IN THE SENIOR COURTS OF BELIZE

IN THE HIGH COURT OF BELIZE

CLAIM No. 607 of 2024

BETWEEN:

CHRIS COTTINGHAM	**First Claimant**
JAMES WESTERHOFF	**Second Claimant**
CS SAIL AND CHARTER, LLC	**Third Claimant**

AND

DILLON ANGUS JOSEPH RAMCLAM	**First Defendant**
DILLON ANGUS JOSEPH RAMCLAM (t/a BOOZY EEL BEACH BAR	**Second Defendant**
MIS JACK CHARTERS LTD	**Third Defendant**
KEN HILBURN	**Fourth Defendant**

Appearances:

Mr Immanuel Williams and Ms Rheana Mena for the claimants
Mr Jose M. Alpuche and Mr Jonathan Alpluche for the first to third defendants

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8 September 2026

29 September 2026

JUDGMENT

Partnership – Whether the parties' relationship was a partnership – Partners' fiduciary duties – If the parties' business relationship was not a partnership, did it give rise to fiduciary duties – Whether the defendant breached any fiduciary duty

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1. Introduction

[1] **HONDORA J.:** The first and second claimants and the first defendant entered into a written Memorandum of Agreement (MOA) on 1 March 2024 to operate a bar and restaurant, Conch Suckers Bar and Bites, at Parcel 2172, Playa Asuncion, Caye Caulker. Conch Suckers Bar and Bites opened for business on 30 March 2024. Not long after, on 22 July 2024, the first defendant terminated the parties' agreement. In September 2024, he opened and operated a bar and restaurant, Boozy Eel Beach Bar, on the same premises.

[2] The first and second claimants' case is that they were in a partnership with the first defendant and provided

the start-up capital for the Conch Suckers Bar and Bites. They seek, among other remedies and declarations: (a) the return of their investment in the Conch Suckers Bar and Bites; (b) a declaration that the first defendant breached his fiduciary duties; and (c) an order requiring the first defendant to account for income generated by both the Conch Suckers Bar and Bites and Boozy Eel. The third claimant seeks repayment of US$11,038.39 from the first defendant for alleged unauthorised use of its credit card.

[3] The first defendant disputes the claimants' claim and seeks its dismissal. He argues that the claimants materially breached the 1 March 2024 agreement by failing to contribute sufficient capital to make the restaurant operational and to pay rent for the property used for the Conch Suckers Bar and Bites, thereby causing the business to operate at a loss. He also contends that the claimants may recover the items they provided for the Conch Suckers Bar and Bites. He also disputes the third claimant's claim for US$11,038.39 and says Mr and Mrs Cottingham, Mr and Mrs Westerhoff, and/or Mr Hilburn authorised the expenses charged to its credit card.

[4] I should note that the claimants have already obtained a default judgment against the fourth defendant, Mr Ken Hilburn. After valid service of the claimant's originating process, Mr Hilburn failed to file an acknowledgement of service or a defence.

[5] The parties' dispute raises numerous questions, including: (a) whether the parties' relationship was a partnership or a joint or other business venture; (b) whether the first defendant owed any fiduciary duties to the first and second claimants; and (c) if so, whether the first defendant breached any fiduciary duties that arose.

2. Context

[6] Mr Chris Cottingham ('Mr Cottingham'), the first claimant, and Mr James Westerhoff ('Mr Westerhoff'), the second claimant, are American businessmen. They reside in Oklahoma, USA. The third claimant, CS Sail and Charter, LLC ('CS Sail LLC'), is a Delaware Limited Liability Company. Mr Cottingham and Mr Westerhoff are the principal shareholders and directors of CS Sail LLC.

[7] Mr Dillon Angus Joseph Ramclam ('Mr Ramclam'), a businessman, resides in Caye Caulker, Belize. Mr Ramclam also trades as Boozy Eel Beach Bar, which is listed as the second defendant. Accordingly, the first and second defendants are one and the same person. The third defendant, Mis Jak Charters Ltd, is a Belize-registered company. Its directors and shareholders are the third claimant, CS Sail LLC, which holds 49% of the shareholding, and Mr Ramclam, who holds 51%.

[8] In this judgment, any reference to "the parties" refers primarily to Mr Cottingham, Mr Westerhoff and Mr Ramclam.

[9] It is common ground that Mr Cottingham and Mr Westerhoff, on the one hand, and Mr Ramclam, on the other, entered into a "Memorandum of Agreement" ('MOA') dated 1 March 2024, which sets out "*the basis of cooperation between the parties to open, operate and maintain a bar and restaurant located on Parcel 2172, Playa Asuncion, Caye Caulker, Belize, formerly known as "Café by the Sea" (the "Property").*"

[10] Clause 2.1 of the MOA provided that the parties' agreement was for a period of two years commencing on the "*effective date",* i.e., 1 March 2024. In addition, Clause 2.3 provides that "*Either Party may terminate this MOA with 180 days' written notice to the other party."*

[11] Clause 5 of the MOA sets out the parties' agreement on the distribution of gross revenue. Clause 5.1 provides that Mr Ramclam is entitled to 75% of all gross revenue, with Mr Cottingham and Westerhoff together receiving 25%. The parties also agreed that Belizean law would govern the MOA.

[12] The claimants aver that their MOA constituted a partnership agreement. In his defence, Mr Ramclam stated that he neither admitted nor denied the claimants' plea. He did not advance a positive case explaining the nature of his relationship with Mr Cottingham and Mr Westerhoff.

[13] Following discussions and agreement between the parties in the period preceding the signing of the 1 March 2024 MOA, Mr Ramclam registered the business name "Conch Suckers Bar and Bites" with the Belize Companies and Corporate Affairs Registry on 6 March 2024. Under Clause 6 of the parties' 1 March 2024 MOA, the intellectual property rights in that name are stated to belong to Mr Cottingham and Mr Westerhoff, not to Mr Ramclam.

[14] According to Mr Cottingham and Mr Westerhoff, they invested approximately US$64,000.66 in the Conch Suckers Bar, in part through transfers to the fourth defendant, Mr Ken Hilburn, Mr Cottingham's father-in-law, who in turn transferred cash to Mr Ramclam. The funds were used to renovate the Conch Suckers Bar premises and to cover start-up and ongoing operational expenses. In addition, Mr Cottingham and Mr Westerhoff purchased equipment and merchandise for the Conch Suckers Bar, which were transported to Belize via Southwest Cargo. In his defence, Mr Ramclam admits to receiving the equipment from Southwest Cargo, including speed rails for holding liquor bottles and bar mats. He also accepts that Mr Cottingham and Mr Westerhoff "made some capital investments" but denies that they invested $64,000.66 and puts them to strict proof. However, he does not specify in his defence or witness statement the amount Mr Cottingham and

Mr Westerhoff invested in the Conch Suckers Bar and Bites, or the full capital amount they ought to have contributed to the Conch Suckers Bar business but allegedly did not.

[15] Further, Mr Ramclam accepts that, together with the bar's chef, his wife and Mr Cottingham's wife, he went to local department stores in Belize City to buy items for the Conch Suckers Bar and Bites, using money provided by the claimants. Among the items purchased were a microwave, fryers, a stove, a mini-freezer, pots, pans, plates, cups and other kitchen appliances.

[16] The parties agree that Mr Ramclam applied for and, on 27 March 2024, obtained a liquor licence for Conch Suckers Bar and Bites. The licence was issued in the name of CS Sail Limited, the third claimant. As set out above, Mr Cottingham and Mr Westerhoff are the shareholders and directors of CS Sail Limited.

[17] It is also not disputed that Conch Suckers Bar opened for business on 30 March 2024. As part of the business' operations, Mr Cottingham and Mr Westerhoff provided Mr Ramclam with a Point-of-Sale System ('POS system'), i.e., a computer-based system that, among other things, creates and issues invoices and receipts, processes payments and transactions, manages sales data, and tracks inventory.

[18] According to the claimants, the POS system recorded gross sales of BZ$197,687.00 between 30 March 2024 and 23 June 2024, and that Mr Ramclam did not, as agreed under their MOA, pay them 25% of the revenue generated by the business. Mr Ramclam disputes that Mr Cottingham and Mr Westerhoff had access to the POS system. He asserts that Mrs Jaklyn Hilburn Cottingham (Mr Cottingham's wife), Mr Hilburn (the fourth defendant), and he were the only ones with access to the POS system. In addition, Mr Ramclam disputes the BZ$197,687.00 figure and asserts that the POS Dashboard app "*did not accurately reflect the information in the POS system because it did not display any refunds or cancelled food and drinks*." He also asserts that the "*POS system was never properly set up with the correct prices*." He further asserts that between 30 March 2024 and 23 June 2024, "*the Bar staff were using paper order books and [were] issuing paper receipts*."

[19] Mr Cottingham and Mr Westerhoff also assert that Mr Ramclam was given a credit card belonging to CS Sail LLC for expenses relating to the marine vessel registered under Mis Jak Charters Limited (the third defendant). The parties refer to this aspect of their relationship as the 'boat business'. The claimants allege that Mr Ramclam wrongfully and without authority used the card to make purchases totalling US$11,038.39 for food and drinks sold at the Conch Suckers Bar. Mr Ramclam denies this. He asserts that the fourth defendant used the credit card most. Mr Ramclam further stated that "If *the card was used for the Bar, the 1st Defendant would notify the Claimants via a WhatsApp Chat Group that included the 1st and 2nd Claimants, Jaklyn Hilburn, Misty Westerhoff, the 4th Defendant and the 1st Defendant. Approval would normally be given by*

Jaklyn Hilburn Cottingham". I note, however, that Mr Ramclam provided no evidence to support this assertion.

[20] Mr Cottingham and Mr Westerhoff also aver that, in or about June 2024, Mr Ramclam changed the POS system passwords, thereby impeding their ability to participate in managing the Conch Suckers Bar and Bites business and to calculate their 25% entitlement to the business's gross revenue. Mr Ramclam denies these assertions and refers to assertions previously made in his defence, which do not directly address the claims made by Mr Cottingham and Mr Westerhoff.

[21] The claimants allege that on 8 July 2024, Mr Ramclam registered the name Boozy Eel Beach Bar with the Belize Companies and Corporate Affairs Registry. In his defence, Mr Ramclam admits registering the name. He asserts that he had no duty to inform or consult the claimants about the registration. He also alleges that, as at the date of registration, he had already terminated the MOA. Mr Ramclam's allegation that, when he registered the name Boozy Eel Beach Bar, he had already terminated the parties' MOA has no basis in fact. Mr Ramclam registered the name Boozy Eel Beach Bar on 8 July 2024, i.e., before 22 July 2024, the date of his letter terminating the MOA.

[22] Mr Ramclam communicated his termination of the parties' MOA by an unsigned letter dated 22 July 2024, the terms of which warrant restatement.

> Dear Mr. Westerhoff and Mr. Cottingham
>
> Memorandum of Agreement dated 1 March 2024 (the "Agreement")
>
> I write to you in accordance with the above-mentioned Agreement. I hereby give you notice that I am terminating the Agreement with immediate effect.
>
> Pursuant to clause 4, you have not met your obligations for the capital expenses of the initial tenant improvements nor have you contributed to the rent and utilities, despite my numerous requests.
>
> As of close of business today, I will cease operations of Conch Suckers Bar and Bites and I will cease the use of that name.
>
> I am prepared to enter discussions with you concerning settlement of any outstanding obligations between us regarding the Agreement.

[23] Mr Cottingham and Mr Westerhoff contend that Mr Ramclam's termination of the parties' agreement was unjustified, as they had fulfilled their obligations under the MOA, i.e., they had made the agreed capital investments required to renovate the premises previously known as Café By The Sea and had made funds available to pay rent and all required expenses to bring Conch Suckers Bar into operation.

[24] In his defence, Mr Ramclam states that his termination of the MOA was justified because Mr Cottingham and Mr Westerhoff failed to fulfil their obligations under the MOA, namely:

> "…they did not carry out all the capital investments required nor did they make required payments towards rent or utilities, except for one month's rent payment." [Emphasis added]

[25] In his defence, Mr Ramclam did not identify which capital investments Mr Cottingham and Mr Westerhoff failed to honour, the amount in dispute, or how the alleged failure constituted a repudiatory breach of the parties' MOA by Mr Cottingham and Mr Westerhoff. In addition, he failed to evidence his claim that he had made "numerous requests" to Mr Cottingham and Mr Westerhoff for additional capital investments and for payment of rent and utilities.

[26] Mr Ramclam also stated in his defence that, when he terminated the MOA, Conch Suckers Bar and Bites was incurring losses. I note, however, that Mr Ramclam did not provide evidence for, or specify: (a) the amount of the alleged losses; (b) the reason(s) for the losses he alleges were suffered by Conch Suckers Bar and Bites; (c) whether the alleged loss position was irrecoverable; (d) that he requested Mr Cottingham and Mr Westerhoff to inject additional capital and that they unreasonably refused; (e) the period over which the alleged losses began and continued; (f) why, in the circumstances, termination of the MOA was an appropriate course; (g) why he chose to register a competing business conducting the same line of business as Conch Suckers Bar and Bites on 8 July 2024, and why he chose two months later to use the same premises as Conch Suckers Bar for his Boozy Eel Beach Bar business; and (h) the reasons why his personal enterprise, Boozy Eel Beach Bar, which operated from the same premises as Conch Suckers Bar and Bites at the same time he terminated the MOA, was (and could be) more profitable than Conch Suckers Bar and Bites.

[27] It is not insignificant that, in his defence, Mr Ramclam did not say that Boozy Eel Beach Bar also faced the viability challenges he alleges Conch Suckers Bar and Bites faced, which he says led him to terminate the MOA. In addition, he did not explain why, given that he led both enterprises, Boozy Eel Beach Bar was more profitable than Conch Suckers Bar and Bites, even though he continued to operate the latter for over two years after he terminated the MOA.

[28] In their statement of claim, the Claimants averred that Mr Ramclam continues to use the premises leased to Conch Suckers Bar and Bites, as well as the equipment and other assets purchased for that bar. In his defence, Mr Ramclam denied some of the Claimants' averments but did not dispute that Boozy Eel Bar uses the premises leased to Conch Suckers Bar. He also did not dispute that Boozy Eel Beach Bar became operational weeks after he terminated the parties' MOA. Although he provided no evidence, Mr Ramclam asserted that he bought all the equipment required to operate Boozy Eel Beach Bar and that the Claimants were free to collect the equipment they had purchased for use at Conch Suckers Bar.

[29] Further, in his defence, Mr Ramclam did not address the averments of Mr Cottingham and Mr Westerhoff that he, Mr Ramclam, breached the parties' MOA "by failing to repay the Claimants for their investments and expected income under the MOA."

[30] Mr Cottingham and Mr Westerhoff also averred that Mr Ramclam, a partner in the Conch Suckers Bar and Bites business, breached his duty to act in good faith and to promote the partnership's success. In para. 34 of his defence, Mr Ramclam denied the claim without directly addressing the claimants' averments, including the contention that the parties' relationship was a partnership. He confined his defence to the averment that Mr Cottingham and Mr Westerhoff failed to fulfil their obligations under the MOA by failing to "*pay the rent and utilities and capital investments*."

[31] The claimants also pleaded that Mr Ramclam breached his fiduciary duties by (a) unilaterally terminating the parties' MOA; (b) failing to repay the claimants' investments; (c) excluding the claimants from all operational control and involvement in Mis Jak Charters Ltd; (d) unilaterally ceasing the Conch Suckers Bar and Bites business; (e) using the premises and property belonging to Conch Suckers Bar and Bites for the Boozy Eel Bar; (f) obtaining a liquor licence for the Boozy Eel Bar without the claimants' knowledge and consent; (g) misappropriating Conch Suckers Bar and Bites' property and operations for the Boozy Eel Bar; and (h) unauthorisedly using the third claimant's credit card to cover expenses incurred by Conch Suckers Bar and Bites.

[32] Mr Ramclam denied in his defence that he owed the claimants any fiduciary duties. He pointed out that he terminated the MOA after the claimants failed to pay rent, provide utilities, and make capital investments, which caused the Conch Suckers Bar to operate at a loss. He also asserted that he had "*no duty to consult, inform or request permission from any of the Claimants [regarding his application for] a liquor licence for a business that he owns and that has nothing to do with the Claimants,*" i.e., Boozy Eel Bar. Mr Ramclam also denied that he had any duty to account for and pay the claimants 25% of the gross revenue earned by the Conch Suckers Bar.

[33] The claimants pleaded in the alternative that Mr Ramclam was a trustee of the assets in his possession and control, and that, in breach of his fiduciary duties, he dissipated them for his personal benefit. Mr Ramclam denied the claimants' assertion, pleading that the parties' relationship was governed by the MOA, which he terminated. In his answer, he referred to para. 27 of his defence, which addressed security cameras and did not address the plea that he was a trustee of the parties' business assets.

[34] The third claimant averred that it is a director and shareholder of Ms Jak Charters Ltd (the third defendant)

and that it should be removed from the register of companies to guard against potential legal risks arising from Mr Ramclam's management of Ms Jak Charters. Mr Ramclam pleaded in his defence that the third claimant was free to dispose of its shares and to resign as a director.

[35] Mr Ramclam denied the claimants' plea that, as a result of his actions, they suffered damages and a loss of US$113,422.41, and he put them to strict proof.

[36] Although the manner in which the claimant set out their statement of case has made it difficult to identify clearly some of the remedies sought and the supporting facts, in my assessment, the claimants are seeking:

(a) an order that Mr Ramclam pay them BZ$204,996.28, comprising: (i) their capital outlay of US$64,000.66/BZ$128,001.72 into the Conch Suckers Bar and Bites business; (ii) unauthorised credit card charges allegedly made by Mr Ramclam totalling US$11,038.39/BZ$22,076.78; and (iii) BZ$54,917.78, i.e., 25% of BZ$219,671.10, the gross revenue allegedly realised between 30 March 2024 and 23 June 2024 – during which period the claimants had access to the POS system;

(b) an account of the profits, which Mr Ramclam generated from the Boozy Eel Bar; and

(c) an order directing Ms Jak Charters Ltd.'s registered agent to cancel CS Sail and Charter, LLC's share certificate and to rectify Ms Jak Charters Ltd.'s register of shareholders by removing CS Sail and Charter, LLC's name.

3. Approach to and evaluation of the parties' evidence

[37] Before addressing the issues arising in this matter, I should note the following regarding the parties' evidence and my approach to it. The claimants called Mr Cottingham, his wife Jaklyn Cottingham, and Mr Westerhoff. The defendants called Mr Ramclam and Mr Hilburn. I have considered the parties' witness statements, the documents tendered and admitted into evidence, and the parties' oral testimony. Rather than summarising each witness's evidence, I will refer only to averments relevant to the issues to be resolved.

[38] I have also reminded myself of the pragmatic approach proposed by Leggatt J (as he then was) in ***Gestmin SGPS S.A. v Credit Suisse (UK) Ltd*** [2013] EWHC 3560 ('Gestmin') for assessing witness recollection and the weight to be accorded to it in commercial disputes. At [22], Leggatt J stated that, in commercial cases, the best approach requires a judge to:

> "…place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose — though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of

supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

[39] The claimants placed a substantial volume of documents in evidence, including bank statements and WhatsApp messages. In considering the documentary evidence, I have found instructive the opinion expressed by Males LJ in ***Simetra Global Assets Limited v Ikon Finance Limited*** [2019] EWCA Civ 1413 at [48], namely:

> "In this regard I would say something about the importance of contemporary documents as a means of getting at the truth, not only of what was going on, but also as to the motivation and state of mind of those concerned. That applies to documents passing between the parties, but with even greater force to a party's internal documents including e-mails and instant messaging. Those tend to be the documents where a witness's guard is down and their true thoughts are plain to see. Indeed, it has become a commonplace of judgments in commercial cases where there is often extensive disclosure to emphasise the importance of the contemporary documents."

[40] I have also considered the implications of a party's failure to call a witness who may be expected to clarify one or more key issues in the matter. See generally ***Wisniewski v Central Manchester Health Authority*** [1998] EWCA Civ 596, in which the Court of Appeal, after analysing relevant case law, set out the following principles:

(1) In certain circumstances a court may be entitled to draw adverse inferences from the absence or silence of a witness who might be expected to have material evidence to give on an issue in an action.

(2) If a court is willing to draw such inferences they may go to strengthen the evidence adduced on that issue by the other party or to weaken the evidence, if any, adduced by the party who might reasonably have been expected to call the witness.

(3) There must, however, have been some evidence, however weak, adduced by the former on the matter in question before the court is entitled to draw the desired inference: in other words, there must be a case to answer on that issue.

(4) If the reason for the witness's absence or silence satisfies the court then no such adverse inference may be drawn. If, on the other hand, there is some credible explanation given, even if it is not wholly satisfactory, the potentially detrimental effect of his/her absence or silence may be reduced or nullified.

