



Neutral Citation Number: [2025] EWHC 2881 (Ch)

IN THE HIGH COURT OF JUSTICE

CLAIM NO. PT-2024-000125

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

PROPERTY, TRUSTS AND PROBATE LIST

Royal Courts of Justice, Rolls Building

Fetter Lane, London, EC4A 1NL

Date: 5 November 2025

(1) MARK WILLIAM LEE

(2) KENILWORTH CLAIM LIMITED (IN LIQUIDATION) Claimants

and

BDB PITMANS LLP

Defendant

(now known as Broadfield Law UK LLP)

and

ADCAMP LLP

Respondent

(formerly known as Pitmans LLP)

Before:

Caroline Shea K.C. sitting as a Deputy Judge of the High Court

**Thomas Grant K.C. and Ryan James Turner (instructed by Milners) for the Claimant
Jamie Carpenter K.C. (instructed by Kennedys Law LLP) for the Defendant and the
Respondent**

Hearing dates : 30 and 31 July 2025

Deputy High Court Judge Caroline Shea KC:

Claim

1. The Claimants seek damages resulting from alleged breaches of duty owed to them by a firm of solicitors, formerly known as Pitmans LLP (“Pitmans”). The Claimants had retained Pitmans to act on their behalf in a property transaction relating to the sale and future development of two adjoining properties in Ascot, Berkshire (“the Properties”). The Claimants allege that contracts for the sale of the Properties were exchanged without a development agreement in place, as had been contemplated, with the result that the Claimants were not entitled to any overage arising out of the subsequent sale of the developed units. The Claimants say that Pitmans was negligent in failing to take such steps as were necessary to ensure that the Claimants were entitled to such overage payments. I record this by way of background only. The hearing before me was not concerned with the substantive elements of the claim.
2. The claim was brought not against Pitmans but against BDB Pitmans LLP, now renamed Broadfield Law UK LLP (“Broadfield”). This was because by the time the Claimants brought the claim, Pitmans had merged with Bircham Dyson Bell LLP (the merged firm later coming to be known as Broadfield). The Claimants came to the view, in circumstances that I will consider in more detail in due course, that any liability of Pitmans to the Claimants in respect of breach of duty had passed to Broadfield. The Claimants’ case as first pleaded was that Broadfield had assumed the liabilities of Pitmans to the Claimants “by novation or otherwise”. Broadfield denies that it has assumed the liabilities of Pitmans to the Claimants for the purposes of any claim the Claimants might bring in respect of Pitmans’ acts or omissions pursuant to its retainer with the Claimants (“the Retainer”).

The Applications

3. By application dated 4 September 2024 Broadfield applied for summary judgment, on the basis that the Claimants have no real prospect of succeeding in their claim that Broadfield has assumed the liabilities of Pitmans to the Claimants. In defending the application, the Claimants say first that Broadfield has assumed those liabilities by novation. In the alternative, the Claimants allege that Broadfield is estopped from denying that it has assumed the liabilities, based on what are said to be representations made in the published accounts of both firms dating from 2019 (“the 2019 Accounts”) and/or a number of exchanges in correspondence in the period between a letter of claim sent to Broadfield by the Claimants and the Claimants issuing the Claim Form, towards

the end of the limitation period. Lastly, the Claimants rely further or in the alternative on the doctrine of acknowledgement.

4. The Claimants make a cross-application dated 15 January 2025, seeking firstly to amend their Particulars of Claim to add particulars of the alleged novation, estoppel or acknowledgement; and secondly seeking, if summary judgment on their claim is ordered, to substitute Adcamp LLP (as Pitmans, having been restored to the register, has been renamed) as defendant. Broadfield consents to the Claimants' application to amend the Particulars of Claim (which I will duly grant), but not to the substitution application.
5. On the face of the Claimants' application, the substitution of Pitmans as Defendant is sought only if Broadfield succeeds in obtaining summary judgment. However I am asked to make a determination on the substitution issue even if summary judgment is refused, in which event no substitution would be required. This is because there is an appeal to the Court of Appeal from the decision in the case of *Office Properties PL Ltd (in Liquidation) v Adcamp LLP* [2025] 1 W.L.R 2287, in which the Court granted an application to substitute Pitmans for Broadfield in a claim based on an allegation of breach of professional duty of care. That appeal is listed to be heard in January 2026 and puts in issue whether the prevailing understanding of CPR Rule 19.6(3)(b), which the Claimants claim is favourable to their application for substitution, is correct. One possible outcome is that Court of Appeal could reverse that understanding, and uphold the appeal against the order for substitution in *Office Properties*.
6. Given that possibility, the Claimants do not simply seek the substitution of Pitmans as defendant to the claim, which if granted would obviate the need for a decision on the summary judgment application. That would be to expose the Claimants to risk on appeal, if there were to be a negative outcome (from the Claimants' point of view) of the appeal in *Office Properties*. Accordingly they seek to have the substitution application decided, even if Broadfield does not succeed in obtaining summary judgment, so that if the substitution route is effectively cut off following the appeal in *Office Properties*, they will retain the benefit of their claim against Broadfield.
7. I am invited to determine both applications, given that if the Claimants succeed in resisting summary judgment they could still fail at the trial of the novation, estoppel and acknowledgement issues, in which case both Pitmans and Broadfield would escape liability. If that happens, they would then seek to invoke the benefit of the outcome of the substitution application (should it be successful), which would allow them to pursue their underlying professional negligence claim against one of the two parties, the justification being that one of them must be liable for any negligence established, and it would be unjust to allow the complexities of the appeal against an existing decision and the procedural web involved in substitution to defeat a claim which if made out will establish negligence on the part of either Pitmans or Broadfield. Broadfield is amenable to that approach, and I will do as requested, on the basis that fairness demands that the Claimants are able to bring their claim, if it has a realistic prospect of success, and assuming their substitution application satisfies the relevant legal test, against whichever of the two parties transpires to be liable.

8. Broadfield's application for summary judgement was supported by the written evidence of John Hutchinson, managing partner of Broadfield (two statements), Paul Castellani of Kennedys, solicitors acting for Broadfield in respect of the Claimants' claim (two statements), and one statement of Sarah Potter, a partner in Broadfield, formerly a partner in Pitmans, who acted for the Claimants on the Retainer. Written evidence in support of the Claimants' application was provided by Martin Scott, of Milners (two statements), solicitors acting for the Claimants in their claim.

Background

The Retainer

9. The Claimants' case is as follows. In setting out the narrative I do not purport to make findings of any controversial facts. In 2014, the Claimants wished to realise the development potential of the Properties. They entered into negotiations with a potential purchaser, and reached an in principle oral agreement as to the sale and subsequent development of the Properties, with provision for the purchasing entity to build out the development, and the Claimants to be paid overage upon sale of the developed units. The in principle agreement was renegotiated in 2018, and was understood by all concerned (rightly) to be subject to contract.
10. The First Claimant contacted Pitmans by telephone in early February 2018 and on 6 February 2018 the Claimants attended a meeting with a Ms Delphine Mehouas, a partner at Pitmans. She passed the matter on to Ms Potter. It is alleged that important information about the proposed transactions was not conveyed by Ms Mehouas to Ms Potter. On 15 February 2018, Pitmans provided a letter of engagement to the First Claimant containing the terms of its retainer, but Broadfield accepts that a letter of engagement was not provided to the Second Claimant.
11. In the event contracts for the sale of the Properties were exchanged without any development agreement having been agreed. The sale price for the Properties was, the Claimants allege, a (deliberate) undervalue in the (misplaced) expectation that more value would be unlocked and disbursed to them by means of an overage provision as the development progressed and sales off were made. However, no development agreement was signed, and in the event the purchasing entity fell out with its lenders and administrators were appointed on 17 December 2021. The administrators sold the Properties free of the overage rights which had been granted to the First Claimant in the contract of sale.
12. The Claimants claim that Pitmans was in breach of its duty of care to them by (to simplify somewhat) failing to ensure that a binding development agreement was entered into prior to exchange of contracts, or failing to ensure that the contracts were conditional on such an agreement having been concluded; and failing to ensure that overage would be ultimately paid to the Claimants. The Claimants claim losses reflecting the loss of the opportunity to earn overage following development and sale,

or at the very least the loss of the actual market value of the Properties, said to be in excess of £10 million.

Post Merger

13. On 1 December 2018 Pitmans and Broadfield merged. It is uncontroversial that at this time the business and the assets of Pitmans were transferred to Broadfield. Also at this time Pitmans ceased trading and was subsequently dissolved on 7 September 2021. The 2019 Accounts, which feature heavily in the pleading and the articulation of the Claimants' claim, comprise Pitmans' accounts for end April 2019, which were published on or around 18 March 2021, and Broadfield's accounts for end May 2019, published on or around 26 February 2020. The 2019 Accounts contained statements about the merger, and its effects, which led to Mr Scott of Milners advising the Claimants on the basis that Broadfield had taken on any liability on the part of Pitmans for *inter alia* then unnotified claims against Pitmans. The relevant statements in Pitmans' 2019 accounts were that:

- (1) the entire assets and business of Pitmans had been transferred to Broadfield;
- (2) the entire liabilities of Pitmans had been transferred to Broadfield;
- (3) following the acquisition, Pitmans had ceased trading.

The relevant statements in Broadfield's 2019 accounts were that:

- (1) Broadfield had acquired the entire assets of Pitmans;
- (2) Broadfield had acquired the entire liabilities of Pitmans;
- (3) Broadfield was the proper defendant to a claim on those liabilities (alleged to be an implicit if not an express representation).

14. On receipt of Broadfield's disclosure of the merger agreement dated 22 November 2018 ("the Merger Agreement"), the Claimants were able to plead out their case on novation, which in its initial formulation had been unparticularised, based only on what the Claimants' solicitors had gleaned from the statements in the 2019 Accounts. It is the Claimants' case that the Merger Agreement provided for the novation to (or alternatively transfer to or assumption by) Pitmans of the liability to, amongst others, the Claimants. I shall consider the detail of this claim when I come on to consider the parties' rival arguments.

