

IN THE SUPREME COURT OF BELIZE, A.D. 2012

CLAIM NO. 712 of 2010

PROGRESSO HEIGHTS LIMITED

CLAIMANT

AND

**WILFRED P. ELRINGTON
PITTS AND ELRINGTON**

**1st DEFENDANT
2nd DEFENDANT**

Hearings

2011
20th October
3rd November
9th December
2012
4th January
20th January
28th February

Mr. Eamon Courtenay SC and Ms. Pricilla Banner for the claimant.
Mrs. Alfia Elrington-Hyde for the defendants.

LEGALL J.

JUDGMENT

The Parties

1. The claimant is private limited liability company incorporated in Belize on 21st July, 2003 under the Companies Act Chapter 250 with

registered offices, according to the Memorandum of Association, at Cedar Bluff, Cayo District, in Belize. According to the first defendant, the registered office of the claimant is 50 North Front Street, Belize City, in a building where the law office of the defendants are located, though the claimant never operated out of that office. The share capital of the claimant is \$10,000 divided into 10,000 shares of \$1.00 each. There are three subscribers to the share capital, namely Lawrence Schneider holding 5,500 shares, his son, Adam Schneider, with 2500 shares and Wilfred Elrington, the first defendant holding 2000 shares. The claimant has two directors – Lawrence and Adam Schneider – and its objects are, among other things, to purchase and acquire and develop land in Belize for sale as residential, commercial and industrial properties.

2. The No. 1 defendant is an attorney-at-law and senior counsel, and was retained for purposes of the incorporation of the claimant. As from the 8th February, 2008, he held a ministerial position in the Government of Belize, as Attorney General and with responsibility for foreign affairs and foreign trade. At present, he holds the responsibility for foreign affairs and trade. Prior to February, 2008 he says he was a practicing partner in the law firm Pitts and Elrington – the second defendant; but his name still appears on letter head documents of that firm. The second defendant is a law firm with about five attorneys and clerical staff situate at 50 North Front Street, Belize City.

The Fundamental Disputes

3. Several pieces of land in Belize were acquired by the claimant for investment purposes, including a large piece of land at Progreso Village, Corozal District, for subdivision and development and sale. The first defendant believed that major sales of properties by the claimant located at the said Progreso Village exceeded US\$5.7 million and that his share of the proceeds should have been, according to him, approximately US\$1.144 million; but to date he says he was only paid US\$253,800. The first defendant also alleged that directors of the claimant made other payments from funds belonging to the claimant, in contravention of its objects, for their personal use; and the use of other companies and individuals and without lawful authority of the claimant. It was also alleged by the first defendant that the claimant, in its administration and operations and functions, failed to comply with several provisions of the Companies Act and also acted contrary to its own objects as stated in its Memorandum of Association. After attempts to resolve the above disputes failed, the first defendant in June 2010 filed a Claim No. 566 of 2010 in which he claimed against the claimant in this action several reliefs as follows:

- “1. A declaration that the affairs of the defendant be investigated;
2. A declaration that the two directors and majority shareholders are acting illegally and dishonestly in relation to the defendant;
3. An order appointing a competent inspector in investigate the affairs of the

defendant including investigations of the financial statements to determine the assets and liabilities of the Company and the legality or otherwise of disbursements of the earnings made by the defendant;

4. An order that any and all rights and entitlements of the claimants since the 21st day of July 2003 should be accorded and or be paid to the claimant;
5. An order that pending the completion of the report of the inspector the defendant be restrained from dealing with or alienating or disposing of any of its real estate and other assets;
6. An order that the two directors personally pay for the cost of the investigation;
7. Any and such other relief which the court thinks fit."

4. The defendant in the above claim (the claimant in this action) filed on 12th October, 2010 this claim against the defendants for the following reliefs:

- “1. The delivery up of all closing documents including documents, certificates of title, and receipts in the defendants’ possession or control for properties sold by the said claimant to various purchasers over the period September, 2009 to June, 2010.
2. Payment of the sum of \$26,120.22 had and received by the defendants.
3. Damages including special damages.
4. Interest.
5. Costs.

6. Any further or other relief which this Honourable Court deems just.”

Applications

5. An application was made by the defendants in this claim for the matters to be heard together, which application was objected to by the claimant. After hearing arguments by both sides, I ruled that both claims 566 and 712 of 2010 would be heard together. In both claims, the parties are largely the same. In both claims, allegations of fraud and unlawful behaviour of the company are raised. Holding separate trials would seem to result in the court having to take and consider aspects of the same evidence twice. Moreover, I thought that hearing the matters together would result in the matters being dealt with expeditiously, in accordance with the overriding objective of the Rules.

