

COMMONWEALTH OF THE BAHAMAS
2009/CLE/GEN/1367 and 2011/CLE/GEN/FP00276
IN THE SUPREME COURT
Common Law and Equity Division

BETWEEN
INCORPORATED TRUSTEES OF ST JOHN'S PARTICULAR
CHURCH OF NATIVE BAPTISTS IN THE BAHAMAS

Plaintiffs

AND

FREEPORT COMMERCIAL AND INDUSTRIAL LIMITED

1st Defendant

AND

GRAND BAHAMA DEVELOPMENT COMPANY LIMITED

2nd Defendant

AND

GODFREY R. WILLIAMS MINISTRIES

3rd Defendant

AND

GODFREY R. WILLIAMS

4th Defendant

AND

BANK OF THE BAHAMAS LIMITED

5th Defendant

BEFORE: The Honourable Madam Senior Justice Estelle G. Gray Evans

APPEARANCES:

Plaintiff: Mr Peter Maynard and Mr Colin Jupp

1st Defendant: Mr Robert Adams and Mr Edward Marshall

2nd Defendant: Mrs Karen Brown

3rd Defendant: Mr Jethro L. Miller

4th Defendant: Mr Harvey O. Tynes, Q.C., and Mrs TanIsha Tynes Cambridge

5th Defendant: Mr Dwayne Fernander and Ms Sydney Rolle

Trial dates: 2019: 11, 15 February; 17-18; 22-24 July;
2020: 14 – 18 December
2021: 25-28 January; 30-31 March; 21 April; 16 November

JUDGMENT

Gray Evans, Sr J

On 16 November 2021 I delivered my decision in this matter and promised to provide a full copy of my judgment in due course. This is the fulfilment of that promise.

1. This is another unfortunate case involving land dispute and churches.
2. The Trustees of the St John's Particular Church of Native Baptists in The Bahamas and their successors in office were deemed a body corporate known and described as "the Incorporated Trustees of the St John's Particular Church of Native Baptists in The Bahamas" ("the Incorporated Trustees"), the plaintiff, by the St John's Particular Church of Native Baptists in The Bahamas Incorporation Act, No. 15 of 1965, Statute Laws of The Bahamas ("the Incorporation Act").
3. Freeport Commercial and Industrial Limited ("FCIL"), the first defendant, is a company incorporated under the laws of The Bahamas, and a subsidiary of the second defendant, carrying on business in the City of Freeport on the Island of Grand Bahama one of the Islands of the Commonwealth of The Bahamas.
4. The Grand Bahama Development Company Limited ("DEVCO") the second defendant is another company incorporated under the laws of the said Commonwealth of The Bahamas and also carrying on business in the City of Freeport aforesaid.
5. Godfrey R Williams Ministries ("GWM"), the third defendant, is a limited liability company, also incorporated under the laws of the said Commonwealth of The Bahamas and also carrying on business/ministry in the said City of Freeport.
6. Godfrey R Williams ("Rev Williams"/"Bishop Williams"/"Pastor Williams"), the fourth defendant, is the Pastor of the St John's Jubilee Cathedral ("the Cathedral"), President and a Director of the third defendant and a former Pastor of the St John's Native Baptist Church, Coral Road and the St John's Native Baptist Cathedral on Settler's Way.
7. Bank of The Bahamas Limited ("the Bank"/"BOB"), the fifth defendant, is a registered company duly incorporated under the laws of the said Commonwealth of The Bahamas and licensed to carry on banking business therein.
8. This has not been an easy case. Not so much because of the difficulty of the issues to be decided, although they were difficult; nor because of the law and authorities cited, although they were many; but rather because firstly, it is a matter dealing with Deacons and Bishops and Pastors and General Superintendents and Trustees of churches where allegations of skullduggery, conning, conniving, betrayal, and such were words used to describe witnesses and or their actions in a matter that has dragged on for far too long where, in my judgment, at the end of the day, regardless of this or any other court's decision, there are no real winners.
9. And secondly, because while the defendants have accused the plaintiff of mischaracterizing the facts and or evidence, having reviewed the pleadings as well as the closing submissions of counsel, it seems to me that the plaintiff and or its attorney are not the only ones "guilty" of mischaracterization of the "facts" leading up to and or the evidence led at trial. I expect

that the reasons for such “mischaracterization” include lapses of memory due to the length of time that it has taken to get to this point, or a case of “filling in the gaps” for a better story, and maybe even as a result of “instructions” given or “knowledge” acquired outside of the trial which, unfortunately, may not have been disclosed during trial, or, perhaps simply a lack of understanding, or maybe even some other “nefarious” reason – to use the word of one witness.

10. Having said that, I remind myself that parties are bound by their pleadings; that the burden of proof is on the plaintiff who must prove his or her case on a balance of probabilities with admissible evidence; that such evidence comes by way of viva voce testimony, witness statements and documents admitted into evidence without, or over, objection of counsel, and not from comments from bar table or submissions of counsel, no matter how persuasive; that very often, no matter how similar authorities may be, very often cases turn or are distinguishable on their own facts; and that where, as in this case, fraud is alleged, while the burden of proof is on a balance of probabilities, the seriousness of the allegation requires “a greater preponderance of evidence”.

11. To borrow, with gratitude, the words of Lord Morris of Borth-Y-Gest in the case of *Gissing v Gissing*, “When questions arise between [trustee and beneficiary] or between former [trustee and beneficiary] or in relation to the affairs of one or another of them concerning the beneficial ownership of property the task of a court will often be one of much difficulty...not because the principles of law are in any way obscure or in doubt...but because in the nature of things, the evidence will often not be specific and precise. The court must do its best to ascertain all the facts and then reach conclusion.”

12. So, having heard the witnesses and having reviewed the documentary evidence included amongst the agreed bundle of documents, and while I readily admit that I do not believe that the evidence adduced at trial discloses “the whole truth and nothing but the truth”, I have come to a decision in this matter, and may I say it has not been easy.

13. Further, while I have read and considered the pleadings, reviewed the evidence of all of the witnesses, as well as the documentary evidence included in the four bundles, read and considered the submissions of counsel, the law and the myriad of authorities cited, tried to separate fact from fiction or conjecture, I simply gave up trying to address every point that was raised either by witnesses or counsel which I determined were not, in my judgment, sufficiently material to the issues that had to be determined as it would only have lengthen an already long judgment. I have tried to do justice to counsel’s submissions, and you will have to decide for yourselves whether I have, but again, due to the volume and side issues raised in some cases, I may not have addressed some of them.

14. Finally, I remind myself that this is not an action by, on behalf of, or against, the members of the St John’s Native Baptist Church (Freeport) who, by all accounts, carried out and financed the construction of the Cathedral on Settler’s Way; nor is it a case in which the plaintiff is alleging that the third or fourth defendant “spirited” away the “church”, meaning the congregation. Rather it is a case in which the plaintiff claims to be entitled to the property on which the church building sits, which, the plaintiff accepts, was lawfully conveyed to the third defendant.

Facts leading up to commencement of action

15. Reduced to their bare essentials, the facts that led to the commencement of this action are that, following a request for the donation of land on which to construct a place of worship (“the Cathedral”) the second defendant, in a letter dated 1 November 1988, addressed to Rev Godfrey Williams, Pastor of the St John’s Native Baptist Church in Freeport (“the Coral Road Church” /“the Freeport Church”/“the Local Church”), informed him of the approval of a donation of land on Settler’s Way for the construction of “your church”. That land was, in fact, a 4.38-acre tract, being

Lot 2, at the northeast corner of Settler's Way in sections 29 and 32, Township 1 North, Range 1 East, in the area known "Fairfield East", Freeport, Grand Bahama ("the Property"). The letter also indicated that the donation was subject to a building commitment, which, I understand meant that a conveyance of the Property would not be issued until the building had been completed or a conveyance was needed for a lending institution as security for a loan to complete such construction.

16. In or about 1997 the fifth defendant agreed to lend funds to the Coral Road Church to facilitate the completion of the construction of the building on the Property and the purchase of furnishings therefor. The fifth defendant required, inter alia, a mortgage over the Property as security for the loan. In a letter dated 23 September 1997 Mr Wallace Allen of the firm of Christie, Davis & Co/Davis & Co wrote to Mrs Willie A.M. Moss of the Grand Bahama Port Authority, Limited ("the Port"/"the Port Authority") and informed her, inter alia, that his firm acted for the fifth defendant and advised that title to the Property was to be taken in the name of the plaintiff.

17. By a conveyance dated 10 February 1998 ("first conveyance"/"FCIL conveyance"), the Property was purportedly conveyed to the plaintiff by the first defendant and by a mortgage of even date therewith, the plaintiff purportedly mortgaged the Property to the fifth defendant as security for the loan. The loan was further secured by the assignment to the fifth defendant of a fixed deposit in the sum of \$500,000.00.

18. In or about July 2001, the second defendant discovered that title to the Property was not vested in the first defendant at the date of the first conveyance and, therefore, the first conveyance was defective. In an attempt to rectify the situation, the second defendant prepared a confirmatory conveyance in favour of the plaintiff ("the second conveyance") "confirming and perfecting title to St John's" and sent the same to the firm of Christie, Davis & Co firstly for "perusal and approval" on behalf of "St John's", then for execution by "your client" and return to the second defendant for its execution. The confirmatory conveyance was never executed.

19. The third defendant was incorporated on 11 December 2002 and the second defendant, at the request of the fourth defendant, conveyed the Property to the third defendant by a conveyance dated 12 December 2002 ("the third conveyance"). By the third conveyance, the first conveyance was declared to be null and void.

20. In or about 2003 the fifth defendant agreed to, and did, lend funds to the third defendant secured, inter alia, by a debenture/mortgage over the Property dated 26 September 2003. Proceeds from that loan, along with the aforesaid sum of \$500,000.00 held on fixed deposit were used to pay off the said mortgage and a satisfaction thereof executed by the fifth defendant on 8 December 2003.

21. The third conveyance and the debenture/mortgage were lodged for record at the Registry of Records on 9 December 2003 and the satisfaction of mortgage was lodged for record on 12 June 2006.

22. The plaintiff claims that it was not informed of the error with the first conveyance or the actions taken subsequent thereto and asserts that all of those actions were done or taken without its knowledge or consent. Further, that it only discovered the third conveyance and the fact that the first conveyance had been declared null and void through a search conducted on its behalf at the Registry of Records on 9 December 2003.

The pleadings

23. The plaintiff commenced this action on 8 September 2009 by a specially indorsed writ of summons against the first and second defendant in which it alleged breach of contract and

negligent misrepresentation for which it sought special damages, damages, interest, certain declarations, and an order for specific performance and costs.

24. By a third party notice filed 6 November 2009 the second defendant gave notice of its claim against the third defendant for indemnification against the plaintiff's claim on the ground that the Property was upon its instructions conveyed to it. The third defendant filed its defence and reply on 9 December 2009.

25. In an amended writ of summons/statement of claim filed 25 September 2015, the third and fourth defendants were added as parties to this action and in addition to the aforesaid allegations the plaintiff also added allegations of negligence against the first and second defendants, and breach of fiduciary duty against the fourth defendant. The plaintiff also sought additional reliefs, including, inter alia, special damages and damages against the third and fourth defendants; as well as a declaration that the third defendant holds the Property on constructive trust for the plaintiff and an order that the third conveyance is null and void.

26. In its second amended writ of summons/statement of claim filed with leave of the court on 28 July 2016, the plaintiff added the fifth defendant against whom it alleged breaches of confidentiality and fiduciary duties of loyalties. The plaintiff also included allegations of fraud against all of the defendants and claimed special damages, damages, interest pursuant to Section 3 of the Civil Procedure (Award of Interest) Act, Chapter 80, costs, and further relief as the Court deems fit and just, against each of the defendants, in addition to which the plaintiff also claimed, as against:

- a. the second defendant:
 - i. A declaration that the second [sic] conveyance to Godfrey R. Williams Ministries is null and void;
 - ii. A declaration that the second defendant is estopped from denying the proprietary interest of the plaintiff in the Property;
 - iii. An order that the second defendant convey the Property to the plaintiff;
 - iv. Further or alternatively, an order for specific performance of the contract to convey the Property to the plaintiff;
- b. the third defendant:
 - i. A declaration that the third defendant holds the Property on constructive trust for the plaintiff;
 - ii. An order and declaration that the second conveyance is null and void;
- c. the fifth defendant:
 - i. Further and/or alternatively an accounting with respect to the status of the fixed deposit in the sum of \$500,000.00 and the property which the Incorporated Trustees provided to the BOB as collateral security for the mortgage;

Defences

27. Each of the defendants either denies or does not admit the plaintiff's claim, puts the plaintiff to strict proof thereof, and each relies on the provisions of the Limitation Act, chapter 83, Statute Laws of The Bahamas.

Trial/Evidence

28. At the trial, evidence was given by the following persons, whose witness statements, as ordered edited by the court, were adopted as his or her evidence-in-chief and each of them subjected to cross examination:

- a. On behalf of the plaintiff:
 - i. Rev Dr Michael Symonette, whose witness statements were filed on 4 April 2016 and 23 February 2018;
 - ii. Rev Alonzo Hinzey, whose witness statement was filed on 23 November 2017;
 - iii. Rev Harrison Butler, whose witness statements were filed on 7 April 2016; 30 November 2017 and 6 December 2018;
 - iv. Rev Dr Carrington Pinder, whose witness statements were filed on 23 November 2017 and 23 February 2018
- b. On behalf of the first and second defendants:
 - i. Mrs Charisse Brown, whose witness statements were filed on 22 and 23 January 2018 respectively;
 - ii. Mr Albert Gray, whose witness statement was filed on 19 January 2018;
- c. On behalf of the third and fourth defendants:
 - i. Bishop Godfrey Williams, whose witness statement was filed on 31 October 2016;
 - ii. Mr David McPhee, whose witness statement was filed on 31 October 2016;
- d. On behalf of the fifth defendant:
 - i. Mrs Annamae Burrows, whose witness statement was filed on 23 January 2018

29. Rev Dr Michael Symonette's evidence is that he had been appointed as an Incorporated Trustee since 1965 and at the date of his first witness statement, 4 April 2016, he was the plaintiff's Chairman and General Superintendent, having been elected on 19 May 1965. So, at all material times, he was a member of the plaintiff board as well as its Chairman and General Superintendent. According to Dr Symonette, the Incorporated Trustees have functioned continuously and without interruption since 1965 and each trustee "is made aware of his solemn fiduciary duty as a Trustee and undertakes at all times to act for the benefit and best interest of the church".

30. He said he officially commissioned and organized the St John's Native Baptist Church in Freeport, Grand Bahama, on 30 June 1974 with 15 adult members and six children and with the authority of the 44th Annual General Conference of St John's Particular Church of Native Baptists in The Bahamas; that that church was initially at Coral Road and subsequently moved to Settler's Way; that on 12 September 1982, Reverend Godfrey Williams was elected by the members to pastor the church and was ordained and installed by Bishop Symonette on 2 January 1983.

31. Bishop Symonette said that in 1984, at a meeting of the Incorporated Trustees, Reverend Williams informed him that they should build another church because the Coral Road Church had outgrown itself and the Trustees all agreed. He said he wrote to Mr Albert Gray of the second defendant on 27 February 1987 and again on 4 April 1988 about securing a piece of property for the church; that in his February 1987 letter, he expressly informed Mr Gray that all legal matters,

including those relating to the acquisition of the property sought to be secured, must be dealt with by the plaintiff and that Rev Williams was only to act on behalf of the Incorporated Trustees' interest; that in his 4 April 1988 letter, he enclosed an interim appraisal report in support of the plaintiff's request for the property.

32. Bishop Symonette's evidence is that on 27 July 1988 a piece of property on Settler's Way, along with a plan, was given to the St John's Native Baptist Church by the second defendant, through the first defendant to start the development of the church; that it was by that [the plan that was provided to "us"] that he was able to identify the land that was given to "us"; that on 22 November 1988, he received a letter from the Grand Bahama Port Authority, Limited, granting permission to have the groundbreaking ceremony for the property on Settler's Way; that that ceremony took place on 18 December 1988.

33. Bishop Symonette said that the funds used for building the church on Settler's Way were raised from the membership of the Coral Road church. His evidence is that on 9 February 1998, a loan was obtained from the fifth defendant under the authority of the plaintiff for \$1,050,000.00 for the completion of the building and a fixed deposit account, which contained \$500,000.00 of the St John's Native Baptist Church was used as a security at the bank; that, on 16 September 1997, the plaintiff, at the request of the fifth defendant, pursuant to its commitment letter dated 2 September 1997, passed a resolution:

- i. enabling and authorizing the Coral Road Church to borrow the sum of \$1,050,000.00 from the fifth defendant;
- ii. guaranteeing the payment of the said sum of \$1,050,000.00; and
- iii. establishing that the mortgage was to be signed and sealed by the Incorporated Trustees.

34. Bishop Symonette said that on 10 February 1998 "we" received the conveyance of the property on Settler's Way through the law firm of Davis & Co and that he, along with Reverend Dr Hervis Bain (now deceased), went to that firm to sign for and receive the deeds.

35. Bishop Symonette said that on 8 November 1998 he preached the sermon and performed the dedication of the church on Settler's Way; that shortly thereafter he wrote to Rev Williams to find out his status in respect of his position as Pastor since he, said, he had not heard from Rev Williams for a period of time; that "it was alleged" that Rev Williams had joined the Full Gospel Baptist Fellowship and was recognized as an Overseer of that organization. He said that Rev Williams had not communicated that information to him or to the Incorporated Trustees nor did Rev Williams reply to the letter inquiring about his status. Bishop Symonette said that on 9 December 2003 he had a search done in the Registry of Records by a Search Clerk and discovered that on 12 December 2002 there was another conveyance from the second defendant to the third defendant of the same property which had been given to the plaintiff; and that that conveyance purported to make the [first] conveyance to the plaintiff null and void. He said he also discovered a plan that showed the same property with the name of the third plaintiff; that he brought the matter to the attention of Lady Henrietta St George, Mr Julian Francis and Mr Carey Leonard of the Grand Bahama Port Authority, Limited ("the Port Authority") and notified them to see what assistance they could offer to help to resolve the matter, but, no one responded to his request for assistance. He said that he received a letter from Mr Francis, dated 21 September 2005, in which Mr Francis had said, inter alia, that the Port Authority intended the conveyance to be a completely gratuitous gesture to the Incorporated Trustees that had resulted in upheaval; and that the matter had been sent to the Legal Department of the Port Authority.

36. According to Dr Symonette, the Port Authority agreed to give "us" [the plaintiff] a piece of land for the expansion of a church. Then "they, DEVCO through FCIL", provided "us" [the plaintiff]

with a plan and later a conveyance. He said that the fact that “they” conveyed the same piece of land to another entity was deplorable to him; that as the first defendant is owned by the second defendant, it is blatantly clear that they should have known that the first defendant did not own the land to convey it to “us” [the plaintiff] in the first place; that neither the second defendant nor the first defendant took any steps to inform “us” [the plaintiff] of this wrong.

37. Bishop Symonette said that the fourth defendant was a Trustee and had participated in many of the planning and construction stages of the Property. He said that he sent a letter to the fourth defendant on 13 June 1989 indicating that he was to work along with Rev Dr Alonzo Hinsey and the other officers of St John’s Native Baptist Church in all building matters connected with the building of the church on Settler’s Way. Bishop Symonette’s evidence is that while Rev Williams made payments to the fifth defendant for the mortgage of the church, he was acting as a Pastor and not in a personal capacity; that in accordance with the Incorporation Act, the Trustees are trustees of all the property as a whole; that there is no compartmentalization of the churches; and that that was also expressed in his letter to Mr Albert Gray in which he indicated that the fourth defendant was acting as a Trustee for the plaintiff.

38. Under cross examination by Mr Tynes, QC, for the fourth defendant, Bishop Symonette said that it was not correct to say that the plaintiff paid no money to the owner of the land on Settlers Way to acquire title thereto. He said that the Trustees did pay money to the original owners to acquire the land, although he did not recall the amount stated in the conveyance from the first defendant to the Trustees. He said it was not a gift and that the price was referred to his first witness statement. Asked whether he accepted that on 12 December 2002, title/ownership of the 4.38 acres of land on which the Cathedral now stands was effectively transferred to the third defendant, Bishop Symonette said that he did not. He said that other than Albert Gray, he did not write to anyone else about securing a piece of property for the church and he admitted that he had no conversation with Mr Gray or anyone else at the Port Group about securing property for the Coral Road Church.

39. In respect to the first letter which he said he wrote to Mr Gray, Bishop Symonette said although the letter appears undated elsewhere in the record, it was written on 27 February 1987 as indicated by the handwritten notation at the bottom of one copy. He said that when he signed the letter, it did not have a date, so he wrote it in. When Mr Tynes pointed out to him that nowhere in that letter did he raise the issue of the possible donation of land for the church – contrary to what he had said in his witness statement - Bishop Symonette said that he was unable to answer the question, but said when he wrote to Mr Gray that he had been “informed by the pastor of St John’s Native Baptist Church, Freeport, that he and other Officers of the Church had been in contact with the Grand Bahama Development Co Ltd on the matter of obtaining five acres of land to erect a church building”, that was the truth. He said he could not recall how he got the information from Rev Williams or how long after he got the information that he wrote to Mr Gray; nor did he recall the circumstances in which Rev Williams came to tell him that he had been in contact with the second defendant about acquiring land. He said that his statement in the letter that “the Pastor, Rev Godfrey Williams, is a member of our Trustee Board, and is working on behalf of the Board’s interest” was to show Rev Williams’ status as a Trustee of the Society and to make it clear that whatever he did with the second defendant was on behalf of the Trustees.

40. As for why he felt it was necessary to insert “St John Native Baptist Church Freeport is a unit church of St John’s Particular Church of Native Baptists in The Bahamas, Incorporated under Act No 15 of 1965” in a letter to secure land, Rev Symonette responded: “because no one was empowered. Rev Williams nor the Freeport Church was empowered to secure any land. They had no standing to secure any land. So I had to put that in there to let them know that securing the land had to come through the Incorporated Trustees because they had no power, no status to claim land.” (Top 15 February 2019, page 37, lines 18 – 24). A similar response was given by Bishop Symonette

in response to why he felt he needed to include in a letter to secure land the sentence: "Therefore all legal matters must be handled by the Bishop and Chairman of the Trustees Board, and the General Secretary of the Society who is Secretary of the Trustees Board, according to the Rules of the Society." He said that was to show "authority"; that all legal matters must be handled by the Trustees and not any unit church or any minister or anybody else of a unit church in the St John's Particular Church of Native Baptists Society."

41. Bishop Symonette said he never made a request for land to either of the late Mr Edward St George, Sir Jack Hayward, or Sir Albert Miller, former principals of the Port Group of companies, all of whom are now deceased. However, he said that in 1988 he got a reply to his letter by way of a plan which had St John's Particular Church of Native Baptists on it. He said that other than that, he did not receive a written response from Mr Gray to the letter, nor did he send a follow-up letter to him. Under cross-examination by Mr Adams for the first defendant, Bishop Symonette agreed that while the plan is dated 27 July 1988, that is not the date on which he received it.

42. Bishop Symonette admitted that as early as 1984, Rev Williams had informed him of the need to build a new church in Freeport, because the church on Coral Road had outgrown itself. He said that he and the other Trustees all agreed. However, he admitted that the Trustee Board took no steps to build a new church building in Freeport between 1984 and 1987. As for why he had not carbon copied Rev Williams on his said letter to Mr Gray and whether it was because he did not want Rev Williams to know that he was writing to Mr Gray, Bishop Symonette said Rev Williams was a Trustee and knew that they were getting the land to build the new church. He disagreed with Mr Tynes QC's suggestion that he was working behind Rev Williams' back to "pull the land from under him."

43. Under Cross Examination by Mr Adams for the first defendant, Bishop Symonette said he became General Superintendent shortly after the Incorporation Act was introduced in March 1965 and that the rules under that Act came into effect afterward. When referred to Article VIII (B) and (J) of the 1991 Rules, Bishop Symonette disagreed with counsel's suggestion that unit churches could have the permission of the Board of Trustees to have property separate from the Incorporated Trustees. While he initially disagreed with counsel for the first defendant's assertion that the Society's unit churches are able to maintain bank accounts separate and apart from the Society, after some pressing by counsel, Bishop Symonette agreed that unit churches could operate their own bank account with permission from the Trustees. However, when counsel for the first defendant pointed out that nowhere under the relevant paragraphs of Article VIII were the words "with the permission of the Incorporated Trustees" written, Rev Symonette responded: "the church is already under the Trustees". He maintained that he disagreed that the subsections did not include that "permission of the Trustee" was necessary for unit churches to open a bank account.

44. Bishop Symonette also disagreed with Mr Adams' suggestion that the plaintiff was not interested in building a new church and that his position was that the Freeport church was on its own if it wanted to build a new church. He disagreed that that was the reason he did not write any letters to the Port Authority asking for land for three years after Bishop Williams had spoken to him about the need for a new church building in 1984. He said he did not recall having a further discussion with Rev Williams in 1987 that would have precipitated the letter to Mr Gray nor did he recall that Rev Williams told him that he and officers locally had moved on and had started negotiations with the Port Authority concerning land to build a new church. Having been referred again to the first paragraph of his said letter, Bishop Symonette said he could not remember "the fact that the conversation took place"; and he disagreed that he had a conversation with Rev Williams about the land before he wrote the said letter.

45. Bishop Symonette also disagreed with Mr Adams' suggestion that the reason he had not copied Rev Williams on his said letter was because he had been informed that this was a venture that the Freeport church was undertaking on its own and it was his intention to stop it. He also disagreed with counsel for the first defendant's suggestion that the reason he wrote to Mr Gray that "Pastor Williams is a member of the Trustee Board and is working on the Trustees behalf" was because he realized that there was an opportunity available to the Freeport church that he wanted the Incorporated Trustees to take for themselves. Bishop Symonette's response was: "You cannot separate the local church from the Trustees".

46. When Mr Adams drew to Bishop Symonette's attention two documents amongst the documentary evidence, both of which with the date, 27 February 1987, written thereon, purportedly by Bishop Symonette, and pointed out the dissimilarity in the way the same date had been written, Bishop Symonette admitted writing the same date differently but disagreed with Mr Adams' suggestion that he did not write the date on the letter to Albert Gray. He insisted that he wrote the date at "the same time, same day, same minute and same hour" as when he appended his signature.

47. In respect to the letter dated 4 April 1988, Bishop Symonette disagreed that the reason he did not copy Rev Williams with that letter was because he was trying to stop the local church from obtaining the land. He admitted that he received no answer to his said letters.

48. When referred to the plan to which he had referred in his witness statement, which he said he received on 27 July 1988, Bishop Symonette agreed with counsel that while the plan is dated 27 July 1988, that is not the date on which he received it. Mr Adams also pointed out to Bishop Symonette that Mr Gray did not inform anyone of the second defendant's decision regarding the grant of land until his letter dated 1 November 1988. However, when shown that letter, Bishop Symonette said he had not seen it before and accepted that it was addressed to Rev Williams personally and not to the Trustees/plaintiff.

49. Bishop Symonette denied that Christie, Davis & Co/Davis & Co represented the plaintiffs in connection with the conveyance from the first defendant. He said that he and Dr Bain were called by that firm to go in and sign the conveyance because that firm was representing the fifth defendant.

50. Bishop Symonette said he could not remember whether Bishop Williams was still a member of the Board of Trustees on 8 November 1998. However, he accepted that in May 1995 Rev Williams told him he no longer wanted to serve as a Trustee. He also said that Rev Williams did not inform the Conference and he, Bishop Symonette, did not accept Rev Williams' decision to be removed as a Trustee. He agreed that the final day of the session of the Annual General Conference was 28 May 1995 and that by the resolution of election of Trustees dated 1 May 1995, the signers signified their acceptance of the office of Trustees and that Bishop Williams' signature was missing therefrom. Bishop Symonette eventually agreed that Rev Williams had told him, as the General Superintendent, about his decision to be removed as a trustee, and that the others at the Conference accepted Rev Williams' decision that he would not serve another term as of May 1995. He also agreed that when the first defendant prepared the conveyance in 1998, Rev Williams was no longer a Trustee or a part of the Society.

51. Further, when it was drawn to his attention that Rev Williams had copied him on his letter to Mr Gray, even though Bishop Symonette had not copied Rev Williams on his letters to Mr Gray, Bishop Symonette responded: "He had to copy me. I's the Bishop. I didn't have to copy him. He had to copy me. I's the chief."

52. Bishop Symonette said that it was not until he read Bishop Williams' witness statement filed in these proceedings in October 2016 that he became aware that Bishop Williams was no

longer a part of, and had left, the Society. He denied that he knew at the dedication service in November 1998 that Rev Williams was no longer a member of the Board of Trustees or a member of the Society and had not been for over three years, that is, since 1995. However he said he had heard it “blowing in the wind”.

53. Bishop Symonette said that he had a search done in 2003 after he had not heard from Rev Williams and that the purpose for the search was to find out information concerning St John’s Church. He denied that he conducted the search because someone told him something ^{(TOP?) page 23, lines 23-24; page 24, line 1.} However, he said that it was as a result of that search, that he discovered that the same piece of property that had been given to the Trustees by the first defendant had also been given to Godfrey Williams Ministries by the second defendant. When asked why it took him two years after that discovery to write to the Port Authority on 15 August 2005, Bishop Symonette responded: “Wait on the Lord.” And when Mr Adams drew his attention to a letter dated 21 September 2005 from Mr Julian Francis, in response to Bishop Symonette’s 24 August 2005 letter to Lady Henrietta, and suggested that Rev Symonette’s statement that he received no response to his said letter was untrue, Bishop Symonette said that as the letter was not signed by Lady Henrietta St George but by Julian Francis, he did not notice that his letter to Lady Henrietta had been answered. Further, when referred to Mr Francis’ said letter, Bishop Symonette agreed that, contrary to what he had said in his witness statement, nowhere in that letter was a reference made to the Incorporated Trustees.

54. Bishop Symonette disagreed with counsel for the first defendant’s suggestions that (i) the first defendant did nothing wrong in its dealings with the plaintiff; or that (ii) in 2002, the plaintiff did not have title to the land on which the Cathedral is situated because when the first defendant purported to transfer title to the plaintiff, it did not own the land.

55. Under cross examination by Mr Miller for the third defendant Bishop Symonette agreed that he has been involved in several litigations involving churches. He disagreed with counsel’s suggestion that his said letter to the Port Authority was an effort by him to interfere with the grant by the Port Authority of land to Bishop Williams. He denied counsel’s suggestion that he had difficulty with Rev Williams moving on. Bishop Symonette said he did not know Albert Gray personally. He said he did not remember discussing the matter with Bishop Williams; that Bishop Williams never wrote to him asking to be removed from the list of Trustees and he did not recall Bishop Williams asking to be removed from the 1991 list of Trustees.

56. When counsel for the third defendant put to Bishop Symonette that it was unusual to write the date at the bottom of a letter, he responded: “Well, I do that.” He denied that he and Bishop Williams had a breach in their relationship. He said he did not know how much was spent to build the Cathedral. He agreed that Rev Williams’ name was not included in the 1995 list of Trustees and the church on Settlers Way was not included in the list of unit churches. However, when Mr Miller pointed out that there are 11 churches listed for New Providence and seven for Cat Island, but only one for Freeport, Bishop Symonette said he could not explain the issue; that the St John’s Church is only one church and the buildings on Coral Road and Settler’s Way both belong to the Society. Bishop Symonette said that moneys to build the new church were raised in the Coral Road Church, and that all the funds raised in that church belonged to the plaintiff; that he contributed to the building as well. He admitted that he had not been back to the Cathedral since its dedication in 1998. He also admitted that he was not consulted on the program with respect to the dedication service for the Cathedral; that although he preached the sermon, it was Bishop Neil Ellis who presided. He denied having concealed from Rev Williams that the 1998 conveyance had been sent to him for signing. He denied that he deliberately organized the execution of the conveyance apart from Rev Williams to exclude him.

57. When referred to his 15 August 2005 letter to Lady Henrietta St George, Bishop Symonette disagreed with Mr Miller's suggestion that he was trying to create a paper trail to deal with the "limitation issue". He said that he knew how to do a search and he knew people at the Registry so it was not necessary for him to engage an attorney to conduct a title search. When referred to the 1 November 1988 letter from Mr Gray to Rev Williams, Bishop Symonette said he disagreed that the letter referred to a donation or that it was not addressed to the Society. When referred to the letter dated 16 December 2002 and a handwritten note at the top thereof, Bishop Symonette said he did not know that Bishop Williams was trying to leave the Society and he insisted that he only became aware of that when he read Bishop Williams' witness statement in which he stated that he had joined Bishop Ellis' Group. Later on, Bishop Symonette said that he did not remember Bishop Williams telling him about his group's plan to leave the Society. He said that the statement "that Bishop Williams said it was not he, Bishop Symonette, who dedicated the church; that it was Neil Ellis and his group who did" came to his attention right after the dedication of the new church – during the dedication. He admitted that Bishop Williams told him he wanted to build a bigger church because the one on Coral Road was too small. He said he gave a positive response and he denied rebuffing Rev Williams.

58. Under cross-examination by Mrs Karen Brown for the second defendant, Bishop Symonette said when he stated in his witness statement that "the Port Authority agreed to give us a piece of land for the expansion of a church", he was referring to the plaintiff and that he looked at the "survey plan" as the "agreement" by the Port to do so. He agreed that the letter to which he referred in his witness statement as the letter from the Port Authority granting permission to have the ground breaking ceremony was in fact addressed to Gamma Construction Company Limited and not the plaintiff. He insisted that it was only after reading Bishop Williams' witness statement that he became aware that Bishop Williams and his group had left the Society in 1998; that, as far as he was concerned, Rev Williams continued as a member of the Society. When counsel for the second defendant pointed out that that evidence was inconsistent with his evidence given previously, Rev Symonette maintained that he got information as to when Rev Williams had left the Society from Rev Williams' witness statement. When referred to his witness statement in which he said he had written to Bishop Williams to inquire as to his status, Bishop Symonette said that when he wrote the letter, "it was alleged", but he never knew or came to grips with that until he read Bishop Williams' witness statement. However, he said, while Bishop Williams left the church/Society, the building on Settler's Way belonged to the Trustees. He said, he left it alone for approximately nine years because he did not want it to be said he was breaking up a church again and during that time the plaintiff was trying to investigate what had happened.

59. Bishop Symonette disagreed with counsel for the second defendant's suggestion that the reason he took no steps before 2009 was because he knew that the donation of the Settlers Way property was negotiated by the fourth defendant. He admitted that having been involved in a number of land acquisitions in his 51 years as General Superintendent he had some basic knowledge about acquiring property and that he understood the importance of having a lawyer look at the papers; that it was prudent to have the title investigated. He said, he could not recall the lawyer who looked after the plaintiff's interest in connection with the conveyance from the first defendant, but he disagreed with counsel's suggestion that it was Christie, Davis & Co.

60. When shown several letters passing between Christie, Davis & Co and Mrs Charisse Brown as legal counsel for the first and second defendants in respect to title searches; confirmation of his instructions by Rev Williams that the property was a gift to the church; review of a draft and approval and execution of the first conveyance by the first defendant; a request for the plaintiff's corporate documents; notice of the error with the first conveyance; perusal and approval of the confirmatory conveyance from the second defendant; receiving the second conveyance for execution by the plaintiff, Rev Symonette maintained his position that Christie

Davis & Co were not the plaintiff's attorneys and that nothing they did was done on behalf of the plaintiff. He said he did not recall ever asking Davis & Co to investigate the title to the land; that he could only recall that Davis & Co told him and Dr Bain to come in and sign some documents.

61. Rev Symonette disagreed with counsel Brown's suggestion that in the letter dated 15 May 2003, addressed to Ms. Annamae Burrows, Mr Allen had indicated that he had investigated title to the property on the instructions of officers of the local church or in the name of the plaintiff. In that letter, Mr Allen wrote, inter alia, that he "personally spoke with all the parties, particularly with Rev Godfrey Williams who confirmed that title to the property should be taken in the name of St Johns Particular Church of Native Baptist in The Bahamas."

62. Bishop Symonette said that he was never informed that the first defendant did not own the Property and he disagreed with counsel for the second defendant's suggestion that the second defendant did not act fraudulently. He also disagreed with counsel for the second defendant's suggestion that the fact that the second defendant, upon conducting a review discovered the mistake and brought it to light, showed that the second defendant had no ill intention regarding the plaintiff or the Property.

63. Bishop Symonette said that although the Board of Trustees has the authority to do so, the Board did not give authority to the local church to hold an account. Later he said that the Board gave the local church authority to hold accounts, but that they also had the authority to pull that back at any time. When referred to Article XXII of the plaintiff's Constitution, Rev Symonette confirmed that the unit churches were required to pay 10% of their gross income each month to the Society and that they could manage the other 90%.

64. On re-examination, Bishop Symonette insisted that he placed the date 27.2.87 on the letter when he signed it; that the Trustees had not given permission to the Coral Road Church to hold property independent of the Trustees; that the Trustees never passed a resolution authorizing the Coral Road Church to operate a bank account independent of the Trustees; that St John's Native Baptist Cathedral was called that because that was the name in their Constitution which says that all St John's Society churches should carry the name "Native Baptist"; that the Cathedral was dedicated as a "Native Baptist"; and at the time the Cathedral was dedicated, he was the General Superintendent of the Society. In regard to the 23 September 1997 letter to Mrs Moss, Bishop Symonette agreed with counsel for the plaintiff that no reference was made in that letter to Mr Allen being concerned for the plaintiff and insisted that none of the correspondence between Mr Allen and Mrs. Brown came to the attention of the Trustees.

65. Reverend Doctor Alonzo Hinsey, who at all material times was a Trustee of the plaintiff and at the date of his witness statement, 23 November 2017, Assistant General Superintendent of the Society, gave evidence that he is a general building contractor by profession with over fifty years of experience; that on or around 1984, the Incorporated Trustees agreed to build another church in Freeport because the membership had grown too large to be comfortably accommodated by the Coral Road Church; that the new Church was built on Settlers Way; that there was never any doubt that the Cathedral was owned by the Incorporated Trustees; that as a result of his professional background as a building contractor and since he had overseen the construction of the Coral Road Church and was the District Pastor for Grand Bahama, the plaintiff appointed him as the project supervisor for the construction of the Cathedral by letter from Bishop Michael Symonette dated 13 June 1989; that Reverend Godfrey Williams was placed under his supervision by the Incorporated Trustees insofar as the construction of the Cathedral was concerned; that in his capacity as project supervisor, he obtained the official building plans for the Cathedral on behalf of the Incorporated Trustees from the planning section of the Grand Bahama Port Authority in or around 1991; that upon his receipt of the plans, he went through them in great detail with Reverend Williams for well over an hour so as to show him the plaintiff's vision for the

Cathedral, to help him understand the nature of the construction process as Rev Williams was not a building contractor by profession. He said that as project supervisor, although he lived in Nassau, he travelled regularly to Freeport to view the ongoing construction process; that recognizing that guidance was being given on site by professional advisers in Freeport, namely Montgomery Pratt and Associates, he provided additional limited supervision where needed. That in or around 1997, Reverend Williams called him for assistance with respect to a problem they were having with the steeple of the Cathedral; that he met with Reverend Williams on behalf of the plaintiff at the Cathedral to discuss his recommendations for fixing the steeple. He said that at all times during the construction, the Cathedral was being built for the benefit of the plaintiff and the members of the St John's Native Baptist Church to replace the Coral Road Church and that the conveyance of the land at Settler's Way was to be made to the plaintiff upon completion of the Cathedral as promised by the second defendant in accordance with the Incorporation Act, the plaintiff's Constitution and its Rules; and that the Incorporated Trustees were always intended to be the owners of the Cathedral.

66. Under cross examination by Mr Tynes, QC, Rev Hinsey agreed that the core issue to be determined in this trial is who owns 4.38 acres of land on Settler's Way on which the Cathedral is located. He agreed with counsel that he took no part in any negotiations with the former owners of the land; that he spoke with no one at the Port Authority; that he wrote no correspondence; that he was not present at any meetings in which acquisition of the land was discussed; and that the plaintiff paid no money for the acquisition of the land. That as Project Supervisor, Pastor Williams was placed under him by the Trustees pursuant to the aforesaid letter dated 13 June 1989. However, when shown the letter Rev Hinsey agreed with counsel for the fourth defendant that the letter was a letter of recommendation not appointment. Nevertheless, Rev Hinsey insisted that he was appointed by the Trustee Board to supervise the construction of the church on Settlers Way.

67. Under cross examination by counsel for the third defendant, Rev Hinsey said that Rev Williams did not accept him as the Project Supervisor.

68. Under cross examination by counsel for the first defendant, when asked what he meant by his statement: "there was never any doubt that the Cathedral was owned by the Trustees", Rev Hinsey said he was certain about the ownership of the Cathedral. He admitted that he was never part of the discussions for the acquisition of the Property or involved in the signing of any of the conveyances of the Property.

69. Under cross-examination by counsel for the second defendant, Rev Hinsey said he could not remember when he first saw the two conveyances, but he recalls that it was when they went to deal with the plans; so it was around 1991. When shown a copy of the third conveyance, Rev Hinsey said he may have been mistaken as to the date when he first saw the conveyances; that he may be mixed up with the dates, but that he is certain he saw the conveyances before this action commenced.

70. On re-examination, Rev Hinsey said the Trustees agreed to acquire the land; that they appointed him as project supervisor; that the Trustees executed the construction; that the Rules of the Society that required all churches to be owned by the Society were the basis of his belief that the property was owned by the plaintiff.

71. Reverend Harrison Butler, current Pastor of the St John's Native Baptist Church on Coral Road, a member of the Incorporated Trustees, and former Treasurer of both the Coral Road Church and the St John's Cathedral on Settler's Way from December 1979 to December 1997, in his witness statement/evidence-in-chief states that in 1987 "we" discovered that the Coral Road Church was overrun with members and there was a need for an expansion because of the growth of the church. It was then that "we" sought the Port Authority to grant a piece of land to build and

expand the church; that his wife worked for the Port in the Deeds Department and she made an appointment for him and the fourth defendant to see Mr Gray; that the purpose of the meeting was to request a donation of land to the Incorporated Trustees; that the Port was aware that the property was to be given to the Incorporated Trustees because they had copies of the Incorporation Act and they knew that Coral Road Church itself could not hold land papers; therefore, the property would have to be held by the Incorporated Trustees, a registered licensee of the Port.

72. Rev Butler said that after receiving the letter “we” informed officers and members of the church, then went to Montgomery A. Pratt, architects, and requested that they provide a drawing for a church; that the fourth defendant also contacted Bishop Symonette and informed him of what was happening in Freeport; that Bishop Symonette came to Freeport with Mr LaFleur of LaFleur Architectural Firm and at a meeting with the Executive Board, Mr LaFleur presented some drawings; that the members had already reviewed a set of drawings from Montgomery A. Pratt and they decided on the latter’s drawings; that Mr Pratt was paid from the Coral Road Church’s bank account.

73. According to Reverend Butler, the fourth defendant along with a deacon, the late Samuel Ferguson, went to Nassau to meet with Bishop Symonette to confirm whether the church should proceed with Mr Pratt’s proposed terms; and when they returned, they told him that Bishop Symonette was prepared for them to go ahead with the plan. He said that the deposit of \$2,000.00 was made by way of a cheque from St John’s Native Baptist Church Freeport bank account and given to Mr Pratt on 19 March 1988 and the balance was paid in installments in August and November 1988; that after seeing the proposal for the church building, the Port Authority granted “us” the Property; that the “agreement” was made that “we” would receive the deeds on completion of the building; and Mr Gray sent “us” a letter on behalf of the Port Authority that land had been granted to the Incorporated Trustees/plaintiff.

74. He said that Bishop Symonette came to Freeport and conducted the groundbreaking ceremony along with Dr Hervis Bain and some other members of the Board of Trustees; that the building of the church proceeded with the use of the Coral Road Church’s funds - from the foundation to the roof; that at some point, “we” received a letter from Mr Gray, on behalf of the Port Authority, concerning the slow construction of the building; that the fourth defendant sent a letter back stating the reasons that stopped “us” from building - that some of the people that were supposed to provide the building materials did not. He said that that letter was written on behalf of the Coral Road Church on its letterhead, therefore, the second defendant knew or ought to have known that the plaintiff invested large sums of money in the church.

75. Rev Butler said that at the time the fourth defendant was a “salary-paid Pastor”, and also a member of the Trustee Board and was acting for and in the interest of the church; that all materials bought or brought into The Bahamas for the construction of the Cathedral were under the plaintiff’s bond and all payments were made out of the Coral Road Church’s account; that after completing the roof of the church, only interior work needed to be done. However, they had exhausted their funds so they went to the fifth defendant where the church had its account. They met with Mr Thompson, Manager of the fifth defendant’s Loans Department; that at that time, the church had deposit accounts in two other banks and one with the fifth defendant; that the fifth defendant requested an appraisal on the property and also an amalgamation of the church’s fixed deposits into the account at the fifth defendant’s bank; that once the loan was approved, the funds were amalgamated for a total sum of \$550,000.00, placed on fixed deposit and used as security for the loan of \$1,050,000.00.

76. Mr Butler said that on 7 August, 1997, in a meeting consisting of pastors, deacons, the treasurer and members, the fourth defendant tried to convince those present with his own views

of creating another company to receive the land that was to be given to the Incorporated Trustees; that everyone present, except himself, went along with the fourth defendant to get the land by forming a company to receive the same; that he did not agree with what the fourth defendant was proposing. That on 2 September 1997 a letter was sent from Mr Thompson to the General Trustees in which Mr Thompson explained that the local Church was responsible for the maintenance payments on the loan and on their failure, it would be the Incorporated Trustees that would inherit the liability. He said that the 2 September 1997 letter was signed by Bishop Symonette, Rev Dr Hervis Bain, Wally Robinson and himself; that at the time, Reverend Williams refused to sign the letter. He said that he resigned as Treasurer of the Coral Road Church on 15 December 1997, although, he remained a member of the Executive Board and a Deacon; that after he resigned, he found out that the fourth defendant had signed the commitment letter in December 1997 and the funds from the loan were then released.

77. Rev Butler's evidence is that at all material times, it was always understood between the plaintiff and the fourth defendant that title to the Cathedral was to vest in the plaintiff. He said that the plaintiff contributed financially to the construction of the Cathedral by directing taxes that should have been paid to the plaintiff by the Coral Road Church to be applied to the cost of constructing the Cathedral. In that regard, he said that on 31 July 1997, the fourth defendant wrote to Rev Dr Symonette, and acknowledged that the plaintiff had extended to the Coral Road Church a six-year deferral with respect to the payment of taxes; that he confirmed that the total amount that the Coral Road Church owed to the plaintiff was \$160,997.00; that he also enclosed a cheque in the amount of \$35,998.00, representing one year's payment of the taxes that the Coral Road Church owed to the plaintiff and stated that the Coral Road Church "shall be pleased to reimburse payments on the remaining balance on a prorated basis beginning next year." He said that as the then Treasurer of the Coral Road Church, he could confirm that Rev Dr Bain, the then General Secretary of the plaintiff, returned the cheque [for \$35,998.00] to the Coral Road Church, to the attention of the fourth defendant instructing him to apply the cheque to cover the cost of the construction of the Cathedral. He said that pursuant to those instructions, the cheque was cancelled, reattached to the cheque book and Dr Bain's instructions were treated as an "inter-company transaction in lieu of cash"; that the balance of the taxes that the Coral Road Church owed to the plaintiff in the amount of \$124,999.00 was written off by the plaintiff, thereby permitting the said balance to be applied to the cost of the construction of the Cathedral.

78. Rev Butler said that on or around 11 July 1997 he had the Property appraised by G. Ray Lightbourn; that the plot plan included therein, which was generated and provided by the second defendant, clearly states that the land on which the Cathedral sits was to be owned by the plaintiff. He said that no reference was made on that plot plan to the third or fourth defendants. Therefore, he said, "it cannot be the case that it was intended for either the third or the fourth defendant to obtain ownership of the Cathedral or the land that it sits on".

79. According to Rev Butler, on 16 July 1998, the fourth defendant submitted a work-in-progress report to the fifth defendant, on the plaintiff's letterhead, demonstrating, he says, that the Coral Road Church was at all material times throughout the construction process acting as a part of, and subject to, the plaintiff body under the leadership of the General Superintendent and the fifth defendant would have plainly had notice of the same. He said that the program for the official dedication of the Cathedral, held on 8 November 1998, clearly shows that the Cathedral was a member church within the plaintiff body's group of churches and that the fourth defendant was merely a pastor of that church. He said that it was also clear that Rev Williams did not operate autonomously with respect to the construction of the Cathedral; that the plaintiff made, among things, other substantial financial contributions to the construction of the Cathedral precisely because the Cathedral was always intended to be a member church within the plaintiff body's

group of churches and the Cathedral was to be owned by the plaintiff and to operate subject to the Incorporation Act and the plaintiff's rules and regulations.