Correspondence

15. In reliance on the statements contained in the 2019 Accounts the Claimants initiated pre-action correspondence with solicitors acting for Broadfield. On 30 November 2023 a letter of claim ("the Letter of Claim") was sent to Broadfield, addressed to John Hutchinson, its managing partner. The letter was headed using the names of the Claimants and of Broadfield. It stated in terms that the Claimants had retained Pitmans; and it was Pitmans that was alleged to have been negligent. The letter also expressly stated that the Claimants intended to pursue the claim against Broadfield, adding:

“[Pitmans] and [Broadfield] are collectively referred to as “you” or the “firm” in this letter given the latter’s accession to the liabilities of the former.” (my emphasis).

16. From 15 December 2023 until 12 March 2024 Broadfield engaged in correspondence responding to the Letter of Claim, but never denying that it was the correct defendant, nor otherwise commenting upon the Claimants’ intention to pursue Broadfield rather than Pitmans. In successive drafts of a standstill agreement being negotiated between the parties (which was never executed for extraneous reasons) Party A was identified as the Claimants, and Party B as Broadfield. Recital B of the amended draft standstill agreement sent by Kennedys on 3 January 2024 stated:

“[the Claimants] engaged Party B in relation to the sale of [the Properties] as identified in the letter of claim dated 30 November 2023”.

17. Proceedings were commenced on 14 February 2024, one day before the anniversary of the Retainer. On 12 March 2024 Kennedys sent a detailed response to the Letter of Claim. At no point in that response did Kennedys distinguish Broadfield from Pitmans, and at every relevant point Kennedys treated Broadfield as synonymous with Pitmans. Neither did Broadfield at any point dispute the express assertion that Broadfield had acceded to Pitmans’ liabilities.
18. The Claim Form and the Particulars of Claim were served on 12 June 2024. It was only on 4 July 2024 that Kennedys wrote denying that Broadfield was the correct defendant to the Claimants’ claim, and indicating that it would make an application for summary judgment to strike out the claim on the basis Broadfield had no liability for the acts of Pitmans.
19. Since then, it has come to light that there exist two further cases involving Pitmans LLP in which the assumption of liabilities has been considered. On 30 January 2025, judgment was handed down in *Office Properties*. In that case, on 13 March 2023, Broadfield had been sent draft Particulars of Claim asserting that the liabilities of Pitmans had passed to Broadfield. On 15 September 2023 Broadfield’s solicitors provided a draft defence to that claim in which it was asserted in terms that Broadfield was not liable for Pitmans’ alleged negligence. This was two and a half months before the Letter of Claim was sent in the present case.
20. A second judgment exists, in the case of *The Tintometer Limited v Pitmans (a firm)* [2024] EWHC 370 (Ch), also involving a professional negligence claim against Pitmans (the firm) in which a later manifestation of Pitmans (the LLP) had been incorrectly named as the defendant. Judgment was handed down on 21 February 2024. Bacon J allowed the substitution for which the claimant applied, in the following circumstances.

“6. It is now known that the solicitors who were instructed by the claimants in 2008 and 2009 carried on business, at the time, as a traditional unincorporated partnership known as Pitmans or Pitmans Solicitors. That

entity is the first defendant as substituted by the claimants. The partnership continued until 1 May 2011. In 2008 an LLP called Pitmans (UK) LLP was incorporated, but remained at that stage a dormant company. It changed its name first to Pitmans LLP, and then to Adcamp LLP (**Adcamp**). That entity is now the second defendant (albeit that the claim is no longer pursued against Adcamp). On 1 May 2011 Adcamp acquired the business of the Pitmans partnership. It was therefore from that point that the business was carried on by the LLP rather than the partnership. In around December 2018 the business was acquired by another LLP, Bircham Dyson Bell LLP, which then changed the name of the merged entity to BDB Pitmans LLP (**BDBP**).

7. The present application arises because the claim form which was originally issued in April 2021 named Adcamp and BDB Pitmans as the first and second defendants, respectively, and did not refer to the former partnership, Pitmans. The claim form was not, however, served until September 2023, following a succession of extensions of time. By the time it was eventually served, the claim form had been amended pursuant to CPR rr. 17.1 and 19.6 so as to substitute Pitmans as the first defendant and Adcamp as the second. The strike out application disputes both the extensions of time and the substitution of Pitmans as a defendant.”

21. It is the Claimants’ case that Broadfield is estopped from denying that it is the correct defendant to the Claimants’ claim. In that context, the recent determinations of very similar issues in *Office Properties* and *The Tintometer* raise the question of what Mr Hutchinson, the managing partner of Broadfield to whom the Letter of Claim was sent, knew about those two cases at the time Broadfield was considering and then responding to the Letter of Claim. Mr Hutchinson does not address the issue of his knowledge in either of the two witness statements in support or defence of the two applications before me.

Summary judgment

The test for summary judgment

22. CPR Rule 24.3 provides that

“[t]he court may give summary judgment against a claimant or defendant on the whole of a claim or on an issue if—
(a) it considers that the party has no real prospect of succeeding on the claim, defence or issue; and
(b) there is no other compelling reason why the case or issue should be disposed of at a trial.”

23. The principles to be applied when considering an application for summary judgment are those set out by Lewison J in *Easyair v Opal Telecom Ltd* [2009] EWHC 339, at [15] (approved by the Court of Appeal in *AC Ward & Sons Ltd v Catlin (Five) Ltd* [2009] EWCA Civ 1098, at [24]).

“(i) The court must consider whether the claimant has a “realistic” as opposed to a “fanciful” prospect of success: *Swain v Hillman* [2001] 2 All ER 91;

ii) A “realistic” claim is one that carries some degree of conviction. This means a claim that is more than merely arguable: *ED & F Man Liquid Products v Patel* [2003] EWCA Civ 472 at [8]

iii) In reaching its conclusion the court must not conduct a “mini-trial”: *Swain v Hillman*

iv) This does not mean that the court must take at face value and without analysis everything that a claimant says in his statements before the court. In some cases it may be clear that there is no real substance in factual assertions made, particularly if contradicted by contemporaneous documents: *ED & F Man Liquid Products v Patel* at [10]

v) However, in reaching its conclusion the court must take into account not only the evidence actually placed before it on the application for summary judgment, but also the evidence that can reasonably be expected to be available at trial: *Royal Brompton Hospital NHS Trust v Hammond (No 5)* [2001] EWCA Civ 550;

vi) Although a case may turn out at trial not to be really complicated, it does not follow that it should be decided without the fuller investigation into the facts at trial than is possible or permissible on summary judgment. Thus the court should hesitate about making a final decision without a trial, even where there is no obvious conflict of fact at the time of the application, where reasonable grounds exist for believing that a fuller investigation into the facts of the case would add to or alter the evidence available to a trial judge and so affect the outcome of the case: *Doncaster Pharmaceuticals Group Ltd v Bolton Pharmaceutical Co 100 Ltd* [2007] FSR 63;

vii) On the other hand it is not uncommon for an application under Part 24 to give rise to a short point of law or construction and, if the court is satisfied that it has before it all the evidence necessary for the proper determination of the question and that the parties have had an adequate opportunity to address it in argument, it should grasp the nettle and decide it. The reason is quite simple: if the respondent's case is bad in law, he will in truth have no real prospect of succeeding on his claim or successfully defending the claim against him, as the case may be. Similarly, if the applicant's case is bad in law, the sooner that is determined, the better. If it is possible to show by evidence that although material in the form of documents or oral evidence that would put the documents in another light is not currently before the court, such material is likely to exist and can be expected to be available at trial, it would be wrong to give summary judgment because there would be a real, as opposed to a fanciful, prospect of success. However, it is not enough simply to argue that the case

should be allowed to go to trial because something may turn up which would have a bearing on the question of construction: *ICI Chemicals & Polymers Ltd v TTE Training Ltd* [2007] EWCA Civ 725.

24. Each of the arguments concerning novation, estoppel, and acknowledgement were the subject of detailed, closely argued legal submissions by Counsel representing both parties. Although I was not addressed on this point, it would in my judgment be open to me to grant summary judgment in respect of part only of the Claimants' claim were I to be satisfied that the Claimants had no real prospect of success on one or two but not all of the pleaded bases for Broadfield's liability.

Novation

25. The fundamental principles of novation are not at issue. To summarise the relevant passages from *Chitty on Contracts*, 35th edition, at 23-089ff, a novation takes place where a new contract is substituted for an existing contract. A three-party novation arises where A and B agree that B shall take on the rights and obligations of A under a contract with C. Consideration is provided by the discharge of the original contract. The question must be determined objectively and it does not matter if the parties are not aware that a novation has arisen. A novation cannot take place without the consent of all parties, which may be express or may be inferred from conduct that objectively demonstrates consent to the novation: *Musst Holdings Ltd v Astra Management UK LTD* [2023] EWCA Civ 128 at [55] – [56].
26. Evidence of actions subsequent to the alleged novation are admissible to establish whether there has been a novation by conduct. The proper approach to deciding whether a novation can be inferred from conduct is

“to decide whether that inference is necessary to give business efficacy to what actually happened The inference is necessary for this purpose if the implication is required to provide a lawful explanation or basis for the parties' conduct.” *Evans v SMG Television Ltd* [2003] EWHC 1423 (Ch) at [181].