(See also ***Ellis v Reid, Claim No. Civ 391 of 2024*** (No. 2) at [115] – [120])

[41] I have also considered, in the round, each witness's testimony against the backdrop of the parties' pleaded cases, the documents admitted into evidence, and the internal coherence of each party's testimony and its inherent probability. As Arden LJ (as she then was) noted in ***Re Mumtaz Properties Ltd*** [2012] 2 BCLC 109 at [12]:

> "There are many situations in which the court is asked to assess the credibility of witnesses from their oral evidence, that is to say, to weigh up their evidence to see whether it is reliable. Witness choice is an essential part of the function of a trial judge and he or she has to decide whose evidence, and how much evidence, to accept. This task is not to be carried out merely by reference to the impression that a witness made giving evidence in the witness box. It is not solely a matter of body language or the tone of voice or other factors that might generally be called the 'demeanour' of a witness. The judge should consider what other independent evidence would be available to support the witness. Such evidence would generally be documentary but it could be other oral evidence …"

[42] I now turn to the issues arising.

Issues

[43] The parties agreed that the following issues arose for determination:

(a) Whether the first defendant was justified in terminating the MOA;

(b) Whether the first defendant breached the MOA;

(c) Whether the first defendant owed the claimants a/any fiduciary duty;

(d) Whether the Defendants (excluding the fourth defendant against whom judgment has already been entered) are liable to account to the claimants for the gross revenue pleaded of BZ$197,687.00 under the MOA;

(e) If the answer to (d) above is 'Yes', what is the claimants' 25% share of the gross revenue;

(f) Whether the claimants are entitled to the gross revenue payments derived from the Boozy Eel Beach Bar operations;

(g) Whether the claimants are entitled to the other reliefs set out in their statement of claim?

[44] In my assessment, the parties' dispute is best resolved by considering whether:

(a) the first and second claimants' relationship with the first defendant was either a partnership or a joint venture that was not a partnership;

(b) whether the first and second claimants breached the parties' MOA entitling the first defendant to terminate the parties' agreement with immediate effect and/or whether the first defendant breached the terms of the parties' MOA;

(c) whether, in any event, the first defendant owed the first and second claimants one or more fiduciary duties arising from their relationship;

(d) whether the claimants have demonstrated their entitlement to the numerous declarations and the other remedies they seek, as set out in their statement of case, and/or any other consequential remedies.

[45] I now turn to the issues raised above.

(a) Whether the parties' relationship was a partnership

[46] As noted above, in their statement of case, the claimants averred that the 1 March 2024 MOA established a partnership between Mr Cottingham, Mr Westerhoff and Mr Ramclam. In his defence, Mr Ramclam did not directly address the claimants' averment that the parties' relationship was a partnership, nor did he advance a positive case to the contrary. Mr Ramclam appears not to have considered it necessary to describe the

nature of the parties' relationship in relation to Conch Suckers Bar, or to provide facts showing that their business relationship was not, as pleaded by the claimants, a partnership.

[47] In his written submissions, Mr Ramclam asserted that the parties' relationship was contractual, with the terms set out in the MOA, which he alleged the claimants had breached. Mr Alpuche, on Mr Ramclam's behalf, submitted that the parties' relationship was akin to that of an investor-operator. To resolve this issue, I first need to outline the general principles governing partnerships.

(i) General principles on partnership

[48] The primary legislation governing partnerships is the Partnership Act, CAP 259 ('the Partnership Act'). The Partnership Act is not a comprehensive code for partnership law. Section 47 of the Partnership Act provides:

> The rules of equity and of common law applicable to partnership shall continue in force except so far as they are inconsistent with the express provisions of this Act.

[49] The provisions of the Partnership Act are substantively similar to those of the United Kingdom's Partnership Act 1890 (1890 Act). As a result, where relevant, English and Scottish case law is persuasive in interpreting and applying the provisions of our Partnership Act. Decisions of the Privy Council handed down before our final appellate court transitioned to the Caribbean Court of Justice ('CCJ') will, depending on the circumstances, constitute binding authority, while its decisions after the transition to the CCJ will be highly persuasive. Also highly persuasive are decisions issued by courts in common law jurisdictions in the Caribbean region and beyond whose countries have substantively similar provisions in their Partnerships Acts, possess equitable jurisdiction, and apply doctrines derived from the Court of Chancery in England and Wales. The opinions expressed by the CCJ in its appellate jurisdiction on issues of principle in relation to partnership legislation of CCJ member countries that are the same as or substantively similar to our Partnership Act will constitute binding authority, noting, of course, the trite point that this court is bound by decisions issued by the CCJ regarding the provisions of our Partnership Act and governing common law and equitable principles.

[50] Section 3 of the Partnership Act defines a partnership as follows:

> (1) A partnership is the relation which subsists between persons carrying on a business in common with a view of profit.
> (2) The relation between members of any company or association which is,
> (a) registered as a company under the Companies Act, Cap. 250; or
> (b) formed or incorporated by or in pursuance of any other Act, Letters Patent or Royal Charter, is not a partnership within the meaning of this Act.

[51] A partnership may be established by a written or oral agreement or by the parties' course of dealing. Accordingly, whether any parties' relationship constitutes a partnership may be a question of fact, a question

of law, or a mixed question of fact and law (see ***Keith Spicer Ltd v Mansell*** [1970] 1 All ER 462 at 463 CA, per Harman LJ; ***Saywell v Pope (Inspector of Taxes)*** [1979] STC 824).

[52] The parties' characterisation of their relationship as a partnership, or their reference to each other as partners, while a relevant consideration, is not in itself conclusive as to whether the parties' relationship is a partnership. In determining whether parties are in a partnership, the court will, in all cases, enquire into the substance of the parties' relationship (see ***Stekel v Ellice*** [1973] 1 WLR 191, at p. 199G; ***Weiner v Harris*** [1910] 1 KB p. 285, at p. 290).

[53] Section 4 of the Partnership Act sets out a non-exhaustive list of rules for determining whether persons are or were carrying on business in partnership. It provides:

> In determining whether a partnership does or does not exist, regard shall be had to the following rules,
>
> (a) joint tenancy, tenancy in common, joint property, common property or part ownership does not of itself create a partnership as to anything so held or owned, whether the tenants or owners do or do not share any profits made by the use thereof;
>
> (b) the sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived;
>
> (c) the receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business, and in particular,
>
> (i) the receipt by a person of a debt or other liquidated amount by instalments or otherwise out of the accruing profits of a business does not of itself make him a partner in the business or liable as a partner;
>
> (ii) a contract for the remuneration of a servant or agent of a person engaged in a business by a share of the profits of the business does not of itself make the servant or agent a partner in the business or liable as a partner;
>
> (iii) a person being the widow or child of a deceased partner and receiving by way of annuity a portion of the profits made in the business in which the deceased person was a partner, is not by reason only of such receipt a partner in the business or liable as a partner;
>
> (iv) the advance of money by way of a loan to a person engaged or about to engage in any business on a contract with that person that the lender shall receive a rate of interest varying with the profits, or shall receive a share of the profits arising from carrying on the business, does not of itself make the lender a partner with the person or persons carrying on the business or liable as such, provided that the contract is in writing, and signed by or on behalf of all parties thereto;
>
> (v) a person receiving by way of annuity or otherwise a portion of the profits of a business in consideration of the sale by him of the goodwill of the business is not by reason only of such receipt a partner in the business or liable as a partner.

[54] As relevant to these proceedings, and drawing only on a select few, the rules set out in section 4 of the Partnership Act can be summarised as follows. Joint tenancy, tenancy in common, joint property, common property or part ownership, or sharing gross returns or remuneration through a share of the profits of a

business do not, by themselves, create a partnership. The advance of money to a person engaged or about to engage in a business, on the agreement that repayment shall consist of a share in the profits of the business, will not itself create a partnership. What then are the key characteristics of a partnership?

[55] In ***Memec Plc v The Commissioners of Inland Revenue***, 1 I.T.L.R. 3 ('Memec'), at p. 16 (e)-(h), Gibson LJ stated that the defining characteristics of an ordinary partnership are as follows:

(1) the partnership is not a legal entity;
(2) the partners carry on the business of the partnership in common with a view to profit (s1(1) *Partnership Act 1890*);
(3) each does so both as principal and (*ss ibid)* as agent for each other, binding the firm and his partners in all matters within his authority;
(4) every partner is liable jointly with the other partners for all debts and obligations of the firm (s9 *ibid*); and
(5) the partners own the business, having a beneficial interest, in the form of an undivided share, in the partnership assets (***MacKinlay v Arthur Young & Co*** [1990] 2 AC 239 at 249 per Lord Oliver), including any profits of the business.

[56] More recently, in ***Sheikh Tahnoon Bin Saeed Bin Shakhboot Al Nahayan v Kent*** [2018] EWHC 333 ('***Al Nahayan'***), at [151], Leggatt LJ stated, in relation to section 1(1) of the 1890 Partnership Act, which is identical in all material respects to section 3(1) of our Partnership Act, as follows:

> In its legal meaning partnership is "the relation which subsists between persons carrying on a business in common with a view to profit": see section 1(1) of the Partnership Act 1890. Other general characteristics of a partnership are: (i) mutual agency whereby each partner has authority to represent and bind the other(s), and (ii) joint liability for the debts and obligations of the partnership business.

[57] In my view, the test (and I use that word hesitantly) for whether there is a partnership is objective, and the decision turns on:

(a) whether, as a matter of fact and law, there is or was an agreement between the parties to carry on business in common, i.e., either a written or oral agreement, or an agreement established by the parties' course of dealing, although a contract is not lightly inferred from conduct (see ***Baird Textile Holdings Ltd v Marks & Spencer plc*** [2001] EWCA Civ 274, at [18]) ('***Baird Textile Holdings Ltd'***) and ***Worbey v Campbell*** [2017] CSIH 49 at [72]) ('***Worbey***')
(b) whether the requirements of section 1(1) of the Partnership Act are satisfied, i.e., whether, as a matter of fact, the parties: (i) were carrying on business; (ii) in common; and (iii) with a view to profit (see ***Worbey*** at [72]); and
(c) factors typically characteristic of a partnership, such as mutual agency and joint liability for the partnership's debts and obligations, noting, however, that agreements modifying these factors do not necessarily negate the existence of a partnership (see ***Dollar Land (Cumbernauld) Ltd v CIN Properties Ltd*** 1996 SLT 186, at p. 195) ('***Dollar Land'***).

[58] Regarding what constitutes 'carrying on business', in ***Miah v Khan*** [2000] 1 WLR 2123 ('***Miah***'), Lord Millett stated:

> There is no rule of law that the parties to a joint venture do not become partners until actual trading commences. The rule is that persons who agree to carry on a business activity as a joint venture do not become partners until they actually embark on the activity in question. It is necessary to identify the venture in order to decide whether the parties have actually embarked upon it, but it is not necessary to attach any particular name to it. Any commercial activity which is capable of being carried on by an individual is capable of being carried on in partnership. [Emphasis added]

[59] In ***Ilott v Williams*** [2013] EWCA Civ 654 ('***Ilott***'), Arden LJ stated at [13] that:

> "…there must be a carrying on of business. Section 1(1) of the Partnership Act 1890 makes it clear that it is not the mere agreement to establish a partnership or the setting up of a partnership that renders the parties partners: there must also be an actual carrying on of business with a view of profit. Partnership is there defined as:
>
> > "the relation which subsists between persons carrying on business in common with a view of profit."

[60] The question of whether profit-sharing is an essential ingredient or merely a characteristic of a partnership was canvassed in detail in ***M Young Legal Associates Ltd v Zahid*** [2006] 1 WLR ('***M Young Legal Associates***'). In that case, the issue was whether a non-profit-sharing partner in a law firm was a partner for the purposes of the 1890 Partnership Act. Hughes LJ, delivering a concurring judgment, expressed the following view at [40]–[41], which I find persuasive for the reasons he gave, that:

> 40. …That the sharing of profits is a characteristic of partnership, as distinct from an essential ingredient of it, was and IS uncontroversial.
>
> 41. However that may be, the words of section I of the 1890 Act seem to me to put the matter beyond doubt. They refer to the making of profit as an aim, but studiously abstain from reference to any necessity that it be shared. On principle it seems to me that if there is an essential element of partnership it is the carrying on of business in common, that is to say in such manner as to make each the agent of the other for all acts done in the course of the business. Having thus constituted themselves, the partners are free under the Act to arrange for the remuneration of themselves in any manner they choose, including by agreement that one or more shall receive specific sums, or that one or more receive nothing, in either case irrespective of profits.

[61] In ***M Young Legal Associates***, at [32], Wilson LJ, who delivered the lead opinion, stated:

> "…the words of the core definition [of partnership set out in the Partnership Act 1890] are wide enough to render the recipient of payments in a fixed sum a partner provided that there is a business, that it is carried on with a view to profit and, crucially for present purposes, that he is carrying it on in common with another or others."

[62] In ***Hamilton v Barrow*** [2024] EWCA Civ 888, at [43], the Court of Appeal reiterated that "*Profit sharing is not an essential pre-requisite of partnership.*"

[63] Section 6 of the Partnership Act provides that persons who have entered into partnership with one another will, for the purposes of the Partnership Act, be called collectively the firm, and the name they use for their business will be the firm name.

[64] Section 26 of the Partnership Act sets out rules governing partners' interests in partnership property and their rights and duties in relation to the partnership, subject to "any agreement expressed or implied between the partners". The rules provide, among others:

(a) that partners "*share equally in the capital and profits of the business*" (section 26(a));

(b) that the firm indemnify every partner in respect of payments made and personal liabilities incurred by them in the ordinary and proper conduct of the firm's business, and in anything done for the preservation of the firm's property or business (section 26(b));

(c) that "*every partner may take part in the management of the partnership business*" (section 26(e)); and

(d) that no partner shall be entitled to "r*emuneration*" for acting in the partnership's business (section 26(f)).

[65] Partners must render true accounts and full information on all matters relating to and affecting the partnership to any partner or their legal representative (section 30 of the Partnership Act). Relatedly, a partner who derives a private profit must account for it to the "firm", i.e., to all the partners (section 31(1) of the Partnership Act). Further, under section 32, a partner who, without the consent of the other partners, carries on any business of the same nature as and competing with that of the firm must account for and pay over to the firm all profits made by him in that business.

[66] The principle that partners owe each other fiduciary duties is uncontroversial. Whether a person is a fiduciary depends on the nature of the relationship between the parties, and partnership is one of the established categories of relationships that give rise to fiduciary duties. Every partner owes the other partner(s) a fiduciary duty, which includes (i) a duty to act in good faith; (ii) a duty of loyalty; (iii) a duty to avoid conflicts of interest, i.e., a conflict between his duty of good faith to the other partners and his personal interests; (iv) a duty not to make any personal profit from the parties' joint venture other than that agreed with the others; and (iv) a duty not to abuse the trust reposed.

[67] In ***Bristol and West Building Society v Mothew*** [1998] Ch 1, 18, Millett LJ described a fiduciary as:

> "…someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal. This is not intended to be an exhaustive list, but it is sufficient to indicate the nature of fiduciary obligations.

[68] In the much-cited Australian case of ***Hospital Products Ltd v United States Surgical Corp*** (1984) 156 CLR 41, 96-97, Mason J stated:

> "The critical feature of these relationships is that the fiduciary undertakes or agrees to act for or on behalf of or in the interests of another person in the exercise of a power or discretion which will affect the interests of that other person in a legal or practical sense. The relationship between the parties is therefore one which gives the fiduciary a special opportunity to exercise the power or discretion to the detriment of that other person who is accordingly vulnerable to abuse by the fiduciary of his position."

[69] I will draw on this analysis of the general principles and other considerations in the discussion that follows.

(ii) Analysis of the parties' respective cases on the partnership question

[70] I propose to first consider whether the relationship between Mr Cottingham, Mr Westerhoff and Mr Ramclam (the parties) constituted a partnership. In addressing this question, I will consider the parties' statements of case and oral testimony, Mr Ramclam's arguments against the existence of a partnership, and then set out my decision.

[71] As noted above, in their statement of case, Mr Cottingham and Mr Westerhoff described their relationship with Mr Ramclam as a partnership. In his defence, Mr Ramclam did not address the issue directly. Instead, he neither denied nor accepted Mr Cottingham and Mr Westerhoff's assertion, and he did not set out a positive defence or the facts on which he intended to rely regarding the nature of the parties' relationship as it pertained to the Conch Suckers Bar and Bites. I find this puzzling, given that Mr Ramclam must have been aware (or had been made aware) that Mr Cottingham and Mr Westerhoff's statement of case and the remedies they sought were grounded on the allegation that the parties' relationship was a partnership.

[72] During cross-examination, Mr Ramclam confirmed that he understood his relationship with Mr Cottingham and Mr Westerhoff to be a partnership. Mr Ramclam's exchange with Mr Williams (the claimants' attorney) was as follows:

Mr Williams:	Yes, Thank you. You were contracted to manage Conch Suckers Bar, correct?
Mr Ramclam:	To manage, no.
Mr Williams:	No, Thank you.
Mr Ramclam:	To be partner, yes.

[73] Mr Ramclam was also asked the following question:

Mr Williams:	Mr Ramclam, by signing the agreement with the claimants, you accept that you [were] required to act in a fair manner where they were concerned, for both parties? Let me not just pin it on you. You agree that both parties should act fair in a partnership arrangement like this?
Mr Ramclam:	Yes.

[74] Mr Ramclam was not re-examined, nor did he recant his description of his relationship with Mr Cottingham and Mr Westerhoff as a partnership. During oral submissions, I asked Mr Alpuche, counsel for Mr Ramclam, whether, given Mr Ramclam's assertion during cross-examination that the parties' relationship was a partnership, there was any real dispute between the parties on that point. Learned counsel submitted that Mr Ramclam was a layperson and that little weight should be attached to his description of his relationship with Mr Cottingham and Mr Westerhoff as a partnership. Counsel also submitted that some of the grounds on which he would resist the characterisation of the parties' relationship were points of law.

[75] In my view, Mr Alpuche's submission carried considerable force. The use of terms such as 'partner' or 'partnership' by parties engaged in a business venture carried out personally in common is certainly relevant to determining whether their relationship is or was a partnership. However, because such terms are used in a wide variety of circumstances, they do not, by themselves, resolve the question of whether, at law, the parties' relationship was a partnership (see ***Lindley & Banks on Partnership***, 21st Edn, at 5-05-5-08; ***Dutia v Geldof*** [2016] EWHC 547 (Ch), at [35], [50], [65], [71]–[74], per Nugee J.).

[76] In ***Glenn v Walker*** [2025] EWHC 1286 (Ch), HHJ Cawson KC held at [116] that:

> "…where it is asserted that the existence of a partnership is supported by the use of the word "partner" or "partnership", it is necessary to consider with care the context in which those words have been used, and whether they in fact point to there being an agreement as to partnership or are being used more generically to describe some other business relationship."

[77] In light of the above, I hold that it is necessary to consider the opposing arguments advanced by the parties on whether their relationship was, in substance and at law, a partnership. In light of the fact that Mr Cottingham and Mr Westerhoff averred that the parties' relationship was a partnership, and that the prima facie facts reflect that the parties carried on a business (the Conch Suckers Bar and Bites) in common (i.e., together as a triumvirate) with a view to profit, I consider it proper to first assess the submissions made by Mr Ramclam challenging Mr Cottingham and Mr Westerhoff's characterisation of the parties' relationship as a partnership before turning to my decision.

Mr Ramclam's arguments that the parties' relationship was not a partnership

[78] In his submissions, Mr Alpuche referred to the following matters, which he argued negated the existence of a partnership.

(a) that Clause 5 of the MOA provided that the parties would share gross income and not profit;

(b) that Mr Ramclam was solely responsible for procuring the lease for the premises to be used for the Conch Suckers Bar;

(c) that Mr Ramclam assumed all liabilities and risks associated with the business; and

(d) Mr Ramclam had no ownership of the intellectual property of the Conch Suckers Bar business.

[79] I shall address each in turn.

1st submission: the parties' relationship was not a partnership because they agreed to share gross income, not profit

[80] It is common ground that, in their MOA, the parties agreed to share gross income and made no express provision for sharing profit. As I understand it, Mr Ramclam's argument is that, because the parties agreed to share gross income rather than profit, their relationship was not a partnership. If that is his argument, it would, in my view, be based on a misinterpretation of sections 3(1), and 4(b) and (c) of the Partnership Act, which I repeat for ease of reference.

[81] Section 3(1) provides:

> "A partnership is the relation which subsists between persons carrying on a business in common with a view of profit."

