ST LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SLUHCV2023/0439

BETWEEN:

NATIONAL INSURANCE CORPORATION

Claimant

AND

[1] DRAKE ADMINISTRATION LIMITED
[2] MICHAEL BRUCE GORDON

Defendants

[3] GILBERT J. DE BOTTON

3rd Defendant/Ancillary Claimant

AND

[1] BEACH POINT CAPITAL MANAGEMENT LP

1st Ancillary Defendant

[2] BEACH POINT SCF I LP

2nd Ancillary Defendant

[3] BEACH POINT TOTAL RETURN FUND LP

3rd Ancillary Defendant

[4] BEACH POINT TOTAL RETURN FUND II LP

4th Ancillary Defendant

[5] BEACH POINT SL INVESTMENTS LLC

5th Ancillary Defendant

[6] LLOYDS BANK PENSION SCHEME NO.1

6th Ancillary Defendant

[7] LLOYDS BANK PENSION SCHEME NO.2

7th Ancillary Defendant

[8] BPC OPPORTUNITIES FUND LP

8th Ancillary Defendant

[9] MARIGOT HOLDINGS INC.

9th Ancillary Defendant

[10] MARIGOT HARBOUR LIMITED

10th Ancillary Defendant

[11] MARIGOT RESORT HOLDINGS, LLC

11th Ancillary Defendant

Appearances:

Ms. Candace Polius, for the Claimant
Ms. Deandra Goss, for the Ancillary Claimant and the 3rd Defendant
Mr. Dexter Theodore KC, for the 1st-8th Ancillary Defendants
Mr. Mark Maragh, with him Ms. Tanya Alexis Francis, for the 9th-11th Ancillary Defendants

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2026: June 1
June 22

JUDGMENT

[1] **SAUNDERS, M:** This judgment determines an application by the 9th, 10th and 11th Ancillary Defendants ("*the Application*") to strike out the ancillary claim brought against them by the 3rd Defendant, Mr Gilbert J. de Botton ("*Mr. de Botton*"), or alternatively for a declaration that this Court has no jurisdiction to hear that ancillary claim.

[2] The Application arises from a main claim brought by the National Insurance Corporation ("*NIC*") against Mr. de Botton, in his capacity as a director of the 1st Defendant, for unpaid contributions and surcharges. Mr. de Botton seeks to deflect that liability by arguing that the obligation to pay NIC had been assumed by other corporate entities under a Purchase and Sale Agreement dated 10 December 2020 ("*the Agreement*"). Although he was not a party to the Agreement, he has brought an ancillary claim against the parties to it, including the three Applicants, seeking a declaration that they, and not he, bear responsibility for the NIC debt. He does not seek contribution, indemnity, damages, or any other monetary or proprietary relief.

[3] The ancillary claim is therefore remarkable in two respects. Firstly, it seeks no remedy against the Applicants in the conventional sense; it seeks only, at best, a declaration that the NIC's claim against Mr. de Botton should be dismissed. Secondly, it seeks that declaration in respect of a contract to which Mr. de Botton was not a party, and which he has no right to enforce.

[4] For the reasons set out in detail below, I am satisfied that the ancillary claim cannot be sustained. I decline to exercise jurisdiction over it, it falls outside the proper scope of CPR 18.1, discloses no reasonable grounds against the 9th and 10th Applicants and is barred by the doctrine of privity against the 11th Applicant.

1. Introduction And Background

1.1 The Parties

[5] On 6 November 2023 NIC commenced proceedings against the 1st and 2nd Defendant for unpaid contributions and surcharges. The claim against the 2nd Defendant was eventually withdrawn with prejudice, but on 5 April 2024, NIC filed an Amended Claim adding Mr. de Botton as the 3rd Defendant.

[6] NIC alleges that Mr. de Botton, as a director the 1st Defendant, is jointly and severally liable under section 80 of the National Insurance Corporation Act for the sums owed. That statutory provision enables NIC to join a director personally where the director has failed to deduct, retain or become accountable for amounts due and owing. NIC's claim therefore directly engages Mr. de Botton's personal liability.

