

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2020/CLE/gen/00671

BETWEEN

RICHARD ROBERT ROLLE

Plaintiff

AND

NEW PROVIDENCE DEVELOPMENT COMPANY LIMITED

Defendant

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Donovan Gibson for the Plaintiff

Gail Lockhart Charles KC with Candice S. Knowles for the Defendant

19 July 2022 and 18 November 2022

JUDGMENT

WINDER, CJ

This is a claim by the Plaintiff to recover damages and other relief from the Defendant for “breach of the recitals and the other terms of the conveyance” on the basis that (as the Plaintiff puts it) the Defendant “purported to convey” land to the Plaintiff which was subject to a right of way which was not disclosed in the conveyance. The Plaintiff is presently restrained by an injunction from obstructing and/or hindering a beneficiary’s use and enjoyment of the right of way.

Background

[1.] The background to these proceedings may be adequately stated as follows.

[2.] The Defendant, a property development company, is the developer of the Subdivision called and known as “Mount Pleasant Village Phase IV” in the Western District of New Providence (“the “Subdivision”). One of the roads in the Subdivision is “Wilson Street”.

[3.] By a conveyance dated 27 January 1999 made between the Plaintiff and the Defendant (“the 1999 Conveyance”), the Defendant conveyed the following property (the “Property”) to the Plaintiff for a consideration of \$21,900:

“ALL THAT piece parcel or lot of land situate in the Western District of the said Island of New Providence comprising 14,599 square feet or thereabouts bounded Northwardly by a Forty (40) foot wide road called and known as Wilson Street and running thereon Forty (40) feet Eastwardly by a road called and known as Percy Road and running thereon Twenty (20.00) feet again Eastwardly by Lot Number One hundred and Fifteen (115) of the Subdivision called and known as “Mount Pleasant Village Phase 4” and running thereon Eighty (80) feet Southwardly by land now and formerly the property of the Vendor and running thereon One hundred and Sixteen and Fourth hundredths (116.04) feet Westwardly by land now and formerly the property of the Vendor and running thereon Two Hundred and Twelve and Forty-five hundredths (212.45) feet again Northwardly by a parcel of land comprising Fourteen thousand Five hundred and Ninety-nine (14,599) square feet or thereabouts formerly belonging to the Vendor and now or lately the property of Donald Ian Rolle and running thereon Ninety-eight and Fifty-two hundredths (98.52) feet and again Eastwardly by the said Wilson Street and running thereon Twenty-one and Forty-three hundredths (21.43) feet which said piece or parcel of land has such position shapes marks and dimensions as are shown on the diagram or plan hereto attached and thereon coloured Pink”

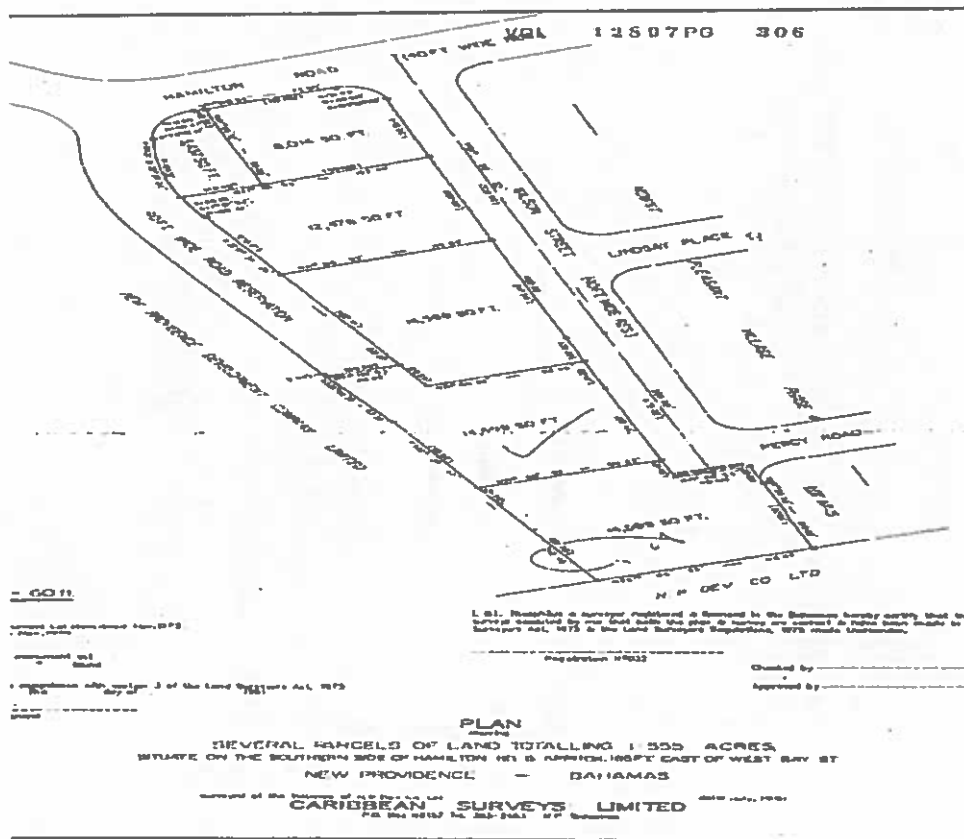
[4.] The Defendant conveyed the Property to the Plaintiff together with (i) all appurtenances belonging to the Property; (ii) a right of way over Wilson Street and Hamilton Road as shown on the plan annexed to the 1999 Conveyance; and (iii) the right for the Plaintiff and his successors to use any sewers, drains, watercourses, pipes, cables, wires and other channels or conductors then or thereafter serving the Property.