[82] Section 4(b), which is one of the rules used to determine the existence of a partnership, provides:

> "the sharing of gross returns does not of itself create a partnership, whether the persons sharing such returns have or have not a joint or common right or interest in any property from which or from the use of which the returns are derived". [Emphasis added]

[83] Section 4(c) stipulates:

> "the receipt by a person of a share of the profits of a business is *prima facie* evidence that he is a partner in the business, but the receipt of such a share, or of a payment contingent on or varying with the profits of a business, does not of itself make him a partner in the business, and in particular,…"

[84] Section 3(1) simply provides that a partnership is the relation that subsists between persons carrying on business in common with a view to profit. Put differently, if persons conduct business, whatever it might be, but not with a view to generating a profit, their relationship would not, as a matter of law, constitute a partnership for the purposes of the Partnership Act. However, in my view, section 3(1) does not govern the sharing of any revenue or profit earned by the parties' carrying on a business in common. Nor does it provide that, if parties to a business venture agree to share gross income but not profit, their relationship will not be a partnership. For a similar ruling, albeit addressing the 1890 Partnership Act, see ***M Young Legal Associates*** at [32], [40] and [41].

[85] Actual profit sharing is not a prerequisite for the existence of a partnership. What is essential is that the relevant parties carry on (or have carried on) a business 'in common', as contrasted with a relationship in which each party carries on (or has carried on) a separate business. There must be a substantial degree of common

interest between the parties in a business they carry on (or have carried on) together with a view to profit, rather than for charity or some other non-profit purpose (see, for example, ***Hamilton v Barrow*** [2024] EWCA Civ 888, at [24–25]).

[86] In my view, it is common ground that the parties agreed to establish Conch Suckers Bar and Bites and did so, agreeing to operate it in common with a view to generating profit. It is also common ground that Conch Suckers Bar and Bites was not a charitable venture and was never intended to operate on any basis other than profit. This is demonstrated in part by Mr Ramclam's claim that he terminated the 1 March 2024 MOA because Mr Cottingham and Mr Westerhoff failed to contribute what he alleged was the agreed capital required to operationalise Conch Suckers Bar and Bites, which resulted in it running at a loss - a reason he gave for terminating the MOA.

[87] Relatedly, any reliance on section 4(b) of the Partnership Act would also be without merit. Section 4(b) does not provide that the sharing of gross income by parties carrying on a business in common negates the existence of a partnership. Section 4(b) simply provides that "*the sharing of gross returns does not of itself create a partnership*." Those words, given their ordinary grammatical meaning, mean no more than that the sharing of gross returns does not itself establish the existence of a partnership, but is a factor that may indicate that one exists.

[88] Further, under section 4(c) of the Partnership Act, receiving a share of profits is prima facie evidence of partnership, but does not, in itself, make the recipient a partner.

[89] These provisions (i.e., sections 3(1), 4(b) and 4(c) of the Partnership Act) do not, either individually or collectively, provide that, for a partnership to exist, the parties must agree to share profits or that they ought to do so.

2nd submission - the parties' relationship was not a partnership because Mr Ramclam was obliged to pay 25% of gross revenue, irrespective of whether the business made a profit

[90] It is also argued on behalf of Mr Ramclam, in support of the contention that the parties' relationship was not a partnership, that "*If the business made no profit, Mr. Ramclam would still be liable to pay the Claimants 25% of the gross revenue – come hell or high water (sic*)." This contention, like the one considered above, was raised only in the defendants' written submissions and not by Mr Ramclam in his defence and/or witness statement, and has little merit.

[91] First, the contention concedes that the parties agreed to carry on business as Conch Suckers Bar and Bites

for profit. Carrying on a business with a view to profit (rather than an agreement to pay each party from profit) is an essential ingredient of a partnership.

[92] Second, as noted above, the contention that Mr Ramclam was entitled to 75% of the gross income, while Mr Cottingham and Mr Westerhoff were entitled to 25% of the gross income "*come hell or high water*", is irrelevant to whether a partnership exists between the parties (see ***Michael Jeffrey and Company v Bamford*** [1921] 2 KB 351; ***Todd v Adams*** [2002] EWCA Civ 509, at [104]). Partners in a partnership are free to determine their respective rights to remuneration, whether from revenue or profits. A firm's realisation of, or failure to realise, a profit has no bearing on whether the parties' relationship is a partnership.

[93] Third, section 26(f) of the Partnership Act provides that "*no partner shall be entitled to remuneration for acting in the partnership business*." In my view, this provision confirms that remuneration calculated as a share of gross income or profits is not an essential feature of a partnership.

3rd submission - the parties' relationship was not a partnership because Mr Ramclam was responsible for securing the lease of the firm's business premises

[94] It is argued on behalf of Mr Ramclam that, because the parties agreed that he was solely responsible for procuring the lease for Parcel 2172, Playa Asuncion, Caye Caulker, Belize (the property on which the parties agreed to operate the Conch Suckers Bar and Bites business), their relationship was not a partnership. In my view, that fact tends to support Mr Cottingham and Mr Westerhoff's contention that their relationship was a partnership.

[95] It is, of course, for parties who conduct business in common with a view to profit to determine their respective contributions to the venture. This applies to partnerships and other business ventures. In addition to paying rent and utilities, Mr Cottingham and Mr Westerhoff provided the start-up capital required to get the business operational. Mr Ramclam provided labour, local know-how, and experience in managing bars and restaurants. He also secured the business licences and the lease for the business property, and he managed the business. The parties' arrangements were far from unusual. I also note that during cross-examination, Mr Ramclam explained that the owner of Parcel 2172, Playa Asuncion, Caye Caulker, Belize, refused to enter into lease agreements with foreigners. Although not demonstrated, that claim would explain why the lease was in his name rather than in Conch Suckers Bar and Bites' name or in the names of all the parties.

[96] In my view, the decision to have Mr Ramclam secure the lease in his name, far from negating the existence of a partnership, goes some way towards affirming it. The decision indicates:

(a) by securing the lease of Parcel 2172, Playa Asuncion, Caye Caulker, Belize, in his name for the

parties' and Conch Suckers Bar and Bites' use, Mr Ramclam contributed to the business venture the parties intended to (and did) carry on in common;

(b) that the parties reposed mutual trust and confidence in each other, i.e., by having Mr Ramclam secure the lease for the business venture in his name for their joint use for their Conch Suckers Bar and Bites business; and

(c) that, in securing the lease, Mr Ramclam acted as an agent for his fellow business partners and for Conch Suckers Bar and Bites (i.e., the parties' firm as described in section 6 of the Partnership Act).

4th submission - no partnership existed because the MOA provided that Mr Ramclam bore all liability for Conch Suckers Bar and Bites

[97] It is argued on behalf of Mr Ramclam that the parties' relationship was not a partnership because, under their MOA, he assumed all liabilities and risks associated with Conch Suckers Bar and Bites. However, Mr Ramclam did not set out the factual basis for this submission in his defence. Relatedly, the written submissions did not adequately set out the details supporting this contention. I infer, though I am far from certain, that the contention rests on clauses 3.1 and 7.1 of the parties' MOA.

[98] Clause 3 of the MOA is headed "DUTIES AND RESPONSIBILITIES OF THE FIRST PARTY". Clause 3.1 of the MOA provides:

> The First Party (Dillon Angus Joseph Ramclam) assumes **SOLE RESPONSIBILITY AND LIABILITY** for the day to day operations of the bar and restaurant including but not limited to:
>
> - Acquisition and signing of the lease with Ilna Auzillou for the Property and abiding by and adhering to any and all obligations assigned to the said lease.
> - The acquisition and expense of all appropriate insurances, licensure and permitting as required by the laws and regulations of Caye Caulker and the country of Belize.
> - The expense of all taxes (sales, payroll, property, etc.) in accordance with the laws and regulations of Caye Caulker and the country of Belize.
> - **ALL OTHER OPERATING EXPENSES** including but not limited to payroll, administrative expenses, consumable goods (food, beverages, ice, etc.) and advertising. **THE SOLE EXCEPTION BEING RENT AND UTILITIES.** [Capitals and emphasis in original]

[99] Clause 7 of the parties' MOA provides as follows:

> 7. EARLY TERMINATION
>
> 7.1. In the event this MOA is terminated for any reason **ALL LIABILITIES AND EXPENSES WILL BE THE SOLE RESPONSIBILITY OF THE FIRST PARTY (DILLON ANGUS JOSEPH RAMCLAM). FURTHERMORE, THE FIRST PARTY (DILLON ANGUS JOSEPH RAMCLAM) AGREES TO INDEMNIFY THE SECOND PARTY (JAMES WESTERHOFF AND CHRIS COTTINGHAM) HARMLESS FOR ALL LIABILITIES AND EXPENSES OF ANY NATURE**. [Capitals and emphasis in original]

[100] It is argued in the written submissions filed on behalf of Mr Ramclam, without reference to any positive factual

case set out in his defence or witness statement, that:

> 21. There was no expectation that Mr. Cottingham and Mr. Westerhoff would incur any liabilities whatsoever for the business. If the rent was not paid, Mr. Ramclam would be personally liable. If a custormer got food poisoning, Mr. Ramclam would be personally liable. If the business made no profit, Mr. Ramclam would still be liable to pay the Claimants 25% of the gross revenue – come hell or highwater.
>
> 22. The Claimants had no expectation of being liable for Mr. Ramclam's actions, as in the case with partners; nor did they desire for Mr Ramclam to be their agent or for them to be Mr Ramclam's agent in relation to the business, as is the case with partners. [Emphasis added]

[101] It is correct that clause 3.1 of the MOA provides that Mr Ramclam "*assumes sole responsibility and liability for the day-to-day operations*" of the business. However, that provision must be read in its proper context. It does not provide that Mr Ramclam had sole liability for the entire business venture. It refers only to day-to-day operations. It is far from unusual for partners in a partnership to assign themselves different roles and responsibilities, including responsibility for discharging different types of liabilities as they arise.

[102] It is also correct that clause 7 of the MOA provides that, in the event of early termination, Mr Ramclam would bear sole responsibility for liabilities and that he undertook to indemnify Mr Cottingham and Mr Westerhoff for any extant liabilities of any nature. In my reading of clause 7 of the parties' MOA, it operated as an intra-party penalty, i.e., it applied if Mr Ramclam terminated the MOA early, i.e., before the expiration of the agreed contractual period of two years, which, per the MOA, was renewable for a similar two-year period.

[103] Section 26 of the Partnership Act sets out the rules governing partners' interests and duties. It recognises that parties to a partnership may expressly or impliedly agree on their interests in partnership property and their respective rights and duties in relation to the partnership, and that, where no such agreement exists, the rules in the section apply. Consequently, the parties' agreement in clause 3 of the MOA does not negate the existence of a partnership.

[104] Clause 7 of the MOA did not govern the liabilities owed by Conch Suckers Bar and each party to third parties in relation to the business. At law, and in the ordinary course, all the parties (Mr Ramclam, Mr Cottingham and Mr Westerhoff) were liable for liabilities incurred by Conch Suckers Bar and Bites, and by each of them, in relation to carrying on the business. Notably, clause 7 also provides that Mr Ramclam agreed to indemnify Mr Cottingham and Mr Westerhoff regarding any liability. That provision implicitly recognises that: (a) Mr Cottingham and Mr Westerhoff were at law liable for liabilities incurred by the Conch Suckers Bar and Bites enterprise; and (b) the parties agreed that, as between themselves, Mr Ramclam would indemnify Mr Cottingham and Mr Westerhoff if they were sued and found liable for the business' liabilities.

[105] For completeness, the argument that "*There was no expectation that Mr. Cottingham and Mr. Westerhoff would incur any liabilities whatsoever for the business. If the rent was not paid, Mr. Ramclam would be personally liable*" has no basis in fact. As I understand the parties' MOA, the term "utilities" refers to charges for electricity, phone and data services. Under Clause 4 of the MOA, the parties plainly agreed that Mr Cottingham and Mr Westerhoff were responsible and liable for the rental and utility costs for the Conch Suckers Bar and Bites.

[106] It appears that Mr Ramclam's argument is that, because the property lease agreement was in his name, the lessor would have sued him in the event of default. However, if the lessor had sued Mr Ramclam for unpaid rent, he could have relied on the MOA to add Mr Cottingham and Mr Westerhoff as ancillary defendants under Part 18 of the Senior Courts (Civil Procedure) Rules to seek indemnity or contribution. The same would apply to any legal claims brought against Mr Ramclam for utility debts that Mr Cottingham and Mr Westerhoff agreed to pay under the MOA. Mr Ramclam could have done so because Conch Suckers Bar and Bites was not his sole business venture. Mr Ramclam's contention also supports the point that he knew Conch Suckers Bar and Bites was a business, which he carried on in common with Mr Cottingham and Mr Westerhoff.

[107] The argument that the parties' relationship was not a partnership because "If a customer got food poisoning, Mr Ramclam would be personally liable" is equally unmeritorious. Mr Cottingham, Mr Westerhoff and Mr Ramclam agreed that Mr Ramclam would secure insurance for the business as part of his contribution to the enterprise they were carrying out in common. It is reasonable to assume that any such insurance would have covered legal claims brought by third parties against Conch Suckers Bar and, by extension, against Mr Ramclam, Mr Cottingham and Mr Westerhoff. That issue aside, neither Mr Cottingham nor Mr Westerhoff would have been able, if sued, to avoid liability by relying on the MOA in the context of the example proffered on Mr Ramclam's behalf.

[108] Does the fact that, under the MOA, Mr Cottingham and Mr Westerhoff were responsible and liable for rent and utilities, while Mr Ramclam was responsible and liable for the day-to-day operations, including payment of all taxes and payroll, advertising, and goods and services provided by Conch Suckers, mean that the parties' relationship was not, at law, a partnership? In my view, the parties' inter-partes operational arrangements and their agreement on who among them would be responsible and liable for particular liabilities as they arise do not negate the existence of a partnership. Such terms are far from unusual in partnerships.

[109] On the facts, I find that the parties merely assigned different roles and responsibilities to advance their collective business interests in the Conch Suckers Bar and Bites venture. Mr Ramclam was the parties' point-

person on the ground in Caye Caulker. He possessed local knowledge and networks. Crucially, he was the only one who, according to the parties, could enter into certain key contracts and secure the necessary regulatory licences. Mr Cottingham and Mr Westerhoff held this view because Mr Ramclam informed them that those licences and other key contracts could be obtained only by, and in the name of, a Belizean, namely himself. For example, during cross-examination, Mr Ramclam stated that the lessor for Parcel 2172 (the Conch Suckers Bar premises) refused to lease the property to foreigners such as Mr Cottingham and Mr Westerhoff, which explains why the lease was secured in his name. Mr Cottingham and Mr Westerhoff, American citizens not ordinarily resident in Belize, provided the start-up capital and funded recurring monthly expenses such as rent and utilities. These elaborate arrangements point to collaboration between persons carrying on business in common with a view to profit.

5th submission – Mr Cottingham and Mr Westerhoff did not consider or hold Mr Ramclam as their agent

[110] It is further argued on behalf of Mr Ramclam that:

> "The claimants had no expectation of being liable for Mr. Ramclam's actions, as in the case with partners; or did they desire for Mr. Ramclam to be their agent or for them to be Mr. Ramclam's agent in relation to the business, as is the case with partners."

[111] In apparent support of that submission, reference was made to the following statement by Mr Westerhoff at para. 18 of his witness statement:

> "I wanted to make sure that the agreement did not include us paying for labour, as I felt from our boat experience that the Belizean culture is to hire their family and friends and provide them a job, whether necessary or not. My expectation was that if I paid the rent and utilities and provided Dillon an operational bar, that they would pay 25% of gross proceeds. With this understanding…Chris, Dillon and I signed a Memorandum of Agreement."

[112] I struggle to see how the quoted statement supports the argument that the claimants had no expectation of liability for Mr Ramclam's actions, did not want Mr Ramclam to be their agent, or that the parties were not agents of each other. All that Mr Westerhoff said in para. 18 of his witness statement was that the parties arrived at the 75%/25% sharing agreement on gross revenue because they considered that the arrangement would incentivise Mr Ramclam – the party with day-to-day responsibility for managing the parties' bar and restaurant business - not to incur unnecessary payroll costs. Learned counsel did not point to any objective factor in the parties' documentary and oral evidence to support the contention that Mr Cottingham and Mr Westerhoff had no expectation of, or desire for, Mr Ramclam to be their and Conch Suckers Bar's agent.

[113] Although he did not make a direct reference to it, learned counsel's submission on agency appears to be based on section 7 of the Partnership Act, which provides:

> "Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership, and

> the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member bind the firm and his partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority or does not know or believe him to be a partner."

[114] On the facts, I find the contention that Mr Cottingham and Mr Westerhoff did not intend, by their MOA, for Mr Ramclam to act as their and Conch Suckers Bar's agent to be unfounded. The parties' testimony makes it clear that Mr Ramclam, Mr Cottingham and Mr Westerhoff agreed that Mr Ramclam would be responsible for securing a lease for Parcel 2172, Playa Asuncion, which the parties agreed would be used for the restaurant and bar business venture. As stated above, in securing the lease, Mr Ramclam acted as an agent of Mr Cottingham, Mr Westerhoff and Conch Suckers Bar and Bites. Mr Ramclam did not secure the lease outside the parties' agreement to establish a bar and restaurant business. Relatedly, Mr Cottingham and Mr Westerhoff acted as agents for Mr Ramclam and Conch Suckers Bar and Bites in providing the start-up capital, paying for tenant improvements, securing all the furniture and fittings required for the bar and restaurant, providing a Pay-Point-System and paying for rent and utilities.

[115] In his submissions, learned counsel cited the case of ***BBC Worldwide v Bee Load Ltd (t/a Archangel Ltd)*** [2007] EWHC 134 ('***BBC Worldwide'***), in which the court was asked to issue summary declarations on several points in dispute between the parties concerning the interpretation of three contracts, including the Archangel Agreement. It is correct that at [105] Toulson LJ stated:

> "Carrying on business in common involves mutual agency, and indeed mutual agency is of the essence of partnership. If, therefore, there was a genuine intention that the participants in the venture were not to be agents of one another in the dealings of either of them with third parties, that would negate an intention to enter into the legal relationship of partners."

[116] In ***BBC Worldwide***, the primary facts of which are not necessary to recite for purposes of this decision, the court, drawing on clause 21 of the Archangel Agreement, held at [106] that the parties had (a) expressly agreed that their agreement should not be deemed to constitute a partnership; and (b) undertaken not to permit any act to be done whereby either party may be represented as being agent or partner of the other. In addition, the court noted that the parties had not created a business name for their venture.

[117] As argued by Mr Williams for Mr Cottingham and Mr Westerhoff, the facts of this case are distinguishable from those in ***BBC Worldwide***, in that as relates to these proceedings: (a) the parties chose and used the name Conch Suckers Bar and Bites, which they carried on in common with a view to profit; and (b) Mr Ramclam accepted during cross-examination that Mr Cottingham, Mr Westerhoff and he were partners in the Conch Suckers Bar business venture, thereby conceding that as far as he was concerned the parties' relationship was a partnership. Relatedly, the parties conducted the Conch Suckers Bar and Bites in their personal

capacities and as agents for each other. In this regard, as Mr Williams argued for the claimants, the decision in ***BBC Worldwide*** is of little assistance to the first defendant's case.

[118] This limb of Mr Ramclam's argument raises the question: if parties agree to carry on a business venture in common with a view to profit and to bear unequal liability for risks relating to that venture, does that preclude their relationship from being a partnership?

[119] Mr Ramclam did not provide any authority for his apparent proposition that, because Mr Ramclam (assuming for argument's sake that this is the case) was solely liable for all liabilities and debts incurred by Conch Suckers Bar, the parties' relationship was not a partnership. In my view, the presence or absence of an agreement between parties carrying on a business in common with a view to profit as to their respective liabilities for the debts and liabilities of their business venture is not an essential criterion for determining whether the parties' relationship is a partnership. Accordingly, if 'X' and 'Y' (parties carrying on a business in common with a view to profit) agree that "X' will bear 100% of the debts and liabilities incurred in conducting the business, with 'Y' bearing nil, such an agreement will not itself (and without more) negate the existence of a partnership between 'X' and 'Y'. Put differently, parties carrying on business in common with a view to profit need not have expressly agreed, before or when they start carrying on the business, that their relationship is one of joint and several liability for it to qualify as a partnership.