80. Rev Butler's evidence is that at the dedication service marking the official opening of the Cathedral, on Settlers Way, the church-going members of the Coral Road Church, including the fourth defendant himself, participated in a "parade of continuity" from the Coral Road Church to the Cathedral which, he said, "was reflective and demonstrative of the understanding that the Cathedral was always intended to be a part of the plaintiff's organizational structure as a member church within that body". However, he said, "unbeknownst to the members of the Coral Road Church which comprised the founding membership of the Cathedral, the fourth defendant had entirely different, nefarious and fraudulent plans". According to Rev Butler, his "first confirmed clue" that something was wrong was on 15 February 2004. In that regard, he said he had issued a cheque for \$646.00 to the St John's Cathedral for his tithes, but the returned cheque had an indorsement stamped on the back stating, "For deposit to account Godfrey Williams Ministries A/C# 1019-223". He said that is when he discovered that the third and fourth defendants had been taking the tithes and offering of the members of the Cathedral which they were depositing to the name and account of the St John's Native Baptist and having the same deposited to an account of the third defendant, namely, "Godfrey Williams Ministries A/C#1019-223", without informing the parishioners that they were doing so. He said that as an officer, member, and very regular church attendee of the Cathedral during the years from its official dedication to the date that he made the aforesaid discovery, he could attest to the fact that at no point did the fourth defendant, or anyone else, inform the membership of the Cathedral that their tithes and offerings which the members were paying to the St John's Native Baptist Church, were, in fact, being diverted to the account of the third defendant, "a private corporate entity with no affiliation with the plaintiff whatsoever" and once he found out what was happening, he stopped making his tithing contributions.

81. Under cross examination by counsel for the fourth defendant, Rev Butler said that he was installed as pastor of the Coral Road Church in August 2005. He said that he and the fourth defendant went to see Mr Gray at the Port Authority; that they were looking for a gratuitous gift; that they were not looking to pay any money for the land; that in his mind the Port Authority would be donating the land to the plaintiff as that is what he and the fourth defendant had expressed to Mr Gray. He said when he and the fourth defendant approached Mr Gray in May 1987, they were told by Mr Gray that he would get back to them; that the letter from Mr Gray in response to their request was read in a meeting, but he did not have a copy of it and it was not included amongst the bundle of documents. He said that the letter dated 1 November 1988 was the second letter which the fourth defendant had received from Mr Gray and the basis for his statement that the Property was to be given to the plaintiff was the fact that the request for the Property made to Mr Gray was on behalf of the Trustees; that the fourth defendant made the request in his presence. He agreed with counsel for the fourth defendant that the 1 November 1998 letter was not addressed to the plaintiff, or to the fourth defendant as a member of the Board of Trustees, but to him in his capacity as Pastor of St John's Native Baptist Church. Rev Butler also accepted that the letter was not copied to Bishop Symonette, who was then the Chairman of the Board of Trustees, nor to himself. He confirmed that in November 1988, his wife worked in the Legal Department to which Mr Gray had referred in his letter. He said that the fact that the letter was addressed to Rev Williams as Pastor of St John's Church supported his statement that the land was intended for the Trustees as the local church is owned by the Trustees. When referred to the consideration mentioned in the first conveyance, Rev Butler said although he was the treasurer at the time, he did not pay \$10.00 to the first defendant on behalf of the Coral Road Church or the plaintiff, although he "thinks and believes" the Trustees would have made the payment themselves. He said that in relation to his statement at paragraph 43 of his witness statement, he

should have said, "Everyone had opposed Rev Williams" rather than "Everyone went along except me."

82. Under Cross Examination by counsel for the second defendant, Rev Butler said that when he said the Port Authority agreed to give the Property to the Trustees, he was referring to the letter of 1 November 1988. He said that addressing that letter to Rev Godfrey Williams, Pastor of St John's, is an express statement that the intention was to give the land to the Trustees.

83. When referred to the satisfaction of mortgage, Rev Butler said the plaintiff did not pay off the 1998 mortgage with the fifth defendant; that until 2004, he was of the opinion that the Property was owned by the plaintiff; that he first learnt of the conveyance to the third defendant in February 2004 when he received his returned cheque which had been indorsed to the third defendant.

84. On cross-examination by counsel for the third Defendant, Rev Butler said he joined the Coral Road Church in 1976; that he and Rev Williams met in 1982 when Rev Williams joined. He said that a loan obtained by the Trustees to build the church on Coral Road was paid off by the church under Bishop Williams' administration. He reiterated that during the 7 August 1997 meeting, everyone present disagreed with Rev William's position regarding the Property. He said he ceased to be treasurer in 1997 because at some point funds had run out and he could not pay Rev Williams his salary; that the situation caused tension among members, so to ease everything with the Trustees, Rev Williams and church members, he resigned as treasurer but remained a deacon. He denied that he, as treasurer, had not paid Rev Williams for months and insisted it was only for one month. He denied that when he resigned as treasurer he took the files from the church and left empty cabinets. He denied that anyone came to him after his resignation asking for records which he took from the church. He said although he was, at the time, a deacon of the church at Settler's Way he did not tell Rev Williams when he accepted the position as Pastor of the Coral Road Church. He also said that he had spoken to Rev Williams at his home after Dr Symonette called and told him he had written to Bishop Williams and told him to send Rev Butler to Coral Road. He said Coral Road premises were closed from 1998 to 2005; that when he returned to Coral Road only one or two members returned with him. He denied that when the Settler's Way Church was being built, he understood that the intention was to break away from the Society and said it was stated that there would be one church in two locations.

85. Rev Butler said that while the Society did not earmark money for the building on Settler's Way, they contributed \$160,000.00 thereto. He admitted and agreed that during the construction process, the Church on Settler's Way received many contributions from people as well as raised funds by cookouts. He said he monitored the contributions on a monthly basis; that while his wife was in the Port Authority's Deeding Department when the first conveyance was done, she had nothing to do with getting the conveyance out of the Port Authority's office.

86. In relation to his cheque for \$646.00, Rev Butler said that the fact that his cheque which was written to St John's Cathedral was indorsed to Godfrey R. Williams Ministry was fraudulent. He said that while he had written cheques to St John's Cathedral before, the \$646.00 cheque was the first time he noticed the endorsement to Godfrey R. Williams Ministries. He said he expected the bank to send the cheque back when they noticed the endorsement by Godfrey R. Williams Ministries. Rev Butler said that he was of the view that the third and fourth defendants were taking tithes and offerings intended for St John's and putting them into the third defendant's account without the knowledge or permission of the members. Rev Butler said that while he was treasurer Rev Williams was not a micro manager; that he never interfered with his financial work and left decision-making on financial matters to the finance committee and the treasurer, although, as pastor he had to approve all non-recurring expenses. He said he returned a cabinet containing all the financial records he had and it was a lie to say that the only things in the cabinets were old

tithing envelopes, but no financial records. Rev Butler said “none of the members of the church knew anything about the third defendant; that it was never brought to their attention.”

87. Rev Butler refuted counsel for the third defendant’s suggestions that it was his plan that the Property should end up with the Society in Nassau; or that the fourth defendant was not consulted on the original loan; or that he was not informed when the documents were being signed.

88. On cross-examination by Mr Fernander for the fifth defendant, Rev Butler agreed with counsel that the plaintiff had no fixed deposit account in Grand Bahama “in their name.” He refused to accept that repayment of the loan was the responsibility of the Freeport church and insisted it was the Trustees. When confronted with paragraph 40 of his witness statement in which he stated that Mr Thompson explained that the local church was responsible for the maintenance payments on the loan and on their failure it would be the Incorporated Trustees that would inherit this liability”, Rev Butler responded that the members/Trustees were co-responsible for repayment of the loan

89. On re-examination, Rev Butler said during his and Rev Williams’ meeting with Mr Gray, Mr Gray promised to get back to them and he did so by a letter to Rev Williams requesting drawings for the church to be built; that Rev Williams informed them at a local officer’s meeting during which he said he would pass the letter to Dr Symonette; that later Rev Williams informed them that Dr Symonette said he would also provide drawings, which he did, from Lefleur Architectural in Nassau. However, Rev Butler said, the Freeport group preferred Montgomery Pratt’s drawings and they got further approval from Bishop Symonette to present those drawings to the Port Authority, which they did. He said that he and Rev Williams returned to the Port and Mr Gray’s office where Rev Williams left the drawings with a cover letter, as Mr Gray was not in office at the time. He said that in addition to the letter of 1 November 1988, the second defendant had also on 27 July 1988 published a plan with the name St John’s Particular Church of Native Baptists on the Property and that, he said, was evidence of, and his reason for saying that, the second defendant’s intention was to give the Property to the plaintiff.

90. At the date he filed his witness statement, 23 November 2017, Bishop Carrington Samuel Pinder, was then Bishop, General Superintendent, and Chairman of the Board of the Incorporated Trustees. However, while at the material times he was a member of the Trustee Board, he had no direct involvement in this matter. Indeed, it is accepted that he only filed a witness statement after Dr Hervis Bain passed away. Furthermore, his evidence, for the most part, consisted of a regurgitation of the re-amended statement of claim, references to, and or excerpts from, the Incorporation Act, the 1991 Rules and the correspondence passing between parties – of which he was neither the author nor the addressee and which were referred to by other witnesses or are contained in the agreed bundle of documents.

91. Bishop Pinder said he believed that it was the original intent of the Grand Bahama Port Authority to assist the St John’s Particular Church of Native Baptists in granting land for the purpose of expanding the Native Baptists’ work in the Port Area. However, the “discovery of their attempt to defraud the Incorporated Trustees of the title to the land after we built and paid for the Cathedral, undermined any semblance of sincerity, credibility and good faith on their part”; that it is the intent of the Incorporated Trustees to have this matter resolved as quickly as possible so that “we” can continue to build and expand the Native Baptists traditions; and that it is with “this” in mind that he prays that restitution can be found as “we” trusted a Trustee of the church and he deceived “us”; that “we” thought the fourth defendant was acting for the interest of the church, when all along he was acting in his own self-interest; that if he wanted to leave the church, he could have, and should have left the belongings of the church upon his exit.

92. Under cross-examination by counsel for the fourth defendant, Bishop Pinder said that he has been a Trustee since May 1982; and Superintendent since May 2016; that both he and Rev Williams were Trustees in 1984. He did not recall being present at a meeting of the Trustees in 1984 when Rev Williams informed the Board that there was a need to build a second church in Grand Bahama, although he recalled there were discussions about it; that there were no objections and he had agreed. He said he did not take any steps personally to obtain land in Grand Bahama on which a second church should be built. He recalled seeing the "27 February 1987" letter at some point after the commencement of these proceedings, but could not say exactly when. When asked the basis on which he, in his witness statement, had said that the letter was dated 27 February 1987, Bishop Pinder said that "the date that was on the head of the letter under the signature of Bishop Michael Symonette, Chairman." When referred to the copy letter in the agreed bundle of documents which has Bishop Symonette's signature, but no date, Bishop Pinder said that he had seen two letters, one had a date that was typed in it and one had a date that was signed." Later he said "I saw one with a handwritten date....and the other was typed." On another occasion he said "one mistakenly had a handwritten date and the other typed in." Later, Bishop Pinder, when asked if he was able to say whether the two letters he saw had the same contents he said "one was a follow up with an enclosed plan." When shown the undated letter, and asked to read it, Bishop Pinder said that was not the letter to which he was referring; that the letter he was thinking of was the letter making request for the consideration of five acres. When his attention was drawn to the copy of the same letter with the date handwritten below Bishop Symonette's signature, and asked if that was the letter to which he had referred in his witness statement, he said he was still not sure. He accepted that except for the handwritten date the letters were the same. When asked by counsel for the fourth defendant to identify the language in that letter of a request for five acres of land, Bishop Pinder referred to the last paragraph and when pressed by counsel he said "there must be another communication". He insisted that the letter to which he was referring "specifically requested consideration for five acres." When referred to his statement that he believes it was the original intent of the Port Authority to assist the church in granting "us" land for the purpose of expanding the Native Baptists' work in the Port area, Bishop Pinder said that the basis of his belief was the conveyance that was issued to the plaintiff and which was used as collateral to get \$1,050,000.00 credit facility. When referred to the 1 November 1988 letter, Bishop Pinder said he did not recall seeing it before.

93. On cross-examination by counsel for the first defendant, Bishop Pinder said that the provisions of Article VIII, paragraph B of the Rules were brought to the attention of the first defendant as it should have received a copy of the plaintiff's constitution. Having been shown a copy of the 27 February 1987 letter again, Bishop Pinder accepted that that letter was not addressed to the first defendant. He admitted that he had seen the first conveyance before and said that it did not refer to the second defendant as vendor; that the parties to that document were the first defendant and the plaintiff. He accepted that having regard to his statement that the Trustees became aware of the confirmatory conveyance after these proceedings were commenced means he would have seen the conveyance between 2009 and the date of his witness statement but not prior to 2009. When referred to a letter dated 15 August 2005 addressed to Lady Henrietta St George from the Trustees under the signature of the General Superintendent and Chairman and asked whether his statement was correct, Bishop Pinder responded "That's because we never received it. It was concealed and kept away from us." When pressed about the accuracy of his statement that the Trustees did not become aware of the second conveyance until after 2009, Bishop Pinder said, "It was accurate based on the fact that we never received it. It never came into our possession" and he disagreed with counsel's suggestion that his statement was incorrect. He disagreed that the Trustees became aware of the second conveyance in 2001. He disagreed that Christie Davis & Co represented the Trustees in 2001. He said that the first and second defendants were required to convey the Property to the plaintiff by virtue of the first

conveyance; that there was an agreement for sale made and executed between the first defendant and the plaintiff as well as between the second defendant and the plaintiff. However, he appeared not to have understood the question being posed by counsel for the first defendant as was evident by his response when it was put to him that there was no such document. He said "yes, the first conveyance came from Freeport Commercial and Industrial Limited which was an agreement" and when it was put to him that the first conveyance was not an agreement for sale, he disagreed. Bishop Pinder also disagreed with counsel for the first defendant that his statement that the "first and second defendants were required to convey the Property to the Trustees", was pure speculation on his part. When referred to correspondence between Christie Davis and Mrs Brown, Bishop Pinder disagreed that Davis & Co represented the Trustees. He agreed with counsel that the land was donated and said that while the first defendant received no money for the land, their "return" was the plaintiff's development of the land. However, he also agreed with counsel for the first defendant that any development of land that had been donated was not a benefit to the donor. He agreed that the Trustees never communicated directly with the first defendant. He disagreed with counsel for the first defendant's suggestion that it was not reasonable to assert or suggest that the first defendant perpetrated fraudulent activities in relation to land it intended to give away, albeit in circumstances where it did not hold the title.

94. Bishop Pinder said it was not true to say that the Trustees did not pay for the construction of the church on Settler's Way because, all funds of any unit church are the property of the Incorporated Trustees; that while the Cathedral was dedicated under Bishop Williams' pastorate, Bishop Symonette, Chairman of the Trustees was the officiant; and he disagreed that Bishop Symonette was only an invitee to the dedication service. He said all of the members from the Coral Road church moved or migrated to the church on Settler's Way. He accepted that the unit church has an obligation to pay tithes and that each unit church maintains a separate bank account to conduct operating expenses, a privilege, he says afforded to them by the Constitution. He admitted that he had not seen any funds coming from the Trustees' bank account to pay a unit church's bills. He disagreed with counsel that it was not the intent of the first or second defendant to give or donate land to the plaintiff. He disagreed that the plaintiff's use of fraud in its pleadings was incorrect.

95. Under cross examination by counsel for the second defendant, Bishop Pinder, in response to counsel's question as to when did he first learn that the first defendant did not have title to the Property, said "that would have been after the dedication possibly in 2001, I think. I think it was 2001". TOP 17 December 2020, pages 105 line 17 through page 106 line 3. And in response to counsel's follow-up question: You knew in or about 2001? Bishop Pinder responded: "Yes." He said he first learned about the conveyance to Godfrey R. Williams Ministries "as a result of some search by the then Chairman at the Registry where he found out that the Property was registered in the name of Godfrey R. Williams Ministries". He said he believed the search was done in 2006. He said that the conveyance came to the Incorporated Trustees through Davis & Co, but that he never knew them to have acted for the Trustees. When pressed by counsel if it was possible that Davis & Co acted for the plaintiff, Bishop Pinder said: "No. They were representing The Bank of The Bahamas". He disagreed with counsel for the second defendant's suggestion that there was no attempt to conceal the error with the first conveyance because, he says, the Trustees were not informed or contacted. He disagreed that there was no reasonable basis for his statement that the second defendant perpetrated or participated in any fraud involving the Property and he insisted that Davis & Co being informed was not the Trustees being informed as Christie Davis & Co never acted for the plaintiff.

96. On cross examination by counsel for the third defendant, Bishop Pinder said that the last meeting he recalls seeing Rev Williams in attendance was the May 1991 meeting; that the conveyance and mortgage dated 10 February 1998 were executed in Nassau; that he was made

to understand that the bank through their attorney, Christie Davis & Co, directed them to their office in Nassau with instructions for Dr Bain and Bishop Symonette to have it executed.

97. On cross-examination by counsel for the fifth defendant, Bishop Pinder, when referred to the second amended writ of summons in which the plaintiff alleges that in or about 9 December 2003, the plaintiff found that the third conveyance had been made by Devco ...” refused to accept that the latest that the Trustees became or had knowledge of the third conveyance was 9 December 2003. He said that in his mind he thought it was 2005 that the plaintiff came across the knowledge but based on what was pleaded he agreed that 9 December 2003 was the correct date. He accepted that there was a conveyance of the property from the second defendant to the third defendant. He accepted that the fixed deposit held by the bank was in the name of the local church. He admitted that the Trustees did not repay the mortgage.

98. On re-examination, Bishop Pinder said that the contents of the 4 April 1988 letter were what he was trying to recollect (tabs 168 and 189) When asked what the Incorporated Trustees did to develop the land, Bishop Pinder said: “There was a request from the church through Pastor Godfrey Williams for the Incorporated Trustees to provide a letter of guarantee to pursue financial credit arrangements of M\$1.05 with the intent of completing the construction and furnishing the church on Settler’s Way which the Trustees provided.

99. Mrs Charisse Brown, who, at all material times was legal counsel for the first and second defendants, in her respective witness statements filed 22 and 23 January 2018 stated, inter alia, that she was responsible for, among other things, preparing and reviewing various documents including those for the transfer of land by and to the first and second defendants; that one of the transfers of land to which she had attended in the aforesaid capacity was the purported transfer of the Property by the first defendant to the plaintiff on or about the 10 February 1998; that in or about 1987, the fourth defendant requested from the second defendant the donation of, and the second defendant agreed to donate, a parcel of land for the construction of a church building; that by letter dated 23 September 1997, Christie, Davis & Co informed the Port Authority that they had been instructed by the fifth defendant who had agreed to extend financing to “St John’s Native Baptist Church” to complete construction of a church building on the Property and that title was to be taken in the name of the plaintiff; that Mr Allen at that firm requested details of title to the Property as well as a draft conveyance for perusal. Mrs Brown said that at all material times, it was her understanding that Christie, Davis & Co was acting in the interest of both the fifth defendant and the plaintiff as she was unaware of any other attorney acting on behalf of the plaintiff; and, her communication respecting the transfer of title to the Property to the plaintiff was primarily, if not entirely, with Christie, Davis & Co.

100. She said that by letter dated 30 September 1997, on behalf of the first defendant, she requested that Christie, Davis & Co provide confirmation from the fifth defendant that it had approved financing for the completion of a church building on the Property; that confirmation was received by letter dated 3 October 1997 and, shortly thereafter, on 12 November 1997, Christie, Davis & Co sent a further letter to the first defendant advising that they had completed and approved their title searches for the Property and requesting that the draft conveyance, in the form approved by that firm, be engrossed and forwarded to them to be held in escrow pending completion. In addition, by letter dated 5 January 1998, Christie, Davis & Co also provided the first defendant with a copy of a “Resolution of The Incorporated Trustees of the St John’s Particular Church of Native Baptists in The Bahamas” showing, among other things, that Rev Michael C. Symonette and Rev Dr Hervis L. Bain were the individuals vested with the authority to sign all documents authorized by the plaintiff.

101. Mrs Brown said that further to the representations made by Christie, Davis & Co with respect to the transfer of the Property, in or about January 1998, in her capacity as counsel for

the first defendant, she prepared a deed of conveyance of the Property in favor of the plaintiff and forwarded the same to Christie, Davis & Co on 26 January 1998 for execution by Rev Michael C. Symonette and Rev Dr Hervis L. Bain; that the delivery of the engrossed conveyance to Christie, Davis & Co for execution by the plaintiff was conditional upon an undertaking by that firm to return the same to the first defendant if the loan from the fifth defendant did not materialize. Mrs Brown's evidence is that the first conveyance, duly executed, was, under cover of a letter dated 23 February 1998, forwarded to Christie, Davis & Co on the strict understanding that it was to be used solely as security for the construction loan granted by the fifth defendant to the plaintiff and on the condition that should the said construction loan not be granted, the same was to be returned to the first defendant. Such undertaking, she said, was received from Christie, Davis & Co on or about the 6 March 1998.

102. Mrs Brown said that in or about July 2001, she received instructions from the second defendant's Sales Department to prepare a conveyance for a parcel of land located in the vicinity of the Property; that as part of that transaction, details of title relative to that property were provided to her by the second defendant's Customer Service Department; that upon reviewing the details of title for that property, it was evident that the Property, the subject of this action, was within an area of land owned by the second defendant. She said that, given the proximity of the two parcels of land, that discovery triggered a review of the previous transfer between the first defendant and the plaintiff; and the second defendant discovered that title to the Property was not vested in the first defendant when it was purportedly conveyed the same to the plaintiff.

103. Mrs Brown said that by letter dated 26 July, 2001, she informed Christie, Davis & Co of this inadvertence and in an attempt to rectify the mistake, forwarded to that firm a draft confirmatory conveyance by the second defendant in favour of the plaintiff for review and approval on behalf of the plaintiff; that by letter dated 17 September 2001, Christie, Davis & Co acknowledged receipt of the second defendant's said letter, and returned a copy of the draft confirmatory conveyance marked "approved as amended"; that under cover of a letter dated 24 September 2001, the engrossed confirmatory conveyance was forwarded to Christie, Davis & Co for execution by the plaintiff, as a client of Christie, Davis & Co.

104. Mrs Brown's evidence is that by letter dated 13 November 2002, Nottage, Miller & Co, then counsel for the third and fourth defendants, instructed the second defendant to draw a conveyance of the Property in favour of the third defendant on the basis that it was the fourth defendant who had first approached the second defendant with the request for a donation or gift of land on which to construct a church building. She said that Mr Miller also advised the second defendant that even though the Property was to be granted to the fourth defendant who may have put forward the names of other persons as trustees to hold title, as far as he was aware, a conveyance for the Property had never been done or completed. She said that subsequently, Mr Gray, Vice President of the second defendant, with responsibility for land sales, donation and development, instructed her to attend to having the Property conveyed to the third defendant, a licensee of The Grand Bahama Port Authority, Ltd, nominated by Bishop Williams.

105. Mrs Brown said that as a precursor to calling for the return of the first conveyance and the confirmatory conveyance, by letter dated 3 December 2002, she informed Davis & Co (formerly, Christie, Davis & Co), of the fourth defendant's instructions and inquired as to the status of the confirmatory conveyance to ascertain whether or not the same had been executed. She also inquired as to whether or not the first conveyance was still required as security for the construction loan granted by the fifth defendant because the first and second defendants had received a request from the attorney for the fourth defendant for a conveyance of the Property in favour of the third defendant. She said that a further inquiry in similar terms was forwarded to Davis & Co by letter dated 12 December 2002 because the matter was becoming urgent.

106. According to Mrs Brown, having not received a response from Christie, Davis & Co, in accordance with the instructions of Mr Gray and the fourth defendant, she prepared a deed of conveyance of the Property in favour of the third defendant which was subsequently executed by the second defendant and dated 12 December 2002; that although signed and sealed, that conveyance was not delivered at that time; that it was not until 21 February 2003, (approximately 17 months after delivery of the engrossed confirmatory conveyance and more than two months after the correspondence with Davis & Co in connection therewith) that she received a letter from Davis & Co responding to her letters of 3 and 12 December 2002; that by their response, Davis & Co confirmed that the fifth defendant still held a mortgage over the Property in the name of "St John's Particular [Church of] Native Baptists in The Bahamas" and that the mortgage would need to be satisfied before any action could be taken which would affect the fifth defendant's security interest. However, Mrs Brown said, the confirmatory conveyance was not enclosed with that letter nor has it since been returned to the second defendant, executed or otherwise. Subsequently, she said, under cover of a letter dated 3 September 2003, and at the direction of the third defendant, the third conveyance was released to Graham, Thompson & Co, attorneys for the fifth defendant, in escrow pending the completion of a mortgage granted by the fifth defendant to the third defendant.

107. According to Mrs Brown, to the best of her knowledge, information and belief, obtained by reason of her capacity as legal counsel to the first and second defendants, it was not until on or about 24 August 2005, when by letter of the same date from The St John's Native Baptist Society of Churches to Port Authority, that the second defendant became aware that there was a dispute between the plaintiff and the third defendant regarding the ownership of the Property; that prior to that date, neither the plaintiff, nor any person on its behalf, requested of the second defendant, delivery of a conveyance of the Property in favour of the plaintiff.

108. Under cross examination by counsel for the plaintiff, Mrs. Brown confirmed that the instructions to prepare the first conveyance came from Mr Gray. She said she was advised by Christie Davis & Co that title would be taken in the name of the Trustees rather than in the name of the Coral Road Church; that she did her due diligence to find out who those Trustees were; that she would have asked Christie Davis & Co for information with respect to the Trustees and also as to who would be signing on their behalf. She agreed with counsel that it would not have made sense for the second defendant to give property to someone without a custom's bond or license with the Port Authority and, therefore, unable to carry out construction on the property. She also agreed with counsel for the plaintiff that at the time, the fourth defendant, did not have a license with the Port Authority.

109. Mrs Brown said that prior to issuing the first conveyance, she would have, on behalf of the first defendant, confirmed that the purchaser or grantee had a bond and had the means to build, which, she said, she confirmed with Christie, Davis & Co. She agreed that it is wrong for a person to bring in building materials on another person's bond. When referred to Mr Allen's letter of 23 September 1997 to Mrs Willie Moss, Mrs. Brown said she knew that Christie Davis & Co were acting for the fifth defendant. She said that when the Port Authority was informed by Christie Davis & Co that title was to be taken in the name of the Incorporated Trustees, no one from the first or second defendants objected and said that title should be taken in the name of the fourth defendant. She said she did as instructed by Mr Allen.

110. Mrs. Brown explained that on commercial transactions, if there is a mortgage and the Port Authority knew that the construction funds were going to be advanced by the lender, the Port Authority would issue the fully executed conveyance to the lender. However, she said, the Port Authority would also require an undertaking from the attorney to return the conveyance in the event the construction loan was not forthcoming. She denied being pressured to proceed with the third conveyance without hearing from Mr Allen in connection with the confirmatory conveyance.

111. Mrs Brown admitted that she was instructed to proceed with the third conveyance even though she had not heard back from Mr Allen on the confirmatory conveyance. She said she never contacted the Trustees directly. She admitted having been directed or ordered by Mr Gray to give the Property to the third defendant. She said that if the third defendant did not have a license in 2003, the conveyance would not have been issued to them. When directed to the copy of the license agreement which is dated 1 June 2003, Mrs. Brown conceded that the 12 December 2002 conveyance to the third defendant was issued before that entity had a license or a customs bond. However, she disagreed with counsel for the plaintiff that that made the third defendant's title bad. She denied or disagreed with Mr Maynard's suggestions that the manner in which the first and second defendants dealt with the conveyance was deceitful or fraudulent to the Trustees.

112. When referred to her 12 December 2002 letters to Mr Allen and Mr Miller respectively, Mrs. Brown admitted that she had written them on the same date. However, she denied that the first and second defendants were defrauding the plaintiff. She also denied that they were reckless in neglecting or failing to tell the Trustees of the conveyance to the third defendant.

113. On cross-examination by counsel for the third defendant, Mrs. Brown said that the third conveyance was consistent with the original grant, that is, that the fourth defendant should be the beneficiary of the land. She said that it was never intended by the second defendant that the Property be conveyed to the plaintiff.

114. On re-examination by counsel for the first defendant, Mrs. Brown said the 1 November 1988 letter from Mr Gray to Rev Williams was in the file when she received the file and her initial instructions. She said she understood that the transaction was to be a gift - a donation. When Mrs. Brown was referred to the 23 September 1997 letter from Mr Allen, she said that, to her, the words "our instructions" indicated that Mr Allen had been instructed on behalf of "Godfrey Williams and the church". She said she did not understand the letter to have been written on behalf of the Bank and she agreed with counsel that in her communications with Mr Allen, she understood him to be acting for the Donee/purchaser and the Bank. According to Mrs Brown, the first and second defendants' practice not to issue conveyances to non-licensees of the Port Authority or non-bond holders was an internal requirement of the company. She said that she followed up her 26 July 2001 letter to Mr Allen on 13 December 2001. She said that when she sent that letter, she was of the view that Mr Allen was acting for the church. Similarly with respect to her letter of 24 September 2001 with which she forwarded the confirmatory conveyance to him for execution; and that that letter was followed up with her letter of 7 May 2002. She said that on 3 December 2002 she wrote to Mr Allen of Davis & Co, in which she referenced a telephone conversation which she would have had with Mr Allen and in which she advised him of having received a request from the fourth defendant's then attorney to convey the Property to the third defendant; that she was again writing to Mr Allen in his capacity as attorney for the church.

115. On re-examination by counsel for the second defendant. Mrs Brown said that not having received a response from Mr Allen to her 26 July 2001 letter, she sent a follow-up letter on 13 December 2001; that when Mr Allen returned the draft confirmatory conveyance as having been approved, she believed him to be acting for the church. She said that in relation to the first conveyance and her initial instructions, while she could not recall exactly what Mr Gray had said, her understanding was that it was always intended for the Property to go "Godfrey Williams and his church". When referred to the letter dated 24 September 2001 from herself to Mr Allen, Mrs Brown said that when referring to "your clients" in the letter she meant the "Church" by which "she meant the plaintiff"; that she is familiar with the conveyancing practice among attorneys and in the transactions involving the first and confirmatory conveyances the functions of counsel for the purchaser or grantee were performed by Mr Allen/Christie, Davis & Co/Davis & Co. She said she did not know the stage of the construction of the building on the Property when the second defendant conveyed the Property to the third defendant.

116. W. Albert Gray, a former employee of the second defendant, and who, at all material times, was its vice president with responsibility for land sales, donation and development, testified that he had a good friendship and worked closely with the late Mr Edward St George (now deceased), then Principal and Chairman of the Port Group of Companies and the President of the second defendant; that from his personal and professional dealings with Mr St George, he was aware that Mr St George held the fourth defendant in high regard and was very fond of him; that from time to time and up to the time of his demise, Mr St George sought spiritual guidance from the fourth defendant; that in or about the late 1980s, the fourth defendant, then a member of the plaintiff, , in anticipation of breaking away from the plaintiff, requested from Mr. St. George a donation of land for the construction of a church building; that Mr St George expressly instructed him [Mr Gray] to locate a suitable tract of land to be donated to the fourth defendant and that title thereto was to be transferred to the fourth defendant or to his nominee; that based on those instructions, he identified the Property to the fourth defendant for the construction of the building by the fourth defendant; that the donation was subject to a building commitment and, as such, title to the Property was not to be conveyed until either the construction of the building was completed or the conveyance was required as security for a mortgage to fund the construction of the building.

117. According to Mr Gray, at no time was he contacted by the plaintiff or any person on the plaintiff's behalf regarding a donation of the Property; that prior to the commencement of this action in 2009, he had not seen the aforesaid undated letter or one with the date 27.2.87 handwritten thereon, from Reverend Dr Michael Symonette, addressed to him in his aforesaid capacity.

118. Mr Gray said that at the material time, land donations would only be made to a body licensed by the Port Authority and at the time, the fourth defendant did not hold such license; that title to the Property was, therefore, not to be transferred until the fourth defendant was in receipt of such a license; and that at no time did the fourth defendant or Mr St George inform him that title to the Property was to be transferred to the plaintiff. He said that the Property was "inadvertently purportedly conveyed" by the first defendant to the plaintiff, which was "completely inconsistent with the intention and instructions of Mr St George"; that in the circumstances, he, on the instructions of the late Mr St George, directed the second defendant's in-house attorney to attend to having the Property conveyed to the third defendant, a licensee of the Grand Bahama Port Authority, Ltd, and which had been nominated by the fourth defendant.

119. Mr Gray said that he was aware that the fourth defendant had first approached Mr Edward St George on a personal basis with a request for land; that Mr St George made it clear to him that the land so identified was meant for the fourth defendant personally and that the title was to be taken in the name of the fourth defendant or whatever entity he chose to take title. Mr Gray said that at no time was he contacted by anyone from the St John's Particular Church of Native Baptists/plaintiff and it was his own advice and recommendation (based on the type of structure which the fourth defendant had in mind) that he should be provided with approximately four acres of land.

120. Mr Gray's evidence is that the reason the letter of offer was addressed to the fourth defendant at St John's Church was "probably because the second defendant could only make offers to entities licensed by the Port Authority and at the time the third defendant was not yet incorporated; and because there was a building commitment attached to the gift of the Property to the fourth defendant the conveyance was not expected to be done until the church building was completed or until a mortgage was taken for completion. However, he said, the overriding consideration was that the land was intended as a gift to the fourth defendant.

121. Mr Gray said that he became personally aware of certain litigation in Nassau between the plaintiff and other churches of the Society around the same time, and it was made clear to him by the late Mr St George that under no circumstances should the plaintiff benefit from the gift. He said he was personally surprised to discover that at some point after the initial gift was made that a conveyance (albeit one generated by the wrong company in the Port Group of Companies) was made to the plaintiff, as that was never the intent of the late Mr St George nor the Executives of the Port Group of Companies. He said that when the matter came to his attention he had no difficulty in advising or instructing their in-house attorney to effect a valid conveyance to the third defendant which was by that time a duly licensed entity of the Port Authority. He said that at no time did the fourth defendant advise him that he wanted title to be taken in the name of the plaintiff and that is also why when the error was discovered, he, along with the late Mr St George and the other members of the Executive team, had no difficulty in ensuring that the title to the Property on which the Cathedral was built was vested in the party to whom it was intended – the fourth defendant or as he directed; that it was the fourth defendant’s choice that the title be taken in the name of the third defendant; and he supported the fourth defendant’s right to do so.

122. Under cross-examination by counsel for the plaintiff, Mr Gray said he received no communication from the Trustees/plaintiff in relation to the donation of land; that he did not know the fourth defendant was a Trustee of the plaintiff in 1987 nor had he seen the undated letter which also appears elsewhere with the date, 27 February 1987, handwritten thereon. He did not accept that in 1998 when the Cathedral was dedicated that he knew the fourth defendant was a Trustee nor did he know in 2002 that he had been a Trustee. When referred to the letter dated 23 September 1997 from Mr Allen to Mrs Moss, Mr Gray said he had not seen it before. He also said he had not seen a copy of the Incorporation Act or the provision stating that the plaintiff owns all real and personal property relating to the Society. Mr Gray said he did not recall seeing the letter dated 4 April 1988 from Bishop Symonette; nor did he recall acknowledging the same. When referred to a “received” stamp on the letter, Mr Gray said he did not stamp received letters. He said he did recall delivering an appraisal report (interim) to the Trustees and said it would have been prepared by the surveyor and delivered to the Port Authority’s legal department; that to his knowledge it would not have been delivered to the Trustees. Mr Gray said that he had never met Bishop Symonette and did not know him; that he did not recall knowing of the Society. He denied that he was dealing surreptitiously with the fourth defendant regarding the Property. He denied that he deceived the plaintiff. He said that he had no dealings with the matter after instructions were sent to the Port Authority’s Legal Department and he did not know that the fourth defendant was using the plaintiff’s bond to import building materials. He also said that he was not aware that the first and second defendants’ legal counsel, Mrs Brown, had written to counsel for the fifth defendant to say that the first defendant did not have title to the Property. When shown the letter dated 26 July 2001 from Mrs Brown to Mr Allen, Mr Gray said that by that date he was aware of the plaintiff; but not prior thereto. He said he was aware that it was intended to replace the first conveyance with the confirmatory conveyance, but he did not recall the letter dated 13 November 2002. He denied being pressured by Mr Jethro Miller to have the Property given to the fourth defendant; and he admitted that he never contacted the Trustees to get their consent to convey the Property to the fourth defendant. He denied that the second defendant was dishonest.

123. On cross-examination by counsel for the third defendant, Mr Gray said it was always his understanding that the Property was intended for the fourth defendant and no one else; that those were the instructions issued to him by the late Mr St George; and he stood by the statement in his witness statement that the late Mr St George instructed him to take a suitable tract of land to be donated to the fourth defendant and that title was to be transferred to him or to his nominee. He said that while he was Vice President of the second defendant he did not handle the legal matters with respect to giving effect to a transfer of property. As for why he, in his letter of 1 November 1988, referred to the late Sir Jack, Mr Gray explained that Sir Jack was Chairman of

the second defendant and, as a matter of policy, if land was to be donated from the second defendant the records would reflect that the late Sir Jack gave the instructions. However, he said that in reality the instructions came from the late Mr St George who ran the entire company.

124. Bishop Godfrey Williams' evidence is that he became a member of the Society in about 1979. He became Pastor of the Coral Road Church in 1982, and was made one of the 14 Trustees of the Society. He said he became more familiar with the manner in which the Society functioned only after he was made a Trustee. That the first significant change that occurred shortly thereafter was the decision by the Society to appoint then Rev Symonette Superintendent for life, a decision with which, he said he disagreed, but was overruled. He said he then wrote to Rev Symonette asking to be removed from the list of Trustees.

125. According to Bishop Williams, following the commencement of court actions by the Society against certain churches in New Providence, particularly the actions against the Annex and Mt. Zion churches, he became aware of the proposal by the Society to redo its Constitution. He said he asked Rev Symonette if he had removed his name as a Trustee and Symonette's response was "No: If I go down we all go down"; that, as a result, when the Constitution was revised his name still appeared as one of the Trustees, notwithstanding he was kept out of the loop of the decision making in the Society. He said it became increasingly clear to him that the position he took with reference to removal placed him in disfavor with Bishop Symonette.

126. Bishop Williams said that his work at the Coral Road Church as well as the membership grew by large measure; that there was a major upheaval in the Coral Road Church; that one source of disfavor by Bishop Symonette resulted from Bishop Williams' decision to bring back certain founding members of the Coral Road Church, who had opposed Bishop Symonette's action against the Annex Church and who had been earlier expelled by Bishop Symonette; that that expulsion became the basis of a court action by those members with the Coral Road Church against the plaintiff and Bishop Symonette in Action No 243 of 1981.

127. Bishop Williams' evidence is that when the decision was made by the Society to elect a permanent pastor for the Coral Road Church, the election was convened on 12 September 1982 by Bishop Symonette who asked him to remove his name and not to vote in the election. He said that Bishop Symonette openly expressed the view that someone else was his choice. Nevertheless, Rev Williams was elected and once the vote count was completed, Bishop Symonette "banged the gavel on the table and in loud voice shouted, in the presence of the members, 'You all want Godfrey Williams. This what you all want. You have him but don't come back to me for a pastor' or words to that effect" as he completed the election process. Bishop Williams said that Bishop Symonette never congratulated him on his election. He said it was only at the dedication of the sanctuary built on Coral Road that Symonette proclaimed "I am now convinced that it was God's work that you was supposed to be the Pastor of this church". The fourth defendant said that the membership continued to grow and the sanctuary on Coral Road became too small to accommodate them; that he approached Bishop Symonette and the Society for financial assistance in the construction of a larger sanctuary, but he was "instantly rebuffed" without the request being canvassed by the Society and told bluntly "If you can't handle it leave it alone".

128. Bishop Williams' evidence is that undeterred by that rejection, he discussed with key members of his then support group to devise a plan by which he could obtain their support to pursue the construction of a larger more comfortable edifice on the Coral Road location. Ultimately, he along with the late Wally Robinson and then Deacon Harrison Butler decided to use their personal properties as security for a loan from the Bank of Montreal (as it then was) sufficient to build the second building which now houses the St John's Native Baptist Church. He said that he nor Wally Robinson was ever compensated for the use of their properties to support

the financing of the construction although the loans were eventually satisfied by the Coral Road Church and their properties released from the bank.

129. Bishop Williams said that in or about 1987 the congregation had outgrown, or was rapidly outgrowing, the then recently built sanctuary on Coral Road. He said that he, while still listed as a Trustee, approached the Society and Bishop Symonette with his "vision" to build a Cathedral. He said he was again rebuffed and told in clearest terms that the Society would not support such a venture. He said it was about that time that he was coming to the conclusion that if the Society could not support the development of such a major undertaking, for an increasing number of persons attracted to the ministry under his leadership, he would have to undertake the execution of his vision alone, if necessary.

130. Bishop Williams said that as a former employee of Freeport Power and a friend of the late Mr St George and other principals of the Port Group of Companies he had a substantial amount of goodwill with his former employers; that in 1988 he approached the late Mr St George about the possibility of locating and securing sufficient land to develop the Cathedral; that he was directed to meet with Mr Albert Gray to seek and select a suitable location; that the Fairfield tract was selected and the matter proceeded. He said that he, along with certain key members of his support group, aggressively developed and carried out fundraising events on a weekly basis and those efforts produced substantial funds which, along with donations and tithes from supporters, soon allowed the construction to proceed apace. According to Bishop Williams, there was, no input or involvement from the Society either in the initial negotiations or in the construction of the Cathedral. He said it became clear to him that he was not going to continue to be a member of, or associated with, the Society; that the only member of his group whom he then trusted to handle certain financial matter was his deacon, Harrison Butler; that when he settled on the land with Mr Gray he gave him names of persons whom he was considering appointing as trustees; that, he later decided instead to incorporate the third defendant as a non-profit company to take title to the Property. However, he said, as he had no bond, the initial letter of request for the property to the Port Group was put on the Coral Road Church's letterhead.

131. Bishop Williams said that the Port Group gave the Property subject to a building commitment which meant, as far as he was aware, he would only obtain the final conveyance when the Cathedral was completed. He said that by the time the construction of the Cathedral was on the way he and his supporters had accumulated approximately half a million dollars which, by his understanding, was going to be held by their bank as security while construction proceeded from money which his group was able to continue to receive from fundraising or other contributions. He said that the construction took several years to complete and attracted additional costs occasioned by changes or modification of roof or other designs based on his vision.

132. Bishop Williams said that in 1997 he convened a meeting with his members of the planned Cathedral and advised them of the firm position that the conveyance of the Property "must never end up" in the name of the plaintiff. He said all members agreed with the position that when the completion of construction was reached the Property would be owned by the members through a vehicle he would establish or incorporate; that the only person holding a different view was Harrison Butler whom, he said, he trusted to attend to the financial matters including banking and payments for supplies and work in process. Bishop Williams said that he did not, at the time, think that Harrison Butler would betray his confidence despite his lone objection or reservation to the exclusion of the plaintiff having any interest in the Cathedral. However, he said, his research later showed "conclusively that it was Harrison Butler, aided by his then wife who was employed in the deeding department of the Port Group, who procured a conveyance in the name of the plaintiff in 1998, in spite of the decision of the members as reflected in the minutes of the August 1997 meeting".

133. Bishop Williams said that by 1998 the building on Settler's Way was partially completed to a point to allow for its dedication; that he and his group had, by that time, become affiliated with Full Gospel Baptist Fellowship headed by Neil Ellis out of Nassau and were not associated with the plaintiff as claimed. He said that at the dedication Bishop Symonette attended by invitation and not as a person presiding over its dedication as, he said, that role was fulfilled by Bishop Neil Ellis.

134. The fourth defendant said that in late 1999 to early 2000 he began negotiating the purchase of Sunland Lutheran School with the intent that he would secure a loan sufficient to provide additional funding for improvements to the Cathedral and for the purchase of Sunland Lutheran School. He said he had engaged the firm of Nottage, Miller to incorporate the third defendant as the entity he decided to establish to hold title to both the school and the Cathedral; and he assumed that as the Cathedral was completed, under the building commitment with the Port Group, it was time to finally secure the conveyance.

135. According to Bishop Williams, it was only when he attended a meeting with Mr George Thompson at the fifth defendant bank along with his then attorney, Mr Miller, to discuss financing of the two projects that the church's files were pulled and both Mr Thompson and he, to his "absolute shock and horror, discovered that a conveyance had been procured from the second defendant to the plaintiff". He said he immediately sought to discover how such an event happened without his knowledge and absolutely contrary to the condition imposed by the Port Group after it offered the Property to him in 1988. He said he also discovered that the conveyance was executed by Dr Bain and Bishop Symonette even though neither of those men had met with him or discussed the same with him or travelled to Freeport to complete the transaction. Bishop Williams said that he discovered that the firm of Christie, Davis & Co, "acting for the bank" were "led by Harrison Butler to complete the conveyance". He said that that discovery became the earliest "proof of betrayal" since "none of this" was brought to his attention, even though he was the person carrying out the project; that it was about that time that he also discovered that the conveyance to the plaintiff was invalid and so the "corrected" conveyance was made to the third defendant as was the intent when the gift was made.

136. Bishop Williams said that he did not agree that the third defendant held the Property in trust for the plaintiff. He said that the loan from the fifth defendant in the name of the plaintiff was repaid by the third defendant, even though the third defendant had no legal obligation to pay the same, out of a loan given by the fifth defendant to assist in the purchase of the Sunland Lutheran School (now Sunland Baptist Academy).

137. Bishop Williams said that despite his feeling of initial betrayal by Harrison Butler, once the correction of the title to the third defendant was made and the 1998 loan by the fifth defendant paid off, the third defendant since 2000 expended thousands more to bring the Cathedral to its present improved and expanded state. He said he was of the impression that Harrison Butler was comfortable with his ongoing involvement and was operating in the interest of the group, which by 1999 had completely disassociated from the plaintiff when the Cathedral would have made its last contribution to the plaintiff. He said that as it had been his practice to allow the treasurer to operate without interference he was "first" surprised by the conduct of Harrison Butler when, on an occasion in 1997, Harrison Butler (without explanation) stopped issuing his regular paychecks; that, on the death of Rev Williams' mother in March 2005 he [Rev Williams] was again shocked to read an article in the Freeport News dated 7 March 2005 announcing that Harrison Butler had been appointed as Pastor of the Coral Road Church, Mr Butler having on the day before, Sunday, 6 March 2005, helped to serve the Lord Supper at the Cathedral.

138. Bishop Williams' evidence is that there has been no relationship between the Cathedral and the Society since 1999; that although the general conference is held in May of every year,

the last time the Cathedral was notified, or invited to participate in the general conference was May 1999 and Bishop Symonette who, as Bishop, needs no invitation, has not visited the Cathedral since the dedication in 1998. According to Bishop Williams, the plaintiff has not requested tithes from the Cathedral since May 1999 nor has the plaintiff put any monies into the Cathedral at any time. He said that the Cathedral registered the church for the May 1999 conference but not the members and a letter was sent to the plaintiff indicating that the Cathedral would not be paying dues for the 1998/1999 fiscal year.

139. Bishop Williams said that the plaintiff has never been involved in the operation of the Cathedral and the Cathedral was never listed as one of the plaintiff's members/unit churches in any of its Constitutions. He said that Bishop Symonette has not given any leadership guidance in any form whether spiritual, financial or otherwise as General Superintendent. According to Bishop Williams, Bishop Symonette did not perform the 2006 ordination of ministers and deacons for the Cathedral; that the last time he performed such ordination for the Cathedral was in Nassau in May 1992. He said that another time Bishop Symonette publicly showed that he had no jurisdiction over Freeport was when a minister of the Society from South Andros, died in Freeport, and she had to be funeralized at another church by her children because Bishop Symonette claimed he did not have a church in Freeport to use for her funeral.

140. Bishop Williams said that prior to the commencement of this action he had not been notified of any dispute or query that the plaintiff may have against the Cathedral by the Advisory Committee, which is the protocol documented by Article IX E of their Constitution.

