

**COMMONWEALTH OF THE BAHAMAS**  
**IN THE SUPREME COURT**  
**Common Law and Equity Division**

**2014/CLE/gen/1852**

**BETWEEN**

**QUALITY BUSINESS CENTRE LIMITED**

**Plaintiff**

**AND**

**ANTHONY MUNNINGS**

**Defendant**

**AND**

**HARMONY HOMES LIMITED**

**Third Party**

**Before:** The Honourable Madam Justice Indra H. Charles

**Appearances:** Mr. John Wilson and Mr. Lemarque Campbell of McKinney Bancroft & Hughes for the Plaintiff  
Mr. Nicholas John Zervos for the Defendant  
Mr. Keith Bell and Mr. Trevor Lightbourne of Sharon Wilson & Co. for the Third Party

**Hearing Dates:** 14 September 2017, 18 January, 12 March, 26 March 2018

**Misrepresentation - Fraudulent misrepresentation - Elements of fraudulent misrepresentation - Whether misrepresentation induced plaintiff to enter into contract for sale of land**

**Pleadings - New issues raised but not pleaded - New Issues considered - Feeding the estoppel - Defective Title - Subsequent Acquisition of Good Title - Equitable estoppel**

The Plaintiff instituted this action against the Defendant seeking damages of \$287,600.00 (including stamp duty and legal fees) for fraudulent misrepresentation of nine lots of land known as Lake Villanees Subdivision situate in the Western District of the Island of New Providence. On 17 June 2016, the Plaintiff was successful in its application for Judgment on Admission. The Defendant was ordered to pay \$80,000.00 representing the sum which he admitted that he received in respect of five out of the nine lots of land along with an additional lot not mentioned in

the Statement of Claim. The Court then set down the remainder of the Plaintiff's claim for trial.

The trial commenced on 14 September 2017. After the witnesses had testified, the Court directed that the parties lay over closing written submissions on or before September 2017 ("the Original Submissions"). More than a month after the Original Submissions were laid over, the Defendant, through his Counsel, served the Court and Counsel for the Plaintiff with Amended Submissions. The Amended Submissions raise new issues and introduce new facts which were not pleaded.

In fairness to the Plaintiff, the Court reconvened to give the Plaintiff an opportunity to address the new issues raised. In the light of the new issues raised, both parties agreed that the Third Party (who did not actively participate in the proceedings) be called upon to produce the original copy of the January 2002 Conveyance made between the Defendant and the Third Party whereby, it was alleged by the Plaintiff, that the Defendant had sold to the Third Party in 2002 the same lots that it sold to the Plaintiff in 2007. The Plaintiff alleged that the Defendant fraudulently represented to its Director that he was the sole legal and beneficial owner of the lots and that they were for sale. The Plaintiff alleged that it was induced into purchasing the lots in reliance of the representation by the Defendant. In its Amended Statement of Claim, the Plaintiff claims damages in the sum of \$207,600.00 being the balance of the lots.

The Defendant denied that he sold nine lots to the Plaintiff and insisted that he sold six lots for \$80,000.00. He also denied that he sold the same lots to the Third Party and alleged that the January 2002 Conveyance which was produced by the Plaintiff is not an original conveyance. In Submissions, the Defendant raised new issues which were not pleaded namely that (i) the signature on the January 2002 Conveyance is not his and (ii) even if it were his, the conveyances including the January 2002 Conveyance were not valid and could not pass the fee simple estate to the Third Party because the legal title in those properties were not yet vested in him. The legal title was passed to him in 2004.

The Third Party was later ordered to produce the original January 2002 Conveyance which it did. The Third Party then asked the Court to declare that it is the owner of the lots in that Conveyance.

**HELD: the Plaintiff is entitled to damages and interest as a result of the Defendant's fraudulent misrepresentation and a Declaration is granted declaring the Third Party to be the owner of the lots in the January 2002 Conveyance.**

1. In order to sustain an action of deceit, there must be proof of fraud. Fraud is proved when it is shown that a false representation has been made knowingly, or without belief in its truth or recklessly without caring whether it be true or false: **Derry v Peek** [1889] 14 App. Cas. 337, per Lord Herschell at page 374.
2. It is sufficient that the misrepresentation is a material inducement, it does not have to be the only one: per Lord Blackburn in **Smith v Chadwick** (1884) 9 App Cas 187 at 195-196.
3. Generally, where a plaintiff argues that a defendant has made a misrepresentation, it is for the plaintiff to prove that the misrepresentation induced him to enter into the contract. However, in circumstances where the court finds that a misrepresentation was made fraudulently (i.e. deliberately to mislead) a presumption is made that the plaintiff was induced to enter into the contract as a result. The burden then shifts to the defendant to show that the representation did not cause the plaintiff to enter into the contract: **Edwards v Ashik** [2014] EWHC 2452 [Ch].

4. In the present case, the Court finds, on a balance of probabilities, that the Defendant fraudulently misrepresented to the Plaintiff that he was the sole legal and beneficial owner of the nine lots of land and that the lots were for sale when he knew that he had sold the same lots to the Third Party in January 2002. The Plaintiff was induced into purchasing the lots in reliance on the representation by the Defendant.
5. The Defendant cannot raise new issues and facts in submissions. Regardless of how skillfully crafted they are, submissions do not rise to the level of pleadings: **Montague Investments Limited v Westminster College Ltd** [2015] CLE/gen/00845 – unreported judgment of Charles J and **Bahamas Ferries Limited v Charlene Rahming** SCCivApp & CAIS No. 122 of 2018, CA.
6. Out of an abundance of caution, the Court considered the new issues raised. With respect to the validity of the January 2002 Conveyance, the Court finds that even though the Defendant acquired the legal title in the lots some two years after he granted and conveyed the lots to the Third Party, this interest would “*feed the estoppel*” and preclude him from disputing the validity or effect of his own grant. In other words, the Defendant would be estopped from saying that he had no interest at the time in which he granted and conveyed the conveyance to the Third Party: **Noel v Bewley** (1829) 3 Sim 103 at 116, per Shadwell V-C and **Re Bridgwater’s Settlement, Partridge v Ward** [1910] 2 Ch. 342. As such, the 2002 conveyances remain effectual to-date, even though these conveyances were executed before the Defendant had acquired interest in the property that he conveyed to the Third Party. In light of this and given that they form part of the valid January 2002 Conveyance to the Third Party, the Court finds that the Plaintiff did not receive good and marketable title in fee simple in possession to the Lots.
7. With respect to the signature on the January 2002 Conveyance, the Court ordered the Third Party to produce the original Conveyance. This was done and further evidence was taken from Counsel before whom the said Conveyance was executed and the Corporate Secretary who also witnessed the execution of the Conveyance and saw the Defendant signed it. The Court then declared the Third Party to be the owner of the lots in the January 2002 Conveyance.
8. The Plaintiff is entitled to damages and interest due to the fraudulent misrepresentation of the Defendant. The Defendant shall pay damages to the Plaintiff in the sum of \$207,600.00 being the balance of the value of the Lots. The Defendant will also pay costs to the Third Party; such costs are to be taxed if not agreed.