[120] I base my decision on the fact that, as a general rule, an agreement between 'X' and 'Y' (parties carrying on business in common with a view to profit and not under an incorporated entity) that 'X' will bear 100% of the debts and liabilities incurred in conducting the business, with 'Y' bearing nil, will not protect 'Y' from (a) third-party claims against the business venture; and (b) actionable claims against 'X' and/or 'Y' arising from 'X's actions and decisions relating to the parties' business venture. Third parties will always have a claim against 'X' and/or 'Y' and their business venture because of Part III of the Partnership Act, which governs relations between partners and persons dealing with them. In particular, sections 11 to 14 provide:

> 11. Every partner in a firm is liable jointly with the other partners for all debts and obligations of the firm incurred while he is a partner, and after his death his estate is also severally liable in a due course of administration for such debts and obligations, so far as they remain unsatisfied, but subject to the prior payment of his separate debts.
>
> 12. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the firm, or with the authority of his co-partners, loss or injury is caused to any person not being a partner in the firm, or any penalty is incurred, the firm is liable there for to the same extent as the partner so acting or omitting to act.
>
> 13. In the following cases, namely,
>
> (a) where one partner acting within the scope of his apparent authority receives the money or property of a third person and misapplies it; and

(b) where a firm in the course of its business receives money or property of a third person, and the money or property so received is misapplied by one or more of the partners while it is in the custody of the firm, the firm is liable to make good the loss.

14. Every partner is liable jointly with his co-partners and also severally for everything for which the firm while he is a partner therein becomes liable under either section 12 or 13 of this Act.

[121] Drawing on the above, I hold that the submission that the parties' relationship was not a partnership because Mr Ramclam bore all liability for Conch Suckers Bar has no basis in fact and is incorrect as a matter of law.

6th submission - the parties' relationship was not a partnership because Mr Ramclam had no ownership of the intellectual property associated with Conch Suckers Bar and Bites

[122] It is further submitted on Mr Ramclam's behalf that the parties' relationship was not a partnership, as all intellectual property rights in relation to Conch Suckers Bar and Bites belonged to Mr Cottingham and Mr Westerhoff. Regrettably, the reasons why this factor (not disputed by Mr Cottingham and Mr Westerhoff) would, as a matter of law, preclude the parties' relationship from being a partnership were neither set out in the written submissions nor adequately amplified during the oral submissions.

[123] The submission regarding intellectual property rights in the Conch Suckers' name and its variants appears to rest on the unsustainable proposition that the rights to the name used by parties carrying on an unincorporated business in common with a view to profit must be owned by all parties for their relationship to qualify as a partnership. Neither the Partnership Act nor common law and equitable rules impose any such requirement, and none have been brought to my attention.

[124] I infer that the submission may rely on Section 22(1) of the Partnership Act, which provides:

> All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

[125] If that is the case, the argument is misplaced. The fact that all property, rights, and interests originally brought into the partnership stock or acquired for use in the course of the partnership business are called partnership property does not mean that such property, rights, or interests necessarily need to be legally owned by the partnership or by all the partners, failing which the parties' relationship is not a partnership.

[126] Under section 22(1) of the Partnership Act, Mr Cottingham and Mr Westerhoff contributed to the partnership stock the name Conch Suckers Bar and Bites, exercising their rights in CS Sail and Charter LLC (the third claimant). Accordingly, the name was partnership property.

[127] In ***Don King Productions Inc. v Warren*** [1999] 3 WLR 276, at [25] (‘***Don King Productions’***), Morritt LJ held, in the context of section 20 of the 1980 Partnership Act, which is similar to our section 22(1) of the Partnership Act, that:

> “…partnership property within s.20 Partnership Act 1890 includes that to which a partner is entitled and which all the partners expressly or by implication agree should, as between themselves, be treated as partnership property. It is immaterial, as between the partners, whether it can be assigned by the partner in whose name it stands to the partners jointly.

[128] Relatedly, it is not uncommon for parties to an unincorporated business venture, including partnerships, to use a name licensed from one or more of the partners or a third party for their business operations, in much the same way as the parties structured their respective contributions and rights in this case. As noted above, the name "Conch Suckers" and its variants are owned by the third claimant, CS Sail and Charter LLC, which is not a partner in Conch Suckers Bar and Bites.

Summary

[129] For the reasons set out above, I cannot accept the submissions, very ably marshalled by Mr Alpuche, that the parties' relationship was not a partnership.

(iii) Decision on whether the parties’ relationship was a partnership

[130] As set out above, whether the parties’ relationship was a partnership is a question that turns on a number of key considerations, particularly whether:

(a) as a matter of law, there was an agreement between the parties to carry on business, i.e., either a written or oral agreement, or an agreement established by conduct - although a contract is not lightly inferred from conduct;

(b) the parties’ arrangement(s) satisfied the requirements of section 1(1) of the Partnership Act, i.e., whether, as a matter of fact and law, the parties: (i) carried on business; (ii) in common; and (iii) with a view to profit; and

(c) as a matter of fact and law, the parties agreed that, in carrying on the business, each would be an agent of the other and that they would be jointly and severally liable for the business’s debts and liabilities, noting, however, that the existence of an express agreement modifying any of these factors does not necessarily negate the existence of a partnership.

[131] I hold that the parties’ relationship was a partnership for the reasons set out above and the following.

(a) The parties had an agreement to carry on business in common

[132] I find as a fact that Mr Cottingham, Mr Westerhoff and Mr Ramclam entered into an agreement on 1 March 2024, titled a Memorandum of Agreement. Under its terms, the parties agreed to cooperate "*to open, operate and maintain a bar and a restaurant (the firm) on Parcel 2172, Playa Asuncion, Caye Caulker, Belize, formerly known as "Café By the Sea" (the "Property")"* (see Clause 1.1 of the MOA). None of the parties challenges the MOA's existence, validity, purpose or terms.

(b) The parties' MOA satisfies the requirements of section 3(1) of the Partnership Act

[133] Section 3(1) of the Partnership Act is satisfied by proof that the parties (i) carried on a business venture; (ii) in common; and (iii) with a view to profit. The parties' MOA and their evidence make it clear that they carried on a restaurant and bar business under the name Conch Suckers Bar and Bites. In other words, rather than using a separate legal entity to conduct their bar and restaurant business, the parties agreed to use only a business name, indicating that they were, in their personal capacities, carrying on a business in common.

[134] The parties also agreed on the respective contributions each would make to their joint venture. Mr Cottingham and Mr Westerhoff provided the start-up capital. Their wives (notably, Mrs Cottingham and the fourth defendant, acting as agents of Mr Cottingham and Mr Westerhoff) played key roles in getting the restaurant and bar operational. Mr Cottingham and Mr Westerhoff also undertook to cover the business's utility costs.

[135] I also find, as set out below, that Mr Cottingham and Mr Westerhoff did, in fact, provide for the business's utility costs as agreed under the MOA. As noted above, Mr Ramclam secured the regulatory licences and the lease for the property where the restaurant and bar operated. In addition, Mr Ramclam served as the business's manager. He employed staff and managed payroll, regulatory compliance, and related matters. He was responsible for securing relevant insurance cover for the business's operations.

[136] In addition, the terms of Mr Ramclam's 22 July 2024 letter terminating the parties' MOA support the finding that the parties were carrying on a business in common. If the parties were not carrying on a business in common, Mr Ramclam would not have stated that he would, with immediate effect, cease business operations and stop using that name. I infer that he made that decision because he acknowledged that Conch Suckers Bar and Bites was the name the parties had agreed to use for the restaurant and bar business they operated in common. Mr Ramclam did not say in his letter or in his evidence that Mr Cottingham and Mr Westerhoff had licensed Conch Suckers Bar and Bites to him personally to operate his own business. Conch Suckers Bar and Bites was, and the parties' evidence and conduct point to its being, the joint venture between the three parties.

[137] Further, it is not Mr Ramclam's case that, before 1 March 2024, he owned shares in, had financial interests in, or had established a restaurant and bar business or any other business venture in his own right, and that he permitted it to be used as a vehicle for the bar and restaurant business known as the Conch Suckers Bar and Bites, into which Mr Cottingham and Mr Westerhoff injected capital.

[138] In my view, the parties' testimony supports the conclusion that they were carrying on the Conch Suckers Bar and Bites business in common. Mr Cottingham, Mr Westerhoff, and their respective spouses needed (or, it would appear, were advised that they needed) a Belizean citizen or resident to realise their goal of establishing and operating a restaurant and bar business. Acting on that decision, Mr Cottingham and Mr Westerhoff settled on Mr Ramclam. Mr Ramclam, who is Belizean, needed people with deeper pockets than his own to enter the restaurant and bar business, which explains why Mr Cottingham and Mr Westerhoff provided the seed and working capital and agreed to pay ongoing utility costs.

[139] Put differently, Mr Ramclam has not demonstrated, through the pleas he set out in his defence or the averments in his witness statement, that: (a) at all relevant times he was an independent business operator in his own right; (b) he ran the Conch Suckers Bar business independently of Mr Cottingham and Mr Westerhoff; (c) Mr Cottingham and Mr Westerhoff agreed that he could use the Conch Suckers name for the restaurant and bar business in his own right; (d) Mr Cottingham and Mr Westerhoff were required only to provide start-up/seed capital and ongoing utility costs, and were consequently nothing more than investors.

[140] In the circumstances, I cannot accept the submission that the court should find that the parties' relationship was a joint venture rather than a partnership. The confluence of the parties' interests, financial wherewithal, relevant networks, local knowledge and abilities led them to carry on a business in common, which I find they did between 1 March 2024 and 22 July 2024.

[141] Quite apart from my findings of fact as set out above, I also hold, as set out above, that it is not, in any event, open to Mr Ramclam to make a tangential submission that does not directly address the provisions of section 3(1) of the Partnership Act to advance the argument that the parties' relationship was a joint venture that was not a partnership. For good policy reasons, CPR 10.5 requires a defendant who intends to defend a claim brought against them to set out in their defence "all the facts" on which they intend to rely to dispute the claim (CPR 10.5(1)). In addition, a defendant who denies any allegations made in a statement of case must state their reason(s) for doing so (CPR 10.5(4)(a)). Crucially, if a defendant intends to prove a different set of facts from those set out in the claimant's statement of case, the defendant must set out their own version of the facts (CPR 10.5(4)(b)). Further, if a defendant neither admits nor denies a claimant's statement of case and

does not set out a different version of events, they are obliged to set out in their defence their reasons for resisting the relevant part of the claimant's statement of case (CPR 10.5(5)).

[142] For ease of reference, CPR 10.5 provides:

> (1) The defence must set out all the facts on which the defendant relies to dispute the claim.
>
> (2) Such statement must be as short as practicable.
>
> (3) In the defence, the defendant must say which (if any) allegations in the claim form or statement of claim–
>
> (a) are admitted;
>
> (b) are denied;
>
> (c) are neither admitted nor denied, because the defendant does not know whether they are true; and the defendant wishes the claimant to prove.
>
> (4) Where the defendant denies any of the allegations in the claim form or statement of claim–
>
> (a) the defendant must state the reasons for doing so; and
>
> (b) if the defendant intends to prove a different version of events from that given by the claimant, the defendant's own version must be set out in the defence.
>
> (5) If, in relation to any allegation in the claim form or statement of claim the defendant does not–
>
> (a) admit it; or
>
> (b) deny it and put forward a different version of events,
>
> the defendant must state the reasons for resisting the allegation.

[143] In his defence, Mr Ramclam did not set out any facts supporting the submission that the parties' relationship was not a partnership because they did not carry on a business in common. In addition, Mr Ramclam did not positively plead in his defence that the parties' relationship was a joint venture, not a partnership, because they did not carry on a business in common. Further, as noted above, there is no real dispute that the parties agreed to establish and operate Conch Suckers Bar and Bites for profit.

[144] In the circumstances, for the cumulative reasons set out above, I find that the parties' relationship satisfied the provisions of section 3(1) of the Partnership Act, i.e., that the parties carried on the business venture (the firm) called Conch Suckers Bar and Bites; (ii) in common; and (iii) with a view to profit

The parties' relationship exhibits other general characteristics of a partnership

[145] As noted above, the other general characteristics of a partnership are (a) mutual agency, i.e., a relationship in which each partner has authority to represent and bind the other, and (b) joint liability (as a matter of law) for the partnership's debts and obligations.

[146] In my view, the parties' relationship was characterised by mutual agency, i.e., each party had authority to represent and bind the other in relation to the Conch Suckers Bar and Bites business. A clear example of

mutual agency is the parties' agreement that Mr Ramclam would secure, in his name, the lease of the property from which they operated their joint venture, as well as regulatory licences and relevant insurance. Mr Cottingham and Mr Westerhoff agreed to pay the rental costs incurred by the Conch Suckers Bar and Bites. In that regard, Mr Ramclam acted as an agent of the other parties and of the Conch Suckers Bar and Bites business. In carrying on the business and assuming the different roles and responsibilities, the parties were mutually interdependent in their arrangements for the success of the Conch Suckers Bar and Bites business.

[147] It is also not insignificant that the parties did not include in their 1 March 2024 MOA a provision stating that no party would, in carrying on the Conch Suckers Bar and Bites business, inform third parties that they were an agent of the other or hold themselves out as the other's agent. In other words, if it had been the parties' intention to exclude mutual agency, this would have been expressed in their MOA. Relatedly, in light of the provisions of the parties' MOA and their conduct in relation to the restaurant and bar business, Mr Ramclam had to set out in his defence and witness statement sufficient facts to undermine Mr Cottingham and Mr Westerhoff's claim that the parties' relationship was characterised by mutual agency. Mr Ramclam failed to do so. Further, as I have found above, the parties' arrangements regarding the roles and responsibilities they ascribed to each other in relation to paying debts and liabilities incurred by Conch Suckers Bar and Bites did not prevent their relationship from constituting a partnership.

[148] In summary, I find that the parties' relationship was a partnership. As noted above, it is uncontroversial that partners owe each other fiduciary duties.

[149] I now turn to consider the second and third questions I posed above, i.e., whether, as pleaded by Mr Cottingham and Mr Westerhoff, Mr Ramclam breached any fiduciary duties under the rules of equity and/or contractual duties under the parties' MOA.

(b) Did Mr Ramclam breach the parties' MOA?

[150] Mr Cottingham and Mr Westerhoff allege that Mr Ramclam breached:

(a) the parties' MOA by terminating it with immediate effect and without giving them 180 days' notice;

(b) the parties' MOA by failing or refusing to pay them 25% of the gross income from the Conch Suckers Bar and Bites;

(c) his fiduciary duties by, among other things, failing and/or refusing to account to them for the partnership's property and by using it for his Booze Eel Beach bar business.

(i) Complaint about termination of the MOA without notice

[151] Mr Cottingham and Mr Westerhoff's case is that, in his 22 July 2024 letter, Mr Ramclam informed them that

he was terminating the MOA with "immediate effect". They argue that in terminating the MOA with immediate effect, Mr Ramclam breached clause 2.3 of the MOA, which provides that "*Either Party may terminate the MOA with 180 days written notice to the other party*."

[152] Mr Ramclam contends that he terminated the MOA with immediate effect because, despite his numerous requests, Mr Cottingham and Mr Westerhoff failed to meet their "*obligations for capital expenses of the initial tenant improvements*" and to contribute to "*rent and utilities*". Mr Ramclam's defence appears to be that he was entitled to terminate the parties' MOA with immediate effect on the basis that Mr Cottingham and Mr Westerhoff were in repudiatory breach of their contractual obligations.

[153] In light of the fact that Mr Ramclam did not dispute that he terminated the parties' MOA with immediate effect, despite being required by clause 2.3 of the MOA to provide 180 days' written notice, he bore the onus of demonstrating that he was justified in terminating the MOA because Mr Cottingham and Mr Westerhoff had: (a) breached their obligation to provide for tenant improvements to the property on which the Conch Suckers Bar and Bites operated; (b) failed to provide funds for rent and utilities; and (c) that these obligations were material terms and conditions of the parties' agreement.

Background and evidence relating to the issue of rent and tenant improvements

[154] According to Mr Cottingham and Mr Westerhoff, in discussions with Mr Ramclam in March 2024, Mr Ramclam stated that the start-up costs for the restaurant and bar were BZ$25,000. They also produced a copy of WhatsApp conversations in which Mr Ramclam referred to BZ$25,000 as the start-up costs for the business venture. During cross-examination, Mr Ramclam and his witness (Mr Hilburn) accepted that the parties exchanged communications and agreed that the start-up costs were BZ$25,000. Mr Cottingham and Mr Westerhoff also testified that they provided BZ$30,000 to cover tenant improvements/renovation costs and the cost of opening the bar and restaurant.

[155] Mrs Cottingham also testified that she bought merchandise in the USA and in Belize to equip the bar and restaurant, the specifics of which were set out in paras. 58-61 of her witness statement. She also couriered goods to Belize. Mr Cottingham also bought wood and other hardware used to construct tables for use at the business.

MONEY SENT BY CLAIMANTS TO DEFENDANTS			
Date	**Transaction**	**Amount**	**Evidence**
4 March 2024	The claimants transferred by wife transfer	BZ$5,000	See page 86 of Bundle C
5 March 2024	The claimants transferred by wife transfer	BZ$16,000	See page 86 of 264-KH-Witness statement. Bundle JC-10
March 22, 2024	Cash (Westerhoffs to DR)	BZ$10,600	See lines 9-11 of page 36of Trial Transcript. James Westerhoff "I personally brought $10,600 Belize into the country
March 26, 2024	W/T (Arvest)	BZ$5,000	See page 56 of JC-WS- Bundle B
March 28, 2024	Xfr UMB 2567 to KH 5615	BZ$5,200	See page 89 of Bundle C
March 31, 2024	March Boat Income from March Boat Report	BZ$24,990	Document disclosed in 3rd supplemental List of Documents
TOTAL		**BZ$96,790.00** **US$48,395.00**	

CREDIT CARD EXPENDITURES FOR CAPITAL INVESTMENTS				
Date/ Timeframe	Description	Amount	Exhibit	Evidence
March, 2024	Equipment and merchandise purchases made in the US to be taken to Belize	BZ$11,000	References provided	Reference provided
March, 2024	Equipment and construction material purchases made in Belize during Jacklyn Cottingham's time in Caye Caulker	BZ$5,268.70	Reference provided	Reference provided
March, 2024	Equipment and construction material purchases made in Belize during Jacklyn Cottingham's time in Belize City with Dillon Ramclam and Neisha Locke, as corroborated in March Bar Report	BZ$8,389.86	Reference provided	Reference provided
March/April 2024	Purchases made by Defendants through the Claimants' CS Sail and Charter's Arvest Credit Card for initial capital investment and tenant improvements, as	BZ$25,357.20	Reference provided	Reference provided

	corroborated by Neisha Locke in the March Bar Report			
TOTAL		**BZ$50,015.76 (US$25,007.88)**		

[156] Mr Cottingham and Mr Westerhoff also produced a financial report detailing tenant improvement costs of BZ$58,795.26, paid in March 2024, covering labour, equipment, accessories, and fixtures and fittings. According to Mr Cottingham and Mr Westerhoff, their total capital investment in the bar business was BZ$146,805.76 (equivalent to US$73,402.88), comprising BZ$96,790.00 (US$48,395.00) in cash and BZ$50,015.76 (US$25,007.88) charged to credit cards.

[157] As noted above, in his defence, Mr Ramclam accepted that Mr Cottingham and Mr Westerhoff provided the capital, equipment, and accessories required to kick-start the Conch Suckers Bar and Bites' operations. However, he also stated that the amount provided was inadequate, without specifying the alleged shortfall. In his counsel's response dated 8 September 2026 to the claimants' statement of account of their alleged capital investments in the Conch Suckers Bar and Bites, Mr Ramclam accepted the figures set out by the claimants' attorneys. In the circumstances, I hold that Mr Cottingham and Mr Westerhoff's claim that they contributed BZ$146,805.76 as seed and working capital, which was used in part for tenant improvements, is undisputed.

[158] That issue aside: regarding the money invested by Mr Cottingham and Mr Westerhoff in the Conch Suckers Bar and Bites business, I have found Mr Ramclam's defence inadequately pleaded and particularised. His evidence on cross-examination was unsatisfactory and unreliable. I found him evasive and unforthcoming in his answers. When challenged on his testimony, he defaulted to saying that the money for Conch Suckers Bar was commingled with funds generated or held under the claimants' boat business, for which he had once been retained as manager, but that arrangement was abandoned after the parties' relationship hit choppy waters.

[159] Mr Ramclam implausibly pleaded ignorance as to whether the cash Mr Hilburn gave him for Conch Suckers Bar and Bites had come from Mr and Mrs Cottingham and from Mr and Mrs Westerhoff. At the same time, while admitting receipt of equipment for the restaurant and bar, he implausibly stated that he did not know whether the "*equipment was supplied by the Claimants or other persons*". Yet he also accepted that, together with his wife and the chef, he went with Mrs Cottingham to department stores in Belize City to purchase, among others, equipment, appliances, and utensils. It is common ground that Mr Ramclam entered into the MOA only with Mr Cottingham and Mr Westerhoff. In addition, Mr Ramclam was always aware that Mr Hilburn was Mrs Cottingham's father and that he was in Belize to assist his daughter, Mrs Cottingham, and her

husband, Mr Cottingham, as well as Mr and Mrs Westerhoff, with their business endeavours in Belize, particularly the Conch Suckers Bar and Bites business.

