COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2021/CLE/gen/00897

BETWEEN

RONDON WILLIAMS

1st Claimant

AND

RIA SMITH

2nd Claimant

AND

LENOVO CONSTRUCTION COMPANY LIMITED

3rd Claimant

AND

TRACY AAA FERGUSON

1st Defendant

AND

JOSEPH PAUL JOHNSON DBA / AVERY'S RESTAURANT & BAR

2nd Defendant

Before:	**Her Ladyship The Honourable Madam Acting Justice Cheryl Bazard KC**
Appearances:	**Ms. Darell Taylor for the 1st, 2nd and 3rd Claimants**
	Mrs. Courtney Pearce Hanna for the 1st and 2nd Defendant
Hearing Date:	**15th and 16th July 2025**

Partnership — Oral Agreement – Dissolution of partnership – Account of all partnership dealings

RULING

BAZARD J (Acting):

INTRODUCTION

[1.] By a specially endorsed Writ of Summons filed on 10 August, 2021, the Claimants claimed the sum of $634,961.76; damages pursuant to breach of contract; loss of income; loss of profit; interest pursuant to the Civil Procedure (Award of Interest) Act, 1992; further or other relief and Costs vis-à-vis a dispute over a purported oral partnership agreement between the First and Second Claimants Rondon Williams and Ria Smith and the Defendants, Tracy Ferguson and Joseph Johnson for the operation of Avery's Restaurant and Bar located in Adelaide Village.

[2.] Although the Writ mentions the "purported oral partnership agreement", the claim was couched in purely contractual terms. While the court recognizes that, at its core, a partnership is a contractual relationship, whether written or oral, it must also hasten to add that the legal duties and remedies arising from a partnership are not always the same as those in standard contract law. Further, the form of pleadings does not bind the court. The court has the power to re-characterize the claim as necessary to achieve a just outcome. I will return to that.

Background Facts

[3.] The First and Second Claimants (hereinafter referred to as "the Claimants) are the officers and shareholders of the Third Claimant. The Third Claimant is a Bahamian Company duly incorporated under the Laws of the Commonwealth of The Bahamas.

[4.] The First and Second Defendants (hereinafter referred to as "The Defendants") are husband and wife and the Second Defendant is the purported owner of Avery's Restaurant & Bar (hereinafter referred to as "Avery's").

[5.] The First and Second Claimants and the Defendants met when they all worked at Bahamar and built a friendship and later a business relationship between each other.

[6.] The Defendants' case was outlined in a Defence filed on 24 May 2022. In their Defence, the Defendants argued that in July 2019, there had been a discussion between the Claimants and the Defendants about the Defendants' plans to reopen Avery's. They asserted that they had already commenced renovation works on the building and were in negotiations with the Claimants to establish an operational partnership, which was subject to contract. The Defendants also claimed that a Partnership Agreement was drafted but never signed by the Plaintiffs. This agreement provided for three options, but the Plaintiffs never indicated which one they chose;

therefore, no binding agreement existed. What is inherently conflicting in the allegation of discussions only being had in July, 2019, is that the draft Partnership Agreement is dated August, 2018. Further, as per paragraph 16 of the Defence, "Avery's reopened in or during September 2019 to the general public." If that is to believed, then the time between the discussions and completion of the renovation works was a mere 2 months at best.

[7.] The Defendants plead at paragraph 8 of their Defence that,

> **"...In the circumstances there was no agreement in place. Nevertheless, the Plaintiffs moved in and commenced renovation works without ever producing a scope of works and/or budget for agreement by the Defendants. The Plaintiffs never discussed the cost of the works with the Defendants before, during and after completing the works until a demand letter was delivered to the defendants some two (2) years later. In the premises the Defendants were entitled to assume based on the conduct of the Plaintiffs reasonably had opted for Option B of the proposed Partnership Agreement."**

[8.] The Defendants further denied the claims of the Claimants that they were to be added to Avery's bank account and put them to strict proof of the allegation made. The Defendants in summary, disagreed with the relief sought by the Claimants and averred that the alleged breaches are false, malicious, and intended to injure the Defendants.

[9.] There was no Reply to the Defence.

[10.] The Non-Agreed Bundle of Documents for the Claimants was filed on 3 March 2025. At TAB 23 of the bundle is the Defendant's Affidavit of Merit, which includes the draft Partnership Agreement marked as Exhibit TF-1. Clause 3.2 provides as follows:

> **"3.2 <u>Capitalisation</u>**
>
> **<u>Option A</u>**
>
> **Williams pays Johnson a buy-in fee of $155,000 (representing approx.**
>
> **50% $303,000, being the current value of the land and building), and all renovation and opening costs are split by Johnson and Williams on a 50/50 basis.**
>
> **<u>Option B</u>**
>
> **Williams pays all costs associated with renovations, including labour and materials, and opening costs, with no buy-in payable to Johnson.**
>
> **<u>Option C</u>**
>
> **Williams pays Johnson a buy in fee of $75,000.00. Williams covers all renovation costs and Johnson and Williams split opening costs 50/50.**

[11.] Clause 3.4 provides:

> **"3.4 <u>Net Profit</u>**
>
> **Each Partner shall be entitled to 50% of the net profits of the business (after overhead expenses), and all losses occurring in the course of the business shall be borne in the same proportion. Distribution of profits shall be made on the 30th day of each month or quarterly, as may be agreed between the Partners. The net profit of the partnership shall be computed utilising generally accepted accounting principles (as defined by International Accounting Standards)."**

Issues:

[12.] Having regard to the pleadings, the issues for determination can be framed as follows:-

1) **Does the oral agreement constitute a partnership agreement pursuant to the Partnership Act and can it be legally binding and enforceable?**
2) **Does the absence of a written partnership agreement automatically invalidate the partnership?**
3) **If a partnership is deemed to exist, what is the Claimant's entitlement?**
4) **Are the Claimants entitled to relief under the equitable principles of proprietary estoppel and unjust enrichment?**

Evidence

[13.] At the trial, the First Claimant ("the Claimant") gave evidence on his own behalf. No other witnesses were called. The Second Claimant did not appear and by Order of Madam Justice Carla Card Stubbs, the ability to join the proceedings via zoom was denied. There is no evidence that the Third Claimant is a proper party to the action, there having been no evidence of any agreement between itself and the Claimants and accordingly the action by the Third Claimant against the Defendants is dismissed. The Court confines its consideration therefore to the First Claimant only.