[7] The three Applicants are:

1. Marigot Holdings Inc. ("*Marigot Holdings*")—a Saint Lucian company;
2. Marigot Harbour Limited ("*Marigot Harbour*")—also a Saint Lucian company; and
3. Marigot Resort Holdings, LLC ("*Marigot Resort*")—a Delaware limited liability company, which was the Buyer under the Purchase and Sale Agreement referred to below

1.2 The Factual Background

[8] Mr. de Botton filed an Amended Defence on 18 March 2025. In that defence, he denies personal liability and pleads that the obligation to pay NIC had been assumed by other corporate entities under a set of complex financing and sale arrangements. Specifically, he relies on:

1. The Agreement which is between certain lender entities (whom he calls "the Seller") and Marigot Resort;

2. Clause 1q of Exhibit F to that Agreement, which Mr. de Botton contends allocated sole responsibility for NIC liabilities to the Buyer, namely Marigot Resort;
3. a Covenant Not to Sue Agreement dated 25 June 2021; and
4. a Deed of Transfer and Assignment of Lease.

[9] Mr. de Botton states in his Amended Defence that "*the Buyer and the Seller were at all times aware and by the Purchase and Sale Agreement covenanted to repaying all of the liabilities ... including the NIC payments*". He further states at paragraph 13 that the Agreement "*supports his position that he is not jointly and/or severally liable for any contributions nor costs to the Claimant*". Importantly, Mr. de Botton was not and does not claim to be a party to the Agreement.

1.3 The Ancillary Claim

[10] Mr. de Botton's Ancillary Claim Form and Ancillary Statement of Claim are issued against eleven ancillary defendants, including the three Applicants. The Ancillary Claim asks the Court to determine the following matters:

1. *Whether the ancillary claimant is personally liable for the outstanding payments claimed by NIC, considering his capacity as a director of a 'Borrower' entity, and the absence of any express contractual or statutory obligation imposing such liability on him.*
2. *Whether the terms of the Purchase and Sale Agreement, expressly delineates the respective responsibilities of the parties in relation to all liabilities owed to NIC in particular.*
3. *Whether the Buyer entity, MARIGOT RESORT HOLDINGS LLC assumed full and sole responsibility for the payment of any outstanding liabilities to NIC as per the terms of the Purchase and Sale Agreement.*
4. *Whether the ancillary claimant was a party to any agreement or arrangement that would impose any liability on him for the NIC payments.*
5. *Whether the ancillary claimant's request for a dismissal of the claim should be granted, and if so, whether he is entitled to recover costs.*

[11] Mr. de Botton seeks no conventional remedy against the Applicants. He does not claim damages, an indemnity, contribution, or any other monetary or proprietary relief. By the resolution of the above questions, the only relief Mr. de Botton pursues is, in essence, declaratory. That is, he asks this Court to declare that the Applicants shoulder the responsibility of the NIC debt, and on that footing to dismiss the NIC claim against him.

[12] The Ancillary Statement of Claim repeats the same narrative. At paragraph 9, Mr. de Botton relies on Clause 1q of Exhibit F of the Agreement, asserting that "*it was expressly agreed between the parties that any and all liabilities of the 'Borrower' to the National Insurance Corporation ... would be the sole responsibility of the 'Buyer', that is of Marigot Resort Holdings LLC*". At paragraph 12, Mr. de Botton says: "*The Ancillary Claimant maintains that as per the agreement between the Seller entities, and the Buyer, all outstanding liabilities were agreed to be settled by the Buyer, Marigot Resort Holdings LLC.*"

[13] Mr. de Botton has not pleaded any specific act, omission or wrongdoing by Marigot Holdings or Marigot Harbour. In his Notice of Opposition, he states that these entities "*were transferees who received proprietary interests in properties via the 2021 Assignment and Deed of Transfer connected to the 2020 Purchase and Sale Agreement involving the 11th Ancillary Defendant*". He says they were included "*due to their close connection to the main transaction*". No legal duty or breach is alleged. No remedy is sought against them.

[14] Against Marigot Resort, Mr. de Botton relies exclusively on the terms of the Agreement. He does not allege that he had any direct contractual or other legal relationship with that entity. His entire case is that the Agreement, to which he was not a party, allocated responsibility for NIC liabilities to the Buyer (Marigot Resort).

1.4 The Application

[15] The Application is supported by an affidavit of Kevin Morgan, a director of Marigot Holdings and Marigot Harbour, sworn on 9 October 2025. Mr Morgan exhibits the Agreement and the Covenant Not to Sue Agreement. He states that

Mr. de Botton is not a party to either, that the principle of privity of contract prevents Mr. de Botton from enforcing obligations under agreements to which he is a stranger, and that the pleadings disclose no reasonable ground for bringing the claim against the 9th and 10th Applicants.