## JUDGMENT

**Charles J**

### **Introduction**

[1] This is an action for fraudulent misrepresentation. It commenced on 14 September 2017. After the witnesses testified, the Court directed that the parties lay over closing written submissions on or before 21 September 2017 (the “Original Submissions”).

- [2] On 25 October 2017, more than a month after the Original Submissions were laid over, learned Counsel for the Defendant, Mr. Zervos who was the third Counsel to represent Anthony Munnings (“the Defendant”) in the proceedings, served the Court and Counsel for the Plaintiff with Amended Submissions. The Amended Submissions raise new issues and introduce new facts which were not pleaded in any of the various iterations of the Defendant’s Defence or raised with the Court in any of the successive applications moved by him up to and at the trial.
- [3] In fairness to Quality Business Centre Limited (“the Plaintiff”), the Court reconvened on 18 January 2018 to give the Plaintiff an opportunity to address the new issues raised in the Defendant’s Amended Submissions.
- [4] Based on the new issues raised, it was agreed that the Third Party, (“Harmony Homes”) ought to appear and make submissions. It was also ordered that Harmony Homes produce the original conveyance of the 7.220 acre tract of land situate West of Gladstone Road in New Providence dated 8 January 2002 and made between Anthony Munnings and Harmony Homes Limited and recorded in the Registry of Records in Volume 8450 at pages 132 to 137 (“the January 2002 Conveyance”). Mr. Zervos drafted an order to this effect which was perfected on 19 January 2018.
- [5] On 12 March and 26 March 2018, the trial continued. I heard from all parties including learned Counsel Mr. Bell who represented Harmony Homes. I reserved my decision.
- [6] For reasons given below, I declare that Harmony Homes is the owner of the 7.220 acre tract of land in the January 2002 Conveyance. I also find that the Plaintiff did not receive good and marketable title in fee simple in possession to the Lots given that they form part of the valid January 2002 Conveyance to Harmony Homes.
- [7] The Plaintiff is entitled to damages and interest due to the fraudulent misrepresentation by the Defendant. The Defendant shall pay damages to the

Plaintiff in the sum of \$207,600.00 being the balance of the value of the Lots. The Defendant will also pay costs to the Plaintiff and Harmony Homes; such costs are to be taxed if not agreed.

## **Background**

- [8] The Plaintiff, a Bahamian company, instituted the present action against the Defendant seeking damages for fraudulent representation of nine (9) lots of land in the amount of \$287,600.00 and/or a declaration that the Defendant is a trustee of the sum of \$260,000.00 together with an Order for the return of the same.
- [9] As a result of certain admissions made by the Defendant in paragraph 7(b) of his Defence filed on 27 January 2015 as well as his affidavit filed on 1 May 2015, the Plaintiff filed an Application for Judgment on Admission.
- [10] On 17 June 2016, the Plaintiff was successful in its Application for Judgment on Admission. The Court ordered the Defendant to pay to the Plaintiff damages in the amount of \$80,000.00 representing the sum which he admitted that he received in respect of five out of the nine lots of land, namely lots 90, 92, 107, 109, 111 along with an additional lot not mentioned in the Statement of Claim namely lot 88.
- [11] The Court also ordered that the remainder of the Plaintiff's claim be set down for trial and leave was granted to the Plaintiff to amend its Statement of Claim reflecting the same. The Plaintiff filed an Amended Statement of Claim on 4 November 2016.
- [12] The Defendant filed another Defence on 17 November 2016. This should have been styled "Amended Defence".
- [13] This judgment is only concerned with a claim against the Defendant for the sum of \$207,600.00 being the balance of the value of the Lots.

## **The Pleadings**

- [14] In its Amended Statement of Claim filed on 4 November 2016, the Plaintiff alleged that the Defendant fraudulently represented and sold to the Plaintiff nine lots,

namely lots: 90, 92, 106, 107, 108, 109, 110, 111 and 112 (the Lots”) in a purported subdivision known and referred to as Lake Villanees Subdivision situate in the Western District of the Island of New Providence, The Bahamas (“LVS”).

[15] The Plaintiff further alleged that between March and May 2007, the Defendant met with Andrew Wilson (“Mr. Wilson”), one of the directors of the Plaintiff, to discuss the prospects of the Plaintiff purchasing property in LVS from him. The Plaintiff next alleged that the Defendant fraudulently represented that he was the sole legal and beneficial owner of the Lots and that they were for sale. As a result, the Plaintiff was induced into purchasing the Lots and in reliance on the Defendant’s misrepresentation, the Plaintiff paid the Defendant the sum of \$260,000.00 as consideration for the transfer of the Lots. The Plaintiff alleged that both parties executed the following conveyances:

(i) An Indenture of Conveyance dated 19 March 2007 for the acquisition of Lots 106, 107, 108, 109, 110, 111 and 112 at a consideration of \$180,000.00;

(ii) An Indenture of Conveyance dated 18 May 2007 for the acquisition of Lot 90 at a consideration of \$40,000.00; and

(iii) An Indenture of Conveyance dated 18 May 2007 for the acquisition of Lot 92 at a consideration of \$40,000.00.

[16] The Plaintiff alleged that sometime in December 2011 while it was negotiating the sale of a couple of the Lots, it discovered that the Defendant had, in 2002, sold a track of land which included the Lots to a Bahamian company named Harmony Homes Limited, the Third Party, in these proceedings.

[17] The Plaintiff further alleged that, as a result of the above, the Defendant fraudulently represented to the Plaintiff that he was the sole legal and beneficial owner of the Lots and induced the Plaintiff to purchase them. Accordingly, the Plaintiff has lost over \$287,600.00, which includes \$260,000.00 for the purchase

price of the Lots; \$17,600.00 for the stamp duty on the Lots and over \$10,000.00 for legal fees and expenses.