The Claimant

[14.] The Claimant's evidence in chief was contained in his Witness Statement filed on 15 September 2023, and he was cross-examined thereon. During cross examination the Claimant was shown the draft partnership agreement which he acknowledged receiving and reviewing. He stated that he did not sign the draft agreement because he disagreed with the clauses regarding the ownership percentage and succession. He testified that under Clause 3, Option B does not say that it gave him 50% interest in the business, only Options A and C.

[15.] The Claimant was shown TAB 17 of the Claimant's Non-Agreed Bundle of documents, which comprised the Claimant's List of Documents. At pages 89 and onwards, Counsel for the Defendant extensively questioned him regarding the accuracy of the amounts listed and cross

referenced the invoices to the line items. The Claimant acknowledged that the majority of the invoices exhibited in the list of documents were either duplications, quotes, or not related to Avery's. He also accepted that no evidence was adduced in support of line items under "Combined Invoices 1" through to the end of the spreadsheet.

Avery's Restaurant Bar and Lounge

Rehabilitation, ReOpening and Operating Cost

Invoice /Receipt Number	Date	Vendor	Description	Cost	
887012	7/30/2019	Quality Home Centre	Chest Freezer	$ 387.83	
181229	7/18/2019	The Paint Place	Paint	$ 80.80	
153336	4/18/2019	The Paint Place	Paint	$ 799.78	
154081	5/23/2019	The Paint Place	Paint	$ 182.78	
157052	5/29/2019	The Paint Place	Paint	$ 185.94	
1203181	7/20/2019	Wynns Home Center	Corner Braces	$ 39.88	
1180448	5/21/2019	Wynns Home Center	Plywood CDX	$ 474.45	
1183486	6/5/2019	Wynns Home Center	Screws & Sand Paper	$ 158.76	
INV501	7/1/2019	Solution Capital	Post Construction Cleaning	$ 1,400.00	
1-973265	5/22/2019	PYP	Caulking	$ 26.94	
1-958290	5/27/2019	PYP	Paint Supplies	$ 263.36	
6998	5/5/2019	Wood Secure Bahamas Ltd	Doors	$ 5,330.00	
7018	5/18/2019	Wood Secure Bahamas Ltd	Screens	$ 1,275.00	
7015	5/13/2019	Wood Secure Bahamas Ltd	Guttering	$ 3,500.00	
7127	7/17/2019	Wood Secure Bahamas Ltd	Hurricane Impact Windows	$ 2,100.00	
77114	5/21/2019	CoolTech Air	AC Grill & Filters	$ 298.88	
4508	5/4/2019	Mikes Stainless Steel	Metal Fabrication	$ 800.00	
699440/2	6/4/2019	Rollys Lumber	Wood & Supplies	$ 127.67	
428717	4/25/2019	Eagle Electrical & Lighting	Electrical Supplies	$ 19.49	
T-00182757	4/25/2019	AG Electric	Electrical Supplies	$ 177.24	
T-00182484	4/24/2019	AG Electric	Electrical Supplies	$ 171.18	
T-00182487	4/24/2019	AG Electric	Electrical Supplies	$ 393.63	
T-00182025	4/18/2019	AG Electric	Electrical Supplies	$ 1,090.84	
12128	4/16/2019	Carpet World	Wood Flooring	$ 4,830.00	
842	4/15/2019	Elite Safety and Fire Protection	Fire Suppression System	$ 8,980.00	
			Combined Invoices 1	$ 83,541.08	
			CL Appliances - Appliance Cost	$ 12,100.00	
			Injection of Cash	$ 25,000.00	
			Combined Invoices 2	$ 5,388.74	
			All Bedroom Partitions	$ 6,500.00	
			Ground Floor Room Partition with Decorative Divider	$ 6,623.97	
			2 Brand New Wardrobes	$ 1,000.00	
			Installation of Wooden Flooring Upstairs	$ 750.00	
			Purchase of Hooks	$ 700.00	
			Murals on Wall	$ 1,000.00	
			Furniture purchased from Boho Nov	$ 3,800.00	
			Subcontractor Construction Work	$ 45,000.00	
			Parking Lot	$ 4,300.00	
			Gloria Cleaning	$ 15,000.00	
			Kirkwood for Internet	$ 2,054.00	
			12KVW Generators	$ 18,000.00	
			21 kVW Generator	$ 8,500.00	
			Humidor	$ 250.00	
			Shade Sails/Kayaks/ Televisions/ Water Fans/ Games	$ 10,000.00	
			Water Fans/Digital Camera	$ 1891	
			Bahamas Customs	$ 1,527.06	
			Aluminum Railing	$ 7,500.00	
			Fire Rated Protection for Kitchen	$ 2,500.00	
			Salaries July 26th 2019 to March 6th, 2020		
			July 26 - August 1st 2019	$ 8,028.22	$ 4,828.67
			August 2 - August 25, 2019	$ 14,306.13	$ 17,153.07
			August 30 - October 3 2019	$ 30,800.54	$ 15,400.27
			October 4 - October 31 2019	$ 26,926.47	$ 13,462.74
			Nov 1st - Nov 28th 2019	$ 30,813.33	$ 15,406.67
			Nov 29th - Jan 2 2020	$ 34,573.90	$ 17,286.95
			Jan 3 - Jan 31	$ 35,000.00	$ 17,500.00
			Feb - March 6th	$ 36,000.00	$ 18,000.00
					$ 114,109.69
			Ria's Food/Beverage Cost	$ 21,705.27	
			Drinks(B-tools)	$ 4,000.80	
			SUBTOTAL	$ 438,180.76	
			Don's Time	$ 130,000.00	
			Ria's Time	$ 30,000.00	
			Fix Electrical for Generator	$ 4,000.00	
			TOTAL	$ 627,846.03	

