COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2024/CLE/GEN/1081

IN THE MATTER OF the Conveyancing Law and Property Act Chapter 138 AND a breach of the contract and terms and conditions of a sales agreement to purchase Unit 205 in One Marina Condominium 2 in the Subdivision known as Palm Cay

BETWEEN

PALM CAY DEVELOPMENT CO. LTD

Claimant

AND

MINDY LEE HALL

Defendant

Before: **The Honourable Justice Darron D. Ellis**

Appearances: **Mr Dion Smith for the Claimant**
Mr Valentino Hamilton for the Defendant

Hearing Date: 26 November 2025

RULING

Civil Procedure — Summary Judgment — Agreement for Sale of a Condominium Unit — Deferred Final Payment — Conveyance Executed and Registered — Conveyance acknowledging payment and receipt of the purchase price — No express reservation of alleged unpaid balance — Estoppel by Deed / Contractual Estoppel — Alleged construction defects, delay, ancillary charges and counterclaim — Whether Defendant has no real prospect of defending claim —Application Dismissed.

By Notice of Application dated 2 December 2024, the Claimant applied for summary judgment pursuant to **Rule 15.2(b) of the Civil Procedure Rules, 2022**. The Claimant contends that the Defendant has no real prospect of successfully defending the claim arising out of a sales agreement dated 13 August 2021 for the purchase of Unit 205, One Marina Condominium of the Palm Cay subdivision. It is alleged that, although the Defendant paid the first four instalments of the purchase price, she failed to pay the final instalment and accrued interest due on 16 October 2024, together with outstanding invoices for works and services, leaving a total sum of $506,731.80 outstanding.

The Claimant sought summary judgment for the alleged unpaid final instalment, interest, and ancillary charges. However, the subsequently executed and registered Conveyance stated that the purchase price had been paid and that its receipt was acknowledged, without expressly reserving the alleged balance or preserving a payment obligation after conveyance.

The Defendant filed a Re-amended Defence and Counterclaim. She admitted the agreement but denied that any sum was due. She relied upon the conveyance's acknowledgement of payment and receipt and contended that the Claimant had waived, or was estopped from asserting, an entitlement to a further balance. In the Counterclaim, the Defendant seeks damages and consequential relief arising from the Claimant's alleged breaches of contract, misrepresentations and related conduct.

HELD: dismissing the Claimant's application for summary judgment

1. The question under rule 15.2(b) was whether the Defendant had no real prospect of successfully defending the claim or issue. A realistic prospect is one that is more than fanciful; it need not be probable.

2. The decision on a summary judgment application does not involve the judge conducting a mini trial. The judge should not therefore apply the standard which would be applicable at trial, namely the balance of probabilities on the evidence presented. By the very nature of the proceeding, the testing of evidence is ordinarily unavailable: **Swain v Hillman and another** [2001] 1 All ER 91 at 95b.

3. The summary-judgment jurisdiction is an important case-management power, but it should not be used to determine fact-sensitive disputes which require fuller investigation at trial.

4. The completed conveyance's acknowledgement that the purchase price was paid and received, without an express reservation of the alleged balance, raised a realistic issue as to construction and contractual estoppel. The disputed calculation of the principal balance, interest, and ancillary invoices supplied an additional reason why the Claimant had not shown that the Defendant's defence was fanciful. The matter should proceed to case management, disclosure, and trial: **Prime Sight Ltd v Lavarello (Official Trustee of Marrache)** [2013] UKPC 22; **Three Rivers District Council v Governor and Company of the Bank of England (No 3)** UKHL 16.

ELLIS J

Introduction

[1.] This is the Claimant's application for summary judgment under **rule 15.2** of the **Civil Procedure Rules ("CPR")**. The Claimant, Palm Cay Development Co. Ltd., seeks judgment for sums alleged to be due under an Agreement for Sale and Purchase dated 13 August 2021 (the "Agreement") concerning Unit 205, One Marina Condominium 2, Palm Cay.

[2.] The Claimant is a company incorporated under the laws of the Commonwealth of The Bahamas and the developer of the Palm Cay subdivision, situated on the southern side of Yamacraw Hill Road in the Eastern District of New Providence. The Defendant is the purchaser named in the Agreement.