27. The Claimants' case based on novation is as follows. Representations were made in the 2019 Accounts to the effect that the liabilities of Pitmans had been transferred by Pitmans to Broadfield and "acquired" by Broadfield from Pitmans. The 2019 Accounts show Broadfield's liabilities as including Pitmans' former liabilities, and Pitmans' balance sheet show zero liabilities. These representations were not merely reflecting the Merger Agreement (which was not made public and so was not available to third parties reading the 2019 Accounts). The representations were a clear message to those to whom Pitmans might in the future be shown to owe liabilities that they had now been acquired by Broadfield.
28. The Claimants rely then on the Merger Agreement, pointing to the use as between Broadfield and Pitmans of what is said to be the language of novation, and not merely that of a contract operating between two parties. Specifically:

- (1) Recital (C): “[Broadfield] and Pitmans wish to merge their businesses and have agreed that [Broadfield] shall acquire the business and assets and certain of the liabilities of Pitmans as a going concern ...”.
- (2) Clause 13.1.1: “[Broadfield] ... shall assume responsibility for the payment, discharge and/or performance of the Assumed Liabilities in accordance with this Agreement”. It is common ground between that parties that “Assumed Liabilities”, defined in Schedule 5 of the Merger Agreement, includes the claim now being brought by the Claimants.
- (3) Clause 13.5.1: except as otherwise provided Broadfield “shall be responsible for discharging all liabilities in connection with or relating to the Business or Assets or assumed pursuant to the terms of this Agreement.”
- (4) Clause 13.6: Broadfield “shall have and be entitled to the benefit of the same rights, powers, remedies, claims, defences, obligations and conditions ... as Pitmans enjoyed in relation to the Assumed Liabilities” and further Pitmans must either assign or exercise such rights etc to the extent that they relate to such Assumed Liabilities.

29. The Claimants say that these facts taken together spell out an implied novation. Viewing the Merger Agreement objectively, Pitmans transferred its business assets and liabilities to Broadfield, using the language of the assumption of liabilities, and fulfilling the first requirement of the doctrine. The representations in the 2019 Accounts amounted to an invitation to the Claimants (as one of a class of those who might post-merger bring claims against Pitmans) to accept the novation, which they duly did by threatening to sue Broadfield alone, or at the latest when they brought the claim against Broadfield alone, thus satisfying the second requirement, that all parties must consent to the novation. The behaviour of the parties after the Letter of Claim, both proceeding on the basis that Broadfield was the correct party to sue, is consistent with such a novation. Since the question whether a novation has taken place is to be determined objectively it is irrelevant if Kennedys was acting under a mistake rather than pursuant to a belief that a novation had taken place.
30. Broadfield does not dispute that the Merger Agreement contained promises from Broadfield to Pitmans that Broadfield would assume liability for claims arising out of Pitmans’ acts or omissions prior to the merger. As between Broadfield and Pitmans, Broadfield is now liable for Pitmans’ actions under the Retainer. It is however hotly contested that this establishes any element of a novation, much less one that the Claimants have consented to, whether expressly or by conduct.
31. Broadfield states that the Merger Agreement operated as between Broadfield and Pitmans, but would never have been seen by any former clients of Pitmans, and so is “irrelevant to any question of novation”. Further, statutory accounts are prepared to satisfy specific statutory requirements, and the statements in the 2019 Accounts on which the Claimants rely cannot be regarded as an offer to contract. In any event the statements relied on were a statement of existing fact, with a specific context within the 2019 Accounts. Reliance is placed on the almost complete absence of any mention in the 2019 Accounts of the merger, the only reference being in a note to the accounts for the purposes of explaining the method of accounting used in respect of the merger. Further, the statements of fact were inconsistent with also being in the nature of an offer.

It is said that the liability could not have been transferred to Broadfield without the Claimants' consent.

32. Thus the central point of dispute between the parties' rival contentions on novation is as follows: is the Claimants' consent at or around the time of the transfer of liabilities a precondition to the successful transfer of liabilities, such that it must be given simultaneously with any transfer of liabilities? Or can the Claimants' consent be given at a time significantly later than the transfer of liabilities between Broadfield and Pitmans, in effect perfecting or feeding the novation?
33. Broadfield argues that the proposition that consent can be provided at a time distant from the transfer of liabilities is not supported by authority. Broadfield relies on *Magee v Crocker* [2024] EWHC 1723 (Ch), in which it was held by HHJ Cawson KC, sitting as a Judge of the High Court, that the novation in that case comprised a tripartite agreement between the three parties, the effect of which was to terminate the original contract, and create a new contract, with the consent of all three parties. On the facts of that case, the consent of the third party was given simultaneously with the transfer of the liabilities from the original contracting party to the new party, and all three parties were involved at the time of the transfer of the shares. There had been a finding of novation by conduct; but that finding depended crucially on Mr Crocker's active involvement at the time that the shares were transferred.
34. Similarly in *Evans v SMG Television* [2003] EWHC 1423 (Ch), it was held that the third party, Mr Evans, and his accountant, were present at the time of the transfer of the contractual liabilities, knew exactly what was happening, and approved it. This was one of the facts from which a novation was to be inferred, and those facts were "consistent and only consistent with the novation for which the defendants contend" (at [183]). Again, it was the knowledge and involvement of the third party at the time of the transfer of liabilities which, together with the other relevant facts, justified the inference of a novation as required to provide a lawful explanation or basis for the parties' conduct.
35. Both of these cases are illustrations of a novation by conduct. Both of them involve situations where the third party was an active protagonist at the time the new arrangements between A and B were entered into, and was aware of those arrangements. I accept that for the consent to be given (whether expressly or by conduct) at the time of the transfer of liabilities is commonplace, and possibly even the paradigm case of novation. But whilst there may be no authority that it is sufficient that consent be given at a later stage by a third party who was unaware of the transfer of liabilities between A and B when it was happening, neither is there any authority deciding that this can never be the case. Moreover, it is not possible in my judgment to spell out from the way these two cases were reasoned that the doctrine is necessarily limited to situations where consent is given simultaneously with or around the time of the transfer in question.
36. Broadfield argues that the offer on which the Claimants rely was made to "creditors" of Pitmans, but that at the time the 2019 Accounts were filed the Claimants were not creditors "*or at any event there is no evidence that they considered themselves to be creditors*". To my mind that semantic argument does not assist Broadfield, which accepts that the liabilities which Broadfield assumed under the Merger Agreement included future as yet unspecified claims by former clients of Pitmans. If the Claimants are correct that the 2019 Accounts can be read as being in the nature of an offer to accept a novation, that could (depending on the facts) entail that the representations are capable of enduring

until such time as a claim is brought, which in the way of things may be some time after the transfer of liabilities, right up until the expiry of any relevant limitation period.

37. Broadfield's next argument is that any contract of novation would have required three parties: Pitmans, Broadfield and the Claimants, and that the contract on which the Claimants first rely – the transfer of liabilities between Pitmans and Broadfield – subsists only between those two parties. I accept that in terms of the Merger Agreement, acceptance and consideration operates between those two parties and not, at the time it was entered into, to the Claimants' knowledge or with their consent. What remains at large however is whether the contract which subsisted between those two parties was capable of serving also as an inchoate tripartite contract (or brace of related contracts), the terms of which were capable of being accepted by the Claimants' intimating, or bringing, its claim, at some point in the future.
38. Broadfield also argues that the statements contained in the 2019 Accounts on which the Claimants rely are not capable of amounting to offers. Reliance is placed on the decision of Neuberger J in *Schuldenfrei v Hilton* [1998] STC 404 in which it was held that a statement contained in a notice from a tax inspector was a statement of fact, which did not seek to reach an agreement, and did not on a fair reading represent an offer capable of acceptance. I do not find this case of assistance. It was a decision on its facts, involving the characterisation of a statement made in a notice to a tax-payer. The interpretation of the notice was highly context dependent. It is not authority for a general proposition that statements of fact can never operate as offers capable of acceptance, the more so where the context in which the statement is made involves potential future creditors whose identity and claims cannot be determined as at the date of the offer. The characterisation of a statement in the 2019 Accounts as an offer is unusual, and for it to qualify as part of the novation of a contract seems to be unprecedented in case law. That alone does not render the claim in novation unarguable, or even fanciful, on these facts.
39. Broadfield then says that if the 2019 Accounts do represent an offer, it had expired by the time the Claimants purported to accept it. Since the offer was not expressly time limited, it would have expired within a reasonable time, and what is reasonable depends on all the circumstances. It cannot have extended beyond the time that the maker of the offer (or one of them) ceased to exist, which was on 7 September 2021, when Pitmans was dissolved. In a similar vein Broadfields argue that there can have been no acceptance of the offer, whether by bringing the claim or otherwise, since any acceptance must be communicated to the offeror, in this case Pitmans, which had ceased to exist prior to any purported acceptance. Further, Broadfields argue that nothing about the Claim Form indicates that the Claimants thereby intended to accept an offer to novate Pitmans' liabilities to Broadfield. Rather, the Claim Form asserted an established novation, and seeks to sue on it.
40. There is some force in these arguments. But they are not in my judgment arguments which show definitively that the claim will fail. They are not arguments which cannot be countered. And the counter arguments are not in my judgment fanciful. If an offer is originally made by the transferring party and the transferee, and if it is held possible that an offer can be accepted some time after it is made, it could (depending on the facts) be that the parties to the transfer agree that acceptance communicated to one of them will suffice, particularly if that party is the one assuming the liabilities under the novated contract. Equally, it might be agreed that the acquiring party will have carriage of the

offer even after the transferring party ceases to exist, so that the offer remains open, and can be accepted, after such an event. And if the offer is capable of being accepted by the commencement of a claim, or by intimating the claim, I cannot see that asserting the novation as having happened rather than as happening by means of the claim will mean that the claimants have failed to accept the offer. So the arguments are in my judgment at large, and the objections raised by Broadfield not so damning that the Claimants have no realistic prospect of success.

41. Lastly it is said that the Claimants provided no consideration for the alleged novation. *Chitty* 35th edition at 23-094 states that consideration for both the discharge agreement and the new contract is required. However I note that in footnote 6 the editors observe that “there can be difficulty in seeing how consideration moves from the promisee”, without suggesting either how that difficulty might be overcome, or that that problem would always stand in the way of a novation *per se*. In my judgment the question of consideration in a novation is a difficult one, and the basis for the application of the requirement in circumstances where novation is to be inferred from conduct is not settled, or at least not entirely clear. I agree with the Claimants’ submission that whilst the framework of the law of contract must be applied, it is also the case that the authorities, particularly those involving the inference of a novation from conduct, require a close examination of what has happened in the business dealings in the period between the parties, accepting that the actors may be wholly unaware of the law of novation, or contract, and will not frame their dealings, in their own minds or in their communications, in terms of the language or concepts of offer, acceptance and consideration.
42. This may make novation harder to identify where not consciously intended, but the proper approach to deciding whether a novation can be inferred from conduct is (to repeat the passage quoted in paragraph 26 above) is:

“to decide whether that inference is necessary to give business efficacy to what actually happened The inference is necessary for this purpose if the implication is required to provide a lawful explanation or basis for the parties’ conduct”. *Evans v SMG Television Ltd* [2003] EWHC 1423 (Ch) at [181].