Table No. 1

[16.] The Claimant was also questioned as to the items listed on the receipts, and he responded that the purchases were for Avery's. He acknowledged that most of the receipts were duplicates and also agreed that one receipt showed items bought for Bahamar. He asserted that his accountant prepared the spreadsheet. The name of the accountant was never given in evidence and the said accountant was not called upon to testify on behalf of the Claimant.

[17.] The Claimant testified that he did not walk away from the partnership but returned the keys and communicated with the Defendants before filing the writ. He said he handled the construction, but business issues were challenging, leading him to believe that leaving was in his best interest. The Claimant testified that before the construction commenced, it was agreed that he would gut the building, replace all windows and doors, and that the old plumbing lines would be replaced.

The Defendants

[18.] The Defendants failed to comply with the Case Management Order of 2 March 2023 by Justice Braithwaite, which directed the parties to file and serve their Witness Statement on or before 7th July 2023 and again the case management order of Madam Justice Card-Stubbs dated 6 May, 2024, where the Order of Justice Braithwaite was varied and the parties ordered to file and exchange witness statements on or before 22 November, 2024. As such, the Defendants did not present any evidence in their defence during the trial. There was no ability to cross examine or test the credibility of the Defendants. This blatant non-compliance afforded the Court no assistance in clarifying the issues in dispute between the parties.

Findings of Facts

The Claimant

[19.] I have had the opportunity to observe the Claimant as he testified, I found that while he was a credible witness, his testimony regarding sums expended was largely unsupported by evidence. He acknowledged during cross-examination that he did not have invoices to support most of the sums listed on the spreadsheet. Further, the invoices provided were also challenged on the ground of duplication.

[20.] I accept the Claimant's evidence that there were oral discussions with the Defendants and that his role would be focused on providing construction and other expertise and services for the restoration of the building housing Avery's as well as the operation of Avery's. This is reflected in the draft Partnership Agreement which the First Defendant prepared. At paragraph 2.3.2. of the said draft Partnership Agreement, it is noted:

"**2.3.2 For Williams:**

(i) Provision of extensive experience and competencies in the construction services industry;

(ii) Oversight and completion of all renovation and new construction works undertaken by the Partners to ensure cost efficiencies and compliance with building industry standards;

(iii)Provision of market and business experience and knowledge;

(iv)Provision of contacts and the introduction of new clients to the business;

(iii) (sic) Management involvement by Williams to ensure business profitability and quality assurance during all infrastructure projects and day to day operations;

(v) (sic) Joint selection with Johnson of all staffing and personnel to be employed by the partnership."

Law and Analysis

[21.] In **Golstein v Bishop [2014] EWCA Civ 10,** the Court recognized that the relationship between partners is not purely contractual. The Court acknowledged that partners owe each other duties, including the duty of good faith, which are not purely contractual but are imposed by law.

[22.] The Partnership Act, Chapter 310 of the Statute Laws of The Bahamas ("**Ch. 310**") also governs the relationship, and some breaches may be more appropriately addressed through claims for compensation in equity or a liability to account, rather than simple contractual damages. This indicates that the court's approach is nuanced and considers the nature of the partnership relationship beyond contractual terms.

[23.] An oral agreement may create a legally recognized partnership under Section 2 of **Ch. 310**, which requires only that persons carry on business in common with a view of profit, not that there be a written or signed contract.

> **Section 2(1) of Ch. 310** defines partnership as "**the relation which subsists between persons carrying on a business in common with a view of profit."**

[24.] In determining whether a partnership exists, **Section 3 of Ch. 310** provides:

> **"3. 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 sue 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;...** "

[25.] Clayton J. in **Josephine Burnett v. Anthony Barker [2021] EWHC 3332** at paragraph 40 noted,

> **"With one exception (the receipt of a share of profits), the above rules are formulated as negative propositions and merely establish the evidential weight to be attached where the particular facts of a case precisely duplicate those set out in the section. However, it will rarely, if ever, be possible to divorce those facts from the surrounding circumstances so as to permit the statutory rules to be applied in their pure form. Fundamentally, in determining the existence of a partnership, regard must be paid to the true contract and intention of the parties as appearing from the whole facts of the case. (Lindley & Banks, para 5-03)"**

[26.] The Court of Appeal in **M Young Legal Associates Ltd v. Zahid [2006] EWCA Civ 613** made it clear that the statutory language intentionally omits any requirement that profits be shared.

> **"They [the words of section 1 of the Act of 1890] 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."**

[27.] An entitlement to participate in profits is not a condition for partnership under the Act. Instead the essential element is the carrying on of business in common, with the aim of making a profit: **Tiffin v. Lester Aldridge LLP [2011] EWCA Civ 1101,**

[28.] The recent decision in **Alexander Isaac Hamilton v. Mark Colin Barrow [2024] EWCA Civ 888** further clarifies that while the absence of profit sharing is a strong indicator against the existence of a partnership, it is not conclusive. The court must undertake an evaluative exercise based on the statutory test: whether the parties carried on a business in common with a view to profit.