[3.] The Claimant alleges that the Defendant agreed to purchase the Unit for B$1,580,000.00, paid the first four instalments, but failed to pay the fifth and final instalment, which it quantifies at B$474,388.62, together with contractual interest and ancillary charges. The Defendant disputes both liability and the amount claimed.

[4.] The Defendant admits entering into the Agreement and admits that a conveyance dated 16 October 2023 was executed and registered. She denies liability for the sums claimed and contends that the application raises factual and legal issues which are unsuitable for summary determination.

[5.] The issue is whether the Claimant has demonstrated that the Defendant has no real prospect of successfully defending the claim or any issue on which summary judgment is sought.

The Claim

[6.] The Claimant seeks to recover sums allegedly due under the Agreement. It alleges that the purchase price was payable in five stages and that the fifth and final instalment was to be financed by the Claimant for 12 months after Completion, at an interest rate of 5%, and then paid in a lump sum together with interest.

[7.] The Claimant pleads that the Defendant paid the first four instalments, leaving B$474,388.62 outstanding as the fifth and final payment. It alleges that Completion occurred on 16 October 2023 and that the final instalment, with interest, became payable on or before 16 October 2024. The Defendant disputes the contractual significance of 16 October 2023 and the material said to establish the relevant statutory certification for Completion.

[8.] In addition to the final instalment and interest, the Claimant claims ancillary charges for utility services, cleaning, and additional works allegedly undertaken on the Defendant's behalf.

[9.] The Claimant further pleads that, between September and November 2024, it made repeated demands for payment by email, WhatsApp, and formal demand letter, but the Defendant did not pay the amounts requested.

Notice of Application

[10.] By Notice of Application dated 2 December 2024, the Claimant applied under rule 15.2(b) of the CPR for summary judgment on the ground that the Defendant has no real prospect of successfully defending the claim. The Notice identifies the affidavit of Jak Hannaby as the written evidence on which the Claimant relies.

[11.] The Notice repeats the Claimant's case that the final instalment became due on 16 October 2024 and additionally claims $9,254.75 for invoices said to concern works and services at the Unit. It alleges repeated unsuccessful demands for payment.

[12.] The Claimant therefore seeks summary judgment against the Defendant in the amount of $506,731.80

The Re-Amended Defence and Counterclaim

[13.] By her Re-Amended Defence, the Defendant admits entering into the Agreement and admits the subsequent execution and registration of the conveyance dated 16 October 2023. She otherwise denies liability and puts the Claimant to strict proof of its allegations.

[14.] The Defendant contends that the Claimant's claim is unsustainable both as a matter of law and on the facts. Her principal legal defence is that, upon execution, delivery and registration of the conveyance, the contractual obligations under the Agreement merged into the conveyance, thereby extinguishing any contractual right to recover the alleged outstanding balance of the purchase price.

[15.] Alternatively, the Defendant contends that, by executing a conveyance acknowledging receipt of the purchase price and thereafter permitting her to take possession of, mortgage, occupy and otherwise deal with the property, the Claimant waived any entitlement to claim a further balance and is estopped from asserting that any part of the purchase price remains unpaid.

[16.] The Defendant further alleges that the Claimant committed numerous breaches of the Agreement, including breaches relating to completion, the quality and condition of the unit, delays in completing the development, failures to carry out remedial works, failures to provide contractual documentation and warranties, and failures to comply with other completion obligations.

[17.] The Defendant also alleges that the Claimant made material representations concerning the readiness and condition of the unit upon which she relied. She contends that the Claimant's breaches and representations caused her substantial financial loss, impaired her ability to rent, sell or refinance the property, and consequently affected her ability to service the mortgage and satisfy the final payment obligation.

[18.] The Defendant further challenges the enforceability of contractual provisions relied upon by the Claimant to exclude or limit liability for those matters, contending that such provisions are unreasonable and unenforceable.

[19.] By way of Re-Amended Counterclaim, the Defendant seeks damages and consequential relief arising from the Claimant's alleged breaches of contract, misrepresentations and related conduct. She alleges, among other matters, delayed completion, construction defects and unfinished works, and failures to perform contractual obligations concerning the quality and completion of the development.

[20.] She further alleges that the Claimant made repeated misleading representations regarding anticipated completion dates, upon which she relied to her detriment, causing her to incur additional storage, travel, financing and other expenses. The Defendant also contends that the Claimant wrongfully obtained and relied upon injunctive relief by failing to make full and frank disclosure to the Court, thereafter unlawfully restricting her access to Unit 205, changing the locks, entering the premises without authority, and otherwise interfering with her possession and proprietary rights.