[5.] The 1999 Conveyance recited that:

"A. The Vendor is seized of the hereditaments and premises hereinafter described for an estate in fee simple in possession free from incumbrances

B. The Vendor has agreed with the Purchaser for the sale to him of the said hereditaments and premises for a like estate in possession subject to the restrictive covenants and conditions set out in the Schedule hereto but otherwise free from incumbrances at the price of Twenty-one thousand Nine hundred dollars in the currency of the said Commonwealth of The Bahamas (B\$21,900.00)"

[6.] The "position shapes marks and dimensions" of the Property were purportedly depicted on the plan annexed to the 1999 Conveyance. On that plan, "Wilson Street" is depicted as a 40-foot-wide road which abuts but does not transverse or comprise a part of the parcel sold to the Plaintiff:



In actual fact, Wilson Street transverses and/or comprises 3,200 square feet of the Property and may be used by the owners and occupiers of Lot No 115 of the Subdivision to access their property.

[7.] By a conveyance dated 20 March 1989 (“the 1989 Conveyance”) made between the Defendant and Malverne Paulette Sybrina Johnson (“Johnson”), which is recorded in the Registry of Records in Volume 5189 at pages 427 to 438, the Defendant had conveyed Lot No 115 of the Subdivision to Johnson together with the appurtenances thereunto belonging and (among other things):

“...full and free right and liberty for the purchaser her heirs and assigns the owner or owners and occupier or occupiers of the said hereditaments or any part thereof and her or their agents tenants servants visitors and licensees (in common with all others who have or may hereafter have the like right) at all times hereafter by day or by night with or without horses and other animals motors cars carts carriages and other vehicles of any description for all purposes connected with the use and enjoyment of the said hereditaments or any part therefor for whatever purposes the same may be from time to time lawfully used and enjoyed to go pass and repass over upon and along the private roads in the said Subdivision which roads are delineated on those parts of the said Plan which are coloured Brown...”

[8.] The plan annexed to the 1989 Conveyance depicted Lot No 115 of the Subdivision as being bordered by, among other things, Wilson Street, and Wilson Street was one of the roads coloured brown.

[9.] It is now common ground between the parties that the Property was, at the time of its conveyance to the Plaintiff, subject to a right of way granted by the Defendant to Johnson. This fact was not always accepted by the Plaintiff, however.

[10.] A dispute arose between the Plaintiff and Johnson regarding Johnson’s use of the Property to access Lot No 115. In 2019, the Plaintiff erected a fence and chain which had the effect of barring Johnson from exercising her right of way over the Property. As a result, Johnson commenced Supreme Court Action No. 1185 of 2019 in the Common Law and Equity Division (the “Johnson Action”) seeking declaratory relief against the Plaintiff in relation to her right of way.