[29.] Where no fixed term is agreed, the partnership is "at will". **Section 27 of Ch. 310** provides:

> **"27. (1) Where no fixed term has been agreed upon for the duration of the partnership, any partner may determine the partnership at any time on giving notice of his intention so to do to all the other partners."**

[30.] According to the House of Lords in **Syers v Syers [1876],** an agreement to share profits without a fixed duration creates a partnership at will unless expressly stated otherwise. At pp 2129, Lord Cairns LC observed:

> **"...If it is a partnership, it is a partnership without a term, that is to say, a partnership at will."**

[31.] The Claimant's exclusion from Avery's bank account, although inconsistent with the intended joint control, does not negate the existence of the partnership. The statutory test emphasizes the intention to operate a business together for profit, supported by each party's contribution.

[32.] The law also recognizes that a partnership may be terminated by acceptance of a repudiatory breach. In **Hurst v Bryk (C.A.) [1999] Ch.1**, a case cited by the Defendants, Gibson LJ by citing Dixon J in **McDonald v Dennys Lascelles Ltd (1933) 48 C.L.R. 457, 476-477** explained that acceptance of repudiation discharges both parties from further performance but maintains rights and obligations already accrued:

> **"When a party to a simple contract, upon a breach by the other contracting party of a condition of the contract, elects to treat the contract as no longer binding on him, the contract is not rescinded as from the beginning. Both parties are discharged from further performance of the contract, but rights are not divested or discharged which have already been unconditionally acquired. Rights and obligations which arise from the partial execution of the contract and causes of action which have accrued from its breach alike continue unaffected."**

Damages

[33.] The general rule as to the measure of damages, in contract, is to put the innocent party in the same position as far as money can do. A claim for damage based on unjust enrichment or restitution is concerned with reversing benefits obtained at the Claimant's expense. As stated by the noted authors of **Halsbury's Laws of England Volume 100 (2024)** provides:

> "The law of unjust enrichment (sometimes still referred to as the law of restitution) is that part of the law which is concerned with reversing a defendant's unjust enrichment at the claimant's expense through the award of restitution."

Issue No. 1: Does the oral agreement constitute a partnership agreement pursuant to the Partnership Act?

[32.] The Claimant contends that there was an intention to create legal relations, supported by the significant financial and operational commitments, and the Defendants benefited from these without reservation. He claims a mutual agreement for 50% ownership in Avery's in return for providing capital and undertaking renovations, although no written agreement was signed due to

disagreements over certain clauses. The focal point advanced is breach of contract and damages, not dissolution under the Act.

[34.] The Defendants accept that there was an oral partnership agreement governed by Ch. 310 and argue that the unsigned draft partnership agreement reflected the intended terms. They maintain that the Claimant abandoned the partnership without notice, failed to meet his obligations to contribute to business expenses, and is therefore not entitled to further profits.

[35.] Section 3(c) of Ch. 310 provides that receipt of profit is prima facie evidence of partnership, wherein it states that partnership is "*the relation which subsists between persons carrying on a business in common with a view to profit.*" As stated in **Hurst v Bryk [1999] Ch 1**, a partnership agreement is essentially an agency relationship in which each partner is both principal and agent of the other. Determining whether such a relationship exists requires the court to construe the agreement as a whole **(Syers v Syers)** and look beyond formalities to the substance, intention, contribution, and conduct.

[36.] The evidence shows that the Claimant provided capital, supervised the renovations, applied his construction expertise and performed managerial responsibilities. The parties clearly intended to operate the business for profit and share those profits. The unsigned partnership agreement informs the oral arrangement and reflects discussed terms, including the Claimant's responsibility for renovations. On this issue I agree with the Defendants' position, as stated in their filed Defence, and find that the oral agreement constitute a partnership agreement. The absence of a fixed term indicates a partnership at will, which can be terminated by any partner at any time under s. 27. On this point, I find that a partnership at will existed between the parties within the meaning of the Act.

Duration and Dissolution of partnership

[37.] With no fixed term having been agreed, the partnership was one at will terminable by notice or by order of the court. Accordingly, sections 36 and 45 of Ch. 310, together with the equitable principles reaffirmed in **Hurst v Bryk (supra)** govern the winding up of a partnership. Dissolution does not release partners from liabilities incurred before dissolution, nor from obligations necessary to wind up the partnership's affairs, including liabilities tied to the partnership property and debts arising from the process of realizing assets and discharging creditors.

[38.] The Claimant argues that he was excluded from the bank accounts and the profits of the business and that the Defendants breached the agreement by withholding profits and denying him proprietary interest in the business. Counsel for the Claimant cited **Cutler v Wandsworth Stadium Ltd [1945] 1 All ER 103; Hong Kong Fir Shipping Co Ltd v Kawasaki Kisen Kaisha Ltd [1962] 2 QB 26** and argue that the turning in of his keys and the commencement of proceedings is notice to end the partnership.

[39.] It is the Defendants' contention that the Claimant handing in the keys does not constitute notice and that the partnership cannot be dissolved unless the time has expired or the Claimant had given notice. The Defendants' position is that the Claimant abandoned the partnership and that there was never a breach of the agreement as alleged. Counsel avers that the 2nd Claimant could not be added to the bank account because she was a foreigner and the Claimant has failed to support his claim that the Defendants were unwilling or refused to put him on the bank account. It should be pointed out that as there was no evidence before the Court as to the reason behind the failure to add the Claimants to the bank account, the Court cannot accept the "evidence" of Counsel and as such, the Court accepts that the Claimant, a Bahamian, was not added to the bank account held at CIBC.