141. Bishop Williams' evidence is that contrary to any allegation or assertion by Harrison Butler or Bishop Symonette from the date of the Executive Board meeting held at the Cathedral in 1997 there can and will be no doubt that the Property was committed to be conveyed to him or as he directed to an entity created by him for the benefit of his members and to no other person or entity owned or controlled by the plaintiff. He said that he verily believed the plaintiff sat intentionally on its hands and waited until the first stage of the Cathedral was completed doing nothing to disclose its shameful conduct in diverting the Property to it only to discover that by some cruel irony, an error was made, and their conveyance turned out to be invalid in any case; that since that time millions of dollars have been spent on the development and expansion of the Cathedral.

142. Under cross-examination by counsel for the plaintiff, Bishop Williams said that he became a member of the St John's Particular Church of Native Baptists in 1979; that between 1979 and 1982 Bishop Symonette came to Freeport from time to time and during that time Bishop Symonette also signed on the Coral Road Church's bank account at Barclays Bank; that he never signed on the church's account at Bank of Montreal or Bank of The Bahamas; that when he, the fourth defendant, was appointed Trustee in 1982, he did not know how the Trustees functioned. He agreed that according to the Incorporation Act, the Trustees are bound and governed by its terms. He agreed with counsel for the plaintiff that as a Trustee in 1982 he was authorized to take in land and money and manage them for the benefit of the Society and that when a Trustee left the Society, trust assets remain in the Society. He said he asked the Trustees' permission to obtain financial assistance for a larger sanctuary for the Coral Road Church, but it was denied. When asked by Mr Maynard, whether, since he was going to go ahead with his vision apart from the Society, he should not have left the Trustees at that time, Rev Williams responded "I was gone". He insisted that his name was still on the list of Trustees because Bishop Symonette told him "If I go down, you go down"; that Bishop Symonette kept his name there on purpose; that before 1988, he had already written a letter to Bishop Symonette asking to be removed as a trustee.

143. When asked if he was conning the Trustees in 1988, Rev Williams said "Yes I was." However, when it was suggested to him that he was using the Society/Trustees to build the

Cathedral, Bishop Williams responded: "I was not using the Trustees, sir, because the Trustees did not have one dollar."

144. Bishop Williams said as far as he was concerned Christie Davis & Co were acting for the bank. He said he did not know that Harrison Butler never went to Christie Davis & Co regarding the Cathedral. When it was suggested that he deceived the Trustees for his own gain from 1988 to 2002 when he got the second defendant to convey the Property to the third defendant, Rev Williams said "No, sir. I disagree". He said that when he approached Mr St George to secure land to develop the Cathedral, he was not doing it for the Trustees, but for the growth of the membership; that the Property was never supposed to be in the hands of the Trustees.

145. When asked if he used the Trustees' bond to import building materials for the Cathedral, Bishop Williams responded: "I disagree." However, when referred to Mr Butler's evidence that when they engaged in purchasing the supplies for the Church, it was under the existing license of the St John's Particular Church of Native Baptist's bond, Bishop Williams responded "yes, that is correct." Then, in response to Mr Maynard question as to Mr Butler's statement that he utilized the bond of the trustees, Bishop Williams responded: "for the local church." And, when pressed by counsel for the plaintiff as to whether he knew that the materials for the construction of the Cathedral were imported under the plaintiff's bond, Rev Williams said: "I disagree, because I personally cannot trust Harrison Butler's witness statement". Later Bishop Williams said that he accepted what Rev Butler said in his witness statement [i.e. that the materials were purchased under the plaintiff's bond] and he agreed that some of the materials used in the construction of the Cathedral were brought in under the plaintiff's bond. The fourth defendant disagreed with counsel for the plaintiff's suggestion that he never told the Trustees that he was using their bond to import materials for the construction of the Cathedral. He disagreed with counsel's suggestion that he was lying when he said that he informed the Trustees of his use of their bond. However, later he said he had not informed the Trustees of his use of their bond. He disagreed that he was dishonest in not informing the Trustees that he was using their bond.

146. When referred to the letter dated 31 July 1987 and asked whether the letter indicated that the Trustees had given a 4-year tax exemption for the purpose of building the Cathedral, Rev Williams said he disagreed, because "this is the money that was raised by the local church". He admitted that he wrote to Bishop Symonette to thank him for the tax exemption and admitted that he accounted for those funds for the year ending April 1992 in the sum of \$232,590.05 and indicated the Coral Road Church would pay the Society \$232,590.05. He denied that those funds were exempted by the Trustees for the purpose of supporting construction of the Cathedral, because he said, the local church raised the money and not the Society. When asked whether he received an exemption of \$160,997.00 from the tithes due to the Society, Rev Williams said he disagreed. He insisted that the Trustees were not involved financially in the construction of the Cathedral. He said that the funds collected by his supporters were held in the Coral Road Church's bank account. He accepted that the Coral Road Church was not a legal entity and that as such the local church could not hold title to Property. While he initially disagreed that the property on Coral Road was owned by the Trustees and said that the building was owned by himself, Wally Robinson and Harrison Butler, who mortgaged their personal properties to construct the extension to the original building, he subsequently agreed with counsel for the plaintiff that the Trustees own the property on Coral Road. However, the fourth defendant disagreed with counsel for the plaintiff's suggestion that any moneys raised for the construction of the church building on Settler's Way were being raised for and on behalf of the Society. He denied that he intended to exploit the Trustees. He denied that he intentionally breached his duties as a Trustee. He denied having been warned by members of the executive committee of the Coral Road Church against proceeding in the way he intended regarding the Cathedral; that there were questions for clarification, not warnings. He disagreed that he was conning the executive committee. He

disagreed that he was “being warned that he was on the wrong path of iniquities of wickedness”; and not to “engage in skullduggery as he was doing.” He denied that he was being told to be careful of his “wicked, conniving scam”. He disagreed that he was scamming the Trustees or the members of the Coral Road Church.

147. Bishop Williams said that during the construction of the Cathedral there was a building committee of which he was Chairman. He disagreed counsel for the plaintiff’s suggestions that: (i) the contractor merely made a list of items to be imported, but did not import the materials for the building of the Cathedral; (ii) all materials imported for the Cathedral were brought in under the Trustee’s licensing bond; (iii) he was lying when he said the contractor imported materials. However, he then accepted as correct that he used the Trustees’ licensing bond for the construction of the Cathedral because he did not have one of his own until 2003. He said he did not recall being advised that if he wanted to leave, he ought to leave the Trustees’ money and property behind. He denied counsel’s suggestion that the minutes of the 7 August 1997 meeting showed “skullduggery, corruption, and deception”, on his part, to take the Cathedral and the Trustees’ money. He denied counsel’s suggestion that he continued “his deception” during the dedication of the Cathedral in 1998. He disagreed with counsel’s suggestion that the Cathedral belonged to the Trustees. He admitted that at the time he became affiliated with/joined the Full Gospel Baptist Fellowship organization, he was still being paid by the St John’s Coral Road Church. He said that both Bishops Pinder and Symonette were also part of the Full Gospel Fellowship. However, he said he did not inform Bishop Symonette or the Trustees that he had joined the Full Gospel Fellowship. He said he was not lying about finding out about the first conveyance from George Thompson.

148. The following exchange took place between counsel for the plaintiff (Q) and the fourth defendant (A) in relation to Mr Miller’s 13 November 2002 letter:

Q. When this letter was written, 13th November, 2002, you realized that the Trustees had a conveyance from FCIL and that wasn’t a part of your con game, isn’t that correct, sir?

A. I disagree, sir.

Q. Having realized that your con game was falling apart, Albert Gray helped you to put your game back together again, isn’t that what you were asking him?

A. I disagree, sir. The conveyance was supposed to be given after the completion of the cathedral.

Q. Therefore, I suggest to you that Albert Gray facilitated a conveyance to Godfrey Ministries instead of the Trustees? Any comment, sir? You disagree with that?

A. It was always meant for Godfrey Ministries or whoever he chooses.

149. Rev Williams said that the Trustees never had a mortgage and when counsel for the plaintiff pointed out that the Trustees signed the mortgage for \$1.05 million, Bishop Williams’ responded: “and never paid a cent.” He insisted it was the local church that had the mortgage. When asked if he knew “You can’t get a mortgage without a conveyance”? Bishop Williams said, “I agree.” However, he insisted that he found out about the first conveyance while in George Thompson’s office. He said he did not know about the first conveyance at the date of his February 1999 letter in which he wrote to Mr Thompson advising that he wanted to “drawdown the full amount of \$1,050,000.” He said he knew about a mortgage; that his accountant wrote the letter. He denied that he plotted with the fifth defendant to get a loan for the Cathedral and Sunland Lutheran School. He denied having instructed counsel to secure a conveyance from the second defendant before he went to the fifth defendant. He agreed that the conveyance to the third

defendant was granted before that company had a license and bond. He disagreed that he conspired with the late Mr St George to acquire the Cathedral for himself or his own entity. He denied having plotted with others to acquire the Cathedral. He disagreed that he breached his duties as a former Trustee and insisted he did not take any property for himself because it was always meant for him. He denied that he ran a “massive fraud” against the Trustees.

150. On cross examination by counsel for the first defendant, Bishop Williams said he had no training with respect to serving as a trustee at the time he was appointed; that the plaintiff provided him with no training; that he was just placed on the Board and told he was a Trustee; that he became more familiar with the manner in which the Society functioned only after he joined and was made a Trustee; that prior to being appointed a Trustee he had never served as a director of a company or any organization; that this was his first time holding such an office; that he had asked Bishop Symonette to remove him from the Trustee Board after he refused to sign a letter approving Bishop Symonette’s appointment as Superintendent for life. He said although he asked on two occasions to be removed as trustee, his request was denied. When asked why he did not just walk away, Bishop Williams said “I guess because of my love for the people and I know my assignment was souls, which was important. I stayed and shepherded that flock because they didn’t have a pastor, and they used to have pastors coming every other Sunday to preach”; that he just had to stay with the people in spite of the opposition; that he decided that the construction of the Cathedral was something that could be done separate and apart from the Society; that that was the second “go round” because they were rapidly outgrowing the church on Coral Road; that he was told by Bishop Symonette that if he could not build it to leave it alone, so he and the members of the Coral Road Church resorted to “cookouts, pledges, and everything”.

151. When referred to Article VIII B of the 1991 Rules, Rev Williams said that he was not familiar with any rule that said that anything by way of a gift coming into the hands of a Trustee must be transferred or turned over to the plaintiff; nor was he told about any such rule by the Trustees; that when Mr St George agreed to give the Property to him, he did not understand that he had to turn it over to the Trustees. When referred to Article VIII J of the Rules, Rev Williams said that he had no orders from the Trustees saying he could not keep those accounts and or keep the money in those accounts since 1991. When counsel referred the fourth defendant to Rev Butler’s statement and the 15 February 1990 financial statements exhibited thereto which predated the 1991 rules, he said he recalled that a building fund account was set up and that it was into that account that funds received from fundraising events, donations and tithes were deposited. He said that none of those funds came from the plaintiff or Bishop Symonette; that they had three accounts relating to the building funds. He said the 7 August 1997 minutes were not adopted by any executive board as approved as accurate or as representing the true statement of everything said in that meeting, at which more than twenty persons were present.

152. In reference to the 16 September 1997 Resolution of the Trustees, Rev Williams said he was not present when the Resolution was passed nor was he aware of its passage or why he was excluded from the meeting. He said that the local church paid off the \$1.05 million; that the proceeds of the loan to the third defendant paid off the debt by the plaintiff to the fifth defendant.

153. Under cross examination by counsel for the second defendant, Rev Williams said he had put forward the name of the plaintiff before the third defendant was incorporated. That when the second defendant communicated the intention to make the donation of the Property to him or his nominee initially he would have put forward the name of the plaintiff; and that it was he, or through his attorney, who requested the second defendant to issue a conveyance of the Property to the third defendant.

154. Under cross-examination by counsel for the fifth defendant, Rev Williams said that the purpose of the \$1.05 million was to complete construction of the Cathedral and that the facility

letter was signed by him as pastor, although a copy of that letter included amongst the agreed bundle of documents does not contain his signature. He said that the document was eventually signed by him in order to facilitate the loan. He agreed with counsel for the fifth defendant that that mortgage was paid off by the fixed deposit and the balance paid by the third defendant - \$500,000.00 by the former and \$496,000.00 by the latter. He said that in 2002 he was still a signatory on the account of the Coral Road Church.

155. On re-examination, Rev Williams said he learnt about the first conveyance when he went to secure a mortgage to purchase the school.

156. Mr David T. McPhee, a former member of the Coral Road Church, which he joined in 1978, and a current member of the Cathedral, said that he served as its Financial Secretary and was present at a Board meeting in which the fourth defendant informed the members of his plans to pull out of the Society and to construct a Cathedral; that the fourth defendant also informed them that he went to the Port Authority Group of Companies to solicit land for the Cathedral; that at that meeting the fourth defendant told them that the Port Authority said specifically that they are not going to give any land to Bishop Symonette or the plaintiff because Bishop Symonette "like to take churches to court – referring to the Annex Baptist in Nassau". Mr McPhee said that in that meeting the fourth defendant also stated that in order for him to receive the property he had to create an entity by giving a few of his members' names to receive the property; that Deacon Harrison Butler, the Treasurer, who was also at that meeting, strongly objected. Mr McPhee said that he supported the fourth defendant in all of his efforts to pull away from the Society and he supported his efforts in building the Cathedral.

157. Under cross-examination by counsel for the plaintiff, Mr McPhee said he stopped being Financial Secretary of the Coral Road Church after they "disconnected" from that church, but he could not recall the date.

158. Annamae Burrows, a former employee of the fifth defendant, was, at all material times employed as a Manager in the Loans Department of the fifth defendant's Freeport Branch. Mrs Burrows stated that on or about 2 September 1997, St John's Particular Church of Native Baptists and St John's Native Baptist Church (Freeport) executed a mortgage commitment letter in favour of the fifth defendant; that pursuant thereto the fifth defendant advanced the sum of B\$1,050,000.00 to St John's Church and/or the Trustees as borrowers; that the loan was secured by a fixed deposit of B\$500,000.00 in the name of St John's Church, and a charge over the Property; that the said commitment letter was executed by Mr George Thompson, on behalf of the Bank, Rev Dr Michael Symonette and Rev Dr Hervis Bain, on behalf of the Trustees, and by the fourth defendant, the late Mrs. Wally Robinson and Mr Harrison Butler, on behalf of St John's Church; that the fifth defendant instructed Davis & Co to prepare the first demand legal mortgage and that Mr Allen was the attorney with carriage of those instructions; that on or around 10 February 1998, the mortgage was executed by the Trustees as mortgagor in favour of the fifth defendant; and in an opinion dated 12 February 1998, Davis & Co advised the fifth defendant that the title vested in the Trustees was good and marketable.

159. Mrs Burrows said that on or around December 2002, the fourth defendant sought financing from the fifth defendant to facilitate his acquisition of Sunland Lutheran School. That on or around 25 March, 2003, she met with the fourth defendant and officers of St John's Church along with their attorney, Mr Jethro Miller, who informed the fifth defendant that the Property had not been effectively conveyed to the plaintiff by the vendor in that, the first conveyance dated 10 February 1998 was made between the first defendant and the plaintiff, whereas, the legal owner and correct vendor of the Property was the second defendant. She said that the fifth defendant's primary concern was curing its vulnerability in the mortgage transaction and that on 25 March 2003, she wrote to Mr Allen of Davis & Co seeking his advice on how the matter was to be rectified; that in

or around early April 2003, a further meeting was held with Mr Miller, the fourth defendant and officers of St John's Church; that the fifth defendant was advised that a new conveyance had been executed by the second defendant in favour of the third defendant in order to correct the error. She said that the fourth defendant and the said officers acknowledged the outstanding debt owing under the loan in the name of the borrowers and informed the fifth defendant that they were prepared to satisfy the borrowers' debt to the fifth defendant. She said that the fourth defendant proposed that the fifth defendant extend a loan to the third defendant, part of which proceeds would be utilized to pay off the then unsecured loan in the name of the borrowers and in turn, the third defendant would grant the fifth defendant a proper charge, by way of mortgage, over the Property.

160. Mrs Burrows said that Mr Allen responded to her said 25 March 2003 letter on 15 May 2003, with which he forwarded a copy of an earlier letter dated 21 February 2003 which had been sent by him to Mrs. Brown of the second defendant, in which he confirmed that the fifth defendant held the mortgage over the Property in the name of the Trustees and advised that the mortgage would have to be satisfied before any action affecting the security could be taken. She said that prior to Mr Allen's 15 May 2003 letter, the fifth defendant had not been aware of his correspondence with the second defendant; that she responded to Mr Allen by letter dated 16 June 2003 and advised him that the fifth defendant's intention was to claim against Davis & Co's professional indemnity insurance should the matter not be resolved satisfactorily; that on 11 August 2003, the fifth defendant approved a loan to the third defendant for an aggregate sum of B\$1,991,000.00 for the following facilities: (i) B\$986,000.00 for satisfying debts owing in the name of St John's Church; (ii) B\$1,000,000.00 to assist with the purchase of the school; and (iii) B\$5,000.00 to assist with duty on imports; that on 26 September 2003, a debenture and legal mortgage in the amount of B\$1,550,000.00 was issued by the third defendant in favour of the fifth defendant to secure the advances made in accordance with the said credit facilities; of that sum, B\$400,000.00 were used to repay the then existing loan, and B\$1,150,000.00 facilitated the purchase of the school. Subsequently, she said, in accordance with the credit facilities, the monies advanced on the 1998 mortgage were repaid by the third defendant to the fifth defendant and on 8 December 2003, the fifth defendant executed a satisfaction of that mortgage.

161. Under cross-examination by counsel for the plaintiff, Mrs. Burrows said that the account at the fifth defendant was in the name of St John's Native Baptist Church, Freeport; that she regarded the Trustees to be in charge of the local church. She agreed with counsel for the plaintiff that the fifth defendant is obligated to inform its customers of changes in any conditions involving their accounts. However, she said, she did not recall whether the fifth defendant's letter dated 25 October 2002 was brought to the attention of the Trustees. She denied that the plaintiff was intentionally excluded by the fifth defendant when it ought to have been included by them. She also denied that the fifth defendant recklessly excluded the plaintiff and defrauded the plaintiff. She said that when the fourth defendant spoke to her about wanting to purchase Sunland Lutheran School, she did not contact the plaintiff. She agreed that Bishop Symonette and Dr Bain as Trustees [and the persons who signed the mortgage] were clients of the bank. She said she did not question the fourth defendant as to whether he was acting without the knowledge of the plaintiff, because, the fourth defendant was the key person in Grand Bahama and Pastor of the local church; that the fixed deposit was not a part of the subsequent commitment with the fourth defendant; that the sum of \$500,000.00 held on that fixed deposit was applied to the loan secured by the 1998 mortgage; that the 11 August 2003 letter was also not disclosed to the plaintiff as it was not addressed to them; that the mortgage was not paid off by the plaintiff but by the third defendant which used the \$500,000.00 to do so. She said she did not recall the bank advising the plaintiff that the mortgage had been paid off or that funds from the loan extended to the third defendant were also used to pay off the 1998 loan.

162. Mrs Burrows denied or disagreed with counsel for the plaintiff's suggestions that: (i) the plaintiff's bank account was replaced by the fifth defendant by the account for the third defendant; (ii) the fifth defendant's failure to inform the plaintiff that the 1998 mortgage had been satisfied was intentional and intended to deceive the plaintiff; (iii) the fifth defendant was reckless in dealing with the plaintiff's affairs between 1998 and 2003; (iv) the fifth defendant defrauded the plaintiff; and (v) the fifth defendant was reckless as to the loss and damage caused to the plaintiff as a result of the transactions between 1998 and 2003.

163. On cross-examination by counsel for the first defendant, Mrs. Burrows said that monies advanced by the fifth defendant to purchase the school were also secured by a mortgage over the school's premises. She said she did not know and had never met either Bishop Symonette or Dr Bain.

164. On re-examination, when referred to the commitment letter dated 2 September 1997, Mrs Burrows said the borrower was the St John's Native Baptist Church which had the commitment to repay the loan.

165. So, having heard the witnesses and having reviewed the documentary evidence included amongst the agreed bundle of documents, and while I readily admit that I do not believe that the evidence adduced at trial discloses "the whole truth and nothing but the truth", in my judgment, the relevant facts leading to the commencement of this action, as have been agreed, or are not disputed, or as may be gleaned from such evidence as I accept, are, as set out hereunder.

166. By section 3 of the Incorporation Act, the plaintiff is given power to acquire property by, inter alia, donation, and any such property acquired by the Incorporated Trustees "shall be held for the use and benefit of the St John's Particular Church of Native Baptists in The Bahamas". By section 8 of the Incorporation Act, all property in The Bahamas, real and personal, of whatever nature which is now vested or held in any manner in trust for or for the use and benefit of the St. John's Particular Church of Native Baptists in The Bahamas shall vest in and be held by the Incorporated Trustees.

167. By section 10 of the Incorporation Act, the plaintiff is given power, with the approval of the Annual General Conference of the St John's Particular Church of Native Baptists in The Bahamas to "make rules for administration of the temporal affairs" of the St John's Particular Church of Native Baptists in The Bahamas, and Rules dated 23 May 1991 ("the 1991 Rules") were made pursuant thereto. Those Rules were signed by eleven "Incorporated Trustees", including three of the witnesses in this case, namely: Rev Dr Michael C Symonette, Rev Carrington S Pinder and Rev Godfrey R Williams.

168. Article I of the 1991 Rules states that the name of the Organization shall be "The St John's Particular Church of Native Baptists in The Bahamas, sometimes referred to as The St John's Native Baptist Society" ("the Society"). By Article III (Membership) of the 1991 Rules, membership in the Society is made up of the Unit Churches listed in the schedule thereto "and all other congregations that may be admitted to membership by the Society as Unit Churches."

169. Section 7 of the Incorporation Act states that members of the [Board of] Incorporated Trustees are elected at the Annual General Conference of the Society for a period of not less than five years and upon the recording in the Registry of Records of a resolution of their election and an acceptance of office by persons named in such resolution, such persons shall be deemed to be Trustees of the St John's Native Baptists in The Bahamas until the recording of a similar resolution and acceptance.

170. By Article VIII (Board of Trustees) of the 1991 Rules:

- A. The members of the Incorporated Trustees under the St John's Particular Church of Native Baptists in The Bahamas shall comprise the Board of Trustees who shall hold office only so long as they are members of the Incorporated Trustees.
- B. All properties, real or personal, including all land, buildings, furniture and monies shall be vested and shall be held only in the name of the Incorporated Trustees and whenever any property real or personal shall come into the hands or possession of any Unit Church for the use of any Unit Church the same shall be transferred to the Incorporated Trustees which shall hold the same in accordance with the provisions of the said Act.
- C. The Board of Trustees shall keep a record of all property belonging to and over which the Society has control or which may be held in trust [for] or on behalf of the Society.
- D.
- J. The Board may from time to time authorize any unit church or churches to keep such account or other property of the Society for the convenience and use of members of the Unit church or churches and may also withdraw such permission without assigning any reason thereto, and until further order the unit church or churches shall keep such account or other property which they now keep.

171. By Article XV (Rules Relating to Unit Churches - Name) of the 1991 Rules: The words "Native Baptist" must be included in the name of every Unit Church in such manner as may be determined by the General Superintendent.

172. Article XXII (Financing of the Society) of the 1991 rules states that:

"Each Unit Church shall tithe to the Society by paying one-tenth of its gross income each month to the Society and such other contribution as shall from time to time be determined by the Board of Trustees for the upkeep and to meet the obligations of the Society".

173. The Coral Road Church, was established on or about 30 June 1974 and by an agreement dated 16 December 1974 between the plaintiff and the Coral Road Church ("the 1974 agreement") it was agreed, inter alia, "that (i) the property and buildings of the Church be vested in and recognized as part of the Society; and (ii) the rules formed by the Society in Conference will be the rules for governing the Church." The Coral Road Church is listed in the schedule to the 1991 rules as the Society's Unit Church in Freeport, Grand Bahama.

174. The fourth defendant became a member of the Coral Road Church in 1979 and was elected and installed as its Pastor in 1982. Under his leadership, the membership soon outgrew the then existing building on Coral Road. To accommodate the growing membership, a second building was constructed on the Coral Road property. Funding therefor was obtained from then Bank of Montreal and collateralized by mortgages over properties belonging to the fourth defendant, the late Wally Robinson, and Harrison Butler, all of whom were members as well as pastor, secretary/treasurer, and deacon respectively, of the Coral Road Church. The loan was repaid by the Coral Road Church.

175. The membership at the Coral Road Church eventually outgrew the Coral Road premises and there is no dispute that the need for larger facilities was brought to the attention of the Trustees sometime in or about 1984. Bishops Symonette and Pinder said that the Trustees sanctioned the idea. Bishop Williams said that the idea was rebuffed.

176. Whether the Trustees sanctioned the proposed expansion or rebuffed the suggestion, the evidence is that they made no attempt to secure any property for the needed expansion before 1987.

177. While there is a dispute as to who made the initial request, the evidence is that a request of the second defendant for a donation of land for construction of a church building was made sometime in or about 1987. The fourth defendant claims that he was the one who made the request from the late Mr Edward St George who referred him to Mr Albert Gray with whom he and then Deacon Harrison Butler subsequently met.

178. The plaintiff claims that it was the Incorporated Trustees who requested land from the second defendant in or about 1987 and as evidence of such request they rely on the following letter from Bishop Symonette:

“Dear Mr. Gray,

Greetings:

I have been informed by the pastor of St. John Native Baptist Church, Freeport, that he and other officers of the Church have been in contact with the Grand Bahama Development Co. Ltd. on the matter of obtaining Five Acres of land to erect a church building.

The Pastor, Rev. Godfrey Williams, is a member of our Trustee Board, and is working on behalf of the Board’s interest.

St. John’s Native Baptist Church, Freeport, is a unit church of St. John’s Particular Church of Native Baptist in the Bahamas, Incorporated under Act No. 15 of 1965. Therefore all legal matters must be handled by the Bishop and Chairman of the Trustees Board, and the General Secretary of the Society who is the Secretary of the Trustees Board, according to the Rules of the Society.

I am enclosing a copy of our Incorporation Act.

Our sincere thanks for your consideration in this matter.

Yours sincerely,

Rev. Dr. Michael C. Symonette

Bishop and Chairman of the Trustees Board”

179. A copy of that letter appears twice amongst the bundle of documentary evidence. In one place, it is undated; and in the other, it has the date, “~~27.2.87~~”, written in manuscript with a line drawn through each of the 7s, under the signature of Bishop Symonette. Although Bishop Symonette said that he wrote in the date after he had signed the letter, he was not able to account for why a copy of the letter appeared elsewhere in the record with his signature but without the date. Counsel for the third defendant suggests that “a very plausible explanation is that its creation was an attempt by the witness to mislead.”

180. In that regard, the defendants question whether the letter was written on 27 February 1987 or whether it was of more “recent vintage” and that date inserted to “create a paper trail” to make it appear, they suggest, that the letter had been written and a request for a donation of land made by the plaintiff to the second defendant prior to Rev Williams’ said request therefor. There was also some doubt as to whether the said date had been written in by Bishop Symonette, as elsewhere amongst the documentary evidence the same date, admittedly written by Bishop Symonette, on a list of the names of the Incorporated Trustees, was written differently, as “27/2/1987” ^{TB Pt 3 tab 188}; and while Bishop Symonette’s evidence is that he customarily wrote the date beneath his signature after he signed letters, there is at least one letter amongst the bundle

of documents which was authored by him and which had the date written in just above the addressee's name, as: 5th March 2004 ^{TB Pt 3 tab 185}; as well as two other letters from him to Rev Williams with the dates written as: May 26th 1995 ^{TB Pt 3 tab 183} and June 27th 2003 ^{TB Pt 3 tab 184}, at the top of the page and not beneath his signature.

181. However, whether the aforesaid letter was written by Bishop Symonette on 27 February 1987 or some other date; and whether he wrote the date in at the time the letter was written or at some other time; and while Bishop Symonette "hemmed and hawed" as to whether, and if so, when, Rev Williams would have told him about having requested a donation of property from the second defendant, it is, in my view, clear from the first paragraph of the said letter that it was written after Bishop Symonette would have had heard from Rev Williams about his said request of the second defendant. That seems to accord with Rev Butler's evidence, which is that he accompanied the fourth defendant to the meeting with Mr Gray when the request for a donation of land was made, and that after that meeting Rev Williams went to New Providence to update Bishop Symonette.

182. More importantly, however, as pointed out by the defendants, not only does that letter not contain a request of the second defendant for a donation of land, but Mr Gray's evidence also is that he never received the letter; and Bishop Symonette admitted that he never received a reply thereto. Furthermore, both Bishop Symonette and Rev Hinsey admitted that no follow-up letter was sent by the Trustees with respect thereto and none of the Trustees met with Mr Gray or any other representative of the Port Group of companies to request a donation of land on behalf of the plaintiff.

183. In the circumstances, I find that the request for a donation of land for the expansion of the Coral Road Church was made by the fourth defendant; that the aforesaid letter purportedly written by Bishop Symonette on 27 February 1987 did not pre-date that request; that, even if it did, it does not include a request for the donation of land; and, in any event, was not received, nor responded to, by Mr Gray.

184. On 4 April 1988, Bishop Symonette wrote the following letter to Mr Gray, in connection with a "request for Property from the Grand Bahama Development Company to erect the New St. John Native Baptist Church":

"Enclosed, please find a copy of an interim appraisal report of the St. John Native Baptist Society of Churches on New Providence from our Appraiser Mr. Frank Carey, of Frank Carey Real Estates Ltd.

There are also 50 other churches in our Society through-out the Family Islands. Please consider our request.

Our Sincere Thanks for your consideration in this matter.

Yours sincerely,
Rev. Dr. Michael C. Symonette
Bishop and Chairman of the Incorporated Trustees."

185. Mr Gray said he did not recall seeing that letter nor did he recall acknowledging the same. Bishop Symonette said that he did not receive a reply from Mr Gray to that letter either.

186. Then, on 28 April 1988, Rev Williams wrote to Mr Gray in connection with a "request for Grand Bahama Development Company for the erection of St John's Native Baptist Cathedral":

"In reference to our telephone conversation April 27th 1988, the following is an interim appraisal report on the St John's Native Baptist Church situated in Freeport.

It should also be noted that we have been having two services for the past twelve months, in order to try and accommodate our congregation at large.

We convey our sincere thanks and gratitude for assisting us in the past, and also what you are doing presently.”

187. Having regard to the contents of those letters, it appears that Bishop Symonette was aware of the second defendant’s request for an interim appraisal, although the report he provided was with respect to the Society’s churches in New Providence, whereas the one provided by Bishop Williams was for the planned St John’s Native Baptist Cathedral. Further, it appears that Bishop Williams’ letter was carbon copied to Bishop Symonette, but Bishop Symonette’s was not copied to then Rev Williams. When asked why he had not copied the fourth defendant on his alleged 27 February 1987 and 4 April 1988 letters, whereas the fourth defendant had copied Bishop Symonette on his correspondence with Mr Gray, Bishop Symonette responded: “He had to copy me. I’s the Bishop. I didn’t have to copy him. He had to copy me. I’s the chief.”

188. In any event, whatever may have been Bishop Symonette’s or the Society’s involvement prior thereto, it was to the fourth defendant that Mr Gray, by letter dated 1 November 1988, write, advising that the then Chairman of the second defendant had approved a donation of approximately 4 acres of land for construction of “your” church building. That land was, in fact, the Property. There is no dispute that at the time the fourth defendant was the pastor of the Coral Road Church, and the letter was addressed to him in that capacity.

189. The donation was subject to a commitment to build as Mr Gray also advised that “the conveyance to the property will not be released until the building commitment is completed”. However, it is common ground that in the event the donee/grantee of the Property required financing to comply with the building commitment, the second defendant would convey the Property to the donor to allow the proposed financing to proceed.

190. On 22 November 1988, Mr Neil Headley, the Port Authority’s Building Inspector, wrote to Gamma Construction Company Limited granting permission to “clear the above site for ground breaking ceremony.” The subject of that letter was “St John’s Native Baptist Cathedral – Fairfield.” The groundbreaking ceremony took place on 18 December 1988. I accept Rev Butler’s evidence that the same was conducted by Bishop Symonette and that he was accompanied by Dr Hervis Bain and other Trustees.

191. Construction of the Cathedral began shortly thereafter and while the plaintiff pleaded at paragraph 5 of its second amended statement of claim that it was the plaintiff who began construction of the building on the Property and financed construction of the Cathedral with funds raised by the Coral Road Church, it is, in my view clear from the evidence that construction of the Cathedral on the Property was done and financed by the Coral Road Church.

192. However, it is common ground that the Coral Road Church was not a licensee of the Port Authority and, therefore, was not the holder of a licensee’s bond from H.M. Customs that would have enabled it to purchase and or import duty-free materials for the construction of the Cathedral. The plaintiff is a licensee and the holder of a bond. So, while the construction of the Cathedral on the Property was carried out and financed by the Coral Road Church, it is also clear that it was done with the use of the plaintiff’s license and bond.

193. By letter dated 26 May 1995, Bishop Symonette wrote to Rev Williams as follows:

“Dear Rev Williams

Greetings. I saw you at Conference and approached you about your willingness to continue your service on the Board of Trustees for another period. You appeared to have some reservations about serving, and informed me that you did not wish

to serve another term, and left the Conference without letting the Conference know your decision. I was looking forward to your service on the Board of Trustees as one of our leading ministers in the Society.

Please let me know what is the problem.

God bless.

(sgd) Rev Dr Symonette”

194. There is no evidence that that letter was responded to, but the fourth defendant's name was not included in the list of the May 1995 trustees, and, in the circumstances, I find that the fourth defendant was a member of the plaintiff's Trustee Board during the period May 1982 to May 1995; and, therefore, he was a member of the Incorporated Trustees Board at the date the request was made of the second defendant for a donation of land as well as the date on which the second defendant approved such request.

195. At an Executive Board meeting of the Coral Road Church held on Thursday, 7 August 1997, and attended by approximately 20 members, including the fourth defendant, Rev Butler and Mr McPhee, all of whom gave evidence in this trial, the fourth defendant is recorded as having informed those present that the “Port Authority gave the property on Settler's Way to the members”; that “the Property was not given to the Society”; and that “if it was to be put in the Society's name the Port Authority would take it back”; that two years prior, Mr Gray had called him and told him that the donation was not being made or to be made to the Society, but rather that it was for the members of the Coral Road Church.

196. It appears from the comments in the aforesaid minutes that Mr Gray or the principals of the second defendant may have become concerned about the Property “falling” into the hands of the plaintiff after becoming aware of court proceedings involving property disputes between the Society and one or more of its unit churches in New Providence. Indeed, Mr Gray's evidence is that he became personally aware of certain litigation in Nassau between the plaintiff and other churches of the Society “around the same time”, and it was made clear to him by the late Mr St George that under no circumstances should the plaintiff benefit from the gift.

197. Rev Williams is also recorded in those minutes as having said, inter alia: “I really need to know what to do since the Port do [sic] not want to give the property to St John's Native Baptist Society. They want to give it to the members of the church. But as of now they have changed their minds. They have a hate for the Bishop.”

198. In those minutes, Rev Butler is recorded as having said: “The letter was sent to the St John's Native Baptist Society in Nassau. The Port is an honourable company and they don't do business like that. There are too many persons involved and Mr Gray can't make the decision to take the property (back). The loan is being processed and set up by the Bank...Now in 1997 we are just going to think about this when the church is almost completed. Rev do you have an application with the Port? Rev you tell whomever at the Port that in 1988 they gave us an agreement to be sent to the St John's Native Baptist Society for the property on Settler's Way and if they now make another decision they must put it in writing.”

199. Now, while the fourth defendant, under cross-examination by Mr Adams responded in the negative to Mr Adams' question as to whether the minutes of that meeting had “been adopted by any executive board as approved as accurate or as representing the true statement of everything said in that meeting”, and while Mr Miller, for the third defendant, argued that the said minutes were “unverified”, none of the witnesses said that the contents of the minutes were not true or that the minutes did not accurately record the discussion at the meeting; or that the comments attributed to him in those minutes were incorrect. Indeed, they all seemed to agree that except for

Rev Butler, all those in attendance at the meeting eventually agreed with the Property not going to the plaintiff. My own view is that at the very least the other members were hesitant about the Property being diverted away from the plaintiff.

200. Sometime prior to the August 1997 meeting, the members of the Coral Road Church applied for a loan. As indicated, the minutes of that meeting recorded Rev Butler as saying: "The loan is being processed and set up by the Bank." By letter dated 2 September 1997 ("the 1997 commitment letter"), and addressed to St John's Particular Church of Native Baptists and/or St John's Native Baptist Church (Freeport), attention: "General Trustees", Mr George E Thompson, the fifth defendant's Manager, Loans, advised the addressees that the fifth defendant had approved a credit facility in the sum of \$1,050,000.00 for, inter alia, completing the construction of the building known as St John's Native Baptist Church (Freeport) and purchasing furnishings therefor. The intended security for the loan included, inter alia: (i) a first legal mortgage on the Property, registered and stamped for \$550,000.00; (ii) an irrevocable assignment of a fixed deposit in the name of St John's Native Baptist Church (Freeport) for an amount of \$500,000.00, to be held in the fifth defendant bank; and (iii) an enabling resolution from the Board of Trustees of the St John's Particular Church of Native Baptist Church (Freeport) authorizing the aforesaid borrowing.

201. The terms of the 1997 commitment letter were "agreed and accepted" by Rev Dr Michael Symonette and Rev Dr Hervis Bain on behalf of St John's Particular Church of Native Baptists and by the fourth defendant, the late Wally Robinson, and Harrison Butler on behalf of the St John's Native Baptist Church (Freeport), as evidenced by their respective signatures. While a copy of that letter appears in the agreed bundle of documents without Rev Williams' signature, and the evidence is that he did not sign it at the same time as the others, the original letter with his signature appended thereto was adduced in evidence and under cross-examination by counsel for the fifth defendant, the fourth defendant admitted to having signed the same at a later date.

202. The "enabling resolution" required by the fifth defendant is dated 16 September 1997 and by it the Trustees resolved as follows:

- a. That the St John's Native Baptist Church Freeport, Grand Bahama, be and are hereby authorized to borrow the sum of \$1,050,000.00 from Bank of The Bahamas Limited, Freeport branch;
- b. That the Incorporated Trustees do guarantee to the said Bank of Bahamas Limited payment of \$1,050,000.00 to be secured by mortgage to be issued by the Incorporated Trustees in favour of the said Bank in the City of Freeport on the island of Grand Bahama;
- c. That the said mortgage be signed and sealed on behalf of the Incorporated Trustees by the Rev Dr Michael C. Symonette, Chairman in the presence of Rev Dr Hervis Bain, the Secretary of the Incorporated Trustees.

203. I note here that while the plaintiff claims ownership of the fixed deposit in the sum of \$500,000.00, nowhere in that resolution is there any mention of that fixed deposit.

204. On 23 September 1997, Mr Allen/Christie, Davis & Co advised Mrs Moss, Legal Counsel at the Port Authority, of his instructions from the fifth defendant that it had agreed to extend financing to St John's Native Baptist Church to complete construction on the Property. He also forwarded a copy of the Incorporation Act and advised that title was to be taken in the name of "The Incorporated Trustees of The St John's Particular Church of Native Baptists in The Bahamas". He also requested particulars of title and a draft conveyance for his perusal. Thereafter correspondence passed between Mr Allen and Mrs Brown, Legal Counsel for the first and second

defendants, with respect to the conveyance of the Property to the plaintiff and the mortgage thereof to the fifth defendant, culminating with the execution of both documents, in New Providence, by Bishop Symonette and Dr Bain on behalf of the plaintiff. The conveyance and mortgage were both dated 10 February 1998, stamped and recorded at the Registry of Records.

205. On 8 November 1998, the entire congregation from the Coral Road Church processioned to the Cathedral on Settler's Way and the doors to the building on Coral Road were closed. So, for all intents and purposes, then, the Coral Road Church relocated to the Property on 8 November 1998 and was dedicated as "St John's Native Baptist Cathedral." The front cover of the dedication service booklet/program included amongst the documentary evidence shows Rev Dr Michael C Symonette as General Superintendent and Overseer Godfrey R Williams, JP, as Pastor. I note here, parenthetically, that there is no evidence of the office of "Overseer" being an office within the Native Baptists and contrary to the plaintiff's assertion at paragraph 10 of its second amended statement of claim, the evidence is that Bishop Symonette preached the sermon, but "the dedication and official opening ceremony" was performed by Bishop Neil Ellis.

206. The final drawdown from the aforesaid loan of \$1,050,000.00 in the sum of \$159,074.00 was made by the fifth defendant, at the request of the fourth defendant by letter dated 5 February 1999 for the same to be transferred to a fixed deposit account with a 30-day rollover. As I understood the fourth defendant's evidence, while he may have signed it, that letter was prepared by the Church's treasurer and having regard to Rev Butler's evidence about the fourth defendant's management style when it came to the church's finances, I believe the fourth defendant.

207. It is common ground that the second defendant discovered in or about July 2001 that title to the Property was not vested in the first defendant when it purportedly conveyed the same to the plaintiff in February 1998. It is also common ground that Mrs Brown, Legal Counsel for the first and second defendants, by letter dated 26 July 2001, informed Mr Allen of the discovery and, in an effort to rectify the situation, she prepared and forwarded to him for approval a draft confirmatory conveyance from the second defendant to the plaintiff. Thereafter correspondence passed between them culminating in Mrs Brown forwarding the duly engrossed confirmatory conveyance to Mr Allen for "execution by your client" and a request for the same to be returned for execution by the second defendant. The confirmatory conveyance was not executed by the plaintiff nor was it returned to the second defendant as requested.

208. Sometime after the Coral Road Church relocated to the Property, the fourth defendant was presented with an opportunity to purchase the Sunland Lutheran School. As I understood his evidence, the fourth defendant was of the view that at that time, since the construction of the Cathedral was completed and the building commitment fulfilled, he could call upon the second defendant for the conveyance of the Property. Further, that he intended to secure a loan sufficient to provide additional funding for improvements to the Cathedral and for the purchase of the school. To that end, he decided to incorporate the third defendant as the entity that would hold the title to both the school and the Cathedral. He said that it was only when he attended a meeting with Mr Thompson at the fifth defendant bank along with his said attorney, Mr Miller, to discuss financing of the two projects that the "church's files were pulled" and both Mr Thompson and he, to his "absolute shock and horror, "discovered" the existence of the first conveyance; that he "immediately sought to discover how such an event happened without his knowledge" and "absolutely contrary to the condition imposed by the Port Group after it offered the Property to him in 1988"; that he also discovered that the conveyance had been executed by Dr Bain and Bishop Symonette, even though neither of those men had met with him or discussed the same with him or travelled to Freeport to complete the transaction.

209. Bishop Williams does not state the date of his meeting with Mr Thompson nor does he provide the timeline for the aforesaid "discoveries".

210. Frankly, having regard to the evidence as a whole, I find it difficult to accept Bishop Williams' evidence of "shock and horror" at the discovery of the first conveyance. Firstly, Bishop Williams, under cross examination by counsel for the second defendant, admitted that it was he who gave instructions for title to the Property be taken in the plaintiff's name. Secondly, Mr Allen in his 15 May 2003 letter to Mrs Burrows wrote, inter alia: "I personally spoke with all the parties, particularly with Rev Godfrey Williams who confirmed that title to the property should be taken in the name of St John's Particular Church of Native Baptists in The Bahamas." Thirdly, it was Rev Williams who, according to Mr Allen's 2 December 1997 letter to Mrs Brown, informed Mr Allen that the Property was a "gift to the church" whereas the conveyance showed a consideration of \$131,400.00. A reasonable inference, in my view, is that, at the very least, the draft conveyance was either shown to Rev Williams or the contents thereof drawn to his attention by Mr Allen.

211. So, either the fourth defendant did not understand the import of the directions he gave in 1997 for title to be taken in the name of the plaintiff, or he was being untruthful either when he said he gave those directions or when he said that he did not know that the conveyance had been issued. Unless, of course, he had forgotten!

212. Further, if, as I understood the fourth defendant's evidence, Mr Thompson had only made that "discovery" at his said meeting with Rev Williams, I am at a loss as to the reason, since the evidence is that Mr Thompson is the one who signed the 1997 commitment letter on behalf of the fifth defendant which required as part of its security: a first legal mortgage on the Property. Mr Thompson was also the author of a letter dated 3 October 1997 to the first defendant confirming that the fifth defendant had "approved to finance the completion of the construction of the St John's Native Baptist Church building on the Property". The subject of that letter was "Freeport Commercial and Industrial Limited to The Incorporated Trustees of the St John's Particular Church of Native Baptists – Lot No. 2 Fairfield East Subdivision, Freeport." Further, as one of the persons who signed the 1997 commitment letter, presumably the fourth defendant was aware of the terms of the loan and the requirement for a mortgage of the Property as security therefor. So, I find it difficult to accept his evidence that he discovered that the firm of Christie, Davis & Co, "acting for the bank" were "led by Harrison Butler to complete the conveyance"; that that discovery became, he said, the earliest "proof of betrayal" since "none of this" was brought to his attention, even though he was the person carrying out the project.

213. Frankly, I am not sure what to make of that evidence. Perhaps the fourth defendant was not aware of when the first conveyance was being executed. However, having, by his own admission, directed that title to the Property be taken in the name of the plaintiff, there was no need for his attendance at the execution of the first conveyance or the mortgage, since he was neither a trustee nor a person authorized to execute legal documents on behalf of the plaintiff.

214. Nevertheless, the fourth defendant's evidence is that around the time that he "discovered" the existence of the first conveyance, he also discovered that that conveyance was invalid. It is unclear when, and how the fourth defendant made that discovery, but it is clear that at the date of Mr Miller's 27 November 2002 letter the fourth defendant was not only aware of the defective first conveyance but he was also aware that the confirmatory conveyance had been prepared and forwarded to Christie Davis & Co by the second defendant. No evidence was adduced as to how he became aware of, or from whom he "discovered", the information, although the second defendant avers at paragraph 37(ii) of its re-amended defence that "on being approached by the fourth defendant as principal or agent of the third party/third defendant in or about 2002, the second defendant informed the third party/third defendant of the inadvertent purported conveyance of Lot 2."

215. In any event, it seems that Mr Miller's correspondence may have prompted Mrs Brown to inquire again of Mr Allen on two more occasions, 3 and 12 December 2002, as to the status of

the confirmatory conveyance forwarded to him for execution by the plaintiff more than a year earlier. Mrs Brown also requested confirmation from Mr Allen as to whether the first conveyance was still required as security for the construction loan granted by the fifth defendant to the plaintiff. She also informed Mr Allen/Davis & Co of the request by the fourth defendant for a conveyance of the Property to the third defendant.

216. The third defendant was incorporated on 11 December 2002 and the second defendant, at the request for the fourth defendant, conveyed the Property to the third defendant by the third conveyance on 12 December 2002, thereby declaring the first conveyance to be “null and void and of no force and effect.” On 26 September 2003, the third defendant gave a fixed and floating debenture over its assets, incorporating first demand legal mortgages over the Property and the premises on which the Sunland School is located. Proceeds from that loan along with the funds held on the aforesaid fixed deposit were used to pay off the 1997/1998 loan to the Coral Road Church and a satisfaction, acknowledging receipt in full of all moneys due and owing under the 1998 mortgage, was executed by the fifth defendant and dated 8 December 2003.

217. The third conveyance and the said debenture were both lodged for record at the Registry of Records on 9 December 2003 and the said satisfaction of mortgage was lodged for record on 12 June 2006.

218. None of the matters since the discovery of the error with the first conveyance to the lodging for record of the said satisfaction were expressly brought to the attention of the plaintiff. However, the plaintiff says that it discovered the third conveyance on 9 December 2003 as a result of a search conducted on its behalf at the said Registry of Records.

Authorities

219. The following principles may be gleaned from the plethora of authorities cited by counsel during the course of their closing submissions:

220.