[11.] In the events that transpired, I acceded to Johnson’s claim. I made an Order in the Johnson Action filed on 16 September 2019 (the “Johnson Order”) in the following terms (the Plaintiff being there called “the Defendant” and Johnson being there called “the Plaintiff”):

“IT IS ADJUDGED that the following reliefs be and are hereby granted to [Johnson]:-

1. A Declaration that [Johnson] has a right of way to pass over and upon and along the private road known as Wilson Street in the Subdivision known as Mount Pleasant Village Phase IV as coloured Brown on the Conveyance dated 20th March 1989 from The New Providence Development Company Limited to [Johnson] recorded in the Registry of Records in Volume 5189 at pages 427 to 438;

2. An Order that Defendant by himself, his servants or agents, or howsoever otherwise is restrained from obstructing and/or hindering [Johnson's] right of way to pass over and upon and along the private road known as Wilson Street in the Subdivision known as Mount Pleasant Village Phase IV as coloured Brown on the Conveyance dated 20th March, 1989 from The New Providence Development Company Limited to [Johnson] recorded in the Registry of Records in Volume 5189 at pages 427 to 438;

3. An Order that the Defendant remove all fencing, chains and poles, erected on and/or across the road reservation known as Wilson Street within fourteen (14) days of the date of this Order;

AND IT IS ADJUDGED that the Costs of and occasioned by this action be [Johnson's] to be taxed if not agreed."

The parties' pleaded cases

[12.] The Plaintiff's claim is encapsulated at paras 5 to 9 of the Statement of Claim endorsed on his Specially Endorsed Writ of Summons:

5. The legal consequence of the said Order [i.e. the Johnson Order] was that a portion of the Plaintiff's property purchased by virtue of the said Conveyance was declared by Justice Winder to form a right of way in the form of a road reservation namely Wilson Street. The Defendant was not seised of that portion of the said hereditaments at the time of the execution of the said Conveyance.

6. The Defendant, having granted the road reservation as a right of way to Ms. Johnson in her Conveyance dated the 20th March 1989, did not possess the legal capacity to grant and convey that same right of way to the Plaintiff at the time the said Conveyance was executed.

7. In breach of the recitals and other terms of the said Conveyance, the Plaintiff, although he purportedly purchased 14,599 square feet of property from the Defendant, is now prevented from exclusively possessing and enjoying the benefit of 3,200 square feet of the said property which was declared to be road reservation.

8. As a result of the above, the Plaintiff has suffered loss and damages.

Particulars of Special Damage

- i) *The Plaintiff obtained a Valuation Report from Randolph John dated the 8th December 2019 at a cost of \$300.00 wherein he stated that the then market value of the property was \$14.25 per square foot. Therefore the value of 3,200 square feet would amount to \$45,600.00.*
- ii) *The Plaintiff was ordered to remove all fencing and chains that were erected on the property at a total cost of \$1,500.00.*
- iii) *The costs of and occasioned by the Supreme Court Action mentioned in paragraph 4 above [the Johnson Action] were awarded against the Plaintiff and by a Certificate of Taxation filed on 16th July 2020 the costs allowed was \$9,000.00.*

Particulars of General Damage

i) The Plaintiff is and was at the material time operating three businesses from the property namely Simply Car rental, RSR General Maintenance & Landscaping and RSR Private Schedule Services. The entirety of the property was used to safely store and secure the vehicles and equipment for the respective businesses which the Plaintiff is now deprived of the benefit to use the property in the said manner.

9. The Plaintiff further claims interest on any sum found due at such rate and for such periods as the Court deems just pursuant to Section 2 and 3 of the Civil Procedure (Award of Interest) Act."

[13.] The Plaintiff's prayer for relief reads:

"AND the Plaintiff claims:-

- 1. The sum of \$56,400*
- 2. Damages for loss of use and breach of the Contract*
- 3. Interest pursuant to the Civil Procedure (Award of Interest) Act*
- 4. Costs.*
- 5. Further or other relief as the Court deems fit."*

[14.] The Defendant's defence is encapsulated at paras 4 to 7 of its Defence:

"4. Paragraph 5 of the Statement of Claim is denied.

