knowledge is not agreement.

[197] A landlord or hospital operator may know that a tenant is purchasing or leasing equipment for its business without agreeing to underwrite that decision. The question is not whether the Defendant knew about the CT Scanner. It plainly did. The question is

whether the Defendant agreed that the Claimant should procure it on terms which would make the Defendant liable for the financial consequences. I find that it did not.

[198] The cross-examination of Dr. Jonathan Romel Daniel supports that conclusion. He accepted that the Board considered material concerning the Claimant's proposal but said that the matter was broader than the CT Scanner and involved competing proposals. Dr. Daniel said that the Board put the matter in abeyance, did not get involved in the dispute between the Claimant and Medical Imaging, and did not respond to either side. When it was put to him that the Claimant acquired the CT Scanner based on discussions with him or the Board, his answer was "absolutely not."

[199] I find that evidence consistent with the documents. The Claimant may have wanted a renewed lease because its bankers required it. It may have expected the Defendant to welcome a new CT Scanner at the hospital. The Defendant may have known about the proposal and received correspondence concerning it. But the evidence falls short of proving a binding agreement between the parties for the Claimant to acquire a new CT Scanner.

[200] The Claimant relies on **Ocean Conversion (BVI) Ltd v Attorney General**, submitting that a party should not encourage another to incur expenditure for its benefit and then refuse to compensate that party after taking the benefit of the expenditure. It says the Defendant encouraged, and stood to benefit from, the Claimant's acquisition of the CT Scanner because it would enhance services to patients at Tapion Hospital.

[201] I understand the equitable force of that submission. In an appropriate case, where one party induces another to incur substantial expenditure for the first party's benefit, and the other acts in reliance on that encouragement, the law may prevent the first party from acting unconscionably. But the facts here do not bring the Claimant within that principle.

[202] On the evidence I accept, that the Defendant did not ask the Claimant to acquire the CT Scanner. It did not sign the CT Scanner lease. It did not promise to fund the machine. It did not promise to reimburse relocation costs. It did not promise to renew

the premises lease as a condition of the acquisition. It did not give written Board approval. No Board minutes record such an agreement. Nor did the Defendant call on the Claimant to incur the expenditure and then resile from that request.

[203] The most that can fairly be said is that the Defendant knew of the Claimant's intention or decision to acquire the CT Scanner, and that the hospital may have benefited from having CT scanning services available on site. That is not enough. Many landlords benefit indirectly from improvements or investments made by tenants in their own businesses. That does not make the landlord liable for the tenant's capital or equipment costs.

[204] I therefore accept the Defendant's submission that **Ocean Conversion** is distinguishable. The principle is not rejected; it simply does not apply on these facts.

[205] The Claimant also claims estimated relocation costs of USD $280,000.00. That claim faces two separate difficulties.

[206] The first is liability. Since I have found that the Defendant did not agree to the procurement of the CT Scanner in the contractual sense alleged, and did not breach any non-compete obligation, there is no contractual basis for making the Defendant liable for relocation costs arising from the Claimant's own equipment arrangement.

[207] The second is proof. Dr. Urs accepted in cross-examination that he did not have invoices to support the USD $280,000.00 estimate. He said he had only the engineer's fees, and even those were not part of his evidence. He described the figure as a rough estimate based on what he had been told about engineering, logistics, insurance and other matters.

[208] I do not doubt that relocating a CT Scanner would be expensive. It is a complex medical machine, and relocation would likely involve engineers, insurance, transport, installation, calibration and possibly construction work. But the Court cannot award USD $280,000.00 on impression alone. The Claimant had to prove the amount claimed. It did not do so.

[209] In any event, relocation costs are more naturally connected to the separate issues of termination, the Notices to Quit, and whether the Claimant must leave the premises. They do not prove that the Defendant agreed to pay for the CT Scanner or its relocation.

[210] I therefore find that the Claimant acquired, or took steps to acquire, a new CT Scanner for use in its radiology and imaging practice at Tapion Hospital. The Defendant knew of that acquisition or proposed acquisition and communicated with the Claimant about it.

[211] However, the Claimant has not proved that the Defendant agreed that the Claimant should procure the CT Scanner on terms making the Defendant liable for the cost of acquisition, operation, financing, maintenance or relocation. The CT Scanner lease was not an agreement between the Claimant and the Defendant. The alleged Board approval was not recorded in writing, was not supported by minutes, and was not confirmed by any Board witness called by the Claimant. The contemporaneous letter of 6 January 2020 is more consistent with the Claimant informing the Defendant of a decision already made than with the Defendant having agreed to that decision beforehand.