[21.] The Defendant also alleges trespass, breach of the Condominium Act, abuse of process, malicious prosecution of civil proceedings, unjust enrichment, wrongful eviction or unlawful exclusion, tortious interference with her property rights, and seeks compensation pursuant to the Claimant's undertaking in damages.

[22.] In addition to claiming damages for breach of contract and the various torts alleged, she seeks recovery of losses said to arise from delayed completion, defective construction, loss of rental income, storage and financing expenses, loss of use and enjoyment of the property, restitution, interest and costs. No finding is made on the merits or legal viability of those allegations on this application.

The Affidavit Evidence

The Claimant's Evidence

[23.] In support of the application for summary judgment, the Claimant relied upon the affidavit of Shandika Morley, a legal assistant employed by the Claimant's attorneys. Ms Morley stated that the Defendant agreed to purchase Unit 205 by instalments, paid the first four instalments, but failed to pay the fifth and final instalment together with contractual interest. She referred to the Statement of Claim seeking recovery of approximately $507,000.00.

[24.] Ms Morley acknowledged that the Defendant had filed an Amended Defence and Counterclaim alleging that her failure to pay resulted from the Claimant's breaches of contract and delays in performance, together with a counterclaim for damages. Ms Morley nevertheless maintained that neither the Defence nor the Counterclaim disclosed any justification for the Defendant's refusal to pay the outstanding balance.

[25.] Ms Morley further deposed that the Claimant relied on earlier affidavits sworn by Jak Hannaby in support of its freezing-injunction application and incorporated those affidavits by reference.

[26.] In those affidavits, Jak Hannaby, a director of the Claimant, deposes that he was familiar with the Agreement in question and had personally overseen works carried out to Unit 205. Mr Hannaby asserted that, pursuant to the Agreement, the Claimant incurred expenses on the Defendant's behalf, including utility connection fees, deposits, cleaning charges and the installation of an additional island pop-up and standby generator connection. He stated that invoices were rendered for those sums, together with the outstanding balance of the purchase price and contractual interest, but that the Defendant failed to make payment.

[27.] He further deposed that, under the terms of the Agreement, cosmetic defects were not a basis for postponing completion and that completion was triggered by the issuance of the Occupancy Certificate on 17 August 2023. He maintained that the Defendant's access to the unit was never restricted because of any outstanding balance and that the Claimant remedied all defects identified on the Defendant's list. The relationship between the asserted certificate date and the 16 October 2023 Completion date relied upon in the claim is a matter requiring clarification.

[28.] Mr Hannaby also referred to email correspondence in which the Defendant indicated that payment would be made in respect of certain utility charges. He stated that although some deposits and utility fees were subsequently paid, the outstanding balance of the purchase price and other sums remained unpaid.

[29.] Mr Hannaby concluded that nothing contained in the Re-Amended Defence or Counterclaim constituted a valid justification for the Defendant's refusal to pay the outstanding balance, and that there was no reason for the matter to proceed to trial.

The Defendant's Evidence

[30.] In opposition to the application, the Defendant relied upon her Affidavit filed on 1 September 2025, incorporating by reference her earlier affidavits and exhibits. The Defendant contended that the Claimant's claim is genuinely disputed and should proceed to trial.

[31.] The Defendant asserted that the amount allegedly owed remains in dispute. She deposed that the unit in question has substantial equity, relying upon comparable sales and market listings which, she says, demonstrate that the property is worth approximately $2 million or more. She further maintained that the outstanding mortgage indebtedness is significantly less than the property's value and that the debt claimed by the Claimant is itself disputed and may ultimately be reduced. The asserted equity is relevant principally to the prior interim-relief injunction proceedings and does not, without more, answer the alleged contractual debt.

[32.] The Defendant further alleged that the Claimant debited approximately US$40,000.00 from her credit card without authority and failed to provide an adequate explanation or accounting as to the application of those funds. She also asserted that she did not receive a detailed breakdown of the sums now claimed until after title had been conveyed and around the time the injunction proceedings commenced.

[33.] The Defendant additionally set out a chronology of her dealings with the Claimant, alleging delays in completing the development and other conduct which, she contends, contributed to the present dispute and supports her position that the issues raised, including merger and estoppel, are unsuitable for summary determination.