[18] The Plaintiff was successful in its Application for Judgment on Admission in which it received judgment for \$80,000.00. It now makes a claim for the outstanding loss and damage suffered for the fraudulent misrepresentation in the amount of \$207,600.00.

[19] In his Defence filed on 17 November 2016, the Defendant denied making any fraudulent misrepresentation regarding the Lots. He alleged that any matters and discussions relating to the sale of the Lots were made by his then attorney, Mr. Philip Lundy (Mr. Lundy”) who intimated to him that Mr. Wilson wished to purchase six lots namely lots 88, 90, 92, 107, 109 and 111. He only met Mr. Wilson on one occasion.

[20] In paragraph 5 of the Defence, the Defendant denied that he fraudulently misrepresented anything to the Plaintiff.

[21] In paragraph 6 of his Defence, he denied selling a track of land which included the Lots to Harmony Homes and puts the Plaintiff to strict proof.

[22] He categorically denied the other averments in the Amended Statement of Claim.

### **Case Management Conference**

[23] The matter was referred to Case Management before Evans J (as he then was) on 25 March 2015. On that date, the learned judge adjourned to 1 April 2015 when Case Management Conference was adjourned sine die.

[24] A few other applications were filed by both parties but they are not germane to the present action.

[25] Strikingly however, on 16 June 2015, after pleadings were closed, the Defendant issued a Third Party Notice to Harmony Homes. On 23 July 2015, the Defendant issued an Amended Third Party Notice. In part, it states “If to the contrary to his

defence, the Defendant be held liable to the Plaintiff, he will claim against you an indemnity”.

[26] On 11 April 2016, the matter was assigned to me. Both Plaintiff and the Defendant were present. I was informed that Harmony Homes was served on 23 October 2015. I ordered that they be served again. Harmony Homes was served on 3 April 2017 and appeared irregularly.

[27] On 3 August 2016, I gave Case Management Directions for a trial to take place on 11 May 2017 which had to be adjourned after the then Counsel for the Defendant, Mr. Wilver Deleveaux fell ill and the Defendant had to engage the services of another Counsel.

[28] The trial commenced on 14 September 2017. Harmony Homes did not participate in the trial. They did not even put in an appearance.

### **The issue**

[29] At the trial, the main issue before the Court was whether or not the Defendant had induced the Plaintiff’s director (Mr. Wilson) to purchase the Lots by fraudulent misrepresentation.

### **Fraudulent misrepresentation**

[30] An action for fraudulent misrepresentation arises where a false representation has been made knowingly, or without belief in its truth, or recklessly without caring whether it is true or not. A representee will not succeed if the representor honestly believed his statement to be true or was merely negligent in making it.

[31] The settled authority on common law fraud or fraudulent misrepresentation is the case of **Derry v Peek** [1889] 14 App. Cas. 337. In that case, the court set out the requirements for fraud stating that fraud is proved when it is shown that a false representation has been made knowingly or without belief in its truth or recklessly without caring whether it be true or false.



[32] Lord Herschell stated at 374:

**“I think the authorities establish the following propositions: First, in order to sustain an action of deceit, there must be proof of fraud and nothing short of that will suffice. Secondly, fraud is proved when it is shewn that a false representation has been made (1) knowingly, or (2) without belief in its truth, or (3) recklessly, careless whether it be true or false. Although I have treated the second and third as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement being fraudulent, there must, I think, always be an honest belief in its truth. And this probably covers the whole ground, for one who knowingly alleges that which is false, has obviously no such honest belief. Thirdly, if fraud be proved, the motive of the person guilty of it is immaterial. It matters not that there was no intention to cheat or injure the person to whom the statement was made.”**

[33] Further, it is sufficient that the misrepresentation is a material inducement, it does not have to be the only one. In **Smith v Chadwick** (1884) 9 App Cas 187 at pages 195-196, HL, Lord Blackburn said:

**"In an ordinary action of deceit the plaintiff alleges that false and fraudulent representations were made by the defendant to the plaintiff in order to induce him, the plaintiff, to act upon them. I think that if he did act upon these representations, he shews damage; if he did not, he shews none. And I think the plaintiff in such a case must not only allege but prove this damage. It is as to what is sufficient proof of this damage that I wish to make my remarks. I do not think it is necessary, in order to prove this, that the plaintiff should always be called as a witness to swear that he acted upon the inducement. At the time when *Pasley v Freeman* was decided, and for many years afterwards he could not be so called. I think that if it is proved that the defendants with a view to induce the plaintiff to enter into a contract made a statement to the plaintiff of such a nature as would be likely to induce a person to enter into a contract, it is a fair inference of fact that he was induced to do so by the statement."**

[34] Lord Blackburn went on to point out that the inference was one of fact not law and that if no evidence is given as to reliance in fact that was ground for not drawing the inference.

[35] Another case dealing with misrepresentation is **Spice Girls Ltd v Aprilia World Service BV** [2002] EWCA 15 (CA). The ‘Spice Girls’ worked together as a five-

member pop group. They contracted with the defendants under which the defendants agreed to sponsor the group's tour in return for promotional work. The defendants had signed a sponsorship agreement, but now resisted payment saying that one of the Spice Girls, Geri Halliwell, had given notice to leave the group, substantially changing what had been promised. The girls acknowledged that Geri had said she would leave, but insisted that no real intention to leave had existed. The defendants claimed that they had been induced to enter into the contract by misrepresentation. The Court of Appeal upheld that contention. It was held that generally, a person who is about to enter into an agreement is under no duty to disclose material facts which he knows but which the other party does not know. Here the group knew that the other party was relying upon a representation, and could not discharge the requirement to show that they did not know of its falsity. They were liable in damages to the defendants.

[36] Generally, where a plaintiff argues that a defendant has made a misrepresentation, it is for the plaintiff to prove that the misrepresentation induced him [the plaintiff] to enter into the contract. However, in circumstances where the court finds that a misrepresentation was made fraudulently (ie deliberately to mislead) a presumption is made that the plaintiff was induced to enter into the contract as a result. The burden then shifts to the defendant to show that the representation did not cause the plaintiff to enter into the contract: **Edwards v Ashik** [2014] EWHC 2452 [Ch].