The first and second defendants

221. In relation to its claims against the first and second defendants, the plaintiff pleads as follows:

- a. In or about 1987 the plaintiff wrote to Mr Gray to request five acres of land to build facilities for worship and religious activities and to inform him that all legal matters including those relating to the acquisition of the property in question must be dealt with by the plaintiff and that the fourth defendant was only allowed to act in the interest of the Incorporated Trustees; that as a result the plaintiff received a copy of a survey from the second defendant which plan was dated 27 July 1988 and showed the property which was to be conveyed to the plaintiff, namely [the Property]; that the second defendant its servants or agents provided the plaintiff with the said survey and caused the Port Authority by letter to the plaintiff dated 22 September 1988 to give permission for the groundbreaking; that by its conduct the second defendant made a promise to the plaintiff that the Property would be conveyed to the plaintiff; that in consideration for that promise, the plaintiff agreed to construct a building for religious worship on the Property; that the said promise and the said consideration constituted a binding contract between the second defendant and the plaintiff for the conveyance of the Property to the plaintiff. (para 3-4);
- b. In reliance on the said promise the plaintiff began construction of the building on the Property on 18 December 1988, expecting to receive the conveyance once the works were completed; that the plaintiff financed the construction of the Cathedral with funds raised by the Coral Road Church (para 5);

- c. A conveyance of the Property was prepared by the second defendant its servants or agents and executed by the plaintiff as purchaser and the first defendant as vendor on 10 February 1998 (para 8);
- d. On or around July 2001 the second defendant discovered that the first defendant did not have title to the Property; that they sought to rectify the issue by preparing a second (confirmatory) conveyance to have the true owners of the property, namely the second defendant, convey the Property to the plaintiff, thereby confirming that title to the Property was to be vested in the plaintiff; that that conveyance was sent to Wallace Allen for review, approval and execution by the plaintiff (paras 11-15).
- e. In reliance on the said promise made by the second defendant, the plaintiff acted to its detriment by financing the construction of the Cathedral on the property and by virtue of the plaintiff's detrimental reliance on the second defendant's promise, the second defendant is estopped from denying the plaintiff's proprietary interest in the Property; that the second defendant, in breach of the said contract, purported to convey the Property to the third defendant, resulting in the plaintiff suffering loss and damage. Further or alternatively, that the second defendant its servants, or agents made representations by its conduct in preparing the copy of a survey/plan, which expressly showed the property to be conveyed to the plaintiff, that the fee simple interest in the Property was to be conveyed to the plaintiff for its benefit. That in reliance on those representations, the plaintiff incurred costs and expenses in the financing and construction of the Cathedral on the Property, which they otherwise would not have incurred. That the representations were made negligently by the second defendant, as a result of which, the plaintiff has suffered loss and damage. Further, or alternatively, that the first defendant was negligent in its execution off the first conveyance, as a result of which the plaintiff has suffered loss and damage (paras 41-45).

222. The plaintiff alleges that the first defendant was negligent in that it:

- a. Executed the first conveyance when it knew or ought to have known that it did not own the Property;
- b. Failed to inform the plaintiff upon discovering that it did not own the Property and could not have conveyed it to the plaintiff;
- c. Failed to take any steps to stop the plaintiff from continuing its construction of the Cathedral on the Property when it knew or ought to have known that the plaintiff was carrying out construction works on the Property.

223. The plaintiff alleges that the second defendant was negligent in that:

- a. Having agreed to convey the Property to the plaintiff and having sent the survey to the plaintiff in confirmation of this commitment, the second defendant caused or permitted a conveyance from the first defendant to be made to the plaintiff, when it knew or ought to have known that the first defendant did not own the Property;
- b. Having discovered that the first defendant did not own the Property, the second defendant did not inform the plaintiff of the error, although it knew the plaintiff had relied to its detriment on the second defendant's promise to convey the Property to the plaintiff;
- c. Having sent or caused to be sent the survey of the Property, the second defendant knew or ought to have known that the plaintiff would commence construction on the Property;
- d. Purported to convey the Property to the third defendant although to correct the error of the first conveyance, all it needed to do was to substitute its name for the first defendant;

- e. Purported to convey the Property to the third defendant when it knew or ought to have known by the statute incorporating the plaintiff and the correspondence of the plaintiff to the second defendant bringing the statute and the plaintiff's constitution to the second defendant's attention, that only the plaintiff was authorized to receive a conveyance of the Property;
- f. Did not inform the plaintiff that it had purported to convey the Property to the third defendant, although it knew or ought to have known that the plaintiff had built on and invested large sums of money into the Property to its detriment. Instead, it merely sought to negate the plaintiff's interest by inserting clauses in the purported third conveyance claiming that the plaintiff's interest was clearly nullified;
- g. Did not serve the purported third conveyance on the plaintiff or advise the plaintiff of it;
- h. Knew or ought to have known that its failure to convey the Property to the plaintiff would by 1998, ten years after the groundbreaking and shortly after the completion of the Cathedral, would cause great damage and loss to the plaintiff.

224. The plaintiff also accuses the second defendant of making negligent misrepresentations to the plaintiff in that the second defendant:

- a. Caused a copy of the survey to be delivered to the Incorporated Trustees, when it knew or ought to have known that the Incorporated Trustees would rely on the delivery of the survey to them to enter into a contract with DEVCO for the conveyance of the fee simple interest in the Property;
- b. By delivering the survey to them, left it for the plaintiff to accept DEVCO's offer of the Property which the plaintiff did by commencing construction works on the property. By their conduct, the plaintiff and DEVCO entered into a contract. The plaintiff performed its part of the contract to its detriment and DEVCO is estopped from denying that they induced the plaintiff to commence construction works.
- c. Was aware, or ought to have been aware, of the groundbreaking ceremony and the construction works being done on the property, being carried out by the plaintiff, caused to be issued the permission by the Port Authority for the plaintiff to commence work on the Property, which they did to their detriment;
- d. Delivered the survey to the Incorporated Trustees when they knew or ought to have known that the Incorporated Trustees would rely on the survey to identify the Property which DEVCO promised to give them;
- e. Represented that the Property would be conveyed to the Incorporated Trustees through FCIL, on behalf of DEVCO, when they knew or ought to have known that FCIL could not convey the property to the Incorporated Trustees.

225. The plaintiff alleges further that after the first and second defendants conceded that they were obliged to give the plaintiff the second conveyance, they did not ensure that it was delivered to and executed by the plaintiff, but instead hatched a plan to defraud the Incorporated Trustees by purporting to convey the Property to Godfrey R Williams Ministries by means of the third conveyance (para 33);

226. At paragraph 47 of its second amended statement of claim the plaintiff alleges further and/or alternatively that the defendants perpetrated a fraud against the plaintiff because, notwithstanding that:

- a. The first conveyance was made to the Incorporated Trustees; and
- b. The first conveyance was underpinned by the mortgage, supported by a letter of guarantee executed by the Incorporated Trustees to the BOB, at the BOB's request, dated 16th September 1997 and received by the BOB on or around 26th September

1997 (the “letter of guarantee”) under which the plaintiff was the guarantor for the entire transaction relating to the acquisition of the property; and

- c. The second conveyance had been agreed by the 1st, 2nd and 5th defendants or their servants and agents, that the 3rd and 4th defendants were fully aware of the second conveyance and all of the defendants knew that the second conveyance was in the process of being executed, the said defendants, made representations, to the Incorporated Trustees, pertaining to the state of the ownership of the property in this matter, falsely and untruthfully and/or recklessly without caring whether their representations to the Incorporated Trustees were true or false, by participating in arrangements which were aimed ultimately to convey and/or receive the property away from the Incorporated Trustees and to Godfrey R. Williams Ministries without the Incorporated Trustees’ knowledge, authorization or consent.

227. As against the first defendant, the plaintiff provides the following “particulars of fraud”:

- a. By virtue of entering into the first conveyance with the Incorporated Trustees, FCIL represented and/or promised that it would convey the Property to the Trustees;
- b. Despite having found out that it did not own the Property, FCIL falsely and untruthfully and/or recklessly not caring whether its representations were true or false, led and/or allowed the Incorporated Trustees to believe that they held a good, clear and marketable title to the Property by failing to bring the fact that they did not own the property to the Trustees’ attention;
- c. Further and/or alternatively FCIL falsely and untruthfully and/or recklessly without caring whether the Incorporated Trustees were being defrauded and/or misled failed to inform the Incorporated Trustees that the Property was being and/or was conveyed to Godfrey R. Williams Ministries and did not object to such conveyance when it knew or ought to have known that the Incorporated Trustees were under the impression that it had a good clear and marketable title to the Property pursuant to the first conveyance and had expended considerable time and monies on the Property as clearly evidenced by the Incorporated Trustees construction works, dedication and occupation relative to the property;
- d. Further and/or alternatively, FCIL as the nominee and agent of DEVCO, who was ultimately managed and under the control of essentially the same management as DEVCO and who, at all material times, was represented by the same general legal counsel, i.e. Charisse Brown, as DEVCO, may be attributed with the same knowledge and fraudulent wrongdoing as their managing company DEVCO.

228. As against the second defendant the plaintiff provides the following “particulars of fraud”:

- a. Notwithstanding that:
 - i. the Incorporated Trustees wrote to Albert Gray of Devco in 1987 to request the five (5) acres of land on which to build the Cathedral and to inform him that all legal matters including those relating to the acquisition of the property must be dealt with by the Incorporated Trustees and that Godfrey Williams was only allowed to act in the interest of the Incorporated Trustees; and
 - ii. DEVCO provided the survey of the Property to the Incorporated Trustees shortly thereafter and induced the Incorporated Trustees to complete, dedicate and occupy the Cathedral;

DEVCO in or around 1988, falsely and untruthfully and/or recklessly without caring whether the Incorporated Trustees were being defrauded and/or misled, without the knowledge, discharge, or consent of the Incorporated Trustees, engaged in separate negotiations, meetings, and correspondence with Godfrey Williams, for the purposes of conveying the Property to Godfrey Williams himself contrary to the Incorporated Trustees’ letter expressly prohibiting such negotiations and contrary to Devco’s

inducements and promise that the Property would be conveyed to the Incorporated Trustees on which the Incorporated Trustees relied.

- b. Despite the fact that DEVCO had full knowledge of the first conveyance, and the mortgage which underpinned it, both of which were in the name of the Incorporated Trustees, and despite having prepared the second conveyance in favour of the Incorporated Trustees, DEVCO, contrary to the Incorporated Trustees' letter expressly prohibiting separate negotiations with Godfrey Williams for his benefit alone, falsely and untruthfully and/or recklessly without caring whether the Incorporated Trustees were being defrauded and/or misled purported to convey the Property to Godfrey R. Williams Ministries under the third conveyance which had been formed to hold title to the Cathedral ultimately for Godfrey Williams without the knowledge, authorization or consent of the Incorporated Trustees.

229. In its second amended defence filed on 26 October 2016, the first defendant:

- a. Admits that on 10 February 1998, it executed the first conveyance for the Property as vendor in favor of the plaintiff and that, subsequently, it was discovered that title to the Property was not vested in the first defendant when it did so;
- b. Avers that after 23 February 1998 Mrs Charisse Brown did not write Mr Wallace Allen in her capacity as Legal Counsel to the first defendant in connection with the 10 February 1998 deed of conveyance.

230. Save as aforesaid, the first defendant either denies or does not admit the plaintiff's claim and puts the plaintiff to strict proof thereof. The first defendant asserts that, in any event, the plaintiff's claim based in negligence as against the first defendant is statute barred because any right of action the plaintiff may have had against the first defendant would have accrued in February 2004, more than six years before the commencement of this action.

231. In its re-amended defence filed on 12 August 2016, the second defendant avers and or admits as follows:

- a. It agreed to donate the Property to Godfrey Williams, Pastor of St Johns Native Baptist Church, Freeport;
- b. By conveyance dated 10 February 1998, the first defendant purportedly conveyed the Property to the plaintiff and that at the date of the first conveyance the Property was vested in the second defendant and could not be validly conveyed by the first defendant;
- c. Having prepared the second conveyance and forwarded the same to Wallace Allen for review and, after finalizing, for execution by the plaintiff, as Mr Allen had previously approved the first conveyance and the first defendant's title to the Property;
- d. By letter dated 27 November 2002 from Nottage Miller & Co on behalf of the third party and fourth defendant, the fourth defendant requested a conveyance of the Property in favour of the fourth defendant or his nominee; ^{para 16}
- e. Under cover of letter dated 12 December 2002 the second defendant forwarded an engrossed conveyance of the Property to Nottage Miller & Co for execution by the third party/third defendant;
- f. The second defendant was not legally or otherwise obliged to deliver the second conveyance to the plaintiff; ^{para 25}
- g. The fourth defendant requested from the second defendant a conveyance of Lot 2 in favor of the third defendant. Further, Mr Wallace Allen having attended to the execution of the first conveyance by the plaintiff and also having approved the form of the second conveyance, under cover of letter dated 24 September 2001, the second defendant

delivered the engrossed second conveyance to Mr Wallace Allen as counsel for the plaintiff for execution; ^{para 26}

- h. By conveyance dated 12 December 2002 the second defendant conveyed the Property to the third defendant and recited the first conveyance as null and void. The conveyance was drawn and executed by the second defendant on the instructions of the third party/third defendant and Mr Allen informed thereof; ^{para 28, para 37(iv)}
- i. A plot plan of the Property was prepared by servants or agents of the second defendant; ^{para 33}
- j. With regard to the particulars of negligence alleged against the second defendant, the second defendant:
 - i. Admits that the purported conveyance of Lot 2 by the first defendant was inadvertent; ^{para 37(i)}
 - ii. Avers that on being approached by the fourth defendant as principal or agent of the third defendant in or about 2002 the second defendant informed the third defendant of the inadvertent purported conveyance of the Property; ^{para 37(ii)}
- k. As to the particulars of negligent misrepresentation alleged against the second defendant, the second defendant avers:
 - i. Since, no consideration was given to the second defendant by the plaintiff in respect of the alleged offer and acceptance, there was no contract between the plaintiff and the second defendant relative to the Property. Moreover, there was no intention on the part of the second defendant to create legal relations with the plaintiff; ^{Para 39(ii)}
 - ii. A building permit was issued by the Grand Bahama Port Authority, Limited;
- l. Title to the Property was investigated, approved and accepted on behalf of the plaintiff.

232. Save as aforesaid, the second defendant denies the plaintiff's claims for breach of contract, negligence, negligent misrepresentation and fraud and/or that the plaintiff is entitled to the relief it seeks and puts the plaintiff to strict proof thereof. Further, the second defendant avers that any action arising in respect of any alleged breach of contract, or negligence and or negligent misrepresentation respecting the Property is statute barred as the same would have accrued more than six years prior to the commencement of this action. The second defendant, therefore, intends to rely on the Limitation Act, 1995. ^{Paras 35, 38, 40} and asserts that any cause of action which the plaintiff may have arising from any such claim is statute barred.

233. At trial the plaintiff abandoned/withdrew its claims for special damages against all of the defendants as well as it claims against the second defendant for the following reliefs:

- a. An order that the second defendant convey the Property to the plaintiff;
- b. Further or alternatively, an order for specific performance of the contract to convey the Property to the plaintiff.

234. Consequently, the relief claimed by the plaintiff against the first and second defendants are as follows:

- a. The first defendant:
 - i. Damages,
 - ii. Interest pursuant to Section 3 of the Civil Procedure (Award of Interest) Act, Chapter 80;
 - iii. Costs and such further relief as the court deems just and fit.
- b. The second defendant:

- i. A declaration that the second [sic] conveyance to Godfrey R Williams Ministries is null and void;
- ii. a declaration that the second defendant is estopped from denying the proprietary interest of the plaintiff in the Property;
- iii. Damages,
- iv. Interest pursuant to Section 3 of the Civil Procedure (Award of Interest) Act, Chapter 80;
- v. Costs and such further relief as the court deems just and fit.

The plaintiff's submissions

235. At paragraph 7 of his written skeleton arguments for use at trial and at paragraph 10 of his written closing submissions, counsel for the plaintiff, respectively, stated the following:

"7. Although allegations of negligence were made in the writ, which the Incorporated Trustees stand by, they wish to emphasize the fraud in this matter."

"10. Whilst the plaintiff maintains its claim in negligence, the Incorporated Trustees wish to emphasize the fraud that was perpetrated by the defendants against them in this matter."

236. On the issue of fraud, counsel for the plaintiff argues that the evidence given by Mrs Brown and Mr Gray demonstrates that the first and second defendants were deceptive:

- a. Prior to 1 November 1988, in that Mr Gray, despite knowing that the fourth defendant was a pastor with the Incorporated Trustees and that he was not a licensee or holder of a customs bond, nevertheless agreed to give the Property to the fourth defendant without the plaintiff's knowledge or consent;
- b. In relation to the first conveyance in that it was not made as a conveyance to the Incorporated Trustees as nominees for the fourth defendant;
- c. In relation to second conveyance:
 - i. Even though she had prepared the first conveyance and after finding out that it was not valid, prepared the second defendant, Mrs Brown never brought the existence of the second conveyance to the attention of the plaintiff, despite Mr Allen advising in writing on two occasions ^(23 September 1997 and 21 February 2003) that Christie Davis & Co did not act for the Incorporated Trustees and in fact their only concern was with the fifth defendant's security;
 - ii. Despite having been copied on correspondence between Mrs Brown and Mr Allen to the effect that Mrs Brown had prepared the first conveyance and after finding out that it was not valid, prepared the second conveyance, Mr Gray was aware that the existence of the second conveyance was never brought to the attention of the Incorporated Trustees;
 - iii. It was not made as a conveyance to the Incorporated Trustees as nominees for the fourth defendant;
 - iv. As neither the first nor second conveyance was made to the Incorporated Trustees as nominees for the fourth defendant, if the intention was to make them nominees of the fourth defendant, then they were again deceived.
- d. In relation to the third conveyance:
 - i. Despite having prepared the first conveyance, being specifically instructed by the fifth defendant that the Property was to be taken in the name of the Incorporated, and not having received any instructions from the fifth defendant, or the plaintiff, to convey the Property to someone else, Mrs Brown nevertheless prepared the third conveyance in favour of the third defendant

without the plaintiff's knowledge or consent, in contravention of the Hawksbill Creek Agreement and the second defendant's policies, having conveyed the Property to the third defendant before it had a license or a licensee's bond;

- ii. Despite being copied on correspondence between Mrs Brown and Mr Allen to the effect that the first conveyance was prepared and being specifically instructed by the fifth defendant that the Property was to be taken in the name of the Incorporated Trustees, not receiving any instructions from the fifth defendant to convey to a person or entity other than the Incorporated Trustees on the point, Mr Gray nonetheless instructed Mrs Brown to prepare the third conveyance in favour of the third defendant without the knowledge or consent of the Incorporated Trustees in contravention of the Hawksbill Creek Agreement and the second defendant's policies, because they conveyed the Property to the third defendant some six months before it had a license from the Port Authority. ^{Para 78b}

237. And he makes the following observations and or submissions:

- a. The first and second defendants were obligated to bring notice of the aforesaid matters to the attention of the Incorporated Trustees and in failing to do so, they acted fraudulently. See *Brownlie v Campbell* 5 App. Ca. 950 the principle in which "completely covers the fraud" that the first and second defendants "participated in and facilitated" when each of them failed to inform the plaintiff of the error with the first conveyance and the subsequent events.
- b. Rather than correct the false representation which they had made by the first conveyance, that is, that they were conveying to the plaintiff a good and marketable title to the Property, the first and second defendants instead, "intentionally or recklessly facilitated the transfer of the Property away from the Incorporated Trustees to Godfrey R Williams Ministries." ^{Para 86}
- c. Although Mrs Brown's evidence is that she was aware that the order from the late Mr St George was that the land was to go to Godfrey Williams, yet she was the person who drafted the first and second conveyances in favour of the plaintiff. And even after Mr Allen wrote to her on 21 February 2003 indicating that his concern was "only with the BOB", rather than informing the Trustees that the first conveyance was invalid and that the second conveyance was misconceived, she chose to remain silent, which, on the authority of *Brownlie v Campbell* supra and *Arnison v Smith*, amounted to fraud, as Mrs Brown was intentionally silent when she and the first and second defendants whom she represented had an obligation to speak up to the Trustees. ^(Para 73b/para 25 supplemental)
- d. Mrs Brown's evidence that the Incorporated Trustees were given notice of the fact that the first defendant did not own the Property through Christie, Davis & Co whom she believed to be acting on the Incorporated Trustees' behalf is unsustainable for many reasons:
 - i. The attorney for the fifth defendant was not the Incorporated Trustees' attorney. See judgment of Gray Evans, J in *Colina Imperial Insurance Company Ltd v Bethel* and another [2011] 2 BHS J No 9. See also *Wilkinson v Grant* S.C. 25 LJCP and *Pratt v Vizard* 5 B & D, which state that there is no implied contract between the mortgagor and mortgagee's attorney and there is no privity between a mortgagor and attorneys for a mortgagee respectively;
 - ii. In this matter, Christie Davis & Co twice wrote and explained that they were only acting for the fifth defendant. Therefore it is clear that that firm cannot be said to have been acting for both the fifth defendant and the Incorporated Trustees.

- iii. The 21 February 2003 letter is particularly damning because according to *Arnison v Smith* “the truth must be brought home clearly to the deceived.”
- iv. When Wallace Allen said he was only acting for and concerned with the fifth defendant’s interest it became incumbent upon the first and second defendants to “distinctly and clearly” explain the situation to the plaintiff. However no steps were taken to do so by any of the defendants and instead after they made their false representation to the Incorporated Trustees, in a fraudulent and dishonest fashion according to Lord Blackburn in *Brownlie v Campbell*, they all instead facilitated, whether intentionally or recklessly, a transfer of the Property away from the Incorporated Trustees to the third defendant without the plaintiff’s knowledge, authorization or consent. Therefore the first and second defendants cannot escape the fact that they acted fraudulently. *Brownlie v Campbell*; *Arnison v Smith*. ^{para 93}
- v. Additionally, if, as the first and second defendants contend, the intention was to give a gift of the Property to the fourth defendant who, at the time, did not have a licensee’s bond, even though both Mrs Brown and Mr Gray testified that they knew that, then they would have been intentionally breaking the law, acting contrary to the Hawksbill Creek Agreement and their own policy and in the process defrauding not only the plaintiff but the Port Authority as well. ^{Para 98}
- vi. Mrs Brown’s and Mr Gray’s evidence that the late Mr St George’s instructions were to give the Property to the fourth defendant, and not to the plaintiff, gives rise to two theories: either Mr St George did not say so and that lie is a part of the fraud; or, if the court finds that Mr St George did say so, then the conduct of Mrs Brown and Mr Gray was to deceive the Trustees, which deception lasted for fourteen years – from 1988 to 2002 – and amounts to fraud. Either way, the conduct of the first and second defendants was intentionally or recklessly to deceive and defraud the plaintiff. ^(para 30 supplemental)
- vii. As for the first and second defendants’ contention that the Property was a gratuitous gift by the second defendant to the fourth defendant or his nominee and that the second defendant was entitled to withdraw the same on the basis of the decision in *Milroy v Lord* 1862 4 De GF & J 264, and gift the Property to someone else, as it did with the third conveyance, based on the recitals in the first conveyance that the Property was given in exchange for the sum of \$10.00 and the “further consideration of constructing the Cathedral on the Property”, which the plaintiff did, the Property could not be said to have been a “gratuitous gift, as, in his submission, the first conveyance was supported by both monetary and practical consideration and as such the Incorporated Trustees are entitled to what they bargained for.” See *Williams v Roffey Bros & Nicholls (Contractors) Ltd* [1989] EWCA Civ 5. ^(paras 99-100)
- viii. Therefore, the first and second defendants, having, by their words, conduct and omissions, individually and collectively defrauded the Trustees, helped the fourth defendant to defraud the plaintiff and they should be held liable in damages for their fraudulent activities. See *Smith New Court Ltd v Scrimgeour Vickers*. ^(para 101)

238. Except for the aforesaid statement at paragraph 10 in his written closing submissions, which had been exchanged prior to the presentation of oral submissions, counsel for the plaintiff made no submissions on the issue of the alleged negligence on the part of the first defendant, prompting counsel for the second defendant to posit that the plaintiff appeared to have effectively abandoned its claim in negligence.

239. Moreover, counsel for the first defendant pointed out that while the plaintiff alleges that the first defendant was negligent in its execution of the first conveyance resulting in the plaintiff

suffering loss and damage and asserted certain particulars of negligence, nowhere in the second amended statement of claim does the plaintiff plead or allege that the first defendant owed the plaintiff a duty of care which was breached in the manner alleged by the plaintiff, particularly, counsel submits, as the plaintiff produced no evidence of an agreement by the first or second defendant to convey the Property to the plaintiff.

The first defendant's submissions

240. Nevertheless, counsel for the first defendant makes the following observations and or submissions in relation to the plaintiff's claim in negligence and on the limitations issue:

- a. The plaintiff's claim in negligence, even if taken at its absolute highest as a claim that was viable was statute barred prior to the commencement of these proceedings. Section 5 of the Limitation Act, 1995;
- b. Assuming (without conceding) that the first defendant owed the plaintiff a duty of care in the transaction giving rise to the first conveyance and the first defendant breached that duty of care, the plaintiff's pleaded claim based on the tort of negligence as against the first defendant was statute barred;
- c. For the purpose of the tort of negligence, the date of damage based on the first conveyance would be the date on which the first conveyance was executed by the parties; namely, 10 February 1998. Further, even if this court determines that time began to run from a later date, namely, the date on which the Trustees became aware that the first defendant did not hold title to the Property, in light of the evidence adduced at trial, that date would have been 26 July 2001;
- d. Consequently, any cause of action the plaintiff may have had against the first defendant based on the tort of negligence arising out of the first conveyance would have accrued at the earliest, on 10 February 1998 and become statute barred in February 2004 and at the latest, on 26 July 2001, and become statute barred in July 2007, the basic rule being: a cause of action accrues when the damage is suffered;
- e. The plaintiff has not pleaded a case that the applicable limitation period has been extended or postponed by reason of disability, concealment, mistake or fraud;
- f. Had the plaintiff pleaded a case for extension or postponement of the limitation period, in light of the compelling evidence showing that since July 2001 the Trustees knew the first conveyance was void, such a case for an extension or postponement of the limitation period would also fail.

241. In support of those contention/submissions, counsel for the first defendant relies on: (i) the viva voce evidence of Mrs Charisse Brown and Bishop Carrington Pinder, and correspondence amongst the agreed documentary evidence; (ii) the provisions of the Limitation Act 1995, chapter 83, Statute Laws of The Bahamas; (iii) Limitation Periods, Second Edition by Andrew McGree (Litigation Library); as well as (iv) the cases of *Pirelli General Cable Works v Oscar Faber and Partners* [1983] 2. A.C. 1 at p. 19; and *Barnes v Moxey and others* [2019] 1 BHS J No. 7.

242. In relation to the plaintiff's fraud claim, counsel for the first defendant makes the following observations and or submissions:

- a. Other than the bald allegations set out in the plaintiff's "particulars of fraud of the first defendant" in the second amended writ of summons, the trustees do not assert anywhere else that the first defendant acted fraudulently or dishonestly towards them;
- b. By the rules of court a party is required to plead the necessary particulars of any claim, particularly in a case for fraud. See Rules of the Supreme Court Order 18 rule 12. However, the plaintiff has failed to provide full particulars in support of its case for

- fraud against the first defendant and, instead, is urging this court to infer fraud from the first defendant's limited involvement with the first conveyance;
- c. The court should "robustly" reject the plaintiff's argument because claims based on fraud must be distinctly pleaded and particularized. See *Wallingford v Mutual Society* 5 App Cas. 697; *Dow Hager Lawrence v Lord Norreys and others* H.L. (1890) 15 App Cas 210; and *Seaton v Seddon* [2012] 1 WLR 3636, 3648;
 - d. Indeed, the few facts pleaded by the trustees in relation to the first defendant are consistent with the first defendant's innocence (see paragraphs 8, 11 and 12 of the second amended writ of summons);
 - e. So, apart from failing to meet the standard of pleading required for claims based on fraud, the trustees' claim for fraud as against the first defendant ought to be dismissed on the basis that the pleaded facts are wholly consistent with the first defendant having committed an honest mistake in assuming that it had title to the property and executing the first conveyance in favour of the plaintiff by inadvertence;
 - f. In any event, assuming the trustees had properly pleaded a case based on fraud (which is not conceded), it is the contention of the first defendant that the evidence does not satisfy any of the essential ingredients to support such a claim. See *Derry v Peek* (1889) 14 App. Cas. 337, 374;
 - g. Crucial to establishing a claim based on fraud is proof that something was said or done by the defendant amounting to a false representation made deliberately or recklessly; that is, it must be shown to the requisite standard of proof (balance of probabilities) that the defendant acted dishonestly. *Seaton v Seddon* [2012] 1 WLR 3636, 3648; and *Niru Battery Manufacturing Co. v Milestone Trading Ltd.* [2003] EWCA Civ. 1446;
 - h. The evidence led at the trial of this action showed that the first defendant honestly believed it held title to the Property when it executed the first conveyance, Objectively viewed, the first conveyance itself, the first defendant's letter dated 26 July 2001 to Christie, Davis & Co, and the testimony of Charisse Brown, all confirm that the first defendant honestly believed at the material time that it was the owner of the Property;
 - i. Applying the objective standards of 'ordinary decent people' to the facts concerning the first defendant's belief as to its ownership of the Property at the time the first conveyance was executed, it cannot be reasonably concluded that the first defendant acted dishonestly;
 - j. The assertion of dishonesty or fraud on the part of the first defendant is absurd as the first defendant stood to gain absolutely nothing, since the Property was purportedly conveyed by the first defendant to the trustees at a nominal purchase price stated in the deed of conveyance – "effectively as a gift";
 - k. Consequently, there is no evidence which supports the Trustees' allegations that the first defendant 'knowingly' made a false representation to them concerning ownership of the Property at the time the first conveyance was executed;
 - l. The first defendant rejects the assertion that its representations to the Trustees were made recklessly and points out that when that suggestion was put to Mrs Brown in cross examination by counsel for the plaintiff, "it was roundly denied on more than one occasion", and he invites the court to accept Mrs Brown's evidence in that regard;
 - m. As against the first defendant, the "straightforward incontrovertible facts are: the first defendant did not own the Property; when it discovered that it did not own the property, on 26 July 2001, it informed the Trustees via their attorneys, Christie, Davis & Co; the evidence shows the Property was intended to be a gift by the second defendant to the fourth defendant; the first defendant was not a party to the transfer of the Property by the second defendant to the third defendant; and the first defendant could not have prohibited the second defendant from conveying its land to the third defendant.

Accordingly, this court ought not to find fraud against the first defendant in any event and should dismiss the Trustees' action against it.

The second defendant's submissions

243. On the issue of the alleged negligence of the second defendant, counsel for the second defendant makes the following observations and or submissions:

- a. In order to establish a claim of negligence against the second defendant, the plaintiff must prove that the second defendant (i) owed a duty of care to the plaintiff: (ii) breached that duty of care, as a result of which (iii) the plaintiff was caused loss or damage: See *Donoghue v. Stevenson* [1932] A.C. 562, H.L.(Sc.);
- b. Even if (which is denied), the requirement of foreseeability of damage was met, it is essential in any situation giving rise to a duty of care, that there should exist between the party owing the duty and the party to whom it is owed a relationship characterised by the law as one of "proximity" or "neighbourhood" and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose a duty of a given scope upon the one party for the benefit of the other;
- c. The plaintiff's case for the existence of a duty of care between the second defendant and the plaintiff, rests entirely on the plaintiff's unfounded assertion that there was a binding contract between the second defendant and the plaintiff whereby the second defendant promised to convey the Property to the plaintiff;
- d. That this contract arose by the conduct of the second defendant in causing a survey, and a permit to build in respect, of the Property, to be issued to the plaintiff and by the plaintiff financing the construction of the Cathedral;
- e. Accordingly, the plaintiff's case for the existence of a duty of care on the part of the second defendant, is an alleged contract for the conveyance of the Property by the second defendant to the plaintiff;
- f. It is trite law that in order for a binding contract to come into existence, there must be an offer, acceptance, consideration and an intention to create legal relations. *Smith v. Hughes* (1871) LR6 QB 597;
- g. The plaintiff pleaded a contract for the conveyance of the Property. The plaintiff did not plead a promise to make a gratuitous donation of the Property;
- h. Accordingly, pursuant to Order 18 Rule 12 of the Rules of the Supreme Court, the plaintiff is bound by its pleadings and is constrained to establish to the satisfaction of the Court, all the requisite elements of a contract for the conveyance of land and also by the maxim, *caveat emptor*. In this regard, of significance is the requirement for agreements regarding the transfer of an interest in land to be in writing or evidenced in writing. Statute of Frauds Act, Section 1;
- i. The evidence on behalf of the plaintiff at trial did not establish the existence of an agreement, written or otherwise by the second defendant to convey the Property to the plaintiff;
- j. The only evidence of any communication from the plaintiff to the second defendant is a controversial letter with a manuscript date of "27.2.87" upon which the plaintiff relies as the basis of the alleged contract by the second defendant to convey the Property to the plaintiff. which letter does not contain a request by the plaintiff;
- k. No evidence was produced of any subsequent correspondence, written or otherwise between the plaintiff and the second defendant. Although in his witness statement Reverend Butler referenced a letter from Mr. Gray to the plaintiff on behalf of the Port Authority that land had been granted to the Incorporated Trustees, no such letter was produced at trial;

- l. The letter that was produced is dated 1 November 1988 from the second defendant (Mr. Gray) to Rev Williams/the fourth defendant, Pastor of St. John's Native Baptist Church, notwithstanding the plaintiff having by the aforesaid February 1987 letter purportedly informed the second defendant that the fourth defendant was a member of the plaintiff and was acting on behalf of the plaintiff;
- m. The second defendant denies making any offer to donate or convey the Property to the plaintiff and the plaintiff has adduced no evidence of any such offer having been made. The evidence adduced clearly establishes that no request for land was made by the Plaintiff to the second defendant and that the second defendant did not at any time communicate any agreement to make a donation of land to the Plaintiff;
- n. Mr. Gray denied having seen the aforesaid February 1987 letter prior to the commencement of this action and denied having met or spoken with any party to this action other than the fourth defendant, regarding the conveyance of the Property;
- o. What is not disputed is that the fourth defendant requested a donation of land from the second defendant for the construction of a church building;
- p. Having failed to produce any evidence relative to a written or oral agreement by the second defendant to convey the Property to the plaintiff, the plaintiff sought to rely on a plan of the Property dated 27 July 1988, on which the Property was labeled with the name of the plaintiff and the issue of a building permit and approval for groundbreaking by The Grand Bahama Port Authority, Ltd ("GBPA");
- q. The copy of the survey plan bears the recording reference volume 7272 page 108, which evidences the fact that the copy of the same was excerpted from the first conveyance which was not made until 10 February 1998, when the construction of the Cathedral was near completion. In any event, there is no evidence that this survey plan was provided by the first or second defendant to the plaintiff. Accordingly, the mere existence of the survey plan, in the absence of delivery of the same by the second defendant to the plaintiff does not constitute an offer by or intention of the second defendant to convey the Property to the plaintiff nor does it establish a case for detrimental reliance;
- r. Further, GBPA is a separate legal entity from the second defendant and no evidence was produced to establish that the second defendant caused, or requested that GBPA issue such permit or approval in respect of the construction of the Cathedral;
- s. In any event, an offer may be withdrawn at any time before it is accepted. *Routledge v Grant* (1828) 4 Bing. 653. If in fact (which is denied), an offer was made by the second defendant to the plaintiff, arguably, the same was never accepted by the plaintiff since the second/confirmatory conveyance was not signed and/or returned for execution by the second defendant;
- t. Moreover, a promise is not binding unless made by deed or supported by consideration. Consideration must be something of value in the eyes of the law and must move from the promisee. *Thomas v. Thomas* (1842) 2 QB 851, 859; and a gratuitous promise does not amount to a contract and is not enforceable. *Re Hudson* (1885) 54 LJ Ch 811;
- u. On the question of consideration, the plaintiff does not plead any agreement to pay or any payment to the second defendant for a conveyance of the Property. By the writ, the plaintiff states that a request was made to the second defendant for land to build facilities;
- v. The undisputed evidence is that the consideration for the conveyance of the Property as recited in the first conveyance, was \$10.00. The only evidence tendered as to the value of the land which comprises the Property is the appraisal of G. Ray Lightbourn in which the basic land value is stated at \$306,600.00. It cannot be reasonably

disputed that the consideration recited in the conveyance is nominal and not valuable consideration;

- w. The plaintiff sought to rely on the building commitment contained in the first conveyance as consideration for the conveyance of the Property by the second defendant;
- x. Firstly, it is respectfully submitted on behalf of the second defendant, that on the evidence, the building commitment was referenced in (i) the letter of 1 November 1988 from the second defendant to the fourth defendant, not to the plaintiff), and in (ii) the first conveyance, of which the second defendant was not party. As such, there is no evidence of a building or other commitment between the second defendant and the plaintiff. Likewise, there is no evidence of the plaintiff having funded the construction of the Cathedral or servicing the mortgage debt with the fifth defendant. In fact, the plaintiff pleads that the construction was financed partly with funds raised by the Local Church and partly by a mortgage from the fifth defendant; and Mrs. Burrows' evidence is that the plaintiff held no accounts with the fifth defendant and that the \$500,000.00 fixed deposit account was in the name of the Local Church;
- y. The plaintiff pleads that the purpose of the loan from the fifth defendant was to complete the construction of the Cathedral and to purchase furniture, fittings and equipment. Again, there is no assertion or evidence of the plaintiff having serviced the mortgage. There is, therefore, no evidence of the plaintiff having fulfilled the building commitment or of any detriment to the plaintiff occasioned by the construction of the Cathedral;
- z. It is noteworthy that the plaintiff guaranteed the mortgage for the funding of a portion of the construction of the Cathedral. However, the borrower was in fact the Local Church. As such, the obligation to repay the mortgage, was that of the Local Church and not the plaintiff. Pinder admitted that the plaintiff did not pay the mortgage and only learned that it had been satisfied in the course of these proceedings. The 2003 commitment letter between the third defendant and the fifth defendant clearly indicates that one purpose of that facility was to satisfy the borrowing undertaken by the Local Church and guaranteed by the plaintiff;
- aa. The undisputed evidence before the Court is that the Cathedral was constructed by funds contributed by the members of the Local Church and the mortgage with the fifth defendant. Notably, the plaintiff's Rules at Article VIII (J) allows for unit churches to keep such account or other property of the Society for the convenience and use of the members of the unit church. As such, the contention by the plaintiff that the construction of the Cathedral was financed by funds which were the Property of the plaintiff is unfounded. The only financial obligation of a unit church to the plaintiff, was to pay tithes;
- bb. The plaintiff pleaded the construction of the Cathedral as consideration for the conveyance of the Property. The evidence clearly establishes that the plaintiff paid no sum to the second defendant as consideration for the conveyance and that the construction of the Cathedral was not financed by the plaintiff. As such, if there was (which is denied) an agreement by the second defendant to convey the Property to the plaintiff, the same would not be enforceable by the plaintiff on account of failure of consideration;
- cc. On the question of intention, Reverend Hinsey confirmed that from the inception, it was the intention of the plaintiff that the plaintiff would acquire title to the Property. However, in cross-examination, he admitted that his evidence on the question of intention was limited to the intention of the plaintiff and did not refer to the intention of the second defendant or any of its affiliated entities;

- dd. Bishop Williams' evidence that Edward St. George, the President of the second defendant, who was his friend, agreed to make a donation of the Property to him or to whomsoever he shall direct, is corroborated by the evidence of Mr. Gray;
- ee. It would, therefore, not be fair, just or reasonable to impose a duty of care on the second defendant in respect of the plaintiff in circumstances where the second defendant agreed to make a gratuitous donation of the Property to the fourth defendant or the his nominee. Further, at no time did the second defendant communicate otherwise to the plaintiff;
- ff. The plaintiff having failed to satisfy the first limb of the litmus test of a claim in negligence (ie. the existence of a duty of care by the second defendant to the plaintiff), the plaintiff's claims in negligence must fail;
- gg. In addition, if (which is not admitted) there was a contract for the conveyance of the Property, the plaintiff was not a party to that contract and is, therefore, not entitled to enforce the same since only a party to a contract can sue on it. *Dunlop Pneumatic Tyre Company Ltd. v. Selfridge* [1915] AC 847;
- hh. There was, therefore, at all material times no enforceable agreement by the second defendant for the transfer of the Property to the plaintiff and, therefore, there was no duty of care as between the second defendant and the plaintiff.

244. As for the plaintiff's claim of negligent misrepresentation, counsel for the second defendant makes the following observations and or submissions:

- a. The bases for the plaintiff's claim of negligent misrepresentation rests with the survey plan which reflects the name of the plaintiff in the area of the Property and the issuance of a building permit and groundbreaking approval by the Port Authority;
- b. However, the plaintiff has produced no corroborating evidence to support its assertion that the survey plan was in fact delivered to the plaintiff by the second defendant; and neither the building permit nor the groundbreaking approval was issued by the second defendant, or indeed, addressed to the plaintiff;
- c. Therefore, the facts alleged by the plaintiff do not constitute representations by the second defendant to the plaintiff; negligent or otherwise;
- d. In any event, since liability in negligence does not exist in the absence of a legal duty to observe care in the circumstances (*Le Lievre v. Gould* [1893] 1 Q.B. 491 at 497, per Lord Esher M.R.), the plaintiff's failure to establish any duty of care on behalf of the second defendant is also fatal to the success of its claim of negligent misrepresentation against the second defendant;
- e. Further, even if, (which is denied), the second defendant was contractually obligated to convey the Property to the plaintiff, there was no duty of care on the second defendant regarding the form of conveyance approved and the marketability of the title to the Property accepted by the plaintiff;
- f. In the absence of an agreement to the contrary, a purchaser of land is not entitled to rely on any representation made by the vendor as to title and is obligated, on his own behalf, to investigate the vendor's title to confirm whether the same is clear and marketable before agreeing to accept the vendor's title to the property. See *Meek v. Clark* [1982] Lexis Citation 1315;
- g. Therefore, having accepted title to the Property in 1998, the plaintiff is now estopped from raising any further questions as to the second defendant's title and/or from calling for any further assurances.

245. Moreover, counsel for the second defendant submits, the plaintiff having approved and accepted the form of conveyance and title to the Property in 1998, its claim in negligence, if any,

became statute barred in 2004 pursuant to the provisions of section 5 of the Limitation Act. In that regard, counsel for the second defendant makes the following observations and submissions:

- a. Bishop Symonette testified that at the time of the dedication in 1998, Bishop Williams was no longer a member of the plaintiff society "because he had already given up to say he turn over to Neil Ellis." The evidence before the Court (including the copy of the dedication pamphlet) is that as at the date of the dedication of the Cathedral (1998), Bishop Williams was the Pastor of the Cathedral;
- b. It is more likely than not, that in 1998 the plaintiff was aware of the fact that the plaintiff was not the owner of the Property and that Bishop Williams had some beneficial interest in the Property. To suggest otherwise, would be to ask this Honourable Court to accept a proposition that the plaintiff, whose congregation had outgrown the Coral Road location, permitted Bishop Williams who had discontinued his affiliation with the plaintiff, to occupy the Property for purposes unconnected with the plaintiff. This proposition is implausible and should be rejected;
- c. In any event, in cross-examination, Bishop Pinder admitted that sometime in 2001 (approximately 8 years before the commencement of this action), the plaintiff became aware that the first conveyance did not effectively transfer title to the Property to the plaintiff;
- d. Even more telling, is the fact that when Reverend Bain and Bishop Symonette wrote to Bishop Williams on 21 January 2005, they stated:

"We wish to inform you hereby that the 74th Annual General Conference of the St. John's Native Baptist Society has given consent and empowerment to the Incorporated Trustees by Resolution dated May 21, 2004 "to deal with the properties of the Society that the St. John's Native Baptist Church, Freeport is located. Furthermore, the Conference has authorized the Trustees to appoint a committee with Power-of-Attorney "to sit from place to place" and call for persons and papers in connection with the said properties;

Already this committee is established and has taken the decision to open the properties of the Society which are located on Coral Road, Freeport for the use of public worship as a unit church of the Native Baptist Society.....

This arrangement would absolve you of any obligation for the care and upkeep of the properties on Coral Road."

- e. It is significant that according to the plaintiff's evidence, having on 9 December 2003 learned of the third conveyance, when the plaintiff wrote to Bishop Williams in January 2005, with authority to call for persons and papers in connection with properties of the Society in Freeport, no mention whatsoever was made regarding any interest of the plaintiff in the Property. The plaintiff has produced no evidence which even remotely suggests that the plaintiff asserted its title to the Property to the third defendant, the occupant and legal owner thereof or to the fourth defendant, pastor of the Cathedral;
- f. No such evidence was adduced because the plaintiff was fully aware of the fact that the plaintiff has no beneficial or other interest in the Property and that this was known to the plaintiff from as early as 1998. As such, any claim by the plaintiff arising out of or related to the conveyance of the Property is statute barred;
- g. For the purpose of these proceedings, time began to run against the plaintiff in 1998 when the plaintiff accepted title to the Property and a conveyance from the first defendant. The plaintiff's cause of action in negligence would, therefore, have become statute barred in 2004; or at the very latest, in 2007, the second defendant having informed the plaintiff (via its agent, Davis & Co), of the inadvertence and delivered an engrossed confirmatory conveyance to Davis & Co in July 2001;

- h. Further, since the second defendant informed the plaintiff (via Davis & Co) of the fourth defendant's request for a conveyance of the Property (the third conveyance) in or about December 2002, it is submitted that any cause of action in fraud would have become statute barred in or about December 2008. Section 41(1) of the Limitation Act.

246. In addition to adopting the submissions of counsel for the first defendant so far as they did not conflict with those made on behalf of the second defendant, counsel for the second defendant makes the following observations and or submissions:

- a. The burden of proof rests on the plaintiff to establish the elements of the claims as pleaded and in that regard, Mrs Brown argues that the court requires a strong case to be established in respect of an allegation of fraud; and such standard is higher than the usual civil standard of a balance of probabilities. See: *Arawak Homes Ltd. v. Sands*, [2003] BHS J. No. 163 and *Johnson Estate v. East Hill Ltd.* [1996] BHS J. No. 44 and *Halsbury's Laws of England*, 3rd edition, Vol. 26, paragraph 1571. See also the dicta of Lord Herschel in *Derry v. Peek (HL)* [1889] 12 AC 337 at 364, as referred to in *Caparo Industries plc v. Dickman et al* [1991] 1 Lexis Citation 2729;
- b. It is "indisputable" that there was no pecuniary or other benefit to accrue to the second defendant by virtue of the fraud alleged by the plaintiff; and, since the second defendant, as the owner of the Property, was not contractually or otherwise obligated to transfer title thereto to the plaintiff, the plaintiff's claim in this regard is entirely without merit;
- c. Moreover, it is clear from the plaintiff's case as pleaded and from the evidence (including the evidence of Mrs. Charisse Brown), that the first conveyance was inadvertent and that the second defendant gave full disclosure to the plaintiff (via its attorney) regarding the request for and the making of the third conveyance; as well as, subsequent to the letter of 26 July 2001 to Davis & Co, whom Mrs. Brown said that she understood to be representing the plaintiff, Mrs. Brown also wrote to Davis & Co on two or three further occasions regarding the execution of the second conveyance by the plaintiff and the request by Bishop Williams for the third conveyance;
- d. It is well settled that by providing full disclosure of the circumstances to Davis & Co, as aforesaid, the second defendant is deemed to have given such notice to the plaintiff. See *Barnes v Moxey and others* [2019] 1 BHS J No. 7 and *Halsbury's Laws (4th edn)* para 456;
- e. Accordingly, the plaintiff's assertion of non-disclosure (intentional or otherwise) of the relevant circumstances, particularly the making of the third conveyance, is unfounded, as knowledge of this fact was fixed in the plaintiff in or about 2002, when the second defendant informed Davis & Co of the same;
- f. Notwithstanding the execution of the third conveyance by the second defendant in or about December 2002, that conveyance was not delivered by the second defendant until the second defendant was in receipt of confirmation that any financial obligations of the plaintiff to the fifth defendant were fully extinguished by the fourth defendant;
- g. Therefore, there was clearly no intent on the part of the second defendant, to deceive or defraud the plaintiff;
- h. Moreover, there is no evidence which even remotely suggests that the second defendant was guilty of the carelessness or recklessness discussed by *Derry v. Peek*, such that would meet the threshold requirements of a case of fraud; and to grant the reliefs sought by the plaintiff in circumstances in which the second defendant had no legal or other duty to convey the Property to the plaintiff, would lead to a result that the evidence in this trial clearly and unequivocally establishes is not merely inconsistent with the intention of the donor of the Property, but also a result which will lead to the plaintiff being unjustly enriched, since by the plaintiff's own admission, the construction

of the Cathedral was partly financed by the Local Church and partly by the mortgage with the fifth defendant, which was satisfied by the third defendant;

- i. Consequently, justice in this case requires that this Court refuse to permit the plaintiff to obtain a benefit in respect of which the plaintiff has not incurred a corresponding deprivation, as there is “absolutely no juristic reason” for such enrichment; and based on the foregoing, the plaintiff’s claims against second defendant are without merit and should be dismissed.