[212] I therefore find that there was no binding agreement between the parties concerning procurement of the CT Scanner in the terms alleged by the Claimant. I also find that the Defendant is not liable for the claimed CT Scanner relocation costs. In addition to the absence of liability, the sum of USD $280,000.00 was not proved by sufficient evidence.

Issue 6- Whether the Defendant breached its repair and maintenance obligations under the lease.

[213] I next consider whether the Defendant breached its repair and maintenance obligations under the lease. This issue is separate from the non-compete issue. Even though I have found that the Defendant was not contractually prohibited from operating its own radiology facility, it remained bound by the repair and maintenance obligations contained in the lease.

[214] The Claimant's pleaded case is that the Defendant breached clauses 4(iv) and 4(v) by allowing the premises to fall into major disrepair. The particulars relied on are that

the Defendant dug up the pathway to the Claimant's premises, making access almost impossible for patients, particularly those in wheelchairs or on stretchers; that there were major structural issues with the roof; that the Defendant refused or neglected to repair those issues despite repeated requests; and that patients and staff had difficulty accessing the premises.

[215] The Defendant accepts the basic contractual position. Clause 4(iv) required it to keep the demised premises in good structural repair during the term, and clause 4(v) required it to maintain and upkeep the common areas to the demised premises. Those were real obligations. The issue is whether the Claimant has proved the breaches alleged.

[216] I start with the pathway. There is no real dispute that the Defendant carried out works to a concrete pathway or access area near the Claimant's premises. Dr. Urs said the works made access difficult, particularly for patients in wheelchairs or on stretchers. Mr. St. Juste said the works were temporary, lasted no more than three weeks and were undertaken to clear a blockage which was causing water to back up. He also said there were alternative routes to the Claimant's premises.

[217] I accept that the concrete pathway was a common area for the purposes of the lease. The Defendant therefore had an obligation to maintain it. However, the evidence does not show that the pathway works were a failure to maintain the common area. On the evidence I accept, the works were undertaken to remedy a blockage. They caused inconvenience, and one route of access was temporarily unavailable, but the Claimant has not proved that access was almost impossible or that the works amounted to a breach of clause 4(v).

[218] The duration of the works is also uncertain. Dr. Urs said they lasted more than a month. Mr. St. Juste said they did not exceed three weeks. There is no independent record establishing the start and end dates. In those circumstances, I am not satisfied that the Claimant has proved the longer period alleged.

[219] The Claimant also relies on the elevator. Dr. Urs said the elevator had only been restored in the last three years and had previously been non-functional for more than ten years. Mr. St. Juste's evidence was different. He said that, to his knowledge, elevator access was available at the time of the pathway works.

[220] Elevator access is plainly important in a hospital setting. However, the difficulty is proof. There is no maintenance log, service record, written complaint, repair invoice, or independent evidence showing when the elevator was not working and for how long. I am not prepared to find a ten-year failure on the basis of the evidence before me.

[221] The roof allegation is the Claimant's strongest maintenance complaint visually, but it is still not proved as pleaded. The photographs exhibited as NRU24 show visible problems: ceiling staining, discolouration, damaged or displaced ceiling tiles, and a bucket placed below an apparent leak. Those photographs support the conclusion that there was water damage and unsatisfactory conditions in parts of the premises.

[222] However, the photographs do not prove major structural issues with the roof. They show the condition of the ceiling and signs of water damage. They do not show the roof structure itself. There is no expert report, contractor's report, engineer's assessment, or other technical evidence establishing structural roof disrepair.

[223] That distinction matters because the Defendant's obligation was to keep the demised premises in good structural repair. The lease did not make the Defendant responsible for every item of non-structural wear and tear inside the unit. Mr. St. Juste accepted that there had been a busted pipe and damage to ceiling tiles but his evidence was that the ceiling tiles were replaced and the affected areas painted. The Claimant did not produce correspondence or other records proving that the Defendant refused or neglected to carry out repairs after notice.

[224] I therefore find that the Claimant proved some water damage and ceiling deterioration and that the Defendant was aware of at least one water-related issue. I do not find that the Claimant proved major structural roof disrepair or a refusal by the Defendant to repair such disrepair.