[160] In my assessment, Mr Ramclam's contradictory positions, together with his feigned ignorance of who funded and supplied the equipment for the Conch Suckers Bar and Bites, have not helped his case. Rather, these factors have undermined his overall credibility. I prefer the claimants' documentary evidence, the admissibility and probity of which Mr Ramclam did not challenge, and the claimants' oral evidence, which I find, on balance, clear, coherent, consistent and highly probable.

Re: tenant improvements

[161] Mr Ramclam could have, but chose not to, evidence the alleged "initial tenant improvements" that he says Mr Cottingham and Mr Westerhoff failed to pay for. The parties agreed that Mr Cottingham and Mr Westerhoff would invest roughly BZ$20.000 as start-up capital, but they ultimately invested far more, i.e., at least BZ$146,805.76 into Conch Suckers Bar and Bites, representing seed and working capital, which was used for tenant improvements and to open the bar and restaurant on 30 March 2024.

[162] Drawing on the above, including Mr Ramclam's 8 September 2026 correspondence to the court:

(a) I dismiss Mr Ramclam's claim that he terminated the MOA because Mr Cottingham and Mr Westerhoff had not availed funds to pay for tenant improvements;

(b) I rule that Mr Ramclam's termination of the parties' MOA, based on the unjustified allegation that Mr Cottingham and Mr Westerhoff failed to pay for tenant improvements, was contrived and that he committed a repudiatory breach of the MOA.

Re: rental and utility payments

[163] In his 22 July 2024 letter, Mr Ramclam alleged that he was terminating the parties' MOA with immediate effect because Mr Cottingham and Mr Westerhoff had failed to pay rent for Parcel 2172, Playa Asuncion, Caye Caulker, Belize. In his defence, he changed tack and said they had paid only one month's rent. Under cross-examination, he shifted again and said they had paid rent for only one or two months.

[164] When pressed during cross-examination, Mr Ramclam accepted that the landlord waived rent for March 2024 because of the parties' tenant improvements. He also accepted that he received and used money from Mis Jak Charters Ltd.'s account for the security deposit and for the last month's rent under the lease. He also accepted that he paid April 2024 rent from Mis Jak Charters Ltd.'s account. The accounts produced by Mr Ramclam's wife (Ms Niesha Locke), which the claimants presented into evidence, show a deduction for May 2024 rent. Further, Mrs Cottingham produced proof of payments of US$1,800 for rent for June and July 2024.

[165] Mr Ramclam has not, in support of his case, produced any documentary evidence showing that, as at 22 July 2024, the date he terminated the MOA with immediate effect on the ground that Mr Cottingham and Mr Westerhoff had not honoured their agreement to pay rent and utilities, the Conch Suckers Bar and Bites owed rent or utility charges. Under the parties' MOA, Mr Ramclam was responsible for keeping proper books of account. He recruited his wife to act as a bookkeeper. In these circumstances, if his claim had any truth, he would have produced relevant documentary evidence.

[166] Regarding rent and utilities, I prefer Mrs Cottingham's testimony (and the overall testimony of Mr Cottingham and Mr Westerhoff) to that of Mr Ramclam, whom I found evasive and whose shifting account I found unreliable and unconvincing. On balance, I find that Mr Cottingham and Mr Westerhoff complied with, rather than breached, their contractual obligations under the MOA in relation to rent and utilities.

[167] Drawing on the above:

(a) I find it not proven that Mr Cottingham and Mr Westerhoff committed any repudiatory breach of the parties' MOA. In other words, I find Mr Ramclam's claim that he terminated the MOA because Mr Cottingham and Mr Westerhoff failed to honour their commitment to pay the rent and utilities for the parties' business is not established on the facts and is contrived. Accordingly, I dismiss it.

(b) On the evidence, I rule that Mr Ramclam's termination of the parties' MOA was unjustified for the reasons set out above. In addition, Mr Ramclam (rather than Mr Cottingham or Mr Westerhoff) committed a repudiatory breach of the MOA by terminating it with immediate effect on false grounds, rather than giving 180 days' notice.

[168] Although I have already addressed this issue immediately above, for completeness I should add the following. Clause 2.3 of the parties' MOA required any party intending to terminate the agreement to give the other parties 180 days' notice. It is common ground that Mr Ramclam terminated the MOA on 22 July 2024 with immediate effect, i.e., without giving any notice. Although the parties did not address the point, I hold that the partnership was dissolved on that date.

[169] In these proceedings, Mr Ramclam had to show that Mr Cottingham and Mr Westerhoff committed a repudiatory breach of the MOA, thereby entitling him to treat the MOA as terminated. I have found that he failed to do so. I have also dismissed as unproven and baseless Mr Ramclam's claim that Mr Cottingham and Mr Westerhoff failed to invest sufficient capital in the business for tenant improvements and to cover rental costs and utility charges for Parcel 2172, Playa Asuncion, Caye Caulker. In the circumstances, I hold that Mr Ramclam's termination of the MOA without notice was wrongful and invalid. I should add, however, that Mr

Cottingham and Mr Westerhoff are not seeking a declaration of invalidity, nor are they seeking to enforce clause 2.3 of the MOA. That ship has long sailed. It also appears that the declaration would have little practical value in light of the other remedies they seek.

(ii) Alleged failure to pay the first and second claimants 25% of gross income and to account

[170] Mr Cottingham and Mr Westerhoff complain that Mr Ramclam failed to pay them the agreed 25% of Conch Suckers Bar and Bites' gross revenue and failed to account to them for the partnership's property, assets and revenue. Mr Ramclam's defence, which is unclear, appears to be that Conch Suckers Bar and Bites was operating at a loss and/or that the figures Mr Cottingham and Mr Westerhoff used to calculate their 25% of gross revenue are inaccurate.

[171] It is not in dispute that, under their MOA, the parties agreed that Mr Cottingham and Mr Westerhoff would receive 25% of Conch Suckers Bar and Bites' gross revenue, while Mr Ramclam would receive 75%. Conch Suckers Bar opened for business on 30 March 2024, and Mr Ramclam terminated the parties' MOA on 22 July 2024. It is also not in dispute that Mr Ramclam, who ran the day-to-day operations of the parties' business, failed to honour the parties' gross income-sharing agreement.

[172] The parties agree that Mrs Cottingham had access to the Conch Suckers Bar POS system until about 23 June 2024. In her evidence, Mrs Cottingham averred that she accessed the POS system daily and kept a log of daily sales figures. According to Mrs Cottingham's records, between 30 March 2024 and 23 June 2024, Conch Suckers Bar generated BZ$197,687.26. Mr Cottingham and Mr Westerhoff produced bank records and averred that between 27 June 2024 and 26 July 2024, Conch Suckers generated income from credit card sales totalling BZ$21,984.08. According to Mr Cottingham and Mr Westerhoff, the Conch Suckers Bar business generated at least BZ$219,671.71, i.e., the aggregate of BZ$197,687.26 and BZ$21,984.08. They claim 25% of BZ$219,671.71 from Mr Ramclam, which is BZ$54,917.78.

[173] In his defence, Mr Ramclam did not deny that clauses 5.1 and 5.2 of the parties' MOA provided that Mr Cottingham and Mr Westerhoff were entitled to 25% of gross income, while he was entitled to 75%. He also did not deny that Conch Suckers Bar generated income between 30 March 2024 and 26 July 2024. Rather, Mr Ramclam asserted that Mrs Cottingham had partial access to the POS system, limited to what he called the "*Dashboard App*." He further added that:

> "However, the Dashboard app did not accurately reflect the information in the POS system because it did not display any refunds or cancelled food and drink orders. Further, the POS system was never properly set up with the correct prices. During the startup period, there was a lot of trial and error with the POS system. The figure of BZ$197,687.00 is therefore inaccurate. During that period, the Bar staff were using paper order books and issuing paper receipts.

[174] I note that, in his defence or witness statement, Mr Ramclam did not provide his own account of the business's monthly gross income. Although Mr Ramclam and his wife had access to the full POS system (unlike, as he says, Mrs Cottingham), and his wife produced weekly accounts, he chose not to produce any financial records showing the business's true income for the period from 30 March 2024 until the date the Conch Suckers Bar and Bites in fact ceased operations.

[175] I am sceptical of Mr Ramclam's claim that the POS system was not programmed with the correct sales prices. Mrs Cottingham purchased the POS system, which is undisputed. It is reasonable to assume that, together with Mrs Cottingham and Mr Ramclam's wife (the bookkeeper), he would, at the earliest opportunity, have ensured the POS system was programmed with the correct prices. It is not in dispute that Mr Ramclam continued to use the same POS system to generate sales information from 30 March 2024 to 23 June 2024. I also note that Mr Ramclam did not plead or demonstrate that the alleged incorrect prices resulted in customers being charged higher or lower prices than the business had budgeted for.

[176] Although Mr Ramclam alleges that the POS system was not programmed to record any refunds or cancelled food and drink orders, he did not indicate, either in monetary terms or as an overall percentage, the extent to which that alleged dysfunction affected the figures recorded in the POS system, which Mr Cottingham and Mr Westerhoff used to calculate the business's gross revenue. In his defence and testimony, Mr Ramclam did not indicate that the alleged mispricing in the POS system produced generally true and accurate financial reports, nor did he indicate that it rendered the figures generated unreliable for the purpose of computing gross revenue.

[177] In addition, I note that, according to Mr Ramclam, at the material time the bar staff he employed used paper order books and issued paper receipts. The income generated by that method was, no doubt, in addition to payments recorded in the POS system. This suggests that the Conch Suckers business generated more revenue than the POS system recorded.

[178] Crucially, however, I note that in his 8 September 2024 reply, Mr Ramclam accepted the figures provided by Mr Cottingham and Mr Westerhoff, including the gross income figures for the Conch Suckers Bar and Bites for the period from 23 March 2024 to 23 June 2024, and the credit card sales income totalling BZ$21,984.08 for the period from 27 June 2024 to 26 July 2024. In the circumstances, I deem that Mr Ramclam did not oppose Mr Cottingham and Mr Westerhoff's claim for 25% of the business' gross revenue, as presented and as calculated by them.

(iii) Re: Alleged failure to account

[179] Mr Ramclam did not dispute, in his defence or at trial, Mr Cottingham and Mr Westerhoff's claim that he failed to account to them for the partnership's property, assets and revenue. Consequently, I find that, in breach of his fiduciary duty under section 20 of the Partnership Act, Mr Ramclam, although bound, failed to "render [any] true accounts and full information of all things" pertaining to the partnership.

[180] In addition, I note that although Mr Ramclam informed Mr Cottingham and Mr Westerhoff in his 22 July 2024 letter that he was terminating the MOA and ceasing operations at the Conch Suckers Bar and Bites with immediate effect, the business continued to generate income at least until 26 July 2024.

Summary and findings

[181] I find that:

(a) Under Clause 5 of the MOA, Mr Cottingham and Mr Westerhoff were entitled to 25% of the business's gross revenue. In breach of the parties' agreement, Mr Ramclam failed or refused to pay them.

(b) Mr Cottingham and Mr Westerhoff have adequately demonstrated that Conch Suckers Bar and Bites generated: (i) BZ$197,687.26 for the period 30 March 2024 to 23 June 2024; and (ii) BZ$21,984.08 in credit card sales income for the period 27 June 2024 to 26 July 2024. This totals BZ$219,671.10. 25% of the gross revenue of BZ$219,671.10 is BZ$54,917.78.

(c) Mr Ramclam did not render any account to Mr Cottingham and Mr Westerhoff, including an account of their gross revenue entitlement for the period from 30 March 2024 until the date he, in fact, ceased operating the Conch Suckers Bar and Bites.

[182] Drawing on the above, I order Mr Ramclam to:

(a) pay Mr Cottingham and Mr Westerhoff BZ$54,917.78, representing 25% of the gross revenue of the Conch Suckers Bar and Bites for the period from 30 March 2024 to 26 July 2024.

(b) render to Mr Cottingham and Mr Westerhoff, within 30 days of the date of his judgment, true accounts and full information regarding the Conch Suckers Bar and Bites and its property for the period from 30 March 2024 until the date he – in fact - ceased operating the business under the name Conch Suckers Bar and Bites.

(c) account to Mr Cottingham and Mr Westerhoff for the gross revenue generated by the Conch Suckers Bar and Bites from 27 July 2024 to the date he actually ceased operating the business.

(c) Did Mr Ramclam breach his fiduciary duty to act in good faith?

[183] Mr Cottingham and Mr Westerhoff claim that Mr Ramclam breached his fiduciary duty of good faith and

advance numerous allegations in support of that claim, including the following:

(a) That Mr Ramclam breached his fiduciary duty by failing to consult them about his decision to cease the Conch Suckers Bar and Bites' business and about his "*rebranding*" of the business as The Boozy Eel Beach Bar. In his defence, Mr Ramclam denied that Boozy Eel Beach Bar was a rebranding of Conch Suckers Bar and Bites and that he had any obligation to consult Mr Cottingham and Mr Westerhoff regarding his new business. He also pleaded that Mr Cottingham and Mr Westerhoff failed to fulfil their obligations under the parties' MOA, which forced him to terminate it.

(b) That Mr Ramclam breached his fiduciary duty and/or committed a breach of trust by continuing to use their "*investments, including equipment and leased property*" to operate The Boozy Eel Beach Bar without providing any benefit to them. In his defence, Mr Ramclam denied using any of what he called "the claimant's assets." He pleaded that he is the leaseholder of the property from which Boozy Eel Beach Bar operates, that all equipment used for that enterprise is his, and that Mr Cottingham and Mr Westerhoff were free to collect any property purchased for use by the Conch Suckers Bar and Bites.

(c) That Mr Ramclam breached his fiduciary duty by obtaining liquor licences under the new name, 'The Boozy Eel Beach Bar', without their knowledge or consent, and by appropriating the partnership's business assets for his personal use and benefit. In his defence, Mr Ramclam reiterated that he is the leaseholder of the property from which The Boozy Eel Beach Bar operates, that all the equipment used for that enterprise is his, and that Mr Cottingham and Mr Westerhoff were free to collect any property purchased for use by the Conch Suckers Bar and Bites. He also added that he had "*no duty to consult, inform, or request permission from any of the Claimants to obtain a liquor licence for a business that he owns and that has nothing to do with the Claimants*."

(d) That Mr Ramclam breached his fiduciary duty by using the alias Boozy Eel as a continuation of the partnership's Conch Suckers Bar and Bites, thereby misappropriating the partnership's financial and business interests. In his defence, Mr Ramclam reiterated the above pleas and added that the Boozy Eel was not an alias of the Conch Suckers Bar and Bites.

[184] On whether Mr Ramclam breached any fiduciary duties, I will begin by briefly highlighting the facts I consider undisputed and those I find to be established.

(a) Mr Ramclam registered the business name Boozy Eel Beach Bar on 8 July 2024. He did not consult or inform Mr Cottingham and Mr Westerhoff of his decision.

(b) On 22 July 2024, Mr Ramclam terminated the parties' MOA dated 1 March 2024 with immediate

effect. By terminating the MOA without notice, Mr Ramclam breached clause 2.3 of the MOA, which required the parties to give each other 180 days' written notice of termination.

(c) Mr Ramclam did not account for the partnership's property and assets, and that remains the case as at the date of this judgment.

(d) Mr Ramclam continued to generate sales income from the Conch Suckers Bar and Bites business until at least 26 July 2024. Mr Cottingham and Mr Westerhoff ascertained from the business's banking records that the Conch Suckers Bar and Bites was still generating income after 22 July 2024. Thereafter, Mr Cottingham and Mr Westerhoff had no means of ascertaining whether Mr Ramclam kept the Conch Suckers Bar and Bites open or the amount of sales generated. Mr Ramclam did not give a specific date, either in his defence or in his evidence, for when he stopped operating the Conch Suckers Bar and Bites.

[185] I turn to the disputed facts relevant to the question whether, as pleaded by Mr Cottingham and Mr Westerhoff, Mr Ramclam breached his fiduciary duties. I will address each in turn.

Did Mr Ramclam use property belonging to Conch Suckers for the Boozy Eel business?

[186] Mr Cottingham and Mr Westerhoff say that Mr Ramclam used property and assets belonging to Conch Suckers Bar and Bites for the Boozy Eel Beach Bar business. Mr Ramclam states that he opened the Boozy Eel Beach Bar in September 2024 but disputes using any property or assets of Conch Suckers Bar and Bites.

[187] To resolve the parties' divergent positions, a useful starting point is the lease for Parcel 2172, Playa Asuncion, Caye Caulker.

The lease for Parcel 2172, Playa Asuncion, Caye Caulker

[188] In their MOA, the parties agreed to "open, operate and maintain a bar and restaurant located on Parcel 2172, Playa Asuncion, Caye Caulker…previously known as "Café By The Sea" (the "Property") (see clause 1.1 of the MOA). The parties also agreed that one of Mr Ramclam's duties was to acquire and sign a lease with the owner of the "Property" and to comply with all obligations under the lease agreement. The parties agreed that the lease was issued in Mr Ramclam's name after they settled their 1 March 2024 MOA. During cross-examination, Mr Ramclam, like the claimants, explained that the "Property" was in his name because its owner, named as Ilna Auxillou, "would not rent to a foreigner". Mr Ramclam also affirmed during cross-examination: (a) that the "Property" was part of his contribution to the Conch Suckers Bar and Bites business; and (b) that, to that extent, it was part of the Conch Suckers Bar and Bites' property. It is also common ground that, under para. 4.1 of the MOA, Mr Cottingham and Mr Westerhoff were responsible for paying the rent for

the "Property".

[189] Is the lease for Parcel 2172, Playa Asuncion, Caye Caulker, partnership property? Section 22(1) of the Partnership Act provides:

> All property and rights and interests in property originally brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement. [Emphasis added]

[190] In my view, it is incontestable that the lease for Parcel 2172, Playa Asuncion, Caye Caulker, formed part of the Conch Suckers Bar and Bites partnership property. Mr Ramclam secured the lease as part of his personal and original investment in the business the parties agreed to carry on in common. The MOA and the parties' evidence make it clear that the partners regarded Parcel 2172, Playa Asuncion, Caye Caulker, including its premier location on the island, as central to their partnership and the business they intended to carry on. The parties also agreed that Mr Ramclam, a Belizean, would secure the lease in his name for their joint venture because the landlady was unwilling to lease to foreigners. Relatedly, it was agreed that Mr Cottingham and Mr Westerhoff would pay the rent for the property. In that regard, in my view, it is incontestable that the lease was secured "for the purposes and in the course of the partnership business" and, accordingly, constituted partnership property.

[191] The question of whether a lease can constitute partnership property was addressed in the Sri Lankan case of ***Pathirana v Pathirana*** [1967] AC 233 ('***Pathirana***'). In that case, the Privy Council held that a lease and related agreements, originally in the partnership's name but later re-issued in the name of one of the partners before the partnership's dissolution, were partnership property. The Privy Council stated, at p.4, that:

> "…the new agreements made between the appellant and Caltex in September and October 1948 during the subsistence of the partnership must on clearly settled principles be treated as partnership property: they were the life blood of the business and so as the Supreme Court pointed out the appellant must be made to account for the profits he thereby made."

[192] In ***Don King Productions Inc***., the England and Wales Court of Appeal addressed a similar question. Citing the Privy Council's decision in ***Pathirana*** with approval, Morritt LJ held at [25] that:

> "The question whether, in the terms of s.20 Partnership Act 1890 an asset is "brought into the partnership stock or acquired….on account of the firm…or for the purposes and in the course of the partnership business.." does not depend on whether it is assignable at law. In both *Ambler v Bolton* (1872) 14 Eq. 427 and *Pathirana v Pathirana* [1967] AC 233 the asset was inalienable. In both cases the inalienable asset had been acquired by the individual partner in his own name during the subsistence of the partnership but was still treated as acquired on account of the firm. In my view it would make no difference if the asset had been acquired before the commencement of the partnership but the partner in question was required by the terms of the partnership to bring it into the common stock. The reason is quite simply that partnership property within s.20 Partnership Act 1890 includes that to which a partner is entitled and which

all the partners expressly or by implication agree should, as between themselves, be treated as partnership property. It is immaterial, as between the partners, whether it can be assigned by the partner in whose name it stands to the partners jointly."

