**IN THE HIGH COURT OF JUSTICE Claim No: 3LS 40050**

**QUEEN’S BENCH DIVISION
LEEDS DISTRICT REGISTRY

MERCANTILE COURT**

**BEFORE STUART BROWN Q.C.**

**sitting as a Deputy Judge of the High Court**

**B E T W E E N**

 **NESBIT LAW GROUP LLP**

 **Part 20 Claimant**

 **And**

 **ACASTA EUROPEAN INSURANCE**

 **COMPANY LIMITED**

 **( formerly FOCUS INSURANCE CO.LTD)**

 **Part 20 Defendant**

 **PRELIMINARY MATTER**

***As indicated in open court that which follows was written after consideration of the parties’ respective skeleton arguments. Such was done with a view to saving time. Ms Troy was invited to expand her submissions orally but did not seek to do so.***

1. The parties were made aware on Tuesday afternoon that, if I decided the “terms issue” in Nesbit’s favour, I would propose to give a reasoned judgment thereon today. I left open for further submissions, questions of interest, costs and, critically, the form of the Order. This last arose because of a matter raised in Ms Troy’s supplemental submissions delivered the day before the hearing commenced. There she suggested that if it were found that Acasta were liable to make any payment then that payment should be directed to be made not to Nesbit but to Clydesdale.
2. Yesterday afternoon a “warning” was delivered by e-mail from Acasta through Ms Troy that it would be argued I should be required to stay the claim, not hand down any judgment unless and until Clydesdale were joined or some further assignment of policy rights and benefits were effected. It was not until after 6.00 p.m yesterday evening that Acasta’s position was finally set out in written submissions from Ms Troy.
3. I remind myself that the present proceedings were begun by way of Part 20 claim some three and a half years ago. Acasta settled their Defence in May 2013. There have been a series of interlocutory hearings the latest only a matter of days ago. Importantly in January of this year part of the Claim was stayed but directions were given for trial of this matter.
4. The week prior to commencement of this hearing the matter was before HH Judge Kaye Q.C. seemingly on an application to adjourn (with disclosure by Acasta still in issue). At that time a formal admission was made (if the same could ever have been in doubt) that Nesbit were the policyholder under the FGI policies.
5. In the Joint Note prepared by Counsel no issue was taken as to the “identity” of the parties and it has throughout specifically been recognised that Nesbit have title to bring these proceedings.
6. Thus the point has, for whatever reason (and I forego cynicism) been taken at the very last minute. Nor am I necessarily categorising Acasta’s stance as procedural skirmishing (as so described in the *Three Rivers case)* albeit a momentary glance at Chitty on Contracts might have sounded a possible warning bell months, if not years, earlier.
7. Their stance is taken apparently both to ensure monies are preserved ensuring, in accordance with the settlement agreement between Clydesdale and Nesbit, that monies recovered are handed over and second so as to ensure that Acasta’s position is protected and that they are not called upon a second time to meet claims from Clydesdale under these policies.
8. It has been suggested to me that Clydesdale must be joined as a party. On one view they were, being the original Claimant. The object of the general rule is that as between assignor and assignee each should know that proceedings are being brought and the nature of these proceedings. It is clear Clydesdale are fully aware of these proceedings and the competing arguments given the terms of the settlement agreement.
9. In deference to the argument raised by Ms Troy I briefly deal with the authorities to which she refers me. I derive no assistance from the case of *Bexhill v Razaq [2012] EWCA Civ 1376.* That deals with a different situation.
10. On its face the case of *Three Rivers District Council v Governor and Company of the Bank of England [1996] QB 292* is central to the argument. The facts were of course very different and thus the “policy” considerations underlying the decision were equally different. All of the Court were concerned as to what I have already termed “procedural skirmishing”.

At 298g Staughton LJ said this:

“*The issue is, whether the assignor of a cause of action retains a cause of action when the assignment is equitable. All are agreed that, as a procedural requirement, he* ***may*** *(my emphasis), if the court thinks fit, be compelled to join the assignee as a party; so too an equitable assignee….. In either case the effect is to avoid double jeopardy, to save the debtor from the risk that he may have to pay twice”*

There follows a long review of the authorities before concluding, as accepted here, that the assignor retains the right to sue in his own name. I do not read this judgment as authority for the proposition that the assignee must be joined.

1. t is right that Peter Gibson LJ’s judgment is to a somewhat different effect though, as is made plain at 308A-B, his principal concern was as to transparency. The Court in *Three Rivers* were concerned not with the assignor suing but the assignee. Nonetheless at 313F-G it is said in terms:

*“If, unusually, the assignor sues he will not be allowed to maintain the action in the absence of the assignee”.*

1. I have been further referred to the case of *Walter v Sullivan [1955]QB 584.* Again the facts of that case were very different and though the court categorised the argument that the assignor could recover in the absence of the assignee as an “impossible contention” I am bound to take the view that all cases are fact specific. In the instant case not only is the point raised at the very last moment but, crucially, Clydesdale are fully aware of the claim and its nature.
2. I am quite satisfied that the concerns of Acasta and the possible concerns of Clydesdale can properly be met by the terms of an Order requiring, inter alia, monies to be first paid into Court, reciting the terms of an appropriate undertaking and giving Clydesdale liberty to apply to vary the Order made.
3. I propose to consider the precise wording of the Order with Counsel but shall do so after having delivered a reasoned judgment on the substantive issue. I shall deal with questions of interest and costs thereafter.

**Stuart Brown Q.C.**

**Sitting as A Deputy Judge of the High Court**

**15.9.16**