In my judgment this approach implicitly acknowledges that the application of the law of contract to the relevant business dealings may be a more fluid, and less rigid, exercise than the textbook account of offer, acceptance, and consideration, albeit those three elements are still required. It remains therefore reasonably arguable that a novation is necessarily to be inferred on the facts of this case to provide a lawful explanation or basis for the parties’ conduct.

43. Broadfield drew attention to a number of provisions within the Merger Agreement that it says show that it did not comprise, or contemplate, a novation of Pitmans liability to its clients. The purpose of the Merger Agreement was not, it is said, to transfer the liabilities of Pitmans under individual contracts of retainer, but rather to provide that Broadfield would in effect indemnify Pitmans against claims, and that Broadfield would take over the management claims of claims commenced against Pitmans post-merger. Certain provisions are consistent only with the parties’ intention that any claim based on Pitmans’ acts or omissions would be brought against Pitmans. The language used is not the language of novation.

44. From these detailed submissions of construction arise four points, say Broadfield. First, the parties understood that the Merger Agreement could not by itself transfer any obligations which could only be transferred by novation. Second, there was no intention to transfer liabilities in respect of notified claims to Broadfield. Third, while Broadfield would assume liability in respect of claims post-merger, that did not signify an intention to novate liability for those claims, but simply that Broadfield would control the claim, deal with it, and hold Pitmans harmless. Fourth, existing clients were to enter into new contracts, not have their existing retainers novated. Accordingly the claim that the Merger Agreement effected a novation of the liabilities of Pitmans to Broadfield, subject only to the consent of the relevant creditor who wished to sue on that liability is unsustainable.
45. Broadfield seeks to rebuff what it characterises as the Claimants' appeal to common sense, when they argue that it would make no sense for a creditor to sue Pitmans or to be required or expected to, in circumstances where Pitmans was "following the transfer of liabilities" an empty shell, had ceased trading, and was later dissolved. The Claimants suggest that Broadfield could only have permitted Pitmans to be dissolved because it did not envisage that former clients of Pitmans should need to go to the trouble of restoring it to the register, but instead could sue Broadfield. This *cri de coeur*, argues Broadfield, is misplaced, for two reasons. First, that difficulty does not arise on the facts of this case since by the time the Claimants had issued the claim Pitmans had been restored. I find that rebuttal unsatisfactory. There will have been (or at the very least could have been) former clients of Pitmans who wished to assert claims during the period between Pitmans' dissolution and its restoration. The point made by the Claimants would certainly have applied to them.
46. Secondly, Broadfield says that the Third Parties (Rights Against Insurers) Act 2010 ("the 2010 Act") removes the problem since it has the effect of transferring the rights of an insured to claim on its insurance in respect of a claim made against the insured to a third party making the claim against the insured. That means that parties in the position of the Claimants who wish to bring a claim against Pitmans can avail themselves of the rights of Pitmans to be indemnified by its insurer in respect of such a claim. Section 6A of the 2010 Act applies the protection to any insured that has been dissolved (subject to exceptions which do not apply). In response, the Claimants rely on the evidence of Mr Hutchinson at paragraph 3 of his first witness statement that Pitmans did not buy any runoff insurance to cover claims which might be made against it after the merger. So Pitmans was not insured in respect of the Claimants' claim which arose after the merger, and so there was no insurance for the 2010 Act to bite on.
47. The Claimants also refer to what I agree would be an oddity if it was not intended that liability for claims should pass to Broadfield – namely, that Pitmans was dissolved at a point in time at which, according to Broadfield, it was intended that Pitmans would retain liability for claims based on its acts or omissions pre-merger. The only way this could operate in practice would be if a future claimant restored Pitmans to the register in order to bring its claim. In my judgment that is an approach both unwieldy and unattractive, and those matters will weigh against the Broadfield position in the process of determining what in fact the parties intended by the Merger Agreement.

48. All of these arguments (and many more) were developed in extensive, tightly packed oral submissions including minute forensic textual analysis of the Merger Agreement, the insurance arrangements in play on Pitmans' ceasing to trade, and involving reference to the body of case law, in particular on the extent to which third parties may rely on published accounts. The rival contentions were meticulously and persuasively argued by Leading Counsel on both sides, and I mean no disrespect to either of them by not setting out the arguments (even) more fully here. But I remind myself that I am not deciding the correctness of the novation argument, but rather must consider whether there is a real as opposed to fanciful prospect of the Claimants succeeding at trial.
49. After considering the arguments, and in the light of the views I have set out above as to their strength, I have reached the conclusion that the Claimants' case on novation is reasonably arguable. Notwithstanding the strength of Broadfield's submissions, they contain no knockout blow whether individually or taken together, such that it can be said that the Claimants' prospects of success are merely fanciful. The argument on these facts, involving a much delayed act of consent on the part of the Claimants, is a novel one, at least in this jurisdiction, but that by itself does not mean that it is hopeless or even fanciful.
50. I am aware that the Court must not shy away from granting summary judgment where the issue is one of law only, and where that issue is capable of being swiftly decided: see the seventh principle of Lewison J in *Easyair* quoted at paragraph 23 above. But whilst Broadfield has ably demonstrated that the contrary position is well arguable, I do not consider that the Claimants' case on novation is obviously bad in law (nor even hovering close to that line). Indeed the very complexity and depth of the rival submissions means that it is not, in my judgment, a "short point" of the type Lewison J had in mind; rather it raises a series of complex issues that are going to be far from straightforward to resolve. I consider that the Claimants have (and by more than a slim margin) a realistic prospect of success on the novation argument, and accordingly I decline to grant summary judgment in respect of it.

Estoppel

51. The Claimants' estoppel claim is advanced widely, on the basis that "it does not matter whether the estoppel here is framed as an estoppel by representation, estoppel by convention, or promissory estoppel" (paragraph 21 of the Claimants' skeleton argument). This is perhaps a surprising submission in view of the fact that those various branches of the doctrine of estoppel have discrete technical requirements, albeit many of them overlap. Nonetheless, the Claimants' case is brought on the basis that all elements relevant to each of the doctrines, in respect of which there is a considerable degree of overlap, have been pleaded and that accordingly, by one branch of the doctrine or another, Broadfield is estopped from denying liability.
52. In support of the broad estoppel claim, the Claimants assert a number of "sources of the estoppel", as follows.
- (1) Positive representations about the legal relations between Pitmans, Broadfield and their creditors. These came in the form of the representations in the 2019 Accounts, and also representations in the correspondence following receipt of the Letter of Claim.
 - (2) A common assumption about the legal relations between Broadfield and the Claimants for which Broadfield assumed responsibility by causing that assumption

- (in the 2019 Accounts) and/or by acquiescing in and encouraging it through correspondence.
- (3) The allegation, based on inference, that Broadfield was aware that the Claimants were mistaken in bringing the claim against Broadfield, but deliberately kept silent about that at a time when it had succeeded on the same argument in unconnected proceedings, until the limitation period for a claim against Pitmans had passed.
53. As regards the requirements for an estoppel by representation the Claimants rely on the following passage from the judgment of Falk LJ in *159-167 Prince of Wales Road RTM Co Ltd v Assethold Ltd* [2024] EWCA Civ 1544 at [66].
- “As far as estoppel by representation is concerned, as Lord Scarman explained in *Tai Hing Cotton Mill Ltd v Liu Chong Hing Bank* [1986] AC 80, 110, its essence is a representation that is intended to induce the person to whom it is made to adopt a course of conduct which results in detriment or loss. More recently, in *Steria Ltd v Hutchinson* [2006] EWCA Civ 1551 at [93] Neuberger LJ described the “classic requirements” as follows (albeit with the qualifier that they were relatively broad brush):
- “(a) a clear representation or promise made by the defendant upon which it is reasonably foreseeable that the claimant will act, (b) an act on the part of the claimant which was reasonably taken in reliance upon the representation or promise, and (c) after the act has been taken, the claimant being able to show that he will suffer detriment if the defendant is not held to the representation or promise.”
54. The Claimants rely on the statements made in the 2019 Accounts to assert that Broadfield intended that persons such as the Claimants should rely on them. Further, the Claimants did in fact rely on the representations in both sets of accounts. The evidence of Mr Scott is that he scrutinised the 2019 Accounts for the very purpose of finding out what arrangements had been made regarding Pitmans’ liabilities upon its merger with Broadfield, precisely so that he could identify the correct defendant. This belief was expressly referred to in the Letter of Claim, and repeated in Mr Scott’s response to Kennedys’ letter of 4 July 2024 in which it had been asserted for the first time that Broadfield was not the correct defendant. That is strong evidence, it is said, both of the belief and the reliance.
55. Lastly, if it is determined that Broadfield is not the correct defendant, the Claimants have suffered detriment in reliance on the representations, or on a common assumption, if it proves that the Claimants are unable to sue Pitmans because their application for substitution is refused, or is granted but later comes to be reversed.
56. In its draft Defence, Broadfield takes issue with all the elements comprising the alleged estoppel. As regards representations alleged to have been made in the 2019 Accounts, it is denied that these amounted to representations that novation had occurred. But I note that that is not how the Claimants characterise the representations. The Claimants’ claim is that the representations suggest (I use the word neutrally) that Broadfield has assumed

the liabilities of Pitmans, which is the outcome of the behind the scenes arrangements between Broadfield and Pitmans, whatever they were, but does not specify the method by which the outcome was achieved. So the Claimants' case is not put on the basis that the statements amount to representations in terms that a novation had taken place, merely that – however it had arisen – Broadfield had assumed liability for the Claimants' claim against Pitmans.

