REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV NO. 2011 -02039

BETWEEN

PEAK PETROLEUM TRINIDAD LIMITED
Claimant

AND

PRIMERA OIL AND GAS LIMITED
PRIMERA EAST BRIGHTON LIMITED
PRIMERA OILFIELD MANAGEMENT SERVICES LIMITED
Defendants

BEFORE THE HONOURABLE MADAM JUSTICE JONES

Appearances:

Mr. D. Mendes S.C., and Mr. S. De La Bastide instructed by Ms. T. Budhu for the Claimant.

Mr. B. Reid instructed by Ms. F. Wilson for the Defendants.

JUDGMENT

1. The Claimant, Peak Petroleum Trinidad Limited, is a limited liability company owned by Patrick Acham ("Acham") and his wife. At all material times the Claimant was run by Acham its managing director and principal. The Defendants are all limited liability companies operating in Trinidad and Tobago within the Oil and Gas Industry. The Defendants together with their subsidiary companies are members of a group of companies known as the Primera Energy

Group. The companies in the Primera Energy Group were at all material times up to August 2011 all wholly owned subsidiaries of CL Financial Limited.

2. The First Defendant, known then as Premier Oilfields of Trinidad and Tobago Limited, was acquired in February 1999 by CL Financial Limited while the Third and the Second Defendants were incorporated in September 1999 and April 2003 respectively. During the period March 1999 to September 2011 Acham was the Chief Executive Officer ("CEO") of the First Defendant and of the Second and Third Defendants from the dates of their incorporation, April 2003 and September 1999 respectively, to September 2011.

3. After 1999 there was a rapid growth of the business of the Defendants and the other members of the Primera Energy Group. In particular the Group's:

(i) proved and probable oil reserves increased from 0.8 million barrels of oil equivalent ("MMBOE") in 1999 to over 16 MMBOE in 2007 and after the sale of approximately 9 MMBOE at a price of over US$75,000,000.00 during the period 2007 to 2009 stood at approximately 10 MMBOE in 2009;

(ii) Reserve Life Index increased from 4 years in 1999 to over 20 years in 2011;

(iii) Net Asset Value increased from approximately US$4,000,000.00 in 1999 to over US$100,000,000.00 in 2007.

4. By this action, filed on the 31st May 2011, the Claimant claims an entitlement to money representing monthly payments due, expenses incurred and bonuses earned pursuant to written agreements ("the service agreements") which it says were made with each of the Defendants for the provision by it to them of consultancy and advisory services. The service agreements were

signed by Acham on behalf of the Claimant and Lawrence Duprey ("Duprey") on behalf of the Defendants. At the time and indeed at all material times up to and until November 2009 Duprey was a director of each of the Defendants and acted as the chairman of their respective boards. Duprey was also at all material times a director and chairman of the board of directors of CL Financial Limited.

5. Each of the service agreements required the Claimant to provide consultancy services to the Defendants in areas of geology, oil well production and servicing and general oilfield management and operations and to advise on "leasing business expansion and development". The agreements, by their clause 4, provided for the Claimant to be compensated by a fixed monthly payment and the provision of a car and housing or the reimbursement of such associated expenses and for the payment of an annual performance bonus. In addition each agreement provided for the payment of a merger, sale and/or acquisition success bonus ("the acquisition bonus") in an amount equal to 2% of the transactional value calculated and payable in respect of each transaction with respect to the First Defendant and related companies. At all material times the Claimant acted through Acham a geologist and consultant in the Oil Industry by profession with over 49 years experience in the Petroleum Industry in Trinidad and Tobago, Canada and the United States of America.

6. By letters dated the 15th September 2011, issued after the commencement of this action, the Defendants all terminated the consulting agreements with the Claimant dated the 1st March 2001 with respect to the First and Third Defendants and the 23rd April 2003 with respect to the Second Defendant with immediate effect. The letters also required Acham to relinquish his role

as the CEO of the Defendants. By the letters all three Defendants offered and paid to the Claimant termination payments in lieu of notice and payments representing expenses associated with both vehicle and housing accommodation.

7. The letters provided for the following payments:

(i) with respect to the First Defendant the sum of $300,000.00 representing six months notice and $75,000.00 representing expenses;

(ii) with respect to the Second Defendant the sum of $60,000.00 representing 6 months notice and the sum of $15,000.00 representing expenses;

(iii) with respect to the Third Defendant the sum of $12,000.00 representing six months notice and $3,000.00 representing expenses.

Issues for determination

8. At issue in this action is the money payable to the Claimant by each of the Defendants pursuant to clause 4 of the service agreements for the reimbursement of housing and related expenses; the non-payment of the monthly payment and the payment of the acquisition bonuses on four transactions:

(i) a transaction evidenced by an agreement in writing dated the 11th May 2007 by which the Third Defendant sold certain shares in Lennox Production Services Limited and Pioneer Petroleum Company Limited ("the Lennox and Pioneer transaction") for which the Claimant claims the sum of US$214, 000.00 based on a transactional value of US$10,700,000.00;

(ii) a transaction completed in January 2007 by which a wholly owned subsidiary of the Third Defendant acquired 56% of the common shares in Celestial

Energy Inc.("the Celestial transaction") for which the Claimant claims the sum of CAN$110,000.00 based on a transactional value of CAN$5,500,000.00;

(iii) a transaction evidenced by an agreement in writing dated the 16th September 2009 by which the First Defendant and another member of the Primera Energy Group assigned 50% of their interest in an exclusive license for the exploration and production of crude oil and natural gas ("the Petro Andina transaction") for which the Claimant claims the sum of US$280,000.00 based on a transaction value of US$14,000,000.00; and

(iv) a transaction evidenced by a written agreement dated November 2008 by which the Second Defendant assigned to SOOGL Antilles (Trinidad) Limited an undivided interest in 65% of its rights and obligations in the East Brighton block ("the SOOGL transaction") for which the Claimant claims the sum of US$1,700,000.00 based on a transactional value of US$85,000,000.00. This transactional value is based on the sum of US$52,000,000.00 representing the cost of fulfilling the obligations and the sum of US$33,000,000.00 representing the cash consideration.

With respect to all of the claims except the claim for a sum of $582,120.00 representing housing and related expenses due from the First Defendant the Claimant seeks the payment of value added tax ("VAT").

9. With respect to the service agreements the Claimant pleads that it entered into a written agreement with the First Defendant dated the 1st March 2001 and annexes to its statement of case a copy of that service agreement with the First Defendant. Thereafter, the Claimant pleads

written agreements with the Third and Second Defendants dated the 1st March 2001 and the 23rd April 2003 respectively and avers that, except for the quantum of the monthly payment, the agreements with the Third and Second Defendants were in the same terms as that with the First Defendant.

10. By their joint defence the Defendants generally put the Claimant to the proof of the facts on which it relies. The Defendants however specifically admit that the service agreements were signed by Duprey but aver that the agreements do not constitute a contract and/or are not binding and enforceable against the Defendants because:

(i) the said agreements remained subject to compliance with the Defendants' bye-laws, in particular: the requirement for submission to and authorisation and approval of same by the Defendants' board of directors and the requirement for execution in order to be binding on and enforceable against the Defendants; and

(ii) the said agreements were not executed in accordance with the Defendants' bye-laws.