5. Paragraph 6 of the Statement of Claim is denied.

6. The Defendant denies breach of the terms of the Conveyance dated the 27th January, 1999 made between the Plaintiff and the Defendant ('the Conveyance'). The Defendant asserts that title to the hereditaments referred to in the Conveyance ('the

Property') was duly transferred to the Plaintiff pursuant to the terms of the Conveyance and that Melverne Paulette Johnson's right of way over the Property was a matter of public record deemed by the Registration of Records Act, Chapter 187 to be known by the Plaintiff at the date of the Conveyance.

7. *No admission is made as to any loss or damage as alleged in paragraph 8 of the Statement of Claim or at all. The Defendant asserts that any loss or damage that the Plaintiff suffered as a result of the litigation between the Plaintiff and Melverne Paulette Johnson was caused by the Plaintiff's own wrongful acts in obstructing Melverne Paulette Johnson's right of way over the Property for the purpose of gaining access to and from her home pursuant to the terms of the Conveyance dated 20th March, 1989 from the Defendant to Melverne Paulette Sybrina Johnson recorded in the Registry of Records in Volume 5189 at pages 427 to 438 which said right of way was at all material times known or deemed to be known to the Plaintiff."*

Evidence

[15.] At trial on 19 July 2022, each party relied on only one witness of fact. The Plaintiff gave evidence on his own behalf. The Defendant's Vice President and Financial Controller, Kavonne Thurston ("Thurston"), gave evidence on behalf of the Defendant.

[16.] The Plaintiff's witness statement filed on 2 June, 2022 was admitted as his evidence-in-chief. The Plaintiff was subject to cross-examination by Counsel for the Defendant and not re-examined.

[17.] The Plaintiff's witness statement was not substantially disputed by the Defendant. According to the Plaintiff:

i) in or around August 2017, the Plaintiff cleared down the Property and placed a 40-foot container on it. The Plaintiff also leased a portion of the Property to a friend who operated (and continues to operate, at a monthly rent of \$300) a car rental business called "Simply Car Rental" from it.

ii) in early 2019, the Defendant sold property to the south of the Property and the new owner of that property wished to access it via the Property. The Plaintiff rejected this and erected a fence along with a chain and lock along the northern boundary of the Property.

iii) after the Plaintiff erected the said fence, Johnson began complaining that she had a right of way over the Property as part of it was not private property but the continuation of Wilson Street, an existing road of the Subdivision.

iv) Johnson commenced the Johnson Action against the Plaintiff by an Originating Summons filed on 15 August 2019. In that action, I made the Johnson Order.

v) by a Certificate of Taxation filed in the Johnson Action on 16 July 2020, the Plaintiff was ordered to pay \$9,000 in costs to Johnson.

vi) the Plaintiff removed all the fencing he erected at a total cost of \$1,500 (but the Plaintiff has provided no receipts).

vii) as a result of the Johnson Order, the Plaintiff engaged a Mr. Randolph John ("John") to prepare a report assessing the value of the portion of the Property which he "no longer has exclusive possession of".

viii) based on the report provided by John dated 8 December 2019, the Property had a value of \$14.25 per square foot and thus the value of the 3,200 square feet which the Plaintiff "no longer has exclusive possession of" was then valued at \$45,600.

[18.] Notably, the Plaintiff did not give evidence regarding (i) his actual state of knowledge at the time of the 1999 Conveyance; (ii) what searches or inquiries were undertaken on his behalf during the sale of the Property; (iii) what representations (if any) were made to him about the Property prior to his purchase of the Property; and (iv) what advice or inquiries (if any) he pursued to verify Johnson's claim after a dispute arose with her.

[19.] In cross-examination, the Plaintiff disputed that Johnson ever objected to the obstruction of her right of way prior to the commencement of the Johnson Action. However, the Plaintiff admitted that, after the Johnson Action was commenced, but before the Johnson Order was made, he was aware that Johnson objected to the obstruction of her right of way but he nevertheless did not remove the fence and chain he had placed on the Property.