[40.] Considering the legal framework and relevant authorities, a partnership cannot be automatically dissolved by a repudiatory breach. The court's discretion to dissolve a partnership for breach under s. 36(f) of Ch. 310 indicates that the framing of a claim as a breach of contract rather than a breach of an oral partnership agreement does not automatically lead to dissolution. The court's approach should be to consider the nature of the breach and the appropriate legal framework for dissolution.

[41.] In **Mohamedalmas Adam v Safvan Ayub Adam [2025] EWHC 1428 (Ch),** Master Valentine noted at paragraph 27 that:

> **"27 The Defendant says it is "trite" law that a partnership cannot be dissolved by one or more partners accepting a repudiatory breach. I am referred to the obiter analysis of Lord Millet in Hurst v Bryke [2002] 1AC 185, Neuberger J's application of that analysis in Mullins v Laughton [2003] Ch 250 and the recognition of both the foregoing by Briggs LJ in Golstein v Bishop [2014] Ch 455. The underlying analysis of the original obiter view by Lord Millett is that for partnerships within the Partnership Act 1890 (such as the partnership alleged to exist in this case) a partnership is not brought to an end automatically by a sufficiently serious breach, this would cut across the court's discretion to dissolve a partnership for breach under s35(d) of that Act."**

[42.] Having regard to the statutory framework and the cited authorities, I find that the partnership was not dissolved pursuant to section 27 of Ch. 310. Accordingly, the partnership must be treated as dissolved pursuant to section 36(f) from the date of the Court's determination, and the Court must determine the consequences of that dissolution.

Issue No. 2: Does the absence of a written document automatically invalidate the partnership?

[43.] The Court finds that an oral agreement can be legally binding and enforceable and the absence of a written document does not in and of itself automatically invalidate a partnership if the conduct of the individuals demonstrates they intended to form a partnership to operate as such. In **Natalia Valencia v. Norberto Llupar [2012] EWCA Civ 396,** the Court of Appeal

held that no writing or formality is required to establish a partnership under section 1 of the Act. Section 1 mirrors section 2 of Ch. 310.

> **"The error of the judge was in finding that the absence of a written agreement precluded a partnership. No writing or formality is required in order to establish a partnership within the meaning of s 1 of the Partnership Act 1890, which defines a partnership as 'the relation which subsists between persons carrying on a business in common with a view to profit.'**

[44.] There needs to be a clear intention to be partners and working together towards a common business goal.

[45.] Counsel for the Defendants openly conceded on a number of occasions before the Court and even in written submissions, that there was a partnership between the First and Second Claimants of the one part and the Defendants of the other part. Pursuant to section 81(1) of the Evidence Act, "**Subject to subsection (2), no fact need be proved in any civil proceeding which the parties thereto or their agents agree to admit at the hearing…"**

[46.] However, it should be pointed out that the lack of an agreed written partnership agreement has resulted in the following issues for the parties, namely:

1. Lack of clarity regarding roles resulting in the dispute over the perceived value of each partner's input, whether it be financial, labour or otherwise;
2. Inherent uncertainties;
3. Undefined partner contributions which have resulted in unequal workloads and which complicates profit sharing arrangements;

[47.] I borrow the dicta from the Texan case of **Galyean v. Guinn, No. 23-11256 (5th Cir. 2024)**:-

> **"If ever there was doubt as to the wisdom of putting contractual agreements in writing, this case should put such doubts to rest."**

[48.] At Tab 11 of the Claimant's Skeleton Submissions, the case of **RTS Flexible Systems Limited (Respondents) v. Molkerei Alois Muller Gmbh & Company KG (UK Production)(Appellants) [2010] UKSC 14,** is cited. Clarke LJ at paragraph 1 notes:-

> ***"The moral of the story is to agree first and to start work later."***

[49.] The parties should have put the agreement in writing and sign it **before** they ventured into the unknown.

[50.] The draft partnership agreement was also woefully inadequate in its drafting by the First Defendant who is a Counsel and Attorney at Law in the Commonwealth of The Bahamas.

[51.] Missing matters include the following:-

1. Roles and duties of partners – time, labour and financial contributions. How the ownership percentages will be allocated;

2. Financial allocations to partners – no specification as to the allocation of profits, losses and draws;

3. Legal authority to act on behalf of the partnership; as the absence of such a position lends to any partner creating legal obligations on behalf of the partnership.

4. No management decision making. The draft agreement failed to outline the management duties of each partner and what actions would need a majority vote or unanimous consent.

5. The partners did not specify how deadlocks or conflicts would be resolved.

[52.] Despite the lack of a written partnership agreement, the Court finds that such lack does not invalidate the oral partnership.

Issue No. 3: If a partnership is deemed to exist, what is the Claimant's entitlement?

[53.] Having determined that a partnership at will existed, the next issue is the Claimant's entitlement on dissolution. Pursuant to Ch. 310, and equitable principles, a partner is entitled to a share of the profits, reimbursement of capital contributions, and a full accounting of the partnership's financial dealings.

[55.] The Claimant relies on a series of invoices and a "Rehabilitation, Re-Opening, and Operating Costs" spreadsheet (Tab 17 of the Non-Agreed Bundle) to quantify his entitlement. The failure of the Second Claimant being unavailable to testify and the failure of the Defendants to provide witness statements, in flagrant non-compliance with the Court's Order during case management, exacerbate the evidence challenges.