6. Having ruled that the matters would be heard together, the court at the same time made case management orders requiring the parties in both claims to make standard disclosures, to file and serve witness statements at specified dates; and the court fixed 7th June, 2011 a date for pretrial review. On that date, the parties in both claims had not complied with the case management orders, and an extension of time was applied for and granted for them to do so, at which time the parties complied with the case management orders, and the 10th October, 2011 at 9:00 was fixed for trial of both claims.

7. Before that trial date arrived, the claimant in this action applied on 30th September, 2011, that the witness Lawrence Schneider be permitted to give evidence and be cross-examined by video link or teleconferencing, on the general ground that, if he came to Belize, to give evidence, he would suffer personal harm, and that the “respondent will cause me to be arrested on criminal charges,” to use his own words in paragraph 14 of his affidavit. The defendants objected to the application on the general ground that “the alleged fear of arrest and imprisonment in paragraph 14 of his affidavit is wholly unfounded”: see paragraph 22 of the first defendant affidavit. The parties, surprisingly, on 3rd November, 2011, agreed to a consent order that Lawrence Schneider give evidence by video link which order was entered and perfected on 29th November, 2011.

8. At the said hearing on the 3rd November, 2011, the learned senior counsel for the defendant in claim No. 566 of 2010 informed the court that he was prepared to advise his client to agree to the inspection – reliefs claimed in the said action – and try to agree on an order for the appointment of an inspector. Learned counsel on the other side had no objection to that proposal. It was agreed by the parties that a draft order would be prepared. As a result of that position, the court fixed 8th November, 2011 to lay over the draft consent order, and fixed the trial of the other claim, this matter 712 of 2010, for 9th December, 2011. Up to now the draft order has not been submitted to the court.

9. The trial in this matter commenced on 3rd January, 2012, and two witnesses testified in the whole case – Lawrence Schneider for the claimant and Wilfred Elrington for the defendants. Schneider filed a witness statement, clause 1 of which states that he was duly authorized to make the statement on behalf of the claimant. It was submitted that the claim must fail because the claimant has produced no evidence that it decided to institute this action or that Schneider was duly authorized to make the witness statement. The evidence is that there are two directors of the claimant – Lawrence Schneider and Adam Schneider holding the majority shares in the claimant. In relation to decisions of the claimant’s affairs, the evidence is that Lawrence Schneider always discussed matters with the other director before decisions are made. Moreover, Lawrence Schneider testified that there are ratifications that were prepared about three or four months ago ratifying the directors actions. In relation to whether there is any signed document by the directors which states that Lawrence Schneider has the authority to make the witness statement on behalf of the claimant, this witness testified that he did not have it in his possession and that it is retained by his attorney. On the above evidence, I think that the claimant has proven, on a balance of probabilities, that the claimant duly authorized the claim and that Schneider was duly authorized, as he swore he was, to make the witness statement on behalf of the claimant.

10. The defendant also raised the issue of authorization by the claimant to its counsel to represent it in the claim, and relies on the well known

case of *Danish Mercantile Co. Ltd. v. Beaumont* 1951 Ch 680. In that case Jenkins LJ said:

“I think the true position is simply that a solicitor who starts proceedings in the name of a company without verifying whether he has proper authority to do so, or under an erroneous assumption as to the authority, does so at his own peril, and, so long as the matter rests there, the action is not properly constituted. In that sense it is a nullity and can be stayed at any time, providing the aggrieved defendant does not unduly delay his application, but it is open at any time to the purported plaintiff to ratify the act of the solicitor who started the action, to adopt the proceedings, and to say: “I approve of all that has been done in the past and I instruct you to continue the action.”

11. As we saw above, there is evidence of ratification of the directors actions. But apart from that, the position taken by the Caribbean Court of Justice on the issue of authority to counsel is commendable, and with respect, is preferred to the views of Jenkins LJ above, especially in the light of the overriding objectives of the Supreme Court (Civil Procedure) Rules 2005. The CCJ in *Watson v. Fernandes* CCJ Appeal No, CV2 of 2006, having adverted to the fact that the Rules require the interest of justice to be an overriding concern in the application of the Rules, the court said:

“Courts exist to do justice between the litigants, through balancing the interests of an individual litigant against the interests of litigants as a whole in a judicial system that proceeds with speed and efficiency, as we made clear in *Barbados Rediffusion Services Ltd. v. Marchandani*. Justice is not served by depriving parties of the ability to have their cases decided on the merits because of a purely technical procedural breach committed by their attorneys. With great respect to the court below we disagree that there is anything in these rules to suggest that there is a time limit on the court’s ability to excuse non-compliance with the rules or permit it to be remedied, if the interests of justice so require. The court retains that jurisdiction at all times.