[16] Mr. de Botton's affidavit in support of his Notice of Opposition states, among other things, that: "*I am not relying on the contracts attached as a party nor am I claiming to be a party. Furthermore, I do not seek to enforce any obligations under the Purchase and Sale Agreement for my personal benefit or gain*." He maintains that he relies on the Agreement as factual, material evidence that the "*11th Ancillary Defendant accepted and undertook responsibility for the liabilities being claimed by the Claimant in the main action.*"

2. The Issues

[17] The following issues arise for decision:

1. Should the Court decline to exercise jurisdiction because the Agreement contains an exclusive New York jurisdiction clause (Section 9.10) and a New York governing law clause (Section 9.9)?
2. Does the claim fall within the definition of an "ancillary claim" under CPR 18.1, which requires a claim for "contribution or indemnity or some other remedy"?
3. Does the Ancillary Statement of Claim disclose any legally recognisable cause of action against Marigot Holdings and Marigot Harbour, against whom no specific allegation is pleaded?
4. Does Mr. de Botton, who is not a party to the Purchase and Sale Agreement, have standing to bring an ancillary claim that seeks a declaration as to the obligations of the parties to that agreement? Is Mr. de Botton barred by the doctrine of privity from relying upon the Agreement to impose liability on the Applicants?
5. Does the bringing of this ancillary claim constitute an abuse of the court's process, particularly where Mr. de Botton seeks relief (dismissal of the NIC claim) that is properly obtainable by way of defence in the main proceedings?

3. The Law

3.1 Jurisdiction Clauses

[18] The Agreement contains an exclusive jurisdiction clause at section 9.10 which states:

> *"The Parties irrevocably and unconditionally submit to and accept the exclusive venue and jurisdiction of the United States District Court for the Southern District of New York located in the Borough of Manhattan or the courts of the State of New York located in the County of New York for any action, suit or proceeding arising out of or based upon this Agreement or any matter relating to it and waive any objection that they may have to the laying of venue in any such court or that any such court is an inconvenient forum or does not have personal jurisdiction over them."*

[19] Section 9.9 of the Agreement also provides that it shall also be governed by New York law.

[20] The principle that an exclusive jurisdiction clause must be given effect is well-established. In **Donohue v Armco Inc** [2001] UKHL 64, the House of Lords held that an exclusive jurisdiction clause is a strong factor influencing forum and that a claimant who has promised to submit to a particular forum should not be permitted to depart from that promise unless very good reasons are advanced.

[21] The principle applies with particular force where a non-party seeks to invoke the terms of a contract. In **The Pioneer Container** [1994] 2 AC 324, the Privy Council held that where an owner of goods has expressly consented to a sub-bailment on any terms, the owner is bound by the terms of the sub-bailment, including an exclusive jurisdiction clause, provided those terms are not so unusual or unreasonable that they could not reasonably be understood to fall within such consent (per Lord Goff at pages 339, 346-347). The principle is one of consent. A non-party who has authorised another to contract on its behalf on any terms is bound by the consequences of that authorisation. The converse must also be true, a non-party who seeks to invoke the benefit of a contract for his own purposes cannot ignore its burdens, including its jurisdiction clause. In the present case, Mr. de Botton seeks to have this Court construe and apply the

Agreement to relieve him of liability, while simultaneously disregarding the exclusive jurisdiction clause that forms an integral part of that Agreement.

3.2 The High Threshold for Striking Out Under CPR 26.3(1)(b)

[22] The Court of Appeal has repeatedly emphasised the high threshold for striking out a statement of case. In **Baldwin Spencer v The Attorney General of Antigua and Barbuda** (Civil Appeal No 20A of 1997), then Chief Justice Byron stated that the summary procedure "*should only be used in clear and obvious cases, when it can clearly be seen, on the face of it, that a claim is obviously unsustainable, cannot succeed or in some other way is an abuse of the process of the court*". The operative test is whether there is "*even a scintilla of a cause of action*".