Plaintiff’s responses (paragraph 33-37 of supplemental submissions)

247. In response to the submissions by counsel for the first and second defendants, counsel for the plaintiff makes the following observations and or submissions:

- a. As against the first defendant, the claim in negligence is not statute barred because the Incorporated Trustees expended considerable time and money, including the payments made in respect of the mortgage and exempting the Coral Road Church from tithes, in erecting the Cathedral as a direct consequence of FCIL, on the instructions of and as agent of DEVCO, mistakenly conveying the Property under the first conveyance to the Incorporated Trustees.
- b. As a result the plaintiff suffered loss and damage as it was operating on the factual mistake that it would and had received good title to the Property under the first conveyance.
- c. Thus, the limitation period will not begin to run against the Incorporated Trustees until they discovered this mistake, or could with reasonable diligence have discovered it.
- d. Further, the first and second defendants never informed the plaintiff of the second conveyance nor the third conveyance. Therefore, the plaintiff could not have found out about the mistake before they conducted their own title searches in or around 9th December 2003 at which point they discovered the third conveyance.
- e. Therefore, the limitation period of six years would have commenced on 9 December 2003 and since the Incorporated Trustees brought its action by filing its original writ on 8th September 2009, approximately five years and nine months later, the plaintiff did file its action within the applicable limitation period with respect to the negligence of the first defendant and the second defendant: Section 41(1) of the Limitation Act and FII Group Test Claimants supra.
- f. Furthermore in paragraph 47 (i) – (iv) of the writ [second amended], the plaintiff sets out with great detail the particulars of the fraud committed by the first and second defendants.
- g. Additionally, the second defendant’s arguments are unsustainable for the following reasons:
 - i. The first conveyance itself proves that a contract existed between the second defendant and the plaintiff because the first conveyance was prepared by the first defendant on instruction from the second defendant;
 - ii. Moreover, after the second defendant found out that the first defendant did not have title to the Property, in order to rectify the situation the second defendant itself prepared the second conveyance which was a confirmatory conveyance precisely to ensure that it discharged its obligations to give the Property to the Incorporated Trustees;
 - iii. Insofar as the duty of care is concerned, the fact that the second defendant took the steps to prepare the second conveyance shows that it was aware of its duty to take care and ensure that the Property was conveyed to the Incorporated Trustees.

- h. Further, the first and second defendant's arguments in relation to the plaintiff's fraud claim are without merit because when they discovered that the first defendant did not own the Property they intentionally or recklessly did not bring this fact to the plaintiff's attention when they should have and instead conveyed the Property to the third defendant without the plaintiff's informed consent, which, counsel argues, is "precisely the fraud that Lord Blackburn condemned in *Brownlie v Campbell* 5 App CA 950.

248. The issues that arise for determination as between the plaintiff and the first and second defendants are as follows:

- a. Whether the second defendant and the plaintiff have a contract whereby the second defendant agreed/promised to convey the Property to the plaintiff? If so,
- b. Whether the second defendant is guilty of breach of contract?
- c. Whether the first and or second defendant is guilty of negligence as alleged? If so,
- d. Whether the plaintiff's claim against the first and or second defendant based on the tort of negligence is statute-barred?
- e. Whether the second defendant is guilty of negligent misrepresentation? If so,
- f. Whether the plaintiff's claim against the first and or second defendant based on the tort of negligent misrepresentation is statute-barred?
- g. Whether the first and or second defendant acted fraudulently toward the plaintiff as alleged?

Was there an alleged contract/agreement/promise?

249. As I understand it, the plaintiff's pleaded case against the first and second defendants is grounded in an alleged contract between the plaintiff and the second defendant whereby the second defendant allegedly promised to convey the Property to the plaintiff in consideration for which the plaintiff allegedly agreed to construct a building for religious worship thereon.

250. As evidence of the alleged promise, the plaintiff relies on a letter from Bishop Symonette to Mr Gray allegedly dated 27 February 1987; a survey/plan dated 27 July 1988; and a letter to Gamma Construction Company Ltd dated 22 November 1988.

251. I have found that the aforesaid letter purportedly written on 27 February 1987 (the "1987 letter") does not pre-date the fourth defendant's request of the second defendant for the donation of land; that, even if it did, it does not include a request for the donation of land; and, in any event, was not received, nor responded to, by Mr Gray.

252. The plaintiff says that while the Trustees received no reply to Bishop Symonette's said letter, "on 27 July 1988 a piece of property, along with a plan, was given to the St John's Native Baptist Church by DEVCO, through Freeport Commercial and Industrial Limited (FCIL) to start the development of the church. This was a piece of property on Settler's Way." The plaintiff says that that plan showed the Property which was to be conveyed to the Incorporated Trustees with their name shown thereon and that that is how the Trustees knew which property was being given to them.

253. However, Bishop Symonette admitted under cross examination that while the survey/plan is dated 27 July 1988, that is not the date on which the Trustees received it. Indeed, neither he, nor any of the plaintiff's other witnesses could say when the plan was received by, or how it was "provided" or "delivered" to, the plaintiff. On the other hand, counsel for the second defendant pointed out that the copy of the survey/plan to which Bishop Symonette was referred while giving his evidence shows the reference "volume 7272 page 108" which is an indication that it is a copy of the survey/plan attached to and recorded with the first conveyance; and I accept that that would

mean, as counsel for the second defendant pointed out, that it would have been obtained after the first conveyance had been recorded, at which date the construction of the Cathedral was near completion, so it could not be said to have induced the plaintiff to undertake the construction.

254. So, having regard to the foregoing coupled with Mr Gray's evidence that he never received nor responded to the plaintiff's "1987 letter", I find that the plaintiff has failed to prove that the survey/plan dated 27 July 1988 was provided to the plaintiff in response to the said letter, or at all; and I accept the submissions of counsel for the second defendant that the mere existence of the survey/plan, in the absence of proof of delivery of the same by the second defendant to the plaintiff, does not constitute an offer by, or intention of, the second defendant to convey the Property to the plaintiff nor does it establish a case for detrimental reliance.

255. As for the groundbreaking letter/building permit, the plaintiff pleads at paragraph 4 of its second amended statement of claim, inter alia, that: "DEVCO, its servants or agents...caused the Grand Bahama Port Authority by a letter to the Incorporated Trustees dated 22 September [sic] 1988 to give permission for the groundbreaking".

256. That letter is actually dated 22 November 1988 and while the reference was to "St John's Native Baptist Cathedral – Fairfield", it is, in fact, addressed to Gamma Construction Co Ltd, not the Incorporated Trustees. Clearly the permission to clear the Property for the groundbreaking ceremony was granted to Gamma Construction Co Ltd, not the plaintiff. Furthermore, as pointed out by counsel for the second defendant, the author of that letter, the Port Authority, is a separate legal entity from the second defendant and no evidence was produced by the plaintiff to establish that the second defendant caused, or requested the Port Authority to issue such permit.

257. In the circumstances, then, I find that neither alone nor together do the "1987 letter", the aforesaid survey/plan dated 27 July 1988, in the absence of proof of delivery with the intention to create legal relations on the part of the second defendant, and/or the aforesaid letter to Gamma Construction Company Ltd dated 22 November 1988, amount to a promise or agreement by the second defendant to convey the Property to the plaintiff.

258. In any event, the evidence is that Mr Gray's 1 November 1988 letter confirming the second defendant's decision to donate the Property was addressed to the fourth defendant as pastor of the Coral Road/Local Church and not to the plaintiff or the Society.

259. As for the plaintiff's assertion that it provided "consideration" for the aforesaid alleged promise by the second defendant, I note, as pointed out by counsel for the second defendant, that the plaintiff does not plead an agreement to pay or that the plaintiff made any payment to the second defendant for a conveyance of the Property. Instead, the plaintiff asserts that "the Incorporated Trustees provided consideration for the said promise by agreeing to construct a Cathedral on the Property". The "commitment to build" upon which the plaintiff seeks to rely was contained in the said 1 November 1988 letter in which Mr Gray advised that "the conveyance to the property will not be released until the building commitment is completed". The "purchaser's covenant to build" was also included in the first conveyance, in addition to the sum of \$10.00, as a "further consideration".

260. However, having regard to the fact that the aforesaid letter from the second defendant containing the "commitment to build" was addressed to the fourth defendant and not the plaintiff, and the first conveyance was declared null and void, even if the "building commitment" could be considered "consideration" for an alleged "promise" by the second defendant to convey the Property to the plaintiff, there is no evidence of such "consideration" being provided by the plaintiff to the second defendant.

261. Moreover, there is no evidence of the plaintiff having funded the construction of the Cathedral or servicing the loan/debt with the fifth defendant. Indeed, the plaintiff pleads that the

construction was financed partly with funds raised by the Local Church and partly by a mortgage from the fifth defendant and it is common ground that while the plaintiff executed the mortgage as a guarantor for the said loan, the plaintiff did not repay the mortgage. In fact, Rev Pinder's evidence is that the plaintiff only learned that the loan had been paid off in the course of these proceedings. And while the plaintiff pleads that the \$500,000.00 held by the fifth defendant on a fixed deposit and which were applied against the loan to the Local Church belonged to the plaintiff, the evidence is that those funds, in fact, belonged to the Coral Road Church – not the plaintiff.*

262. In the circumstances, I find that the plaintiff has failed to prove the existence of a contract between the second defendant and the plaintiff whereby the second defendant agreed to convey the Property to the plaintiff.

Was there a breach of contract?

263. The plaintiff pleads further, at paragraph 42 of its second amended writ, that "in breach of the contract, DEVCO purported to convey the Property to Godfrey R Williams Ministries"; as a result of which "the plaintiff has suffered loss and damage."

264. As I have found that there was no contract between the second defendant and the plaintiff whereby the plaintiff agreed to convey the Property to the plaintiff, there could be no breach thereof. I, therefore, find that, in conveying the Property to the third defendant by the third conveyance, the second defendant was not in breach of any contract with the plaintiff whereby loss or damage was caused to the plaintiff as pleaded.

Whether the first and second defendants are guilty of negligence in respect to the execution and delivery of the first conveyance?

265. Notwithstanding my finding that there was no contract between the second defendant and the plaintiff whereby the second defendant agreed to convey the Property to the plaintiff, the evidence is that by the first conveyance the Property was purportedly conveyed to the plaintiff pursuant to a request or upon the directions of the fourth defendant to enable the Property to be used as security for the loan by the fifth defendant to the Coral Road Church. It is common ground that at the date of the first conveyance, title to the Property was vested in the second, not the first, defendant and that the first conveyance was declared null and void and the Property subsequently conveyed by the second defendant to the third defendant.

266. The plaintiff alleges, inter alia, that the first defendant having executed the first conveyance and the second defendant having caused or permitted the first conveyance to be executed by the first defendant in favour of the plaintiff, when each of them knew or ought to have known that the first defendant did not own the Property, as well as each of them failing to inform the plaintiff of the error with the first conveyance when it was discovered in 2001, when, in the case of the first defendant, it knew it could not have conveyed the Property to the plaintiff; and in the case of the second defendant, when it knew the plaintiff had relied to its detriment on the second defendant's promise to convey the Property to the plaintiff, they are both guilty of negligence. Further, that by failing to take any steps to stop the plaintiff from continuing its construction of the Cathedral on the Property when it knew or ought to have known that the plaintiff was carrying out construction works thereon, the first defendant was negligent; and that in purporting to convey the Property to the third defendant when it knew that only the plaintiff was authorized to receive a conveyance thereof and not informing the plaintiff of the third conveyance, the second defendant was negligent.

267. "Negligence" is defined as "the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do." Alderson, B. in the case of *Blyth v Birmingham Waterworks* (1856)11 Exc 781, 784.

268. In order to prove common law negligence, a plaintiff must establish and prove that (i) he was owed a duty of care by the defendant; (ii) the defendant breached that duty; (iii) as a result of which the plaintiff sustained reasonably foreseeable injury and damage. (See *Donaghue v Stevenson* [1932] A C 562). The burden is on the plaintiff to prove each of those elements. See *Brown v Rolls-Royce Ltd*; *Ng Chun Pui v Lee Chuen Tat* [1988] RTR 298 PC.

269. Even if the requirement of foreseeability of damage is met, it is essential in any situation giving rise to a duty of care, that there should exist between the party owing the duty and the party to whom such duty is owed a relationship characterised by the law as one of "proximity" or "neighbourhood" and that the situation should be one in which the court considers it fair, just and reasonable that the law should impose such duty upon the one party for the benefit of the other. See, for example *Caparo Industries plc v Dickman and others* [1990] 1 All ER 568.

270. Furthermore, not only must particulars always be given in the pleading showing in what respects the defendant was negligent, but the statement of claim "ought to state the facts, upon which the supposed duty is founded and the duty to the plaintiff with the breach of which the defendant is charged" (per Willes, J in *Gautret v Egerton* (1867) L.R. 2 C.P. 271 cited with approval by Lord Alverstone C.J. in *West Rand Central Gold Mining Co v R* [1905] 2 K.B. at p. 400. The English Rules 1978, paragraph 18/12/22.

271. As indicated, the plaintiff relies on the aforesaid alleged contract to establish that the second defendant owed a duty of care to the plaintiff. Having regard to my findings that there was no such contract, I accept the submission of counsel for the second defendant that, in the absence of a contract as alleged by the plaintiff, and in light of the second defendant's evidence that it agreed to make a gratuitous donation of the Property to the fourth defendant or his nominee, and that at no time did the second defendant communicate otherwise to the plaintiff, it would not be fair, just or reasonable to impose a duty of care on the second defendant in respect to the plaintiff in relation to the Property.

272. So, in the absence of any such contract, on the plaintiff's pleaded case, in my judgment, no duty was owed to the plaintiff by the second defendant with respect to a conveyance of the Property and I agree with counsel for the second defendant in the absence of the plaintiff establishing a duty of care on the part of the second defendant to the plaintiff, the plaintiff's claim in negligence against the second defendant fails.

273. Similarly, while the plaintiff asserts at paragraph 45 of its second amended statement of claim that "further, or alternatively, FCIL was negligent in its execution of the first conveyance as a result of which the plaintiff has suffered loss and damage," nowhere in its second amended statement of claim does the plaintiff plead that it was owed a duty of care by the first defendant, which duty was breached when the first defendant executed the first conveyance. In the absence of a duty, there can be no breach. Therefore, the plaintiff's claim in negligence against the second defendant also fails.

274. In any event, the plaintiff pleads that the first conveyance was executed by the first defendant in error and that the second defendant brought the matter to the attention of the firm of Christie Davis & Co and an attempt made to correct the error by the preparation of the second/confirmatory. In that regard, the evidence is that immediately after the second defendant discovered the error it sought to bring the matter to the plaintiff's attention by notifying the firm of Christie, Davis & Co, whom Mrs Brown said she believed represented the plaintiff.

275. Furthermore, according to his 23 September 1997 letter, Mr Allen informed Mrs Moss at the Port Authority that the fifth defendant had "agreed to extend financing to St John's Native Baptist Church to complete construction on the above-captioned property", so it is unclear how the first or second defendant would have known that the plaintiff was carrying out construction

works on the Property, and what steps the second defendant could have been expected to take to stop the plaintiff from continuing its alleged construction of the Cathedral on the Property, when they were clearly advised that it was the Coral Road Church carrying out such construction. Additionally, the evidence is that when the second defendant was requested/directed by the fourth defendant or his attorney, at the time, to have the Property conveyed to the third defendant, that information was also passed on to the firm of Christie, Davis & Co with the belief that it was being shared with the plaintiff's attorney.

276. In the circumstances then, having regard to the plaintiff's pleaded case, the evidence on the whole, the submissions of counsel and the authorities cited, I find that the plaintiff has failed to prove its claim in negligence against the first and or second defendant, and the same is dismissed.

277. The plaintiff also accuses the second defendant of negligent misrepresentation and alleges that the second defendant delivered to the Incorporated Trustees a survey/plan with the Property labeled with the plaintiff's name thereon and by doing so, the second defendant misrepresented to the plaintiff that the second defendant would convey the Property to the plaintiff, upon which representation the plaintiff relied and acted to its detriment.

278. Having regard to my findings in regard to the alleged contract between the plaintiff and the second defendant for the conveyance of the Property to the plaintiff; the alleged issuance of the permit; the alleged delivery of the survey/plan to the plaintiff; the plaintiff's acknowledgement that the first conveyance was executed by the first defendant in error; the plaintiff's alleged involvement in the construction of the Cathedral on the Property; and having regard to the submissions of counsel and authorities cited on this aspect of the plaintiff's claim, I find that the plaintiff's claim against the second defendant for negligent misrepresentation has not been made out and the same is, therefore, dismissed.

279. The first and second defendants say that in any event any cause of action which the plaintiff may have had against either of them based on contract or the torts of negligence or negligent misrepresentation would, at the commencement of this action, have been statute barred at the commencement of this action.

Is the plaintiff's claim based on the tort of negligence and/or negligent misrepresentation statute barred?

280. Section 5 (1) of the Limitation Act 1995, chapter 83 Statute Laws of The Bahamas provides as follows:

- "5. (1) The following actions shall not be brought after the expiry of six years from the date on which the cause of action accrued, that is to say —
- (a) actions founded on simple contract (including quasi contract) or on tort;
 - (b)

281. And section 41 (1) of the Limitation Act provides as follows:

- "41. (1) Subject to subsection (4), where in the case of an action for which a period of limitation is prescribed by this Act either —
- (a) the action is based upon the fraud of the defendant; or
 - (b) the action is for relief from the consequences of a mistake,
- the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it."

“(2)....

“(4)...and (5) deal with purchaser for value without notice

“(6) References in this section to the defendant include references to the defendant's agent and to any person through whom the defendant or the defendant's agent claims.”

282. In the case of ‘simple wrongs’, “the basic rule is that in cases of actions grounded in tort, the cause of action accrues when the damage is suffered” (per the learned authors of *Limitation Periods*, Second Edition, page 65). This may be said to follow from the principle that the cause of action is complete when there is a plaintiff who can sue and a defendant who can be sued; and when the ingredients of duty, breach of duty and damage are all satisfied. See *Howell v Young* (1826) 5 B & C 259, [1824-34] All ER Rep 377; *Coburn v Colledge* [1897] 1 Q.B. 702, C.A.; and *Pirelli General Cable Works v Oscar Faber and Partners* [1983] A.C. 1 at p. 19.

283. In the case of *Howell v Young supra*, the plaintiff, in 1811, agreed to lend to O a sum of money at interest if certain premises should be a sufficient security for the loan, and he employed the defendant, an attorney, to ascertain whether the premises would be a sufficient security. The defendant, without exercising due care, stated that the premises would be a sufficient security, whereupon the plaintiff lent the money to O. Interest was paid regularly until 1820, when the plaintiff discovered that the security was insufficient. In an action by the plaintiff against the defendant for negligence, it was held that the cause of action was the misconduct or negligence of the defendant in taking an insufficient security; the period of limitation ran from the time when the defendant was guilty of that misconduct, and not from the time when the plaintiff discovered that the security was insufficient; and, therefore, the action was barred.

284. Then, in the case of *Pirelli General Cable Works Ltd v Oscar Faber & Partners (A Firm)*, [1983] 2 A.C. 1, the plaintiffs, in about March 1969 engaged the defendants, a firm of consulting engineers, to advise on and design an addition to their factory premises, including the provision of a chimney. The chimney was built in June and July 1969. A material was used in its construction which was unsuitable for the purpose, and not later than April 1970 cracks developed at the top of the chimney. The plaintiffs discovered the damage in November 1977, and it was found that they could not with reasonable diligence have discovered it before October 1972. Extensive remedial work had in due course to be carried out, and in October 1978 the plaintiffs issued a writ claiming damages for, inter alia, negligence by the defendants in relation to the design of the chimney. The defendants in their defence pleaded, inter alia, that the claim was barred by the Limitation Act 1939. The judge held that the design of the chimney, for which the defendants were responsible, was negligent, that the plaintiffs' cause of action accrued when the damage was discovered or ought with reasonable diligence to have been discovered, and that since that date was less than six years before the issue of the writ and therefore within the limitation period prescribed by section 2 (1) of the Act of 1939, the defendants were liable. The defendants appealed, the question at the hearing of the appeal being confined to that of limitation. The Court of Appeal dismissed the appeal. On appeal by the defendants, the House of Lords, allowing the appeal, held that the date of accrual of a cause of action in tort for damage caused by the negligent design or construction of a building was the date when the damage came into existence, and not the date when the damage was discovered or should with reasonable diligence have been discovered; that the plaintiffs' cause of action, therefore, accrued not later than April 1970, when the cracks occurred in the chimney; and that since that date was more than six years before the issue of the writ, the claim was statute barred.

285. In this case, the alleged negligent conduct/act of the first and second defendants of which the plaintiff complains, is the execution of the first conveyance by the first defendant upon the

instructions or by the direction of the second defendant when each of them knew or ought to have known that the first defendant did not have title to the Property.

286. It is common ground that the date of that conveyance is 10 February 1998. In my judgment, that is the date on which the plaintiff's cause of action in negligence, if any, in relation to the first conveyance would have begun to run, as that is the date when the alleged negligent act of executing the conveyance would have occurred, and when damage, if any, would have occurred. See *Howell v Young* above. That is also the date when, as counsel for the second defendant pointed out, the plaintiff would have accepted the vendor's title and delivery of the conveyance and, therefore, that was the date when there was a plaintiff who could sue and a defendant who could be sued on that conveyance; when the ingredients of duty, breach of duty and damage, if any, would all have been satisfied for the purpose of the tort of negligence. See *Pirelli General Cable Works v Oscar Faber and Partners* supra and also *Coburn v Colledge* [1897] 1 Q.B. 702, C.A., where it was held that in the case of a solicitor's costs the cause of action arises when the work is completed, and, therefore, the Statute of Limitations begins to run from that time.

287. Consequently, I accept the submissions of counsel for the first and second defendants and find that any cause of action which the plaintiff may have had against the first defendant or the second defendant based on the tort of negligence with respect to the execution and delivery of the first conveyance, would, pursuant to section 5 of the Limitation Act, have become statute barred on or about 10 February 2004, almost five years before the commencement of this action.

288. Likewise with respect to the plaintiff's claims for breach of contract and negligent misrepresentation as, in my judgment, claims based on those causes of action would, pursuant to section 5 aforesaid, have also been statute barred, the same having accrued more than six years before the commencement of this action in 2009.

289. As indicated, section 41 provides for the postponement of the commencement of the limitation period on the ground of fraud or mistake until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it.

290. Counsel for the plaintiff argues for a postponement of the accrual date to 9 December 2003, on the ground that the plaintiff did not discover the existence of the third conveyance or the error with the first conveyance until that date. In counsel for the plaintiff's submission, then, the limitation period of six years would have commenced on 9 December 2003 and since the Incorporated Trustees brought its action by filing its original writ on 8th September 2009, approximately five years and nine months later, the plaintiff did file its action within the applicable limitation period with respect to the negligence of the first defendant and the second defendant: Section 41(1) of the Limitation Act and *FII Group Test Claimants* supra.

291. On the other hand, counsel for the first defendant, with whom counsel for the second defendant agrees, points out that the plaintiff has not pleaded a case that the applicable limitations period should be extended or postponed by reason of disability, concealment, mistake or fraud; and that even if the plaintiff had so pleaded, in light of the "compelling" evidence showing that since July 2001 the Trustees knew the first conveyance was void, the plaintiff's case based in negligence would nevertheless have been statute barred at the commencement of this action, namely from July 2007.

292. The "compelling" evidence to which Mr Adams refers, and with which Mrs Brown for the second defendant agrees, came, they say, from Bishop Pinder and from Mrs Charisse Brown.

293. Bishop Pinder's evidence under cross examination is that the plaintiff first learnt in 2001 that the first defendant did not have title to the Property. In fact, Bishop Pinder's so-called "firm" responses to the questions posed by counsel for the first defendant on the issue were that he

learned “it through a communication we said in checking of the records”...“after the dedication, possibly 2001, I think”...“I think it was 2001”. Counsel for the first defendant pointed out, correctly, that counsel for the plaintiff did not, on re-examination of Bishop Pinder, seek to clarify his evidence that the plaintiff became aware in 2001 that the first defendant did not have title to the Property.

294. Mrs Brown’s evidence on the issue is that when she realized in 2001 that the first defendant did not, at the date of the first conveyance, have title to the Property, by letter dated 26 July 2001, she so informed Christie, Davis & Co, who she says, she believed had represented the plaintiff in the transaction involving the first conveyance, and, therefore, were the plaintiff’s attorneys.

295. The first and second defendants argue that the documentary evidence supports Mrs Brown’s “belief” that Christie, Davis & Co acted for the plaintiff and, therefore, that firm’s knowledge of the error with the first conveyance ought to be imputed to the plaintiff and that the Incorporated Trustees are estopped from denying that they knew since July 2001 that the first conveyance was void.

296. For that submission, the first and second defendants rely on the judgment of Winder J in the case of *Barnes v Moxey and others* [2019] 1 BHS J No 7 in which he cited with approval the dicta of Browne-Wilkinson V-C in *Strover v Harrington* [1988] Ch 390, and held that in transactions for the sale of land the knowledge acquired by a purchaser’s attorney is imputed to the purchaser himself and he is estopped from denying that he had received the information relative to the transaction.

297. Similarly the learned authors of *Halsbury’s Laws* (4th edn) opined at para 456:

“Where in the course of any transaction in which he is employed on his principal’s behalf, an agent receives notice or acquires knowledge of any fact material to such transaction, under such circumstances that it is his duty to communicate it to the principal, the principal is precluded, as regards the persons who are parties to such transaction, from relying upon his own ignorance of that fact, and is taken to have received notice of it from the agent at the time when he should have received it, if the agent had performed his duty with due diligence ...”

298. The plaintiff denies that the Incorporated Trustees were represented by Christie, Davis & Co and counsel for the plaintiff invites the court to accept Bishop Symonette’s evidence that the firm of Christie Davis & Co did not represent the Trustees in the transaction involving the first conveyance, and to find, firstly, that notice to that firm ought not, in the circumstances, to be imputed to the plaintiff; and, secondly, that the plaintiff did not discover, and could not, even with reasonable diligence, have discovered, the error with the first conveyance until 9 December 2003.

299. As further support for the plaintiff’s contention that the firm of Christie, Davis & Co did not represent the plaintiff, counsel for the plaintiff referred the court to certain correspondence passing between Christie, Davis & Co and the first and second defendants as evidence, he says, that that firm “only” acted for the fifth defendant. In his written closing submissions counsel for the plaintiff asserts that Christie, Davis & Co “twice wrote and explained that they were only acting for the BOB”.

300. Indeed, as I understood him, counsel for the plaintiff argues that because Christie, Davis & Co acted for the fifth defendant in the mortgage transaction they could not also have acted for the plaintiff. In support of that argument, counsel for the plaintiff seeks to rely on a judgment by this court in the case of *Colina Imperial Insurance Company Ltd v Bethel and Another* ^{[2011] 2 BHS J No. 19}. However, I merely point out, as I did at paragraph 44 of that decision, that there may be times when the same lawyer, for any number of reasons “may act” for both parties. In fact, in one

of the cases cited by counsel for the plaintiff in this matter, *Bristol and West Building Society vs. Mothew* ^{[1998] Ch.1}, the same attorney acted for the bank and for the borrower qua purchaser; and in the case of *Paragon Finance Plc v D B Thakerar & Co (a firm)*; *Paragon Finance plc and another v Thimbleby & Co (a firm)* ^{[1999] 1 All ER 400}, cited by counsel for the fifth defendant, two separate cases in which the defendant solicitors acted for both the plaintiff mortgage lenders and the borrowers in relation to the purchase and mortgage of a number of flats.

301. So, the mere fact that Christie, Davis & Co acted for the fifth defendant does not mean they could not also have acted for the plaintiff as the donee of the Property which was to be mortgaged to the fifth defendant. The question is, did they?

302. The letters to which counsel for the plaintiff referred and relied upon as documentary evidence supporting the plaintiff's assertion that the firm of Christie, Davis & Co did not represent the plaintiff are dated 23 September 1997 and 21 February 2003 respectively. In the 23 September 1997 letter Mr Allen/Christie, Davis & Co wrote to Mrs Moss, Legal Counsel of the Port Authority as follows:

"We have been instructed by Bank of The Bahamas Limited who have agreed to extend financing to St John's Native Baptist Church to complete construction on the above-captioned property."

303. In the 21 February 2003 letter Mr Allen wrote to Mrs Brown, Legal Counsel of the second defendant, inter alia:

"You will appreciate that our concern is only so far as the Bank's security remains intact or suitable arrangements, to the Bank's satisfaction, are in place."

304. While I accept that nowhere in those letters does Mr Allen/Christie, Davis & Co say that he/that firm acted for the plaintiff, I note that Mr Allen also does not say that he/his firm "only" acted for the fifth defendant.

305. On the other hand, having regard to the oral testimonies and the agreed documentary evidence, it is, in my view, clear that Mr Allen/Christie, Davis & Co "acted" for the plaintiff in the transactions leading up to the execution and delivery of the first conveyance, in the sense, certainly from the documentary evidence, that that firm performed the functions of an attorney for the purchaser/donee in a conveyancing transaction, as demonstrated by the following:

- a. Christie, Davis & Co, by letter dated 23 September 1997, informed Mrs Moss at the Grand Bahama Port Authority, Limited, that the first conveyance would be taken in the name of the plaintiff;
- b. Christie, Davis & Co approved particulars of title for the Property which is a duty that is normally borne/undertaken by attorneys representing a purchaser in a transaction for the sale of land;
- c. Christie Davis & Co took receipt, and unilaterally amended copies, of the draft conveyance for execution by the Trustees and returned the same to Mrs Brown for engrossment;
- d. Christie, Davis & Co attended to the execution of the first conveyance and delivered the same to the first defendant fully executed by the Trustees.

306. Regrettably, it is not clear from the letters upon whose instructions Christie, Davis & Co were acting.

307. However, when Mrs Brown, with her letter dated 26 January 1998, returned the first conveyance to Mr Allen "as per your request" for execution by the plaintiff's General Superintendent and General Secretary, she gave the following reminder: "inasmuch as this

transaction is subject to a building commitment, we would require from you an undertaking to return the original Deed if the loan to your client is not forthcoming". (tab 44 part 1)

308. Moreover, there is no evidence that Bishop Symonette and or Dr Bain, when asked to execute the first conveyance, indicated to Mr Allen/Christie, Davis & Co that they wished to have the plaintiff's attorney review the documents or the title to the Property. There is also no evidence of the plaintiff contacting the first or second defendant directly requesting details of title or indicating how title to the property was to be taken and or providing either of them with the name of the plaintiff's attorney, even after having been contacted by Christie, Davis & Co to execute the first conveyance and the 1998 mortgage.

309. Then, in relation to the second/confirmatory conveyance, following the aforesaid discovery by the second defendant of the error with the first conveyance, Mrs Brown notified Mr Allen/Christie, Davis & Co and sent him/that firm the confirmatory conveyance with a request that he "peruse the same on behalf of St John's", which he, apparently, did before returning the same to her for engrossment. Mrs Brown then forwarded the engrossed confirmatory conveyance to Mr Allen/Christie, Davis & Co for execution by "your client" and return for execution by the second defendant. Additionally, Mrs Brown informed Mr Allen/Christie Davis & Co of the request by Mr Miller, on behalf of the fourth defendant, that the Property be conveyed to the third defendant.

310. It is, therefore, clear, with respect to the confirmatory conveyance, that the firm of Christie, Davis & Co also performed the services of counsel for the purchaser/donee in that that firm approved the draft confirmatory conveyance on behalf of, and accepted the same for execution by, the plaintiff. Nowhere in the aforesaid exchange of correspondence after the discovery of the error with the first conveyance did Mr Allen say that he or his firm did not represent the plaintiff and or invite Mrs Brown to contact the plaintiff, or its lawyers, instead.

311. In my judgment, the aforesaid correspondence passing between the firm of Christie, Davis & Co and the first and second defendants before and after the discovery of the error in the first conveyance, provided Mr Allen/Christie, Davis & Co with ample opportunity to ensure that the first and second defendants were aware that he/that firm did not represent the plaintiff, particularly after notice of the request by the fourth defendant to have the Property conveyed to the third defendant was brought to his/their attention.

312. It is not entirely clear from the evidence who among the "church players", if any, other than the fourth defendant, would have communicated with Mr Allen/Christie, Davis & Co on behalf of the Coral Road Church and or the Trustees. While the fourth defendant's evidence is that he gave instructions for the Property to be conveyed to the plaintiff, in his re-amended defence, he accuses Rev Butler of being the mastermind behind the preparation and execution of the first conveyance. And while in his 15 May 2003 letter Mr Allen wrote to Mrs Burrows that he "personally spoke with all the parties... who confirmed that title to the property should be taken in the name of St Johns Particular Church of Native Baptist in The Bahamas", the only named "party" was the fourth defendant.

313. Further, it appears from Mr Miller's 27 November 2002 letter to Mr Gray that at some point Christie, Davis & Co may have acted for the fourth defendant, although it is not entirely clear whether that representation was of the fourth defendant personally or in his capacity as pastor of the Coral Road Church. In that regard, Mr Miller, in the penultimate paragraph of that letter, stated: "You will note that soon after the Bishop [i.e. the fourth defendant] consulted us a few months ago and informed me that Mr Allen acted for himself and the Bank, I wrote to him requesting that he [i.e. Mr Allen] forward files and documents pertaining to St John's and Bishop Williams."

314. And while counsel for the plaintiff thought to make it clear that as he was no longer a trustee in 1997, the fourth defendant could not give Christie, Davis & Co instructions to represent

the plaintiff, the fourth defendant's evidence under cross-examination is that as far as he was concerned Christie, Davis & Co represented the fifth defendant.

315. Having said that, while I am persuaded by the aforesaid correspondence passing between the firm of Christie Davis & Co and the first and second defendants that that firm performed the services of counsel for the plaintiff as purchaser in relation to the transactions involving the execution and delivery of the first conveyance as well as with the confirmatory conveyance, and while I accept Mrs Brown's evidence that she believed, with good reason in my view, that that firm represented the plaintiff, having regard to the evidence of the plaintiff's witnesses, and the aforesaid correspondence passing between Mr Miller and the first and second defendants, as well as the evidence of the fourth defendant, I am not persuaded that that firm was, in fact, engaged or retained by the plaintiff to provide such representation – certainly not to the point that I am prepared, as invited by counsel for the first and second defendants to follow Winder, J in the case of *Barnes v Moxey and others* [2019] 1 BHS J No, 7 and make a finding that Mr Allen's/Christie Davis & Co's knowledge of the aforesaid events ought to be imputed to the plaintiff.

316. In that regard, while I accept that *Barnes v Moxey* may be instructive, in my judgment, that case is distinguishable from this case as there was no dispute in *Barnes v Moxey*, unlike in this case, that the same attorney had acted for the vendor and purchaser in the transaction giving rise to the action.

317. In the circumstances, then, I decline to make a finding that Christie, Davis & Co's knowledge about the error with the first conveyance and the circumstances relating to the second and third conveyances ought to be imputed to the plaintiff on the basis that that firm was the plaintiff's attorney.

318. Further, having regard to the fact that the third conveyance, although dated 12 December 2002 was not lodged for record until 9 December 2003, it is unlikely, as Bishop Pinder testified, that the Trustees would have become aware in 2001 that the first defendant did not have title to the property "following a search of the records". I, therefore, accept Bishop Symonette's evidence that the plaintiff did not discover the existence of the third conveyance and or the error with the first conveyance until on or about 9 December 2003.

319. So, in the event, I am incorrect in my finding that the plaintiff's claims based on the first conveyance, were, pursuant to section 5 of the Limitation Act, statute barred at the commencement of this action, the same having accrued in or about 1998, and that date ought to be postponed to the date when the plaintiff allegedly discovered the error with the first conveyance, then I would hold that the postponement date would be 9 December 2003 as contended by the plaintiff and not 26 July 2001 as contended by the first and second defendants.

320. In any event, I have found that the plaintiff's claims for breach of contract, negligence and or negligent misrepresentation against the first and second defendants respectively have not been proven and are dismissed.

321. On the issue of fraud, the following principles may be gleaned from the authorities cited:

- a. To sustain an action of deceit, there must be proof of fraud. Fraud is proven when it is shown that a false representation has been made knowingly, without belief in its truth or recklessly, careless whether it be true or false. See *Derry v Peek* (1889) 14 App. Cas. 337;
- b. A case for fraud must be clearly expressed and general allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any court ought to take notice. See *Seaton v Seddon* [2012] 1 WLR 3636 and *Wallingford v. Mutual Society* 5 App. Cas 697;

- c. The burden of proof is on the plaintiff and the standard of proof, whilst to the civil standard of the balance of probabilities, in a case such as this, where there are grave allegations, the law requires cogent evidence of serious wrongdoing before the standard of proof is satisfied. See *H. Minors* (1996) AC 563 and *Re Dellow's Will Trusts* [1954] 1 WLR 451;
- d. In this regard, the approach of the court in determining questions of fraud and dishonesty was set out in the English case of *Niru Battery Manufacturing C. v Milestone Trading Ltd* [2003] EWCA Civ 1446 at paras 173 -175, and should be applied in the present case.

322. The case of *Derry v Peek*

323. In my judgment, the plaintiff's complaint/claim of fraud in relation to the first and second defendants boils down to the second defendant conveying the Property to the third defendant in December 2002, without the plaintiff's knowledge or consent, after the first defendant had allegedly agreed to convey the Property to the plaintiff and had purportedly done so by the first conveyance; and the alleged failure of the first and second defendants to notify the plaintiff of the error with the first conveyance and the subsequent events leading to the execution and delivery of the third conveyance to the third defendant.

324. It is not contended that the execution of the first conveyance by the first defendant was fraudulent. Indeed, the plaintiff pleads at paragraphs 8, 11 and 12 of its second amended statement of claim that the first conveyance was executed by the first defendant as vendor; that in 2001 the second defendant discovered that the first defendant did not have title to the Property and that the second defendant "sought to rectify this issue by preparing a second conveyance...a draft of which was sent under cover of the letter dated 26th July 2001 to Wallace Allen for his review and approval".

325. There is, therefore, no dispute that the first defendant executed the first conveyance in error; that it did not realize its error until 2001; and that as soon as it did, it notified the firm of Christie, Davis & Co and sought to rectify the situation by the preparation of the second conveyance in favour of the plaintiff, forwarding the same to Christie, Davis & Co for execution by the plaintiff.

326. While I have found that Christie, Davis & Co did not in fact represent the plaintiff, based on the evidence and the information available to the first defendant's legal counsel at the time, the fact that she was of the view that Christie, Davis & Co represented the plaintiff, Mrs Brown's dealings with Mr Allen/Christie, Davis & Co after she discovered the error with the first conveyance as well as when the fourth defendant's attorney requested a conveyance of the Property in favour of the third defendant, lead me to the conclusion that there was no intention or recklessness on the part of the first defendant to lead and or allow the Incorporated Trustees to believe that they held a good, clear and marketable title to the Property by failing to bring the fact that the first defendant did not own the Property to the Trustees' attention.

327. As for the plaintiff's complaint/allegation that the first defendant "allowed the Incorporated Trustees to believe that they held a good, clear and marketable title to the Property by failing to bring the fact that they did not own the Property to the Trustees' attention", the fact is that if, as the plaintiff complains, it had a contract for the acquisition of the Property from the second defendant, as it claims, it had an obligation to conduct its own title searches to verify the marketability of the donor's title. The evidence is that the plaintiff's alleged 1987 letter as well as its 4 April 1988 letter were both addressed to the second defendant, so when it was asked to execute a conveyance showing the first not the second defendant as the vendor/grantor/donor, it was, in my judgment, put on notice of the error but failed to do anything about it.

328. As opined by Oliver, L.J. in the case of *Meek v Clark*, “it is for the purchaser to satisfy himself that the vendor has the title which he offers and by completing the sale he acknowledges that he is so satisfied.” So, I agree with counsel for the second defendant that the plaintiff having accepted the first defendant’s title in 1998 because it failed to exercise its own due diligence, cannot now accuse the first or second defendant of fraud because it failed to detect what it admits was an error on the part of the first defendant.

329. As for the plaintiff’s contention that in failing to object to the third conveyance in favour of the third defendant the first defendant acted fraudulently, I agree with counsel for the first defendant that the first defendant could not have prohibited the second defendant from disposing of its property by conveying it to the third defendant, or anyone else, for that matter, especially in a case such as this where the first defendant had no interest in the land and had received no consideration or benefit from the plaintiff for its execution of the first conveyance.

330. As for the plaintiff’s claim that the first defendant would have known that the plaintiff had expended considerable time and moneys on the Property as evidenced by their construction works, dedication and occupation of the Property, I have found that the construction works were carried out by the Coral Road Church and not the plaintiff. Further, in his 23 September 1997 letter Mr Allen advised Mrs Moss at the Port Authority that the loan was to enable the Coral Road Church to complete the construction. Again, the evidence is that the dedication of the Cathedral was performed by Bishop Ellis, not the plaintiff or its General Superintendent, who admitted that he was a guest at the dedication service, and clearly the Property was occupied by the Coral Road/Local Church, not the plaintiff.

331. In the circumstances, then, I find that the plaintiff has failed to prove, as pleaded, that the first defendant is guilty of fraud in its dealings with the plaintiff or that the actions of which the plaintiff complains and the evidence led in support thereof are sufficient to prove an allegation of fraud against the first defendant.

332. As for the plaintiff’s allegations of fraud against the second defendant, I have found that the aforesaid alleged 1987 letter was not received, nor responded to, by Mr Gray; further, that the plaintiff failed to prove that the said survey was sent to the Incorporated Trustees apart from the same being attached to the first conveyance; and that even if it had been, it is insufficient to form the basis of an agreement to convey the Property to the plaintiff; that there was no inducement on the part of the second defendant to the plaintiff to complete, dedicate and or occupy the Cathedral. In any event, I have found that the plaintiff did not complete, dedicate or occupy the Cathedral and even if it did, the plaintiff has adduced no evidence to show how the first and or second defendant should or would have had such knowledge.

333. Further, the evidence is that the meetings and negotiations between the second defendant and the fourth defendant that resulted in the donation of the Property were conducted prior to the alleged 1987 letter, as evidenced by the first paragraph of that letter, and, according to Mr Gray’s evidence, without knowledge of that letter. In any event, there is, in my view, nothing in that letter expressly prohibiting the second defendant from meeting or negotiating with the fourth defendant for a donation of the Property to the fourth defendant, and vice versa, and I have found that the plaintiff has failed to prove any inducement and or promise on the part of the second defendant that the Property would be conveyed to the Incorporated Trustees upon which the plaintiff ought to have relied.

334. Again, while it is not disputed that the second defendant knew of the first conveyance and the mortgage, and did prepare the second conveyance in favor of the plaintiff, there is nothing in the alleged 1987 letter expressly prohibiting the second defendant from conducting negotiations with the fourth defendant for his benefit alone or from conveying the Property to the third defendant; nor, in my judgment, did the second defendant need the plaintiff’s consent therefor.

335. As for the plaintiff's allegation of fraud on the ground that the first and second defendants failed to bring the aforesaid matters to the attention of the plaintiff, it is common ground that they did notify the firm of Christie, Davis & Co thereof; and, again, I accept that the reason for doing so was because Mrs Brown, legal counsel for the first and second defendants, honestly believed, and in my view with good reasons, that that firm acted for the plaintiff.

336. So, while I accept the plaintiff's evidence that notice of the aforesaid matters was not brought to its attention expressly by the first defendant, second defendant or Christie, Davis & Co; and while I accept that the plaintiff may not have engaged or retained the services of Christie, Davis & Co as its attorneys in the transaction leading up to the first conveyance (although that firm performed such services); and while, as indicated, I am unable to find that notice to that firm ought to be imputed to the plaintiff, in the circumstances of this case, the fact that the matters were brought to Christie, Davis & Co's attention shortly after the aforesaid discovery of the error with the first conveyance, and as the events were unfolding, is, in my judgment, a clear indication that there was no intention on the part of the first and or second defendants to conceal the same from the plaintiff.

337. As pointed out by counsel for the first defendant, crucial to establishing a claim based on fraud is proof that something was said or done by the first defendant amounting to a false representation made deliberately or recklessly; that a defendant acted dishonestly. See *Ivey v Genting Casinos (UK) Ltd t/a Crockfords* [2017] USC 76; and *Niru Battery Manufacturing Co. v Milestone Trading Ltd.* [2003] EWCA Civ. 1446, paragraphs 172 to 175. In that regard, in my judgment, neither the first nor second defendant can be said to have acted fraudulently by not informing the plaintiff directly of the aforesaid matters, but, instead, informing Christie Davis & Co, whom they honestly believed acted for the plaintiff, and who did dispel them of that belief.

338. Moreover, counsel for the plaintiff in his written closing submissions asserted that Mrs Brown had been specifically instructed by the fifth defendant that the Property was to be taken in the name of the plaintiff and not receiving any instructions from the fifth defendant to convey to a person or entity other than the plaintiff, and not obtaining any instructions from the plaintiff on the point, she nonetheless prepared the third conveyance in favour of the third defendant without the knowledge or consent of the plaintiff.

339. Presumably that assertion is a reference to Mr Allen's/Christie, Davis & Co's 23 September 1997 letter to Mrs Moss advising that title was to be taken in the name of the plaintiff. If it is, then, in my judgment, that is even more reason for this court to find that the first and second defendants did not behave fraudulently in that they notified Christie, Davis & Co, from whom they had received instructions as to how title was to be taken, of the aforesaid matters, with the belief that they were also notifying the plaintiff.

340. So, if, as the plaintiff asserts, the second defendant had been specifically instructed by the fifth defendant that title to the Property was to be taken in the plaintiff's name, I am not sure how the second defendant can be said to have acted fraudulently by informing that firm and not the plaintiff, when that firm was the only entity from whom the first and second defendants had received direct communication in connection with the Property. It cannot, in my view, be said in the circumstances that the first and second defendants kept silent on the matter. Moreover, according to Mrs Brown, the second defendant has never received a request from the Incorporated Trustees for a conveyance of the Property.

341. Moreover, the evidence is that after waiting for more than a year for the second conveyance to be executed by the plaintiff and returned to her for execution by the second defendant, and faced with a request for the Property to be conveyed to the third defendant, Mrs Brown, again notified Mr Allen of such request. I am, therefore, hard-pressed to find that the first or second defendant, in the circumstances, can be said to have acted fraudulently when, upon

the instructions of the fourth defendant for whom, according to Mr Gray's and Mrs Brown's evidence, the gratuitous gift was intended, the second defendant conveyed the Property to the third defendant.

342. Counsel for the plaintiff argues that as Mr Allen/Christie, Davis & Co did not act for the plaintiff, the first and second defendants were obligated to bring the aforesaid matters to the attention of the Incorporated Trustees themselves and that their failure so to do, "is precisely the fraud that Lord Blackburn condemned in the case of *Brownlie v Campbell*." Had I found that Mrs Brown did not honestly believe that Christie Davis & Co represented the plaintiff, I would have agreed. However, I am persuaded that Mrs Brown honestly believed, and with good reason, that Mr Allen/Christie, Davis & Co represented the plaintiff in the transaction leading to the execution of the first conveyance as well as in connection with the confirmatory conveyance. And while such honest belief may not be sufficient for me to find that the firm of Christie, Davis & Co did in fact represent the plaintiff, it is enough for me to find that by notifying Christie, Davis & Co and not the plaintiff directly, there was no intention on the part of the first or second defendant to conceal the aforesaid matters from the plaintiff. Moreover, it is unclear to me what would have been intended by the first and or second defendant to have been achieved having regard to the fact that this was a completely gratuitous gift on their part.

343. Having regard to the plaintiff's pleaded case and the evidence led at trial, in my judgment, the plaintiff has failed to prove the essential ingredients to support a claim for a *Derry v Peek* fraud namely: that the first and or second defendant made any false representation to the plaintiff knowingly, without belief in its truth, or (iii) recklessly, careless whether it be true or false; nor in my judgment do the facts of this case fall within the case of *Brownlie v Campbell* as it is clear that the second defendant bringing the aforesaid matters to the attention of Christie, Davis & Co whom they honestly believed represented the plaintiff, could be said to have acted fraudulently in failing to bring the matter to the attention of the plaintiff directly.