In *Baptise v. Supersad* Chief Justice Wooding cautioned that “The law is not a game, nor is the court an arena. It is ...the function and duty of a judge to see that justice is done as far as may be according to the merits.” Indeed, as Musmanno J has said: “The attainment of true justice is over the highway of realities and not through the alley of technicalities.”

The Merits

12. We may now examine the merits of the case starting with the witness Schneider. This witness states that the claimant purchased over 2000 acres of land, subdivided the land, and did thereon infrastructure works, including the construction of houses, roads, providing water and electricity and building a ramp, pier and a community swimming pool. He states that the claimant also advertised the properties for sale and

that the first defendant invested in the claimant “only as to the 20% shareholding allotted to him,” and that the said defendant agreed, due to his inability to contribute financially to the development of the claimant’s property, he would provide legal advice and services to the claimant “without charge.” As the claimant was in the business of the sale of land, legal services provided to the claimant by the first defendant for the period 2006 to 2007 included, according to Schneider, the preparation and filing of conveyancing documents and carrying out legal searches at the land registry. The witness states that in 2008 the first defendant began requesting the claimant to pay 2% legal conveyancing fees to the defendants on all properties and the claimant agreed to pay the fees.

13. It is also stated by the witness that the claimant, in relation to this claim, commencing from September, 2009, retained the defendants to convey sixteen properties from the claimant as vendor to sixteen purchasers who had paid the purchase price to the claimant and signed all transfer documents in the USA. The witness states that the transfer documents for the 16 parcels of land were remitted to the defendants with all the conveyancing costs and fees payable to the Government of Belize for that purpose, including stamp duty, registration fees and certificate fees; and the 2% of the purchase price for each of the 16 parcels of land, charged by the defendants as processing or lawyers fees. The witness states, in the witness statement, that of the 16 parcels of land to be transferred to the purchasers, searches have revealed that land title certificates for eight parcels have been duly issued to the defendants, and the remaining transfer or conveyance documents in relation to the

other parcels are still in the possession and control of the defendants who have failed or refused to file them at the Land Registry, though all fees in relation to these documents have been paid to the defendants. The land title certificates, it is alleged, are also in the possession of the defendants. It is also stated by the witness, that the claimant paid the sum of \$42,436.74 to the defendant for conveyancing costs and lawyer fees for the 16 parcels, but since the defendants have only filed conveyance papers for only 8 parcels for which land title certificates were issued, which are in the possession of the defendants, the defendants have only earned \$16,316.52 out of the \$42,436.74 paid to them, thus leaving a balance of \$26,120.22 owing to the claimant for unprocessed documents. According to the witness, the claimant made several requests to the defendants to deliver the documents and land certificates, but without success. The claimant then filed in this matter the above mentioned claim to deliver up all the conveyancing documents and title, and payment of the sum of \$26,120.22 to the claimant.

14. The defendants filed a defence to the above claim and the first defendant filed a witness statement, paragraph 1 in which he also states that he makes the statement on his own behalf and on behalf of the second defendant. The filed defence in answer to the substantive claims is a mere denial. The defendants denied they or any of them were retained by the claimant at any time for any purpose, including the processing of transfer of title documents. The defendants further deny that the claimant at any time remitted to them any transfer documents, closing costs and fees. The defendants deny that they ever charged the

claimant any processing fees and denied that the claimant remitted to them any such fees in respect of the 16 parcels of land. The defendants also denied that any land title certificates were issued to them. The defendants further denied that the claimant paid to them \$42,436.74 or any other sum in respect of legal or processing fees, for the recording and registration of transfer of land documents. The witness statement, by the first defendant, contains similar denials as in the defence. Examples of these denials in the witness statement of the first defendant are as follows:

“22. The claimant at no time retained me or the Firm of Pitts & Elrington for any purpose whatsoever since its incorporation and specifically not for the purpose of processing transfer of title documents for the transfer of sixteen (16) properties located in the Progresso Heights Registration Section. The claimant never sent nor caused to be delivered to me any transfer of title documents whatsoever.

23. I have never entered into a professional relationship with the claimant in my professional capacity as an attorney-at-law.

24. The claimant has never paid me for any service rendered by me for it and neither has it ever paid to the firm of Pitts & Elrington for any service that firm rendered it.