57. Broadfield further asserts that there was no intention on its part that any statement in the 2019 Accounts should be relied on by the Claimants. The Claimants answer that by asserting that an LLP “must expect” that accounts published to the world via the Companies House portal will be consulted and relied on by third parties as accurately reflecting the affairs of the LLP. If that is the expectation then “it is difficult to see how there could not also be an intention that they should be relied on”. The Claimants rely on the observations of Bingham LJ in *Caparo Industries plc v Dickman* [1989] 1 Q.B. 653 at 682C that the requirement that filed accounts be available for public inspection must “*be imposed (in part at least) for the protection of those dealing with the company as contracting parties, creditors, lenders and even, perhaps, defendant in litigation.*” However, this was not said in the context of a claim based on estoppel, and although Bingham LJ expressly refers to a defendant in litigation, that is a tentative reference (“... even, perhaps ...”) which cannot in my judgment bear the weight the Claimants seek to place on it in the context of bringing a claim in estoppel by representation. Moreover, the characterisation of Bingham LJ of the purpose of the publication of accounts in terms of enabling prospective investors to make informed decisions was not shared by Lord Oliver when the case came to be considered by the House of Lords: [1990] 2 AC 605, at 653D. On the other hand I agree with the Claimants' contention that in *Caparo* the purpose of the accounts was being considered in the context of an enquiry into the concept of proximity for the purposes of establishing a duty of care, and the observations even of these highly respected senior members of the judiciary must be viewed accordingly and are of relatively limited assistance (a point which I note goes both ways).
58. In summary, it is in my judgment fairly arguable that accounts available to the world at large may contain statements which qualify as representations intended to be relied on. Much will depend on context and the terms of the statements. Moreover, although the summary set out by Falk LJ in *159-167 Prince of Wales Road* speaks of “a representation that is intended to induce the person to whom it is made to adopt a course of conduct”, the summary of Neuberger LJ in *Steria* which she then quotes refers to “a clear representation or promise ... upon which it is reasonably foreseeable that the claimant will act” (my emphases), which is an objective measure, and does not involve enquiry into the state of mind of the representor. That distinction did not form part of the argument before me, but the latter test is clearly an objective, and arguably a less stringent, one which in my judgment lends itself more naturally to the analysis based on expectation advanced by the Claimants. I conclude that there is a realistic prospect of success in the argument that the statements are sufficient to qualify as representations for the purposes of the doctrine of estoppel by representation.

59. The doctrine of promissory estoppel requires that a promise be made by the party alleged to be estopped that it will not enforce its legal rights against the claimant in some respect. It involves a promise or undertaking as to the future (per HHJ Cawson KC in *Ashworth v Philbin* [2025] EWHC 494 (Ch) at [149], referring to *Spencer-Bower on Reliance Based Estoppel*, 5th ed, at 1.25.) I do not consider that the evidence on which the Claimants rely can spell out such a promise whether from the 2019 Accounts or the correspondence following the Letter of Claim.
60. The position in relation to the doctrines of estoppel by acquiescence and estoppel by convention, as applied to the situation as it developed from the time the Letter of Claim was sent, is more nuanced. Broadly speaking, estoppel by acquiescence is a branch of the doctrine of estoppel by representation and applies when a party stands by and says nothing, in the knowledge that another party is acting on a belief that they have rights, which belief the first party knows to be mistaken. It feeds into the line of cases relied on by the Claimants dealing with the situation where the defendant knows that the claimant was acting under a mistake but did not disabuse the claimant of it. In *Pacol Ltd v Trade Lines Ltd (the Henrik Sif)* [1982] 1 Lloyd's Rep 456, Webster J recognised (at 465) a duty to speak out in certain circumstances:

“... the duty necessary to found an estoppel by silence or acquiescence arises where ‘a reasonable man would expect’ the person against whom the estoppel is raised ‘acting honestly and responsibly’ to bring the true facts to the attention of the other party known by him to be under a mistake as to their respective rights and obligations.”

Where the ignorant party acts to their detriment in reliance on such acquiescence, an estoppel may arise.

61. It is the Claimants' case that Broadfield stayed silent in the knowledge that the Claimants were acting on the basis of a mistake (as Broadfield now alleges it to be). That knowledge was derived from *Office Properties*, and *The Tintometer*. The defendant in *Office Properties* denied that Broadfield was liable for Pitmans' alleged negligence. That was on 15 September 2023, a little more than two months before the Letter of Claim. Mr Castellani of Kennedys, acting on behalf of Broadfield in this claim but in neither of the earlier two, gives evidence that he was not aware of the distinction between Pitmans and Broadfield, nor that they were separate legal entities. The Claimants accept that statement and do not seek to go behind it. Ms Potter, the partner in Pitmans who had conduct of the Retainer, and who was herself involved in Broadfield's response to this claim, gives evidence that although she read the Letter of Claim, she simply failed to notice that it was being brought against Broadfield and not Pitmans. The Claimants say, fairly in my judgment, and intending no disrespect to Ms Potter, that they are not in a position at this juncture to accept that evidence as correct. Further, Mr Hutchinson, the Managing Partner to whom the Letter of Claim was addressed, gives no evidence as to his knowledge in this respect in either of his witness statements, notwithstanding that the second one was signed on 3 February 2025, after this issue had been raised by the Claimants.

62. The Claimants say that there are questions to be asked of Mr Hutchinson, and suggest that it is suspicious that he has not addressed this issue in his evidence. If he did know of the issue in *Office Properties* and *The Tintometer*, then the question arises how, upon receipt of the Letter of Claim, he could have been unaware that the Claimants were proceeding on the same, or equivalent, mistaken belief as the parties in those two cases. If it were to transpire that he was aware, that would take the facts into estoppel by acquiescence territory, in which the party alleged to be estopped, while knowing that the claimant is proceeding to its detriment on a mistaken belief as to its rights, does nothing to disabuse the claimant of its mistake.
63. On any view a claim based on any branch of the doctrine of estoppel is highly fact sensitive and can only be resolved by a close examination of the facts. In my judgment it is not right to say that the Claimants have no realistic prospect of establishing the estoppel when the facts on which they rely are (a) more than merely speculative, grounded as they are in the history of this dispute from the 2019 Accounts and the Letter of Claim onwards and (b) in relation to the allegation that Broadfield knew of the Claimants' mistake, not addressed by the evidence of Broadfield. The Claimants' case is more than fanciful, and they have a real prospect of success depending on how the facts emerge. It is not possible to give summary judgment in respect of this element of the Claimants' case whilst the crucial facts remain to be explored.
64. Similar considerations apply to the doctrine of estoppel by convention, albeit that the technical requirements of that branch of the doctrine differ to a degree, and are generally regarded as harder to satisfy. These were set out by Falk LJ in *Musst* at [61], where she summarised the approach of Briggs J in *Revenue and Customs Commrs v Benchdollar Ltd* [2010] 1 All ER 174, as slightly modified by subsequent authority, and approved by the Supreme Court in *Tinkler v HMRC* [2021] UKSC 39 at [45] – [53]:
- a) There must be a common assumption that is not only understood between the parties but is expressly shared between them. Thus the party seeking to rely on an estoppel (C) must know that the person against whom the estoppel is raised (D) shares the common assumption. In short, the common assumption must have “crossed the line”.
 - b) C must in fact have relied on the common assumption to a sufficient extent, rather than merely relying on his own independent view. This requires C to at least have been strengthened or influenced in its reliance on the assumption by the knowledge that D shared the assumption.
 - c) The expression of the common assumption by D must be such that he may properly be said to have assumed some responsibility for C's reliance on it. This requires D to have objectively intended or expected reliance, in the sense of conveying an understanding that he expected C to rely on the common assumption.
 - d) That reliance must have occurred in connection with some mutual dealing between the parties.
 - e) Some detriment must thereby have been suffered by the person alleging the

estoppel, or benefit conferred on the person alleged to be estopped, sufficient to make it unjust or unconscionable for the latter to assert the true legal or factual position.

65. It is in my judgment at least reasonably arguable that the common assumption had crossed the line as between Pitmans and Broadfield: the Claimants set out their belief in the Letter of Claim, including the source of it. In response to it, including in the draft Standstill Agreement, Broadfield conducted itself and expressed itself in a way that was consistent with its sharing the belief that it was liable. Broadfield protests that whilst the two drafts of the Standstill Agreement were consistent in wrongly stating that Broadfield had acted for the Claimants in the matter which was the subject of the claim, there was no reference in either draft to Broadfield having assumed any liabilities of Pitmans. In my judgment that oversimplifies the position. Those statements were made in the context of the Letter of Claim in which the Claimants' belief that Broadfield had assumed responsibility for Pitmans' liabilities to them was expressly set out. The references to Broadfield having acted in the claim, which on any view was a mistake, must be understood in that context. The Claimants were referring to Broadfield having acted for them by reference to and in the context of their belief that Broadfield had assumed liability for Pitmans' acts. Whether Broadfield was making the same references based on the same mistake, or some other mistake, or – conceivably – making no mistake at all, and deliberately not alerting the Claimants to their mistake, is a crucial area of factual enquiry which cannot be resolved at the summary stage, and requires to be explored at trial.
66. Broadfield also relies on the fact that by the time the Claimants issued the claim on 14 February 2024 Broadfield had still not provided a substantive response to the claim. The die was in effect cast, and anything occurring after that point has no relevance to the Claimants' decision to issue proceedings against Broadfield. The reliance by the Claimants on the Letter of Response dated 12 March 2024 is thus misplaced. That letter proceeded on the basis of an apparent belief that Broadfield had performed the work about which the Claimants were complaining. That was a mistake, but the Claimants' reliance on it suffers two deficiencies. First, that mistake – that it was Broadfield that had done the work – is different from the convention on which the Claimants rely, namely, that Broadfield had assumed the liabilities of Pitmans such that it was now liable to the Claimants in Pitmans' place. Secondly, postdating the detriment, it cannot have been relied on for the purposes of the doctrine.
67. These are important points but in my judgment do not mean that the claim based on estoppel by convention is unsustainable or even that it is fanciful. In relation to the first, the mistake made in the Letter of Response has to be interpreted in the context of the belief to which express reference was made in the Letter of Claim. It is possible that what was written in the following letters, including the Letter of Response, was shorthand, eliding the claim that Broadfield had assumed Pitmans' liabilities into the language of Broadfield having undertaken the work. It is simply not possible to make a determination on what the statements in the letter signified without conducting a broad factual enquiry into the background behind the words used in these documents and the state of minds of

the people using them. As to the second reliance point, the pleaded detriment (at paragraph 7H.4 of the Amended Particulars of Claim) is that the Claimants persisted in their claim as formulated and without adding or substituting Pitmans as defendant prior to the expiry of the limitation period. Further, it may also be relevant as evidence of the state of mind of its author on behalf of Broadfield up to that point. Again, that cannot be determined merely from the documents and submissions. To attempt to do so by way of summary determination would fall into the trap of conducting a mini-trial of the kind cautioned against by Lewison J's third principle in *Easyair*.