[193] In ***Thompson's Trustee in Bankruptcy v Heaton [1974] 1 All ER 1239 at 1249, at 61***, Pennycuick V-C stated:

> "The fiduciary relation here [between partners] arises not from a trust of property but from the duty of good faith which each partner owes to the other. It is immaterial for this purpose in which partner the legal estate in the leasehold interest concerned is vested. What then is the position when a partnership is dissolved but there remains property of the former partnership which has not been realised? The general principle I think, is correctly stated in (Lindley The Law of Partnership (13th edn, 1971) pp 615, 616), in the following terms: 'Upon the dissolution of a partnership, and in the absence of any agreement to the contrary, it has been seen... (4) That, for the purposes of winding up, the partnership is deemed to continue; the good faith and honourable conduct due from every partner to his co-partners during the continuance of the partnership being equally due so long as its affairs remain unsettled; and that which was partnership property before, continuing to be so for the purpose of dissolution, as the rights of the partners require.' It necessarily follows, I think, that where the property of a dissolved partnership includes a leasehold interest then, subject [to] any other arrangement which may be made between the partners concerning that interest, each of the former partners owes the same obligation to the other former partners in respect of that interest as he did while the leasehold interest remained the partnership property and, accordingly, he is under the same limitations with regard to the purchase of the reversion as he would have been had the partnership still been subsisting. [Emphasis added]

[194] In ***Titanium Capital Investments Limited v Manduca*** [2026] EWCA Civ 976 ('***Titanium Capital Investments Limited***'), at [141]–[142], Snowden LJ and Falk LJ expressed the following view, which I share:

> 141. "...the concept of an asset belonging to the partnership should not be given a narrow legal or technical meaning but should be interpreted in accordance with the equitable principles relating to partnerships that are preserved by section 46 of the 1890 Act. 142.
>
> 142. So, to take a simple example, the concept of "partnership property" clearly extends beyond assets legally owned by the partnership to include assets held on trust for the partnership (whether by a partner or a third party), such that they are regarded as belonging to the partnership in equity."

[195] Drawing on the above, I find that the lease for Parcel 2172, Playa Asuncion, Caye Caulker, was secured in Mr Ramclam's name for the agreed purpose of bringing it into the partnership's stock. Consequently, the lease was partnership property, which Mr Ramclam took over and admits he used for his Boozy Eel Beach Bar business.

Did Mr Ramclam improperly use any other partnership property?

[196] I turn to the question of whether, as pleaded by Mr Cottingham and Mr Westerhoff and denied by Mr Ramclam, the latter used other partnership property in his Boozy Eel Beach Bar business, which would include (b) bar and restaurant equipment, appliances, utensils and disposables; (c) TVs; (d) the POS system; (e) an inflatable cinema system; (f) security cameras; (g) the gross revenue generated by the Conch Suckers Bar and Bites. In his defence, Mr Ramclam accepted that he possessed property purchased by Mr Cottingham and Mr

Westerhoff for the Conch Suckers Bar and Bites. However, he provided no details of the property in question, its present location or condition, nor any explanation for why he did not account to Mr Cottingham and Mr Westerhoff immediately after terminating the parties' MOA.

[197] Mr Ramclam commenced his Boozy Eel Beach Bar operations on the same premises previously used by the Conch Suckers Bar and Bites. In my assessment, drawing on the parties' pleaded cases and evidence, I hold that it is more likely than not that he was able to operationalise his business at the time and at the speed at which he did because he relied on, and must have used, the assets and property of the Conch Suckers Bar and Bites partnership.

[198] I noted above that, to operationalise the Conch Suckers Bar and Bites, the parties undertook substantial tenant improvements to the building on Parcel 2172, Playa Asuncion, Caye Caulker, funded by the working capital contributed by Mr Cottingham and Mr Westerhoff. Those tenant improvements constituted partnership property. The gross revenue generated by the business between 30 March 2024 and 26 July 2024 likewise constituted partnership property. It is common ground that Mr Ramclam did not account for either the tenant improvements or the gross revenue.

[199] In circa February 2024, the partnership paid the security deposit and the rent for the final month of the lease. Mr Ramclam did not plead that, after 22 July 2024, he secured a new lease for Parcel 2172, Playa Asuncion, Caye Caulker. Rather, he converted the original lease to his personal use and failed to account to the partnership for the security deposit and the rent for the final month of the lease.

[200] In my view, Mr Ramclam's non-particularised and non-evidenced plea that he did not use partnership property to operate the Boozy Eel Beach Bar cannot be true and is contradicted by the objective facts. I note and hold that Mr Ramclam had no compunction about using, for his Boozy Eel Beach Bar: (a) the lease for Parcel 2172, Playa Asuncion, Caye Caulker; (b) the tenant improvements to that property and the building; (c) the security deposit and the rent for the final month of the lease; and (d) the gross revenues generated by the Conch Suckers Bar and Bites. In the circumstances, why would he have chosen not to use any other partnership property in his Boozy Eel Beach Bar when he admits he had no personal financial resources sufficient to operate a bar and restaurant business similar to Conch Suckers Bar and Bites? Mr Ramclam has not shown that he could, using his own means, open a bar and restaurant business. In the circumstances, his claim that he did not use any partnership property does not withstand scrutiny.

[201] To get Conch Suckers Bar and Bites operational, Mr Cottingham and Mr Westerhoff invested approximately BZ$146,805.76 (US$73,402). During cross-examination, Mr Ramclam stated that to get Boozy Eel Beach Bar

operational, he secured a US$17,000 loan from the fourth defendant, Mr Hilburn (Mrs Cottingham's father), and, as he said, "may be about $3,000 or $4,000" from his grandfather. Mr Ramclam did not set out these alleged facts in his defence or witness statement. In addition, he did not provide evidence that he received any of the alleged financial assistance from Mr Hilburn or his grandfather. However, even if Mr Ramclam had been loaned these amounts, in my opinion, they would have enabled him to run the Boozy Eel Beach Bar because the partnership had already made all the necessary investments in the Conch Suckers Bar and Bites, which Mr Ramclam transitioned to the Boozy Eel Beach Bar. In other words, the BZ$38,000.00 loan would have been sufficient only because Mr Ramclam gifted himself a ready-to-move-in bar and restaurant.

Summary

[202] Drawing on the above discussion, I make the following findings and conclusions.

(a) Mr Ramclam accepts that the lease of Parcel 2172, Playa Asuncion, Caye Caulker, formed part of his contribution to the parties' Conch Suckers Bar and Bites business, which they carried on in common. Accordingly, that lease was partnership property as a matter of law.

(b) On a balance of probabilities, I find that, to operate his Boozy Eel Beach Bar business, Mr Ramclam used the partnership's property without the consent of Mr Cottingham and Mr Westerhoff.

[203] I also find that, by using partnership property in the circumstances he did, including without the consent of Mr Cottingham and Mr Westerhoff and before the partnership was wound up, Mr Ramclam breached his duty of good faith and loyalty, as well as his duty to account to the partnership for its property. In reaching this decision, I have taken into account that Mr Ramclam's application to register the Boozy Eel Beach Bar name was approved on 8 July 2024. This means he must have applied for the name at least weeks before that date, or perhaps soon after Conch Suckers Bar and Bites opened for business. In addition, I note that Mr Ramclam offered no explanation in his defence, in his witness statement or in oral evidence as to why:

(a) he applied to register the Boozy Eel Beach Bar name for a venture carrying out the same type of business as Conch Suckers Bar and Bites before terminating the partnership, if his actions were not preparatory to his intention to transition the partners' Conch Suckers Bar and Bites business into his personal Boozy Eel Beach Bar business;

(b) 14 days after securing registration of the Boozy Eel Beach Bar name, he terminated the MOA without notice, on contrived and baseless allegations that Mr Cottingham and Mr Westerhoff had failed to contribute sufficient capital to cover tenant improvements and the property's rent;

(c) four or so weeks after terminating the MOA, he opened his personal business venture, carrying out the same business as Conch Suckers Bar and Bites on the same premises where, but for his

decision to terminate the MOA, it would have been operating and (as I have found) using Conch Suckers Bar and Bites' property; and

(d) he did not account to Conch Suckers Bar and Bites, Mr Cottingham, and Mr Westerhoff immediately after terminating the MOA without notice, nor did he take any steps to wind up the business, which I hold he would have done if it had ever been his intention to separate Conch Suckers Bar and Bites from his Boozy Eel Beach Bar business and to draw a clear line between them.

(d) Claim that Mr Ramclam must account for benefits from the Boozy Eel Beach Bar

[204] As I understand Mr Cottingham and Mr Westerhoff's claim, they seek an order requiring Mr Ramclam to account for the benefits he derived from using the partnership's property in breach of fiduciary duties in relation to his Boozy Eel Beach Bar business. In this regard, they seek payment of US$75,000.00.

[205] Mr Ramclam disputes that Mr Cottingham and Mr Westerhoff are entitled to such an order. In his view, the duo are free to collect "*any equipment purchased for use by Conch Suckers*".

A preliminary point

[206] Mr Ramclam's choice of words, that Mr Cottingham and Mr Westerhoff are free to collect "any equipment purchased for use by Conch Suckers", suggests that he always understood the Conch Suckers Bar and Bites business as a partnership and that each party made contributions, including the "equipment purchased for use by Conch Suckers."

[207] Regarding the offer which Mr Ramclam makes to Mr Cottingham and Mr Westerhoff, and by way of his defence to their claim for an account of benefits, in my view, from 1 March 2024 each of the parties acquired a proprietary interest in each and every asset and property brought into the business and thus belonging to it, but not an entitlement to any specific asset or property. Save by agreement between the partners, no partner has a right to require that the whole, or even a share, of any particular partnership asset or property be vested in them or in another partner, including on account of their having contributed the asset or property to the partnership (see ***Popat v Shonchhatra*** [1997] 1 WLR 1367, at 137).

[208] Section 22(1) of the Partnership Act, which I repeat for ease of reference, is clear. It provides that:

> All property and rights and interests in property brought into the partnership stock or acquired, whether by purchase or otherwise, on account of the firm, or for the purposes and in the course of the partnership business, are called in this Act partnership property, and must be held and applied by the partners exclusively for the purposes of the partnership and in accordance with the partnership agreement.

Whether Mr Ramclam must account for profits he made trading as Boozy Eel Beach Bar

[209] Mr Cottingham and Mr Westerhoff's contention that Mr Ramclam, a partner, breached his fiduciary duty of good faith by using partnership property without their consent to operate his Boozy Eel Beach Bar business, and that, in the circumstances, he must account for the profit he made, is grounded in sections 7 and 31(1) of the Partnership Act and in established jurisprudence.

[210] Section 7 of the Partnership Act, which provides that "*Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership*…", codifies the equitable rule governing partners' relationships.

[211] Section 31(1) of the Partnership Act, which provides that "*Every partner must account to the firm for any benefit derived by him without the consent of the other partners from any transaction concerning the partnership, or from any use by him of the partnership property, name or business connection*", codifies the no-profit rule.

[212] I find the following cases both instructive and persuasive in elucidating the equitable principle that a partner (or any fiduciary) who personally profits in breach of fiduciary duty (i.e., where the partner/fiduciary secures a profit in circumstances where his fiduciary duty of good faith and loyalty conflicts with his personal interest, or where there is a significant possibility of such a conflict) must account to his fellow partners for those profits.

[213] Before the 1890 Act, in ***Dean v MacDowell*** (1878) 8 Ch D 345, James LJ said at p. 350-351:

> "…one partner must not directly or indirectly use the partnership assets for his own private benefit. He must not, in anything connected with the partnership, take any profit clandestinely for himself, nor must he carry on the business of the partnership or any business similar to the business of the partnership in his own or another name separate from it, otherwise than for the benefit of the partnership."

[214] At p. 354, Cotton LJ stated:

> "If profit is made by business within the scope of the partnership business, then the partner who is engaging in that secretly cannot say that it is not partnership business. It is that which he ought to have engaged in only for the purposes of the partnership. Again, if he makes any profit by the use of any property of the partnership, including, I may say, information which the partnership is entitled to, there the profit is made out of the partnership property, and therefore, of course, it must be brought into the partnership account. So, again, if from his position as partner he gets a business which is profitable, or if from his position as partner he gets an interest in partnership property, or in that which the partnership require for the purposes of the partnership, he cannot hold it for himself, because he acquires it by his position of partner, and acquiring it by means of that fiduciary position, he must bring it into the partnership account".

[215] At p. 355-356, Thesiger LJ set out three principles, stating:

> ""The first of those principles is that a partner shall not derive any exclusive advantage by the employment of the partnership property …. The second principle which is to be collected from the cases is, that a partner is not to derive any exclusive advantage by engaging in transactions in rivalry with the firm …. The third principle which is to be

collected from the cases is, that a partner is not allowed in transacting the partnership affairs to carry on for his own sole benefit any separate trade or business which, were it not for his connection with the partnership, he would not have been in a position to carry on."

[216] In ***re Jarvis*** [1958] 1 WLR 815 ("Jarvis"), Upjohn J held:

> "A trustee must not place himself in a position where his duty and interest conflict, and if he does so he must account for any profit thereby made or for the property thereby acquired …. The old business had been closed down after the bombing, but in a sense its ghost lay there waiting for a new lease of life. When the defendant resurrected the business on the premises at No. 7, Woolwich Road, she was undoubtedly to some extent putting herself in a position where her duty and interests conflicted. In another sense, the business that she opened was a new business, but it was of the same character as the old. It necessarily benefited from the goodwill attaching to the premises, because the newspaper and tobacconist business had been carried on there for 40 or 50 years down to the end of 1940. It may well be that the virtual closure for over three years, coupled with the great excess in those days of demand over supply, made the value of the goodwill small: but it was there because of the former activities of the testator, of whose estate the defendant was a trustee. Furthermore, the defendant was able to get some supplies of cigarettes and newspapers by reason of the testator's earlier connexion with the suppliers. It seems to me clear on principle that the defendant must be accountable as a constructive trustee for those benefits which came to her because of her position as a trustee of the testator's estate."

[217] ***Chan v Zacharia*** (1984) 154 CLR 178 ('***Chan***') is an Australian case. In that case, Dr Chan and Dr Zacharia were partners in a medical practice. They agreed that if either died or retired, the other could purchase the retiring partner's share of the practice. Dr Zacharia retired, and Dr Chan exercised this right. However, Dr Zacharia opened a nearby practice, prompting Dr Chan to sue, alleging that Dr Zacharia had breached his fiduciary duty.

[218] In ***Chan***, p.198-199, Deane J stated:

> "The variations between more precise formulations of the principle governing the liability to account are largely the result of the fact that what is conveniently regarded as the one 'fundamental rule' embodies two themes. The first is that which appropriates for the benefit of the person to whom the fiduciary duty is owed any benefit or gain obtained or received by the fiduciary in circumstances where there existed a conflict of personal interest and fiduciary duty or a significant possibility of such conflict: the objective is to preclude the fiduciary from being swayed by considerations of personal interest. The second is that which requires the fiduciary to account for any benefit or gain obtained or received by reason of or by use of his fiduciary position or of opportunity or knowledge resulting from it: the objective is to preclude the fiduciary from actually misusing his position for his personal advantage. Notwithstanding authoritative statements to the effect that the 'use of fiduciary position' doctrine is but an illustration or part of a wider 'conflict of interest and duty' doctrine (see e.g., *Phipps v. Boardman* [1967] 2 A.C. 46, 123; N.Z. *Netherlands Society 'Oranje' Inc. v. Kuys* [1973] 1 W.L.R. 1126, 1129), the two themes, while overlapping, are distinct. Neither theme fully comprehends the other and a formulation of the principle by reference to one only of them will be incomplete. Stated comprehensively in terms of the liability to account, the principle of equity is that a person who is under a fiduciary obligation must account to the person to whom the obligation is owed for any benefit or gain (i) which has been obtained or received in circumstances where a conflict or significant possibility of conflict existed between his fiduciary duty and his personal interest in the pursuit or possible receipt of such a benefit or gain or (ii) which was obtained or received by use or by reason of his fiduciary position or of opportunity or knowledge resulting from it. Any such benefit or gain is held by the fiduciary as constructive trustee ...." [Underlining added]

[219] In ***John Taylors (A Firm) v Masons (A Firm)*** [2001] EWCA Civ 2106 (‘***John Taylors’***), five partners had an oral partnership agreement at will, which they called the LLCA. The partnership ran the Louth Market. In autumn 1998, two partners gave notice of dissolution, and the remaining three continued the partnership. The partnership had used premises licensed by the East Lindsey District Council (‘ELDC’) for its business since about 1947. On 4 December 1998, the appellants wrote to the ELDC requesting a new licence. The respondents objected. As the respondents were not ready to take over the premises as of 1 January 1999, the ELDC granted the appellants a provisional licence. The ELDC then invited tenders for a new licence. Both the appellants and the respondents submitted tenders. The appellants' bid was successful, and they were granted a three-year licence. The appellants began trading in January 1999 as Louth Market Auctioneers (‘LMA’). The first instance court found that, by securing the temporary licence and writing to the LLCA's former customers about the interim running of the market, the appellants had breached their duty to act in the partnership’s best interests and must account to the respondents for the profit they generated. The Court of Appeal upheld the first instance court’s decision, noting in particular that the profit had been secured in a situation of conflict of interest and duty and by use of the fiduciary position.

[220] Peter Gibson LJ, at [45]–[47], expressed the view, which I find persuasive, that:

> 45. It is one of the fundamental rules of equity that (with immaterial exceptions) a trustee must not be allowed to profit from his trust. That rule applies to all types of trustee, including those in a fiduciary position such as partners. The rule is for the protection of the persons to whom the duty is owed and can be relaxed with their consent. Thus, in the ordinary case where some partners wish to use some asset of the partnership, such as goodwill, after dissolution to the exclusion of the other partners, agreement will be reached and appropriate compensation given to the excluded partners.
>
> 46. The rule is not dependent on fraud or bad faith or whether the actions of the fiduciary were clandestine. The rule is dependent on the mere fact of a profit being made. The rule can at times operate harshly, but there can be no doubt but that it is still the law. The judge, in his admirable judgment, has found the facts clearly, recognised the relevant principles of law and applied them correctly.
>
> 47. In my judgment on the facts so found, and applying the guidance of Deane J in *Chan v Zacharia* [1983] 154 Commonwealth Law Reports 178, as approved by this court in *Don King Productions Inc v Warren* [1999] 2 All ER 218, the defendants have obtained a benefit or gain in the form of the profitable licences in circumstances in which a conflict did exist between the defendants' fiduciary duty owed to the claimants and the defendants' personal interest in the pursuit of such benefit or gain, and which benefit or gain was obtained by use or by reason of their fiduciary position and opportunity and knowledge resulting from it.

[221] Arden LJ, who delivered the first judgment, recited with approval at [19] – [20] the following statement of principle set out by the trial judge at [15], namely:

> “…the duty of good faith or the fiduciary duty of a partner to his fellow partners is similar to the fiduciary duty upon a company director as set out in cases such as *Regal (Hastings) Ltd v Gulliver* (1967) 2 AC 134 and *Phipps v Boardman* (1967) 2 AC 46. I further accept that, for there to be a breach of such duty, it is not necessary to establish that the Defendant partner or company director acted in a clandestine manner in order to obtain a benefit or profit for

themselves at the expense of the partnership or limited company. As was said by Lord Russell of Killowen in the *Regal* case (ante) at Page 144G-145A:

> 'The rule of equity which insists on those, who by use of a fiduciary position make a profit, being liable to account for that profit, in no way depends on fraud, or absence of bona fides; or upon such questions or considerations as whether the profit would or should otherwise have gone to the plaintiff, or whether the profiteer was under a duty to obtain the source of the profit for the plaintiff, or whether he took a risk or acted as he did for the benefit of the plaintiff, or whether the plaintiff has in fact been damaged or benefited by his action. The liability arises from the mere fact of a profit having, in the stated circumstances, been made. The profiteer, however honest and well intentioned, cannot escape the risk of being called upon to account.'"

[222] Arden LJ further noted, at [34], that:

> The duty to account imposed on a partner extends to assets which have come into existence prior to the dissolution and prior to the completion of the winding-up by reason of the maturation of some business opportunity in existence at the date of dissolution, because such opportunities are obtained in a situation of conflict of interest and duty and by use of the fiduciary position.