Issue

[34.] The issue for determination is whether the Claimant has demonstrated that the Defendant has no real prospect of successfully defending the claim or any issue on which summary judgment is sought.

The Claimant's Submissions

[35.] Counsel for the Claimant submits that this is an appropriate case for summary judgment. The Claimant says that the Defendant has no real prospect of successfully defending the claim and that the issues raised do not require trial.

[36.] Counsel submits that the Defendant paid four of the five contractual instalments, leaving the fifth instalment outstanding. It is submitted that the fifth instalment was expressly structured to become payable twelve months after completion, with interest, and that the Defendant does not dispute that she has not made the payment described by the

Claimant as the final instalment. However, she disputes the Claimant's entitlement to recover it.

[37.] Counsel further submits that the Defendant's complaints concerning delays, punch-list items, title insurance, alleged defects and alleged consequential losses do not constitute a defence to the contractual obligation to pay the final instalment. At their highest, those matters may form the basis of a separate counterclaim in damages, but they do not answer the debt claim.

[38.] In relation to merger, Counsel submits that the Defendant has mischaracterised the applicable legal principles. The Claimant argues that only obligations relating to title and conveyancing merge into a deed upon completion. Whereas collateral obligations, including obligations expressly intended to survive completion, remain enforceable.

[39.] Counsel contends that the obligation to pay the fifth instalment was expressly structured to arise twelve months after completion and therefore could not have merged into the Conveyance executed on 16 October 2023. It is submitted that the Conveyance contains no clause discharging or extinguishing that obligation.

[40.] Counsel further submits that the recital in the conveyance acknowledging receipt of the purchase price is not conclusive and is no more than prima facie evidence of payment. The Claimant argues that such a recital cannot override the parties' contractual arrangements or extinguish the deferred-payment obligation for which it contends.

[41.] The Claimant also disputes the Defendant's reliance upon waiver and estoppel. Counsel submits that the Claimant never intentionally relinquished its right to recover the outstanding balance, never represented that the debt was forgiven, and never issued any release discharging the Defendant from her contractual obligations.

[42.] Counsel submits that the Defendant's reliance upon mortgage financing and subsequent dealings with the property does not alter the parties' contractual rights and does not give rise to any estoppel preventing enforcement of the Agreement.

[43.] In those circumstances, Counsel invites the Court to grant summary judgment for the amount claimed, or alternatively to enter judgment for the final instalment and contractual interest, leaving the ancillary invoices for determination at trial or further case management.

The Defendant's Submissions

[44.] Counsel for the Defendant submits that the application should be dismissed because the Defendant has a bona fide Re-amended Defence and Counterclaim raising substantial issues of fact and law. Counsel argues that the Counterclaim, if established, may exceed the amount claimed by the Claimant and may, to the extent properly pleaded as a set-off or other answer to immediate judgment, affect the Claimant's entitlement to summary relief.

[45.] Counsel submits that the matter raises numerous disputed questions requiring disclosure, further particulars, and the testing of evidence at trial. It is submitted that the Court should not conduct a mini-trial on affidavit evidence.

[46.] The Defendant alleges that the Claimant breached the Agreement by failing to deliver a completed unit within the anticipated timeframe, repeatedly extending completion dates, and failing to complete certain works and punch-list items. It is further alleged that those delays caused the Defendant to incur additional expenses and suffer loss of anticipated rental income.

[47.] Counsel also submits that the Claimant made negligent or misleading representations concerning the anticipated completion date, readiness and condition of the unit, and that those representations induced the Defendant to proceed with the transaction and related financing arrangements. The Defendant proffers that the legal effect of the contractual provisions concerning the completion period, force majeure, and delay-related loss remains in issue.

[48.] By supplemental submissions, Counsel advances two principal legal arguments. First, it is submitted that the contractual obligations contained in the Agreement merged into the conveyance executed on 16 October 2023. Secondly, and alternatively, it is submitted that, by executing and registering a conveyance acknowledging receipt of the purchase price, the Claimant waived, or is estopped from asserting, any entitlement to recover a further balance under the Agreement.

[49.] Counsel emphasises that the conveyance transferred legal title to the Defendant, expressly acknowledged receipt of the purchase price, and was subsequently relied upon by the Defendant in obtaining mortgage financing from Scotiabank. It is further submitted that the Claimant treated the conveyance as fully effective for a substantial period before asserting that a balance remained outstanding.