26. At no time whatsoever and particularly not since the month of September 2009 has the claimant ever sent any closing documents to me or any member or employee of the firm of Pitts & Elrington. Neither has the claimant ever sent to me or

to the firm of Pitts & Elrington any closing costs or fees required by the Government of Belize, inclusive of Government of Belize Stamp Duty, Government of Belize Registration Fee and Government of Belize Certificate Fee.

27. At no time whatsoever and particularly since the month of September, 2009, have I or any member of the firm of Pitts & Elrington ever been retained or paid by the claimant to process closing documents the property of the claimant or of the purchasers of land from the claimant and particular no two percent (2%) of any of any purchase price has ever been remitted to me or to the Firm of Pitts & Elrington in respect of any sixteen (16) lots or parcels.

28. At no time have I had in my possession or under my control, neither has the firm of Pitts & Elrington had in its possession or under its control any closing documents the property of the claimant or of purchasers of and from the claimant.

29. At no time was any title deed issued to me or to any member or employee of the Firm of Pitts & Elrington in respect of any land the property of the claimant between the period September 2009 up to the present time.”

The defendants therefore requested that the reliefs claimed by the claimant in the claim be denied.

15. The main issue for the court, as I see it, is one of fact: whether the closing documents and land certificates or titles were delivered to the defendants; and whether the defendants were paid the processing fees,

and costs. In order to resolve this issue, the task of the court is to decide who is speaking the truth. The task becomes more difficult because each party based its case on one witness, making the case a two witness case. I must also consider that the burden is on the claimant to prove its case on a balance of probabilities. It must also be remembered that the claimant and its majority shareholder and managing director, Lawrence Schneider are separate and distinct legal entities each of which could enter into a valid contractual relationship: see *Catherine Lee Air Farming Ltd. 1960 3 AER 420*. The claimant company is inanimate and speaks by way of resolutions and ratifications, and decisions made at meetings of the company, held in accordance with its Articles of Association.

16. Giving evidence for the claimant company was Lawrence Schneider the majority shareholder who in his evidence said that he was duly authorized to speak on behalf of the claimant, and that the company remitted the transfer documents of the sixteen parcels to the defendants and that the company remitted to the first defendant the fees and costs to the first defendant's bank account at the Bank of America in Miami USA. He also testified that searches conducted by the company regarding the 8 parcels of land, reveal that land certificates were issued to the defendants in respect of these parcels. He also testified that the company paid to the defendants the \$42,436.74. This witness continually says what the company did; but since the company is inanimate, it had to do these alleged matters through some human person; and there is an absence of evidence as to which human person or persons did all the above matters which this

witness said were done by the company. Who actually did all the above things? Were these things actually done by Mr. Schneider himself, or were they done by some other person who told Mr. Schneider what was done? If the latter is correct the evidence of Schneider that the company sent the documents to the defendants would be inadmissible as to their truth and would amount to inadmissible hearsay evidence. In Mr. Schneider oral evidence in court he admitted that he did not personally send the conveyancing documents to the defendants, which according to him was sent by registered mail. Absent from the evidence-in-chief is whether he saw some person posting by registered mail the conveying or closing documents to the defendants. It seems that Mr. Schneider's evidence of the company remitting or sending the conveyancing documents to the defendants is based on what he was told by some unidentified and unknown persons who did not give evidence in this matter.

17. Similar problems arise in relation to the evidence-in-chief of Mr. Schneider when he swore that the company remitted closing costs and fees to the defendants. Several cheques were tendered in evidence to prove the payments of the costs and fees to the defendants for each of the 16 parcels of land. In all the cheques the payee is named as Wilfred P. Elrington and they are Bank of America cheques where the No. 1 defendant admitted he had an account. The account number in all the cheques is stated thereon as 9853. I have no evidence from Mr. Schneider in evidence-in-chief stating that the account number on the cheques is the account number of the first defendant at the Bank of America. Up to the evidence-in-chief, the

nexus between that information on the cheques and the first defendant account number, had not been established. Moreover, of the thirteen cheques tendered to prove the payments by the claimant to the defendants, only two have the name of the claimant, Progresso Heights Limited as drawer of the cheques. The remaining cheques have the names of drawer as Jason Weaver the claimant's lawyer; and Waterside Limited and Belize Holdings LLC.

18. The claimant tendered copies of the Land Register for seven parcels of land to prove that "land title certificates have been duly issued to the defendants in respect of these parcels. But on examination of the Register it is not stated that land title certificates have been duly issued to the defendants. And Mr. Schneider in his evidence-in-chief did not say that he personally witnessed or saw the titles issued to the defendants. He said searches conducted by the company revealed this, but who did these searches is absent from the evidence. No one from the Land Registry was called to give evidence in relation to this issue.