[223] In ***FHR European Ventures LLP v Cedar Capital Partners LLC*** [2014] UKSC 45 ('***FHR European Ventures LLP***'), from which I propose to quote liberally for the principles espoused, not the facts, Neuberger LJ stated at [5]–[8]:

> 5. The following three principles are not in doubt, and they are taken from the classic summary of the law in the judgment of Millett LJ in *Bristol and West Building Society v Mothew* [1998] Ch 1, 18. First, an agent owes a fiduciary duty to his principal because he is "someone who has undertaken to act for or on behalf of [his principal] in a particular matter in circumstances which give rise to a relationship of trust and confidence". Secondly, as a result, an agent "must not make a profit out of his trust" and "must not place himself in a position in which his duty and his interest may conflict" - and, as Lord Upjohn pointed out in *Boardman v Phipps* [1967] 2 AC 46, 123, the former proposition is "part of the [latter] wider rule". Thirdly, "[a] fiduciary who acts for two principals with potentially conflicting interests without the informed consent of both is in breach of the obligation of undivided loyalty; he puts himself in a position where his duty to one principal may conflict with his duty to the other". Because of the importance which equity attaches to fiduciary duties, such "informed consent" is only effective if it is given after "full disclosure", to quote Sir George Jessel MR in *Dunne v English* (1874) LR 18 Eq 524, 533.
>
> 6. Another well established principle, which applies where an agent receives a benefit in breach of his fiduciary duty, is that the agent is obliged to account to the principal for such a benefit, and to pay, in effect, a sum equal to the profit by way of equitable compensation. The law on this topic was clearly stated in *Regal (Hastings) Ltd v Gulliver (Note)* (1942) [1967] 2 AC 134, 144-145, by Lord Russell, where he said this:
>
> > "The rule of equity which insists on those, who by use of a fiduciary position make a profit, being liable to account for that profit, in no way depends on fraud, or absence of bona fides; or upon such questions or considerations as whether the profit would or should otherwise have gone to the plaintiff, or whether the profiteer was under a duty to obtain the source of the profit for the plaintiff, or whether he took a risk or acted as he did for the benefit of the plaintiff, or whether the plaintiff has in fact been damaged or benefited by his action. The liability arises from the mere fact of a profit having, in the stated circumstances, been made."
>
> 7. The principal's right to seek an account undoubtedly gives him a right to equitable compensation in respect of the bribe or secret commission, which is the quantum of that bribe or commission (subject to any permissible deduction in favour of the agent – eg for expenses incurred). That is because where an agent acquires a benefit in breach of his fiduciary duty, the relief accorded by equity is, again to quote Millett LJ in Mothew at p 18, "primarily restitutionary or restorative rather than compensatory". The agent's duty to account for the bribe or secret commission represents

a personal remedy for the principal against the agent. However, the centrally relevant point for present purposes is that, at least in some cases where an agent acquires a benefit which came to his notice as a result of his fiduciary position, or pursuant to an opportunity which results from his fiduciary position, the equitable rule ("the Rule") is that he is to be treated as having acquired the benefit on behalf of his principal, so that it is beneficially owned by the principal. In such cases, the principal has a proprietary remedy in addition to his personal remedy against the agent, and the principal can elect between the two remedies.

8. Where the facts of a particular case are within the ambit of the Rule, it is strictly applied. The strict application of the Rule can be traced back to the well known decision in *Keech v Sandford* (1726) Sel Cas Ch 61, where a trustee held a lease of a market on trust for an infant, and, having failed to negotiate a new lease on behalf of the infant because the landlord was dissatisfied with the proposed security for the rent, the trustee negotiated a new lease for himself. Lord King LC concluded at p 62 that, "though I do not say there is a fraud in this case" and though it "may seem hard", the infant was entitled to an assignment of the new lease and an account of the profits made in the meantime – a conclusion which could only be justified on the basis that the new lease had been beneficially acquired for the infant beneficiary. [Underlining added]

[224] In ***Recovery Partners GP Ltd v Rukhadze*** [2025] UKSC 10 ('***Recovery Partners GP Ltd'***), Briggs LJ, with whom Lords Reed, Hodge and Richards agreed, stated, at [2] that:

> The equitable principle in issue on this appeal, put at the highest level of generality, is that the undertaking characteristic of a fiduciary relationship that fiduciaries will act with single-minded loyalty toward their principals (or beneficiaries) means that the fiduciary must account to the principal for any profits which the fiduciary makes from that fiduciary relationship, unless the principal has given its fully informed consent to the fiduciary keeping them for himself. That duty to account for profits is usually called the profit rule: see eg *Lewin on Trusts*, 20th ed with 1st Supp (2023), paras 45-032 ff. Profits made from the fiduciary relationship are treated by equity as held upon constructive trust for the principal from the moment of their receipt by the fiduciary. In everyday language, the profits belong in equity to the principal and must be treated as such. Therefore the fiduciary must account for them, which means not merely revealing their existence, but paying them to the principal, or otherwise treating them as the principal's property. They are sometimes called secret profits but the fact that the principal knows that they are being made by the fiduciary is irrelevant to the duty to account, in the absence of the principal's fully informed consent that the fiduciary should keep them for his own account. In this judgment I will for convenience use the masculine to refer to the fiduciary because the individual fiduciaries in the present case were all men. [Underlining added]

[225] In ***Recovery Partners GP Ltd,*** at [25], Briggs LJ stated:

> "Undertaking the role of a fiduciary does not, of itself, prohibit the fiduciary from carrying on other profitable activities which have nothing to do with the subject matter of the fiduciary relationship. The director of a company making cars may perfectly legitimately carry on an activity of betting on horse races out of working hours, and keep any profits he makes for himself. But the opposite would be true of an executive director of a company operating a horse racing stable, if his betting was informed by what he learned while at work, unless the company gives its consent. Similarly (subject of course to any contractual restraint) the director of a company may, after resignation, set up and make profit from carrying on a similar business to that of the company, provided that he does not use information, or pursue opportunities that came to him, from his fiduciary position in the company. The duty, which may well extend beyond the end of the fiduciary relationship, is to account for profits made from, out of, or otherwise sufficiently connected with, the fiduciary relationship.

[226] ***Titanium Capital Investments Limited***, at [165], Snowden and Falk LJ expressed the view that:

> …as to post-dissolution conduct…a partner cannot use for his own benefit, property belonging to the partnership which should be realised in the winding up for the benefit of all former partners; nor can a partner place himself in a

position where his personal interests conflict or might conflict with his continuing obligation to wind up the affairs of the partnership and complete unfinished transactions for the benefit of all of the former partners.

[227] In these proceedings, I have found:

(a) that soon after the parties began operating their business in common with a view to profit, i.e., the Conch Suckers Bar and Bites, Mr Ramclam secretly, without disclosing this to or seeking the consent of Mr Cottingham and Mr Westerhoff, applied to register his own similar-line business that he intended to operate (or must have intended to operate and did operate not long after) under the name the Boozy Eel Beach Bar;

(b) that Mr Ramclam terminated the parties' MOA on dishonest grounds, namely his unfounded claim that Mr Cottingham and Mr Westerhoff had failed to provide capital for tenant improvements and to pay rent and business utilities

(c) that after terminating the parties' MOA on 22 July 2024 and in carrying on and in making a profit from the Boozy Eel Beach Bar, Mr Ramclam used the same lease, other property, assets, interests belonging to and the revenue generated by the Conch Suckers Bar and Bites without the other partners' (i.e., Mr Cottingham and Mr Westerhoff's) consent; and

[228] Drawing on the above-mentioned factors, I hold that Mr Ramclam breached his fiduciary duties to Mr Cottingham, Mr Westerhoff and the Conch Suckers Bar and Bites by profiting from trading as the Boozy Eel Beach Bar, in circumstances where his fiduciary duty to his fellow partners conflicted with his personal interests.

[229] Drawing on the above, I rule that Mr Ramclam must account for the profits he made from trading as the Booze Eel Beach Bar. In my view, that is the appropriate remedy in this case, not the requested order for the repayment to Mr Cottingham and Mr Westerhoff of their capital investment in the Conch Suckers Bar and Bites business.

How should the Boozy Eel Beach Bar's profits be dealt with?

[230] The facts raise the question: are Mr Cottingham and Mr Westerhoff entitled to all the profits generated by Mr Ramclam's trading as the Boozy Eel Beach Bar, or is the correct equitable remedy that all three parties (Mr Cottingham, Mr Westerhoff and Mr Ramclam) must share those profits equally? I find this a rather knotty question to resolve.

[231] In their MOA, the parties set out their remuneration agreement, i.e., 25% of gross revenue to Mr Cottingham and Mr Westerhoff and 75% to Mr Ramclam. However, they did not specify their respective shares in the

Conch Suckers Bar and Bites business venture.

[232] Section 26(a) of the Partnership Act, which provides:

> 26. The interests of partners in the partnership property and their rights and duties in relation to the partnership shall be determined, subject to any agreement expressed or implied between the partners, by the following rules,
>
> (a) all the partners are entitled to share equally in the capital and profits of the business, and must contribute equally towards the losses, whether of capital or otherwise sustained by the firm;

[233] In other words, absent an agreement between the parties on the sharing of capital and profits (whether by written or oral agreement, or an agreement implied from the parties' course of dealing), the partners are statutorily entitled to share equally in the capital generated and the profits made by their business.

[234] I would add that I am of the view that if a partner makes a profit in breach of their duty to the firm and their other partners, any such profit forms part of the partnership's profit and must be shared in accordance with the parties' agreement (actual or implied), or, failing that, in accordance with the default statutory rule on equal sharing.

[235] Section 41 of the Partnership Act provides that:

> On the dissolution of a partnership, every partner is entitled, as against the other partners in the firm, and all persons claiming through them in respect of their interests as partners, to have the property of the partnership applied in payment of the debts and liabilities of the firm, and to have the surplus assets after such payment applied in payment of what may be due to the partners respectively after deducting what may be due from them as partners to the firm, and for that purpose any partner or his representatives may on the termination of the partnership apply to the court to wind-up the business and affairs of the firm.

[236] As relates to these proceedings, the Conch Suckers Bar and Bites partnership determined, if not on 22 July 2024, when Mr Ramclam informed Mr Cottingham and Mr Westerhoff that he was terminating the agreement with immediate effect, or on the date he ceased operating the Conch Suckers Bar and Bites business. However, none of the parties has acted to wind up the partnership. Consequently, at law the partnership continued for the limited purposes set out in section 40 of the Partnership Act, which provides:

> After the dissolution of a partnership, the authority of each partner to bind the firm, and the other rights and obligations of the partners, continue notwithstanding the dissolution, so far as may be necessary to wind-up the affairs of the partnership, and to complete transactions begun but unfinished at the time of the dissolution, but not otherwise…

[237] In my view, a fiduciary's obligation to account for profit obtained in breach of fiduciary duties is exactly that and nothing more. That equitable obligation does not include a concomitant penalty that denies an errant fiduciary participation in the sharing of the parties' joint venture's capital and profits. I do not understand the jurisprudence to have evolved to provide for such a penalty.

[238] The issue of sharing revenue and capital profits post-dissolution was discussed at some length in ***Popat v***

Schonchhatra [1997] 1 WLR 1373 and ***Sandhu v Gill*** [2005] EWCA Civ 1476. I do not propose to recapitulate the facts and findings of those cases, except to say that I am of the view that my decision that Mr Cottingham, Mr Westerhoff and Mr Ramclam must share equally in the profits (and I emphasise, profits) generated by Mr Ramclam from trading as Boozy Eel Beach Bar is consistent with the principles discussed and adopted in those authorities.

[239] Drawing on the above, I hold that:

(a) Mr Cottingham, Mr Westerhoff and Mr Ramclam shall share equally the profits generated by Mr Ramclam from trading as Boozy Eel Beach Bar; and

(b) Until Mr Ramclam fully accounts to Mr Cottingham, Mr Westerhoff and Conch Suckers Bar and Bites, he shall hold all partnership property, including the profits he made from trading as Boozy Eel Beach Bar, on constructive trust for Mr Cottingham, Mr Westerhoff and Conch Suckers Bar and Bites, subject to their beneficial interests.

(e) If the Conch Suckers Bar and Bites was a joint venture and not a partnership, would the parties' relationship have given rise to fiduciary duties?

[240] For the reasons set out above, I hold that the contention that the parties' relationship was a joint venture that did not constitute a partnership is unarguable. However, for completeness, I consider it appropriate to address whether, if the parties' relationship was not a partnership, Mr Ramclam owed fiduciary duties to Mr Cottingham and Mr Westerhoff. My decision to undertake this analysis has also been informed by the following factors, not raised by Mr Ramclam, which warrant consideration.

[241] Under the MOA, Mr Ramclam is described as the first party, while Mr Cottingham and Mr Westerhoff are described as the second party. Neither set of parties explained this oddity, i.e., the reference to Mr Cottingham and Mr Westerhoff, collectively, as the second party and to Mr Ramclam as the first party. It remains unclear whether this description of the parties reflects a drafting infelicity. Under para. 34(a) of the statement of claim, Mr Cottingham and Mr Westerhoff referred to themselves as "the original financiers" of Conch Suckers Bar and Bites. Little turns on this description. In my view, it is undisputed that Mr Cottingham and Mr Westerhoff provided the seed and working capital for Conch Suckers Bar and Bites.

[242] Notably, however, in para. 35(a) of the statement of case, the claimants described the third defendant, Ms Jak Charters Ltd, "as the business entity operating Conch Suckers Bar and Bites." During cross-examination, Mrs Cottingham stated that Conch Suckers Bar and Bites was an entity of Mis Jak Charters Ltd. However, it was not explained how Ms Jak Charters Ltd was, in fact, an entity, and, if it was, how the parties – Mr

Cottingham, Mr Westerhoff and Mr Ramclam – used it to carry on the bar and restaurant business. In addition, no explanation was given as to why Mis Jak Charters Ltd was not mentioned in the parties' 1 March 2024 MOA. For a partnership to exist, the parties must agree and, in fact, carry on the business in common with a view to profit. As section 3(2) of the Partnership Act provides, the relationship between members of a company registered under the Companies Act is not a partnership within the meaning of the Act.

[243] The parties' evidence does not enable me to rule definitively whether Conch Suckers Bar and Bites was a business name for Ms Jak Charters Ltd, or whether Ms Jak Charters Ltd operated Conch Suckers Bar and Bites. The parties' MOA refers to Mr Cottingham and Mr Westerhoff owning the intellectual property rights in the Conch Suckers name. It also sets out the parties' intention to run, between themselves, a bar and restaurant business, with their respective roles spelt out, without any reference to Ms Jak Charters Ltd. The parties' agreement, as set out in the MOA, regarding the sharing of gross profit could not properly be structured and implemented through a company, suggesting that the parties' relationship in relation to Conch Suckers Bar and Bites was more likely than not to be a partnership.

[244] These peculiarities have led me to consider: (a) whether, if I am wrong in holding that the parties' relationship was a partnership, their relationship resulted in Mr Ramclam owing fiduciary duties to Mr Cottingham and Mr Westerhoff. I have also decided to address this question for completeness. In response to a question I posed to Mr Alpuche (as I understood learned counsel's response), he accepted that fiduciary duties may exceptionally arise in the context of a joint venture. Learned counsel is correct.

[245] Fiduciary duties may arise outside settled categories of relationship, such as (a) trustee and beneficiary of a trust; (b) partnership; (c) company directors of a registered company; (d) attorneys and their clients; and (e) agent and principal. However, courts are, as a rule, slow to recognise fiduciary duties in commercial relationships, as Walker LJ explained in ***Cobbe v Yeoman's Row Management Ltd*** [2008] UKHL 55, at [81]. This cautious approach is sensible, as parties to commercial transactions will normally repose some degree of trust and confidence in each other without necessarily intending that their relationship give rise to fiduciary duties. This raises the question: in what circumstances may fiduciary duties arise in commercial transactions, such as joint ventures or operator-investor relationships? I pose the question this way, borrowing from Mr Alpuche's submission (which I must reiterate was not supported by the facts pleaded by Mr Ramclam) that the parties' relationship must be considered an operator-investor or joint venture-type relationship.

[246] As a starting point, it should be stated, as Lloyd LJ explained in ***Ross River Ltd v Waveley Commercial Ltd*** [2013] EWCA Civ 910 ('***Ross River Ltd***.') at [34], that:

> "…the phrase "joint venture" is not a term of art either in a business or in a legal context, and each relationship which is described as a joint venture has to be examined on its own facts and terms to see whether it does carry any obligations of a fiduciary nature."

[247] In other words, whether a party to a business relationship owes one or more fiduciary duties to another is a fact-sensitive question that depends on the nature of the parties' relationship (see also ***Crossco No 4 Unlimited v Jolan Ltd*** [2011] EWCA Civ 1619 at [88]).

[248] Regarding relationships that typically give rise to fiduciary duties, in ***Al Nahayan*** at [159], Leggatt LJ expressed the following statement of principle, which I find persuasive:

> "…fiduciary duties typically arise where one person undertakes and is entrusted with authority to manage the property or affairs of another and to make discretionary decisions on behalf of that person. (Such duties may also arise where the responsibility undertaken does not directly involve making decisions but involves the giving of advice in a context, for example that of solicitor and client, where the adviser has a substantial degree of power over the other party's decision-making: see Lionel Smith, "Fiduciary relationships: ensuring the loyal exercise of judgement on behalf of another" (2014) 130 LQR 608.) The essential idea is that a person in such a position is not permitted to use their position for their own private advantage but is required to act unselfishly in what they perceive to be the best interests of their principal. This is the core of the obligation of loyalty which Millett LJ in the *Mothew* case [1998] Ch 1 at 18, described as the "distinguishing obligation of a fiduciary". Loyalty in this context means being guided solely by the interests of the principal and not by any consideration of the fiduciary's own interests. To promote such decision-making, fiduciaries are required to act openly and honestly and must not (without the informed consent of their principal) place themselves in a position where their own interests or their duty to another party may conflict with their duty to pursue the interests of their principal. They are also liable to account for any profit obtained for themselves as a result of their position."

[249] In my view, the following facts, set out below, support the conclusion that, if the parties' relationship was not a partnership under the law but a joint venture or an operator-investor-type relationship, Mr Ramclam owed fiduciary duties to Mr Cottingham and Mr Westerhoff, and that he breached those duties.

[250] Mr Ramclam is a citizen of Belize, and Mr Cottingham and Mr Westerhoff are citizens and residents of the United States. The parties intended to and did carry on business in Belize. Mr Cottingham and Mr Westerhoff engaged and worked with Mr Ramclam because they understood that he was well connected in Caye Caulker in particular and in Belize more generally. As a result, the parties agreed that Mr Ramclam would, and did, secure, for the parties' business purposes, the lease of Parcel 2172, Playa Asuncion, Caye Caulker. By all accounts, this was a premier location for their bar and restaurant business. Mr Cottingham and Mr Westerhoff needed to, and did, repose trust and confidence in Mr Ramclam's loyalty to them and their business venture, so they agreed that he secure the lease to Parcel 2172, Playa Asuncion, Caye Caulker, in his name. They also agreed that his ability to secure the lease, among other responsibilities such as securing relevant business regulatory licences and managing the business' day-to-day operations, would constitute part of his contribution to their joint venture, the business they intended to carry on in common. Mr Ramclam also stated

during cross-examination, in agreement with Mrs Cottingham's evidence-in-chief, that the landlady was averse to renting to foreigners. Acting on that information, the parties relied on Mr Ramclam to secure the lease for Parcel 2172, Playa Asuncion, Caye Caulker, in his name and to contribute the lease agreement to the parties' business.

[251] Structurally, the parties' relationship and the success of their business venture depended on trust and confidence in one another. For the success of the parties' business, Mr Cottingham and Mr Westerhoff needed to trust Mr Ramclam (as their co-equal rather than their employee) to:

(a) recommend suitable premises for the business's operations;

(b) enter into contracts necessary to operate their business in his name;

(c) act as the business's designated manager for its day-to-day operations, not as a salaried employee, as Mr Ramclam confirmed during cross-examination, but as a co-equal partner, and in a spirit of cooperation and for their collective benefit;

(d) facilitate and enable their remote access to the business's POS and security camera systems, enabling them to play a meaningful part in the management of the business, which access Mr Ramclam withdrew on the ground which I find spurious.

(e) apply the business's nascent goodwill, assets, and income exclusively to its success and to the parties' collective commercial interests; and

(f) honour the parties' revenue-sharing agreement.

[252] In the ***Hospital Products case*** (1984) 156 CLR 41 at 71, Dawson J stated:

> "A fiduciary relationship exists where one party is in a position of reliance upon the other because of the nature of the relationship and not because of a wrong assessment of character or reliability."

[253] In ***Al Nahayan***, Leggatt LJ regarded agreements, such as the parties' 1 March 2024 MOA, as "relational contracts". At [167], Leggatt LJ stated:

> "In particular, I drew attention to a category of contract in which the parties are committed to collaborating with each other, typically on a long term basis, in ways which respect the spirit and objectives of their venture but which they have not tried to specify, and which it may be impossible to specify, exhaustively in a written contract. Such 'relational' contracts involve trust and confidence but of a different kind from that involved in fiduciary relationships. The trust is not in the loyal subordination by one party of its own interests to those of another. It is trust that the other party will act with integrity and in a spirit of cooperation. The legitimate expectations which the law should protect in relationships of this kind are embodied in the normative standard of good faith."

[254] I hold that the nature of the parties' business relationship was characterised by and dependent on:

(a) Mr Cottingham and Mr Westerhoff's placing (and, to ensure the business' viability, needing to place) considerable trust and confidence in Mr Ramclam's honesty, loyalty and integrity in discharging his

responsibilities for the business' success and to secure their agreed remuneration from the business; and

(b) Mr Ramclam's placing (and needing to place) considerable trust and confidence in Mr Cottingham and Mr Westerhoff to provide seed and working capital and to cover ongoing utility costs.