68. The other criteria in the doctrine of estoppel by convention may be difficult for the Claimants to establish. It is not wholly clear whether and if so to what extent the Claimants relied on the common assumption rather than merely their own independent views, formed from Mr Scott's reading of the 2019 Accounts. Again, these are factual matters which will require to be explored in the usual way at trial, by construing documents and testing witness evidence. Similarly, it is not entirely straightforward to establish (nor indeed to deny) that the expression of the common assumption by Broadfield was such that Broadfield may properly be said to have assumed some responsibility for the Claimants acting in reliance on it. Again, the nuances cannot be explored much less adjudicated upon at this summary stage.
69. The reliance and the detriment would in my judgment be clearly established if the other components are made out. The detrimental reliance consisted of issuing the claim against Broadfield instead of against Pitmans, and allowing the limitation period for bringing a claim against Pitmans to expire. If Broadfield had been aware of the Claimants' mistake and had disabused them of it prior to that point, they would at the very least have been able to issue the claim against both Pitmans and Broadfield in the alternative. As it is the limitation period expired the day after the Claimants issued the claim and (subject to the operation of CPR 19.6, to which I will turn in due course) they were thereafter prevented from bringing any claim against Pitmans. Broadfield argues that any reliance would not be reasonable, since any solicitor in those circumstances ought to be aware that liability could only be transferred by a tripartite arrangement. In my judgment the reasonableness of the belief will have to be explored at trial, but the fact that others have made the same mistake (as *Office Properties* and *The Tintometer* show) suggests that it is fairly arguable that the mistake was not one which no reasonably competent solicitor could make.
70. Broadfield focuses on the fundamental averment on which the Claimants rely (and which Broadfield denies) at paragraph 7 of the Amended Particulars of Claim, namely, that "[Broadfield] is the successor to [Pitmans] and assumed, by novation or otherwise, the liabilities of [Pitmans] to the Claimants." But, Broadfield says, Broadfield cannot be estopped from denying it, because they have never accepted it. In my judgment this is not a complete answer. The questions will be (at the least): were the Claimants operating under the belief that Broadfield had assumed Pitmans' liabilities? If so, did Broadfield share (accept) that belief? If so, to what extent if any was Broadfield responsible for the Claimants holding and continuing to hold that belief? If not, was Broadfield aware that the Claimants were operating under that belief? If so, in all the circumstances was Broadfield under a duty to point out the Claimants' error? Did the Claimants act in

reliance to their detriment on the convention? In all the circumstances is it unconscionable for Broadfield to act otherwise in accordance with the belief? It is not possible to determine those questions on the basis of contemporaneous documents and untested written witness evidence. It is hard to think of a more fact sensitive enquiry.

71. In conclusion, save for a claim based on promissory estoppel, the elements of which are not sufficiently pleaded, in my judgment the claim in estoppel (whichever other branch or branches of the doctrine are ultimately deployed by the Claimants) cannot be dealt with at the summary stage. Determining the estoppel must await an investigation of presently unknown facts (the most obvious being the state of knowledge of Mr Hutchinson). The Claimants have a realistic possibility of succeeding on the claim. I decline to grant summary judgment dismissing that element of the claim.
72. As with the novation argument, my discussion of the estoppel claim does not refer to every point made by the Counsel in their detailed and thoughtful oral submissions. But in the light of the test for summary judgment, I have aimed for concision and economy when setting out the decisive factors leading to my decision, and have concentrated on the principal facts and arguments which led me to my conclusions in each case that the Claimants' prospects of success were real and not fanciful.

Acknowledgment

73. Acknowledgement is a further or alternative basis on which the Claimants bring their claim. This is a rarely used doctrine whereby A can sue B where B has received a fund from C, agreed to pay an amount of money to A, and acknowledged as much to A, notwithstanding the absence of privity of contract. Whilst the conventional application of the doctrine is to support a claim for money had and received, the Claimants argue that it need not be so limited, and that there is "no principled basis to distinguish between an acknowledgement of liability for an unascertained sum and an acknowledgement of liability for an ascertained sum." It is said that all that is required for the third party to sue are:
- (1) the possession, or transfer, of a fund of assets by B to C;
 - (2) an agreement between B and C that C shall pay A; and
 - (3) conduct on the part of C sufficient that A could understand that C has assented to the arrangement.
74. The Claimants contend that the doctrine can not only be utilised to support a restitutionary claim, but can also entitle a party to sue on an acknowledged liability by the recipient of the entire business and assets of another. The three elements set out above are said to be satisfied on the facts of this case by:
- (1) Pitmans transferring its business and assets (comprising the "fund") to Broadfield, in return for Broadfield assuming Pitmans' liability to future claimants including the Claimants. This is based on (i) Clause 3.1 of the Merger Agreement which provides for the transfer of the assets and that "Broadfield shall assume the Assumed Liabilities" and (ii) Clause 4.1 providing that the consideration for the transfer of the business and the assets including "the

assumption by Broadfield of the Assumed Liabilities pursuant to the terms of [the Merger Agreement]”;

- (2) Broadfield agreeing with Pitmans that it would discharge the Assumed Liabilities, and as successor firm for the purpose of its insurance Broadfield obtaining insurance for that purpose;
- (3) Pitmans and Broadfield acknowledging Broadfield’s liability in the 2019 Accounts. That was sufficient so that the Claimants could understand that Broadfield had assented to the arrangements.

75. In response Broadfield point out that the doctrine as expounded on the Claimants’ facts is akin to, if not a mere restatement of, the doctrine of novation, and object that it is not pleaded.

76. *Chitty on Contracts*, 35th edition, at 23-099 describes a

“difficult line of mainly nineteenth century cases that appear to accept what one can call “acknowledgement”. It must be recognised however that this line of authority is difficult to rationalise and a number of alternative explanations to “acknowledgement” have been offered including attornment and restitution of unjust enrichment”.

77. The Claimants rely on *Shamia v Jorry* [1958] 1 Q.B. 448, as the only comparatively recent application of the doctrine, and note that on the basis of that decision *Chitty* is content to describe the doctrine as applying in a situation where the assigning party held a debt and not a fund as such. The principle was squarely accepted in *Shamia*, including its extension (if that is what it was) to a monetary liability over which the transferor has a right of disposal, regardless of from what source the liability arises: per Barry J at 459. Broadfield replies that this is the very furthest the doctrine has gone, and deals only with debt, not with unascertained claims. There is no suggestion that the doctrine can include cases where a contracting party’s liability is transferred to another party. Broadfield did not hold funds for any other party, but rather acquired assets to control and utilise as they wished. Further there was no instruction by Pitmans to make a payment to the Claimants, and no communication of a promise to the Claimants by Broadfield. Moreover the Claimants are not claiming a liability to pay a fixed sum: the extent of that liability remains unascertained.

78. The Claimants contend that there is no inherent limitation on the doctrine, and certainly no limitation that arises by way of operation of law. The requirement is that there be an acknowledgement by the recipient of the fund to the promisee. There is no reason in principle why such an acknowledgement should not suffice where it is made in relation to an unliquidated amount. The fact that a further process is required to render the unliquidated amount a quantified sum is not a principled basis on which to confine the doctrine. The absence of authority on this point is understandable since it is a rare occurrence for a person to acknowledge liability to an unliquidated (and unlimited) claim but, the Claimants contend, that is the situation on these facts, and all the court will be doing in applying the doctrine would be holding Broadfield to what they agreed

to do in the Merger Agreement and what they acknowledged to the Claimants they would do in the 2019 Accounts.

79. Whether or not the Claimants have a realistic prospect of success based on the doctrine of acknowledgement is the question that has troubled me the most. In the end I have concluded that summary judgment ought not to be granted. If (as I have held) it is arguable the Merger Agreement was intended to transfer the liability for Pitmans' as yet unnotified claims to Broadfield, it is equally arguable that the same can be characterised as an instruction by Pitmans to Broadfield to pay to future claimants such sums as would have been Pitmans' liability had the merger not been effected. Equally it is arguable that Broadfield acknowledged the instruction by entering into the Merger Agreement and communicated its promise to pay the Claimants, amongst others, when publishing its 2019 Accounts. The cause of action is sufficiently pleaded in my judgment, given the express reference to "Acknowledgment" in the heading at Section B2A of the Amended Particulars of Claim, and the subsequent pleading out of the elements on which the doctrine would bite. It is a curious and little used doctrine, and its application to an unascertained fund would be a novel extension. But I do not regard the argument as hopeless or fanciful.

Substitution Application

80. The Claimants' application for substitution becomes irrelevant given my findings on summary judgment. Nonetheless for the reasons I set out at the beginning of this judgment, I shall determine it in the alternative as the parties have requested.

81. CPR Rule 19.6 contains provisions concerning adding or substituting parties after the end of a relevant limitation period, including a limitation period under the Limitation Act 1980. Under CPR Rule 19.6(2) the court may add or substitute a party only if the relevant limitation period was current when the proceedings were started and the addition or substitution is necessary. It is common ground that the first of those criteria is satisfied on the facts of this case.

82. CPR Rule 19.6(3) provides that for these purposes a substitution is "necessary" only if the court is satisfied that one or more of three conditions is met. The first two are

- “(a) the new party is to be substituted for a party who was named in the claim form in mistake for the new party;
- (b) the claim cannot properly be carried on by or against the original party unless the new party is added or substituted as claimant or defendant”.