The Defendants also allege that the Claimant is barred by the Limitation of Certain Actions Act Chap 7:09 from pursuing any claim in respect of any sum of money allegedly due from the Defendants for any period prior to the 30th May 2007.

11. With respect to the acquisition bonuses claimed the Defendants:

(i) admit that the shares in Lennox Petroleum and Pioneer Production were sold for US$10,700,000.00;

(ii) admit the Celestial transaction but neither admit nor deny that the

consideration for the shares in the Celestial transaction amounted to CAN$5,500,000.00;

(iii) admit the facts of the Petro Adina transaction including the fact that the agreement was valued at US$14,000,000.00; and

(iv) do not deny the SOOGL transaction but aver that part of the value of the transaction, the cost of fulfilling the obligations, amounted to US$47,960, 509.00 rather than the US$52,000,000.00 alleged by the Claimant.

12. By way of reply the Claimant denies that the bye-laws have the effect alleged by the Defendants and in any event puts the Defendants to the proof that the bye-laws were made by the directors and/or confirmed by the shareholders in accordance with section 66 of the Companies Act Chap 81:01.With respect to the applicability of the Limitation of Certain Actions Act the Claimant avers that the cause of actions all accrued within 4 years of the commencement of this action.

13. Further the Claimant avers that:

(i) even if contrary to the bye-laws the agreements are enforceable because (a) they were entered into at the instigation and with the full approval, consent and knowledge of CL Financial Limited and its Chairman Lawrence Duprey; and (b) the Defendants each took the benefit of the agreements; and

(ii) an estoppel by convention arises preventing the Defendants from denying that the agreements contractually bind them.

14. Proof of the facts relied on apart from the issues for my determination are:

1. Were the service agreements required to be executed and approved in accordance with clauses 9.2.1 and 20.1 of the bye-laws of the Defendants.
2. If so, are the service agreements enforceable in any event because: (a) they were entered into at the instigation of and with the full approval, consent and knowledge of CL Financial and Duprey and the Defendants took the benefit of them; and (b) the Defendants are estopped from denying that the agreements are contractually binding on them.
3. What sums, if any, are due to the Claimant from the Defendants pursuant to the service agreements; and
4. Are any of these sums now irrecoverable by virtue of the Limitation of Certain Actions Act.

15. Insofar as the Defendants seek to raise in their submissions the question whether Duprey had the authority to sign the service agreements on behalf of the Defendants. I agree with the Claimant that this is not an issue that can now be canvassed by them having not raised it in their defence. The Claimant has pleaded the existence of agreements signed by Acham and Duprey. The specimen agreement annexed to the statement of case is on the face of it signed by Acham on behalf of the Claimant and Duprey on behalf of the Defendants. The only defence raised by the Defendants with respect to these agreements is that they were not executed, authorised or approved in accordance with the Defendants' bye-laws.

16. By Part 10 of the Civil Proceedings Rules 1998 as amended ("the CPR") a defendant must identify in the defence the allegations in the statement of claim it denies and where denied

must state the reasons for such denial[1]. A failure to deny or provide reasons for such denial has the effect of rendering the allegation undisputed[2]. Further a defendant may not rely on any allegation which it did not make in its defence unless the Court gives permission to do so[3]. For the Defendants to make the question whether Duprey had the authority to sign the service agreements an issue for my determination they were required to specifically plead same or seek permission to do so. The Defendants did not plead lack of authority by Duprey nor did they seek permission to rely on such an allegation. The Defendants cannot now raise such an issue.

The Evidence

17. Evidence on behalf of the Claimant was given by Acham and Tamilee Budhu. The evidence given by Budhu deals solely with the directorship of the relevant companies for the period 1999 to 2009 and in particular confirms the evidence of Acham in that regard. Patrick Chin gave evidence on behalf of the Defendants.

18. With respect to the evidence generally the Defendants are under a major disadvantage since their witness Chin, although employed with the First Defendant as Financial Comptroller then as internal auditor and finally as Senior Manager Administration and Business Development since 1991, was never a member of the board of directors of any of the Defendants. Chin admits under cross-examination to have never attended any meetings of the board or the shareholders of the Defendants. Except with respect to the existence of the Defendants' bye-laws he does not really assist with any of the issues in dispute. However, he does to some extent confirm some of

[1] Part 10.5(3) and(4)of the CPR
[2] M.I.5 Investigations Limited v Centurion Protective Agency C.A. Civ 244/2008
[3] Part 10.6 of the CPR

the evidence of Acham in particular: (i) the manner in which the Defendants were operated; and (ii) the existence of two contracts dated 8th March 1999 and 7th December 2000 between the First Defendant and Mission Exploration Services and the First Defendant and the Claimant respectively.

19. The only disputes of fact raised on the evidence are the existence of the Defendants' bye-laws and the sum of money said to represent the cost of fulfilling the obligations under the SOOGL transaction. In all other matters of fact the Defendants merely put the Claimant to the proof.

20. Apart from the existence of the bye-laws the only real evidence with respect to the factual matrix of the case comes from Acham. In this regard Acham's evidence is undisputed and in the main unchallenged. He was not shaken in cross-examination. He presented as a credible witness and I accept his evidence of the primary facts. In these circumstances, in order to set the stage for answering the specific questions for my determination I propose to deal with the general facts as established by the evidence of Acham and thereafter any additional facts as may be necessary to determine those specific issues at the time of dealing with the particular issue.

Findings of fact

21. These findings are drawn primarily from the evidence of Acham. The initial foray into the Oil Industry by CL Financial through the acquisition of the First Defendant was as a result of advice requested by Duprey and given to him by Acham in his capacity as a friend of Duprey and a geologist and a consultant in the Oil and Gas Industry by profession. This finding is

consistent with the unchallenged evidence of Acham. The Second and Third Defendants were incorporated under Acham's watch: the Third Defendant to provide support services to the First Defendant and the Second Defendant to hold certain exploration and production rights acquired earlier by the First Defendant upon the advice of Acham.

22. Thereafter, at the request of Duprey, Acham continued to provide consultancy and advisory services initially to the First Defendant and thereafter, as they came on board, the Third and Second Defendants. This advice was provided through companies operated by Acham.

23. Both Acham and Duprey were the Third Defendant's first directors and continued as its only directors until 2004. As well Acham and Duprey were the first directors of the Second Defendant and between the period 2003 and 2007 were its only directors. Similarly with respect to the Third Defendant Acham and Duprey were its first directors and its only directors up to January 2004. Up to November 2009, when he resigned as a director, Duprey acted as the chairman of the board of directors of all the Defendants and the other members of the Primera Energy Group.

24. The other members of the Primera Energy Group at the time included Lennox Production Services, Pioneer Petroleum Company Limited and Optimal Services Limited. All three companies were purchased in 2000 by the Third Defendant. Acham also functioned as CEO for the other members of the Primera Energy Group. I accept Acham's evidence that these companies were purchased upon his recommendation.