344. In the circumstances, then, I find that the plaintiff has failed to prove a case of fraud as against the first and or second defendants and the case against the first and or second defendants based on fraud is dismissed.

345. In the result, the plaintiff's claims against each of the first and second defendants are dismissed in their entirety with costs to the first and second defendants to be taxed if not agreed.

The third and fourth defendants

346. The plaintiff's pleaded case against the third and fourth defendant is set out in paragraphs 34, 35, 36, 38, 40 and 47 of its second amended statement of claim as follows:

"34. For his part, in spite of Godfrey Williams' knowledge of the affairs of the plaintiff, by virtue of having been a Trustee of the plaintiff, and continuing that fiduciary duty as a past Trustee and pastor of the plaintiff, he nonetheless plotted and conspired through himself, his servants and agents, to have the property transferred to his company Godfrey R. Williams Ministries fraudulently and in breach of his solemn trust.

35. Therefore, Godfrey R. Williams Ministries was used as an instrument of Godfrey Williams' fraud in that the objective of the fraud was to transfer the property to that company which was Godfrey Williams' alter ego.

36. As a result of Godfrey Williams' correspondence and negotiations, whether by himself or through his Counsel, with DEVCO resulting in interference and obstruction relative to the second conveyance, the second conveyance to the Incorporated Trustees was never executed, nor even delivered or brought to the

attention of the Incorporated Trustees by Wallace Allen or any of the defendants although the defendants were all under separate duties to bring the second conveyance to the Incorporated Trustees' attention for execution.

37. ...

38. On or about 9 December 2003, the Incorporated Trustees found that the third conveyance had been made by DEVCO, which purported to convey the property to another entity, namely Godfrey R. Williams Ministries. The senior pastor of Godfrey R. Williams Ministries is Godfrey Williams, who at all material times was a member of the plaintiff body and was fully aware that he negotiated on its behalf to obtain the property for the Incorporated Trustees. Reverend Williams was not permitted, authorized or otherwise entitled to seek the property for his own benefit or that of Godfrey R. Williams Ministries.

39. ...

40. As a member of the plaintiff body, Reverend Williams owed a fiduciary duty to the Incorporated Trustees. In breach of that duty, Reverend Williams invited, authorized, requested or otherwise permitted DEVCO to convey the property to a party other than the Incorporated Trustees namely, Godfrey R. Williams Ministries. By virtue of Reverend Williams' position as Senior Pastor of Godfrey R. Williams Ministries, his awareness of his fiduciary duty to the Incorporated Trustees can be imputed to Godfrey R. Williams Ministries.

Particulars of breach of fiduciary duty by the fourth defendant

- a. incorporating the 3rd defendant for the purpose of obtaining an interest in the land from DEVCO when he knew he had been authorized to obtain the land for the benefit of the plaintiff;
- b. directing, authorizing, inviting, or otherwise requesting that DEVCO convey the land to the 3rd defendant, when he knew that he had been authorized to obtain the land for the benefit of the plaintiff;
- c. allowing DEVCO to convey the land to the 3rd defendant when he knew that the land ought to have been conveyed to the plaintiff;
- d. convincing DEVCO to change the recipient of the land from the plaintiff in the first conveyance to the 3rd defendant in the third conveyance;
- e. failing to advise the plaintiff that he or the 3rd defendant was seeking to acquire an interest in the land when he knew the plaintiff was seeking to acquire the land.

347. In relation to its allegations of fraud against the fourth defendant, the plaintiff provides the following particulars at paragraph 47:

Notwithstanding that at all material times Godfrey Williams was a member of the Plaintiff body and was fully aware that any correspondence, discussions, or negotiations he engaged in with the other defendants regarding the property, ought to have been done on behalf of the plaintiff to obtain the property for the plaintiff and that he was not permitted, authorized or otherwise entitled to seek the property for his own benefit or that of Godfrey R. Williams Ministries, Godfrey Williams nonetheless abused his position within the Incorporated Trustees and misused information to which he would have been privy as member of the Incorporated Trustees to procure a conveyance of the property away from the Incorporated

Trustees to Godfrey R. Williams Ministries for his own ultimate benefit without the Incorporated Trustee's knowledge, authorization or consent by:

- a. Having an Executive Board Meeting on 7th August 1997 at the St. John's Native Baptist Church, the minutes of which were taken by Mrs. Wally Robinson, and whereat he made his intentions to defraud the Incorporated Trustees clear by emphatically stating among other things and all of which is clearly documented in the said minutes, that:
 - i. he believed that the season of the then Chairman of the Incorporated Trustees, Bishop Symonette, was over;
 - ii. that the purpose of the meeting was to determine the best plan and course of action for approaching the Port Authority/DEVCO for having the property conveyed away from the incorporated Trustees; and
 - iii. that he did not want Bishop Symonette, the then Chairman of the Incorporated Trustees, finding out about his plans.
- b. Subsequently and astonishingly the fraudulent activity of the fourth Defendant continued to intensify and did so greatly during the years 2001-2002 wherein he falsely and untruthfully and/or recklessly made representations about his entitlement to the property, rather than the Incorporated Trustees' entitlement to the property, and without caring whether those representations were true or false by having meetings, correspondence and discussions with DEVCO such that he should acquire the property for his own benefit, all of which was concealed from the Plaintiff;
- c. Interfering in the private and confidential relationship between the Plaintiff as customer and the BOB as banker by meeting with the BOB to have the mortgage granted by the Incorporated Trustees to the BOB cancelled, aborted, revoked, and/or otherwise brought to an end, despite the fact that Godfrey Williams was aware of the first conveyance and the mortgage which underpinned it, both of which were in the name of the Incorporated Trustees, and the second conveyance showing that at all material times it was always intended for title to the property to vest in the Incorporated Trustees.
- d. Falsely and untruthfully and/or recklessly making representations not caring whether such representations were true or false to the BOB, among others, so as to facilitate the debenture arrangement between the BOB and Godfrey R. Williams Ministries for his ultimate benefit, all of which was concealed from the Incorporated Trustees.
- e. Godfrey Williams engaged in this massive fraud to obtain the property so that he could ultimately use it as collateral security to finance and/or facilitate his acquisition of Sunland Lutheran School and expand his organization to include ownership and operation of other churches, the development of single or multi-family units for members and supporters of his ministry, a travel agency, a credit union or society, and a convenience/sundry store which would include the sale of books, school supplies, religious materials, audio and video recordings and non-prescription drugs.

348. As against the third defendant, the plaintiff pleads, at paragraph 35, 40 and 46 of its second amended statement of claim that the third defendant was used as an instrument of the fourth defendant's fraud in that the objective of the fraud was to transfer the Property to the third defendant, the fourth defendant's alter ego; that by virtue of the fourth defendant's position as senior pastor of the third defendant, his awareness of his fiduciary duty to the Incorporated Trustees/plaintiff can be imputed to the third defendant; and, further or alternatively the third defendant holds the Property on constructive trust for the plaintiff.

349. In relation to its allegations of fraud against the third defendant, the plaintiff provides the following particulars:

"Having been incorporated on 11th December 2002, at all material times, Godfrey R. Williams Ministries was an instrument of Godfrey Williams' fraud against the Incorporated Trustees as set out above due to it being the entity through which Godfrey Williams' fraud against the Incorporated Trustees was perpetrated and it being the entity holding the property fraudulently as against the Incorporated Trustees."

350. In their re-amended defences filed 18 August 2016 the third and fourth defendants deny the plaintiff's claim and put the plaintiff to strict proof thereof. The third and fourth defendants also aver, inter alia, [para 5] that the fourth defendant was not acting for the plaintiff when he approached the principals of the Port Group of Companies to secure land on which to build a Cathedral; that [para 6] the intent of the fourth defendant's negotiations with the second defendant was to secure the Property "for and on behalf of the fourth defendant and the former members of the Coral Road Church who supported him and not as a so-called trustee of the plaintiff." Further, [para 9] that the grant of the Property "was a gift to the fourth defendant and his members and not the plaintiff as a Society."

351. The third and fourth defendants pleads further, inter alia, that:

- a. "The plaintiff paid no moneys for or towards the construction of the Cathedral or repayment of the loan procured by the local congregation. [para 7]
- b. The initial development phase was undertaken using the name of the Society for licensing purpose only but the ownership and the conveyance was [sic] never to be in favour of the plaintiff. The initial correspondence by the fourth defendant to the Port Group, innocently used the Coral Road Church stationery because the license for the Cathedral was not issued at the time. [para 8].
- c. In or about 1988 when the fourth defendant began pursuit of the acquisition of the Property the principals of the Port Group brought to his attention three factors: (i) that the plaintiff as a Society was in default of its lease of the Coral Road Property; (ii) that it would only grant the Property if it was to be owned by the fourth defendant and his local members; and (iii) that the Port Group would not support granting the land if it was to end up in the control or ownership of the plaintiff. [para 10]
- d. In about 2000 when the fourth defendant had engaged attorneys, Nottage, Miller & Co to incorporate the third defendant to complete the conveyance of the Property and to complete the acquisition of the Sunland Lutheran School was the time the fourth defendant made the following discoveries: [para 15]
 - (a) At a meeting with one George Thompson at the Bank of The Bahamas, Freeport, the fourth defendant was shocked, surprised and distressed to discover that in 1988 [sic] the Bank had procured a conveyance from Freeport Commercial and Industrial Limited in the name of the plaintiff and purportedly signed by them unbeknown to the fourth defendant and without reference to him.

(b) Investigation indicated that this act appears to have been orchestrated by one Harrison Butler who had been trusted by the fourth Defendant to act as Treasurer of the local group. The Attorney for the Bank (Wallace Allen) could find no written or other approval by the fourth defendant to support either his call on the port Group for a conveyance nor his consent to have the conveyance taken in the name of the Society. Contrary to either the wishes of the group or the terms of the gift by the Port Group, the conveyance referred to in paragraph 8 of the statement of claim was secretly procured by the plaintiff and its agents unbeknown to the fourth defendant or reference to him and this was a deceitful and deliberate act which is confirmed by a review of the minutes of the meetings of the local church group in which Harrison Butler was the sole dissenting voice to the directive by the Port Group that the gift must go only to the fourth defendant and the local membership through the third defendant when it was incorporated. In any event the same deed is otherwise invalid and of no effect.

(c) Even though the fourth defendant was supposedly one of the trustees of the plaintiff his signature was not sought for the purported conveyance and this act was deliberate and deceitful;

(d) The claim that construction payments were made or drawn down by or at the instance of the Trustees of the plaintiff as set out in paragraph 9 is patently false. The fourth defendant avers that the said Harrison Butler seized and retained control of the financial records of the group as treasurer and appears at all material times to have been secretly creating a record to assist the plaintiff in its effort to claim ownership of the new church once it was completed.

(e) The claim or assertion that the fourth defendant is either a member of the plaintiff or owed a fiduciary duty to the plaintiff or that such fiduciary duty was imputed to the third defendant as set out in paragraph 13 of the statement of claim is false, ill-conceived and without merit and unworthy of serious consideration.

18.(1) Contrary to the allegation in paragraph 10 to the claim, Dr. Symonette was invited to the dedication in 1998. He did not appoint the 4th Defendant since at that point the 4th Defendant was already the Pastor of the new Church. That attendance in 1998 is the only time Dr. Symonette ever visited the St. John's Cathedral. The St. John's Cathedral does not maintain any association with the Plaintiff Society nor does it pay membership or affiliation fees to it.

18.(2) The 3rd and 4th defendants neither admit nor deny the part of paragraph 38 which asserts the date it found out that the property was conveyed to the 3rd defendant but they specifically deny that the 4th defendant is or was at the material time still a member of the plaintiff body. Indeed the very Constitution of the Society which listed the Trustees will show that by the date of the Devco conveyance the 4th defendant was not a member of the Group. The 4th defendant asked to remove his name and signature as a Trustee in 1991 and since that date his name nor signature did not appear on any of the successive Constitutions. This step was taken by the 4th defendant as a result of the series of costly actions launched by Bishop Symonette against several churches in the Society. The 3rd and 4th defendants needed no approval or authorization from the plaintiff to either form its own body nor submit to the dictates of the plaintiff which by the date of the dedication of the St. John's Cathedral had dissociated any membership therefrom. The claim or assertion that the 4th defendant is either a member of the plaintiff or owed a fiduciary duty to the plaintiff or that such fiduciary duty was imputed to the 3rd defendant as set out in paragraph 13 of the statement of claim is false, ill-conceived and without merit and unworthy of serious consideration. Accordingly the particulars of breach of such duty as set out in paragraph 13 of the statement are also specifically denied and are without merit for reasons set out in this defence – specifically the land on which the St. Johns Jubilee was built (nor the additional acreages adjoining it subsequently granted to the 3rd Defendant) was never intended to belong to the plaintiff.

18.(3) The plaintiff has made assertions in its new amended paragraphs 11 through 38 which are either knowingly false, factually incorrect or otherwise intended to deliberately mislead on certain material particulars as it related specifically to the conduct or activity of the 3rd or 4th defendants as follows:

(a) The confusion over the preparation of the erroneous conveyance appear to have emanated from the deceitful conduct of Harrison Butler who with the assistance of his wife them, employed in the deeding section of the Port Group devised a scheme to have a conveyance executed in favour of the plaintiff notwithstanding Harrison Butler's own knowledge that such a conveyance was contrary to the intent of the executives of the Port Group. The legal department who purported to be acting on the instructions of Davis & Co. The 4th defendant also discovered, after meeting with the Bank of Bahamas that there was an attempt to correct the invalid conveyance referred to in paragraphs 12 but again it was found out by the Port Legal Department that too would have been wrong and sought to recall that document.

(b) Paragraph 16 is deliberately false and the 4th defendant aver that it was after his discovery that a conveyance was purportedly issued to the plaintiff by the first defendant which was contrary to his or the wishes of the Executive of the Port Group he properly directed his counsel to require the conveyance to be issued properly as it was intended and as was his legal right to so do. If there was any fraud or deception committed such was confined to a deceitful attempt by the plaintiff to once again seek to take ownership of churches developed by the efforts of former members (as it has notoriously and unsuccessfully attempted on several other occasions) while making no contribution to its construction or development:

(c) While the date of the meeting referred to in paragraph 22 is neither admitted or denied the 4th defendant aver that the relationship between himself and the Bank of the Bahamas began when he and a group of his local members opened an account at the Bank of Montreal which later became the Bank of The Bahamas. The account was established following the action of Bishop Symonette who closed an account operated by the Society (the plaintiff) at Barclays Bank for its church on Coral Road and expelled several founding members. It was the 4th defendant who was the main signatory on the BOB account not the plaintiff or its executives or trustees. It was the 4th defendant who approved Harrison Butler to sign on the account with other members and it was the 4th defendant (not the plaintiff) who enjoyed the BOB relationship and was entitled to discover the status of the account at BOB after all the construction of the Cathedral was done by the 4th defendant and his supporters not the plaintiff and the claim of breach of confidentiality is knowingly without merit;

(d) For reasons previously set out above the claims made in paragraphs 23 to 25 are materially false as it fails to claims of confidentiality where none exists in favour of the plaintiff and the so called mortgage was a device created by the deceitful and secret act of Harrison Butler to effect a legal mortgage over the property and have it executed by Bishop Symonette and Hervis Bain without informing the 4th defendant which only came to light when he decided to deal with the BOB personally on the basis that having finally completed the construction and it was then time to obtain the legal title and have it vested in the name of the Third Defendant and consolidate the new loan to cover the Sunland School as well as the further development of the Cathedral as pleaded otherwise in this Defence;

(e) The assertions in Paragraphs 26 to 32 are best addressed by the 5th Defendant however the 4th Defendant categorically deny giving written or verbal instructions to Wallace Allen to prepare a mortgage in favour of BOB over the property in favour of the Plaintiff as that would have been completely contrary to the will of the donors and the decision of his members during the August 1997 meeting referred to herein. However, when BOB discovered that it had no security, due to the invalid conveyance, and threatened to sue Davis & Co. it was then that the firm appear to have adopted a

defensive position instead of admitting negligence. The Third Defendant took the position to pay off the mortgage from its own funds even though it was not strictly liable to do so based on (i) the historical relationship which the 4th Defendant and the BOB enjoyed and (ii) to remove the need for BOB to pursue Davis & Co. in negligence; The fact that the Plaintiff claims it paid off a 900,000.00 mortgage without knowing about it or its satisfaction is proof positive that the Plaintiff continue to practice deception and that it enjoyed no such banking relationship with BOB. The account was set up by the 4th Defendant which he signed alone or with Butler and or Wally Robinson. Neither Hervis Bain or Bishop ever signed on that account. To the contrary, the 4th Defendant will show that on one occasion Bishop Symonette placed his name on an earlier account operated by the Coral Road Church. When that occurred it was Harrison Butler himself who protested that if Bishop Symonette was given signing privilege he Butler could not accept responsibility for the church funds. At that point new accounts were set up and the old account which had the signature of Symonette remained dormant if it still exist;

(f) The allegation in paragraph 33 referring to a massive fraud is again a figment of the imagination of the Plaintiff and a simple enquiry would have disclosed to the Plaintiff, a fact clearly known to Harrison Butler, which was that no plan was "hatched" by DEVCO, FCIL or any other defendants to "defraud" anyone since the property was NEVER intended for the Plaintiff and if fraud was attempted it was by the Plaintiff and the unseemly, continuous and repetitious assertion of "fraud" is simply a thinly veiled attempt to circumvent the Statute of Limitation and attempt to deny the Defendants a defence to which it is entitled and which has been asserted;

(g) Further for reasons previously stated Paragraphs 34 to 36 again contains material falsehood since the Plaintiff are fully aware that by 1999 the 4th Defendant and his members had disassociated from the Plaintiff Society. The 4th Defendant is not a Trustee for the Plaintiff and in not a pastor of the or associated with the Plaintiff since 1991 as a Trustee, he attended no meetings since then and hold no property in trust for the Plaintiff. It was not the correspondence from the 4th Defendant which caused a conveyance to come from DEVCO to the 3rd Defendant but it was the fact that DEVCO's principals recognized that a grave error was made by its legal officers and saw fit to have them corrected so the claim in Paragraphs 34 to 37 are plainly and willfully misleading and false; wrong;

(h) The 3rd Defendant is a properly incorporated whose Articles of Incorporation under relevant section of the Companies Act and duly licensed by the Minister responsible for non-profit companies (all of which could be discovered by the Plaintiff) and is not an "alter ego" of the 4th Defendant;

(i) The Paragraphs described in (a) through (h) are scandalous, without merit are either incapable of proof capable of sustaining any allegation of fraud and must be struck out as vexatious, abusive, scandalous and unfit for serious consideration particularly by being inserted fully Seven (7) years after the Writ was filed in a matter which arose in 2001.

19. The plaintiff was aware from 2002 that the conveyance was granted to the 3rd defendant and that since that time millions of dollars was spent expanding the Church but now, seven years after the fact, the plaintiff wishes now to lay claim to having a proprietary interest which is itself an act of deceit having made no prior assertion to the 3rd or 4th defendants to this effect preferring, in absolute bad faith, to wait until the development is complete to appear to assert this claim. In any event the claim is barred by the Statute of Limitation and or estoppel

20. The claim made in paragraphs 14 and 15 are knowingly false since the Incorporated Trustees not only had no role in the construction of the Cathedral but declined to give any financial or other assistance and can demonstrate no financial contribution

made by them. Since the entire construction was financed by the local membership of the Church the plaintiff has no right to claim the Church as their own.

21. In further support for the position that the plaintiff can claim no ownership or control over the Cathedral nor the membership, the 3rd and 4th defendants assert as follows:-

- (a) Under the Articles of Incorporation of St. John's Particular Church of Native Baptist the Church name should have "Native Baptist" in it; the Cathedral does not.
- (b) Yearly audit done by General Superintendent & Executive Committee by Article 19 – an audit has never been requested, granted or performed on the Cathedral by the plaintiff Society.
- (c) Contrary to Article 2 – the Society has never guaranteed a loan or injected any funds into the operation of the Cathedral. On May 20, 1992 the Freeport Church asked for an exemption from paying dues to the Society which was due to the Society which was denied but no payment was made from 1992 to 1999 when a final payment was made.
- (d) By Article 12-F a general conference is held every year – May 1999 was the last time the Cathedral was notified or invited to participate in a general conference.
- (e) There has been no relationship between the Cathedral and the Society since May, 1999.
- (f) Bishop Symonette has not visited the Cathedral since dedication in 1998 and as a Bishop he needs no invitation.
- (g) The plaintiff/Society has requested no dues since May, 1999; have not put any money into the Cathedral at any time. The last dues of \$53,567.30 was paid for the 1997/1998 fiscal year and thereafter the Cathedral discontinued the affiliation with the Society
- (h) The Cathedral registered the Church May, 1999 but did not register any members.
- (i) Thereafter the Cathedral advised the plaintiff in writing that the Cathedral will not be paying any dues to the Society from 1998/1999.
- (j) The plaintiff has not been involved in the operation of the Cathedral at any time.
- (k) The General Superintendent, Dr. Symonette, has not given any leadership guidance in any form (neither spiritual nor financial) at any time since inception of the Cathedral.
- (l) Bishop Symonette did not perform the ordination of ministers and deacons for the Cathedral. The last time Bishop Symonette performed an ordination for the Cathedral was in Nassau in May, 1992.
- (m) Furthermore, Bishop Symonette has stated that he has no jurisdiction over Freeport and accordingly, when Reverend Sheila Duncombe, a minister in the plaintiff Society from South Andros, died in Freeport, she had to be funeralized at Calvary Temple by her children because Bishop Symonette claimed he did not have a church in Freeport to use for the funeral.
- (n) Assuming the plaintiff/Society felt it had a legitimate claim its own constitution required the 3rd defendant to be notified of any dispute or query the Society might have against the 3rd defendant by the Advisory Committee.

22. On the premise set out above and more particularly set out in paragraphs 16 – 20 above the 3rd and 4th defendants denies [sic] that this claim is made in good faith. The plaintiff knows that it has no right to the Cathedral nor to the amenities developed therewith.

23. The 3rd and 4th defendants aver that if the information or accounting records of the Cathedral, which was at one time within the possession of Harrison butler, was

misrepresented in an attempt to claim the benefit of the construction of the Cathedral for the plaintiff, such attempts were concealed from the 4th defendant and his membership.

24. Notwithstanding the trust and confidence which the 4th defendant placed in Mr. Butler, his Treasurer, subsequent events suggest he was instrumental in attempting to promote the interest of the Society and which culminated in his sudden and unannounced decision to remove from the Cathedral as a deacon at the Cathedral to take over as a pastor of the Coral Road Church (developed as aforesaid by the 4th defendant and the members) under the direction of the plaintiff.

25. Despite not being compensated for financing the construction of the Sanctuary on Coral Road, the 3rd defendant voluntarily surrendered possession of that church to the Society. The 3rd defendant holds no property in constructive trust for the plaintiff as alleged in paragraph 19 of the statement of claim. Further, the plaintiff is not entitled to the reliefs sought in law or in equity as claimed. The plaintiff can show no loss or damage and equity bars relief of specific performance in any event based on the conduct in bad faith of the plaintiff and its agents in attempting wrongfully and or unlawfully to procure ownership by stealth and contrary to the wishes of the donor and the donee of the Fairfield tract on which the Cathedral is built.

26. The plaintiff's claim therefore is without merit and subject as specifically set out and traversed, the claim is denied.

27. Further the 3rd and 4th defendants are in no way liable to indemnify the remaining defendants for any matter arising from this claim and particularly asserts that apart from the facts set out herein the defendants cannot deny that the Cathedral property was in no circumstances to fall to the benefit of the Society, and its agents were wrong and mistaken to have purported to issue the first conveyance to the plaintiff. Having issued the corrected document in 2002, the plaintiff can claim no loss. The mortgage was paid by the Cathedral and its members and it is wrong to permit the plaintiff to make a claim more than eight (8) years after the event and after sitting idly by watching the members expend millions of dollars since 1998 on the construction and additional amenities.

28. With respect to the assertion set out in paragraph 47 and to the extent the "Incorporated Trustees" which appears to be synonymous with "the plaintiffs and to the extent the plaintiffs did execute a Guarantee to the BOB (which is not admitted) such a document would clearly have been worthless even if it existed since (a) there was no evidence that BOB called on the Trustees to pay the loan and (b) it was the members who used their own property to secure a loan to build the Sanctuary on Coral Road when the plaintiff refused to either pay off the old debt or loan to Sir Roland Symonette or support the building of the new sanctuary there. The plaintiff also refused to support the construction of the Cathedral on Settlers Way and that is when the 4th defendant launched a building fund which generated the seed money to construct the Cathedral on the property. Such a guarantee (if it was effected) was secretly arranged through Harrison Butler and, like the void conveyance from the first defendant was concealed from the 4th defendant. The 4th defendant was made aware of the so called "second conveyance" only after it was brought to his attention while the second defendant was in the process of correcting the error as it related to the first void conveyance.

29. The particulars of fraud alleged against the 3rd defendant is non-specific, vacuous lacking in scholarship and incapable of being specifically addressed, proven or otherwise abusive and unworthy of being inserted in this statement of claim.

30. With reference to the particulars of fraud alleged against the 4th defendant the 4th defendant stands on the factual and easily provable assertions or averments otherwise already set out in this defence of both the 3rd and 4th defendants for [sic] would say as follows:

30(a) The 4th defendant had no continuing responsibility to the plaintiff as it related to the ongoing construction or development of the property and it was never the

agreement or intent of the members who joined the 4th defendant in the development of the Cathedral to report to the plaintiff on the development of the Cathedral.

30(b) The property was never intended to benefit the Society in any way and Harrison Butler who kept and retains to this date most of the records of the 3rd defendant during the time he acted as the treasurer of the local group secretly attempted to divert the property intended for the 4th defendant and his members to the plaintiff;

30(c) The minutes of the meeting was clearly in the possession of the plaintiff since 1997 (now exhibited in the affidavit of one Carrington Pinder) and would have been among the records belonging to the 3rd and 4th defendant seized and retained by Harrison Butler when he returned only a cabinet consisting only of old receipts and envelopes. At the meeting referred to the question was simply asked by one member if the matter of the need [sic] position of the Port was brought to Bishop Symonette's attention and the answer was it was not. Therefore when in 1998 Harrison Butler devised a plan to have the conveyance executed in favour of the plaintiff he knew on the decision of the members in 1997 and clearly would have advised the so called Incorporated Trustees of the decision of the meeting. It was for that reason he kept his actions secret and cannot now rely on his own devious acts to besmirch the character and reputation of the 4th defendant;

30(d) The claims made in b through e of the particulars in the amended statement are as slanderous and scandalous as they are recklessly made by the plaintiff who knows that they are also made falsely. These so named Incorporated Trustees enjoyed no confidential relationship with BOB capable of being interfered with by the 4th defendant whose relationship with BOB began when the bank was still known as the Bank of Montreal. The 4th defendant was shocked and horrified when at a meeting with the BOB the 4th defendant was told for the first time that a mortgage was effected over the property in the name of the plaintiff. This happened at the same time that new officers were being introduced to the bank and the 4th defendant (who thought till then, that there was no mortgage was seeking to establish a secured loan facility. The plaintiff can point to no evidence of false, untruthful or reckless representation made by the defendant or any of them to BOB to secure a debenture and such reckless assertions by the plaintiff or its counsels should be sanctioned by a dismissal of the claim or struck out under the rules of court;

30(e) The claim of "massive fraud" to obtain the property in (e) of the particulars is again abusive and specious and also reckless providing no specific or particulars but consistently repeating the word "fraud" even while adding a pejorative adjective (massive) is still lacking in scholarship when the plaintiff knows (a) it has no proof (b) BOB was at all material times represented by independent counsel at the time the debenture was effected and (c) further the attempt to associate the acquisition of the Sunland School with personal gain by the 4th defendant is slanderous as well as knowingly false. That is evidenced by the fact that monetary gifts of cash given to the 4th defendant was voluntarily given or deposited to the account of his ministry – in one instance while Harrison Butler was still treasurer two checks given to the 4th defendant by a friend in the sum of US\$262,000.00 was again voluntarily endorsed and paid into the account of his ministry.

31. Save us specifically set out herein and agreed or traversed the claim is denied in its entirety."

352. Counsel for the plaintiff submits that the fourth defendant's evidence demonstrates that he was deceptive:

- a. firstly, with respect to the use of the Coral Road Church's bank account and property, in that, even though he was aware of both the judgment and the agreement which provided for the plaintiff owning the real estate and moneys in its bank account at the fifth defendant, he nevertheless from 1989 to 1997 used those moneys to finance construction of the Cathedral which he eventually took, along with the Property, without the Incorporated Trustees' knowledge or consent;
- b. secondly, with respect to the use of the Incorporated Trustee's licensee's bond and also their power to raise additional moneys, in that he admitted to having used the bond from time to time to import materials for building of his Cathedral without informing the Incorporated Trustees who were under the assumption that he was working to build a Cathedral for the Society; and
- c. thirdly, in relation to securing the third conveyance, in that although he was warned on a number of occasions at the executive meeting not to take the Property and the Cathedral, and he was aware of the first and second conveyances as well as the 1998 mortgage, he nonetheless, without the knowledge or consent of the Incorporated Trustees:
 - i. while pretending to be a pastor of the Cathedral at the dedication, had jumped ship and had joined Full Gospel Fellowship so as to facilitate his exit and extraction of the Cathedral from the Incorporated Trustees;
 - ii. met with Mr Thompson and Mrs Burrows to advise the fifth defendant that the Incorporated Trustees' mortgage was not valid, and that the Property should be used as collateral security as part of the package to fund his acquisition of Sunland Lutheran School; and
 - iii. during the months of November and December 2002 persuaded the first and second defendants to transfer the Property to himself so that he could use it as collateral security in connection with his acquisition of Sunland Lutheran School;
- d. that he falsely represented to the first, second and fifth defendants that he was entitled to the Property and requested that they provide him with the third conveyance and debenture in respect of the same;
- e. that false representation was made by the fourth defendant either intentionally or recklessly as to whether it was true or false, considering that the fourth defendant was aware of the aforesaid agreement, resolution, mortgage and the first conveyance; that he had been warned not to proceed with taking the Property and the Cathedral; and that he had admitted at trial that he conned the Incorporated Trustees: *Derry vs Peek* 1889 14 App. Cas 337. ^{para 28}

353. And he makes the following observations and or submissions:

- a. The fourth defendant was a member trustee during the years "1987 to 1991 and up to 1996", during which time the plaintiff obtained its agreement that the Property would be conveyed to them; that he was intimately aware of the plaintiff's involvement in the construction process of the Cathedral on the Property as he was also the head pastor of the Coral Road Church during that time. ^[para 46]
- b. It is clear from the evidence that while the fourth defendant was a paid pastor and a member trustee of the Incorporated Trustees and, therefore, a fiduciary in respect of the same, he was (i) aware of the first conveyance and the 1998 mortgage as well as "the construction process which the Incorporated Trustees were very much involved with";
- c. That (ii) by his acts and conduct, the fourth defendant was in breach of his fiduciary obligations: (a) not to let his duty conflict with his personal interest; (b) not to profit from his position as a fiduciary; (c) not to enter into engagements in which a personal

interest may conflict with the interest of those he is bound to protect; (d) and not to exploit business opportunities of those on whose behalf he acted as a fiduciary, namely the Incorporated Trustees, even after he resigned from his fiduciary position. Section 3 and 8 of the 1965 Act, Article VIII B of the 1991 rules, the Judgment of Chief Justice Telford Georges 1981 BHS J. 243, and the aforesaid cases of Regal Hastings v Gulliver, Keech vs. Sandford, Boardman vs. Phipps supra. CMS v Dolphin Simonet [2002] B.C.C. 600; [2001] 2 B.C.L.C. 704; [2001] Emp. L.R. 895 ^{Para 48}

- d. Furthermore, the fourth defendant will be held liable as a constructive trustee for the whole profit he gained as a result of his acts and conduct and is obligated to return the same to the Incorporated Trustees which would be fit and just. See CMS Dolphin v Simonet in which Simonet had resigned and took the property without the Trustees' consent and was required (i) to hold it on constructive trust; (ii) to account; and (iii) to disgorge it. ^{Para 49}

354. Counsel for the plaintiff submits further that the following consequences ^(para 50) follow from the fourth defendant's fraud and breaches of fiduciary duty:

- a. Firstly, as regards the third defendant, where the gain made by the fiduciary in breach of his duty is placed into a company then both the directors and that company are liable to account for the profits: Cook v Deeks [1916] 1 A.C. 554 P.C. ^{para 51}
- b. Secondly, as regards the third defendant, which was incorporated by the fourth defendant, its Chairman and Director, on 11 December 2002 and the third conveyance being executed in its favor on 12 December 2002, being signed by the fourth defendant for the third defendant, it follows that the fourth defendant will also be held liable as a constructive trustee for knowing receipt of the Property and according to Millet J in Agip (Africa) Ltd v Jackson [1987] 264 at 272-3 "Unless [a recipient of misdirected trust property] (in this case, the third defendant) is a bona fide purchaser for value without notice, he must restore the trust property to its rightful owner. [our emphasis]." ^{Para 52}
- c. Moreover, in a similar vein, the Australian case of Lincu v Krnjulac [2014] NSWSC 532 is instructive. And while Mr Adams for the first defendant attempted to distinguish Lincu on the basis that the land in Lincu was subject to a common law trust and not a statutory trust as in the case of the Incorporated Trustees, the point is immaterial because (i) Krnjulac, like Godfrey Williams had a fiduciary duty of loyalty as trustee; and (ii) equity regards as done that which ought to be done. ^{Para 53, supplemental 19}
- d. The facts of Lincu are on all fours with the instant case namely: they both involve church land which was held on trust by trustees and one of the trustees contrived to appropriate the property for his own purposes concealing the same from church membership and mortgaged that property for the benefit of his private purposes. See Common law trust, paragraph 10 on 5th page. Incorporated Trustees are subject to a statutory trust imposed by the legislature explicitly in the 1965 Act and buttressed by the Rules requiring any church property coming into the hands of trustees to be held for the benefit of St John's. ^{para 55; supplemental para 21}
- e. Thus based on Lincu v Krnjulac the third and fourth defendants are liable to account for the trust property they have misapplied, restore such property to the plaintiff and since the fourth defendant, an incorporator, Chairman and Director of the third defendant, was also the person who signed the third conveyance on behalf of the third defendant, the third defendant may not be regarded as a bona fide purchaser for value without notice and thus has no rights as against the plaintiff. Indeed by signing the third conveyance himself, counsel for the plaintiff argues, the fourth defendant held himself out as acting on behalf of his principal the third defendant and as such the third defendant will be liable for its agent's breaches of fiduciary duty: Freeman & Lockyer vs. Buckhurst Park. ^{para 57}

- f. Furthermore, and in any event, Godfrey Williams as a former paid Pastor of the Incorporated Trustees owed his employer a duty to account for all property entrusted to his care and for all property received from third persons for or on account of his employer according to Labour Law In The Bahamas: An Outline by Emmanuel Enebeli Osadebay, LL.M. (LOND) former Justice of Appeal, on page 117. *Superplux v. Plaisted* (1958) *The Times*, 12 December, is cited as authority for that proposition. ^{Para 58}
- g. Based on the foregoing, in addition to his breaches of fiduciary duty and/or trust, the fraud of the fourth defendant is clear. As was explained by Lord Herschell in *Derry vs Peek* 1889 14 App. Cas 337, 374 “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.” ^{Para 59}
- h. In the instant case, the fourth defendant falsely represented to FCIL, DEVCO and BOB, that he was entitled to the Property and requested that they provide him with the third conveyance and debenture in respect of the same. This false representation was made either intentionally or recklessly as to whether it was true or false considering he was aware of the agreement, the resolution, the mortgage and the first conveyance, that he was warned at the Executive Meeting not to proceed with taking the Property and the Cathedral and he admitted at trial that he conned the plaintiff: *Derry vs Peek*. ^{Para 60 and 61}
- i. The letter dated 5 February 1999 from the fourth defendant to George Thompson shows the depth of the deceit of the fourth defendant and BOB as there they are exchanging notes on the drawdown of the mortgage with \$159,074.00. The court is asked to note particularly that letter. Three years later, Jethro Miller by letter dated 27 November 2002 to Mr Gray said the fourth defendant was distressed to discover the first conveyance and the arrangements with the bank. So we know there is the *Derry v Peek* fraud, intentional or reckless deception to the detriment of the Trustees. But there is also another kind of fraud. *CMS v Dolphin* and *Brownlie v Campbell* fraud, intentional or reckless omission to the detriment of the Trustees when the fraudsters are under an obligation to speak up. ^{supplemental para 23}
- j. Further, the fourth defendant exploited knowledge and information he acquired as a member trustee of the Incorporated Trustees and ensured that the Property that the Incorporated Trustees were entitled to was conveyed instead to the third defendant which he incorporated for that purpose by intentionally or recklessly making false representations about his and/or the third defendant’s entitlement to the Property to the first, second and fifth defendants to the detriment of the Incorporated Trustees. Counsel submits further that the fourth defendant was prohibited from exploiting that information and intentionally or recklessly making false representations about his entitlement to the Property thereby concealing from others that it was the Incorporated Trustees who were to take title to the property: *CMS vs. Dolphin* *Simonet* [2002] B.C.C. 600; [2001] 2 B.C.L.C. 704; [2001] Emp. L.R. 895 and *Brownlie vs. Campbell* supra.
- k. The fourth defendant must compensate the Incorporated Trustees for his fraudulent non-disclosure for all loss the Incorporated Trustees suffered as well as consequential losses according to *Smith New Court Ltd v. Scrimgeour Vickers*. ^{Para 62 supplemental}
- l. Additionally, the third defendant, as the instrument of the fourth defendant’s fraud should also be held liable in damages for fraudulently holding the Property as against the Incorporated Trustees: *Smith New Court Ltd v. Scrimgeour Vickers*.
- m. Justice requires that the corporate veil of the third defendant should be lifted since the fourth defendant who fraudulently breached his fiduciary duty to the Incorporated Trustees is the same person who signed the third conveyance for the Property on behalf of the third defendant: *Conway vs. Ratiu* [2005] EWCA Civ. 1302 per Auld LJ at paragraph 75. Further, the third defendant will be liable for the acts of its agent: *Freeman & Lockyer vs. Buckhurst Park*. ^{Para 63}

Third defendant's submissions

355. In addition to his “detailed, critical and comprehensive analysis of the plaintiff’s evidence”, which counsel for the fourth defendant adopted “with sincere gratitude”, counsel for the third defendant also provided extensive written closing submissions, which he prefaced with the following comments:

- a. As I am counsel with perhaps the longest historical involvement with the facts and circumstances of this case I chose to begin with an overview of the materials led (or misled) by the plaintiff with my usual less than adherence to orthodoxy.
- b. While some of what I say may relate to the defence of the 4th defendant I take pleasure in opining that my learned friend and colleague Mr. Harvey Tynes Q.C. is more than capable of covering any grounds that I may leave unplowed but I will submit in passing, at the outset, that on no facts nor theory of this case should there be any conclusion that the 3rd defendant, by operation of any theory of law, is holding the 4 plus acres of land on which the St. John’s Cathedral is based IN TRUST for the Plaintiff.

356. Unfortunately, counsel for the third defendant’s “usual less than adherence to orthodoxy” ended up producing some 31 pages of observations and or submissions, much of which, in my view, came from his position as “counsel with perhaps the longest historical involvement with the facts and circumstances of this case” and not necessarily from the evidence adduced at trial.

357. So, while I have read and considered his observations and submissions in their entirety, I have only set out some of them hereunder:

- a. The record of this trial will show that once the limitation issue was raised on behalf of the third party (now the third defendant), there have been a series of amendments by the plaintiff to its statement of claim which triggered parallel amendments by each defendant thereafter but I submit paragraph 19 of the Re-amended defences of the third and fourth defendants in 2015 and as Re-re-amended thereafter, is in similar terms as posited in 2009 before the third defendant was even a defendant. I set out paragraphs 19 (which is similar as first iterated in paragraph 17 of the defence in December 2009):

“19. The plaintiff was aware from 2002 that the conveyance was granted to the third defendant and that since that time millions of dollars were spent expanding the Church but now seven years after the fact, the Plaintiff wishes now to lay claim to having proprietary interest which is itself an act of deceit having made no prior assertion to the 3rd or 4th defendants to this effect preferring, in absolute bad faith, to wait until the development is complete to appear to assert this claim. In any event the claim is barred by the Statute of Limitation and or Estoppel.”

- b. I submit that on being awoken by a serious flaw in plaintiff’s attempt (I submit) to once again claim a church to which it has no proprietary interest and for which it has not contributed a single cent (according to the evidence of Bishop Williams), the plaintiff, through its counsel, resorted to accusing all five defendants of being part of an organized fraud scheme, a con.
- c. But in making that a late hook on which the plaintiff sought to hang its case, I submit, the plaintiff forgot some of the first principles in fraud or conspiracy.
- d. To scream fraud, scam, con or similar invectives at every witness for each defendant (or even, as the record will show, directed at the principal benefactor the late Edward St. George) though a regrettable trial tactic, cannot be the basis by which the Limitation Act prohibition can be easily overcome in my very humble submission. It is my submission that reliance on the fraud assertion is not only a subtle attempt to avoid the Limitation prohibition, but it is a bugle call, a foghorn.

358. After excerpting certain portions of Bishop Symonette's evidence in which he speaks to the matter, counsel for the third defendant submitted that:

- a. Bishop Symonette was cagey because he knew, as was later suggested that by the date of that erroneous invalid conveyance in 1998, (orchestrated by Harrison Butler, to go to the plaintiff, according to the evidence of Bishop Williams and to be referred to later herein), that Bishop Williams was not a member of the Society nor a trustee.
- b. There are other significant facts on which the plaintiff's claim hinges but on which the same element of prevarication, word games or untruth can be found in Bishop Symonette's evidence. One issue or instance related to why the St. John's Cathedral is not now and has never been listed as a unit church in any of the plaintiff's Constitutions after it was built.
- c. Another issue is the inconsistency of the date or time frame on which the plaintiff became aware of the conveyance or the plan to convey the Fairfield tract to the third defendant. There is also the jumbled if not plainly unfortunate insertion of that questionable letter dated by Bishop Symonette's hand, at the bottom of the page and, the 27 February, 1987. That letter occupied each defence counsel, particularly Mr. Tynes, for a substantial amount of time in cross-examination. That letter to Mr. Albert Gray was supposed to be the letter by which the plaintiff wrote to Mr. Gray requesting over four acres of free land. It has no acknowledgment, it is not preceded by a meeting between Messrs St. George and the Port Executives, and there was not even a request for such a meeting. It is hardly a good method to obtain such a generous gift by a group already in default on its Coral Road church. To view the terms of that letter as a request for donation, I submit, offends and frankly defies credulity. That letter alone should be sufficient to destroy the core value of the Bishop Symonette's evidence.
- d. The common thread of every defendant was the proverbial elephant in the room which the plaintiff, after the third party (now third defendant), filed its response in 2009, which was and remains the limitation. As argued before, the plaintiff attempted to fend off this hurdle, (I submit an insurmountable one), by firstly trying to have its witness obfuscate on one simple and important fact or question: When did the Plaintiff find from its own industry, informed or discovered that the Fairfield tract (a gift of land) was granted to the entity or person to whom it was intended? The answers to this question proffered by both Bishops Symonette and Pinder leave this Court with an insurmountable credibility issue. In my submission, Bishop Symonette tried, and failed, to fudge the date, being now advised or tutored by someone that he should try to manipulate the timing and occurrence of events into an within a period of six (6) years following the discovery. There were several examples of outright equivocation, deflection or denial when faced with questions about the date or timing of plaintiff's knowledge. I will point to a few of this subject area below:
- e. The evidence of Bishop Symonette in cross-examination by Mrs. Brown was interspersed with his denial of the information contained in a letter from Mrs. Charisse Brown dated 26 July 2001 by which she informed Christie, Davis of the invalidity of the 1998 Conveyance.
- f. The repeated attempts at obfuscation (is in my view, unworthy of a "man of the cloth"). His feeble attempt to dismiss Davis & Co as representing any interest of the plaintiff was an attempt to give plausible deniability to the knowledge of the invalid 1998 conveyance or the time it discovered the conveyance to the third defendant.
- g. I submit the totality of the evidence supports the conclusion that the evidence on this point should have been straightforward. It was not. I noted Bishop Pinder at a later point said the Society found out in 2000 about the decision to convey the Fairfield Lot to Bishop Williams. I note also that every point at which he was cross-examined about letters informing Wallace Allen about the defective conveyance, the return of the corrective second conveyance which was never returned or the letters informing Mr.

Allen about the decision to convey the lot to the third defendant, never once did Bishop Symonette deny that he got the information sent by Ms. Charisse Brown. He was intent only to insist that Christie, Davis & Co was not their lawyer. This leaves one of two obvious conclusions (a) he was lying and trying to make the date of the plaintiff's discovery as late as possible to try to rescue the claim from the limitation bar, or (b) to attempt, clumsily, to support their claim that the Port Authority was concealing the information from the plaintiff that the 1998 conveyance was defective. None of their concealment theories make sense. For at least two or more cogent but compelling circumstantial reasons as it relates to concealment, collusion with the defendants and time the existence of the Williams conveyance came to the plaintiff's attention, such as:

- i. This plaintiff found its way to Christie, Davis & Co to have that 1998 defective conveyance executed before Mr. Davis and to otherwise quietly and quickly prepare their loan documents clearly under the guidance of Harrison Butler. So, it was good for the plaintiff to have that firm act at the beginning of the transaction, but now they deny the very existence. Selective ignorance is hardly acceptable in litigation and is abhorrent in a court of equity;
 - ii. The evidence shows that the information about the defective first conveyance was disclosed formally as early as July 2001. Or, information came, according to Bishop Pinder, in 2000.
 - iii. The evidence shows that Harrison Butler was the only local member who, in August 1997 was opposed to the property being taken in the name of Bishop Williams or as he directs. He was at all material times the "trusted" treasurer to Bishop Williams, but unbeknown to Bishop Williams shortly after the August 1997 meeting, Butler knew of a meeting of the Trustees where the decision was made to take the property in the plaintiff's name;
 - iv. Bishop Symonette complains that FCIL should have informed the plaintiff that its conveyance was defective and in not doing so was guilty of fraud. Such a position defies, law, logic and common sense. A prudent person acquiring a gift of real estate or purchasing and intending to expend millions of dollars developing that land, would routinely engage an attorney to investigate title. The investigation that was apparently not done in 1998 and as such the result is hardly evidence of fraud but negligence by the plaintiff who were so insanely hurry to quickly take the property and place it in the hands of the plaintiff (before Bishop got wind of what was being done) that the prudence and good common sense was ignored by the plaintiff. It seems that the fraud if it exist, falls on the side of the plaintiff. In re-examination of its own witness Mr. Maynard addressed another elephant in the room. The title investigation.
- h. The single most glaring example of false evidence intended to support the claim must be the so-called letter to Mr. Albert Gray in which Bishop asserts he was asking the executives of the Port Group to give the plaintiff 4.3 acres of land to build a church. He claims the letter to Mr Gray was dated in 1987. The letter to Mr Gray, in my own submission, is not a request to grant land but an effort to prevent it being given to Bishop Williams.
- i. The letter to Mr Gray precedes the date the request for land is made by Bishop Williams in 1988. The letter to Mr Gray was not responded to by Mr. Gray, who only saw it in the lead-up preparing for trial. The fact that no follow up letter was sent should raise serious questions about if it was actually prepared or sent in real time, or at all.
 - j. At another point in Bishop Symonette's evidence he sought to explain the absence of the Cathedral being listed as one of the plaintiff's unit churches is because, as he puts it, "There is only one church" in Freeport. His explanation for why there are seven unit

churches in Cat Island, for example, while in a City as large as Freeport only Coral Road church is listed makes no actual sense.