[20.] Thurston's witness statement filed on 15 July 2022 was admitted as her evidence-in-chief. She was subject to cross-examination by Counsel for the Plaintiff and, like the Plaintiff, was not re-examined.

[21.] Thurston's witness statement was in substance to the effect that (i) the 1989 Conveyance gave Johnson a right of way over the Property however (ii) the 1989 Conveyance was lodged for record in the Registrar General's Department on 29 May 1989 and was therefore a "matter of public record" more than 10 years before title to the Property was conveyed to the Plaintiff.

[22.] In cross-examination, it came to light that Thurston was not employed by the Defendant at the time of the 1989 Conveyance or the 1999 Conveyance. Thurston was therefore unable to give evidence of much assistance for the purposes of deciding the issues in this case.

[23.] No evidence was led by either party as to the physical state of the property at the time of the 1999 Conveyance.

Submissions of the parties

[24.] Counsel for the Plaintiff submits that the Property was misdescribed in the 1999 Conveyance (and, it would follow, the plan annexed thereto). By the 1999 Conveyance, the Defendant purported to grant and convey 14,599 square feet of land to the Plaintiff but (so Counsel for the Plaintiff submits), in the Johnson Action, it was subsequently declared by the Court that “a portion of the property (i.e. 3,200 square feet) formed a right of way and that the Plaintiff had no exclusive possession to that portion of the property”. Counsel submits that the Defendant is liable for the misdescription of the Property and should compensate the Plaintiff for his inability to “possess the square footage lost”. Counsel referred the Court to *Flight v Booth (1824-34) All ER Rep 43*, in particular the judgment of Tindal CJ at page 46, and *In re Contract between Fawcett and Holmes (1889) 42 Ch.D 150*, in particular the judgment of Lord Esher MR at pages 158 and 159.

[25.] Counsel for the Defendant submits that the Plaintiff’s claim should be dismissed because the Plaintiff, alone, is responsible for the consequences of the Johnson Action to him, and he is not entitled to recoup any damages from the Defendant or to claim any relief against the Defendant arising out of the Johnson Action or at all. Counsel submits:

i) the Plaintiff would be deemed to have had constructive notice of the rights granted to Johnson prior to the date of his conveyance, which rights he subsequently opposed. Counsel for the Defendant referred to *Dennis Dean v Arawak Homes Ltd [2014] UKPC 24*, on the doctrine of constructive notice, in particular to paras 24 to 26.

ii) the Plaintiff’s refusal to recognize the existence of Johnson’s rights notwithstanding his constructive notice of those rights at the time of his purchase, his actual notice at the time he was sued by Johnson, and his “obdurate” defence of the Johnson Action, were the cause of the costs orders against him in the Johnson Action.

iii) the Plaintiff has pleaded no legal theory upon which the Plaintiff may claim damages against the Defendant with respect to the cost orders made against him in the Johnson Action.

iv) the Plaintiff’s allegations that the Defendant “was not seised” of the Property at the time of sale, and that the Defendant “lacked legal capacity” to grant the same right of way to the Plaintiff that it did to Johnson, are “ill-conceived” because the grant of a right of way to Johnson did not displace the Defendant’s fee simple estate in the Property or deprive the Defendant of the ability to convey that fee simple estate to the Plaintiff.

Counsel referred the Court to *Baker v Craggs [2018] 4 All ER 627*, in particular, to paras 24 and 25.

v) there is no reference to “exclusive possession” in the 1999 Conveyance and no suggestion Johnson had been given any right to claim possession or to do anything other than to pass and repass over a portion of the Property. Further, the Plaintiff has not pleaded a misrepresentation claim as regards “exclusive possession”, and, even if the Plaintiff were to apply to amend to bring such a claim, any such claim would be statute barred, as the Plaintiff’s writ was filed more than 20 years after the 1999 Conveyance was entered into.