25. Sometime between the years 1999 and 2000 Acham, through Mission Exploration Services Limited, entered into a written agreement with the First Defendant for the provision of advisory and consultancy services. This agreement was signed by Duprey on behalf of the First Defendant and contained terms and conditions which had been agreed between Acham and Duprey prior to Acham being appointed CEO of the First Defendant.

26. In 2000 it was agreed between Acham and Duprey that Acham would continue to provide consultancy and advisory services to the First Defendant but would do so through the Claimant. This arrangement was formalised by a written agreement dated 1st March 2000 between the First Defendant and the Claimant. This agreement was signed sometime in 2000 or early 2001. The existence of these two agreements, the Mission agreement and the first Peak agreement, are confirmed by Chin who accepts that copies of these agreements were forwarded to him from CL Financial's offices in or around December 2000. Chin also confirms the payment of a monthly sum of $50,000.00 to Acham by the First Defendant retroactive to May 1st 1999 pursuant to a memorandum to him dated the 25th May 2000 signed by Duprey as executive chairman of CL Financial.

27. Acham, as CEO of the Defendants, ran the day to day business of the Defendants. He also formulated and discussed with Duprey the business plans and strategies to be adopted by them. This to my mind is consistent with his appointment as CEO for the members of the group and his experience in the industry. Indeed if the company documents tendered through Budhu are anything to go by it would seem that up to and until at least 2004, with respect to the First and

Third Defendant and up to 2010 with respect to the Second Defendant Acham was the only director with experience or qualifications relevant to the Oil and Gas Industry.

28. Acham says, and I accept, that although Duprey relied on him to formulate and recommend the business of the Primera Energy Group and to implement same if adopted by the companies, Duprey was the person who made the decision as to whether the plans and strategies were adopted by the Group. Duprey had the final say on all important decisions to be made on behalf of those companies in that ultimately the boards of directors followed his decision on matters which he had to decide on behalf of those companies. According to Acham Duprey was able to do so because he was the chairman of the board of CL Financial the sole shareholder in and the parent company of the Primera Energy Group. I accept Acham's evidence in this regard.

29. By way of discussions between Acham and Duprey in 2001 it was agreed that Acham would continue to work with the Primera Energy Group and that the Claimant would enter into separate contracts with the First and Third Defendants for the provision of those services to them. These contracts would replace the existing contract. Included in the terms agreed between them was that the Claimant would receive a 2% commission on the purchase or sale by members of the Primera Energy Group of their oil and gas and other assets. It was also agreed that the Claimant would be provided with housing accommodation or a housing allowance, a car allowance and a flat monthly fee from each of the Defendants.

30. With respect to the agreements made in 2001 no steps were taken to have written contracts prepared before 2006. In or around 2006 however the service agreements containing

the terms agreed on in 2001 between Duprey and Acham, all dated the 1st March 2001, were formalised and signed by Acham on behalf of the Claimant and Duprey on behalf of the Defendants. Prior to their execution the agreements were vetted on behalf of the Defendants by a director of the First Defendant who was also an Attorney-at-Law. I accept Acham's evidence that these service agreements contained the terms under which Acham's services had been provided to the Defendants by the Claimant from 2001 with respect to the First and Third Defendants and 2003 with respect to the Second Defendant. I also accept Acham's evidence that his appointment as CEO and director of the Defendants and the other members of the Primera Energy Group served to facilitate the provision of the Claimant's services under the service agreements.

31. According to Acham, based on his considerable experience in the Industry, and in particular in the Canadian Oil and Gas Industry, the monthly fees payable to the Claimant under the service agreements were much less than that which applied in the Industry. This opinion was not challenged by cross-examination and I accept it. According to Acham these lower fees were necessary for the Defendants to achieve the group objective of becoming a key player and significant producer in the oil and gas sector within a period of 5 to 10 years. This together with the need to adopt austerity measures and engage in loan arrangements with other members of the CL Financial group, he says, formed the basis of the terms set out in clause 4 of the service agreements. I accept this evidence.

32. It is not in dispute that the business and the asset base of the Primera Energy Group increased more than 100 fold during under Acham's stewardship. The Defendants deny Acham's

evidence that this was as a result of the advisory and management services provided by the Claimant, through Acham, and aver that this was as a result of increased production and increased oil prices. I am satisfied that these are not mutually exclusive positions and that the success of the Primera Energy Group and the Defendants in particular was in a large measure due to the advice given and strategies recommended and implemented by the Claimant through Acham which in itself resulted in increased production. The increased oil prices only served to enhance this position.

33. I accept the evidence of Acham with respect to the transactions for which he claims to be entitled to an acquisition bonus and his input in this regard. These transactions have been admitted by the Defendants. According to Acham the Lennox and Pioneer transaction was completed in or around December 2007. This evidence has not been challenged. With respect to the non-reimbursement of the Claimant's housing expenses Acham provides no evidence of the rent paid for the period prior to January 2006. On his evidence however I am satisfied that the Claimant incurred the following expenses with respect to Acham's housing:

(i) between the period 1st January 2006 to 31st July 2007 the sum of $7,560 a month;

(ii) for the months of September and October 2010 the sum of $6,350.00 a month;

(iii) for the month of November the sum of $5715.00 and

(iv) for the period 1st January 2011 to 30th of September 2011 the sum of US$22,500.00.

34. I also accept his evidence that also outstanding is the monthly sum of $10,000.00 payable by the Third Defendant to the Claimant pursuant to clause 4 of the service agreement with respect to the period 1st March 2001 to 30th September 2007. Despite invoices sent in on the 24th August 2009 and in May 2010 and June 2010, all these sums remain unpaid.

Were the service agreements required to be executed and approved in accordance with clauses 9.2.1 and 20.1 of the bye-laws of the Defendants.

35. With respect to the validity of the bye-laws the burden of proof is on the Defendants. In this regard they must satisfy me that:(a) the documents identified by Chin are in fact the bye-laws of the Defendants; (b) they are not precluded by section 25 of the Companies Act Chap 81:01 ("the Companies Act") from asserting that there has been no compliance with the bye-laws; and (c) Bye-Laws 9.2.1 and 20.1 are relevant to the validity of the service agreements.

(a) Are the documents identified by the Defendants as their bye-laws valid bye-laws of the Defendants?

36. The Defendants' evidence in this regard comes from Chin. In his witness statement he annexes what he concludes are true copies of the bye-laws of each of the Defendants. He gives no further evidence in this regard. On the evidence before me therefore his conclusions, insofar as they are founded on facts, could only be based on the contents and the form of the documents. With respect to the document purporting to be the bye-laws of the First Defendant it is undated and unsigned. The other two documents both bear the signature of Duprey as chairman and another person as secretary of the company. Both are dated the 20th April 2003.

37. The position of the Defendants with respect to these documents is therefore slightly different. With respect to the First Defendant only the fact that the document states that it is bye-laws of the First Defendant supports the conclusion arrived at by Chin. The documents identified by Chin as the bye-laws of the Second and Third Defendants however bear a date, 20th April 2003, and are signed by Duprey and presumably the company secretary.

38. The only other evidence of the possible existence of bye-laws comes from the service agreements themselves which provide under the clause dealing with 'engagement' that the Defendant agrees to engage the Claimant and the Claimant agrees to render non-exclusive, independent advisory and consulting services "in compliance with all applicable laws, the company's articles of incorporation and bye-laws" and the terms and conditions in the agreements.