83. The wording of CPR Rule 19.6(3) closely follows, though does not precisely mirror, section 35(5)(b) of the Limitation Act 1980, which provides that rules of court may only permit a new claim to be made

- “in the case of a claim involving a new party, if the addition or substitution of the new party is necessary for the determination of the original action”;

and section 35(6) of the Limitation Act 1980, which provides that

“The addition or substitution of a new party shall not be regarded for the purposes of subsection (5)(b) above as necessary for the determination of the original action unless either –

- (a) the new party is substituted for a party whose name was given in any claim made in the original action in mistake for the new party’s name; or
- (b) any claim already made in the original action cannot be maintained by or against an existing party unless the new party is joined or substituted as plaintiff or defendant in that action.”

84. For the purposes of the application before me the Claimants do not rely on CPR Rule 19.3(6)(a) (“Ground (a)”) although they “reserve the liberty” to argue that it does apply. That position is accepted as being contrary to the test set out in *The Sardinia Sulcis* [1991] 1 Lloyd’s Rep. 201, which was adopted by the Court of Appeal in *Adelson v Associated Newspapers Limited* [2008] 1 W.L.R. 585. Should any such challenge to the principle become necessary, the Claimants intend to rely on the *obiter* remarks of Leggatt J in *The Insight Group Ltd v Kingston Smith* [2014] 1 W.L.R. 1448 in which he set out his view as to the incorrectness of the prevailing view that CPR Rule 19.6(3)(a) applies only to mistakes of fact and not mistakes of law. I am not asked to make that determination and accordingly do not examine the arguments any further, but merely record the Claimants’ position.

85. The Claimants rely on CPR Rule 19.3(6)(b) (“Ground (b)”), namely, that the claim cannot properly be carried on by or against the original party unless the new party is added or substituted as claimant or defendant. In *Insight Group*, Leggatt J expressed (again *obiter*) the view that Ground (b) was available in a case where the current entity was sued in the knowledge that it was not the entity which undertook the work, but in the mistaken belief that it had acquired a liability for the prior entity’s acts and omissions in relation to that work. He first considered two decisions of the Court of Appeal, *Parkinson Engineering Services Ltd v Swan* [2010] Bus LR 857 and *Irwin v Lynch* [2011] 1 WLR 1364. In *Parkinson Engineering*, the original action asserted the company’s claim against the former administrator, which could not be determined without the substitution of the liquidator as claimant. The substitution also required minor changes to the pleaded case in addition to the excision of the original claimant:

“Without that substitution it could only, and would be bound to, be determined in favour of the defendants because of the [defence based on section 20 of the Insolvency Act 1986]. The claim would be struck out, because of that defence, and it could not be decided on its merits, either way, as the proceedings stand. In terms of the rule, it cannot properly be carried on by the original party, the company, whereas it can be maintained and carried on if the liquidator is substituted. No more than minimal change is necessary to the statement of case: substitution of references to the liquidator as claimant and references to the company in the third rather than the first person, so to speak, together with

consequential changes as regards the relief sought. It is the same claim, in every respect, despite the fact that it is asserted by the liquidator on behalf of the company, rather than in the name of the company itself.” (per Lloyd LJ at [28])”.

86. A similar conclusion was reached by the Court of Appeal in *Irwin*, where it was considered that substitution was permissible because the claim, as amended with the substitute claimant, was identical to that made originally. It was argued in *Irwin v Lynch* that the new claim would not be the same because of the identity of the claimant. That argument too was rejected. Lloyd LJ at [26]:

“Sometimes the identity of the party might be, indeed often it might be, a vital distinction, but here Mr Irwin plainly asserted the company’s cause of action and asserted it on behalf of the company, just as the substituted liquidator did in the Parkinson Engineering case. So the cause of action is identical; it is already pursued for the benefit of the company, but it is doomed to failure because of the lack on Mr Irwin’s part of the necessary locus standi. It seems to me that it is possible and appropriate for the court to exercise its discretion under rule 19.5 to allow the joinder of the company so as to assert the relevant claims.”

87. Returning to *Insight*, Leggatt J states at [96] to [98]:

“96. The principle which I derive from these two decisions of the Court of Appeal is that the court has power to order substitution under section 35(6)(b) and [Ground (b)] if: (1) a claim made in the original action is not sustainable by or against the existing party; and (2) it is the same claim which will be carried on by or against the new party.

97. Applying this test to the facts of the present case, it is common ground that the claims made in this action were unsustainable against the LLP. The first requirement was therefore satisfied. However, the second requirement was not satisfied, as the claims which the claimants sought to carry on against the firm were not the same claims as were made against the LLP. ...The new claims ... allege different facts and are not identical to the original claims.

98. My conclusion on this issue would have been different if I had agreed with the master’s view as to the nature of the mistake made by the claimants when they issued the proceedings against the LLP. As mentioned earlier, on the master’s view the claims were originally brought against the LLP on the basis that the firm had provided the relevant services but in the mistaken belief that the LLP had taken over the liabilities of the firm. If I had accepted that analysis of the claims, then I would also have agreed with Master Fontaine that the requirements of [Ground (b)] were met in this case. That is because, if the original claims had asserted negligence in the provision of

professional services by the firm, they would have been the same claims as those which are now pursued. The only difference would have been that the claimants were no longer contending that the LLP was liable in law for the acts alleged.”

88. This approach was adopted by David Halpern K.C. sitting as a Deputy High Court Judge, in *Office Properties*, when permitting the substitution of Pitmans for Broadfield. The mistake identified in *Office Properties* was the belief that Broadfield was the successor practice for insurance purposes, a different mistake from the mistake (if such it proves to be) made by the Claimants in this case. The Deputy Judge held at [44]

“The classic definition of a claim is “simply a factual situation the existence of which entitles one person to obtain from the court a remedy against another person”: *Letang v Cooper* [1965] 1 QB 232, 242—243 per Diplock LJ. In my judgment Mr Lawrence is correct in saying that one cannot apply that definition literally to [Ground (b)], because the minimum facts which have to be pleaded in order to found a claim against one party will necessarily be different from the minimum facts which have to be pleaded to found a claim against a substituted party. The necessary difference is the inclusion of facts intended to show why the original party (or the substituted party, as the case may be) is the right party. The allegation in the original Claim Form that [Broadfield] was liable as the successor practice was not a necessary ingredient of the claim for loss caused by Pitman’s negligence and was added solely in order to show why liability should attach to [Broadfield].”

89. The reasoning of Leggatt J was also followed by Master Teverson in *Collingwood v Irwin Mitchell LLP* [2025] EWHC 1570 (Ch). That case concerned a claim against one firm of solicitors for the negligence of another firm of solicitors with which it had merged. Whilst holding that the substitution was available under Ground (a), the Master also decided that substitution could be ordered under Ground (b) by striking out the part of the Particulars of Claim which pleaded the basis on which it was said that the original defendant was liable.

90. The Claimants submit that I am compelled to follow *Parkinson Engineering* and *Irwin*, being decisions of the Court of Appeal; and that I should follow the decisions of the High Court in *Office Properties* and *Collingwood* unless there is a powerful reason for not doing so. Broadfield’s position is to the contrary: first, that the *obiter* remarks of Leggatt J in *Insight Group* are based on flawed reasoning which should not be followed; and second that the instant case can be distinguished on the facts.

91. On the first of those assertions, Broadfield relies heavily on the decision of the Court of Appeal in *Nemeti v Sabre Insurance Co Ltd* [2013] EWCA Civ 1555. The claim arose out of a road traffic accident in Romania. The Claimants were passengers in a car driven by Mr Bura, who lost control of the car and hit the concrete base of a bridge. Sadly Mr Bura died in the accident. The Defendant supplied insurance to Mr Bura’s father in respect of the car involved in the accident. But Mr Bura himself was uninsured at the time of the accident. The Claimants issued a claim against the defendant insurance

company alleging that Sabre was the insurer of the car and that Mr Bura was the insured party. However, their ability to bring the claim against Sabre depended crucially on section 3 of the European Communities (Rights against Insurers) Regulations 2002 (“Regulation 3”). Sabre’s defence was based, amongst other things, on the fact that it had not insured Mr Bura and so Regulation 3 did not bite.

92. The Claimants made an application for permission to join the estate of Mr Bura (“the Estate”) as Second Defendant. Sabre applied to strike out the claim. The Claimants applied to amend the application to substitute the Estate in place of Sabre. Only minimal amendments were required, together with the actual substitution of the Estate. At first instance the Master granted the Claimants’ application for substitution. In the High Court HHJ Cotter sitting as Deputy Judge allowed Sabre’s appeal, on the basis (at [44]) that under Ground (b)

“any substitution must be necessary for the maintenance of the existing action, not for the assertion of a new action”.

He concluded at [46] that the substitution of the Estate was not necessary for the determination of the original action. He further expressed the view at [41] that Ground (b) is

“solely aimed at errors in the constitution or formality of the action, relating to the parties joined to it, or the capacity in which they sue or are sued, which made the extant action unsustainable.”

93. The Court of Appeal upheld the Deputy Judge’s decision, Hallett LJ stating at [44] that although Mr Bura’s negligence provided the bedrock for both claims,

“the claims are not the same. It is not simply a matter of form. In substance these are two different causes of action”.

She went on (at [45]):

“A deliberate decision was taken at the outset, no doubt for tactical and financial reasons, to sue one defendant, the Respondent, on a particular cause of action rather than sue another defendant, the Estate, on a different cause of action. After the expiry of the limitation period, the decision was taken to pursue the Estate because the first cause of action could not be maintained. It was properly constituted but doomed to fail for substantive reasons. No amount of amendment could save it. The proposed substitution of a new party is not designed to maintain the original claim; it is designed to launch a new claim against a new party. A mistake was made but not the kind of mistake the section was designed to remedy. The Judge was correct, in my view, to find that the amendment is not “necessary for the determination of the action”.”