[255] I hold that if the parties' relationship were not a partnership, it was based on a "relational contract", and that Mr Ramclam owed Mr Cottingham and Mr Westerhoff a contractual duty of good faith. In ***Nahayan***, Leggatt LJ made the following observations at [168]–[169], which I find both persuasive and applicable to the facts of this case:

> 168. Although the observations that I made in the *Yam Seng* case[1] about the scope for implying duties of good faith in English contract law have provoked divergent reactions, there appears to be growing recognition that such a duty may readily be implied in a relational contract. For example, in *Bristol Groundschool Ltd v Intelligent Data Capture Ltd* [2014] EWHC 2145 (Ch) the parties agreed to collaborate to produce training manuals for pilots. The claimant provided the content for the manuals and the defendant converted the content into an electronic application, which the parties jointly published and marketed. The parties fell out. Anticipating the end of their joint venture, the claimant secretly accessed the defendant's database and downloaded material. After the contract was terminated, the claimant used the downloaded material to continue selling the electronic training manuals. One issue was whether the secret download was a breach of contract. There was no express term of the contract which prohibited it. But Mr Richard Spearman QC, sitting as a deputy High Court judge, characterised the joint venture agreement as a relational contract and held that there was an implied term of the contract requiring good faith in its performance. The defendant had breached that term by engaging in conduct that "would be regarded as commercially unacceptable by reasonable and honest people" (para 196).
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> 169. In *D&G Cars Ltd v Essex Police Authority* [2015] EWHC 226 (QB) a private contractor had agreed to dispose of cars for a police authority. The police authority gave instructions for one particular vehicle to be completely crushed; but they later found out that, instead of sending it to be crushed, the contractor had re-built the car, transferred the number plates from a different vehicle, and was using it in the contractor's own fleet. Dove J described the contract as "a relational contract par excellence" and held that it was an implied term that the contractor would perform the contract in good faith or – as he preferred to put it – with honesty and integrity. The judge concluded that, even if the contractor had not been deliberately fraudulent, there had been a breach of the implied term which amounted to a repudiatory breach of the contract.

[256] Consistent with the findings above, I find, on the facts, that if the parties' relationship was not a partnership, it would, by its nature, be a relational contract that carries fiduciary duties. I have found that Mr Ramclam, in breach of his contractual duty of good faith, hijacked the parties' Conch Suckers Bare and Bites business, which they were carrying on in common, which he went on to carry on by himself trading as Boozy Eel Beach Bar by:

(a) secretly registering, i.e., without informing his business partners and behind their backs, the name Boozy Eel Beach Bar on 8 July 2024, intending to use it (as he soon thereafter did) as a vehicle for conducting

[1] ***Yam Seng Pte Ltd v International Trade Corp*** [2013] EWHC 111 (QB)

the same business as Conch Suckers Bar and Bites;

(b) using false and contrived grounds to shut down the Conch Suckers Bar and Bites on or shortly after 22 July 2024. His claim that Mr Cottingham and Mr Westerhoff had failed to invest sufficient capital in Conch Suckers Bar and Bites for tenant improvements and to cover rent was, on the facts, plainly unfounded;

(c) not long after his brute-force and unjustifiable closure of the parties' business, and without seeking Mr Cottingham and Mr Westerhoff's agreement or accounting for the parties' business operations, used the lease for Parcel 2172, Playa Asuncion, Caye Caulker; the assets of the Conch Suckers Bar and Bites business; and the income earned by that business to operate his Boozy Eel Beach Bar business, which he carried out in his name.

[257] In my view, Mr Ramclam's actions, namely taking steps to register the Boozy Eel Beach Bar soon after the parties commenced operating as the Conch Suckers Bar and Bites, terminating the parties' MOA on the specious grounds he gave, and using the parties' business's property, assets and revenue for his Boozy Eel Beach Bar, were dishonest. Mr Ramclam knew the parties secured the lease for Parcel 2172, Playa Asuncion, Caye Caulker, for the Conch Suckers Bar and Bites, not for his personal benefit. His use, without Mr Cottingham and Mr Westerhoff's consent, of property, assets belonging to and income generated by the Conch Suckers Bar and Bites to operate his Boozy Eel Beach Bar business was dishonest. Mr Ramclam was also keenly aware that Mr Cottingham and Mr Westerhoff were wholly reliant on him for the day-to-day management and success of their joint venture, the Conch Suckers Bar and Bites, and for securing and promoting their interests in it.

[258] I share the opinion expressed by Leggatt LJ in ***Nahayan*** at [175], drawing on Australian jurisprudence that he found consistent with English case law and that I hold applicable to the law in Belize, that:

> "…the obligation of good faith [is] an obligation to act honestly and with fidelity to the bargain; an obligation not to act dishonestly and not to act to undermine the bargain entered or the substance of the contractual benefit bargained for; and an obligation to act reasonably and with fair dealing having regard to the interests of the parties (which will, inevitably, at times conflict) and to the provisions, aims and purposes of the contract, objectively ascertained. In my view, this summary is also consistent with the English case law as it has so far developed, with the caveat that the obligation of fair dealing is not a demanding one and does no more than require a party to refrain from conduct which in the relevant context would be regarded as commercially unacceptable by reasonable and honest people: see *Bristol Groundschool Ltd v Intelligent Data Capture Ltd* [2014] EWHC 2145 (Ch), para 295, referred to above; and *Astor Management AG v Atalaya Mining Plc* [2017] EWHC 425 (Comm), para 98. In the *Paciocco case* (at para 290) Allsop CJ also made the important point that:
>
> > "The standard of fair dealing or reasonableness that is to be expected in any given case must recognise the nature of the contract or relationship, the different interests of the parties and the lack of necessity for parties to subordinate their own interests to those of the counterparty. That a normative standard is introduced by good faith is clear. It will, however, not call for the same acts from all contracting parties in all cases. The legal norm should not be confused with the factual question of its satisfaction. The contractual and factual context (including the

nature of the contract or contextual relationship) is vital to understand what, in any case, is required to be done or not done to satisfy the normative standard."

[259] I am further fortified in holding that, if the parties' relationship was not a partnership, Mr Ramclam owed Mr Cottingham and Mr Westerhoff a duty of good faith, which he breached, drawing on the opinions and statements of principle in ***Murad v Al-Saraj*** [2004] EWHC 1235 (Ch) ('***Murad'***).

[260] In ***Murad***, the claimants, two sisters residing in Bahrain, and the defendant, Mr Al-Saraj, an Iraqi businessman residing in England, agreed to purchase a London hotel through a corporate vehicle, Danescroft Properties Limited ('Danescroft'). The claimants alleged that they were induced to agree that Mr Al-Saraj would be entitled to a share of profits from Danescroft's resale of the hotel, based on certain promises he allegedly made. In suing Mr Al-Saraj, the claimants intended, in part, to deprive him of any right to share in the profits Danescroft made when it resold the hotel for a substantial capital profit. The claimants alleged, drawing on the nature of their relationship with Mr Al-Saraj, that he owed them a fiduciary duty of good faith and had breached it by failing to disclose certain commissions he had agreed with the hotel's vendor.

[261] The first-instance judge, Etherton J (as he then was), found (on facts relating to the parties' relationship, which, while not on all fours, were broadly similar to those in these proceedings) that:

> "…prior to the proposal by Mr Al-Saraj for the acquisition of the Hotel, the relationship between Mr Al-Saraj and Mrs Murad was one in which Mrs Murad, who lived abroad, looked to Mr Al-Saraj, who was an Iraqi businessman living and working in England, to make appropriate recommendations to her and to assist her in connection with possible investments in England. The reality was, as Mr Al-Saraj was well aware, that the Claimants were wholly dependent upon Mr Al-Saraj for his advice and recommendation in relation to the Hotel, and for the negotiations with Mr Al-Arbash and HHL, the instruction of professionals on their behalf, including in relation to the structure of the transaction and the documentation. The relationship between them was a classic one in which the Claimants reposed trust and confidence in Mr Al-Saraj by virtue of their relative and respective positions."

[262] Not unlike in ***Murad***, in these proceedings (and at the risk of over-repetition):

(a) Mr Cottingham and Mr Westerhoff lived abroad, while Mr Ramclam, who lived in Belize, served as the parties' point-person in Caye Caulker;

(b) after Mr Cottingham and Mr Westerhoff were introduced by Mr Hilburn to Mr Ramclam, they looked to him (Mr Ramclam) for appropriate recommendations on the location of their intended bar and restaurant business; and

(c) Mr Cottingham and Mr Westerhoff reposed trust and confidence in Mr Ramclam, including for business necessity, to enter into the lease agreement for Parcel 2172, Playa Asuncion, Caye Caulker, in his name, to obtain the relevant business licences, and to manage the business's day-to-day operations loyally in furtherance of the parties' business interests and for their collective benefit.

[263] In ***Murad***, Etherton J found that Mr Al-Saraj breached the trust and confidence the claimants reposed in him by failing to disclose that part of his financial contribution to the purchase of the hotel was not cash but commissions owed to him by the vendor. As a result, the court ordered Mr Al-Saraj to account for the profits he made from the sale of the hotel, even though the claimants had not suffered a loss on the sale. The court also found that Mr Al-Saraj owed fiduciary duties to the claimants, even though the joint venture was carried on through the jointly owned company Danescroft and Mr Al-Saraj was not himself a shareholder in Danescroft, as his shares were held by a company wholly owned by him. The High Court decision was upheld on appeal (see ***Murad v Al-Saraj*** [2005] EWCA Civ 959).

[264] As relates to these proceedings, I hold that Mr Ramclam violated the trust and confidence reposed in him by Mr Cottingham and Mr Westerhoff by taking steps not long after the parties' Conch Suckers Bar and Bites commenced operations to set up and operationalise his Boozy Eel Beach Bar business, and, not long after establishing it, by using the investments the parties had made in the Conch Suckers Bar and Bites and its property and assets, without obtaining Mr Cottingham and Mr Westerhoff's consent.

[265] By dint of his presence in Belize and his control over the day-to-day operations of the Conch Suckers Bar and Bites, Mr Ramclam exercised overwhelming influence and control over the operations, ongoing viability, and success of the parties' business, including the payment of the agreed remuneration from the Conch Suckers Bar and Bites' gross revenue.

[266] ***Ross River Limited v Wavely Commercial Ltd*** [2012] EWHC 81 (Ch) is authority for the proposition that where one party to a joint venture exercises overwhelming control over decisions relating to the parties' enterprise, fiduciary duties may arise. In that case, the first-instance court found that, because the defendant company and one of its directors (Mr Barnett) had significant control over the assets and management of the parties' joint venture and over the disposal of funds generated, the defendant owed the claimant fiduciary duties. The court also found that the claimant reposed trust and confidence in the defendant. The decision was upheld on appeal (see ***Ross River Limited v Wavely Commercial Ltd*** [2013] EWCA Civ 910).

Summary

[267] Drawing on the above, I hold that if I were wrong to rule that the parties' relationship was a partnership, I would still find that:

(a) Mr Ramclam: (i) owed Mr Cottingham and Mr Westerhoff a 'contractual relational' duty of good faith, which, although not identical, is broadly the same as that owed by a party to a partnership to their fellow partners; and (ii) that Mr Ramclam breached that duty for the reasons set out above,

(b) Mr Ramclam must account to Mr Cottingham and Mr Westerhoff and the Conch Suckers Bar and Bites for the profits he derived from trading as the Boozy Eel Beach Bar business.

(c) Mr Cottingham, Mr Westerhoff and Mr Ramclam shall share equally the profits generated by Mr Ramclam from trading as Boozy Eel Beach Bar from the date he began trading as such to the date of this judgment, for the reasons set out in [237] – [238] above.

(d) Until such time as Mr Ramclam has accounted to Mr Cottingham, Mr Westerhoff and Conch Suckers Bar and Bites as set out in (b) above, he shall hold, on trust for Mr Cottingham, Mr Westerhoff and Conch Suckers Bar and Bites such of the property, assets and interests that belonged to Conch Suckers Bar and Bites, and the profits he generated from its use in his Boozy Eel Beach Bar business.

(f) Third claimant's claim for US$11,038.39 representing alleged unauthorised credit card charges

[268] The third claimant, CS Sail and Charter, LLC, seeks from Mr Ramclam US$11,038.39, which it says (through averments made by Mr Cottingham and Mr Westerhoff) it is owed because Mr Ramclam used its credit card without authorisation to fund food and drink purchases for the Conch Suckers Bar and Bites Business.

[269] In his defence, Mr Ramclam denied the third claimant's claim. He pleaded as follows:

> "The 3rd Claimant's credit card was used mainly by the 4th Defendant. The 1st Defendant used the card with authorization from the 4th Defendant or the Claimants. The 1st Defendant used the card […] mainly for expenses for trips carried out by the 3rd Defendant. If the card was used for the Bar, the 1st Defendant would notify the Claimants via WhatsApp Chat Group that included the 1st and 2nd Claimants, Jaklyn Cottingham, Misty Westerhoff, the 4th Defendant and the 1st Defendant. Approval would normally be given by Jaklyn Hilburn Cottingham." [Emphasis added]

[270] I should pause here to note the following. Mr Ramclam: (a) accepts that he had access to and used the third claimant's credit card; (b) pleads that he used the third claimant's credit card for the Conch Suckers Bar and Bites, but only after notifying the claimants via a WhatsApp group chat and obtaining relevant approval; and (c) does not dispute that any unauthorised use by him of the third claimant's credit card would be wrongful and that the third claimant would be entitled to an order requiring repayment for any unauthorised use.

[271] However, although aware that the third claimant's case is that the US$11,038.39 charges to the third claimant's credit card were unauthorised, and notwithstanding that he could have met that case head-on by producing the WhatsApp messages authorising him to use the card for the Conch Suckers Bar and Bites, Mr Ramclam chose not to. Mr Ramclam gave no reason for failing to produce the relevant WhatsApp messages. In addition, Mr Ramclam did not say that he or any of the parties in the group WhatsApp chats had deleted them. It is, of course, for parties to litigation to plead and evidence their respective statements of case and to establish their cases on a balance of probabilities.

[272] In addition, Mr Ramclam did not seek to amplify his evidence in chief with the aim of addressing head-on Cottingham's averment (as set out in her witness statement at [80]) that:

> Misty and I conducted an in-depth audit of the bar's income and expenses, and we could not determine where the money had been spent. Dillon, Niesha, and Ken were approached with this information via a speaker phone call, and they adamantly denied money being missing or stolen, but they were unable to explain the deficit. During the audit that Misty and I performed, we also noted over BZ$15,000.00 in unauthorised charges to our business credit for bar food, beverages and other expenses that were exclusively those of Dillon. We questioned Dillon about this as well, and he ultimately agreed to repay this money as per the MOA. Exhibited and marked JC-54 are WhatsApp conversations between me and Dillon dated April 24, 2024."

[273] Mr Ramclam has not, in these proceedings, raised any discernible legal defence to the third claimant's plea that he wrongfully used its credit card and consequently owes it US$11,038.39. He also did not dispute, as alleged by Mrs Cottingham, that he "agreed to repay" the money he charged to the third claimant's credit card.

[274] Drawing on the above, I hold:

(a) that the third claimant has demonstrated, including through the financial reports admitted without demur into evidence, that the charges of US$11,038.39 were made to the third claimant's credit card and were unauthorised;

(b) that the third claimant has demonstrated that the credit card charges were in fact or on a balance of probabilities, incurred by Mr Ramclam;

(c) that Mr Ramclam did not dispute the claimants' claim that he promised to repay the charges made to the third claimant's credit card in the sum of US$11,038.39; and

(d) that Mr Ramclam owes, and must pay, the third claimant US$11,038.39.

(g) Claim that the third defendant's registered agent must cancel the third claimant's share certificate

[275] The third claimant, through Mr Cottingham and Mr Westerhoff, seeks an order directing Mis Jak Charters Ltd.'s registered agent to cancel CS Sail and Charters, LLC's share certificate and to rectify the register of shareholders removing the latter as a shareholder.

[276] In his defence, Mr Ramclam averred that CS Sail and Charters, LLC "*is free to sell or dispose of its shares in the 3rd Defendant as well as to resign as a director*."

[277] I note that the alleged "registered agent" was neither named nor cited as a defendant. Notwithstanding his plea, Mr Ramclam did not contend that he was authorised to speak and litigate on behalf of the alleged and unnamed registered agent.

[278] On the limited information provided by the parties, I am not persuaded that an order is necessary directing the

alleged but unnamed registered agent to cancel the third claimant's share certificate and to take steps to rectify the register of shares. The third claimant has not established a valid cause or need for the court to exercise its jurisdiction in relation to the requested order. In other words, the third claimant has not alleged that it requested the alleged registered agent to cancel the share certificate and rectify the register of shares, and that the alleged registered agent refused to do so. If, as appears to be the case, the alleged registered agent exists, it is reasonable to assume that the third claimant need only request cancellation of the share certificate and rectification of the register of shares. If, in the circumstances, the alleged registered agent fails or refuses to do so, the third claimant would have a valid cause to seek the court's intervention.

[279] As a general rule, the court will not exercise its jurisdiction in personal or administrative matters where no real dispute exists between the relevant parties, or where the affected parties can secure effective redress between themselves or by exercising their respective rights through administrative communications and/or action. The court's exercise of its jurisdiction on any contrary basis would involve it in unnecessary administrative matters, which would not serve the overriding interests of the just and cost-effective resolution of substantive disputes, i.e., of all cases on the cause list.

[280] The parties to these proceedings are not litigants-in-person. In my view, the parties, hopefully by agreement, should be able to secure the cancellation of the third claimant's share certificate and the rectification of the share register, thereby helping to ensure a clean and final break in their fractured business relationship.

[281] In my view, the third claimant is at liberty, as stated by Mr Ramclam, to approach the registered agent to cancel its share certificate and to request rectification of the register of shares as a result. If the said registered agent is unable to or refuses to do so, the third claimant is at liberty to seek relevant legal redress. In the circumstances, I dismiss this part of the third claimant's claim.

5. Costs

[282] The claimants, jointly, are the successful party and are consequently entitled to their costs on the prescribed basis, with the defendants jointly and severally liable, the one paying the other being absolved.

6. Conclusion

[283] Drawing on the above, I rule as follows:

1. Dillon Angus Joseph Ramclam shall pay Chris Cottingham and James Westerhoff **BZ$54,917.78,** representing their entitlement to 25% of the gross revenue of the Conch Suckers Bar and Bites business venture for the period from 30 March 2024 to 26 July 2024.
2. Dillon Angus Joseph Ramclam shall, within 30 days of the date of this judgment, render to Chris

Cottingham and James Westerhoff true accounts and full information relating to the Conch Suckers Bar and Bites business, its property and assets, for the period from 30 March 2024 until the date he actually ceased operating the business under the name Conch Suckers Bar and Bites.

3. Dillon Angus Joseph Ramclam shall account within 30 days of the date of this judgment to Chris Cottingham and James Westerhoff for the gross revenue generated by the Conch Suckers Bar and Bites from 27 July 2024 to the date he actually ceased operating the business.
4. Dillon Angus Joseph Ramclam shall account, within 30 days of the date of this judgment, to Chris Cottingham, James Westerhoff and Conch Suckers Bar and Bites for the profits he made from trading as Boozy Eel Beach Bar.
5. Chris Cottingham, James Westerhoff and Dillon Angus Joseph Ramclam shall share equally the profits generated by Dillon Angus Joseph Ramclam from trading as Boozy Eel Beach Bar from the date he began trading as such to the date of this judgment.
6. Until such time as Dillon Angus Joseph Ramclam has accounted to Chris Cottingham, James Westerhoff and Conch Suckers Bar and Bites, he shall hold, on constructive trust for Chris Cottingham, James Westerhoff and Conch Suckers Bar and Bites, such of the property, assets and interests belonging to Conch Suckers Bar and Bites, and the profits he generated from trading as Boozy Eel Beach Bar. ##
7. Dillon Angus Joseph Ramclam owes and shall pay CS Sail and Charter, LLC **BZ$22,076.78**, representing Dillon Angus Joseph Ramclam's unauthorised use of CS Sail and Charter, LLC's credit card.
8. CS Sail and Charter LLC's claim for an order directing Mis Jak Charters Ltd.'s registered agent to cancel its share certificate and for an order rectifying the register of shareholders by removing it as a shareholder is dismissed.
9. Each of the orders set out above, which sounds in money, shall attract interest at 6%, calculated from the date of this judgment.
10. Dillon Angus Joseph Ramclam shall pay costs of suit on the prescribed scale.

Mr Justice Hondora
High Court