[225] Dr. Christy Daniel's evidence does not alter that conclusion. His evidence may provide some background concerning maintenance complaints during his own tenancy, but it does not prove that the Defendant breached its repair obligations to this Claimant in relation to this unit and during the relevant period.

[226] Standing back, the evidence shows inconvenience and some unsatisfactory conditions. The pathway works disrupted access. The photographs show water damage and ceiling deterioration. However, the Claimant has not proved the pleaded breaches of clauses 4(iv) and 4(v). I therefore find that this head of breach is not made out.

Issue 7 - Whether the lease was renewed after 31 March 2020, and if so, on what terms.

[227] I next consider whether the parties' conduct after 31 March 2020 created a tacit renewal of the lease and, if so, for what period.

[228] The 2015 lease was for a term of five years, commencing on 1 April 2015 and ending on 31 March 2020. It also contained an express renewal mechanism. Clause 5(iii) required a written request by the Claimant not less than 60 days before the expiration of the term and contemplated a further lease for up to five years on terms including a rental to be agreed.

[229] That clause is important. It shows that the parties knew how a formal renewal was to occur. A further five-year lease was not automatic. It required a written request, consideration of renewal, and agreement on rent.

[230] Dr. Urs accepted in cross-examination that the renewal provision required a written request at least 60 days before expiry and that the Defendant would then consider whether to renew and on what terms. The legal effect of the parties' conduct is for the Court, but that evidence confirms that the contractual route to a further five-year lease was not automatic.

[231] The evidence also shows that the Claimant did seek renewal. The January 2020 correspondence was headed "Renewal of Lease Agreement" and contained proposals

intended to reassure the Defendant about service levels, including the proposed acquisition of newer imaging equipment. That correspondence supports the conclusion that both sides understood that the lease was expiring and that any further formal lease required discussion.

[232] No executed written renewal lease for the period 1 April 2020 to 31 March 2025 was produced. If the parties had agreed a further fixed five-year term, one would expect a signed lease or clear written confirmation of agreement on the essential terms, including rent. There is none.

[233] I therefore find that there was no express renewal of the 2015 lease for a further five-year term.

[234] The remaining question is whether there was tacit renewal under **Article 1516 of the Civil Code** and if so, whether that renewal was for five years. **Article 1516** provides, in substance, that where the lessee remains in possession for more than eight days after the expiration of the lease, without opposition or notice from the lessor, a tacit renewal takes place for another year, or for the term for which the lease was made if that term was less than a year.

[235] The Claimant submits that because the original leases were five-year leases, the tacit renewal should also be treated as a further five-year term. I do not accept that interpretation. It does not give proper effect to the words “if less than a year.” The structure of Article 1516 is that the default tacit renewal is for one year. The exception is where the original lease was for less than one year, in which case the shorter period is repeated.

[236] I accept the Defendant’s submission on this point. Applying the Vagliano approach, the Court should interpret the Civil Code according to its own language and structure and should not add words which the Code does not contain. Article 1516 does not permit a five-year lease to be tacitly renewed for a further five years.

[237] The authorities relied on by the Claimant, including **Royden Beharry and Harvey Setterfield**[13], do not produce a different result. I accept that conduct may imply a contract or support tacit renewal, but those authorities cannot override the express wording of Article 1516, which governs the duration of tacit renewal of a lease.

[238] I do accept, however, that the parties' continued conduct had legal effect. After 31 March 2020, the Claimant remained in possession. The Defendant did not immediately oppose that occupation. Rent continued to be invoiced and paid. On those facts, a tacit renewal did arise, but it was not a five-year renewal. It was a renewal from year to year under Article 1516.

[239] This conclusion is also consistent with the Defendant's letter of 11 April 2023, which stated that the premises had been leased for a five-year term from 1 April 2010, renewed for a further five years from 1 April 2015 and thereafter renewed by tacit renewal "from year to year" in accordance with Article 1516. That letter is not decisive of the law, but it reflects the correct legal position.

[240] I therefore find that the 2015 lease expired by effluxion of time on 31 March 2020. There was no express written renewal for a further five-year term ending on 31 March 2025. A tacit renewal arose because the Claimant remained in possession and the Defendant continued to treat it as a tenant, but that renewal was from year to year. I reject the Claimant's contention that the lease was tacitly renewed for a further five-year period.

Issue 8 - Whether the Notices to Quit were valid and effective.