[23] In **Citco Global Custody NV v Y2K Finance Inc** (HCVAP 2008/022), Edwards JA stated that striking out is appropriate where the claim sets out no facts indicating what the claim is about, or if it is incoherent and makes no sense, or if the facts it states, even if true, do not disclose a legally recognisable claim against the defendant. On such an application, the Court must assume that the facts alleged in the statement of case are true. However, the Court must distinguish between primary facts and conclusions or inferences from those facts.

3.3 Abuse of Process Under CPR 26.3(1)(c)

[24] Under CPR 26.3(1)(c), the court may strike out a statement of case if it is an abuse of process or likely to obstruct the just disposal of proceedings. In **Hunter v Chief Constable of the West Midlands Police** [1982] AC 529 at 536, Lord Diplock defined abuse of process as using the Court's procedure in a way that, although not inconsistent with the literal application of procedural rules, "*would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people*".

3.4 The Scope of Ancillary Claims Under CPR 18.1

[25] The ancillary claim procedure is governed by CPR 18 which provides, among other things, as follows:

> *"Meaning of ancillary claim*
>
> *18.1(1) An 'ancillary claim' is any claim other than a claim by a claimant against a defendant, a counterclaim or a claim for a set off contained in a defence and includes a –*
>
> *(a) claim by a defendant against any person (whether or not already a party) for contribution or indemnity or some other remedy; and*
>
> *(b) claim by an ancillary defendant against any other person (whether or not already a party)"*
>
> **...**
>
> *Matters relevant to question whether ancillary claim should be dealt with separately from main claim*
>
> *18.7 (1) This rule applies when the court is considering whether to–*
>
> *(a) dismiss an ancillary claim;*
>
> *(b) permit an ancillary claim to be made; or*
>
> *(c) require the ancillary claim to be dealt with separately from the claim.*
>
> *…*
>
> *(2) The court must have regard to all the circumstances of the case including–*
>
> *(a) the connection between the ancillary claim and the claim;*
>
> *(b) whether the ancillary claimant is seeking substantially the same remedy which some other party is claiming from the ancillary claimant;*
>
> *(c) whether the ancillary claimant wants the court to decide any question connected with the subject matter of the proceedings –*
>
> *(i) not only between the existing parties but also between existing parties and the proposed ancillary defendant; or*
>
> *(ii) to which the proposed ancillary defendant is already a party but also in some further capacity; and*
>
> *(d) whether the facts in the ancillary claim are substantially the same, or closely connected with, the facts in the claim."*

3.5 Privity of Contract

[26] The doctrine of privity of contract is a cornerstone of the common law. In **Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd** [1915] AC 847, Viscount Haldane LC stated at p 853 that "*only a person who is a party to a contract can sue on it. Our law knows nothing of a jus quaesitum tertio arising by way of contract*". The doctrine applies with equal force to a party who seeks a declaration as to the meaning or effect of a contract to which he is not a party. He may not, under the guise of "evidential reliance", ask the Court to interpret and apply a contract so as to impose obligations on contracting parties in his favour.

4. Analysis - Jurisdiction

4.1 The Ancillary Claim Arises Out of the Agreement

[27] Mr. de Botton's ancillary claim asks the Court to answer, among other questions, the following:

> *"Whether the terms of the Purchase and Sale Agreement, expressly delineates the respective responsibilities of the parties in relation to all liabilities owed to NIC in particular*
>
> *...*
>
> *Whether the Buyer entity, MARIGOT RESORT HOLDINGS LLC assumed full and sole responsibility for the payment of any outstanding liabilities to the NIC as per the terms of the Purchase and Sale Agreement."*

[28] These are not questions of evidence. They are questions of contractual construction. The Court cannot answer them without interpreting the Agreement and then applying that interpretation to the parties to the Agreement. The ancillary claim therefore falls squarely within the scope of the exclusive jurisdiction clause, which covers "*any action, suit or proceeding arising out of or based upon this Agreement or any matter relating to it*". The words "*arising out of or based upon*" are broad and deliberately expansive. A claim that seeks a declaration as to the meaning and effect of the Agreement plainly arises out of it.

[29] Mr. de Botton seeks to avoid this conclusion by characterising his reliance on the Agreement as "evidential" rather than "enforcement". I reject that characterisation. The Ancillary Claim Form does not merely seek to adduce the Agreement as evidence in support of a defence. It effectively seeks a binding declaration from this Court as to the obligations of the contracting parties under the Agreement. That is a substantive claim requiring the Court to exercise its jurisdiction over the contract. A party cannot, by linguistic artifice, convert a claim for declaratory relief into a mere "evidential" matter. The substance of the claim is what matters.