[50.] On merger, Counsel submits that, upon execution and delivery of a conveyance, obligations arising under an antecedent agreement for sale may merge into the conveyance, save for obligations which are collateral or otherwise intended to survive completion. Reliance is placed upon **Ferguson v McKenzie** CLE/gen/ No. 934 of 2002 and **Massai Aviation v Attorney General** [2007] UKPC 12. Counsel accepts that the application of that principle depends upon the language and circumstances of the particular instruments.

[51.] Counsel argues that the Conveyance became the operative instrument governing the completed transfer of legal title, conveyed absolute legal title, acknowledged receipt of the purchase price, and contained no reservation preserving any right to demand further payment.

[52.] Alternatively, Counsel submits that even if merger does not apply, the Claimant's conduct gives rise to waiver and estoppel. Reliance is placed upon **Prime Sight Ltd v Lavarello [2013] UKPC 22** and **Old Fort Bay Property Owners Association Ltd v Old Fort Bay Company Ltd.** SCCivApp No. 12 of 2022. Counsel submits that by executing the Conveyance, permitting the Defendant and her mortgagee to rely upon it, and remaining silent for a period thereafter, the Claimant is precluded from subsequently asserting that part of the purchase price remains unpaid.

[53.] Counsel further submits that merger, waiver and estoppel are highly fact-sensitive and require examination of the parties' intentions, communications and subsequent conduct. Accordingly, it is argued that those issues cannot properly be determined on a summary application.

[54.] Counsel also submits that the debt claimed remains disputed, including by reason of the alleged unauthorised credit-card debit of approximately US$40,000.00, the absence of a timely detailed accounting, and the disputed ancillary charges. The Defendant contends that those matters are relevant to the proper accounting between the parties and the quantification of the amount, if any, due.

[55.] Accordingly, Counsel invites the Court to dismiss the application for summary judgment, and refer the matter to case management and trial.

The Law

[56.] Summary judgment is designed to permit the rapid disposal of straightforward cases where a claim or defence has no real prospect of success and where there is no other compelling reason for a trial. The jurisdiction is an important case-management power. It avoids unnecessary expense and delay in cases where a trial would serve no useful purpose. However, because the jurisdiction may finally determine a party's rights without disclosure, oral evidence or cross-examination, it must be exercised with caution.

[57.] **Rule 15.2** of the CPR permits the Court to give summary judgment on a claim or issue where the Claimant has no real prospect of succeeding or the Defendant has no real prospect of successfully defending it.

[58.] The expression "real prospect" means a prospect that is realistic, not fanciful. It does not require the Court to find that the party resisting summary judgment is likely to succeed. The question is whether the case has sufficient substance to justify a trial.

[59.] In **Swain v Hillman** [2001] 1 All ER 91, the Court of Appeal explained that the word "real" distinguishes a realistic prospect of success from one that is merely fanciful. The power is intended to deal with cases where there is no real prospect of success, not to deprive a party of trial where there are issues requiring investigation. Further, *Lord Woolf MR* described the English equivalent of **rule 15.2** of the CPR in the following terms at page 92:

Under r 24.2, the court now has a very salutary power, both to be exercised in a claimant's favour or, where appropriate, in a defendant's favour. It enables the court to dispose summarily of both claims or defences which have no real prospect of being successful. The words 'no real prospect of succeeding' do not need any amplification, they speak for themselves. The word 'real' distinguishes fanciful prospects of success or, as Mr Bidder QC submits, they direct the court to the need to see whether there is a 'realistic' as opposed to a 'fanciful' prospect of success.

[60.] In **Celador Productions Ltd v Melville [2004] EWHC 2362** (Ch), *Sir Andrew Morritt V-C* summarised the relevant propositions as follows: first, it is for the applicant for summary judgment to demonstrate that the respondent has no real prospect of success; secondly, a real prospect is one which is more than fanciful or merely arguable; thirdly, if it is clear beyond question that the respondent will not be able at trial to establish the facts on which he relies, the prospects are not real; and fourthly, the Court is not entitled to conduct a trial on documents without disclosure or cross-examination.

[61.] In **Easy Air Ltd v Opal Telecom Ltd [2009] EWHC 339** (Ch), *Lewison J* further emphasised that the Court must consider whether the claim or defence has a realistic, as opposed to fanciful, prospect of success. A realistic claim carries some degree of conviction and is more than merely arguable. The Court must avoid a mini-trial, but is not bound to accept at face value assertions that are unsupported, inherently implausible or contradicted by contemporaneous documents. The Court may also consider evidence that can reasonably be expected to be available at trial.