Analysis and discussion

[26.] Our system of civil procedure is adversarial. The court generally relies on the parties to frame the issues by their pleadings and to present their respective cases in relation to those issues, with the court occupying the role of neutral and impartial final arbiter of those issues. In *R v Mian [2014] 2 SCR 689*, a criminal case, the Supreme Court of Canada observed at para 38:

“Our adversarial system of determining legal disputes is a procedural system ‘involving active and unhindered parties contesting with each other to put forth a case before an independent decision-maker’ (Black’s Law Dictionary (9th ed. 2009), sub verbo ‘adversary system’). An important component of this system is the principle of party presentation, under which courts ‘rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present’ (Greenlaw v. United States, 554 U.S. 237 (2008), at p. 243, per Ginsburg J.).”

[27.] The proper function of a judge in a civil dispute is to try those issues the parties have raised and only those issues. The relevant principle was stated by Dyson LJ in the well-known case of *Al-Medenni v Mars UK Ltd [2005] EWCA Civ 1041*, at para 21, thusly:

“It is fundamental to our adversarial system of justice that the parties should clearly identify the issues that arise in the litigation, so that each has the opportunity of responding to the points made by the other. The function of the judge is to adjudicate on those issues alone. The parties may have their own reasons for limiting the issues or presenting them in a certain way. The judge can invite, and even encourage, the parties to recast or modify the issues. But if they refuse to do so, the judge must respect that decision. One consequence of this may be that the judge is compelled to reject a claim on the basis on which it is advanced, although he or she is of the opinion that it would have succeeded if it had been advanced on a different basis. Such an outcome may be unattractive, but any other approach leads to uncertainty and potentially real unfairness.”

[28.] As the Supreme Court of the United Kingdom put the same point in *Sainsbury's Supermarket Ltd v Visa Europe Services LLC [2020] UKSC 24*, at para 242, "...the task of the courts is to do justice between the parties in relation to the way in which they have framed and prosecuted their respective cases, rather than to carry out some wider inquisitorial function as a searcher after truth".

[29.] It is necessary that I make these points before turning to the merits because, in this case, both parties' cases have been framed narrowly.

[30.] As will be gleaned from para 12 above, the Plaintiff's pleaded claim is essentially that:

- (i) the Defendant was not seised of part of the Property purportedly conveyed to the Plaintiff by the 1999 Conveyance (*para 5 of the Statement of Claim*);
- (ii) the Defendant did not possess legal capacity to grant and convey the same right of way the Defendant conveyed to Johnson to the Plaintiff (*para 6 of the Statement of Claim*); and
- (ii) "in breach of the recitals and other terms of the 1999 Conveyance" (none of which, I note, are specifically pleaded), the Plaintiff, although he purportedly purchased 14,599 square feet of property from the Defendant, is now prevented from "exclusively possessing and...enjoying the benefit of" 3,200 square feet (*para 7 of the Statement of Claim*).

[31.] The Defendant submits that the allegations of the Plaintiff as to paragraphs (i) and (ii) above are ill-founded because the grant of a right of way to Johnson did not preclude the Defendant from conveying its fee simple estate to the Plaintiff. I accept this submission.

[32.] In *Baker v Craggs [2018] 4 All ER 627*, the facts of which are not material for the purposes of the present case, the English Court of Appeal discussed the distinction between the concepts of "estates in land" and "interests or charges in or over land which are capable of subsisting or being conveyed or created at law" appearing in the *UK Law of Property Act 1925*. The Court stated at paras 24 to 25:

"24 Section 1(1) of LPA 1925, the first building block of the entire 1925 property legislation, states that the only estates in land which are capable of subsisting or of being conveyed or created at law, or in other words the only legal estates in land which are now capable of existing, are an estate in fee simple absolute in possession, and a term of years absolute. As the introductory note to LPA 1925 in Wolstenholme & Cherry's Conveyancing Statutes, 13th ed (1972), vol 1, p 32 says:

'Part I of the Law of Property Act, 1925 ... was entirely new; it effected a fundamental reform by reducing legal estates in land to two, namely, a fee simple absolute in possession, and a term of years absolute ...'

Previously, various other estates in land had subsisted at law, such as fee tails, life estates and determinable fees. Subject to transitional provisions, these were now abolished.