19. Up to this point of the evidence-in-chief of Mr. Schneider for the claimant, the case for the claimant, based on the above reasons, seemed weak. But evidence came out in cross-examination which seems to remedy certain gaps in the claimant's case in relation to the delivery to the defendants of the conveyancing and closing documents, and the payments of costs and fees by the claimant to the first defendant. In relation to the delivery of the closing documents,

the following is the evidence which came out in the cross-examination of Mr. Schneider:

“Q. You speak in paragraph 19 that you duly collected the purchase price from the purchasers of the Progresso Heights Limited and duly execute all the transfer documents in the US and remitted same to defendants along with all closing costs and fees required by the Government of Belize inclusive of Government of Belize stamp duty, Registration fee and certificate fee. What exactly did you remit to the defendants, all of these things that you have here in paragraph 19?

A. We remitted the Government of Belize fees, the stamp duty, the government Registration fee and the government certificate fee along with the 2 percent legal fee that Mr. Elrington charged.

Q. And the transfer documents?

A. And we sent the transfer documents, yes, for Registration.

Q. Can you tell us who specifically received those things that you alleged to

have sent in the paragraph 19?

A. Mr. Elrington's office actually received the documents when they came in via Federal Express.

Q. You said that the defendants received it. The defendants are Wilfred Elrington and Pitts & Elrington so I am trying to figure out who would have been the one to have received it. Do you know if anyone at Pitts & Elrington received it or Mr. Elrington's office?

A. I don't know who at Mr. Elrington's office actually received the documents. They were sent registered mail in every case.

Q. Do you know if anyone received it?

A. Yes.

Q. Who?

A. Mr. Elrington told me that he was in receipt of the documents or that Mrs. Elrington received the documents because she was the one that generally took care of the documents for Progresso Heights Limited.

Q. So now you are saying it is Mr. Elrington or Mrs. Elrington?

A. You are asking who specifically received the documents, am I correct?

Q. Yes.

A. I don't know who actually received each one. The only thing I am certain of was that they were sent out registered mail and that either Mr. Elrington or Mrs. Elrington acknowledged receipt of the documents. They may have also been sent out expressed or priority mail.

Q. So in fact they were not sent Registered mail. You can't tell the court that they were sent Registered mail. You said Federal express, express mail, priority mail, registered mail, which one of them is it?

A. It could have been any of them but we do have those records in our possession. In addition we had discussions with either Mr. Elrington or Mrs. Elrington informing us of the status of the documents so part of affirming or confirming the receipt of the documents they let us know whether the documents were at the Land Registry or whether they had not been filed yet.

Q. Can you tell the court who is the Mrs. Elrington you are speaking of?

A. Mrs. Barbara Elrington, Mr. Elrington's wife.

Q. So now you are saying that you would have had communication with either Mr. Elrington or Mrs. Elrington about these documentation, correct?

A. Yes."

20. In relation to the payment of the fees and costs, the following came out in cross-examination:

"Q. When you said he put to us that he expected the 2 percent legal fee you mean he put that to you and your son?

A. To me and my son. The legal fee was to be paid by Progresso Heights Limited and be charged to the purchasers of the property, the purchase from Progresso Heights Limited.

Q. So who specifically did he say that to?

A. Both me and to Adam.

Q. How was this request made, the two percent legal fee?

A. Verbally.

Q. And what was the decision that the company made with respect to that request?

A. We paid it.

Q. The decision was to pay the 2 percent?

A. Was to pay that fee.

Q. And how was that decision manifested?

A. I don't understand what you mean by manifested.

Q. How did that decision come about by the company?

A. Well it just didn't come about. Mr. Elrington insisted that we charged the buyers of the Progresso Heights properties 2 percent legal fee and so we charged them the 2 percent legal fee.

Q. That is not what I am asking. I asked just before what decision did the company make on that request. You said to the court that Mr. Elrington put to you and your son that he expected a 2 percent legal fee to be paid, correct?

A. Yes.

Q. I then asked what decision did the company make on that request.

A. We did it as agreed and we did it.

Q. Let me finish. You said the decision was to pay the fee, the 2 percent legal fee, correct?

A. Yes.

Q. So the question now is, how did that decision, how was that decision made by the company?

A. When Mr. Elrington presented to us, we as the Directors decided and made

the decision to charge the 2 percent fee to the purchasers and subsequently paid Mr. Elrington the 2 percent fee.