4.2 A Non-Party Cannot Ignore a Jurisdiction Clause While Invoking the Contract

[30] It is true that Mr. de Botton is not a party to the Agreement. He cannot, however, have it both ways. He cannot say: "I am not a party to this contract, so I am not bound by its terms," while also saying, "I rely on this contract to impose binding obligations on the contracting parties, and I ask the Court to interpret it in my favour."

[31] The principle that a party cannot pick and choose which provisions of a transaction to enforce while discarding others was affirmed, as discussed above, in **The Pioneer Container**. Although the facts of **The Pioneer Container** arose in the context of a sub-bailment rather than a direct bilateral contract, the underlying principle, that a non-party cannot cherry-pick beneficial provisions while disclaiming burdensome ones, is of general application. Mr. de Botton seeks to take the benefit of Clause 1q of Exhibit F of the Agreement (which he says allocates NIC liability to Marigot Resort). He cannot invoke that specific provision in isolation while simultaneously disclaiming the jurisdiction clause in Section 9.10. Both provisions are integral parts of the same contractual package. If Mr. de Botton relies on the Agreement to establish a right or entitlement, he must accept all of its terms, including the forum selection clause. The same reasoning applies to the governing law clause at Section 9.9.

4.3 No Strong Reasons for Departure Have Been Shown

[32] Mr. de Botton bears the burden of showing strong reasons for departing from the exclusive jurisdiction clause (see **Donohue v Armco Inc**). He has not attempted to do so. There is no suggestion that New York is a *forum non conveniens*. There is no suggestion that the New York courts would not provide a fair trial or that Mr. de Botton would be unable to obtain justice in New York. The only argument advanced is that the main claim is in St. Lucia and that the ancillary claim is merely connected to it.

[33] That argument conflates the main claim with the ancillary claim. The main claim is governed by the law of St. Lucia and does not require the enforcement of the Agreement against the Applicants. The ancillary claim, by contrast, seeks to have the Court construe a New York-governed contract that contains an exclusive New York jurisdiction clause against the unwilling Applicants. The proper forum for that exercise is New York. The fact that the main claim is in St. Lucia does not give this Court jurisdiction over a claim that is independently subject to an exclusive foreign jurisdiction clause.

[34] The exclusive jurisdiction clause in the Agreement applies to the ancillary claim and Mr. de Botton's claim should be struck out or stayed on that basis. Even if that is not correct, the ancillary claim should alternatively be struck out on other grounds advanced in the application.

5. Analysis - Alternative Grounds

5.1 The Claim Falls Outside the Scope of CPR 18.1

[35] The Ancillary Claim Form and Statement of Claim are not properly brought pursuant to CPR 18.1.

[36] The critical question is whether the words "*some other remedy*" in CPR 18.1(1)(a) are to be construed without limit, so as to embrace any remedy known to the law, as Mr. de Botton contends, or whether they are confined to remedies of the same kind as contribution and indemnity. I have concluded that the latter construction is the correct one, compelled as it is by the *ejusdem generis* canon of construction.

[37] Where Parliament (or, in this case, the drafters of the Civil Procedure Rules) employs specific words followed by general ones, the general words are to be read as confined to things of the same kind as those specifically enumerated. The principle is founded on a straightforward linguistic implication that the drafter cannot have intended the general words to range beyond the category established by the specific words, for if they had, the specific words would serve no purpose[1].

[38] The principle applies with particular force where, as here, the specific words are of a clearly identifiable class. The words "contribution" and "indemnity" are not random examples. Each has a settled legal meaning. An indemnity is a primary obligation by which one party agrees to keep another harmless against loss[2]. Contribution, by contrast, arises where two or more persons are liable to a common demand; if one of them discharges more than his proportionate share of that common liability, the law requires the others to contribute so as to equalise the burden[3]. Each is a monetary remedy, each is coercive, each is claimed against the party joined, and each is for the benefit of the party joining. These shared characteristics establish a clear genus, that is, claims for monetary relief against a third party to shift a loss or liability. While the general words "*some other remedy*" are wide enough to encompass a declaration, an injunction, specific performance, or any other form of judicial order, the genus, claims for contribution or indemnity, is considerably narrower.