[241] I next consider whether the Notices to Quit served by the Defendant were valid and what legal effect they had. This issue must be considered against my finding that, after 31 March 2020, the Claimant occupied under a year-to-year tacit renewal.

[13] GDAHCV2023/0481

[242] The Defendant served a Notice to Quit dated 11 April 2023. In that notice, it stated that the 2015 lease had expired, that any continued occupation was by tacit renewal from year to year, and that the Defendant did not intend the lease to be renewed tacitly or otherwise. The notice required the Claimant to vacate "with immediate effect."

[243] The Defendant later served a further notice dated 31 January 2025, confirming that it did not resile from its earlier demand for vacant possession and maintaining its position that the Claimant should vacate the premises.

[244] The Claimant says the notices were invalid because the first notice was served after these proceedings had been filed. It says the notice was retaliatory, unfair and made in bad faith. The Defendant says it was entitled to give notice because there was no further five-year lease and Article 1517 prevents a lessee from claiming tacit renewal once notice has been given.

[245] I do not accept that the 11 April 2023 notice was invalid merely because it was served after proceedings had been filed. The filing of a claim does not freeze the parties' legal rights. A landlord is not prevented from giving notice simply because the tenant has sued. Timing may be relevant to bad faith, but it does not, without more, make the notice void.

[246] I also do not accept that the Claimant's continued occupation after the notice created a further tacit renewal. Article 1517 provides that where notice has been given, the lessee cannot claim tacit renewal merely because he remains in possession.

[247] There is, however, one qualification. The 11 April 2023 notice went too far in requiring the Claimant to vacate "with immediate effect." If a yearly tacit renewal had already arisen, the Defendant could not terminate that existing period immediately by demanding possession. But that does not invalidate the whole notice. It remained effective as a clear statement that the Defendant opposed any further tacit renewal.

[248] The 31 January 2025 notice removed any possible doubt. It confirmed that the Defendant maintained its demand for possession and did not intend the tenancy to continue.

[249] I therefore find that the Notices to Quit were valid in substance. The 11 April 2023 notice was not effective to require immediate possession if a current yearly renewal was still running, but it was effective to prevent further tacit renewal. The 31 January 2025 notice confirmed the Defendant's position. The Claimant's challenge to the notices therefore fails.

Issue 9 - Whether the Defendant acted in bad faith.

[250] I next consider the Claimant's allegation that the Defendant acted in bad faith. The allegation has three main parts. First, the Claimant says the Defendant secretly established its own radiology facility without informing the Claimant. Secondly, it says the Defendant diverted patients to its own facility, causing financial loss. Thirdly, it says the Defendant served the Notice to Quit only after these proceedings were filed, which the Claimant says was retaliatory and prejudicial.

[251] In determining whether an act amounts to bad faith, the court may examine not only the conduct at the time of the act but those actions before and after. In **Jewel Thornhill v Attorney General**[14], Pereira CJ (as she then was) stated:

> "...I accept however, as a general and commonsense proposition that indetermining bad faith one should look at the entire course of conduct as acontinuum, as bad faith is usually to be inferred from a certain state of thingswhich may include conduct not only at the specific point in time of the actioncomplained of but also actions taken before and after as all of these may berelevant in divining bad faith in respect of the act."[15]

[252] I accept that the Defendant did not inform the Claimant before establishing its radiology facility. Dr. Martin Plummer accepted in cross-examination that there was no discussion with the Claimant before the decision was taken. I also accept that, from the Claimant's perspective, the Defendant's conduct must have felt sharp. The parties had

[14] SLUHCVAP2012/0035 (delivered 16th April 2015); [2015] ECSCJ No. 77
[15] See paragraph 37

been in a long commercial relationship, and the Claimant had provided radiology and imaging services from Tapion Hospital for many years.

[253] However, the Court is not deciding whether the Defendant's conduct was courteous or commercially sensitive. The question is whether it was unlawful, in breach of contract, or an actionable breach of good faith.

[254] I have already found that the lease did not contain an express or implied non-compete obligation binding the Defendant. I have also found that the lease did not require the Defendant to consult or notify the Claimant before developing its own radiology department. In those circumstances, the failure to inform the Claimant does not, by itself, amount to bad faith.

[255] Nor does the establishment of the radiology department itself prove bad faith. The Defendant was entitled to manage and develop the hospital's services unless restrained by contract. No such contractual restraint has been proved.