- k. I submit the Cathedral was never developed as a unit church. It was not intended as a unit church as that is precisely why successive versions of the plaintiff's constitution neither list it as owned by or a unit of the plaintiff and neither is Bishop Williams a trustee. Bishop Symonette initially attempted to deny actual knowledge of when Bishop Williams left the society. This case proceeded initially on the premise that Bishop Williams was a trustee so in the cross-examination Bishop Symonette initially struggled to acknowledge that by 1995 he knew or remembered that Bishop Williams was no longer a trustee. He had to be referred to his own handwriting or letter to remember or "come clean" on such a pivotal issue. How then should the court treat his evidence with the value the plaintiff wishes to attach when it is equivocal, deceptive or even untrue? If the witness was not the leader "for life" of this organization his regular memory lapses or inconsistent answers could be ignored. I submit that they cannot.
- l. It is not disputed that Harrison Butler was the treasurer of the local church from 1983 to 1997 (when I submit, he had to demit office). He originated from the same family Island as Bishop Williams. He began his association with Bishop Williams as his trusted wing man, his control of the finances and records was beyond dispute. He controlled even the paychecks made to Bishop Williams.
- m. He left the position as treasurer in 1997 but remained a member of the Cathedral and on the executive board until his sudden and unannounced departure in 2005.
- n. Bishop Williams was NOT a trustee when he negotiated with his friend Mr. St. George and other executives for the gift of the Fairfield tract on which he planned to build the cathedral. As such and in spite of the attempt to claim him as a trustee, Bishop Williams was not seeking to cement his position as a member of the plaintiff's society but seeking to secure a place large and comfortable in which his members of his local church could worship. The evidence merely confirms (via Bishop Williams, Albert Gray and Charisse Brown) the intent of the donors, (Mr St George, Sir Jack Hayward & Sir Albert Miller) now all deceased, that the property was NEVER intended for the plaintiff. They never requested and were never granted or gifted any land.
- o. These defendants contend the 1998 conveyance was the handiwork of Harrison Butler using his control over the financial affairs of Bishop Williams as he promoted the development of the Cathedral. Butler, the trusted deacon in the church following the meeting of the Executive Board on August 7, 1997 when it was clear to him that Lot 2 must only go Bishop Williams or as he directs secretly diverted the conveyance to the plaintiff in 1998 with no word or notification to Bishop Williams.
- p. The plaintiff, in a desperate hurry, I submit, avoided the most basic step of any group acquiring land on which it intends to invest millions of dollars. They engaged no lawyer, conducted no title search until, according to the testimony of Bishop Symonette, 2003. So the cruel "hands of faith" fortuitously stepped in and made it easier to put right an act of ultimate deceit or betrayal.
- q. The defendants have shown that the plaintiff incurred no loss and have invested "not a dime" in the Cathedral. Indeed, the evidence shows that the plaintiff refused to invest the money needed to build the newer sanctuary on Coral Road, which is recognized as the plaintiff's land in Freeport. The retort from Symonette when the request was made "If you can't handle it leave it alone".
- r. It is clear from the evidence of Bishop Williams (See paragraph 2 of his witness statement) that in spite of the attempts in the 2009 statement of claim where the first iteration of the claim was based on the unsupported theory that Bishop Williams was a trustee when he took delivery of the 2002 conveyance. There is evidence that Bishop Symonette knew, even before the 1991 version of the constitution and in fact from the time of the 1981 Annex litigation that Bishop Williams wanted his name removed. I

submit, therefore, that one cannot be a trustee by default or on demand and without consent. I submit that no evidence was led to distinguish whether his signature in 1991 was an original or an adaptation from the 1980's constitution. Either way, there is no evidence that Bishop Williams at the material time was a trustee.

- s. The land in question was a gift and in spite of the attempts to argue that all properties coming into the hands of a member must be received by that member in trust for the society (an extreme and disingenuous interpretation of its constitution) such a construction has no application to the gift which the donors were absolutely entitled to determine who will be excluded as a beneficiary of the gift and no arcane rule or practice posited by the plaintiff or Bishop Symonette by reference to its constitution could have any impact on the decision of Mr. St. George and the Executives of the Port Group, the donor, as to who it gives its land to. That will be so even if Bishop Williams was a trustee, and we know he is not. By that bizarre construction Butler could not own G B Muffler, and all trustees would need to take a vow of poverty. The application is even more untenable when it is noted that the donors specifically excluded the plaintiff as inheritors of Lot 2. Yet in the absence of logic, or common sense, the plaintiff argues every gift you receive belongs to them, if you are a member of this church.
- t. This claim begun on the plaintiff's improbable and incorrect theory: that the 3rd defendant took delivery/ownership of lot under a constructive trust on behalf of the plaintiff. I submit that once limitation was raised in my filing of a defence and reply in September 2009 the concern over the impact of limitation turned their claim into a series of fraud allegations directed at every act of every defendant. It must also be noted that at the date of the defence and reply there were only two defendants (FCIL & DEVCO) and the third defendant was listed only as a third party. For the plaintiff's so-called fraud theory to make sense it must be proved by clear and convincing evidence. But when the witnesses, mouthing in parrot fashion these allegations from the witness box, were asked to explain "fraud" or "massive fraud" (See Symonette, Butler & Pinder) all we got were jumbled words and deflections. For this theory of fraud to succeed the plaintiff had to prove that all defendants took an active part and the exact fraudulent steps taken by each of the accused. Mouthing it from counsel table is not worthy of judicial time in an allegation akin to a crime.
- u. The evidence of Mr. Albert Gray of DEVCO should put an end to the plaintiff's legal fiction and nonsense theory of fraud. The notion that St. George et al had to stealthily sneak around to make sure his friend got the gift of land as he intended. I would posit, from hearing Counsel Charisse Brown, that he was a man who would have expressed his views and directions with the certitude of the head of a large company. He had no need to mislead anyone as to his true intent and think he had to collude with his executives and his staff to void a transfer to a group of men he never met in order to ensure almost five acres of his land to Bishop Williams, as was always his intent, simply highlights the legal fiction being advanced by this plaintiff.
- v. There are serious question concerning a 27 February 1987 letter from Bishop Symonette to Mr. Albert Gray which is being offered as "A Request for the donation of 4.3 acres of land" Then an undated version of that letter found its way into the agreed bundle. As noted before, that letter, by its clearest words, was an attempt to discourage the donation of land to Bishop Williams which Bishop Symonette (perhaps by his mythical power of premonition) somehow knew Bishop Williams would request in 1988. I can conjure no explanation why a copy of the same letter will have no date, but because of the importance of the timing and impact on such a critical matter the date is important, a very plausible explanation is that its creation was an attempt by the witness to mislead.
- w. Additionally, because the plaintiff incurred no expenses, paid nothing in the acquisition, made no contribution to the construction, did not even consult, engage or pay any lawyer, the loan, procured from the fifth defendant through a process by which

- somehow, Wallace Allen got the 1998 conveyance for the plaintiff (who now disowns any association with Christie Davis & Co) was also paid by the third defendant. So there was no default requiring the plaintiffs to pay the loan as guarantors. In the words of the Law Lords in *Derry v Peek* “fraud without damage, or damage without fraud does not give rise to such actions”). As a result, the plaintiff cannot make or succeed in an equitable quantum meruit claim, even if it was driven to make one. It attached its horse to a moving target which in my submission remains elusive if not an illusion.
- x. The re-amended defence filed on August 18, 2016 with leave of Court is being relied on in complete answer to the plaintiff’s Claim (as amended several prior times since initially file on September 8, 2009).
 - y. The witness statement of Bishop Williams (even as amended by the Court) and David McPhee. Nothing said by these witnesses was classified as untruth and their testimonies are therefore adopted in totality.
 - z. There is not one shred of evidence the plaintiff “built the cathedral”. Indeed the evidence is completely opposite, and knowingly so.
 - aa. It must be remembered, and never forgotten, that the essential element to be proven is that the defendant must have acted knowingly and with dishonest intent. The action taken or done must be done knowing it was wrong.
 - bb. With the passing of Mr. Edward St. George, who undoubtedly appears to have been the principal donor of the land in question, Mr. Gray was and remains the only other person who was present at the critical date in 1988 when the letter of 1 November 1988 was written in response to Bishop Williams, offering him the 4.3 acre tract to build “your church”. We learn the following items, among others, from Mr Gray’s evidence:
 - i. Despite a hopeless attempt by counsel to get the knowledge of that so-called 1987 letter requesting property to come to Mr Gray’s attention in 1987 it turns out he saw it only after the 2009 litigation began.
 - ii. He did not know that in 1998 the plaintiff was claiming Bishop Williams was trustee.
 - iii. There is another letter which supposedly was also written by Bishop Symonette to Mr Gray which Mr. Gray has never seen. It puts into serious doubt the validity of the existence of such items.
 - iv. He never met any of the trustees and never received a request for land from them.
 - v. The property was to be donated to Bishop Williams, not the Incorporated Trustees.
 - cc. The plaintiff sat on its hands for at least eight years while the local members of the Cathedral expended millions of dollars developing and expanding the Cathedral making NO contributions in the meantime. Once the Cathedral (now possibly the largest church in Freeport and one of the largest in the Bahamas) I submit the plaintiff pounces in trying to seize a church in which it has no proprietary interest. It seeks to claim money in a bank in which it does not even have an account. I would argue this approach has been taken and failed in prior cases.
 - dd. Specifically, under no circumstances can it be found on the evidence before this Court that the third defendant became a constructive trustee of the plaintiff. A point which requires emphasis or repetition.
 - ee. In my submission, the plaintiff having failed to prove that Bishop Williams was a trustee or acting as a trustee when he sought approval of his friend or friends at the Port Group of companies (where he was formerly employed) of a grant of land to build “his church” and faced with the bar of Limitation, the plaintiff pivoted, following my defence and

reply in 2009 to its current formula – the shouts of fraud, massive fraud, con, con game at every witness or participant on the defendants' case. The plaintiff ignored, or better still, failed to produce any evidence, as required by law, common law, to prove any of the elements required. I would have thought the principles of what is required to establish actionable fraud or deceit was settled as far ago as 1889 in the case of Derry v Peek [1889] H.L Vol XIV p. 337.

- ff. I submit repetition of the allegation without proof or supporting material, is as objectionable as it is impermissible. Derry v Peek is the defining guide in this area of law which 131 years later is still pretty good law. The facts of the case may not be particularly relevant. It is the decision of the judges, I thought, that an assertion of fraud or deceit in a civil case was settled law. The succinct extract from the first few lines of the decision makes it clear what was and still is required in claims made by this Plaintiff.

“In an action of deceit the plaintiff must prove actual 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 is true or false. A false statement, made through carelessness and without reasonable ground for believing it to be true, may be evidence of fraud but does not necessarily amount to fraud. Such a statement, if made in the honest belief that it is true, is not fraudulent and does not render the person making it liable to an action of deceit”.

- gg. In reviewing the body of this case I note that it was the successful arguments on behalf of the appellants (Messrs. Sir Horace Davey Q.C & Moulton Q.C.) which carried the day, and I adopt the arguments posited at page 339 as my own. They argued:-

“To support an action of deceit it always was necessary at common law and still is both there and in Chancery to prove fraud. i.e., that the thing was done fraudulently. Fraud has never been and never will be exhaustively defined, the form which deceit may take being so many and various. There is a negative characteristic: it must be something which an honest man would not do; not merely what a logical or clear-headed man would not do. However unbusinesslike a man may be, he is not fraudulent if he acts honestly. The natural consequence of words or acts must be taken to have been intended, but not so as to impute fraud to honesty. No honest mistake, no mistake not prompted by dishonest intention is fraudThe essence of fraud is the tricking a person into a bargain”.

- hh. None of the guardrails outlined above was met by any of the evidence led by the plaintiff. Nobody was tricked by anything. Lord Halsbury (one of the law Lords) at page 343, quoted language centuries old to the effect that “fraud without damage, or damage without fraud” do not give rise to such actions. Herschell L.J p.364 where fraud is asserted (as here) in these cases says: “The assertion alone will not maintain the action, but the plaintiff must go on to prove that it was false and that the defendant knew it to be so” He goes on at page 373 to adopt the ground rules when making allegations of deceit fraud in civil cases none of which were satisfied by this plaintiff they were stated, quoting Lord Selbourne in Smith v Chadwick 9 App. Case. As follows:

“I conceive that in an action of deceit it is the duty of the plaintiff to establish two things: first, actual fraud, which is to be judged of by the nature and character of the representations made, considered with reference to the object for which they were made, the knowledge or means of knowledge of the person making them, and the intention which the law justly imputes to every man to produce those consequences which are the natural result of his acts: and secondly, he must establish that the fraud was an inducing cause to the contract”. Herschell. Continued: It will be noticed that the noble and learned Lord regards the proof of actual fraud as essential, all other matters to which he refers are elements to be considered in determining whether such fraud has been established...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 shown that a false representation

has been made (1) knowingly, or (2) without belief in the truth or recklessly, careless whether it be true or false ... Thirdly, if fraud is proved, the motive of the person guilty of it is immaterial”

- ii. The so-called fraud and its corollary “the con or con game” and hitherto unknown legal construct, directed at Bishop Williams arose out of the meeting of the so titled “Executive Board” on August 7, 1997 when he brought the attention of upwards of 20 members to inform them of the recent intervention by Sir Albert of the Port Group to enquire into the progress of the church. The members assembled were informed that the property was a gift to the Bishop or as he directs and will not be given if the plaintiff was allowed to have any part in its ownership. Harrison Butler (the treasurer and then thought to be Bishop William’s trusted wingman) was the only one opposed. He followed that meeting by organizing the diversion of the property to the plaintiff after a meeting in Nassau by the trustees without notice to Bishop Williams. Thereafter the trustees secured the 1998 conveyance. From that factual matrix Counsel charged that was evidence of concealment, a con game. The assertion is simply fanciful even from the unverified minutes of the meeting. How do you conceal a decision in a meeting of up to twenty members? Who was misled here? How is this proof of fraud? It was Butler who acted with deceit not Bishop Williams. Where was the false representation made by Bishop with malice or requisite mens rea knowing it to be false and on which the Plaintiff acted to its detriment my own iteration of the DERRY v. PEEK principle? Surely nothing there even begins to satisfy any of the ground rules.
- jj. That the creation of Godfrey R. Williams Ministries and the vesting of the title in it was concealed. This theory came from Butler. Where is the fraud here? One may ask. The answer: Legal nonsense, because there was no fraud. Butler was the treasurer. He may not have been the treasurer in 2002 but he was an active member of the executive board until his departure in March 2005 to take up leadership of the Coral Road Church. The certificate of incorporation December 2002 was signed by his niece. The listing of the members who subscribed to the articles of incorporation (all of whom served with Butler) were exhibited by the plaintiffs yet Butler claims none of the members knew of the existence of the third defendant. How is this evidence of fraud? Which element of those facts caused this Plaintiff to act to its detriment? It would, I submit, be a strange application of Derry v. Peek to find fraud here.
- kk. The plaintiff, at another point in its evidence, previously referred to, asserted that it expended over a million dollars building the Cathedral on Settlers Way based on the representation that FCIL had good title to Lot 2 Fairfield at the date of the 1998 conveyance and that based on such representation it undertook the expenditure. This assertion is provably and demonstrably false. It turns out the plaintiff spent, in the words of Bishop Williams “not a dime”. But like the \$500,000.00 cash on fixed deposit and raised by the local group to assist in the building, which the plaintiff tried to claim as its own, that too is no proof of fraud. It cannot be. The plaintiff had no account at the fifth defendant. On the evidence the Incorporated Trustees were “strangers” to the contractual relations between the third and fourth defendants and the fifth defendant.
- ll. Mr. Albert Gray made it clear that the property was never ever intended to go to the plaintiff. That when Bishop approached him in 1988 it was clear that he was making provision to move away from the Coral Road Church. It was property intended for his church. Nothing knowingly fraudulent came from this witness to the plaintiff on which the plaintiff acted to its detriment. In any case how can communications between Bishop Williams and Mr. Gray cause the plaintiff to act to its detriment when the plaintiff was not and could not be privy to those communications, if we were to find the kind of proof of fraud as addressed by Herschell L.J.
- mm. While the examples listed above or referred to previously in my submission are not exhaustive of the instances in which the word “fraud” or some derivative thereof were put in the record or thrown in the face of each a witness for the Defence, it is sufficient,

I submit, to show, (notwithstanding volume of times of its usage) it is yet improbable one can find any evidence or proof of fraud to satisfy the Derry v Peek criteria or any case law after it.

nn. The third defendant (and every other defendant) is absolutely entitled to judgment with costs for having endured 20 years of litigation, sometimes at the expense of the true purpose for which the third defendant, a non-profit, was created.

359. Counsel for the fourth defendant makes the following observations and or submissions:

- a. The fourth defendant accepts that, as a matter of law, the court may attach a constructive trust to specific property which is not expressly subject to a trust, but which is held by a person in circumstances where it would be inequitable for the holder of the property to assert full beneficial ownership to the property;
- b. Cases in which the principle is applied usually involve directors and include cases where (i) a party received a benefit as a result of his position as a fiduciary (Keech v Sandford (1726) Se Cas. T. King 61; Boardman v Phipps [1967] 2 A.C. 46; Regal (Hastings) Ltd v Gulliver [1942] 1 All ER 378); (ii) a claim can be made of a party diverting a maturing business opportunity of the person in which he stands in the position as a fiduciary to himself (Regal Hastings supra; Canadian Aero, Framington v Dolphin); or (iii) a joint purchase of land where by agreement the title to the land is placed in the name of one party (Tinsley v Milligan [1994] 1 AC 340, [1993] 3 All ER 65; Gissing v Gissing [1971] AC 886, [1970] 2 All ER 780; Grant v Edwards [1986] Ch 638, [1986] 2 All ER 426);
- c. Mr Gray's evidence that the conveyance of the land was intended by the donor and its principals to be a gratuitous gift to the fourth defendant or his nominee, and not to the plaintiff, was not contradicted;
- d. Therefore, based on that fundamental fact, the plaintiff is unable to assert a claim that:
 - i. the third or fourth defendant acquired the Property which would otherwise have "belonged" to the plaintiff; or
 - ii. the third or fourth defendant was guilty of any kind of "wrongdoing" or "unconscionable conduct" by accepting a gratuitous gift of the Property from the second defendant; or
 - iii. the third or fourth defendant was under an obligation to acquire this gratuitous gift "for the plaintiff"; or
 - iv. the fourth defendant received a benefit as a result of his position as a fiduciary;
 - v. the fourth defendant diverted a maturing business opportunity of the plaintiff to himself or to the third defendant;

See Keech v Sandford (1726) Se Cas. T. King 61; Boardman v Phipps [1967] 2 A.C. 46; Regal (Hastings) Ltd v Gulliver [1942] 1 All ER 378; Canadian Aero, Framington v Dolphin); or,
- e. This is also not a case of a joint purchase of land where, by agreement the title was placed in the name of the fourth defendant or his nominee. (Tinsley v Milligan [1994] 1 AC 340; Gissing v Gissing [1970] 2 All ER 780; Grant v Edwards [1986] Ch. 638);
- f. Moreover, the fact that the donation of the Property was by way of a gratuitous gift makes this case inconsistent with the equitable principle stated by Millet J in Lonrho plc v Fayed and others (No 2) [1991] 4 All ER 961 and McMillan in Regal (Hastings) Ltd v Gulliver and Others [1942] 1 All ER 378 - that a fiduciary is not allowed to make a profit of property in respect of which a fiduciary relationship exists - and takes it a long way away from the authorities cited;

- g. Furthermore, the plaintiff has failed to establish that moneys belonging to the plaintiff were used in the construction of the building which was erected on the Property. Therefore, the plaintiff may not rely on the principles applicable to a “resulting trust” or “proprietary estoppel”, although the plaintiff did not, in his second amended statement of claim, assert such claims. In any event, this case does not fall in the category of such cases (*Dillon v Llewellyn*; *Edward v Baker*), even if the plaintiff had so pleaded;
- h. There is no evidence before the court to support a contention that the principles laid down in *Derry v Peek* apply to support the plaintiff’s claim based on fraud and he relies on counsel for the first defendant’s submissions in that regard;
- i. Therefore, the plaintiff has completely failed to establish a cause of action against the third and fourth defendants based on the third conveyance and in any event, a claim arising out of that conveyance, which is dated 12 December 2002, would be statute barred.

Plaintiff’s submissions in response

360. In response, counsel for the plaintiff submits that counsel for the fourth defendant’s submissions/arguments are unsustainable because:

- a. Charisse Brown’s evidence is that the Property and the Cathedral were not mere gratuitous gifts as they were supported by monetary consideration in the sum of ten dollars and the further consideration of the Incorporated Trustees building the Cathedral, which they did;
- b. The agreement, the resolution, the letter dated 27.2.87, the first conveyance, the mortgage and the enabling resolution, the second conveyance and survey plan all prove that the Property was originally intended to go to the Incorporated Trustees not the fourth defendant or the third defendant;
- c. Counsel for the fourth defendant has completely missed the mark by assuming the constructive trust in this matter arises as a result of principles laid down by Millet J in *Lornho plc v Fayed No. (2)*, *Tinsley v Milligan*, *Gissing v Gissing* or *Grant v Edwards*.
- d. The constructive trust in this case arises as a result of the fourth defendant’s breaches of fiduciary duty, by which he is bound even after his resignation according to *CMS v Dolphin Simonet*, in taking property to which the Incorporated Trustees were entitled which he was aware of whilst a trustee and exploited that opportunity of the Incorporated Trustees after resigning for the purpose. Therefore, the Incorporated Trustees are entitled to the Property as against the third defendant and damages from the fourth defendant. Supplemental submissions page 8 para 24 (a)-(d)

361. As for counsel for the third defendant’s arguments that the third defendant cannot be considered a constructive trustee nor has the fourth defendant committed fraud in the *Derry v Peek* sense, counsel for the plaintiff submits that those arguments are likewise unsustainable because:

- a. The fourth defendant in breach of his fiduciary obligations placed the Property in the hands of the third defendant by signing the third conveyance for and on behalf of the third defendant; therefore, the third defendant and its directors will be liable to account for the profits. *Cook v Deeks*.
- b. As a result of the fourth defendant signing the third conveyance for and on behalf of the third defendant, it follows that the third defendant will also be held liable as a constructive trustee for knowing receipt of the Property: *Millet J Agip (Africa) Ltd v Jackson and Lincu v Krnjulac*.
- c. Moreover, the fourth defendant falsely represented to the first, second and fifth defendants that he was entitled to the Property and requested that they provide him with the third conveyance and debenture in respect of the same. This false

representation was made either intentionally or recklessly as to whether it was true or false considering he was aware of the agreement, the resolution, the mortgage, and the first conveyance, that he was warned at the Executive Meeting not to proceed with taking the Property and the Cathedral and he admitted that he conned the Incorporated Trustees: Derry v Peek

362. The issues that arise for consideration from those arguments are as follows:
- a. Whether the Property was a gratuitous gift?
 - b. Was the plaintiff the intended recipient? If so,
 - c. Whether the fourth defendant owed a fiduciary duty to plaintiff in respect to the Property? If so,
 - d. Whether the fourth defendant breached such fiduciary duty?
 - e. Whether the fourth defendant acted fraudulently toward the plaintiff?

Whether the donation was a gratuitous gift?

363. The fourth defendant's evidence is that he requested a donation of land from the late Mr St George. Rev Butler confirmed that he and the fourth defendant went to the Port Authority seeking a donation of land and the 1 November 1988 letter stated that a donation of the Property had been approved by the second defendant's Chairman. After the draft conveyance had been delivered to Mr Allen for approval, he wrote to Mrs Brown on 2 December 1997 indicating that his instructions from the fourth defendant were that the property was a "gift to the church", whereas the draft conveyance showed a consideration of \$131,400.00. Mrs Brown, by letter dated 9 December 1997, confirmed that Mr Allen's instructions in that regard were correct. Further, in an appraisal of the Property dated 11 July 1997, prepared by G. Ray Lightbourn, a licensed real estate appraiser, the basic land value is stated as \$306,600.00.

364. It is common ground that the first conveyance included as consideration therefor "the sum of \$10.00" and "in further consideration of the purchaser's covenant to build as set out in clause 5 [sic] hereof". The covenant is actually set out in clause 4 of the first conveyance. There is no evidence that the plaintiff paid the sum of \$10.00, or any other sum, to the first defendant. In fact, the plaintiff's witnesses either admitted that the plaintiff had not paid any funds to the first or second defendant for the acquisition of the Property; or they were not able to say whether any funds had been paid. And while Bishop Symonette, under cross examination, insisted that the Property was not a gift and that the Trustees did pay money to the original owners to acquire the same, he said he could not recall the amount, but that it was stated in his witness statement. However, at paragraph 20 of his first witness statement/evidence-in-chief, Bishop Symonette made the following statement: "on 27 July 1988 a piece of property, along with a plan, was given to the St John's Native Baptist Church by DEVCO".

365. Further, when Bishop Symonette and Dr Bain wrote to Lady Henrietta St George after allegedly discovering the third conveyance, they stated, inter alia, "In 1987, the Incorporated Trustees applied again to Devco for five acres of land to accommodate fully the work-in-progress at Coral Road and they were granted 4.38 acres on Settler's Way..." Mr Francis, in responding thereto, stated, inter alia: "I, therefore, find it most unfortunate that what appears to have been intended as an entirely gratuitous gesture has resulted in such upheaval."

366. In the circumstances, I agree with the defendants that it cannot be reasonably argued that the sum of \$10.00 for 4.38 acres of commercial land in the Port Area of Freeport, Grand Bahama, valued at \$131,400.00 by the donor or appraised at \$306,600.00 by a licensed real estate appraiser, can be anything other than a nominal sum and that the conveyance of the Property was, for all intents and purposes, intended to be a gratuitous gift.

367. Moreover, I have found that the plaintiff provided no consideration for the Property, either by the payment of any money for its acquisition or fulfilment of a building commitment, as the construction of the Cathedral was undertaken and financed by the Local Church.

368. In the circumstances, then, I find that the donation of the Property by the second defendant was a gratuitous gift.

Whether the plaintiff was the intended recipient of the gratuitous gift?

369. The plaintiff asserts that the fourth defendant negotiated the donation of the Property on behalf of the Incorporated Trustees; that he was not entitled or authorized to negotiate such donation on behalf of himself or the third defendant, therefore, the plaintiff, not the third or fourth defendant, was the intended recipient thereof. As evidence that the plaintiff was the intended recipient of the donation of the Property, the plaintiff relies on the evidence of Bishop Symonette, Rev Butler, Rev Hinsey and Bishop Pinder, as well as certain documents included amongst the documentary evidence.

370. Bishop Symonette's evidence is that on 27 July 1988, the Property along with a plan was given to the St John's Native Baptist Church by the second defendant through the first defendant to start the development of the church; that it was by that plan that he was able to identify the land that was given to the Incorporated Trustees; that in addition to the plan, the second defendant, through the first defendant, later provided the plaintiff with the first conveyance. He admitted that he had no discussions with the second defendant or any of its principals about the donation of land and that he did not receive any response to his February 1987 letter which, he said, was written to show the fourth defendant's status as a trustee of the Society and to make it clear that whatever the fourth defendant did with the second defendant was on behalf of the Trustees as, neither the fourth defendant nor the Freeport Church was empowered to secure any land.

371. Rev Butler's evidence is that he and the fourth defendant met with Mr Gray for the purpose of requesting a donation of land for the Incorporated Trustees; that the Port Authority was aware that the Property was to be given to the Incorporated Trustees because the Port Authority had a copy of the Incorporation Act and they knew that the Coral Road Church itself could not hold land papers and, therefore, the property would have to be held by the Incorporated Trustees, a registered licensee of the Port Authority. He said that Mr Gray sent "us" a letter on behalf of the Port Authority that land had been granted to the Incorporated Trustees; and that the basis for his statement that the Property was to be given to the plaintiff was the fact that the request for the Property by the fourth defendant to Mr Gray was made, in his presence, on behalf of the Trustees; that the plot plan which was generated and provided by the second defendant clearly stated that the land on which the Cathedral sits was to be owned by the plaintiff; that no reference was made on that plot plan to the third or fourth defendant, so "it cannot be the case that it was intended for either the third or the fourth defendant to obtain ownership of the Cathedral or the land that it sits on". Rev Butler also said that the fact that the 1 November 1988 letter was addressed to Rev Williams as Pastor of St John's Church was another reason for him saying that the second defendant's intention was to give the Property to the plaintiff.

372. Rev Hinzey's evidence is that at all times during the construction, the Cathedral was being built for the benefit of the plaintiff and the members of the St John's Native Baptist Church to replace the Coral Road Church and that the conveyance of the land at Settler's Way was to be made to the plaintiff upon completion of the Cathedral as promised by the second defendant in accordance with the Incorporation Act, the plaintiff's Constitution and its Rules; that the Incorporated Trustees were always intended to be the owners of the Cathedral; and that there was never any doubt that the Cathedral was owned by the Incorporated Trustees. When asked, under cross-examination, what he meant by that last statement, Rev Hinzey simply said that he was certain about the ownership of the Cathedral. However, he admitted that he was never a part

of the discussions for the acquisition of the Property nor involved in the signing of any of the conveyances thereof.

373. Bishop Pinder's evidence is that he believed it was the original intent of the Port Authority to assist the church in granting the plaintiff land for the purpose of expanding the Native Baptists' work in the Port area, and that the basis of that belief was the conveyance that was issued to the plaintiff, which was used as collateral to get the \$1,050,000.00 credit facility. He also admitted that he was never a part of the discussions for the acquisition of the Property nor involved in the signing of any of the conveyances thereof.

374. In addition to that evidence, counsel for the plaintiff argues that the Incorporation Act; the [1974] agreement; the [4 March 1975] resolution; the [20 November 1984] judgment; the 1987 letter, the 1988 survey plan; the 1991 Rules; the [16 September 1997] enabling resolution; the first and second conveyances; and the 1998 mortgage all "prove" that the Property was originally intended to be donated to the plaintiff.

375. By section 3 of the Incorporation Act, the plaintiff is given power to acquire property by purchase, transfer, donation, exchange, devise, bequest, grant, gift, conveyance or otherwise and any such property acquired by the Incorporated Trustees "shall be held for the use and benefit of the St John's Particular Church of Native Baptists in The Bahamas". The 1974 agreement is between the Society and the Coral Road Church by which the parties agreed that the property and buildings of the Church be vested in and recognized as part of the Society; and that the rules formed by the Society in Conference will be the rules for governing the Church". By the 4 March 1975 resolution, members of the Trustees Board were authorized to be the signees of the Society "in all matters connected with the Society."

376. The [20 November 1984] judgment was a judgment entered in default in Supreme Court Action No 243 of 1981 in which former members of the Coral Road Church, the plaintiffs in that action, were said to have failed to appear and their action dismissed "out of court" and it was "ordered" pursuant to the counterclaim of the Incorporated Trustees, the defendants in that action, that "the plaintiffs do deliver to the defendants all books of account which relate to the affairs of the Freeport Branch of the first defendant and that the moneys standing to the account of the said Freeport Branch at Barclays Bank International, Freeport, belong to the defendants." (Tab 67) As I understood counsel for the plaintiff's arguments, the judgment is evidence/authority for the plaintiff's contention that all moneys belonging to the Coral Road Church belong to the plaintiff and that is why the plaintiff can assert that it financed the construction of the Cathedral. However, none of the pleadings in respect of which the 1984 judgment was purportedly made were adduced in evidence nor is the copy of the judgment signed by the Registrar or initialed by the Judge. There is no evidence as to the issue before the court and the bank account to which the said order relates is not the bank account which the Coral Road Church maintained with the fifth defendant at the material times. So, in my view, that judgment does not support the plaintiff's contention that the funds belonging to the Coral Road/Freeport/Local Church in the account with the fifth defendant belonged to the plaintiff.

377. By the [16 September 1997] enabling resolution, the Incorporated Trustees authorized (i) the borrowing of the sum of M\$1.05 by the Coral Road Church; (ii) the guaranteeing of the loan by way of mortgage; and (iii) the execution by the Chairman and Secretary of the mortgage of the Property to facilitate the loan by the fifth defendant to the Coral Road Church, the proceeds of which were used to complete the construction of the Cathedral. In my judgment, that enabling resolution is evidence that in order for the Coral Road/Freeport/Local Church to obtain a loan to complete the construction of the Cathedral it required the assistance of the plaintiff as the Coral Road/Freeport/Local Church was not a licensee of the Grand Bahama Port Authority nor a body corporate entitled to take title in its name. However, in light of the evidence as a whole, that

resolution does not, in my view, evidence an intention on the part of the second defendant to donate and or convey the Property to the plaintiff.

378. As for the "February 1987" letter, as indicated, that letter was not received or responded to by the second defendant. I also note that the letter was not copied to the fourth defendant to apprise him of the plaintiff's communication with the second defendant; and while the survey plan does in fact show the name of the plaintiff as the label on the Property, that plan is dated July 1988, but the letter confirming the approval of the donation is dated 1 November 1988 and was addressed to the fourth defendant, not the plaintiff. And while it is common ground that the first and second conveyances were indeed in favour of the plaintiff, and the plaintiff provided a mortgage to the fifth defendant on the basis that it was of the view that it had a good and marketable title to the Property, the fact is that no title passed to the plaintiff by either the first or second conveyance, and, therefore, title to the Property never vested in the plaintiff. Further, while Article VIII B of the 1991 Rules provides that property which "shall come into the hands or possession of any Unit church for the use of any Unit Church the same shall be transferred to the Incorporated Trustees which shall hold the same in accordance with the provisions of the said Act", the Property was never transferred to the Incorporated Trustees by the unit church.

379. Ultimately, the legal owner of the Property conveyed the same to the third defendant.

380. On the other hand, the fourth defendant's evidence is that in or about 1987, the Coral Road Church's congregation had outgrown, or was rapidly outgrowing, the then-recently built sanctuary on Coral Road; that while still listed as a member of the plaintiff's Trustee Board, he approached the Society and Bishop Symonette with his "vision" to build a Cathedral. He said he was "rebuffed" and told in clearest terms that the Society would not support such a venture. That he approached the late Mr St George about the possibility of locating and securing sufficient land to develop the Cathedral; that he was not doing it for the Trustees, but for the growth of the membership; the Fairfield tract was selected; that the Property was never supposed to be in the hands of the Trustees; that in 1997 he convened a meeting with his members of the planned Cathedral and advised them of the "firm position" that the Property "must never end up in the name of the plaintiff". Indeed, in the minutes of that meeting, the fourth defendant is recorded as having said that two years prior thereto Mr Gray had called him and told him that the donation was not being made to the Society, but rather it was for the members of the Coral Road Church; and that "if it was to be put in the Society's name the Port Authority would take it back".

381. Mr Gray's evidence is that the second defendant's intention was to donate the Property to the fourth defendant or his nominee and not to the plaintiff; that, in fact, it was the express intention of the second defendant and its principals that the Property not be donated to the plaintiff. He said that he became personally aware of certain litigation in Nassau between the plaintiff and other churches of the Society "around the same time", and it was made clear to him by the late Mr St George that under no circumstances should the plaintiff benefit from the gift; that the land was meant for the fourth defendant personally and that the title was to be taken in the name of the fourth defendant or whatever entity he chose; that the reason the 1 November 1988 letter of offer was addressed to the fourth defendant at St John's Church was probably because the second defendant could only make offers to entities licensed by the Port Authority and at the time the third defendant was not yet incorporated. However, he said, the overriding consideration was that the land was intended as a gift to the fourth defendant and that at no time did the fourth defendant or the late Mr St George inform him that title to the Property was to be transferred to the plaintiff; that while the Property was "inadvertently purportedly conveyed" by the first defendant to the plaintiff, that was "completely inconsistent with the intention and instructions of Mr St George". So when he became aware that the first conveyance was invalid, he had no difficulty in instructing the second defendant's in-house attorney to effect a valid conveyance to the third defendant

382. Mrs Brown's evidence is that while she could not recall exactly what Mr Gray had said, her understanding was that it was always intended for the Property to go "Godfrey Williams and his church". On cross-examination by counsel for the third defendant, Mrs. Brown said that the third conveyance was consistent with the original grant, that is, that the fourth defendant should be the beneficiary of the land; that it was never intended by the second defendant that the Property be conveyed to the plaintiff.

383. It is clear from the evidence of the plaintiff's witnesses that none of the members of the Incorporated Trustees had any dealings with the second defendant or any of its principals in relation to the acquisition of the Property and, therefore, none of them had any "first-hand" knowledge of the discussions between the fourth defendant and the second defendant, its principals and or officers that would have led to the second defendant's decision to donate the Property; and while I accept Rev Butler's evidence that he accompanied the fourth defendant on at least one of his meetings with Mr Gray, frankly, I do not believe Rev Butler when he said that the fourth defendant requested the donation of land on behalf of the Incorporated Trustees.

384. Both Rev Butler and the fourth defendant testified that the reason for the request was because the membership of the Coral Road Church had outgrown the premises on Coral Road and there was a need to secure larger premises to accommodate the growing congregation. According to the fourth defendant, he was told by the General Superintendent that if he could not "handle it" he should leave it alone; that by the time he requested the said donation, it had become clear to him that he was not going to continue to be a member of, or associated with, the Society. It seems unlikely to me that in those circumstances the fourth defendant would have requested and or negotiated a donation of land on behalf of the Incorporated Trustees.

385. However, it is clear from the evidence of the plaintiff's witnesses, as well as the submissions of its counsel, that the plaintiff's position is that, because of the provisions of the Incorporation Act and the 1991 Rules, a request by, or on behalf of, one of its trustees or unit churches for a donation of land is a request by, or on behalf of, the Incorporated Trustees because, as Rev Butler put it, "the local church is owned by the Trustees"; and that the 1 November 1988 letter having been addressed to Rev Williams as Pastor of St John's Church supported his statement that the land was intended for the Trustees. And while Rev Butler also said that Mr Gray had sent "us" a letter on behalf of the Port Authority that land had been granted to the Incorporated Trustees, no such letter was adduced in evidence. As indicated, the only letter from the second defendant adduced in evidence was the aforesaid 1 November 1988 letter addressed to the fourth defendant.

386. In the circumstances, I accept the fourth defendant's evidence that when he requested the donation of land he did not do so on behalf of the plaintiff. Moreover, the evidence of the second defendant's witnesses, which I accept, is that it was not the intention of the second defendant and or its principals to donate the Property to the plaintiff; that the letter granting approval for the said donation was in favour of the fourth defendant not the plaintiff; and in fact, it was the express intention of the second defendant and its principals that the Property not be donated to the plaintiff.

387. In the circumstances, then, I find that the plaintiff was not the intended donee of the Property; or put another way, the second defendant did not intend to donate the Property to the plaintiff.

388. Notwithstanding the intention of the donor, the first conveyance purportedly conveyed the Property to the plaintiff and when that attempt was unsuccessful, the second conveyance in favour of the plaintiff was prepared by the second defendant and forwarded to Christie, Davis & Co for execution. However, prior to the second conveyance being executed, the Property was conveyed by the second defendant to the third defendant upon the instructions or by the directions of the fourth defendant.

389. The plaintiff asserts that the first and second conveyances, both in favour of the plaintiff, evidence the second defendant's intention to convey the Property to the plaintiff and the plaintiff accuses the fourth defendant of having firstly, interfered with the execution of the second conveyance then orchestrating the conveyance of the Property to the third defendant by virtue of the third conveyance. Therefore, the plaintiff says the third defendant ought to be made to hold the property on constructive trust for the plaintiff.

Was the fourth defendant in a fiduciary relationship with the plaintiff with respect to the Property?

390. "A fiduciary is someone who has undertaken to act for or on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence. The distinguishing obligation of a fiduciary is the obligation of loyalty. The principal is entitled to the single-minded loyalty of his fiduciary. This core liability has several facets. A fiduciary must act in good faith; he must not make a profit out of his trust; he must not place himself in a position where his duty and his interest may conflict; he may not act for his own benefit or the benefit of a third person without the informed consent of his principal." Per Millett, LJ in *Bristol and West Building Society v Mothew* [1998] Ch. Those principles are not disputed.

391. While I have found that the fourth defendant was a member of the plaintiff trustee board during the period 1982 through 1995, the evidence is that at the date of the third conveyance he was no longer a trustee. Therefore, title to the Property never vested in the fourth defendant or in a company controlled by him, while he was a trustee. Additionally, as the first conveyance was declared to be null and void, no title to the Property passed thereunder to the plaintiff or the Society. Therefore, the Property was not "acquired by the Incorporated Trustees" which could be "held for the use and benefit of the" Society pursuant to section 3 of the Incorporation Act. Further, even if, having regard to the evidence that the entire congregation of the Coral Road Church processioned to the Property on 8 November 1998 and continues to worship there, it could be said that the Property came into the "hands or possession" and "for the use" of the Coral Road Church as one of the plaintiff's unit churches, there was no transfer of the Property to the plaintiff as provided for in Article VIII B of the 1991 Rules.

392. So, having regard to my findings that the donation of the Property was not sought by the fourth defendant on behalf of or for the benefit of the plaintiff; that the donation was by way of a gratuitous gift by the second defendant, not intended for the plaintiff; and title to the Property was never vested in the plaintiff or a member of the plaintiff's trustee board, then, as I understand the authorities cited, the Property never became "trust" property in respect of which a fiduciary relationship between the fourth defendant and the plaintiff would/could have existed.

393. So, if no fiduciary relationship existed between the fourth defendant and the plaintiff with respect to the Property, could the fourth defendant, and by extension the third defendant, nevertheless be required to hold the Property on a constructive trust for the plaintiff?

394. A "constructive trust" is said to be created by a transaction between the trustee and the cestui que trust/beneficiary in connection with the acquisition by the trustee of a legal estate in land, whenever the trustee has so conducted himself that it would be inequitable to allow him to deny to the cestui que trust/beneficiary a beneficial interest in the land acquired. And he will be held so to have conducted himself if by his words or conduct he has induced the cestui que trust/beneficiary to act to his own detriment in the reasonable belief that by so acting he was acquiring a beneficial interest in the land." Lord Diplock in the case of *Gissing v Gissing* [1971] AC 886.

395. According to the learned authors of *Snell's Principles of Equity*, 26th ed, 1966, at p. 202: a person "becomes a constructive trustee if he falls within either of two heads, namely - (i) that he

received trust property with actual or constructive notice that it was trust property and (ii) that the transfer to him was a breach of trust."

396. The learned authors of Halsbury's Laws of England, 3rd ed., Vol. 38 (1962), pp. 858 to 859, paras. 1446 and 1447 state:

"1446. Acquisition with notice of trust. Where a person, whether gratuitously or for valuable consideration, acquires property, or an interest in property, which is subject to a subsisting trust, he becomes a trustee of it for the purposes of the trust if he has either actual or constructive notice of the trust. ...

1447. Necessity for notice of misapplication. In order to constitute a person who takes trust property or trust money for his own purposes a constructive trustee of it, he must have notice that it is being misapplied by being transferred to him, or, in other words, he must be a party to a fraud or breach of trust on the part of the actual trustee."

397. The "constructive trust" principle, it is said, has its origins in the case of *Keech v Sandford* (1726) Sel Cas. t. King 61 and is based on the premise that a trustee or fiduciary should not place himself in a position where his duty may conflict with his personal interest; and if he does, he ought not be permitted to retain any profit which he makes from the use of any property subject to the fiduciary relationship or which he makes because of his fiduciary position, without authority from the beneficiaries, the trust instrument or the court. If he does, he will be required to hold the Property or profit on constructive trust for the beneficiary.

398. In *Keech v Sandford*, the defendant, an express trustee, held the profits of a lease of a market on trust for a minor. Before the expiration of the lease, the defendant [trustee] requested a renewal of the lease firstly, in favour of the beneficiary personally, and then, in his capacity as trustee for the infant. Both requests were refused. However, the lessor agreed to renew the lease in favour of the trustee personally and this was done. In an action brought on behalf of the beneficiaries, the court decided that the profits of the renewed lease were held on constructive trust for the beneficiaries. In doing so, Lord King LC said:

"I must consider this as a trust for the infant, for I very well see, if a trustee, on the refusal to renew, might have a lease to himself, few trust estates would be renewed to the cestui que use. Though I do not say there is fraud in this case, yet he should rather have let it run out than to have had the lease to himself. It may seem hard that the trustee is the only person of all mankind who might not have the benefit of the lease; but it is very proper that the rule should be strictly pursued and not in the least relaxed; for it is very obvious what would be the consequences of letting trustees have the lease, on refusal to renew to the cestui que trust."

399. Then in the case of *Regal (Hastings) Ltd v Gulliver* [1942] 1 All ER 378, Regal Ltd received an offer from one of its subsidiaries to sell to Regal (Hastings) a quantity of shares. Regal (Hastings) did not have the specified amount of funds but four of its directors subscribed for the shares personally and later sold them for a profit. It was found as a fact that all the transactions were bona fide. Regal (Hastings) claimed that the directors were accountable for their profit. The House of Lords agreed. Lord Russell of Killowen opined at page 379:

"I am of opinion that the directors standing in a fiduciary relationship to Regal in regard to the exercise of their powers as directors, and having obtained these shares by reason and only by reason of the fact that they were directors of Regal and in the course of the execution of that office, are accountable for the profits which they have made out of them. The equitable rule laid down in *Keech v Sandford* and *Exp James*, and similar authorities applies to them in full force."

400. Lord McMillan at pages 391 and 392 opined that:

“The equitable doctrine invoked is one of the most deeply rooted in our law. It is amply illustrated in the authoritative decisions which my noble and learned friend Lord Russell of Killowen has cited. I should like only to add a passage from Principles of Equity, by Lord Kames which puts the whole matter in a sentence (3rd Edn 1778, vol 2, p 87): “Equity,” he says, “prohibits a trustee from making any profit by his management, directly or indirectly.” The issue thus becomes one of fact. The plaintiff company has to establish two things: (i) that what the directors did was so related to the affairs of the company that it can properly be said to have been done in the course of their management and in utilisation of their opportunities and special knowledge as directors; and (ii) that what they did resulted in a profit to themselves.”

401. Later, in the case of *Lonrho plc v Fayed (No 2)* [1991] 4 ALL ER 961, Millett, J, after noting that the plaintiff’s claim in that case was to an asset acquired from other sources which should have been acquired for the plaintiff, continued at pages 969-970:

“Equity will intervene by way of constructive trust, not only to compel the defendant to restore the plaintiff’s property to him, but also to require the defendant to disgorge property which he should have acquired, if at all, for the plaintiff. In the latter category of case, the defendant’s wrong lies not in the acquisition of the property, which may or may not have been lawful, but in his subsequent denial of the plaintiff’s beneficial interest. For such to be the case, however, the defendant must either have acquired property which but for his wrongdoing would have belonged to the plaintiff or he must have acquired property in circumstances in which he cannot conscientiously retain it as against the plaintiff.”

402. Further, where a stranger or third party receives property subject to a fiduciary relationship with actual or constructive knowledge that it is trust property that has been transferred to him or her in breach of trust or fiduciary duties, he or she will be held to be a constructive trustee of that property. Halsbury’s Laws of England, supra para 1446.

403. As I understand it, the plaintiff claims that, as a member of the plaintiff’s trustee board and the pastor of one of the plaintiff’s unit churches, the fourth defendant owed a fiduciary duty to the plaintiff during the time he served in those positions as well as after he ceased to so serve. That while the fourth defendant was authorized to, and did, negotiate the donation of land on behalf of the plaintiff, he was not authorized to do so on behalf of himself or the third defendant. That as a trustee the fourth defendant stood in a fiduciary relationship with the plaintiff and, in breach of his fiduciary duties, he orchestrated or directed the conveyance of the Property away from the plaintiff to the third defendant; that as the fourth defendant was one of the persons who executed the conveyance on behalf of the third defendant, the third defendant is fixed with the fourth defendant’s knowledge of his fiduciary duties to the plaintiff and the alleged breaches thereof. Consequently, the plaintiff asserts/contends it is entitled to a proprietary interest in the Property and the third defendant as the legal title holder thereof holds the Property on a constructive trust for the plaintiff.

404. I have found that the fourth defendant did not negotiate the donation of the Property on behalf of the plaintiff and that the donation of the Property by the second defendant was by way of a gratuitous gift. I also accept counsel for the fourth defendant’s submission that even as a trustee, the fourth defendant would have been under no “obligation” to acquire a “gratuitous gift for the plaintiff” and there is nothing in the Incorporation Act or the Rules which requires a trustee to do so. Further, having regard to my findings regarding the plaintiff’s “1987 letter”, there is no evidence that the Incorporated Trustees were seeking to acquire the Property for itself or for the

Local Church, by donation, purchase or otherwise, at least not prior to the fourth defendant's request of the second defendant.