[39] The claim advanced by Mr. de Botton possesses none of the above characteristics of the established genus. He does not assert that the Applicants are liable to a common demand together with him, nor does he say he is entitled to seek a monetary payment from them to reimburse a loss he has or will sustain. He asks only for a declaration that the Applicants, and not he, bear responsibility for the NIC debt, and that the main claim against him be dismissed. That is a defensive shield against the claimant, not a monetary sword

1 **R v Edmundson** (1859) 28 LJMC 213.
2 See 49 Halsbury's Laws (5th Edn) para 1021.
3 See 16(2) Halsbury's Laws (4th Edn Reissue) para 458.

against the joined parties. It is not a remedy of the same kind as contribution or indemnity, and it therefore falls outside the scope of CPR 18.1(1)(a).

[40] Additionally, even on the widest possible reading of the phrase "*some other remedy*" in CPR 18.1(1)(a), the proceeding instituted by Mr. de Botton is not an ancillary claim at all, because it does not seek a remedy against the ancillary defendants. It is hard to see how the ancillary claim which asks the Court to grant no remedy against the joined parties can be an ancillary claim within the rule. It is, in substance, a statement of defence, supported by evidence, mistakenly directed at third parties.

[41] It follows that even if the words "*some other remedy*" in CPR 18.1(1)(a) were read without any restriction, embracing claims unlike contribution or indemnity, the proceeding would still not be an ancillary claim, because it does not seek a remedy *against* the persons joined. The rule requires that there be a claim for a remedy that travels from the ancillary defendant to the ancillary claimant. Here, the only remedy sought travels from the Court to the claimant in the main action; the Ancillary Defendants are merely the unwilling audience for a dispute that Mr. de Botton wishes to litigate as a surrogate for his defence.

[42] My construction of CPR 18.1(1) is not technical for its own sake. It serves the purpose of ensuring that the ancillary claim procedure is not misused as a device by which a defendant may compel strangers to the principal litigation to participate in proceedings from which the defendant seeks nothing against them. To hold otherwise would permit a defendant to join any person who might have relevant evidence or a commercial connection to the dispute, not to obtain relief against that person, but to secure an advisory opinion on the merits of the claimant's case. In my view, that would subvert the purpose of the procedure, blur the distinction between a defence and a cross-claim, and impose unwarranted burdens on third parties who have no legal relationship with the defendant and against whom no relief is claimed.

[43] I have considered whether CPR 18.7 might provide a route by which Mr. de Botton's claim could survive. It does not. CPR 18.7 is a case management provision; it applies only when the court is considering whether to dismiss,

permit, or order separate trial of an ancillary claim, that is, a claim that already falls within CPR 18.1(1). If a proceeding is not an ancillary claim in the first place, CPR 18.7 has no operation. In the event I am wrong on the construction of CPR 18.1(1), however, CPR 18.7 requires the Court to have regard to all the circumstances and to the specific factors listed in sub-rule (2). Each of those factors weighs decisively against permitting the claim.

[44] Firstly, the ancillary claim does nothing more than rehearse the defence Mr. de Botton has already pleaded. It adds no genuine third-party dimension to the proceedings (CPR 18.7(2)(a)). Secondly, the remedy he seeks, dismissal of the NIC claim, is the very remedy he seeks in his Defence (CPR 18.7(2)(b)). That remedy is sought against NIC, not against the Applicants. Thirdly, the questions he asks the Court to determine are not, in substance, disputes between himself and the Applicants. They are questions about his own liability to NIC. He asserts no legal right against the Applicants, and he claims no relief against them (CPR 18.7(2)(c)). Fourthly, the facts on which he relies in the ancillary claim are substantially identical to those he has already pleaded in his Defence. They are, indeed, indistinguishable (CPR 18.7(2)(d)).

[45] In these circumstances, the ancillary claim serves no purpose other than to duplicate the Defence. It is an unnecessary and wasteful procedural vehicle. To permit it to continue would be contrary to the overriding objective and to the very purpose of the ancillary claim procedure.

5.2 The Position of Marigot Holdings and Marigot Harbour: No Reasonable Grounds Disclosed

[46] I turn next to the position of Marigot Holdings and Marigot Harbour. Mr. de Botton's Ancillary Statement of Claim contains no allegation of fact against either of these entities. The body of the statement of claim does not mention them by name.