39. In his evidence in chief Acham does not specifically deny the existence of bye-laws but merely states that he is not aware of the Defendants having bye-laws. He states that during the period that he was a director of the Defendants he does not recall any reference to such bye-laws being made by Duprey or any other person. Nor is he aware that any directors' meeting of the Defendants were held where such bye-laws were considered or approved or of any shareholders meetings or resolutions of the Defendants which confirmed such bye-laws. In this regard his evidence seems confirmatory of the manner in which matters were dealt with by Duprey rather than evasive.

40. His evidence under cross-examination on this issue is, however, slightly contradictory.

Acham was asked, and accepted, that companies in general had corporate documents which included bye-laws. In answer to the specific question whether he knew that the Defendants had bye-laws for them to function he answered yes. Nonetheless, in response to the question that the bye-laws that the Defendants have said are its bye-laws are in fact bye-laws that he as a director and the CEO of the companies would have been aware of so that the companies could function, he states: "I was not aware of any bye-laws of those companies."

41. When referred to the service agreements and the fact that all three agreements make reference to the bye-laws of the Defendants he accepts that to be the position and that this would have been brought home to him when signing the service agreements. Taken on its own I am satisfied that that paragraph in the service agreements is not necessarily an acknowledgement of the existence of bye-laws for the Defendants. Similarly, I am not convinced that the Defendants can rely on Acham's evidence in cross-examination to prove the existence of bye-laws of the Defendants and in particular that the documents described by him as bye-laws were those of the Defendants. Further, I am satisfied that given Acham's involvement with the Second and Third Defendants from their incorporation he would have known if the bye-laws were made by the directors.

42. In any event the Defendants also have to deal with section 66 of the Companies Act. Section 66(1) and (2) of the Companies Act empowers the directors of a company by resolution to make, amend or repeal any bye-laws for the regulation of the business or affairs of the company and to submit same to the shareholders of the company at the next meeting of

shareholders after the making, amendment or repeal of the bye-law. Thereafter the shareholders may by ordinary resolution confirm and amend or reject the bye-law, amendment or repeal.

43. Section 66 (3) states:

> "A bye-law or any amendment or repeal of a bye-law is effective from the date of the resolution of the directors making, amending or repealing the bye-law until-
>
> (a) the bye-law, amendment or repeal is confirmed as amended or rejected by the shareholders pursuant to subsection (2); or
>
> (b) the bye-law amendment or repeal ceases to be effective, pursuant to subsection 4,

and if the bye-law, amendment or repeal is confirmed or amended by the shareholders, it continues in effect in the form in which was confirmed or amended.

44. Section 66(4) states:

> "when a bye-law, or an amendment or repeal of a bye-law, is not submitted to the shareholders as required by subsection (2), or is rejected by the shareholders, the bye-law, amendment or repeal ceases to be effective; and no subsequent resolution of the directors to make, amend or repeal a bye-law, having substantially the same purpose or effect is effective until resolution is confirmed with or without amendment by the shareholders."

Further section 67(a) of the Companies Act provides that after the issue of a certificate of incorporation of a company a meeting of the directors of the company shall be held at which the directors may make bye-laws.

45. The position under the Act seems therefore to be that for there to be effective bye-laws of a company such bye-laws must be: (a) made by resolution of the directors at a meeting held after the issue of a certificate of incorporation; (b) be submitted to the shareholders at the next meeting of the shareholders; and (c) confirmed by the shareholders by ordinary resolution.

46. The short point is that even, if I accept that the documents relied on by the Defendants are in fact bye-laws made by the directors sometime after the incorporation of the Defendants for such bye-laws to be effective, I must be satisfied that the Defendants complied with section 66(3) and (4) of the Act in that these bye-laws were submitted to and confirmed by the shareholder, CL Financial in accordance with the Act.

47. There is no evidence of compliance with section 66 of the Companies Act. Indeed Acham's evidence is that these bye-laws were never raised at a board meeting or placed before or approved at a shareholders' meeting. If I accept this evidence it is clear that, at least with respect to the Second and Third Defendants, the Defendants have not got off first base there being no evidence that the bye-laws were made by the directors. Acham's evidence in this regard is unchallenged and I accept it.

48. At the end of the day I do not accept that the unsigned and undated documents purporting to be the bye-laws of the First Defendant are in fact the bye-laws of the First Defendant. The only evidence in this regard is that it is stated in the document. In my opinion that is not sufficient evidence upon which to base a positive finding of fact particularly since the document is undated and unsigned.

49. With respect to the other two documents although there is evidence that these documents bear Duprey's signature there is no evidence that section 66 of the Companies Act was complied with. Indeed from the unchallenged evidence of Acham it is open to me to find, and I find that the 'bye-laws' were not raised or discussed at any meeting of the directors held prior to the 20th April 2003 or at all. In the circumstances I also do not accept that the documents identified by Chin as bye-laws are in fact the bye-laws of the Defendants.

50. Although in the light of my finding with respect to the bye-laws it is not necessary for me to deal with the effect of section 25 of the Companies Act or whether bye-laws 9.2.1 and 20.1 affect the validity of the service agreements for completeness I propose to deal with these two questions as though the bye-laws are valid.

(b) The effect of Section 25 of the Companies Act

51. Section 25 of the Companies Act prevents a company from asserting against a person dealing with the company or any person who has acquired rights from the company that any of the bye-laws of the company have not been complied with "except where that person has or ought to have by virtue of his position with or relationship to the company knowledge to the contrary."

52. The simple point here is that given Acham's relationship and position as CEO of the Defendants if the bye-laws were in fact valid bye-laws he, and by extension the Claimant, would or ought to have known of the provisions. In the circumstances if on the facts before me

compliance with clauses 9.2.1 and 20.1 was necessary for the validity of the service agreements then the Defendants would not be precluded from asserting same.

(c) In the event that the bye-laws are valid do the bye-laws render the service agreements unenforceable

53. The Defendants rely on clauses 9.2.1 and 20.1 of the bye-laws. In seeking to interpret the clauses I am required to give effect to the plain English meaning of the words used and as far as it is practically possible construe the clauses so as to give them reasonable business efficacy.[4]

54. Clause 9.2.1 states:

> "The directors for the time being of the company shall not be under any duty or responsibility in respect of any contract, act or transaction whether or not made, done or entered into in the name or on behalf of the company, except such as are submitted to and authorised or approved by the directors."

55. It would seem to me that on a reading of the clause and giving effect to the plain meaning of the words it is clear that the clause deals with the personal liability of the directors of a company and simply provides for the directors not to be personally liable for contracts, acts or transactions done or entered into in the name of the company unless those contracts have been submitted to and authorised or approved by the directors. In this regard therefore I agree with the submission of the Claimant that the clause is concerned with the personal liability of the directors for such transactions or contract and not with the enforceability or binding nature of

[4] Holmes v Lord Keyes[1959] Ch 199 at page 219.

these transactions on the company. The question for my determination in this action is whether the service agreements are enforceable as against the Defendants and not whether the directors are personally liable to the Claimant under the agreements. In my opinion therefore clause 9.2.1 has no bearing on the enforceability of the service agreements.