[37] To sum up, a fraudulent misrepresentation is founded on the tort of deceit and has four elements namely:

- a) The representor makes a false representation to the representee;
- b) The representor knows that the representation is false, or, he is reckless as to whether it is true or false;
- c) The representor intends that the representee should act in reliance on it; and
- d) The representee does act in reliance on the representation and, as a result, suffers loss.

[38] Once a fraudulent misrepresentation is established, the representee may rescind the contract and claim damages.

### **The evidence**

[39] Andrew Wilson testified on behalf of the Plaintiff. He relied on his witness statement which was signed on 8 March 2017 and filed the day after. He is the President and Principal of the Plaintiff. He stated that sometime between January and March 2007, he met with the Defendant and his attorney, Mr. Lundy, to discuss the prospects of the Plaintiff purchasing a number of lots from the Defendant. The meeting took place in Mr. Lundy's office.

[40] Mr. Wilson asserted that during the meeting the Defendant represented to him that he was the sole legal and beneficial owner of the Lots and that the Lots were for sale. He considered the purchase price that the Defendant was asking for to be a good deal. The Defendant showed him a property plan laying out LVS.

[41] Mr. Wilson further asserted that, as a result of the meeting, he paid the Defendant the sum of \$260,000.00 with an initial deposit of \$50,000.00. The Defendant insisted in cash payment which he did. The balance was paid shortly thereafter. All monies were paid directly to the Defendant in Mr. Lundy's office. He said that after payment in full, the following three conveyances were executed in Mr. Lundy's office namely: (i) An Indenture of Conveyance dated 19 March 2007 for the acquisition of Lots 106, 107, 108, 109, 110, 111 and 112 at a consideration of \$180,000; (ii) An Indenture of Conveyance dated 18 May 2007 for the acquisition of Lot 90 at a consideration of \$40,000 and (iii) An Indenture of Conveyance dated 18 May 2007 for the acquisition of Lot 92 at a consideration of \$40,000: See Tab 2 - 4 of the Witness Statement of Andrew A.D. Wilson filed on 9 March 2017 for the conveyances.

[42] Mr. Wilson alleged that, sometime in December 2011, he discovered that Harmony Homes, a company owned by Sir Franklyn Wilson, was the owner of a track of land which included the Lots that the Defendant had sold to the Plaintiff. The Defendant had purportedly sold the track of land to Harmony Homes in 2002.

- [43] Mr. Wilson alleged that after realizing the loss endured from the Defendant's fraud, he instructed his attorneys to file a formal criminal complaint against the Defendant with the Royal Bahamas Police Force.
- [44] Mr. Wilson was extensively cross-examined. During cross-examination, he revealed that his lawyer was Mr. Lundy who also represented the Defendant in the transaction. He also stated that the Defendant had approached him in his store which was right across the street from Mr. Lundy's office and offered to sell the Lots. He then went over to Mr. Lundy's office to further discuss and facilitate the transaction. Throughout the cross-examination, he maintained that the Defendant sold the Lots twice. He was asked whether he has receipts to verify that he paid \$260,000.00 to the Defendant. Mr. Wilson stated that the Conveyances are the receipts and that the Defendant himself has produced some of them.
- [45] Under re-examination, Mr. Wilson indicated that the Defendant was the one who directed him to go to Mr. Lundy. Mr. Lundy did not do any searches. He merely facilitated the transaction.
- [46] The Defendant testified on his own behalf. He relied on his witness statement which was filed on 30 June 2017. He asserted that he is a realtor by profession. He alleged that between January and March 2007, his then attorney Mr. Lundy, informed him that Mr. Wilson was interested in purchasing some adjoining lots of land which he (the Defendant) owns at LVS. He said Mr. Lundy told him that he would be acting for both parties in the transaction.
- [47] The Defendant denied that he ever had any discussions with Mr. Wilson. According to him, all discussions with respect to purchasing of the property would have been made between Mr. Wilson and Mr. Lundy. He said Mr. Lundy told him that the purchaser had \$80,000.00 and he wanted to purchase about six lots which were contiguous and adjoining one another in a row in the LVS. He said he told Mr. Lundy that he would be prepared to sell Lots 111, 109, 107, 92, 90 and 88. He said

he informed Mr. Lundy that these six lots were all in a row and adjoining one another on the same side of the larger parcel of land comprising the LVS.

- [48] The Defendant alleged that he agreed to sell the six lots for \$80,000.00 to be paid in cash. He said that once Mr. Lundy orally communicated to him the Plaintiff's acceptance of his offer, he instructed Mr. Lundy to prepare the required conveyance to effect the sale. He said that Mr. Lundy was well aware of his requirement of cash payment for all land transactions; an arrangement known to him as his attorney in other sales.
- [49] The Defendant said that he never met or had any direct discussion with Mr. Wilson about the sale and/or purchase price of the six lots. He denied that he entered into any agreement with Mr. Wilson on behalf of the Plaintiff to sell six lots for \$180,000.00. He saw Mr. Wilson at the time of the closing of the execution of the conveyance in Mr. Lundy's office. He said, at that time, Mr. Wilson paid him \$55,000.00 cash. He had already received \$25,000.00 cash as a deposit from Mr. Wilson. In all, he received \$80,000.00 in cash payments for six lots of land.
- [50] The Defendant asserted that he only signed one conveyance for the sale of Lots 111, 109, 107, 92, 90 and 88. He denied that he sold the Plaintiff Lots 90, 92, 106, 107, 108, 109, 110, 111 and 112 as stated by Mr. Wilson. He denied that he was paid \$260,000.00 for the Lots. He stated that the Plaintiff's claim is fraudulent.
- [51] Throughout his witness statement, the Defendant insisted that he sold six lots of land in LVS to the Plaintiff for \$80,000.00 and he received cash payments.
- [52] During oral testimony, the Defendant stated that he never conveyed 7.220 acres of land on 8 January 2002 to Harmony Homes. He never signed any conveyance to that effect. However, he recalled that he sold to Harmony Homes a track of land comprising 6.02 acres for \$100,000.00 in 2002.
- [53] He was shown a photocopy of the January 2002 Conveyance (from Anthony Ramond Munnings to Harmony Homes) and he stated that there is no original of

the conveyance because it is a fraudulent document. He was asked whether the signature on the photocopy is his and he stated that it is illegible but it is definitely not his.

[54] The Defendant maintained his account that he sold six lots of land to the Plaintiff and he only signed one conveyance. He also maintained that he received \$80,000.00 by way of cash payments from the Plaintiff. He also stated that no attempt was made by the Plaintiff to produce the original January 2002 Conveyance from Sir Franklyn Wilson.