[62.] In **Maurice Glinton & Co v Robert K. Adams and Graham Thompson & Co (a Firm))** 2021 CLE/GEN/01115, *Winder CJ* at paragraph 75 reproduced the seven propositions identified by *Potter LJ* in **Partco Group Ltd v Wragg** [2002] 2 BCLC 323 as useful guidance when a court considers summary disposal. The present application concerns summary judgment, and the propositions are useful insofar as they emphasise the overriding objective, the risks of resolving fact-sensitive questions prematurely, and the need to consider whether early disposal will genuinely avoid or materially reduce the need for a trial, he writes:

(1) The purpose of resolving issues on a summary basis and at an early stage is to save time and costs and courts are encouraged to consider an issue or issues at an early stage which will either resolve or help to resolve the litigation as an important aspect of active case management; see Kent v Griffiths (No 3) [2000] 2 All ER 474, [2001] QB 36.

(2) In deciding whether to exercise powers of summary disposal, the court must have regard to the overriding objective.

(3) The court should be slow to deal with single issues in cases where there will need to be a full trial on liability involving evidence and cross-examination in any

event and/or where summary disposal of the single issue may well delay, because of appeals, the ultimate trial of the action.

(4) The court should always consider whether the objective of dealing with cases justly is better served by summary disposal of the particular issue or by letting all matters go to trial so that they can be fully investigated and a properly informed decision reached.

(5) Summary disposal will frequently be inappropriate in complex cases. If an application involves prolonged serious argument, the court should, as a rule, decline to proceed to the argument unless it harbours doubt about the soundness of the statement of case and is satisfied that striking out will obviate the necessity for a trial or will substantially reduce the scope of the trial itself; see the Three Rivers case per Lord Hope at paras 94–98 (pp 542–544), considering the Williams & Humbert case.

(6) It is inappropriate to deal with cases at an interim stage where there are issues of fact involved, unless the court is satisfied that all the relevant facts can be identified and established; see Killick v PricewaterhouseCoopers at 72 and 73.

(7) It is inappropriate to strike out a claim in an area of developing jurisprudence. In such areas, decisions should be based upon actual findings of fact; see *Farah v* British Airways plc [1999] CA Transcript 2120, per Lord Woolf MR at para 35 and Three Rivers District Council v Bank of England (*No 3)* [2003] 2 AC 1 ("Three Rivers District") per Lord Hobhouse at paragraph 156.

[63.] Where the application raises a short point of law or construction, and the Court is satisfied that it has all the evidence necessary to determine it fairly, the Court may and should decide that point. However, where the determination depends upon contested facts, credibility, intention, reliance, waiver, estoppel, causation, loss, or other matters requiring fuller investigation, summary judgment will ordinarily be inappropriate.

[64.] The Court therefore approaches the application by asking: first, whether the Defendant has a real prospect of successfully defending the Claimant's claim; and, whether any pleaded issue in the Defence of merger, waiver, estoppel, breach, misrepresentation requires further ventilation at trial.

Discussion and Analysis

[65.] The authorities establish that although the Court has a broad jurisdiction to determine proceedings summarily, that jurisdiction must be exercised cautiously and only where a trial is genuinely unnecessary. As recognised by *Lord Briggs* in **Sagicor Bank Jamaica Ltd v Taylor-Wright** [2018] UKPC 12, the summary judgment procedure gives effect to the overriding objective by saving expense, ensuring proportionality, promoting the efficient use of judicial resources, and avoiding unnecessary trials where the outcome of disputed factual issues cannot affect the claimant's entitlement to relief.

[66.] Conversely, where the issues are heavily fact-sensitive, depend upon credibility, or require the resolution of competing evidence through disclosure, cross-examination and detailed factual findings, the Court should be slow to dispose of the matter summarily. In exercising this jurisdiction, the Court must also heed the warning of *Mummery LJ* in **Doncaster Pharmaceuticals Group Ltd v Bolton** [2006] EWCA Civ 661 not to be misled either by defendants who seek to manufacture complexity to avoid summary disposal or by overconfident claimants who oversimplify factual or legal issues in the name of efficiency.