Q. So you as the Directors decided, correct?

A. Yes.

Q. Do you have any company minutes or any resolutions to show that that decision was made?

A. I don't know. We do have the ratification of the Directors actions.

Q. That is the ratification that was made three or four months ago?

A. Yes.

Q. For something done in 2008?

A. Yes.

Q. I am suggesting to you that you have no resolutions because that was never a decision from your company, yes or no?

A. That wasn't a question. You did not ask a question. You made a suggestion. You did not ask a question.

Q. That you can agree with or disagree with. You can agree with it or you can disagree with it. Do you agree or you disagree?

A. I disagree.

Q. And this 2 percent was with respect to all subsequent properties being sold?

A. From that point forward, yes.

Q. Do you have any document to prove that that 2 percent was paid on all subsequent properties?

A. Yes, we do.

Q. Do you have any evidence to show that you paid Pitts & Elrington any sums?

A. We have the dividend cheques.

Q. Paid to Pitts & Elrington?

A. And we also have the deposit ticket.

Q. Witness, I am speaking specifically to the second defendant. The company is suing two parties here, Wilfred Elrington and Pitts & Elrington. I am speaking about Pitts & Elrington. Do you have any evidence to show that you paid Pitts & Elrington?

A. I don't know.

Q. You don't know if you have that evidence?

A. I don't know if I have that evidence. We do have cancelled cheques and deposit receipts for cheques that we made out to Wilfred Elrington at his instructions to his Bank of America account in the state of Florida USA.

Q. I am not asking you about Wilfred Elrington. I have

asked about Wilfred Elrington already. I am asking about Pitts & Elrington, the second defendant, not the first defendant. So in paragraph 18 of your statement then?

A. I didn't know the difference between Pitts & Elrington, the law firm and Wilfred P Elrington when we wrote cheques. We called Mr. Elrington and told him that we were making a payments for the Government of Belize transfer fees to him and we made all of those deposits to Mr. Elrington's account at Mr. Elrington's instructions.

Q. So now, you have all these cheques that are written to Wilfred Elrington, correct?

A. Yes.

Q. Do you have any proof that it was actually deposited in Wilfred Elrington account?

A. I have the deposit slips, yes.

Q. On the deposit slips of each of those is the name Wilfred Elrington anywhere there?

A. No.

Q. So therefore, you can't tell this court that those sums were deposited into the account of the Wilfred Elrington?

A. No, that's not correct. I know for a fact that they were. I made the deposits myself. Mr. Elrington gave me a blank deposit ticket with his account number and I knew the account number. I made the deposits myself.

Do you have a copy of the blank deposit slip you claim Mr. Elrington gave you?

A. I don't know if I have it here. I didn't have a copy of it.

A. I don't know.

Q. So, you have no personal knowledge of anyone receiving those documents?

A. My personal knowledge that I received from either Mrs. Elrington or Mr. Elrington when they spoke to me on the telephone and they said yes, Mr. Schneider, we received the documents, they are in process, yes Mr. Snyder we received your cheques, thank you, everything is moving along quite nicely."

The witness also said that he did not state in his witness statement that the defendant admitted to him that he received the documents, the cost and fees because he was not aware that he had to put them in the witness statement. These are vitally important matters in relation to the claimant's case, and it is doubtful whether the claimant is truthful

when he said that he was not aware that these matters should be in his witness statement.

21. The first defendant gave evidence on oath in defence of the claim. As shown above, this witness in his witness statement and defence has in relation to the claim, merely denied that he had any conveyancing documents, or fees or costs for Mr. Schneider or for the claimant. These denials continued in his oral evidence in cross-examination. He admitted that he was still a minister of Government, an attorney-at-law and partner in the second defendant. He admitted also that he performed legal services for the claimant, but that he did not do so as a partner of the No. 2 defendant, who never did any legal work for the claimant. He testified that although he never did any work for Mr. Lawrence Schneider, he did legal work for his son Adam Schneider and, to quote him, “All the work I did through the entire association with the Schneiders was done voluntarily, not retained to do anything by any of them at any time.” He also said he was not paid by any of them to do any work.