94. In the light of *Nemeti*, Broadfield invites me to find that the words of section 35(6)(b) of the Limitation Act 1980 and Ground (b) are directed at “procedural or constitutional

problems”, with additional support from the words “properly carried on” (held in *Nemeti* to hold the same meaning as “maintained” in Section 35(6)(b)) with “properly” implying that there is some fundamental reason why the claim cannot reach a determination on its merits. That view also receives support from the observations of Mann J in *Various Claimants v G4S plc* [2021] 4 WLR 46 at [152]:

“It seems to me that insufficient attention has been paid to the word “properly” in the provision. While it is not possible to define its precise effect, it seems to me that it is intended to correct errors of the kind in *Irwin* and *Parkinson* which are in the nature of locus standi errors. The word would be unnecessary if the provision were to have the broad effect which Leggatt J’s analysis [in *Insight*] would give it. An interpretation along these lines is the interpretation which I would prefer, and it is not inconsistent with the Court of Appeal authorities which bind me.”

95. Broadfield further mounts a vigorous attack on the view of Leggatt J in *Insight*. First, *Insight* was heard and decided prior to the publication of the decision in the Court of Appeal in *Nemeti*. Leggatt J did however refer to the judgment of HHJ Cotter on the first appeal. He concurred with the outcome of the appeal, on the basis that it could not be said that the substitution for the Estate was necessary for the determination of the original action, based on the claim’s reliance on Regulation 3. But he also noted that the first appeal in *Nemeti* had been decided without reference to *Parkinson Engineering and Irwin*, in both of which the Court of Appeal considered that the substitution was permissible because the claim, as amended with the substituted claimant, was identical to that made originally. He also noted the failure in *Irwin* of the defendant’s argument that the new claim would not be “the same” because of the identity of the claimant.
96. Secondly, Broadfield says that Leggatt J’s view was contaminated by his starting point that a more liberal approach should be taken to mistakes generally under CPR 19.6. This view it is said necessarily coloured his *obiter* discussion of Ground (b). I do not accept that criticism. The reasoning of the Judge is, with respect, principled, clear, and authoritative. Any rejection of it will have to be likewise.
97. Thirdly, Leggatt J’s statement that Ground (b) is engaged “if a claim made in the original action is not sustainable by or against the existing party” was too broad because it apparently encompasses a claim which will fail for any reason, whether formal, constitutional or on the merits. Leggatt J accepted that as the consequence of his decision, rightly in my judgment, but the consequence does not wholly or necessarily undermine the premise, nor the decision on the assumed facts.
98. Fourthly it is said that Leggatt J was wrong to hold that the claim against the LLP in the mistaken belief that it had taken over the liabilities of the firm was the same claim as the claim against the firm. The claim included the averment that LLP had acquired those liabilities, an averment which would not be made in the claim against the firm. That was not a matter of locus (as was the case in *Parkinson and Irwin*.) In my judgment that criticism makes the mistake of asserting that which it seeks to prove. Leggatt J derived a principle from *Parkinson and Irwin* which was sufficiently broad to encompass

situations involving locus and those involving liability under an existing fully realised cause of action being transferred to a different party. There may be a distinction between those two situations, but that does not prevent them both falling within the principle expounded by Leggatt J.

99. Broadfield further relies on the case of *Barnett v Maize*, an unreported decision of HHJ Monty in the County Court at London, in which a claim had been brought against a company in the mistaken belief that it had acquired the liabilities of an LLP. The Judge held that the mistake was a mistake of law, and that the substituted claim against the LLP was a different claim from the claim against the company. In declining to allow the substitution, he relied on the case of *AIG Europe Ltd v McCormick* [2020] EWHC 943 (TCC) where substitution was allowed because the claim could not continue against the existing party as there had been an assignment: “It was the same claim”. For my part I can see no difference in substance between the transfer of liabilities by assignment and their transfer by novation (or for that matter any other method of transfer).
100. Broadfield submits that I should decline to follow the reasoning of Leggatt J in *Insight*, and instead adopt what is said to be the more rigorous approach of Hallett LJ in *Nemeti*. Substitutions should not be allowed if there is an essential averment in one claim which would not be made in the other claim. If any averments are material to one claim but not the other then Ground (b) is not engaged because the claim which is sought to be made by virtue of the substitution is a different claim from the original claim. This would be a case of making a new claim, not of maintaining the old claim within the meaning of Ground (b).
101. I have concluded that the proposed substitution does fall within the scope of Ground (b) for the following reasons. First, whilst the decision in *Barnett v Maize* is that of an experienced and respected Judge, a decision of the County Court is not binding on me when determining this application, and it is arguably flawed if it amounts to treating assignments as different from other methods of transferring liability.
102. Second I note that *Office Properties* is a decision of the High Court on exactly the same facts (so far as material) and involving exactly the same parties as this case. (I do not regard the difference in the mistake made by the claimants in each of the cases as material.) Whilst I am not technically constrained to follow it, the general rule is that the High Court should follow judgments of a court of coordinate jurisdiction, unless there is a powerful reason for not doing so: *Willers v Joyce* [2018] A.C. 843 at [9] and *Roberts (A Child) v Soldiers, Sailors, Airmen and Families Association-Forces Help* [2019] Q.B. 310 at [2]. Not only do I see no reason, much less a powerful one, for not doing so, I independently consider the decision, and the reasoning leading to it, correct. Whilst the cause of the belief that Broadfield was liable was different (the Claimant in *Office Properties* believing that Broadfield was a successor to Pitmans for insurance purposes, and not, as in this case, by novation, estoppel or acknowledgment), that is a distinction which does not in my judgment make any material difference to the principles on which the decision was based, and does not lead to a different conclusion.

103. Third, whilst recognising the authority of the Court of Appeal in *Nemeti*, the case is distinguishable on its facts. In *Nemeti* the cause of action, whilst parasitical on the underlying negligence claim, depended also on the operation of the statutory framework in the form of Regulation 3, which had to be invoked to confer liability on the insurer, but was never part of any cause of action as against the Estate. Thus the two claims were not the same. In this claim, the cause of action, professional negligence, is identical whether the defendant is Broadfield or Pitmans. The difference in defendant simply relates to which party has the liability for its consequences if the negligence is established. In my judgment the fact that another step has been pleaded in the original claim to account for how Broadfield is thought to have acquired the liability for the alleged breaches of professional duty of care does not prevent it being the same claim for the purposes of Ground (b).

104. I do not consider the decision by Leggatt J in *Insight* to be contrary to the decision in *Nemeti*, or inconsistent with it. There is a line to be drawn between claims that are “the same” for the purposes of Ground (b), and claims that are not. In *Nemeti*, the claims were not the same, because they were based on different causes of action. In *Insight* (albeit on a counterfactual basis), *Office Properties* and *The Tintometer*, the claims against the original defendant and the new defendant were the same. In my judgment, the Claimants’ claim against Pitmans is the same claim as the claim brought against Broadfield.

105. Fourth, the observations of Leggatt J in *Insight Group* at [96] and [98], whilst *obiter*, are persuasive and in my respectful judgment are correct. Substituting Pitmans because the contention that Broadfield was liable in law for the acts alleged was abandoned is, as Leggatt J observed, materially equivalent in its effect to the substitution of the liquidator for the company as claimant in *Parkinson Engineering*, and of the company for the administrator in *Irwin*. The differences between the two situations – locus on the one hand, and transfer of liability on the other – are in my judgment not differences which are material for the purposes of applying Ground (b). Unlike the situation in *Nemeti*, they do not involve bringing a different claim. They are the same claim.

106. Accordingly I conclude that Ground (b) is engaged. It falls then to consider whether to exercise the discretion conferred by CPR Rule 19.6(2) to make the substitution. The discretion must be exercised in accordance with the overriding objective of enabling the court to deal with the cases justly: per Leggatt J in *Insight* at [100]. Two of the factors relied on by Leggatt J in deciding to exercise the discretion were that both parties appeared to proceed on the same basis, namely, that the distinction between the firm and the LLP was immaterial; and that there was no prejudice to the firm, the relevant personnel having been aware of the claim, for all practical purposes, from the outset.

107. I take into account the following matters relied on by the Claimants, all of which reflect what is said to be the lack of prejudice to the substituted defendant on the facts of this case. The members of Pitmans, now being members of Broadfield, have been on notice since the Letter of Claim was sent on 30 November 2023. The same party and insurer are ultimately liable and it is likely if not inevitable that the same solicitors as have acted to this point will be instructed on behalf of Pitmans, meaning that there is an identity of

interest between Broadfield and Pitmans, with the result that Broadfield could in any event be regarded as a representative defendant for Pitmans. There is no claim to nor evidence of any prejudice to Pitmans by making the substitution, nor could there be given Pitmans' indemnity from Broadfield in respect of the claim. Lastly a complete draft Defence already exists which will apply as well to the claim against Pitmans as it would have to any claim against Broadfield.

108. Similar reasons (barring the last) were all factors leading to the exercise of the discretion by Bacon J in *The Tintometer* (at [124] and [129]), with similar reasons being relied on by Master Teverson in *Collingwood* (at [102]). Moreover I am reminded that the Claimants were led to their belief that Broadfield was the correct defendant by the statements in the 2019 Accounts and by the failure by Broadfield to deny liability until after the limitation period had passed. The extent of any liability or unconscionability arising from those matters remains to be explored, but the Claimants' misguided belief is not challenged (nor could it sensibly be) and at the very least suggests an innocence of mistake which counts in its favour on the question of discretion.

109. In these circumstances I will make an interim declaration granting permission for the substitution of Pitmans for Broadfield in the event it transpires that liability for Pitmans' acts and omissions was not transferred to Broadfield, or that Broadfield is not estopped from denying that it was transferred, or that liability was not transferred to Broadfield under the doctrine of acknowledgment.

Conclusion

110. In conclusion I have found as follows. First, the Claimants have permission to amend their Particulars of Claim (and indeed Broadfield has consented to that application). Second I dismiss Broadfield's application for summary judgment, save in respect of the claim based on promissory estoppel. Third, I grant the Claimants' application for declaratory relief in respect of the application to substitute Pitmans for Broadfield.