[55] During cross-examination, the Defendant said that Mr. Lundy had been his attorney for about 8 to 10 years prior to the transaction with Mr. Wilson.

[56] During further cross-examination, learned Counsel for the Plaintiff, Mr. Wilson asked the Defendant about his relationship with Mr. Wilson and he acknowledged that they were no more than casual friends. At this point, learned Counsel Mr. Wilson quizzed him as to the reason why he would have grossly undersold the lots to the Plaintiff. The Defendant, by his account, sold 6 lots for \$80,000.00 or approximately \$13,000.00 per lot (not \$12,000.00 as learned Counsel Mr. Wilson calculated but he unhesitatingly acknowledged that he is not good at Mathematics).

[57] Learned Counsel then revealed three conveyances which showed that the Defendant had sold individual lots in LVS at an average of \$40,000.00 during the same period that he sold the Lots to the Plaintiff. The conveyances are:

- (i) Conveyance of lot 78 in LVS to Ricardo Nathaniel Johnson for a consideration of \$40,000.00 dated 16 February 2007;
- (ii) Conveyance of lot 76 in LVS to Ricardo Nathaniel Johnson for a consideration of \$40,000.00 dated 9 February 2007; and

- (iii) Conveyance of lot 28 in LVS to RSS Holdings for a consideration of \$35,000.00 dated 28 February 2006.

[58] Under cross-examination, the Defendant insisted that the Conveyance relating to lots 106, 107, 108, 109, 110, 111 and 112 is a fraudulent conveyance because the conveyance which he signed in 2007 had six lots on it. He did not answer whether the signature on that conveyance is his but said that *“the conveyance is a fraudulent conveyance, it had to been orchestrated”*. He also stated that the first time he became aware of the January 2002 Conveyance was at the police station.

[59] The Defendant admitted that he had received two separate cash payments from the Plaintiff, in the amounts of \$25,000.00 and \$55,000.00, an aggregate sum of \$80,000.00. He also asserted that he had sight of cheques from the Plaintiff in the amount of \$105,000.00 and \$75,000.00; the respective cheques being received by Mr. Lundy.

[60] This was the extent of the evidence adduced on 14 September 2017.

### **Analysis of the law and the evidence**

[61] This is a civil case wherein the standard of proof is based on a balance of probabilities. Having had the opportunity of seeing, hearing and observing the demeanour of the witnesses and analyzing the documentary evidence, specifically the conveyances and exhibits which the Defendant himself exhibited to his witness statement, I prefer the evidence adduced by the Plaintiff to that of the Defendant. I found Mr. Wilson to be candid and straightforward. On the other hand, the Defendant, in spite of his engaging manner, can hardly be believed and I attached very little weight to his evidence. In other words, I found him to be a stranger to the truth. Mr. Wilson thought that he was getting a bargain. Four years later, he realised that he was deceived by the Defendant who had already sold the same Lots to Harmony Homes. I will come to that aspect of the evidence later on in the judgment.

- [62] I believed Mr. Wilson when he stated that he was induced by the Defendant to purchase the Lots. I also believed that the Defendant made the representations that (i) he was the sole legal and beneficial owner of LVS; (ii) the Lots were for sale; and (iii) he produced a property survey plan purportedly laying out LVS.
- [63] Accordingly, I found that, as a result of the misrepresentation of the Defendant, the Plaintiff executed the three conveyances for the Lots and paid for them.
- [64] I agree with learned Counsel Mr. Wilson that, from the Defendant's Defence, he seeks to muddle the issues in order to avoid his obligation. The irrefutable fact is that the Defendant's signature appears on the three conveyances issued to the Plaintiff.
- [65] Further, in paragraphs 3 & 4 of its Amended Statement of Claim, the Plaintiff pleaded that the Defendant fraudulently represented that he was the owner of the Lots and he had the authority to sell the same. Learned Counsel Mr. Wilson submitted, quite correctly, that this representation is both express and implied by virtue of the fact that the Defendant executed the conveyances in question purporting to sell the properties when he was no longer the owner thereof.
- [66] In my judgment, the Defendant made the representations fraudulently and either well knowing that they were false and untrue or recklessly not caring whether his representations were true or false.
- [67] Having by his deed expressly represented that he was the owner of the Lots, the only issue is whether the Defendant was in fact the owner of the Lots which he purportedly sold to the Plaintiff. The Defendant's case is that he is the owner of the Lots and that the January 2002 Conveyance to Harmony Homes which bears his signature is a fraud. This was the focal point of the Amended Submissions which Mr. Zervos made to the Court. I will return momentarily to this issue.
- [68] Furthermore, the Defendant has failed to adduce any evidence to support his claim that he only sold the Plaintiff six lots at LVS, namely lots 111, 109, 107, 92, 90 and



88. What is interesting is the fact that lots 106, 107, 108, 109, 110, 111, and 112 were all conveyed to the Plaintiff in one deed yet the Defendant disputes that he sold lots 106, 108, 110 and 112 but not the others. Lots 90 (not 88) and 92 were conveyed by individual deeds and the Defendant admits to selling these lots to the Plaintiff.

[69] What is even more interesting is that the Defendant has throughout his Defence, witness statement and viva voce testimony maintained that he sold six lots at LVS to the Plaintiff for \$80,000.00. He asserted that Mr. Wilson paid him \$80,000.00 cash for the six lots and he executed one conveyance for those lots. To date, he has not produced that conveyance which would have fortified his assertion. Undoubtedly, one would expect that he would have that conveyance in his possession. After all, he is no ordinary man. According to him, he is a realtor. He had, in the past, sold many lots of land not only in LVS but other areas in New Providence. In my judgment, it appears that he has practised a web of deceit over the many years.

[70] Additionally, the Defendant admitted that he had received two separate cash payments from the Plaintiff, in the amounts of \$25,000.00 and \$55,000.00, an aggregate sum of \$80,000.00. He also stated that he had sight of cheques from the Plaintiff in the amount of \$105,000.00 and \$75,000.00; the respective cheques were received by Mr. Lundy. The Defendant agreed that the total amount of the cheques and the cash is \$260,000.00 which is the exact amount that the Plaintiff claimed in its Statement of Claim (which was subsequently amended due to admissions made by the Defendant).