22. He said he may have written a letter on behalf of the claimant on the letter head of the second defendant. In relation to writing a letter on behalf of Lawrence Schneider, he said he may have, but could not recall. But he had said as shown above, that he never at any time did any legal services for the said Lawrence Schneider. His evidence in cross-examination contains the clause” “I may have” in response to questions. He said, for instance, that he may have issued a legal opinion and make telephone calls on behalf of the claimant

specifically to the Land Registry, but he cannot recall making such a call on behalf of Lawrence or Adam Schneider. On being asked whether he prepared for the claimant a mortgage in relation to Atlantic Bank, he answered first that it might have been, but later, having been told that his signature appeared on it, and it was prepared by the second defendant, he said he did, but the defendants were never paid to prepare the mortgage. This would seem to conflict with his previous testimony that the second defendant never did any legal work for the claimant.

23. The first defendant admitted that since the 1980's he had a number of accounts at Bank of America in Miami, Florida. Up to 6th February, 2008, he was a partner and practicing attorney at the second defendant and that he brought this claim having discussed it with the other partners in the second defendant. But from the 7th February, 2008 when he became a government minister he remained a partner in the second defendant but he ceased to practice law in the second defendant, because of the three portfolios he had as a government minister. Since he was not practicing law, his wife, Mrs. Barbara Elrington, in so far as the claimant was concerned, was doing work for him. On being asked: "Mr. Elrington, in so far as Progresso Heights is concerned, Mrs. Elrington was doing that work on your behalf? He answer: "Through me, yes." He also said the work was done for him. He said since he had a 20% interest in the claimant, he could not ask the second defendant to be involved in what was his personal interest and investment. So he requested his wife to help do the work for the claimant which was done voluntarily and without payment by the

claimant to his wife, him or the second defendant. His wife according to him, was not employed by the second defendant. She was just working out of the office. On being asked what work Mrs. Elrington was doing with respect to the claimant, the witness replied as follows:

"A. I would be happy to tell the court that. As far as I am aware, My Lord, when documents came from Progresso Heights Limited for clients who bought land from Progresso Heights Limited, they would be sent to Mrs. Elrington addressed to her and the records are there, not to me, addressed to Mrs. Barbara Elrington and the other claim has the affidavit and the witness statements showing that they were addressed to her so you have it right in your possession, not one to me and she would simply take these documents to the lands registry. That's all, nothing more, nothing less.

Q. But the relevant fees would be paid, documents processed and Pitts & Elrington or I should be more specific, Mrs. Elrington on your behalf would attend?

A. Not on my behalf. Mrs. Elrington dealt with them. They were sent to her. She worked out of the office. They were not sent to me."

24. In relation to stamp duty and government fees, the following exchange in cross-examination occurred.

"Q. And Mr. Elrington, would I be correct to say that moneys, the stamp duty and related government fees were sent to you?

A. Yes, you would be correct to say that.

Q. From an account of Jason Weaver Iota Trust?

A. To be very candid with you and the court, I only discovered that last year. I have accounts at Bank of America but I don't get cheques that are deposited in Bank of America on behalf of myself so I don't know. The first time I learn that Jason Weaver was suppose to be depositing cheques into my account was last year when I got an information from the Schneiders, never knew anything about it before."

25. On being asked whether he accepted that stamp duties and related fees to process the transaction were deposited in his account, the witness answered:

"A. My Lord, as far as I am aware, when I did work for the company while I was there

at the firm and I did work for the company, moneys that were deposited into my account by the Schneiders would be used to defray the costs of documents and that was done routinely.

Q. I didn't think my learned friend was confused with the question, My Lord. So, just to clarify again, the moneys on a routine basis, to use your word, in relation to land transfers that were received by Mrs. Elrington were deposited in your accounts in the US, Mrs. Elrington looked after the filing, Registration of these documents, paid the necessary fees and attended to the return of the documents, would that be accurate?

A. That would be accurate.

26. The defendant admits that monies were paid in his account in the US while he was at the second defendant and that monies and land transfer were received by Mrs. elrington. He admitted he sent to Mr. Schneider a blank deposit slip in relation to one of his accounts at Bank of America in Miami. He explained the purpose for sending the deposit slip as follows:

"A. When the company started out in 2003 My Lord, the

Schneiders are based in Florida. The work is based in Belize. To get payments made to the electricity board, to the lands department or wherever it is, that moneys would be deposited in my account from 2003 so that to build roads, moneys to pay contractors, moneys to pay gardeners and the like would be routinely deposited to my account and I would then ensure that the people are paid.

THE COURT: In Belize dollars here?

A. In Belize dollars. That is done. That was done from about 2004, 2005 when we started the development."

27. The defendant admitted in the e-mail of 9th April, 2008 he did work for the claimant and the two Schneiders pro-bono. In relation to the closing documents, this is his evidence in cross-examination:

"Q. And I want to suggest to you, Mr. Elrington, that at this time your law firm is in possession of 8 title documents retrieved from the Lands Registry that you are refusing to hand over to Progresso Heights Limited?