[56.] Having reviewed the evidence in support of the claim for damages, I find that the evidence adduced was inadequate to establish the Claimants' entitlement to the sums sought. The primary documents relied upon, were contained at Tab 17 of the Non-Agreed Bundle which consisted largely of duplicated invoices, including:

- Invoice No. 15681 in the amount of $152.78 appears at pages 90 and 93;
- Invoice No. 157052 in the amount of $195.94 appears at pages 92 and 94;
- Invoice No.1185436 in the amount of $158.76 at pages 96 and 99;
- Invoice No. 1-958260 in the amount of $263.26 at pages 101 and 102;
- Invoice No. 6998 in the amount of $5330.00 at pages 103 and 104;
- Invoice No. 7019 in the amount of $1275.00 at pages 105 and 106;
- Invoice No. 7015 in the amount of $1500.00 at pages 108 and 109;

- Invoice No. 4505 in the amount of $896.00 at pages 111 and 112;
- Invoice No. 639440/2 in the amount of $126.67 at pages 113 and 114;
- Invoice No. 428717 in the amount of $19.49 at pages 115 and 116;
- Invoice No. T-00162757 in the amount of $177.24 at pages 117 and 124;
- Invoice No. T-00162494 in the amount of $171.19 at pages 118 and 123;
- Invoice No. T-00162487 in the amount of $393.62 at pages 119 and 122;
- Invoice No. T-001627025 in the amount of $1,090.94 at pages 120 and 121;
- Invoice No. 12108 in the amount of $4830.00 at pages 134 and 135;
- Invoice No. 842 in the amount of $8,960.00 at pages 136 and 137;

[57.] Some entries are not invoices but quotations, namely: Q-42071 in the amount of $249.74 found at page 126 and Q-042070 in the amount of $876.90 found at page 127. The duplication extends to Quote No. 3 in the amount of $5,700.00 appearing at both pages 138 and 139;

[58.] Under cross-examination, the Claimant conceded that from line item "Combined Invoices" to the final entry, no supporting documentation was provided. The following exchange took place:

> **"Q: Would it be fair to say that you have no evidence of any expenditure from "Combined Invoices 1 to the end of your spreadsheet? Would that be accurate?**
>
> **A: It seems to be so.**
>
> **Q: Do you accept you did not give the Court any reason that you made these expenditure.**
>
> **A: On my word I made these expenditure (sic).**
>
> **Q: You did not give the Court any evidence that you made these expenditure.**
>
> **A: No"**

[59.] Taking in account the circumstances as a whole, the absence of supporting documentation for approximately $600,000.00 of the claim, coupled with duplication of invoices, undermines the reliability of the spreadsheet and the credibility of the quantum claimed. The burden is on the Claimant to prove his claim; bare assertions are insufficient. The Court requires clear and convincing evidence to support the claim. There is neither electronic footprint nor paper trails to support the claim for the sums mentioned. The Claimant struggled in his evidence to explain why there were duplicate invoices, the lack of evidence to support the amounts noted in the appended table of expenses or the inclusion of quotes and not invoices.

[60.] From the evidence led, it is difficult, nay impossible to ascertain the Claimant's full contributions and proper valuation.

[61.] It is now necessary to consider the statutory framework governing the rights and obligations of partners. **Section 25 of Ch. 310** sets out the default rules which governs the rights and obligations of partners in the absence of any expressed or implied agreements:

> **"25. 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 express 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;**
>
> **(b) the firm must indemnify every partner in respect of payments made and personal liabilities incurred by him –**
>
> **(i) in the ordinary and proper conduct of the business of the firm;**
>
> **(ii) in or about anything necessarily done for the preservation of the business or property of the firm;**
>
> **(c) a partner making, for the purpose of the partnership, any actual payment or advance beyond the amount of capital which he has agreed to subscribe, is entitled to interest at the rate of five per centum per annum from the date of the payment or advance;**
>
> **(d) a partner is not entitled, before the ascertainment of profits, to interest on the capital subscribed by him;"**

Issue No. 4: Is the Claimant entitled to relief under the equitable principles of proprietary estoppel and unjust enrichment?

Proprietary Estoppel

[62.] As an alternative to contractual and statutory remedies, the Claimant invokes proprietary estoppel and unjust enrichment. He alleges that the Defendants assured he and the Second Claimant that, in return for their financial and managerial investment, they would receive a 50% ownership interest. Relying on this assurance, he undertook renovations and operational expenditure. Counsel submits that it would be inequitable for the Defendants to retain these benefits without compensating the Claimants.

[63.] The elements of proprietary estoppel are: (i) a representation or assurance; (ii) reliance; and (iii) detriment. The Defendants deny that any enforceable assurance was given and contend that the Claimants abandoned the partnership, failed to pursue dissolution before commencing proceedings, and have not substantiated their alleged investment.

Unjust Enrichment

[64.] On a claim for unjust enrichment,

> **"There are four stages of the inquiry to any restitutionary claim that the Plaintiff must prove namely: (i) the Defendant was enriched; (ii) the enrichment was at the expense of the Plaintiff; (iii) the enrichment must have been unjust and (iv) consideration must be given to the applicable defences. There is a fifth state to the inquiry namely the remedies which are available to the Plaintff: *Halsbury's Laws of England*, 5th ed., Vol. 8, at para. 410" Per Charles J. (as she then was) in *Enos Miller* v. *McKinney, Bancroft & Hughes and Hartis Pinder.*"**

[65.] In paragraph 8 of their Defence, the Defendants aver that, "...the Plaintiffs moved in and commenced renovation works..."

[66.] The Court having already addressed the deficiencies in the Claimants' documentary evidence at Issue No. 3, the same difficulties apply here. Of the sums claimed, a significant portion is unsupported by invoices or other proof. No evidence was presented as to the appropriate hourly rate or the market value of the Claimants' professional services. Without such information, the Court would not have been able to determine a fair measure of any alleged enrichment or quantify restitution.