[71] Before I conclude, I should say that the Defendant hurled a sundry of aspersions at his attorney of many years. He brought into question the integrity of Mr. Lundy in at least three instances. First, he stated that he never received any money or payment from Lundy & Co. from the Plaintiff in spite of documentary evidence to the effect that Andrew Wilson paid \$25,000.00 to Lundy & Co. on 17 March 2007. Implicitly, he is saying that Mr. Lundy received monies from Mr. Wilson but never

paid it to his client (the Defendant). This is a very dangerous allegation. Second, the Defendant asserted that Mr. Lundy had never produced or mentioned to him that he had done any separate conveyance for Lots 90 and 92 despite repeated requests for same: paragraph 22 of his witness statement. Third, he sold six Lots namely lots # 111, 109, 107, 92, 90 and 88 to the Plaintiff for \$80,000.00 and the conveyance which he signed in Mr. Lundy's office was for those six Lots. Any conveyance(s) for the Lots identified by the Plaintiff is a fraudulent document. In effect, he is saying that Mr. Lundy was part and parcel of the orchestration of a massive fraud on him.

[72] Nonetheless, Mr. Lundy had been his attorney for close to a decade. The Defendant said that he did not negotiate the sale of the Lots to the Plaintiff. Mr. Lundy did everything. All that he did was to present himself in Mr. Lundy's office where he signed one conveyance. In other words, Mr. Lundy was his agent. In an action for misrepresentation, it does not matter if the representation was made by an agent who did not know that the representation was untrue: **Smelter Corporation of Ireland Limited v O'Driscoll** (1977) IR 307.

[73] Applying the law to the facts of this case, I find that the Defendant fraudulently misrepresented to the Plaintiff that he was the owner of the Lots knowing full well that he had sold the Lots to Harmony Homes as evidenced in the January 2002 Conveyance.

#### **New issues raised by Defendant in Amended Submissions**

[74] After the trial was concluded, the Court directed that the parties lay over closing written submissions on or before 21 September 2017 (the "Original Submissions"). This was done merely to facilitate learned Counsel Mr. Zervos who had been recently retained. In fact, on the date fixed for trial, he was armed with an application to strike out the Claim which the Court did not entertain but proceeded with the trial.

[75] As already mentioned, on 25 October 2017, Mr. Zervos served Counsel for the Plaintiff with Amended Submissions. Learned Counsel for the Plaintiff Mr. Wilson

submitted that, without prejudice to his primary contention that it is far too late for the Defendant to now raise new issues and facts (in Submissions), the two issues which are at the forefront of the Amended Submissions are: (1) the Defendant's signature to the January 2002 Conveyance to Harmony Homes and (ii) the Defendant's title to the property conveyed to Harmony Homes namely: the January 2002 Conveyance comprising 7.22 acres of land in LVS (which he denies having executed) and a subsequent conveyance for a 6.021 acre tract of land in LVS (which he admits having executed), dated 2 August 2002 ("August 2002 Conveyance").

[76] Counsel argued that the Court should not consider these issues at this late stage since they were not pleaded in any of the various iterations of the Defendant's Defence or raised with the Court in any of the successive applications moved by him up to and at the trial. Indeed, these issues which were not pleaded will call for fresh evidence in a trial that had already concluded.

## **Pleadings**

[77] Time after time, inferior as well as superior courts have emphasized the need for proper pleadings and its purpose. On 31 March 2020, this very Court in **Montague Investments Limited v Westminster College Ltd** [2015] CLE/gen/00845 reiterated the importance of pleadings. At paragraphs 15 to 17, I stated:

**"[15] The purpose of pleadings in civil cases is to identify the issue or issues that will arise at trial. This is in order to avoid the opposing parties and the court taken by surprise. The pleadings must be precise and disclose a cause or causes of action. Evidence need not be pleaded, because that will come from the affidavits and cross-examination thereon or by oral evidence.**

**[16] In Bahamas Ferries Limited v Charlene Rahming SCCivApp & CAIS No. 122 of 2018, our Court of Appeal held that the starting point must always be the pleadings. At para. 39 of the judgment, Sir Michael Barnett JA (as he then was) stated:**

**"The starting point must always be the pleadings. In Loveridge and Loveridge v Healey [2004] EWCA Civ. 173, Lord Phillips MR said at paragraph 23:**

**"In *Mcphilemy vs Times Newspapers Ltd.* [1999] 3 ALL ER 775 Lord Woolf MR observed at 792-793:**

**'Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader.'** “[Emphasis added]

[17] At paragraph 40 of the Judgment, Sir Michael went on to state:

**“It is on the basis of pleadings that the party’s decide what evidence they will need to place before the court and what preparations are necessary for trial.”**

[78] Therefore, it is absolutely important that the pleadings should make clear **the general nature** of the case of the pleader. Submissions, however, skillfully crafted, do not rise to the level of pleadings.

[79] That said and, out of an abundance of caution, the Court reconvened on 18 January 2018 and permitted both Counsel to address the new issues raised by the Defendant.

### **The Defendant’s signature on the January 2002 Conveyance**

[80] As the Plaintiff correctly submitted, there seems to be great confusion on the part of the Defendant when he asserted in the Defendant’s Amended Submissions at page 2 that: “the Plaintiff FIRST ACCUSED the Defendant of fraudulently signing the [January] 2002 Conveyance and affixing his signature thereto thereby defrauding the Plaintiff of B\$260,000.00 and related sums of money including interest and costs.”

[81] However it was the Defendant who alleged that the signature on the January 2002 Conveyance was forged by way of defence to the claim by the Plaintiff that he represented that he was the owner of the property when he was not. The Defendant has persistently stated in affidavits, his witness statement and his oral testimony before this Court that the signature on the January 2002 Conveyance is not his. However, he has not pleaded it.

[82] In the present case, the Plaintiff merely alleged that, after it had purchased the Lots, it was discovered, by way of a **lodged and recorded** conveyance, that the Defendant had previously sold the Lots to Harmony Homes by way of the January 2002 Conveyance. The Amended Statement of Claim, at paragraph 7, clearly pleads:

**“Sometime in December, 2011 while QBC was negotiating the sale of a couple of the Lots a title search was undertaken by the prospective purchaser’s attorney. The results of the title search confirmed that in 2002 Mr. Munnings had sold a track of land which included the Lots to a Bahamian company named Harmony Homes Limited.”**

[83] Consequently, during the trial, when Counsel for the Defendant asserted that it was for the Plaintiff to prove that the signature on the January 2002 Conveyance is fraudulent, the Court was of the contrary opinion since the Defendant is the party asserting that the signature is fraudulent.