[256] The allegation of patient diversion also does not change the position. I accept that the Defendant's new department was promoted to referring practitioners and was capable of drawing patients away from the Claimant. That may have had a serious commercial effect on the Claimant. But once there was no enforceable exclusivity obligation, referral obligation, or non-solicitation restriction, the fact that patients used the Defendant's department rather than the Claimant's facility does not prove bad faith.

[257] The Notice to Quit is also insufficient to establish bad faith. The first notice was served after the claim was filed, and that timing is not irrelevant. It supports the conclusion that the commercial relationship had broken down. But timing alone does not prove an improper purpose. I have already found that the notices were valid in substance and effective to prevent further tacit renewal.

[258] The Claimant also relies on the Defendant's alleged failure to maintain the premises. That does not support the bad faith allegation because I have found that the pleaded maintenance breaches were not proved.

[259] I would be careful not to convert every hard commercial act into bad faith. Bad faith requires more than conduct which disadvantages the other party. It requires some breach of obligation, abuse of right, dishonesty, improper purpose, or conduct inconsistent with the bargain actually made. On the evidence before me, that has not been established.

[260] My finding is that the Defendant acted in its own commercial interest. It did so in a way that the Claimant understandably regarded as unfair and damaging. However, because the Claimant has not proved the non-compete obligation, the consultation obligation, the pleaded maintenance breaches, or the invalidity of the notices, the allegation of bad faith also fails.

[261] I therefore find that the Defendant did not act in bad faith in the legal sense relevant to this claim. That does not mean that the relationship was handled well. It means that the Claimant has not proved an actionable breach of bad faith.

Issue 10 - If liability is established, whether the Claimant has proved recoverable damages.

[262] In light of my findings on liability, damages do not strictly arise. I have found that the Claimant has not proved the alleged non-compete obligation, has not proved a binding CT Scanner agreement with the Defendant, has not proved the pleaded maintenance breaches and has not shown that the Notices to Quit were invalid. There is therefore no breach of contract on which an award of damages can be based.

[263] In any event, the damages claim would have faced real evidential difficulties. Mr. Yague's expert evidence shows a decline in the Claimant's revenue after 2023 and I accept that the business experienced a significant financial downturn. However, the report does not prove that the decline was caused by a breach of contract by the Defendant. It records the figures, but it does not establish causation or isolate the Defendant's conduct as the legal cause of the loss.

[264] The claim for CT Scanner relocation costs would also fail. I have found that the Defendant did not agree to be responsible for the CT Scanner or its relocation. In any

event, the claimed sum of USD $280,000.00 was not proved by invoices, quotations, engineering reports, or other reliable supporting evidence.

[265] The claim for loss of goodwill and reputation would likewise fail for want of proof. The Claimant did not call referring doctors, patients, or other independent witnesses to prove reputational damage. Nor was there valuation evidence establishing a separate loss of goodwill.

[266] Accordingly, even if damages had arisen for determination, I would not have awarded the sums claimed.

DISPOSITION:

[267] For the reasons set out above, the Claimant has not proved that the Defendant was bound by an express or implied non-compete obligation, or by any separate ancillary agreement prohibiting it from establishing or operating its own radiology facility. The Claimant has also not proved the alleged CT Scanner agreement, the pleaded maintenance breaches, the invalidity of the Notices to Quit, or an actionable breach of good faith. It follows that the claim must be dismissed, with costs.

ORDERS:

[268] I therefore make the following orders:

1) The Claimant's claim is dismissed.

2) The Claimant shall pay the Defendant's costs of the claim, to be assessed if not agreed within 21 days of the date of this judgment.

3) If costs are not agreed within 21 days, then:

    i. The Defendant shall file its Bill of Costs pursuant to CPR 65.13 on or before 31 August 2026.

ii. The Claimant shall file any objections to the Bill of Costs on or before 21 September 2026. The objections shall indicate whether the objection is to a specific item, to the quantum claimed, or both, and shall propose any alternative sum said to be appropriate.

iii. The Defendant shall be at liberty to file any reply to the Claimant's objections on or before 2 October 2026.

iv. The assessment of costs is fixed pursuant to CPR 71.13(2) for 7 October 2026 at 1:00 p.m., by electronic hearing.

4) If costs are agreed between the parties, the Defendant shall notify the Court in writing, whereupon the hearing for the assessment of costs shall be vacated.

Alvin Shiva Pariagsingh
High Court Judge

By the Court,

Registrar of the High Court