[67.] In **Energy Venture Partners Ltd v. Malabu Oil and Gas Ltd [2013] EWHC 2118 (Comm),** Gloster LJ at paragraph 281 noted,

> **"281. There is no dispute between the parties that there is an important distinction between: (a) the situation where the court has to determine what is a reasonable sum, in a case where a contract either expressly or impliedly provides that a reasonable sum shall be payable, and (b) the situation where the court is having to assess what is the appropriate figure to award a claimant by way of quantum meruit, in a restitutionary claim for unjust enrichment. In the former, the assessment of such a claim will depend upon all of the circumstances, the objective being to ascertain what the parties to the contract would have considered to have been a reasonable amount. In contrast, the objective in a restitutionary quantum meruit assessment is to reverse the unjust enrichment of a defendant, with the measure of any award reflecting the benefit that the defendant of the services received."**

[68.] In **Benedetti v. Sawiris [2010] EWCA Civ 1427,** Etherton LJ said:

> **"140. Judicial decisions and academic commentary in recent times have clarified that a quantum meruit claim is a restitutionary claim for unjust enrichment. The amount recoverable by a claimant is the objective value of the benefit at the time of receipt, namely the price which a reasonable person in the defendant's position would have had to pay for the services. It is to be contrasted with an express or implied contractual term to pay a reasonable amount for services provided pursuant to the contract. In such a case, the court can have regard to all the circumstances to determine what would be a reasonable amount as contemplated by the parties to the contract. (Emphasis added)"**

[69.] Lord Clarke in **Benedetti v. Sawiris [2014] AC 938** further added:

"The legal principles

9. It is common ground that the correct approach to the amount to be paid by way of a quantum meruit where there is no valid and subsisting contract between the parties is to ask whether the defendant has been unjustly enriched and, if so, to what extent. The position is different if there is a contract between the parties. Thus, if A consults, say, a private doctor or a lawyer for advice there will ordinarily be a contract between them. Often the amount of his or her remuneration is not spelled out. In those circumstances, assuming there is a contract at all, the law will normally imply a term into the agreement that the remuneration will be reasonable in all the circumstances. A claim for such remuneration has sometimes been referred to as a claim for a quantum meruit. In such a case, while it is no doubt relevant to have regard to the benefit to the defendant, the focus is not on the benefit to the defendant in the way in which it is where there is no such contract. In a contractual claim the focus would in principle be on the intentions of the parties (objectively ascertained)." (Emphasis added)

[70.] While the evidence suggests that the Defendants derived some benefit from the Claimants' work, equity requires both a factual basis and sufficient certainty to fashion a remedy. The Court certainly cannot adopt a broad-brush approach. In these circumstances, neither proprietary estoppel nor unjust enrichment can be sustained on the evidence before the Court. In other words, unjust enrichment cannot be relied on to circumvent the terms of an existing contract nor to resolve deficiencies in oral contracts.

[71.] The Defendants submit that the Court should be minded to depart from the ordinary course of dissolution by sale, as this case falls within the exceptional circumstances warranting a *Syers* order, as recognised in *Syers v Syers* (1876) 1 App Cas 174 and *Bahia v Sidhu* [2024] EWCA Civ 605. They argue that, as in *Cobden v Cobden* [2024] EWHC 1581 (Ch), the business is of a specialised nature, such that an open market sale would risk a "fire sale" of key assets at a "substantially depressed price" and create significant adverse tax consequences.

[72.] The Defendants contend that they have been the principal drivers of the operation of the business as well as its development and are best placed to ensure its continuity and preserve its value, creating the "equity" identified in *Cobden*, where "it would certainly not be desirable… to have a sale." Accordingly, the Defendants opine that the appropriate order, if the Court exercises its equitable discretion, would be for the Defendants to purchase the Claimant's interest at a fair, market-based valuation.

[73.] In the equitable jurisdiction, the Court is not bound to follow a rigid procedure for dissolution but may mold its orders to fit the circumstances. As stated in **Syers v Syers:**

"The result… is that there was a partnership, but …terminated at the time of putting in the answer…the ordinary course would be for the court to direct a sale… Those provisions are molded in every case by the court to meet the circumstances."

[74.] This discretion was applied in the recent case of **Cobden v Cobden [2024] EWHC 1581 (Ch),** where the court confirmed that a **Syers Order** may be made in exceptional circumstances where a conventional winding up and sale would cause undue prejudice and undermine the value of the partnership business. The case involved one of the largest UK dairy units, where a sale risked a "fire sale" of livestock, especially under TB restrictions, at "a substantially depressed price," and significant tax liabilities on plant and machinery. Although partners were equal in law, the court found that one partner had driven the business and built the Diary Unit for long-term succession to his children. The judge held that the business's specialised nature, the financial and operational harm of an open market sale, and the purchaser's personal and generational commitment justified a "*Syers*" order, as **in Bahia v Sidhu [2024] EWCA Civ 60,** where a sale was not desirable. The court may exercise discretion to allow one partner to buy out the other at a fair, market-based valuation instead of ordering a sale.

[75.] Based on the facts at hand, the Court does not find that this case is a suitable one for the exception applied in ***Syers.***

Accounting of the partnership

[76.] The Court having found that there was a partnership, it must now turn its attention to the partners' respective shares as well as the directions to be given for the accounting to be taken on dissolution of the partnership.

[77.] Clayton, J. in **Josephine Burnett v. Anthony Barker** *supra* noted:

> **"... subject to any agreement express or implied between the partners, by the rules set out in s 24 Partnership Act 1890, and principally on the basis that 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."**

[78.] Ch. 310 is, in substance, the same as the English Partnership Act, 1890. Section 24 mirrors section 25 of that Act.