[84] In any event, the Plaintiff has done its part, by exhibiting the lodged and recorded January 2002 Conveyance as evidence, to justify its claim that the Defendant had previously sold the Lots in 2002 to Harmony Homes, while fraudulently misrepresenting to the Plaintiff that he was the sole legal and beneficial owner of the Lots in 2007. The essence of fraudulent misrepresentation is the absence of honest belief.

[85] As the Plaintiff correctly contended, any reference to the Defendant’s signature on the January 2002 Conveyance would be an issue solely between the Defendant and Harmony Homes, to which he issued a Third Party Notice but did not pursue it with any vigour.

[86] Further, section 113(2) of the Evidence Act, Ch. 65 of the Laws of The Bahamas confers a statutory presumption of validity on all public documents (which includes private documents on public registers). Therefore, the burden rests with the Defendant to displace that presumption by proof to the contrary. It appeared that

this is what he is trying to do by asserting *non est factum*, and which ought to be specifically pleaded and proved.

- [87] In the Defendant's Amended Submissions, the issue regarding the validity of the two conveyances including the January 2002 Conveyance in respect of whether or not title had passed to Harmony Homes surfaced for the first time. Not only did the Defendant fail to raise the issue at any stage in the proceedings, he has shifted the burden to the Plaintiff to argue a potential claim that Harmony Homes may have against him in these circumstances, that being the common law doctrine of "*feeding the estoppel*."

### **Doctrine of "feeding the estoppel" - good and marketable title passed to Harmony Homes**

- [88] Learned Counsel Mr. Wilson forcefully argued that Counsel for the Defendant has advanced a flawed claim in his Amended Submissions - that the January 2002 Conveyance is "a completely worthless piece of paper", and that the August 2002 Conveyance would need to be affirmed by Confirmatory Conveyance, given that both conveyances predate the relevant Deed of Assent dated 3 December 2003 and the Deed of Partition dated 4 March 2004.
- [89] Learned Counsel Mr. Zervos submitted that the January 2002 Conveyance is not a valid conveyance and did not pass the fee simple estate of the 7.220 acre tract of land to Harmony Homes because even if the Defendant did sign that conveyance (which he strenuously denies signing), the legal title was not vested in him so that he could not convey title to Harmony Homes or to anyone else. He relied on the maxim "*nemo dat qui non habet*" ("no one gives who possesses not") and that no Deed of Assent had been executed and no Deed of Partition had been executed by the eight children of the Defendant's late father.
- [90] To refute this claim, learned Counsel Mr. Wilson relied on a passage by the learned authors of **Halsbury's Laws of England 4<sup>th</sup> edn. Vol. 16(2)** at para 1033 which states:

**“1033. Subsequent acquisition of title by grantor or landlord. Where the grantor or landlord subsequently acquires a legal title to the premises which he has purported to demise, the legal estate or interest is said to feed the estoppel, and the grant or the lease then takes effect in interest and not by estoppel; but the grantor or landlord is estopped from saying that he had no interest at the time of the grant or lease”.**

- [91] Consequently, even though the Defendant may have only acquired the legal title some two years after he granted and conveyed the tracts of land to Harmony Homes, this interest would ‘*feed the estoppel*’ and preclude the Defendant from disputing the validity or effect of his own grant. In other words, the Defendant would now be estopped from saying that he had no interest at the time in which he granted and conveyed the 2002 Conveyances to Harmony Homes.
- [92] Further, it is well-established that if a person conveys a defective title and he afterwards acquires a good title, the court will make that good title available to make the conveyance effectual: **Noel v Bewley** (1829) 3 Sim 103, at 116, per Shadwell V-C.
- [93] This well-established principle was followed and applied in **Re Bridgwater’s Settlement, Partridge v Ward** [1910] 2 Ch 342. It was held that “if an assignor with a defective title purports and intends to assign property for value, any interest subsequently acquired by him in that property is available in equity to make the assignment effectual, even though the defect in title is apparent on the face of the assignment”.
- [94] In my judgment, the 2002 Conveyances remain effectual to-date, even though these conveyances were executed before the Defendant had acquired interest in the property that he conveyed to Harmony Homes.
- [95] Additionally, says Mr. Wilson, Harmony Homes would have a persuasive claim against the Defendant for a declaration that the 2002 Conveyances should be recognized. According to him, Harmony Homes could essentially contend that although the Defendant had not been in a position to convey the lots in 2002, he

had created a valid conveyance by estoppel and when he afterwards obtained the legal title by way of the Deed of Assent and the Deed of Partition, the estoppel was 'fed' and Harmony Homes thereby became entitled to the full enjoyment of the tracts of land.

[96] For all of these reasons, I find that the Plaintiff did not receive good and marketable title in fee simple in possession to the Lots, given that they form part of the valid January 2002 Conveyance to Harmony Homes.

### **Order for Harmony Homes to appear with January 2020 Conveyance**

[97] In light of the Amended Submissions and in an effort to bring some finality to this long-drawn-out dispute, it was agreed by the parties that Harmony Homes ought to appear and make submissions. It was also ordered that Harmony Homes produces the original January 2002 Conveyance failing which Judgment in default will be entered against it [Harmony Homes]. The continuation of the trial was adjourned to 8 March 2018.

[98] On 7 March 2018, Harmony Homes filed a Summons supported by the affidavits of Tavares Laroda, General Legal Counsel of Sunshine Holdings Limited and Mr. Shurn Henry, a licensed land surveyor, seeking an order pursuant to Order 16 Rule 4 of the Rules of the Supreme Court ("RSC") that the Third Party Notice filed on 1 September 2017 (sic) be set aside and that the Court declares that Harmony Homes is the owner of the property in the January 2002 Conveyance.

[99] On 8 March 2018, the Defendant filed yet another Summons to strike out the proceedings supported by an affidavit of the Defendant.

[100] On 12 March 2018, learned Counsel Mr. Bell appeared for Harmony Homes. He produced the original of the January 2002 Conveyance. After hearing submissions from all parties, the Court ordered that Honourable Keith Thompson, then a judge of the Industrial Tribunal, and Ms. Maxaleeta Bethell appear on 26 March 2018 to be examined as to their knowledge of the execution of the January 2002 Conveyance said to be signed by the Defendant. The Court further ordered that



the Defendant's Summons filed on 8 March 2018 be struck out as it was nothing more but a delaying tactic.