[47] The only reference to them appears at paragraph 14 of the Amended Defence (not the ancillary claim itself), where Mr. de Botton avers that "*the operations of the 1st Named Defendant inclusive of assets and liabilities were transferred to*

Marigot Holdings Inc. and Marigot Harbour Limited". Even if that were true, it does not give rise to any cause of action. A "transfer of operations" is not a legal wrong. No duty is pleaded or alleged and no remedy is sought against them.

[48] In his Notice of Opposition, Mr. de Botton explicitly states that he "*has not alleged that they were parties to the contract but has included them due to their close connection to the main transaction involving the liability of the 11th Ancillary Defendant*". A "close connection" is not a cause of action. It is not a ground for joining a party to litigation.

[49] The claim against Marigot Holdings and Marigot Harbour fails to disclose any reasonable ground for its initiation and should also be struck out on that basis under CPR 26.3(1)(b). The decision in **Citco Global Custody NV** directly supports this conclusion.

5.3 The Position of Marigot Resort: Privity and Standing

[50] Mr. de Botton's claim against Marigot Resort rests entirely on the Agreement. He asks the Court to determine whether its terms make Marigot Resort as the Buyer solely responsible for NIC liabilities. He does so even though he does not claim to be a party to the Agreement.

[51] As I have already explained in the context of the jurisdiction clause, the questions posed by Mr. de Botton are questions of contractual construction. The Court cannot answer them without interpreting the Agreement and then applying that interpretation to the parties to the Agreement. That is precisely what the doctrine of privity prohibits a stranger from doing. In **Dunlop Pneumatic Tyre Co Ltd**, the House of Lords made clear that a stranger to a contract cannot acquire rights under it or enforce its terms. Although Mr. de Botton says he seeks no "enforcement" in the sense of a money judgment, the relief he seeks, a declaration that the Buyer assumed NIC liability, is a form of legal recognition of a contractual right. It would, if granted, be binding on the Applicants and would affect their legal position. That is enforcement in all but name.

[52] The case of **Shanklin Pier Ltd v Detel Products Ltd** [1951] 2 KB 854, on which Mr. de Botton relies, is distinguishable. In **Shanklin Pier**, it was found that the defendant made a direct warranty to the claimant that its paint would last for seven to ten years. The claimant, in reliance on that warranty, amended its contract with its contractors to specify the defendant's paint. The court found an enforceable collateral contract, the consideration for which was the claimant's act of causing its contractors to purchase the defendant's paint. The critical elements were: (a) a direct representation from the defendant to the claimant; (b) reliance by the claimant on that representation; and (c) consideration moving from the claimant to the defendant.

[53] None of these elements exists in these proceedings. Mr. de Botton does not allege that Marigot Resort made any warranty or representation to him personally. He does not allege that he acted in reliance on any such representation. He does not allege that he provided any consideration to Marigot Resort. His case is simply that the Agreement, to which he was not a party, allocated liability for the NIC debt to the Buyer. That is a matter of evidence, not of contract.

[54] Mr. de Botton also lacks standing. In **Jose Gillis v Star Properties Corp** (ANUHCV2015/0035), the Court held that standing requires a sufficient stake in the outcome based on a legal right or a legally protected interest. Mr. de Botton has no legal right against the Applicants. He has no contract with them. He has no tort claim against them. His interest is merely that he would prefer that they pay the NIC debt. That is not a sufficient stake to invoke the Court's jurisdiction.

[55] The doctrine of privity and Mr. de Botton's lack of standing constitute complete answers to the claim against Marigot Resort.

5.4 Declaratory Relief—The Limits of Rolls-Royce

[56] To be fair to Mr. de Botton I have considered whether the principles in **Rolls-Royce plc v Unite the Union** [2010] 1 WLR 318 warrant the maintenance of the ancillary claim against the Applicants. In that case, the English Court of

Appeal entertained an appeal seeking a determination as to the lawfulness of a length-of-service criterion in a collective agreement, even though there was no immediate cause of action. The Court of Appeal (Wall LJ, with whom Arden LJ agreed) held that the construction of a statutory instrument deriving from an EU Directive was a matter of public importance, the point was not academic, and it was appropriate to determine the issue between the employer and the union.