56. In my opinion were the clause to have the meaning suggested by the Defendants it would have been simple to leave out the words: "The directors for the time being of" and have the clause merely read 'The company shall not be under any duty or responsibility in respect of any contract, act or transaction whether or not made or entered on behalf of the company except such as are submitted to and authorised or approved by the directors.'

57. In terms of formatting the clause 20.1 contained in the various documents is slightly different. The contents however are the same. Clause 20.1[5] states:

> "Contracts, deeds, documents or instrument in writing requiring the signature of the company may be signed by:
>
> (a) any two (2) directors; or
>
> (b) any director together with the Secretary

and all contracts, documents or instruments in writing so signed shall be binding upon the Company without any further authorisation or formality. The directors shall have power from time to time by resolution to appoint any officers or persons on behalf of the Company, either to sign certificates for shares in the Company and contracts, documents or instrument in writing generally or to sign specific contracts, documents or instruments in writing."

[5] as formatted in the documents purporting to relate to the Second and Third Defendants

58. In my opinion the first part of this clause deals with proof and merely provides that insofar as the company is concerned where a contract or other document is signed by any two directors or any director together with the secretary then no further authorisation or formality is required for the contract or other document to bind the company. So for example, absent section 66 of the Act, if the second signature on the document identified by Chin as the bye-laws of the Second Defendant had been identified as that of the secretary of the Second Defendant then pursuant to Clause 20.1 the document would have been deemed to be the bye-laws of the company without the need for any further proof of authorisation or formality.

59. Contrary to the submissions of the Defendants the clause does not however provide that **only** contracts, documents or instruments in writing signed by any two directors or any director together with the secretary are binding upon the company. Indeed the use of the words "without further authorisation or formality" to my mind suggests that in the absence of the signatures of two directors or a director and a secretary it is still possible for the document to be binding on the company but making it so would require further authorisation or formality. In other words further proof of authorisation by the company would be necessary. I do not accept the submission of the Defendants that the use of the word "further" indicates that execution in the manner specified therein is to be regarded as the requisite authorisation and formality when entering into contracts. In my opinion the clause merely provides that once the document is signed in the manner specified no additional authorisation and formality is required to bind the company.

60. That this is the position is to my mind confirmed by the fact that the clause goes on to confirm that despite what is contained above the directors have the power to appoint persons to sign documents on behalf of the company. In accordance with the clause therefore, should that be done, to be binding on the company the "further authorisation," that is, the directors' resolution to appoint such a person would have to be established.

61. I am satisfied that were the documents identified by Chin the bye-laws of the Defendants neither bye-law 9.2.1 or 20.1 would affect the validity of the service agreements.

On the assumption that clauses 9.2.1 and 20.1 apply to the service agreements, are the service agreements enforceable in any event.

(a) are the service agreements enforceable because they were entered into at the instigation of and with the full approval, consent and knowledge of CL Financial and Duprey and the Defendants took the benefit of them.

62. On the evidence it cannot be disputed that the Defendants took the benefit of the service agreements. Neither can it be disputed that the service agreements were entered into with the full approval, consent and knowledge of Duprey. The Claimant submits that the service agreements are binding on the Defendants as their sole shareholder CL Financial consented to/or ratified the agreements through its acquiescence in the execution of the agreements and the fulfilment of their terms. According to the Claimant it is well established that where a company enters into a transaction or agreement that is intra vires the company but was not signed or executed by its representatives in accordance with the bye-laws the company cannot deny the transaction or

agreement if all the shareholders have given their consent to same whether such consent is given formally or informally.[6]

63. In this regard it is clear that, subject to compliance with any of its bye-laws, the Defendants had the power to enter into agreements of this type. Contracts of this nature are therefore intra vires the Defendants.

64. While accepting the principle in law relied on by the Claimant the Defendants submit that in order to rely on this principle the Claimant must establish knowledge on the part of the board of directors of CL Financial of the acts of Duprey acting in his capacity as the director of the Defendants. In this regard the Defendants rely on the case of Marsh v Joseph and the statement of Lord Russell of Killowen that:

> "to constitute a binding adoption of acts a priori unauthorised these conditions must exist: (1) the act must have been done for and in the name of the supposed principal, and (2) there must be full knowledge of what those acts were, or such an unqualified adoption that the inference may properly be drawn that the principal intended to take upon himself the responsibility for such acts, whatever they were."[7]

They submit that there is no plea that CL Financial's board had any knowledge far less full knowledge of Duprey's actions.

[6] Einsberg v Bank of Nova Scotia(1965) SCR 681; In re Horsley &Weight Ltd(1982) Ch. 442
[7] [1897] 1 Ch 213 at pages 246 and 247.

65. In this regard it is not in dispute that, at all material times, Duprey operated as chairman of the board of directors of CL Financial, the sole shareholder and chairman of the boards of all the Defendants. The Claimant submits that there are two ways in which a person's knowledge can be attributed to a company (i) as agent of the company and (ii) where the person is deemed to be the company in the sense that his knowledge is the company's knowledge and his acts the company's acts.[8]

66. The Claimant submits that on the basis that the service agreements did not comply with the Defendants' bye-laws, then, Duprey as a director and chairman of the board of directors of CL Financial was under a duty to inform the board of CL Financial of that fact and in those circumstances, Duprey's knowledge is to be imputed to CL Financial. In this regard the Claimant relies on the case of Belmont Finance Corporation v Williams Furniture Ltd and others (No2)[9].

67. The Claimant also submits that on the evidence Duprey is to be treated as the directing mind and will of CL Financial where the Defendants' entry into the service agreements was concerned. I am not convinced that there is sufficient evidence before me for me to come to the conclusion that insofar as the service agreements are concerned Duprey was the directing mind and will of CL Financial. There is in fact not much evidence of the relationship between Duprey and the board of CL Financial. I prefer to rest my decision, if it was necessary to do so, on the fact that if the Defendants' entry into the service agreements was contrary to the Defendants' bye-laws then Duprey was under a duty to inform the board of CL Financial of this fact, and having not done so his knowledge of the transaction is to be imputed to CL Financial.

[8] El Ajou v Dollar Holdings plc[1994] 2 All E.R. 685 per Hoffman LJ @page 701
[9] [1980] 1 All ER 393

68. To adopt the words of Buckley LJ in the Belmont Finance case in dealing with multiple directors:

> "their knowledge must, in my opinion be imputed to the companies of which they would directors and secretary, for an officer of a company must surely be under duty, if he is aware that the transaction into which is company or wholly owned subsidiary is about to enter is illegal or tainted with illegality, to inform the board of that company of the fact. Where an officer of a company is under a duty to make such a disclosure to his company, his knowledge is imputed to the company..."[10]

Further it would seem that on the facts before me there is evidence of such an unqualified adoption of the service agreements that the inference may properly be drawn that the principal intended to take upon himself the responsibility for such acts, whatever they were. In this regard the instructions to Chin from CL Financial for the payment to Acham of the $50,000.00 a month is an example.