A. Let me clarify, we have them, my law firm have them, Mrs. Elrington have them, who

have them? What is the question you are asking?

Q. One of those 3 have them.

A. So you don't know who have them?

Q. Do you?

A. I don't know. I certainly have none. I can tell you that the firm of Pitts & Elrington have none. I have none, the firm of the Pitts & Elrington have none.

Q. Mrs. Elrington doesn't have them?

A. You have to ask her. You could have subpoenaed her, she was right there, you could have done all of that."

The documents

28. I have no doubt from the above evidence that the conveyancing documents in relation to this Claim were posted to the law firm of Pitts and Elrington. According to the letterhead of the law firm there are five attorneys of that firm including the No. 1 defendant. Apparently working there too is one Pauline Jex perhaps doing work of a clerical nature. And also doing work at the law firm was the wife of the No. 1 defendant Mrs. Barbara Elrington. After the No. 1 defendant became a minister in the government the said documents may have been delivered to the law firm. But who received these documents posted to the law firm. Mr. Schneider said in cross-examination that the No. 1 defendant confirmed to him that he received the documents, but neither did he mentioned this in his

evidence-in-chief nor in his witness statement in this matter. This omission creates doubt in my mind about the truth of this alleged admission by the No. 1 defendant. Since the No. 1 defendant was working as a minister of the government at the time, it is highly likely that the documents were received by the wife of the No. 1 defendant, Mrs. Barbara Elrington at the office of the law firm, though it is also possible that it was received by anyone of the other persons working there at the time, including Pauline Jex. Neither Mrs. Barbara Elrington nor other persons working at the law firm were called to give evidence in this matter, though there are four express mails registered slips dated 19th September, 2009, 4th February, 2010, 22nd April, 2010 and 31st June, 2010 addressed to Pitts and Elrington and marked “Attention: Mrs. Barbara Elrington.”

29. There is no evidence from the claimant identifying anyone who was seen receiving these documents and there are no registered slips on which normally would have the name or names of the recipient of the registered mail. The burden is on the claimant to prove on a balance of probabilities, that the defendants received the conveyancing documents. I am not satisfied on the evidence, that the claimant has proven on a balance of probabilities that the defendants received these documents. It is highly likely that the documents were received by Mrs. Elrington who should have been called as a witness or made a defendant in this matter.

Costs and Fees

30. I have no doubt, on the evidence, that conveyancing costs and fees were paid into the account of the first defendant at Bank of America by the Schneiders for and on behalf of the claimant. I accept the evidence of Mr. Lawrence Schneider that he discussed the payment of costs and fees with the other directors and he personally deposited the cheques in the account of the first defendant who had given him information of the said account. The claimant's case is that the sum of \$42,436.74 was paid to the defendants for legal and conveyancing costs and fees. Thirteen cheques were tendered as evidence of the payment; but the total of all of the cheques is \$55,395.42. The claimant states that the defendant recorded transfer of land documents for only eight of the sixteen parcels claiming that the defendants have only earned \$16,316.52 for the eight parcels out of the amount of \$42,436.75 paid to them leaving the balance claimed of \$26,120.22. But how the sum of \$16,316.52 was arrived at by the claimant is unknown and not in the evidence. Moreover, there is no evidence to show how the amount of \$42,436.75 was arrived at. I have no doubt that there must have been some explanation showing how the different figures above were arrived at; but those explanations were not given in the evidence. The burden is on the claimant to prove its case and I am not satisfied on a balance of probabilities that the claimant has proven how the amounts claimed in the claim were calculated or arrived at.

Damages

31. The claim form, as we saw above, among other things, claims the

following:

“Damages including special damages.”

It is not stated therein damages for what. But in the statement of claim it seems that damages are claimed for libel, but the particulars of the alleged libel as well as the alleged resulting damage have not been established. The claimant claims \$294.90 against the defendants as special damages being the cost of sending the closing documents by registered mail. But the mails were specifically addressed to the “Attention of Mrs. Barbara Elrington,” who is not a defendant in this case.

Conclusion

32. Costs are awarded in the discretion of the court and in the exercise of that discretion the court is entitled to consider the conduct of the parties. In the exercise of my discretion I do not make any order as to costs.

33. I therefore make the following orders:
 - (1) The claims in the claim form in this matter are dismissed.
 - (2) There is no order as to costs.

Oswell Legall
JUDGE OF THE SUPREME COURT
28th February, 2012