[57] **Rolls-Royce** is distinguishable in several critical respects. Here, Mr. de Botton is not a party to the Agreement. He seeks a determination about the obligations of others under a contract to which he is a stranger. I accept, pursuant to **Rolls-Royce**, that there may be circumstances where a non-party can properly seek declaratory relief. However, I do not accept that the principle can apply in the present case. In **Rolls-Royce**, the employer (a party to the collective agreement) sought a declaration about its own obligations. The English court of appeal, therefore, was not being asked to adjudicate on the rights and obligations of parties who had not submitted to the court's jurisdiction. The "directly affected" principle in paragraph 120(4) of the decision must be read in that context. It does not entitle a non-party to seek a declaration as to the contractual obligations of parties who have not consented to the Court's jurisdiction over that dispute. It is also noteworthy that Aikens LJ (who articulated this principle) ultimately dissented from the majority's decision to entertain the appeal, expressing concern that it was not appropriate to grant declaratory relief in circumstances where the individuals most affected were not before the court.

[58] Finally, it is important that the court in **Rolls-Royce** was dealing with a point of statutory construction; the interpretation of a statutory instrument deriving from an EU Directive. That exercise, involving the construction of parliamentary material, was properly one for the court to undertake. Here, the question is not a point of statutory construction but a dispute about the contractual obligations of parties to a private commercial agreement. That is a fundamentally different exercise.

[59] In his arguments Mr. de Botton points to the fact that he is "directly affected" by the Agreement because he faces personal liability under section 80 of the NIC

Act. I accept that Mr. de Botton is directly affected in the sense that he has an interest in the outcome of the NIC claim. However, that interest is properly addressed by defending the NIC claim. It does not give him standing to bring proceedings against third parties with whom he has no legal relationship. As I have already held, the proper vehicle for Mr. de Botton's case is his defence in the main proceedings, not an ancillary claim against parties who have no legal relationship with him.

[60] In my view, the principles in **Rolls-Royce** do not warrant the maintenance of the ancillary claim against the Applicants. The case is distinguishable on the grounds set out above. No basis has been provided for permitting a non-party to seek a declaration as to the obligations of parties to a contract in respect of which he is a stranger, in proceedings where parties primarily interested in the outcome are either not before the Court or have not consented to jurisdiction.

5.5 The Claim is an Abuse of Process

[61] Lastly, Mr. de Botton has brought an ancillary claim that seeks no contribution, no indemnity, and no remedy against the Applicants other than a declaration that the NIC claim against him should be dismissed. That is not a proper use of the ancillary claim procedure. Mr. de Botton's attempt to use CPR 18 in this way constitutes an abuse of process.

[62] The continuation of the ancillary claim would be manifestly unfair to the Applicants. They are not parties to the main claim. They have no direct relationship with Mr. de Botton. They are being drawn into proceedings and required to incur costs to defend themselves against a claim that seeks no substantive remedy against them. That is precisely the kind of unfairness identified in **Hunter v Chief Constable of the West Midlands Police**.

[63] Furthermore, the entire exercise is futile. The NIC is not a party to the ancillary claim. Any declaration made in the ancillary claim would not bind the NIC. The Court cannot, in the ancillary proceedings, make a binding determination that the Applicants are liable to the NIC in the absence of the NIC. Mr. de Botton's insistence on joining the Applicants is therefore unnecessary and improper.

[64] The proper course is for Mr. de Botton to defend the NIC claim on the merits, relying on the Agreement as part of his evidence. That is what the CPR contemplates. The ancillary claim procedure is not a substitute nor supplement to a defence.

6. Disposition

[65] For all the above reasons, I make the following orders:

1. The Court declines to exercise jurisdiction over the Ancillary Claim brought by the 3rd Defendant because the claim arises out of or is based upon a Purchase and Sale Agreement dated 10 December 2020, which contains an exclusive New York jurisdiction clause. The claim is therefore struck out.
2. In the alternative, the Ancillary Claim is struck out in its entirety pursuant to CPR 26.3(1)(b) and (c) for the following reasons:
   i. The claim falls outside the scope of CPR 18.1;
   ii. The claim against the 9th and 10th Applicants (Marigot Holdings Inc. and Marigot Harbour Limited) discloses no reasonable ground for its initiation;
   iii. The claim against the 11th Applicant (Marigot Resort Holdings, LLC) is barred by the doctrine of privity and the 3rd Defendant lacks locus standi;
   iv. The claim constitutes an abuse of process.

3. I shall hear the parties' arguments on costs at the next hearing of the matter.

Yuri Saunders

Master

Registrar