69. In the circumstances I am of the opinion that were the documents identified by Chin as the Defendants' bye-laws in fact the bye-laws of the Defendants and were the validity of the service agreements dependent on compliance with bye-laws 9.2.1 and 20.1 the service agreements would have in any event been enforceable because they were entered into at the instigation of and with the full approval, consent and knowledge of Duprey as agent for CL Financial and the Defendants took the full benefit of them.

[10] at page 404

(b) Are the Defendants in any event estopped from denying that the agreements are contractually binding on them

70. Again this question presupposes that the bye-laws are valid bye-laws of the Defendants and they mandated that the service agreements be executed and approved in accordance with clauses 9.2.1 and 20.1.

71. The Defendants accept that an estoppel by conduct will arise to prevent a person relying on a particular state of affairs created or encouraged by that person's words or conduct where it would be unjust or inequitable for him to do so but submit that this is only the case if that person is not legally disabled from creating that state of affairs.

72. In this regard the Defendants rely on the following statement from the Halsbury's dealing with estoppel by representation:

> "A distinction must be made between acts which are outside a body's legal powers and those for the validity of which certain formalities are necessary. In the latter case persons dealing without notice of any informality are entitled to presume that all things have been rightly and duly performed."[11]

73. Accordingly on the basis that the bye-laws were valid; required the service agreements be executed and approved in accordance with clauses 9.2.1 and 20.1 and that Acham as the CEO of the Defendants must be taken to have knowledge of these bye-laws the Defendants submit that

[11] Halsbury's Laws of England 5th Edition Vol. (16(2) at paragraph 1053

the Claimant ought not to be allowed to assert that it was led by the representations of the Defendants to believe that the service agreements are valid and enforceable.

74. The Claimant here however relies on the concept of estoppel by convention and in particular a statement of the law in this regard by Lord Steyn in the case of The Indian Endurance (No.2) Republic of India v India Steamship Company Limited:

> "It is settled that an estoppel by convention may arise where parties to a transaction act on an assumed state of facts or law, the assumption being either shared by them both or made by one and acquiesced in by the other. The effect of an estoppel by convention is to preclude a party from denying the assumed facts if it would be unjust to allow him to go back on the assumption."[12]

75. I accept this to be a correct statement of the law. In the instant case, the question here is whether such an estoppel arises as a result of the assumption by both the Claimant, through Acham, and the Defendants, through Duprey, that the service agreements were enforceable and binding on the Defendants.

76. It is not in dispute that both parties, Acham on behalf of the Claimant and Duprey on behalf of the Defendants, signed the service agreements. It is not in dispute that both parties for many years acted on the agreements. Indeed Chin confirms a monthly payment to Acham of $50,000.00. To my mind these facts alone are sufficient to establish the common assumption that the service agreements were binding on the Defendants. Further by their letters of the 11th September 2011 the Defendants acknowledge the existence of consultancy agreements with the

[12] Per Lord Steyn [1998] AC 878 at page 913.

Claimant dated the 1st March 2001. Indeed the termination payments made to the Claimant all accord with the fixed monthly payments payable by the service agreements and acknowledge the Claimant's entitlement to expenses associated with travel and housing accommodation.

77. Further it is clear on the evidence that the Defendants all reaped the benefits of the consultancy and advisory services provided by the Claimant through Acham. It seems to me that in these circumstances to allow the Defendants to now deny the validity of the service agreements is unconscionable and unjust to say the least. On the evidence before me I am satisfied that an estoppel by convention has arisen thereby preventing the Defendants from denying the validity of the service agreements.

What sums, if any, are due to the Claimant from the Defendants pursuant to the service agreements

78. The Claimant seeks:

(a) As against the First Defendant: housing and related expenses in the sum of TT$582,120.00 and an acquisition bonus of US$280,000.00 together with VAT in the sum of US$42,000 with respect to the Petro-Andina transaction;

(b) As against the Second Defendant: an acquisition bonus of US$1,700,000.00, together with VAT in the sum of US$255,000.00 with respect to the SOOGL transaction; and

(c) as against the Third Defendant: monthly payments in the sum of TT$790,000.00, together with VAT in the sum of TT$118,500.00; an acquisition bonus of CAN$110,000.00 together with VAT in the sum of

CAN$16,500.00 with respect to the Celestial transaction and an acquisition bonus of US$214,000.00, together with VAT in the sum of US$32,100.00 with respect to the Lennox and Pioneer transaction.

79. With respect to the entitlement of the Claimant to these sums, subject to its submissions on the validity of the service agreements and the Limitation of Certain Actions Act, the Defendants merely put the Claimants to the proof of the facts relied upon by it. Acham's evidence that the Claimant was at all material times registered under the Value Added Tax Act and charged its clients and paid VAT pursuant to its provisions has not been challenged.

80. Given the admissions made by the Defendants in their defence and the unchallenged evidence of Acham I am satisfied that the Claimant has proved its entitlement to the acquisition bonus with respect to the Petro-Andina transaction; the Celestial transaction and the Lennox and Pioneer transaction. With respect to the SOOGL transaction however there is an issue of fact as to whether the cost of fulfilling the obligations amounted to US$47,960, 509.00, as claimed by the Defendants, or the US$52,000,000.00 alleged by the Claimant. In its submissions filed on 26th March 2014 the Claimant indicates its intention to rely on the admission of the Defendants in this regard. Accordingly the Claimant now seeks the sum of US$1,619,210.00, together with VAT in the sum of US$242,881.00 as the acquisition bonus payable on the SOOGL transaction rather than the US$1,700,000.00 and VAT in the sum of US$255,000.00 originally claimed. There is therefore no dispute of fact with respect to this transaction and the Claimant has proved its entitlement to the acquisition bonus claimed.

81. With respect to the monthly payment of $10,000.00 due from the Third Defendant under the service agreement, Acham's undisputed evidence is that during the period the 1st March 2001 to 15th September 2011 the Claimant provided consultancy services to the Third Defendant but was not paid the monthly sum in accordance with the service agreement. The Claimant however only seeks payment for the period the 1st March 2001 to the 30th September 2007. In the circumstances I find that the Claimant has proved its entitlement to the sum of TT$790,000.00 from the Third Defendant for monthly payments due to it for the period the 1st March 2001 to the 30th September 2007 pursuant to clause 4 of the agreement.

82. The evidence of Acham with respect to the payment of the reimbursable housing expenses is that accommodation was provided to him by way of apartments owned by a subsidiary of CL Financial. He says that between the period early 2001 to November 2010 the rent for these apartments was paid to one or the other of the First and Third Defendants by the Claimant. Acham however fails to substantiate his claim for the reimbursement of the rent paid for the period prior to January 2006. In the absence of such proof, therefore, those sums are not recoverable.

83. Acham states that between the period January 2006 to the 31st January 2007 the Claimant paid a monthly rent of TT$7,500.00 to the First Defendant and between the period the 1st August 2007 to the 30th November 2010 it paid the rent in the same sum to the Third Defendant. In the months of September and October 2010 rent in the sum of TT$6,350.00 and in the month of November 2010 rent in the sum of TT$5,715.00 was paid to the Third Defendant.

In or around January 2011 he was forced to vacate the apartment and thereafter rent in the sum of US$2,500.00 a month was paid by the Claimant for his accommodation.