[67.] Ultimately, as emphasised by Lord Woolf MR in **Swain v Hillman** and by *Lord Hope* in **Three Rivers District Council v Governor and Company of the Bank of England** (No. 3)[2001] UKHL 16, the summary jurisdiction is confined to cases that are plainly unfit for trial because they are legally unsustainable or wholly without merit. It should never be used to deprive a party of a trial where there are genuine issues requiring proper judicial determination.

[68.] Considering the principles outlined earlier and after reviewing the pleadings, submissions, and evidence, I believe the proper course is to deny summary judgment against the Defendant and to adjourn the case for management. Essentially, there are legal points and substantive issues that require further ventilation at trial. Guided by **Celador Productions Ltd v Melville** [2004] EWHC 2362 (Ch), I find that the Claimant has neither shown nor convinced me that the Defence lacks a realistic or genuine chance of success.

[69.] I am unable to agree with Counsel for the Claimant that the claim is straightforward enough or meritorious enough on its face to warrant summary judgment. Despite Counsel's best efforts, I am of the opinion that there are issues that ought to be decided at trial. The Claimant's case relies on the Defendant admitting to the Agreement, the purchase price, and the transfer of title, as well as not disputing that the fifth instalment remains unpaid. If these were the only issues, the claim would seem simple. However, the Court must also review the Defence filed and the evidence available, especially as they relate to whether the Claimant is entitled to an immediate judgment on its claim.

[70.] I accept that the mere existence of a Counterclaim does not, without more, prevent the Court from granting summary judgment on the Claimant's claim. If the Counterclaim is no more than an independent claim for damages, it may survive separately even if judgment is entered on the debt claim. The relevant question is whether the matters pleaded by the Defendant provide a real defence to the Claimant's claim, give rise to a set-off or other answer to immediate judgment, or otherwise disclose a compelling reason for trial.

[71.] In the present case, I am not satisfied that the Defendant's Defence can properly be characterised as fanciful. The Defendant raises legal and factual issues which go directly to the Claimant's entitlement to recover the alleged outstanding balance, and which require fuller investigation.

[72.] First, the Defendant raises the issue of merger. She contends that upon execution, delivery and registration of the conveyance, the obligations under the Agreement merged into the conveyance, and that the Claimant is no longer entitled to sue upon the antecedent agreement for the unpaid balance.

[73.] The Claimant's response may ultimately prove correct. It may be that the fifth instalment was a collateral or surviving obligation deliberately structured to become payable after completion, and therefore did not merge into the conveyance. It may also be that the recital acknowledging receipt of the purchase price is not conclusive. However, the Court is not persuaded that the Defendant's merger argument is so hopeless that it should be rejected summarily.

[74.] The issue requires consideration of the Agreement, the conveyance, the parties' intentions, the structure of the deferred payment obligation, the language used in the conveyance, and the surrounding circumstances in which the parties proceeded to completion notwithstanding the alleged outstanding balance. Those are matters more appropriately determined after disclosure and trial, unless the Court is satisfied that the construction point is short, self-contained and capable of final determination on the present record. The Court is not so satisfied.

[75.] Secondly, the Defendant raises waiver and estoppel. She contends that the Claimant executed and registered a conveyance acknowledging receipt of the purchase price, permitted her to take possession, permitted her to obtain mortgage financing and otherwise deal with the property, and only later asserted that a further balance was due. The Claimant's completed conveyance states that the purchase price was paid and acknowledges its receipt, but does not expressly reserve the alleged balance, preserve a post-conveyance payment covenant, or create security for it.

[76.] In **Prime Sight Ltd v Lavarello (Official Trustee of Marrache)** [2013] UKPC 22, the Privy Council held that a completed deed which treated the purchase price as paid gave the transferee substantial grounds for disputing a subsequent debt claim for the same price, even though payment had in fact not been made. The Defendant's reliance on the receipt clause therefore raises a real issue of construction and contractual estoppel which cannot be dismissed as fanciful. The central issue is accordingly whether, consistently with the completed conveyance, the Claimant may enforce the deferred balance under the Agreement. The answer requires a fuller examination of the documents, surrounding communications, payment and completion records, and the parties' evidence.

[77.] The Claimant may ultimately establish that there was no representation, no reliance, no detriment, and no intention to waive the deferred payment obligation. But those matters are fact-sensitive. They require examination of the parties' communications, the terms of the closing documents, the knowledge of each party at completion, the extent to which the Defendant and any mortgagee relied upon the conveyance, and the timing and content of the Claimant's subsequent demands for payment.