25 Section 1(2) then creates a limited category of 'interests or charges in or over land which are capable of subsisting or of being conveyed or created at law'. This category includes, by virtue of paragraph (a), an easement 'for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute', and thus includes an easement such as that which the Charltons purportedly granted to the Bakers. By virtue of section 1(4), the two estates in land referred to in subsection (1), and the interests or charges in or over land which are itemised in subsection (2), are together defined as 'legal estates', and that definition is reflected in section 205(1)(x). By contrast, all other estates, interests, and charges in or over land take effect as equitable interests: see section 1(3), and (again) section 205(1)(x)."

[33.] I readily accept that caution is required when referring to the **UK Law of Property Act 1925** because it is not directly applicable in The Bahamas and, more importantly, it contains provisions which are not a part of Bahamian law. Nevertheless, I do accept that, in Bahamian law, it is possible to distinguish between estates in land and other, lesser interests in land.

[34.] There are many different types of interest in land. They differ by reference to one or other or both of what the person who holds the interest has the legal right to do in relation to the land and for how long they may do it. Estates are the most comprehensive interests in land known to the law. Lesser interests include easements and profits à prendre. Rights of way are an example of an easement. As a matter of property law, easements and profits à prendre do not amount to estates in land.

[35.] The holder of a fee simple estate may have their ability to exercise their rights curtailed by a right of way that has been granted in relation to the land in which they have their estate. However, those rights remain good against all others who do not benefit from the right of way. The fee simple estate continues to subsist notwithstanding the right of way; the right of way is an incumbrance.

[36.] The Plaintiff has not identified any consideration such as an approval under the now-repealed **Private Roads and Sub-divisions Act** or a statutory provision that might arguably have deprived the Defendant of capacity to convey its fee simple estate in the land over which Wilson

Street runs simply because a roadway exists upon it. Consequently, I agree with the submission at para 21 of the Defendant's Closing Submissions that:

"Malverne Johnson had been granted an interest in the Land in the form of a right of way some 10 years prior to Mr Rolle's purchase of the Land; however the granting of such an interest in the Land to Malverne Johnson did not mean that Defendant was no longer seised of the fee simple estate in the land, nor did it mean that the Defendant was no longer capable of conveying its estate in the Land to the Plaintiff, as it did."

[37.] With respect to the Plaintiff's complaint that he is now prevented from exclusively possessing and enjoying the benefit of 3,200 square feet of the 14,599 square feet that he purchased, the Plaintiff has failed to advance any sustainable basis for holding the Defendant liable for this.

[38.] I do not agree that the Property was misdescribed in the 1999 Conveyance as contended by the Plaintiff. The substance of what transpired is that the Plaintiff did not receive the estate that he says he bargained for – namely, a fee simple estate in possession free from incumbrances other than the restrictive covenants provided for in the 1999 Conveyance – because of the existence of the rights of way granted by the Defendant over Wilson Street.

[39.] However, even if the Property were misdescribed, the Plaintiff has failed to discharge the burden that the law has placed on him to establish his entitlement to relief. The Plaintiff has not in his pleadings or closing submissions identified any relevant covenants expressly or impliedly given by the Defendant which he alleges have been breached, nor has the Plaintiff set up any actionable fraudulent misrepresentation, negligent misrepresentation or breach of collateral warranty. This is certainly not his pleaded case, by which he is bound.

[40.] Insofar as the Plaintiff has relied upon *Flight v Booth* and *In re Contract between Fawcett and Holmes*, both cases do not assist. Both concerned misdescriptions discovered prior to completion. The present matter does not concern an executory contract for the sale of land, as completion took place long ago. As a general rule, on completion, the transaction between vendor and purchaser is at an end, subject to any recourse that might be had by the purchaser to the covenants given by the vendor in the conveyance.

[41.] While not enforced with quite the same rigor in modern times, the principle of the finality of the conveyance was expressed by Mallins VC in *Allen v Richardson (1879) 13 Ch D 524* at page 541 in the following emphatic terms:

"I do not think there is a more important principle than that a purchaser investigating a title must know that when he accepts the title, takes the conveyance, pays his purchase-money and is put into possession, there is an end to all as between him and the vendor on that purchase. If it were otherwise, what would be the consequence? A man sells an estate generally because he wants the money; if this were not the rule, he must keep the money at his banker's, and there never would be an end to the question; whereas by adhering to the rule, the purchaser is put into possession at once of his land, and the vendor has the purchase-money to dispose of as he thinks fit the moment after receiving it."