84. On the evidence before me I am satisfied that the Claimant has proven its entitlement to be reimbursed the sum of TT$151,200.00 from the First Defendant and the sum of TT$290,136.00 from the Third Defendant with respect to housing expenses for the periods 1st January 2006 to the 31st July 2007 and the 1st August 2007 to the 30th November 2010 respectively. The Claimant is also entitled to recover the sum of US$22,500.00 from the First Defendant representing these expenses for the period the 1st January 2011 to the 30th September 2011.

Are any of these sums irrecoverable by virtue of the Limitation of Certain Actions Act?

85. With respect to claims founded in contract section 3 of the Limitation of Certain Actions Act Chap 7:09 provides for a period of four years from the date on which the cause of action accrued for bringing the action. This action was commenced on the 31st May 2011. The Defendants plead and submit that with respect to the claims for money due prior to the 30th May 2007 these claims are now statute barred since the cause of action with respect to these sums would have accrued more than four years before the commencement of this action.

86. The Defendants allege that with respect to the monthly payments of $10,000.00 these sums became due and owing at the end of each month. With respect to the reimbursement of the housing and related expenses they submit that these sums became due and owing upon the procurement of same. I understand this to mean upon the payment of the rent each month by the

Claimant. With respect to the acquisition bonuses they submit that these sums became due on the completion of each transaction.

87. On the evidence before me the question now for my determination is whether the Claimant is statute-barred from recovering from the First Defendant the sum of $7,560.00 a month for the period from the 1st January 2006 to the 30th May 2007 with respect to the reimbursable housing expenses and from the Third Defendant the sums due with respect to the monthly payments of $10,000 for the period 3rd March 2001 to the 30th May 2007 and the acquisition bonus for the Celestial transaction. The Celestial transaction was completed in January 2007. With respect to the Lennox and Pioneer transaction despite the Defendants' submission in this regard the unchallenged evidence is that the agreement was completed in December 2007. In these circumstances section 3 of the Act does not apply to the acquisition bonus payable to the Claimant on this transaction.

88. The Claimant, on the other hand, submits that on a proper construction of the agreement with the Defendants they were required to reimburse the Claimant for rents paid within 30 days after being issued with an invoice for such a rent. The invoice for such reimbursement was only issued in June 2010 the cause of action therefore only arose on that date and the claim for housing and related expenses is not statute barred. In truth and in fact according to the evidence of Acham an invoice was first issued in August 2009 for payments due prior to August 2009. Not much turns on this fact though because if the Claimant is right then in any event the claim would have been brought within the four year period.

89. With respect to the acquisition bonuses the Claimant submits that upon a proper construction of the service agreements the commissions became due and payable 30 days after the issue of an invoice and a written demand for same. This construction, the Claimant submits, is supported by the fact that under the service agreements the Claimant is an independent contractor and Acham's evidence that it is customary that the fees and expenses of consultants engaged in the Industry to fall due for payment 30 days after the consultant issues an invoice for such fees.

90. Alternatively the Claimant submits on a proper construction of the service agreements it was entitled to be paid the acquisition bonus within a reasonable time after the completion of the transaction. In accordance with the evidence of Acham, it says, 30 days was a reasonable time.

91. It is trite law that with respect to contracts time begins to run or the cause of action accrues as soon as there is a breach of the contract. The question of when a breach of a contract occurs is an issue of fact to be determined by the Court in the light of the surrounding circumstances. In this case the claims are for money due and owing pursuant to clause 4 of the service agreements. The relevant date therefore would be the date on which the sums became due and owing under the clause. Indeed it seems to be accepted by both sides that the cause of action accrued when the payments became due.

92. In the circumstances the first place to begin is with a consideration of the provisions of the service agreements and in particular clause 4. Clause 4[13] in its entirety provides:

> "Consultant shall receive as compensation for the performance of all services hereunder the sum of (Ten Thousand Trinidad and Tobago dollars) TT$10,000 per month for service. The Company will provide the Consultant with an appropriate vehicle for the performance of his duties and responsibilities. Alternately, the Consultant will procure its own vehicle and will be reimbursed by the Company for costs associated with its acquisition and operation. Alternatively, the Consultant will procure its own accommodation and be reimbursed the housing and related expenses.
>
> In addition, the Company will pay to the Consultant a merger, sale and /or acquisition success bonus in a cash amount equal to two percent (2.0 %) of the Transaction Value calculated and payable in respect of each transaction with respect to Primera Oil and Gas Limited and related companies. Consultant shall be entitled to an annual performance bonus in an amount to be determined at the absolute discretion of the Board based upon overall corporate performance and contributions of the Consultant thereto. Consultant shall provide details of services performed on a monthly basis. The company shall pay Consultant on a monthly basis at the end of month after submission of consultant's statement for the same month's services."

93. The only other evidence specifically directed to the method of payment of compensation under the services agreements comes from Acham. According to him based on his

[13] Service agreement with the Third Defendant.

experience in the Oil and Gas Industry, in the absence of express contractual provisions to the contrary, it is customary that the fees and expenses of consultants engaged by companies become due for payment 30 days after the consultant issues an invoice to the company for such fees and expenses. This evidence was not challenged nor was it contradicted by Chin. As financial controller of the First Defendant since 1991 it is I think reasonable to assume that he would be aware of any custom with respect to the payment of fees to consultants.

94. On the other hand insofar as we have any evidence as to the method of payment of the monthly sum it comes from Chin. According to Chin's unchallenged evidence he received instructions from Duprey by memorandum dated 25th May 2000 to pay to Acham the sum of TT$50,000.00 a month as remuneration. He says that in accordance with the instructions he disbursed the sums from the accounts of the First Defendant.

95. I am presented with two seemingly contradictory positions with respect to payments both of which are unchallenged. How are these two bits of evidence to be reconciled. It could only be that, while of some assistance, evidence of the method by which sums due are paid is not necessarily determinant of when the money becomes due. It would seem to me to be reasonable in circumstances where fees are at large, or have to be ascertained, as is generally the case with consultancy fees and reimbursements, that those fees and/or expenses only become due when they have been quantified. Since quantification in a large measure generally comes from the consultant in that context Acham's evidence makes absolute sense.

96. That said it cannot be that a consultant can wait for 10 years and then present an invoice and expect payment. This makes no business sense. It also defeats the whole purpose of the limitation acts. Not only will this result in a defendant having a claim hanging over his head for an indefinite period but a lapse of time brought about by a claimant will make disproof of a claim more difficult. As well it certainly runs afoul of the concept that a person who does not promptly act to enforce his rights should lose them. It would seem to me that in the circumstances Acham's evidence must be taken solely at face value and limited to what usually applies in the Industry but not necessarily conclusive of when the cause of action accrues.

97. That this is the position is to my mind confirmed rather than weakened by the evidence of Chin with respect to payments by the First Defendant of the monthly payment of $50,000.00 to Acham. It is clear that in the case of the monthly payments Duprey determined that payment would be in a particular manner. In this case, although with respect to monies payable to a consultant, the sums were ascertainable. It would seem to me therefore that the manner by which the payments are usually made does not necessarily determine when the payments become contractually due but in the absence of any contractual arrangements consideration must also be given to the type of payment and all the relevant circumstances.