[78.] Waiver and estoppel are not issues which the Court should ordinarily determine summarily where the alleged representation and reliance arise from a course of conduct surrounding completion and subsequent dealings with land. On the present material, I am unable to conclude that the Defendant's reliance on waiver and estoppel is fanciful.

[79.] The Agreement provides the Claimant with an arguable basis for a deferred final-payment obligation. But the completed conveyance contains an unqualified acknowledgement that the purchase price was paid and received. It neither identifies the alleged unpaid balance nor states that any obligation to pay it survives conveyance.

[80.] Thirdly, the Defendant disputes the amount claimed. The Claimant seeks not only the fifth instalment and interest, but also ancillary charges relating to utilities, cleaning and additional works. The Defendant alleges that she did not receive a detailed accounting until after title was conveyed and around the time of the injunction proceedings.

[81.] Those matters may or may not substantially reduce the Claimant's claim. However, they are capable of affecting the quantum of any judgment. They also reinforce the conclusion that the matter is unsuitable for final summary disposal unless the Claimant first provides a reconciled account and the Court can fairly determine the issues without the fuller investigation available at trial.

[82.] The Defendant also alleges an unauthorised credit-card debit of approximately US$40,000.00 and says that no adequate accounting has been provided. The allegation cannot, without a pleaded and evidenced connection to the Claimant's debt claim, be treated as an automatic defence to the deferred instalment. Still, it remains relevant to the present application insofar as it demonstrates the need for a proper account between the parties.

[83.] Fourthly, the Defendant has pleaded allegations concerning delay, defects, remedial works, contractual documentation, warranties and alleged misrepresentations. To the extent that those allegations are advanced only as an independent Counterclaim for damages, they do not by themselves answer the Claimant's application for summary judgment on the debt claim. The Claimant has not sought summary judgment dismissing the Counterclaim, and the Court does not determine the merits of the Counterclaim on this application.

[84.] The Court considers those matters only to the extent that they are properly pleaded and supported as an answer to immediate judgment, whether by equitable set-off, abatement, or another identified defence. It does not determine, at this stage, whether the Defendant's allegations will ultimately support such an answer.

[85.] I therefore do not refuse summary judgment merely because a Counterclaim has been pleaded. Rather, I refuse summary judgment because the Defence raises triable issues going directly to the Claimant's entitlement to recover the alleged outstanding balance, including merger, waiver, estoppel, the effect of the conveyance, and the disputed accounting for sums claimed.

[86.] The Claimant's reliance on affidavits filed for the freezing-injunction proceedings does not relieve it of the burden on this application to demonstrate that the Defence has no real prospect of success. The Court must consider whether those affidavits, together with the current evidence, resolve rather than merely narrate the contested questions arising from the completed conveyance, the alleged balance, the completion date, interest, and ancillary charges.

[87.] This is not a case where the Defendant has merely asserted that a trial is required without identifying any triable issue. She has identified specific legal issues — merger, waiver and estoppel — and specific factual issues concerning the conveyance, the parties' dealings at and after completion, accounting, ancillary charges and the alleged credit-card debit. I am satisfied that those issues are more than fanciful. They have a real prospect of affecting the outcome of the Claimant's claim, the amount recoverable, and the continuing basis for any interim relief. The appropriate course is for the matter to proceed through case management, disclosure and trial.

[88.] **Relying on Partco Group Ltd v Wragg and the aforementioned authorities,** I therefore decline to grant summary judgment. I express no final view on the merits of the Claimant's claim, the Defendant's Re-Amended Defence, or the Counterclaim. Nothing in this judgment should be taken as deciding the merger, waiver, estoppel, breach, misrepresentation, causation, set-off or quantum issues. Those matters remain for trial or further case management as appropriate.

Disposition

[89.] The Claimant's application for summary judgment is dismissed.

[90.] The matter shall proceed to case management for directions, a proper accounting and expert evidence if appropriate, and trial.

[91.] The question of the continuation, variation or discharge of any injunction shall be addressed separately upon proper application or at the next case management hearing, having regard to the issues identified in this judgment and the current evidential position.

[92.] There is no order as to costs.

Dated 13th of August 2026

Darron D. Ellis

Justice