[79.] In **Neil Geoffrey Charles Barber and Others v. Rasco International Ltd [2012] EWHC 269 (QB),** the court confirmed that partners are entitled to an account from their co-partners of all matters affecting the partnership, and that an order for the taking of accounts is a normal remedy upon dissolution or dispute.

[80.] Section 25(f) of Ch. 310 provides that, subject to any agreement (express or implied) between the partners, no partner is entitled to remuneration for acting in the partnership business, unless agreed otherwise. **[Jaswant Sidhu v Dr Sangeeta Rathor [2020] EWHC 1916 (Ch) and Lynn Smith v Arthur John Morris Crawshay [2019] EWHC 2507 (Ch).]** However, section 25(b)(i) and (ii) of Ch. 310 allow for indemnification of partners for payments made and liabilities incurred in the ordinary and proper conduct of the business, or in anything necessarily done for the preservation of the business or property of the partnership. This distinction in

crucial: while indemnification for costs and liabilities is a statutory right, remuneration for services is not, unless agreed.

[81.] Section 45 of Ch.310 provides rules for the distribution of assets on final settlement of accounts.

> **"45. In settling accounts between the partners after a dissolution of partnership, the following rules shall, subject to any agreement, be observed –**
>
> **(a) losses, including losses and deficiencies of capital, shall be paid first out of profits, next out of capital, and lastly, if necessary, by the partners individually in the proportion in which they were entitled to share profits;**
>
> **(b) the assets of the firm including the sums, if any, contributed by the partners to make up losses or deficiencies of capital, shall be applied in the following manner and order –**
>
> **i. in paying the debts and liabilities of the firm to persons who are not partners therein;**
>
> **ii. in paying to each partner rateably what is due from the firm to him for advances as distinguished from capital;**
>
> **iii. in paying to each partner rateably what is due from the firm to him in respect of capital;**
>
> **iv. the ultimate residue, if any, shall be divided among the partners in the proportion in which profits are divisible."**

[82.] The courts have also recognized the possibility of alternative remedies, such as ordering a buyout of a partner's share instead of a full winding up, where appropriate **Mullings v Laughton [27/12/2002] TLR 4.**

[83.] In **Jill Deacon v. Nisar Yasseen [2020] EWHC 465 (Ch),** in giving the judgment of the Court, Eveleigh LJ stated:

> **"The assets of the partnership are owned by all the partners. When the partnership was dissolved the assets will be distributed according to the state of accounts between the partners and proportionately to their shares. In relation to a specific asset in the hands of one of the partners it is quite impossible to attribute to any partner a specific share of it or of its value. Until an account is taken it is not possible to say that the partner who holds the property or money has no claim to any part of it whatever. Such a partner will usually have claims against the partnership for various things which would have to be taken into account when the partnership accounts are taken so that until then it is impossible to say what sum is held for the partnership..."**

[84.] I adopt the caveat in the **Baker** case,

> **"106. I would urge both parties to adopt a sensible and pragmatic approach. The Defendants should not look to put off the assessment of this claim for as long as possible; nor should the Claimant look to recover sums which are unrealistic."**

[85.] The balance sheet as at today's date and a profit and loss account should be prepared as quickly as reasonably practicable. **Philip John Moody v. The Estate of the late Norman Jones [2021] EWHC 3443 (Ch).** The balance sheet should include inquiries as to the revenue and capital profits earned by the partnership.

[86.] The parties should continue to bear in mind the duty of good faith between partners.

[87.] *En passant*, it appears to me that the case for the Claimants could have been pleaded more clearly and precisely. The witness statement for the Claimant was not detailed and the presentation of receipts sloppy. A party is bound by its pleadings and must substantiate claims for sums, liquidated or otherwise, with convincing evidence.

[88.] As to the Defendants, the Court notes that the 1st Defendant is an Attorney at Law. Notwithstanding the change of Attorney a week before trial, failure to comply with the Court's Order of July 2023 was a serious breach of the Civil Procedure Rules and not in keeping with the overriding objective of the Rules.

Conclusion

[89.] The Court declares that the Claimant is entitled to an equal share in the partnership known as Avery's.

[90.] That the partnership of Avery's between the Claimant and the Defendants is dissolved with effect from the 27 August, 2025, pursuant to section 36(f) of Ch. 310.

[91.] The Court directs that there be a rendering of true accounts and full information of all partnership dealings and transactions affecting the partnership to determine the financial position of the partnership and the respective entitlements of the partners.

[92.] The parties are to agree and obtain a joint expert report on the valuation of the overall costing of the capital work done on the building and premises housing Avery's. The Court will appoint an expert failing the agreement of a joint expert

[93.] The cost of the preparation of the said report is to be borne by the partnership.

[94.] There is to be a preparation of a legible and comprehensive statement of accounts of the partnership containing the balance sheet and the profit and loss accounting for the period July 2019 to 27 August, 2025.

[95.] The cost of the preparation of the statement of accounts is to borne by the partnership.

[96.] That the partnership must indemnify the Claimant in respect of payments made and personal liabilities incurred by him in the ordinary and proper conduct of Avery's and for anything necessarily done for the preservation of Avery's or the property of Avery's.

[97.] Interests is payable on the sums found due in accordance with Ch. 310.

[98.] That amounts found due and owing to the claimant be paid on or before 31 December, 2025.

[99.] Costs is reserved pending receipt of the aforesaid reports and written submissions, as necessary by Counsel.

Dated this 27th day of August, A.D. 2025.

The Honourable Madam Acting Justice Cheryl Bazard KC