98. The first port of call however is the contractual arrangement. The service agreements provide for four types of payment: a flat monthly rate; reimbursement of costs for transportation and housing expenses; the acquisition bonus; and an annual performance bonus. The annual performance bonus is not an issue in this case. Nor is the reimbursement of costs for transportation.

99. The agreements specifically state that 'the consultant shall provide details of services performed on a monthly basis and the company shall pay the consultant on a monthly basis at the end of month after submission of consultant's statement for the same month's services'. At first blush this seems not applicable to services for which the compensation is ascertainable or where the compensation is not tied to the consultant's performance.

100. Some assistance however is obtained from an examination of the clause dealing with compensation in the agreements of March 1999 and 2000 with the First Defendant. It is clear from the evidence of Acham that the entry into the service agreements was a natural progression from these initial agreements. Indeed it would seem from his evidence that for the period 2001 to 2006 while the type and quantum of compensation payable to the Claimant for Acham's services was increased by way of an oral agreement these earlier agreements were the only written agreements describing the manner by which his services were to be provided to and compensated by the Defendants. These agreements may therefore shed some light on how clause 4, and in particular that part of the clause which provides for the monthly payment to be made after submission of the consultant of details of service, is to be interpreted.

101. In the earlier agreements the clause relating to the payment of compensation is clause 4 and is the same in both agreements. The clause states:

> "Consultant shall receive as compensation for the performance of all services hereunder the sum of $30,000 per month of service. Consultant has agreed to accept payment for services rendered in 2000 on before the 15th December 2000. Consultant shall provide details of services performed on a monthly basis. After 15th December 2000 company shall pay consultant on a monthly basis 30

days after submission of consultant's statement for the previous month's services."

102. A comparison of the two clauses, clause 4 of the earlier agreements and clause 4 of the service agreements, reveals that except for the inclusion of additional compensation the structure of the clauses are more or less the same. In both cases the Claimant was required to provide a monthly statement of services and payment by the Defendants was linked to the provision of such a statement. In this regard the clause seems to accord with the customary practice described by Acham except the clauses specifically provide a time by which such statement be delivered. It is clear therefore that insofar as the monthly sum is concerned, despite the fact that a fixed sum was payable, payment was only due after the submission of that monthly statement from the Claimant.

103. Whereas the earlier agreements fixed the time for payment to 30 days after the submission of the statement that specific requirement was not repeated in the service agreements. Rather the service agreements provides for the payment to be made 'on a monthly basis at the end of month after submission of consultant's statement for the same month's services'.

104. In interpreting this I am required to adopt the plain English meaning of the words and as possible construe the clause so as to give it reasonable business efficacy[14] while at the same time ensuring that I do not introduce or imply terms which seek to make the clause fairer or more reasonable.[15] The clause to my mind suggests two interpretations, at least with respect to the

[14] Holmes v Lord Keyes [1959] Ch 199 at 219
[15] Attorney General of Belize and ors v Belize Telecom and ors(2009) UKPC 10.

fixed monthly sum, that the statement of services be provided monthly and that the payment be made at the end of **a** month after the submission for the same month's services or that the statement of services be provided monthly and that payment be made at the end of **the** month after the submission for the same month's services.

105. It would seem to me in order to give effect to the words 'same month's services' the clause must be read to provide the payment of the fixed sum almost simultaneously with and within the same month as the submission of the consultant's statement. This makes sense since the sum is readily ascertainable and is in fact a fixed monthly sum. Further if the parties intended to provide for the payment to be due one month after the submission of the statement there would have been no need to change the wording used in the earlier clause 4. Insofar as the monthly sum is concerned therefore I am satisfied that the cause of action accrued at the end of each month. In the circumstances the Claimant is not now entitled to claim any sums due from the Third Defendant on the claim for any fixed monthly payments which accrued prior to the 30th May 2007. Accordingly the Claimant is only entitled to the payment of the sum of TT$10,000 from the 31st May 2007.

106. The question now for consideration is whether this requirement applies to the other types of compensation under the section. There is nothing in the clause which disapplies it to these other types of payments. Neither is there any other provision in the service agreements which apply to these types of compensation. The problem is that the provision of details of services performed during the month would not necessarily provide the information necessary to ascertain the quantum of these other payments. Is this then one of the situations where it is open

to a court to imply that with respect to the other types of compensation payable the provision of the 'details of services' really refer to invoices or statements with the information necessary to make the relevant payments.

107. Would implying this "spell out in express words what the instrument, read against the relevant background, would reasonably be understood to mean."[16] I think it does. In my opinion "it is the meaning which the clause would convey to a reasonable person having all the background knowledge which would reasonably be available to the audience to whom the instrument is addressed."[17]

108. In these circumstances I am satisfied that the Claimant was required to provide a statement of his reimbursable charges upon the payment of the rent to the First and Third Defendants on a monthly basis and that the reimbursement became due and owing at the end of each month. In my opinion the particular circumstances that applied did not render such an interpretation unworkable since, except for the period after January 2011 when the arrangement changed the rents were being paid since 2001 to the First or Third Defendants. In any event it is customary for rents to be payable at the beginning and not the end of the month.

109. Similarly with respect to the acquisition bonus I think it is permissible to imply that the monthly statement of services apply to invoices or details of the compensation payable in this regard. In the circumstances the acquisition bonuses became due and payable at the end of the

[16] Per Lord Hoffman in the Attorney-General of Belize and others v Belize Telecom Limited and others Privy Council Appeal No 19 of 2006 at paragraph 21
[17] Per Lord Hoffman at paragraph 6.

month in which the transaction was completed. In these circumstances the acquisition bonus with respect of the Celestial transaction is not recoverable by the Claimant.

110. In the circumstances therefore the Claimant is entitled to the following sums:

1. From the First Defendant: (a) the sum of TT$22,683.00 representing housing and related expenses for the months of May, June and July 2007; and (b) the sum of US$266,000.00 or its Trinidad and Tobago equivalent together with VAT in the sum of US$39,900.00 or its Trinidad and Tobago equivalent representing the acquisition bonus payable on the Petro-Andina transaction.
2. From the Second Defendant: the sum of US$1,619,210.00 or its Trinidad and Tobago equivalent together with VAT in the sum of US$242,881.50 or its Trinidad and Tobago equivalent representing the acquisition bonus payable on the SOOGL transaction.
3. From the Third Defendant: (a) the sum of $50,000.00 representing the monthly payments due for the period 31st May 2007 to 30th September 2007 together with VAT in the sum of $7,500.00; (b) the sum of US$214,000.00 or its Trinidad and Tobago equivalent together with VAT in the sum of US$32,100.00 or its Trinidad and Tobago equivalent representing the acquisition bonus on the Lennox and Pioneer transaction; (c) the sum of TT$298,135.00 representing housing and related expenses for the period 1st August 2007 to 30th November 2010; and (d) the sum of US$20,000.00 or its Trinidad and Tobago equivalent representing housing and related

expenses for the period 1st January 2011 to 31st August 2011 together with VAT in the sum of US$3,000.00 or its Trinidad and Tobago equivalent.

Dated this 9th day of June, 2014.

Judith Jones
Judge