[42.] In *Joliffe v Baker (1883) 11 QBD 255*, Williams J quoted with approval the following passage from *Dart's Vendor and Purchaser* and noted that *Sugden on Vendors and Purchasers* was "to the same effect":

"With some few special exceptions a purchaser, after the conveyance is executed by all necessary parties, has no remedy at law or in equity in respect of defects either in the title to or quantity or quality of the estate which are not covered by the vendor's covenants."

[43.] *Allen v Richardson* and *Sugden on Vendors and Purchasers* on this subject were both referred to with approval by James Smith J in the Bahamian case *Burnside v Mutual Development Co Ltd (No 126/1966) [1965-70] 2 LRB 170*. In that case, James Smith J held that a purchaser was not entitled to the return of their purchase money after completion merely because an undiscovered parallel documentary title existed to the land the purchaser had purchased. *James Smith J* found that the statutory covenants for title implied by section 7 of the *Conveyancing and Law of Property Act* had not been breached in the circumstances, as the vendors had conveyed in good faith, had given the purchaser such title as they had and had not, by any act or omission, impaired their title.

[44.] In the present case, there is no recourse on the face of the Plaintiff's Statement of Claim to the statutory covenants for title implied by the *Conveyancing and Law of Property Act*. In addition, Counsel for the Plaintiff did not refer to them, or any case law concerning them, in his submissions. In these circumstances, where the Defendant has not had a reasonable opportunity to address the Court on their application, it would, in my view, be unfair and contrary to natural justice for me to consider whether the statutory covenants for title have been breached. Had the statutory covenants been pleaded, the Defendant may well have defended the Plaintiff's claim differently. Accordingly, I decline to enter into a consideration of the issue.

[45.] While not strictly necessary for my decision, in my judgment, by the time of the 1999 Conveyance, the Plaintiff had constructive notice of the 1989 Conveyance and Johnson's rights. Like the conveyances and judgments/orders in *Dennis Dean v Arawak Homes Ltd*, the 1989

Conveyance was recorded in the Registry of Records and therefore a matter of public record. The “usual and proper inquiries” conducted on a sale of land in The Bahamas, had they been properly conducted, would have disclosed the full extent of Wilson Street and the existence of rights of way over the Property. Despite the fact that the physical state of land can put a party on notice as to the existence of rights of way, as the existence of an archway under which people might pass was held to put the defendant on notice as to the existence of a way of necessity in *Davies v Sear (1869) LR 7 Eq 427*, I would not base my finding that the Plaintiff had constructive notice here on the physical state of the Property in 1999.

[46.] Had the Plaintiff established a good cause of action against the Defendant, in my judgment, the Plaintiff could still largely not have recovered against the Defendant. The Plaintiff’s unreasonable conduct in failing to acknowledge Johnson’s rights was the real operative cause of the “special damages” pleaded by the Plaintiff other than the diminution in the value of the Property. As regards that diminution in value, in my view, such diminution would fall to be assessed as at the date of the 1999 Conveyance and not the date of the Johnson Order or the date the assessment is undertaken; there is no evidence before the Court as to the value of the Property in 1999 beyond the consideration on the 1999 Conveyance. With respect to the “general damage” pleaded by the Plaintiff, there is no evidence the Plaintiff operated the businesses referred to in his Statement of Claim.

[47.] In the circumstances, and for the foregoing reasons, the Plaintiff’s claim is dismissed. I am inclined to make the usual order as to costs, however, if the parties wish to be heard on costs I will deal with the issue on written submissions, which are to be lodged within 7 days.

[48.] In the event costs should follow in the usual course, I propose to summarily assess these costs and therefore invite the Defendant to provide any representations it wishes as to the time that was reasonably spent in defending the claim and preparing for and attending to the trial. These representations, extending no more than 4 pages, must be submitted within the next 14 days.

Dated the 23rd day of June 2023

A handwritten signature in black ink, appearing to be 'I. Winder', written in a cursive style.

Sir Ian R. Winder
Chief Justice