[101] On 26 March 2018, all parties appeared. In the intervening period, the Defendant filed another Summons on 21 March 2018 seeking that the Court strikes out the Summons filed by Harmony Homes on 7 March 2018 pursuant to Section 16(3) of the Limitation Act, Chapter 83 of the Laws of The Bahamas and pursuant to Order 18 Rule 19(1)(b) and (d) of the RSC on the grounds that (i) the relief claimed is tantamount to bringing an action to recover land and that is statute-barred; (ii) the consideration expressed in and relating to the Conveyance upon the Third Party Defendant relies for this claim is non-existent or has completely failed; (iii) that the Conveyance upon which the Third Party is basing its claim to ownership contained a false and fictitious purchase price of BS\$100,000.00 (thereby rendering it a fraudulent document designed to deceive) and which was never paid by the Third Party Defendant to the Defendant and (iv) the infrastructure which the Third Party Defendant by its Chairman undertook on 17 December 2001 (some 17 years ago) to install and lay down along the 7.220 acre tract of land was never installed or laid down. The Defendant also sought an order that Harmony Homes do produce evidence in the form of an original and proper receipt or cancelled cheque or bank draft or manager's cheque dated on or about 8 January 2002 proving that it paid the Defendant and the Defendant received the sum of \$100,000.00.

[102] Nothing contained in this Summons was ever pleaded and, as Counsel for the Plaintiff properly intimated, the Defendant is only trying to delay the final judgment in this action by obfuscating the issues and essentially making meritless and unwarranted applications as the case progressed. It is a pity that an Officer of the Court would condescend to that level.

[103] That said, I dismissed the Defendant's Summons and proceeded with the evidence of the two witnesses for Harmony Homes who were summoned by the Court.

[104] Mr. Keith Thompson testified. He was a Judge of the Industrial Tribunal and now a Supreme Court Judge. Between 1998 and December 2009, he was General

Legal Counsel to Harmony Homes and all of the other affiliated companies including Arawak Homes, Sunshine Insurance and others. He was responsible for basically all of the conveyancing for the purchase of lands. He is familiar with the name Anthony Ramond Munnings who sold lands to Harmony Homes and the affiliated companies. He had dealt with many transactions for the sale of land between these parties. Mr. Thompson said that he was responsible for the drafting and execution of conveyances during the tenure of his employment. He was shown the January 2002 Conveyance which he recognized: Exhibit KHT1. He identified his signature in the margin as the Attorney. He also notarized the signature of Maxaleeta Bethell who was one of his secretaries at the time.

[105] Mr. Thompson also testified that the Defendant executed the January 2002 Conveyance in his presence since he never allowed documents as serious as these to be executed in his absence. His seal which is unique (with a music sign) also appears on the Conveyance.

[106] He was extensively cross-examined on many irrelevant matters which were never pleaded. At the end of the day, Mr. Thompson's evidence remained uncontroverted and I accept his candour and impartiality.

[107] The next witness called was Kyron Strachan who is the corporate secretary at Sunshine Holdings and its affiliated companies. She was called because Maxaleeta Bethell could not be located. Ms. Strachan is familiar with the Defendant who did business with Harmony Homes over the years and he visited their office on many occasions. He sold property to them. She stated that whenever the Chairman, Sir Franklyn signed documents, she was always present to witness his signature. She was shown the January 2002 Conveyance. He said that she signed as witness to Sir Franklyn's signature: see pages 134 and 136 of Volume 8450.

[108] Ms. Strachan was cross-examined. She was asked whether she saw the Defendant actually signed the January 2002 Conveyance and she affirmatively answered.

[109] This was the evidence adduced by Harmony Homes. I accepted the evidence of Mr. Thompson and Ms. Strachan that they witnessed the signing and execution of the January 2002 Conveyance. They both saw the Defendant affixing his signature to the said Conveyance.

### **Conclusion**

[110] For all of these reasons, I am more than satisfied that the January 2002 Conveyance is a valid conveyance even though it was executed before the Defendant had acquired interest in the property that he conveyed to Harmony Homes. The cases of **Noel v Bewley** and **Re Bridgwater's Settlement** [supra] are sound authorities for the principle that if a person conveys a defective title and he afterwards acquires a good title, the court will make that good title available to make the conveyance effectual.

[111] In the present case, although the Defendant had not been in a position to convey the Lots in 2002, he had created a valid conveyance by estoppel and when he afterwards obtained the legal title by way of the 2004 Deed of Assent, the estoppel was 'fed' and Harmony Homes thereby became entitled to the full enjoyment of the tracts of land.

[112] Accordingly, this Court declares that Harmony Homes is the owner of the 7.220 acre tract of land as shown in an Indenture of Conveyance dated 8 January 2002 and made between the Defendant of the first part and Harmony Homes of the second part and recorded in the Registry of Records in Volume 8450 at pages 132 to 137: Exhibit KHT1.

[113] Given this Declaration, I find that the Plaintiff did not receive good and marketable title in fee simple in possession to the Lots, given that they form part of the valid January 2002 Conveyance to Harmony Homes.

[114] In my judgment, the Plaintiff has adduced credible evidence to support the claim of fraudulent misrepresentation made by the Defendant and that the Defendant made such misrepresentation knowing the same not to be true. Furthermore, there

is sufficient evidence to show that such misrepresentation induced the Plaintiff to purchase the Lots at a considerable amount of money. As a result of the misrepresentation of the Defendant, the Plaintiff has suffered loss and damage, given the fact that the Lots were previously sold to Harmony Homes.

[115] In the premises, the Plaintiff is entitled to damages and interest as a result of the fraudulent misrepresentation made by the Defendant. The Defendant shall pay damages to the Plaintiff in the sum of \$207,600 being the balance of the value of the Lots. The Defendant will also pay costs to the Plaintiff and Harmony Homes; such costs are to be taxed if not agreed.

[116] The Plaintiff and Harmony Homes will email their Bill of Costs to the Court and to the Defendant not later than 29 May 2020.

[117] The Court will hear the parties on Monday 8 June 2020 at 2.30 p.m. if costs are not agreed.

[118] Last but not least, I apologize for the inordinate delay in the delivery of this Judgment.

**Dated this 17<sup>th</sup> day of April, A.D. 2020**

**Indra H. Charles  
Justice**