405. The evidence, which I accept, is that the fourth defendant as pastor of the Coral Road Church recognized that there was a need for larger premises to accommodate the growing congregation/ membership. In or about 1984, he approached the plaintiff/General Superintendent for assistance. His evidence is that he was rebuffed and basically left on his own to carry out what he said was his "vision" for the Cathedral. The plaintiff's witnesses, Bishops Symonette and Pinder, said that the trustees supported the idea of a larger building and seeking a donation of land therefor, but admitted that they did nothing about the situation for at least three years. Moreover, even after purportedly writing the "1987 letter" to Mr Gray purportedly requesting the donation of land, none of the trustees followed up that letter and there is no evidence of any of them approaching anyone from the Port Group of Companies or otherwise seeking to obtain land for the aforesaid purpose. Bishops Symonette and Pinder and Rev Hinsey each admitted that he had never spoken to any of the principals of the second defendant or to Mr Gray in connection with the matter.

406. While there, are no doubt, similarities between this case and those cited, those cases appear to be distinguishable in one way or another from the case at the bar and I accept the submission of counsel for the fourth defendant that the "fundamental fact" or what I call the "distinguishing feature" between them is that, in this case, the donation of the Property by the second defendant was a gratuitous gift, not intended for the plaintiff, but for the fourth defendant or his nominee, therefore (i) the plaintiff is unable to rely on the principle stated by Millet J in *Lornho plc v Fayed and others (No 2)* [1991] 4 All ER 961, that is, that a fiduciary is not allowed to make a profit of property in respect of which a fiduciary relationship exists, by asserting that the third or fourth defendant acquired the Property which would otherwise have "belonged" to the plaintiff; (ii) nor is this a case where the plaintiff can assert a claim that the fourth defendant received a benefit as a result of his position as a fiduciary; (iii) or a case in which a claim can be made by the plaintiff that the fourth defendant diverted a maturing business opportunity of the plaintiff to himself or to the third defendant; (iv) a case of a joint purchase of land where, by agreement the title was placed in the name of the fourth defendant or his nominee.

407. Indeed, it appears from his supplemental written submissions that counsel for the plaintiff agrees with/accepts Mr Tynes, QC's submissions as well. In that regard, Mr Maynard submits that counsel for the fourth defendant has "completely missed the mark" by assuming the constructive trust in this matter arises as a result of principles laid down by Millet J in *Lornho plc v Fayed No. (2)*, *Tinsley v Milligan*, *Gissing v Gissing* or *Grant v Edwards*.

408. Instead, he argues, the constructive trust in this case arises as a result of the fourth defendant's breaches of fiduciary duty, by which he is bound even after his resignation according to the Canadian case of *CMS v Dolphin Simonet* [2002] B.C.C. 600; [2001] 2 B.L.C. 704; [2001] Emp. L.R. 895, in taking property to which the Incorporated Trustees were entitled which he was aware of whilst a trustee and exploited that opportunity of the Incorporated Trustees after resigning for the purpose.

409. In my judgment, the case of *CMS v Dolphin*, is also distinguishable from the case at the bar on its facts. I have found in this case that the Property, the subject of this action, was not trust property. In *CMS v Dolphin*, it was determined that the "business opportunity" of the company of which the former director took advantage, was to be treated as if it were property of the company in relation to which the director had fiduciary duties. In other words, the "business opportunity" was trust property. I have found in this case that the Property, the subject of this action, was not trust property; title to it was never vested in the plaintiff or in anyone on the plaintiff's behalf and, as indicated, the evidence is that the express intention of the donor was that the plaintiff receive no legal or beneficial ownership therein.

410. Moreover, in light of my findings as aforesaid, there is no evidence that the Incorporated Trustees were “entitled to the Property” or that the plaintiff was in a position to have the Property donated to it and the fourth defendant interfered. The evidence is that the Property was never intended by the second defendant to be given to the plaintiff. Indeed Mr Gray’s evidence, which I accept, is that when he became aware that the Property had been inadvertently conveyed to the plaintiff and he had the opportunity to right the situation he did so happily, because the overriding consideration was that the land was intended as a gift to the fourth defendant.

411. The case of *Lincu v Krnjulac* [2014] NSWSC 532 is another case on which counsel for the plaintiff seeks to rely and which he submits is instructive. In his submission, the facts of *Lincu* are on all fours with the instant case namely, he says, they both involve church land which was held on trust by trustees and one of the trustees contrived to appropriate the property for his own purposes concealing the same from church membership and mortgaged that property for the benefit of his private purposes.

412. On the other hand, counsel for the first defendant submits that except for involving a church, a pastor and the transfer of land, the case of *Lincu* is clearly distinguishable from the case at the bar.

413. *Lincu* involved an Australian church. Five members of the church purchased land in 1978 in their joint names, with the common intention that it be purchased and held, on trust for the charitable purposes of the church community for whose worship it was purchased. The building constructed on the land was paid for by the members and donations from friends and other like-minded congregations. By the time of the events that triggered the commencement of the action, two of the five members had died - two became plaintiffs, *Lincu* and *Kovacevic*, in the action and the other, *Krnjulac*, became the defendant along with his two sons, neither of whom was a member of the congregation. The plaintiffs sought to recover the land, which was transferred out of the names of the trustees into the names *Krnjulac* and his two sons (neither of whom was a member of the church) for their own purposes. From the time of its acquisition in 1978 up to and including the time when *Krnjulac* contrived to have the property transferred into the name of himself and his sons, giving them the legal title to the property, the property it was being held on trust for charitable purposes, of which *Krnjulac* had notice. Immediately after they took title to the property they mortgaged it for their own private business purposes and *Krnjulac* contrived to appropriate title to the property to himself with that object not disclosed to the fellow worshippers of the church.

414. Having regard to the evidence in this case and my findings thus far, I agree with counsel for the first defendant that the case is distinguishable from *Lincu* on its facts. Some of those distinguishing features are: firstly, in *Lincu*’s case, the land was purchased and held by the trustees in trust for the church and the document effecting the transfer expressly stated that the land was being held on trust for the church. In this case, title to the Property had never vested in the plaintiff or anyone else on trust for the plaintiff. Secondly, in *Lincu*’s case, after property had been transferred to the trustees for the church, *Krnjulac* decided to transfer trust property (that is, property expressly impressed with a trust) to himself and two of his sons, clearly in breach of his obligations to hold the property in trust for the benefit of the church. In this case, no property had been vested in the plaintiff which had been effectively transferred to a third party. The first conveyance was void, so no title was acquired by the plaintiff by that conveyance; the second/confirmatory conveyance was never executed, so no title was passed to the plaintiff and the third conveyance was in favour of the third defendant.

415. Moreover, there is nothing in the Incorporation Act or the 1991 Rules which imposes an “obligation” on a trustee to acquire a gratuitous gift for the Incorporated Trustees or that having obtained such a gift, an obligation to turn it over to them. I therefore accept the submission of

counsel for the fourth defendant that even as a trustee, the fourth defendant would have been under no obligation to acquire a gratuitous gift for the plaintiff.

416. Furthermore, having regard to the fourth defendant's evidence about the reason for his request for the said donation, along with the evidence of the witnesses for the second defendant of the intention of the donor of the Property, I find that in "representing" to the first, second and or fifth defendant that he was entitled to a conveyance of the Property and entitled to use the Property as collateral for a loan from the fifth defendant, the fourth defendant's representations of his entitlement to the Property were not made "falsely, and untruthfully and or recklessly" as alleged by the plaintiff; that is, I find that in making the aforesaid representations, the fourth defendant did not act fraudulently in the *Derry v Peek* sense.

417. As for the plaintiff's complaints about the fourth defendant meeting with the fifth defendant, as pastor of the Freeport Church, having regard to the fact that the fourth defendant was one of the signatories on the 1997 commitment letter and a signatory on the bank account with the fifth defendant I do not see how his meeting with officers of the fifth defendant and discussing matters relating to the first conveyance or the mortgage could be said to be fraudulent or in breach of any duty he may have owed to the plaintiff as a trustee and or pastor, present or former.

418. In the circumstances then I find that by accepting a gift of the Property and directing the same be conveyed to the third defendant, the fourth defendant did not breach any fiduciary duties which he may have owed to the plaintiff by virtue of the fact that he was a trustee during the period in which the second defendant agreed to donate the Property; nor, in the circumstances, did he breach any fiduciary duty by incorporating the third defendant and directing that the second defendant convey the Property to the third defendant thereafter.

419. In the circumstances then, I find that the plaintiff has failed to prove that the fourth defendant was guilty of breaches of his solemn trust or breaches of any fiduciary duties or fraud in relation to his dealings with the Property as alleged by the plaintiff in the second amended statement of claim.

420. As for the plaintiff's claim against the third defendant is predicated on a finding of liability on the part of the fourth defendant. The learned authors of *Snell's Principles of Equity*, 26th ed, 1966, at p. 202 opine: "He becomes a constructive trustee if he falls within either of two heads, namely - (i) that he received trust property with actual or constructive notice that it was trust property and (ii) that the transfer to him was a breach of trust."

421. The plaintiff having, in my view, not proven that the Property was trust property or that in having the same conveyed to the third defendant, the fourth defendant committed a breach of trust or fraud, then the plaintiff's case against the third defendant also, in my view, falls away.

422. In the result then, the plaintiff's case against the third and fourth defendants are dismissed in their entirety with costs to the third and fourth defendants to be taxed if not agreed. The fourth defendant's costs are certified as fit for two counsel.

The fifth defendant

423. The plaintiff pleads, inter alia:

- a. The Incorporated Trustees agreed to mortgage the Property to the fifth defendant on 2 September 1997 in order to secure a loan of M\$1.05 to complete the construction of the Cathedral and to purchase furniture, fittings and fixtures for the Cathedral; and as security for the loan, it was agreed that the Incorporated Trustees would provide a fixed deposit in the sum of \$500,000.00 and the Property;

- b. That the agreement to mortgage the Property was subsequently executed on 10 February 1998 after a legal opinion rendered by Wallace Allen of Davis & Co, attorneys for the fifth defendant, confirmed that the title to the Property was clear and marketable;
- c. That pursuant to the mortgage, the St John's Coral Road Church on behalf of the plaintiff drew down funds from the account at the fifth defendant in order to issue cheques to pay contractors as well as other expenses relating to the completion of the Cathedral (paras 7-9).
- d. That around 2000, and again in 2003, the fifth defendant met with Godfrey Williams, and/or, with his attorney and/or a member/officer of the Local Church, and divulged private and confidential matters relating to the plaintiff's title to the Property without the plaintiff's knowledge, authorization or consent and in violation of the fifth defendant's duties of confidentiality and fiduciary duty of loyalty that it owed to the plaintiff as its customer; (paragraphs 22-23)
- e. That the Incorporated Trustees, who at all material times were the fifth defendant's customers and mortgagors under the mortgage, who were owed duties of confidentiality and fiduciary duties of loyalty from the fifth defendant, were never informed by the fifth defendant or anyone else about the said meetings or of the fifth defendant's correspondence with Wallace Allen/Christie, Davis & Co in relation to the matter; (para 25)
- f. That on 25 January 2006 without the knowledge authorization or consent of the plaintiff the fifth defendant asked Christie, Davis & Co to record a satisfaction of the 1998 mortgage (at paragraphs 30).
- g. That "astonishingly, fraudulently and in clear breach of its fiduciary duty of loyalty" as banker to the plaintiff as its customer, the terms of the satisfaction stated that the fifth defendant had received from the plaintiff payment in full of all monies and interest forming the mortgage thereby purporting to cancel, abort, revoke and/or otherwise bring to an end the mortgage relationship between the plaintiff and the fifth defendant without the plaintiff ever being made aware of the same. (Para 31)
- h. Further, that the fifth defendant, notwithstanding that they were advised that any rectifying documents issued in this matter that were not in favour of the plaintiff would be fraudulent, nonetheless issued the satisfaction, thereby purporting to cancel, abort, revoke and/or otherwise bring to an end the plaintiff's mortgage without the plaintiff's knowledge, authorization or consent, so that the fifth defendant could fraudulently use the Property itself as collateral security for a debenture facility agreed to between the third defendant and the fifth defendant dated 26 September 2003. para 37

424. As for the fifth defendant's part in the alleged "massive fraud" of which the plaintiff accuses all of the defendants of having perpetrated against the Incorporated Trustees, the plaintiff provides the following particulars:

Notwithstanding that at all material times the fifth defendant knew that title to the Property was to be taken in the name of the Incorporated Trustees as confirmed by the mortgage itself, that the first conveyance was given in the name of the Incorporated Trustees, that it had approved of the second conveyance through the written confirmation of Wallace Allen, its attorney, and that the Incorporated Trustees, were the guarantor for the entire transaction relating to the acquisition of the property, by virtue of the letter of guarantee, which was requested by the fifth defendant, the fifth defendant, without the knowledge, authorization or consent of the Incorporated Trustees and in breach of its duty of confidentiality and its fiduciary duty of loyalty that it owed the Incorporated Trustees as its customer nonetheless falsely and untruthfully and/or recklessly made representations about the Incorporated Trustees' mortgage and/or title arrangements to the property by:

- a. Meeting with Godfrey Williams and also having further meetings where Godfrey Williams was accompanied by Floyd Swain and Jethro Miller to discuss private and

confidential matters pertaining to the Incorporated Trustees' title to the property with them;

- b. Purporting to cancel, abort, revoke, and/or otherwise bring the mortgage to an end, and thereby falsely and untruthfully and/or recklessly, deny the Incorporated Trustees' entitlement and/or claim to the property, not caring whether such denial was true or false, despite the fact that it was aware that the Incorporated Trustees were the mortgagors and the guarantors in respect of the property and that it was aware or ought to have been aware that it was the Incorporated Trustees, pursuant to the mortgage, that allowed the St. John's Coral Road Church on its behalf to draw down funds from the account at the fifth defendant in order to issue cheques to pay contractors as well as other expenses related to the completion of the Cathedral on the property.
- c. Entering into the debenture with Godfrey R. Williams Ministries and unbelievably using the property which was in the name of the Incorporated Trustees, as clearly seen from the first conveyance, the second conveyance, the mortgage and reflected by the letter of guarantee, as collateral security for the debenture, thereby falsely and untruthfully and/or recklessly, denying the Incorporated Trustees' entitlement and/or claim to the Property, not caring whether such denial was true or false.
- d. Issuing the satisfaction, thereby purporting to cancel, abort, revoke, and/or otherwise bring to an end, the Incorporated Trustees' mortgage without the Incorporated Trustees' knowledge, authorization or consent, so that they could nonetheless fraudulently use the Property itself, as collateral security for the debenture and/or as a means of limiting their exposure to losses of some \$900,000.00 pursuant to the erroneous title opinion provided by Wallace Allen, then of Davis & Co.
- e. Issuing the satisfaction, thereby purporting to cancel, abort, revoke, and/or otherwise bring to an end the Incorporated Trustees' mortgage without advising the Incorporated Trustees in any manner whatsoever as to the status of the sum of \$500,000.00 which the Incorporated Trustees provided to the fifth defendant as collateral security for the mortgage, much less returning and/or releasing the said amount to the Incorporated Trustees as should have been done given that the satisfaction was issued lodged and recorded.

425. By its defence filed on 26 October 2016 as amended with leave of the court and filed on 9 February 2021, the fifth defendant denies the plaintiff's claim and puts the plaintiff to strict proof thereof. Additionally, the fifth defendant avers as follows:

- a. On 2 September 1997, a loan agreement was made between the 5th defendant and St John's Particular Church of Native Baptists and/or St John's Native Baptist Church (Freeport) ("St John's Native Baptist") in respect of an advance in the amount B\$1,050,000.00 which was to be secured by the property and an irrevocable fixed deposit in the name of St. John's Native Baptist in the amount of B\$500,000.00 to be deposited with the 5th defendant (the "Mortgage Commitment"). The borrowers named in the mortgage commitment were both St John's Particular Church of Native Baptists and St Johns Native Baptist Church (Freeport);
- b. It was an express condition of the Mortgage Commitment that the 5th defendant had a right to demand full repayment of the loan in the event of a material or adverse change in the financial condition of the borrowers;
- c. The Mortgage Commitment was agreed and accepted by the borrowers;
- d. The document was signed by Rev. Dr. Michael Symonette and Rev. Dr. Hervis Bain for St John's Particular Church of Native Baptists and by Rev. Godfrey Williams, Mrs. Wally Robinson and Mr. Harrison Butler for St John's Native Baptist Church (Freeport);

- e. In September 2001 Mr Wallace Allen of Davis & Co was not instructed by the 5th defendant to review and provide advice to the 5th defendant in connection with the alleged 'second conveyance'. In addition, the 5th defendant was unaware of the 'second conveyance' in September 2001. If Mr Wallace Allen reviewed and approved the draft 'second conveyance' as alleged, he did not act upon any instructions provided by the 5th defendant to him to do so on its behalf;
- f. Any conversations between the 5th defendant's employees and Reverend Godfrey Williams ("Reverend Williams") concerning the loan agreement evidenced by the Mortgage Commitment were lawfully conducted. It is further averred that Reverend Williams was a signatory to the Mortgage Commitment on behalf of St Johns Native Baptist Church (Freeport) and as such authorized to receive information from the 5th defendant concerning the status of the account relating to the loan agreement evidenced by the Mortgage Commitment;
- g. Further, on or around the beginning of 2003, Reverend Williams approached the 5th defendant and informed the 5th defendant of his intention to purchase Sunland Lutheran School, now known as Sunland Baptist Academy (the "school");
- h. Meetings were held between the 5th defendant and Reverend Williams to discuss the 5th defendant financing acquisition of the school by Reverend Williams. As a part of such discussions, the 5th defendant inquired as to whether his church would be prepared to secure advances made by the 5th defendant to finance his acquisition of the school with the property on which the Reverend Williams' church was situated.
- i. It was not until around April 2003 that the 5th defendant became aware of the deficiencies of the first conveyance. Officers of St John's Native Baptist Church (Freeport) along with their attorney Mr. Jethro Miller informed the 5th defendant that the first conveyance of the property was not legally effective and, as a consequence, the security interest intended to be granted to the 5th defendant over the property was not legally effective.
- j. The 5th defendant was also advised/informed by Mr. Jethro Miller that the legally effective conveyance of the property had been executed by The Grand Bahama Development Company Limited in favour of Reverend Godfrey Williams d/b/a Godfrey Williams Ministries.
- k. The Officers of St. Johns Native Baptist Church (Freeport) and Mr. Jethro Miller, however, informed the 5th defendant in the said meeting that it was their intention to repay the debt owed by them to the 5th defendant by virtue of the said loan agreement notwithstanding that title to the property was vested in Reverend Godfrey Williams.
- l. Thereafter, on August 11, 2003 the 5th defendant approved and granted to Godfrey Williams Ministries three credit facilities for an aggregate amount of B\$1,991,000.00 under the following terms and conditions:
 - i. Facility No. 1 in the amount B\$986,000 for the purpose of satisfying the debt owed by St. Johns Native Baptist Church (Freeport) to the 5th Defendant under the said loan agreement evidenced by the Mortgage Commitment;
 - ii. Facility No. 2 in the amount of \$1,000,000.00 to assist with the said purchase of the school;
 - iii. Facility No. 3 in the amount of \$5,000 to assist with duty imports;
- m. The terms of the credit facilities were signed and agreed by Reverend Godfrey Williams d/b/a Godfrey Williams Ministries and by Reverend Williams in his personal capacity as guarantor and is evidenced by a Commitment Letter (hereinafter, the "Commitment Letter").

- n. On 26th September 2003, a Debenture and legal Mortgage was issued by Godfrey Williams Ministries in favour of the 5th Defendant to secure the advances made in accordance with the said credit facilities.
- o. Subsequently, the monies advanced by the 5th Defendant in accordance with the credit facilities were repaid by Godfrey Williams Ministries to the 5th defendant. On 8th December 2003, the 5th defendant executed a satisfaction of mortgage in favour of St. John's Particular Church of Native Baptists in The Bahamas.
- p. The 5th defendant did not owe a fiduciary duty to the plaintiff and avers that any relationship between the 5th defendant and the plaintiff was based in contract. It is further denied that the 5th defendant held unauthorized meetings in breach of a duty owed to the plaintiff to maintain confidentiality. Reverend Williams was a signatory to loan agreement on behalf of St. Johns Native Baptist Church (Freeport) as evidenced by the Mortgage Commitment. Reverend Williams was therefore a person with whom the 5th defendant bank was authorized to communicate regarding the status of the account relating to the said loan.

426. The fifth defendant contends that in any event, any claim which the plaintiff may have against the fifth defendant arose more than six years before the fifth defendant was joined as a party to this action and is, therefore, statute barred pursuant to the provisions of the Limitation Act.

427. Counsel for the fifth defendant argues that having regard to the evidence, the plaintiff had ample opportunities between December 2003, when the plaintiff claims it discovered the third conveyance, and July 2006, when the plaintiff wrote to the fifth defendant inquiring as to the status of its mortgage with the fifth defendant, to make reasonable and diligent enquiries as to the status of its said mortgage. Furthermore, counsel for the fifth defendant submits, the plaintiff had from December 2003 to March 2009 when the fifth defendant responded to counsel for the plaintiff's correspondence and provided information as to the status of the said mortgage, to investigate its mortgage with the fifth defendant with reasonable diligence having been seised with the information that it had. In that regard, counsel for the fifth defendant submits, the plaintiff has produced no evidence to suggest that exceptional measures were required of it that it could not reasonably have been expected to take.

428. As for the plaintiff's assertion that the Incorporated Trustees did not discover that the defendants, including the fifth defendant, had perpetrated the alleged fraud until around 2016, counsel for the fifth defendant points out that at paragraph 15(a) in the re-amended defence of the third and fourth defendants filed 6 November 2015, the third and fourth defendants refer to the fourth defendant's meeting with George Thompson at which the fourth defendant said he was shocked to find out that the first conveyance had been procured since 1998, which paragraph, counsel for the fifth defendant points out, was a repeat of the information which had been included at paragraph 13 of the defence and reply of the third and fourth defendants filed 9 December 2009.

429. Therefore, counsel for the fifth defendant submits, the plaintiff cannot deny that the aforesaid information came to its attention since December 2009, and in his submission, that is when the plaintiff discovered the alleged fraud and also the date when time began to run for the purpose of the Limitation Act. In that regard, counsel for the fifth defendant pointed out that when the plaintiff filed its amended writ on 25 September 2013, it had an opportunity to make the claim against the fifth defendant, and, in his submission, since it did not, the plaintiff cannot resile from the fact that it had notice of the satisfaction at the latest since December 2009.

430. Counsel for the fifth defendant, therefore, invites the court to find that time began to run for the purpose of the Limitation Act as it relates to the claim asserted against the fifth defendant at the earliest on or about July 2006 when it initiated an enquiry with the Bank and knew or ought

to have known that the mortgage had been satisfied, and at the latest, December 2009, when it received direct information from the fifth defendant regarding the defective mortgage and that the debt had been extinguished, which was evidenced by the recording of the aforesaid satisfaction of mortgage. Accordingly, counsel submits, the plaintiff's claims against the fifth defendant became statute barred by virtue of the Limitation Act as at the earliest July 2012 or at the latest December 2015.

431. On the other hand, counsel for the plaintiff maintained the plaintiff's assertion that the plaintiff did not discover the defendants', including the fifth defendant's, fraud until around 2016 when it filed its summons on 20 July 2016. Further, counsel for the plaintiff argues, as I understood him, because the Court allowed the plaintiff leave to amend its claim on 28 July 2016 to include fraud, the plaintiff's fraud claims against any and/or all of the defendants cannot be said to be statute barred as six years since the Incorporated Trustees discovered the fraud had not elapsed at the date the plaintiff filed its second amended statement of claim: Section 41 (1) of the Limitation Act and *Ali and others v. Coutts and Company (Nassau) Limited and other* [2009] 1 BHS J No 34.

432. As stated previously, under the Limitation Act, an action in tort must be brought within six years after the cause of action arose and an allegation of fraud only postpones the time for the commencement of time beginning to run for the purpose of a plaintiff's knowledge and the limitation period. (Sections 5 and 41 of the Limitation Act).

433. It is accepted that the test to be applied by the Court in making that determination is whether the plaintiff could with reasonable diligence have discovered the alleged fraud it asserts and the burden of proof is on the plaintiff to prove that it exercised reasonable diligence and that it could not have discovered the fraud alleged without exceptional measures. See *Paragon Finance v DB Thakerrar & Co.* [1999] 1 All ER 400, 418 b and c.

434. In this case, the plaintiff asserts that it became aware of the third conveyance on or about 9 December 2003, and at the same time discovered that the first conveyance had been declared null and void. No mention is made by the plaintiff of having also discovered the debenture at the same time, although the evidence is that both the third conveyance and the debenture were lodged for record at the Registry of Records on the same date.

435. I confess that I find it difficult to believe that having discovered the third conveyance, the plaintiff, headed by an admittedly business-savvy person like Bishop Symonette, who said he knew how to conduct searches and knew people at the Registry who could conduct searches on his behalf, would not have discovered the debenture; or having discovered that the first conveyance had been declared null and void by the third conveyance, would not, at the very least, have made inquiries of the fifth defendant as to the status of the mortgage and its liability thereunder, particularly as the third conveyance was in the name of the third defendant, a name, no doubt, Bishop Symonette would have recognized.

436. Moreover, after having discovered the third conveyance in December 2003, the plaintiff, almost two years later wrote to the Port Authority about the matter. Curiously, in the letter dated 15 August 2005, signed by Bishop Symonette and Dr Bain, the plaintiff wrote: "Earlier this year, the Incorporated Trustees discovered by chance a second set of registered documents for the same land and concerning the same mortgage with notable and significant changes that were contrary to the interests of the Trustees." That sounds to me like it was not only the third conveyance that was discovered.

437. Nevertheless, it was not until 14 July 2006, that the plaintiff wrote to the fifth defendant enquiring on the status of its mortgage. Counsel for the fifth defendant points out that that letter was dated about a month after the satisfaction of mortgage had been lodged for record at the Registry of Records (i.e. 12 June 2006). A strong inference, he suggests, and I agree, can be

made that at 14 July 2006, the plaintiff was already aware that the mortgage had been satisfied. While there is no evidence that the fifth defendant responded to the plaintiff's 14 July 2006 letter, on 26 March 2009, in response to the plaintiff's attorney's letter dated 30 December 2008 inquiring about the status of the loan, the fifth defendant advised that the plaintiff's mortgage was not effective and had been aborted and that a satisfaction had been issued on 8 December 2003.

438. In the circumstances, I agree with counsel for the fifth defendant that the plaintiff had ample time between December 2003 and March 2009, if it had not already done so, with reasonable diligence, to have made the discoveries it asserts were not made until 2016. As Millett, LJ in *Paragon Finance plc v D B Thakerar & Co (a firm)*; *Paragon Finance plc and another v Thimbleby & Co (a firm)* opined: "The question is not whether the plaintiffs should have discovered the fraud sooner; but whether they could with reasonable diligence have done so. The burden of proof is on them. They must establish that they could not have discovered the fraud without exceptional measures which they could not reasonably have been expected to take."

439. The plaintiff includes amongst its allegations of breaches of confidentiality and fiduciary duty of loyalty and its particulars of fraud, meetings between the fourth defendant, its attorney and officers of the Local Church, and the fifth defendant, and claims that it made its discovery in 2016. However, as counsel for the fifth defendant pointed out, both in their defence and reply filed 9 December 2009 and their re-amended defence and reply filed 6 November 2015, the third and fourth defendants referred to a meeting with the fifth defendant where the fourth defendant discovered that the fifth defendant "had procured a conveyance" from the first defendant.

440. Consequently, I find that not only between 2003 and 2009 could the plaintiff, with due diligence, have discovered the events and information which it alleges evidence the fifth defendant's alleged breaches of confidentiality and fiduciary duty of loyalty and or alleged fraud, but I find also that the plaintiff had actual notice of at least one of the meetings at which the fifth defendant allegedly disclosed confidential information to the fourth defendant and his associates, as early as December 2009, from the defence and reply of the third and fourth defendants.

441. In the circumstances, then, I accept the submissions of counsel for the fifth defendant that at the date the plaintiff added the fifth defendant to these proceedings, July 2016, any cause of action, based in tort, which the plaintiff may have had against the fifth defendant would have been statute barred, the same having accrued in or about July 2012 at the earliest or December 2015 at the latest.

442. James Smith J, in the case of *Johnson and others v Exuma Estates and another* [1965-70] 1 LRB 214, opined, inter alia, that when there is "the grave general question arising from the allegations of fraud made against the defendant, it is right and due to such defendant that those allegations should be examined to ascertain whether they have been substantiated or not." (My emphasis).

443. So, notwithstanding my finding that the plaintiff's claim, if any, against the fifth defendant, based in tort, would have been statute barred at the date the fifth defendant was added to these proceedings, having regard to the seriousness of the allegations levied against the fifth defendant and for which the court has received full arguments, I go on now to consider the plaintiff's substantive claims against the fifth defendant.

444. In that regard, the issues that arise for consideration are as follows:

- a. Whether the fifth defendant owed the plaintiff a duty of confidentiality and or a fiduciary duty of loyalty? If so,
- b. Whether the fifth defendant breached such duties or either of them?
- c. Whether the fifth defendant is guilty of fraud as alleged by the plaintiff?

Did the fifth defendant owe to the plaintiff a duty of confidentiality and or a fiduciary duty of loyalty?

445. Counsel for the plaintiff argues that by executing the 1997 commitment letter, a contract was formed between the Incorporated Trustees and the Coral Road/Freeport/Local Church on the one hand and the fifth defendant on the other hand, by which the plaintiff became a customer of the fifth defendant and by which the bank-customer relationship between them was governed; that as a result, the fifth defendant owed a duty of confidentiality and a fiduciary duty of loyalty to the plaintiff and the Coral Road/Freeport/Local Church, as its customers.

446. Consequently, counsel for the plaintiff submits, the fifth defendant was prohibited from sharing confidential information concerning the first conveyance and the mortgage to third parties not acting on behalf of the plaintiff and the Coral Road Church. In that regard, counsel for the plaintiff submits, the fifth defendant, being aware that the fourth defendant was speaking on behalf of the third defendant, should not have met with the fourth defendant and engage in such discussions without anyone to speak for or on behalf of the Incorporated Trustees/plaintiff. Further, that by sharing confidential information about the plaintiff and its account with the fourth defendant, without the plaintiff's consent, the fifth defendant acted in breach of its duty of confidentiality to the borrowers under the 1997 commitment letter.

447. In support of those submissions, counsel for the plaintiff relies, inter alia, on the evidence of Annamae Burrows that the plaintiff was a customer of the fifth defendant; the cases of *Great Western Rly Co vs. London Country Banking Co Ltd* [1901] AC 414 and *Tournier v National Provincial and Union Bank of England* [1924] 1 KB 461; and section 77 of the Banks and Trust Companies Regulations Act 2020. [section on law/authorities]

448. Counsel for the plaintiff submits further that the fifth defendant knew that the plaintiff was not represented in the conveyance and mortgage transactions in respect of the Property because Charisse Brown was acting for the first and second defendants and Wallace Allen confirmed in his said letters that he was only acting for the fifth defendant. Therefore, he argues, because the plaintiff was not represented, "equity will impose a fiduciary relationship between the plaintiff and the fifth defendant in order to prevent the exploitation of the vulnerable"; and that "the distinguishing obligation of a fiduciary is the obligation of loyalty". See *Lloyds Bank Ltd v Bundy* [1975] QB 326; the learned authors of *Ellinger's Modern Banking Law* 4th edition at page 137 citing *Lord Millet in Equity's Place in the Law of Commerce* (1998) 114 LQR 214; and *Bristol and West Building Society v Mothew* [1998] Ch 1 at page 18.

449. Counsel for the fifth defendant accepts that the relationship between the plaintiff and the fifth defendant was contractual, and that the terms thereof were governed by the 1997 commitment letter and the 10 February 1998 mortgage. However, he argues, the plaintiff was not a customer of the fifth defendant.

450. In that regard, counsel for the fifth defendant pointed out that while the notion of who in fact is considered a bank's customer may be impossible to define with exactness, the industry accepted chief criterion for identifying a customer of a bank is that there exists an account with a bank through which transactions are passed. See *Paget's Law of Banking*, 11th edition, pages 106-107. Counsel for the fifth defendant points out that despite being the mortgagor, pursuant to the 1997 commitment letter, the plaintiff was not the borrower; nor, he submits, did the plaintiff hold any account at the fifth defendant bank, as it was the intention of the parties that the Freeport Church would service the 1997 loan. Therefore, counsel for the fifth defendant submits, the fifth defendant owed no fiduciary duty or duty of confidentiality in relation to the management of the Freeport Church's account to the plaintiff and could not have breached any such duty to the plaintiff as alleged, or at all. Nor, counsel submits, did the fifth defendant breach any of its

contractual obligations to the plaintiff pursuant to the 1997 commitment letter or the 1998 mortgage.

451. In the alternative, counsel for the fifth defendant submits, even if this court were to find that the plaintiff was its customer, the fifth defendant still did not breach any fiduciary duty or duty of confidentiality allegedly owed to the plaintiff by allegedly disclosing information in relation to the Freeport Church's account to the fourth defendant. In his submission, at all material times, so far as the fifth defendant was aware, as a signatory to the 1997 letter and the pastor of the Freeport Church, in the absence of any notice to the contrary, the fourth defendant remained the pastor, authorized actor and signatory on behalf of the Freeport Church and as such was authorized to continue to manage the Freeport Church's account and service the 1997 loan. Moreover, counsel for the fifth defendant submits, the fifth defendant was entitled to disclose any such information that it was required to disclose to the fourth defendant in order to protect the Bank's interests. For that proposition counsel relies on the cases of *Tournier v National Provincial and Union Bank of England* supra; *El Jawhary v Bank of Credit and Commerce International SA* [1993] BCLC 396; and *Christofi v Barclays Bank plc* [1999] 2 All ER (Comm) 417.

452. Consequently counsel for the fifth defendant submits, having regard to the authorities cited, and in light of the situation that existed at the time, any disclosure made to the fourth defendant was clearly reasonably necessary for the protection of the fifth defendant's commercial interests; and, in any event, the fourth defendant, as pastor of the Freeport Church and an authorized signatory thereon, would have already had all relevant information as it related to the Freeport Church's account.

453. Moreover, counsel for the fifth defendant argues, so far as the alleged breach of confidentiality is concerned, at all material times the Freeport Church was the borrower of the funds advanced under the 1997 facility letter which was collateralized by an irrevocable fixed deposit in the name of the Freeport Church and a mortgage over the Property which was purported to have been conveyed to the plaintiff from the first defendant. Counsel for the fifth defendant points out that discussing the details of the loan which was secured by the fixed deposit and the mortgage, both of which the Freeport Church was required to provide in order to be given the loan, could not amount to a breach of any obligation of confidentiality as (i) the Freeport Church was a borrower and liable to the Bank on the loan; (ii) the fourth defendant was the Pastor of the Freeport Church and a signatory on the 1997 facility letter and (iii) the fourth defendant was a signatory on the bank account for the fixed deposit which was security for the loan. Therefore, counsel submits, having regard to the foregoing, and the evidence adduced at trial, there can be no doubt that if the plaintiff's evidence given through its General Superintendent, Bishop Symonette, and through Rev Butler is to be given even a "modicum of merit", it cannot be maintained by the plaintiff that any duty of confidentiality to the plaintiff, if such existed, was breached by the fifth defendant.

454. Counsel for the fifth defendant argues further that if the plaintiff held the belief that the fourth defendant was "absolved" of any obligation for the Freeport Church as at 21 January 2005, it cannot, with a clear conscience, assert with any sincerity that the fifth defendant breached a duty of confidentiality to the plaintiff (if it existed) because of any alleged disclosure to the fourth defendant as Pastor of the Freeport Church in 2003. In that regard, counsel for the fifth defendant submitted, the fifth defendant in its dealings with the fourth defendant had every reason to hold the same belief that the plaintiff held that the fourth defendant was the Pastor of the Freeport Church. In his submission, it cannot be disregarded that (i) the fourth defendant was a signatory to the account of the Freeport Church, and (ii) that there was no evidence put before this court that the plaintiff notified the fifth defendant prior to or at the time of the meeting with Mr. Thompson in early 2003 that the fourth defendant was no longer a member of its Society and no longer authorized to conduct business on behalf of the Freeport Church. Indeed, counsel argues, the

plaintiff's own evidence that the fourth defendant was only relieved of such duties by the plaintiff by virtue of the letter dated 21 January 2005, is unassailable and the plaintiff ought not to be allowed to impeach or resile therefrom.

455. Counsel for the fifth defendant submits, therefore, that the plaintiff's "conjured allegations" are "plainly bogus, mendacious and without any credence whatsoever" and he invites this Court to give no regard to the same.

456. In response counsel for the plaintiff argues that the fifth defendant's submissions are without merit because Mrs Burrows admitted under cross examination that the Incorporated Trustees were the fifth defendant's customers pursuant to the mortgage and as such, counsel submits, the fifth defendant did owe a fiduciary duty to its customer particularly since the fifth defendant knew the Incorporated Trustees were not represented in this matter.

457. While counsel for the plaintiff in his closing submissions included the Coral Road Church along with the plaintiff as being customers of the fifth defendant to whom duties of confidentiality and loyalty were owed, as I understand it, the crux of the plaintiff's claim as pleaded against the fifth defendant is that at all material times the plaintiff was the customer and mortgagor of the fifth defendant under the 1997 commitment letter and the 10 February 1998 mortgage, and as such the plaintiff was owed a duty of confidentiality and a fiduciary duty of loyalty by the fifth defendant, which duties the fifth defendant allegedly breached by meeting with the fourth defendant, accompanied by others, and discussing confidential matters in relation to the plaintiff's title to the Property and its mortgage to the fifth defendant without the plaintiff's knowledge, authorization or consent.

458. It is accepted that a bank owes its customer a duty of confidentiality. The bank's duty of confidentiality implies a legal obligation to maintain the customer's information securely: See *Tournier v National Provincial and Union Bank of England* [1924] 1 K.B. 461 in which case, Bankes LJ noted that the duty of confidentiality is a legal one arising out of contract and that the duty is not absolute but qualified. In setting out what he termed the qualifications of the contractual duty of secrecy implied in the relationship of banker and customer, Bankes, LJ stated at page 473:

"On principle I think that the qualifications can be classified under four heads: (a) Where disclosure is under compulsion of law; (b) where there is a duty to the public to disclose; (c) where the interests of the bank require disclosure; and (d) where the disclosure is made by the express or implied consent of the customer."

459. A bank may also, in certain circumstances, stand in a position of a fiduciary to its customer: *Bristol and West Building Society v Mothew* [1998] Ch.1 at 18 in which Millett, LJ opined that a fiduciary relationship is imposed by law in any case where the professional owes an exclusive loyalty to the interests of his principal and must put these above all others, including his own. See also Clerk & Lindsell on Torts 20ed para 10-23, page 628.

460. The learned authors of Paget's Law of Banking, 11th ed, at pages 106-107, under the heading "The customer" state the following:

"The law of banking proper is the law of the relationship between a banker and his customer. Basically, the relationship is that of mandator (the customer) and mandatory (the bank) but it is nonetheless a relationship which embraces mutual duties and obligations and offers privileges to both parties. It is a relationship peculiar to banking, giving rise to a contract between the two parties. The relationship is enjoyed by no one but a bank with reference to a customer and thus it is necessary to know what in law is a customer."

461. After observing that nowhere was "a customer" defined, not even in the English Bills of Exchange Act 1882 or the Cheques Act 1957, the learned authors continue:

“Customer” is probably impossible to define with exactness, but the chief criterion is that there exists an account with a bank through which transactions are passed.”

462. The learned authors opined that, ultimately, this is not really a legal question but one to be solved by what an ordinary intelligent business man would understand by ‘a bank’s customer’.

463. It is common ground that as a result of the 1997 commitment letter and the 1998 mortgage, the plaintiff and the fifth defendant had a contractual relationship. While it is accepted that a banker-customer relationship is also a contractual one, having regard to the aforesaid criterion, it does not necessarily follow that all contractual relationships with a bank are, in fact, banker-customer relationships; that is, not all persons with whom a bank has contractual relationships are “customers” of the bank.

464. In this case, the evidence is that the plaintiff had no account with the fifth defendant through which transactions were processed. The fourth defendant, Rev Butler and Mrs Burrows all testified that the account with the fifth defendant was in the name of the Freeport Church on which none of the Incorporated Trustees were signatories and in respect to which, no instructions were given to the fifth defendant by the plaintiff or any of the Trustees.

465. So, on the basis that the chief criterion for identifying a customer is the existence of an account with a bank through which transactions are passed, and the plaintiff having, in my judgment, failed to prove that it had such an account with the fifth defendant, I find that, at the material times, the plaintiff was not a customer of the fifth defendant. Therefore, the relationship between the plaintiff and the fifth defendant, although contractual, was not a banker-customer relationship.

466. As further authority for the plaintiff’s contention that the relationship between the plaintiff and the fifth defendant was a fiduciary one, counsel for the plaintiff cited the case of *Lloyds Bank Ltd v Bundy* supra and argues that a fiduciary relationship was imposed on the plaintiff and the fifth defendant by equity “in order to prevent the exploitation of the vulnerable because the fifth defendant knew the plaintiff was not represented in the conveyance and mortgage transactions”; and that “the distinguishing obligation of a fiduciary is the obligation of loyalty”. In that regard, counsel for the plaintiff argues, as I understood his submission, that the fifth defendant knew that the plaintiff was not represented because Mrs Brown was acting for the first and second defendants and Mr Allen confirmed in his said letters that he was only acting for the fifth defendant and somehow that gave rise to a fiduciary duty of loyalty on the part of the fifth defendant.

467. I have already found that nowhere in his correspondence with the defendants did Mr Allen say that he was only acting for the fifth defendant. In any event, the case of *Lloyds Bank Ltd v Bundy* supra is, in my view, clearly distinguishable from the case at the bar. Firstly, there was no dispute in that case that the defendant was a customer of the plaintiff bank; secondly, in that case the bank’s manager admitted that the guarantor relied on him for advice and the guarantor confirmed that that was the case. So, immediately the banker gave advice to the guarantor, a fiduciary relationship was established. In this case, the fifth defendant denies that the plaintiff was its customer. Also, there is no allegation, or evidence, in this case that the fifth defendant gave any advice to the plaintiff, upon which the plaintiff acted to its detriment.

468. Consequently, I find that not only has the plaintiff failed to prove that at the material times it was a customer of the fifth defendant bank, but it has, in my judgment, also failed to prove that the contractual relationship between the Incorporated Trustees and the fifth defendant gave rise to a duty of confidentiality or a fiduciary duty of loyalty on the part of the fifth defendant to the plaintiff.

Whether the fifth defendant breached such duties or either of them?

469. In any event, even if, by virtue of having given the said mortgage to the fifth defendant, or having regard to Mrs Burrows' evidence under cross examination, the plaintiff were a customer of, and therefore, owed a duty of confidentiality and or a fiduciary duty of loyalty to, the fifth defendant, in my judgment, having regard to the fact that at all material times the fourth defendant was the Pastor of the Freeport Church, a signatory on the 1997 commitment letter, a signatory on the only bank account with the fifth defendant, and the person with whom the fifth defendant had been dealing in relation to that account, then, any disclosure made by the fifth defendant of any allegedly confidential material relating to the account or the mortgage in support of the loan to the Freeport Church at the aforesaid meetings with the fourth defendant and or his counsel would have been done with the consent of one of the customers, that is, the Freeport Church, through its pastor.

470. I, therefore, agree with counsel for the fifth defendant that even if the fifth defendant did owe the plaintiff the aforesaid duties of confidentiality and fiduciary duty of loyalty, and in my judgment, it did not, the conduct of which the plaintiff complains would not have breached those duties.

Whether the fifth defendant is guilty of fraud as alleged by the plaintiff?

471. As regards the plaintiff's allegations of fraud, in his written closing submissions, counsel for the plaintiff asserted that Mrs Burrows' evidence confirmed that the fifth defendant was deceptive regarding the aforesaid meetings with the fourth defendant and his associates; the cancellation of the mortgage; and the use of the Property as security for the third defendant's debenture; and he made the following observations and or submissions:

- a. Mrs Burrows testified that she regarded the Incorporated Trustees as the owners of the Coral Road Church; that all lands belonged to the Incorporated Trustees and that the Trustees provided the guarantee in order for the mortgage to proceed, and that if the fifth defendant was going to make changes to the conditions of its facilities like the one it had with the Incorporated Trustees, clients such as the Incorporated Trustees should be informed;
- b. However she gave evidence that she was approached by the fourth defendant in or around December 2002 and that he informed her that the Incorporated Trustees' mortgage was invalid; that he wanted to acquire Sunland School and would use the Property as collateral security for his loan from the fifth defendant in that regard; that despite receiving that information from the fourth defendant she did not inform her client, the Incorporated Trustees. Instead she complied with the fourth defendant's wishes by issuing a satisfaction to cancel the mortgage and took the \$500,000.00 security deposit and applied it to settling the Incorporated Trustees' debt without obtaining their informed consent on any of those matters;
- c. She applied \$500,000.00 to the benefit of the third defendant when it is undisputed that the \$500,000.00 came from another entity. The fifth defendant through Mrs Burrows said the client was the Coral Road Church, but the fifth defendant could not use the Coral Road Church's money to finance a completely separate entity, the third defendant, as the third defendant was not the Coral Road Church. Yet the fifth defendant transferred the assets of the Coral Road Church and the plaintiff to the use and benefit of the third defendant;
- d. Notwithstanding that Mrs Burrows knew of the Incorporated Trustees' commitment letter which was to the attention of the Incorporated Trustees, the guarantee and the mortgage, she had discussions with persons who were not representatives of the Incorporated Trustees that led her to alter the Incorporated Trustees banking facilities

without the Incorporated Trustees knowledge or consent when she could have easily obtained their views on the matter by letter, phone call or email; and

- e. Notwithstanding that she knew of the Incorporated Trustees' commitment letter, the guarantee and the mortgage, Mrs Burrows complied with the fourth defendant's wishes, cancelled the Incorporated Trustees' mortgage by having the fifth defendant issue an admittedly false satisfaction which stated that the Incorporated Trustees had paid off the mortgage when they did not; rather the fourth defendant did and they then took the Incorporated Trustees \$500,000.00 security deposit and the Property and used it for the benefit of the fourth defendant so that he could obtain his debenture;
- f. The primary motivation for why the fifth defendant breached its duty of confidentiality, duty of loyalty and perpetrated such a fraud against the plaintiff is summed up by Mrs Burrows at paragraph 9 of her witness statement where she states that because their counsel, Christie, Davis & Co, had erroneously prepared its title opinion confirming the first defendant's title to the Property was good and marketable, the fifth defendant was exposed by some \$900,000.00 and wanted the situation rectified; and that consideration was given to informing the plaintiff at all about the status of the Property or the mortgage; rather pure greed led the fifth defendant to facilitate the defrauding of the plaintiff;
- g. Based on the fifth defendant's fraud, the fifth defendant will be liable to account for and return the \$500,000.00 security deposit to the plaintiff and compensate the plaintiff in terms of damages for all losses actually suffered and all consequential losses suffered by the plaintiff in respect of the mortgage. *Smith New Court Ltd v Scrimgeour Vickers* [1997] A.C. 254.

472. As regards the plaintiff's allegations of fraud against the fifth defendant, counsel for the fifth defendant makes the following observations and or submissions:

- a. To sustain an action of deceit, there must be proof of fraud. Fraud is proven when it is shown that a false representation has been made knowingly, without belief in its truth or recklessly, careless whether it be true or false. See *Derry v Peek* (1889) 14 App. Cas. 337;
- b. A case for fraud must be clearly expressed and general allegations, however strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any court ought to take notice. See *Seaton v Seddon* [2012] 1 WLR 3636 and *Wallingford v. Mutual Society* 5 App. Cas 697;
- c. The burden of proof is on the plaintiff and the standard of proof, whilst to the civil standard of the balance of probabilities, in a case such as this, where there are grave allegations, the law requires cogent evidence of serious wrongdoing before the standard of proof is satisfied. See *H. Minors* (1996) AC 563 and *Re Dellow's Will Trusts* [1954] 1 WLR 451;
- d. In this regard, the approach of the court in determining questions of fraud and dishonesty was set out in the English case of *Niru Battery Manufacturing C. v Milestone Trading Ltd* [2003] EWCA Civ 1446 at paras 173 -175, and should be applied in the present case;
- e. No evidence of fraud or misdeeds was adduced during the course of the trial or at all to support the allegations of fraud asserted by the plaintiff against the fifth defendant in its second amended writ of summons;
- f. The uncontroverted evidence before the court is that, at the material time, the second defendant was the freehold title holder of the Property and it wished to convey it by way of a gift to the fourth defendant;
- g. Whether the Property should have been conveyed to either the plaintiff or the third defendant had nothing to do with the fifth defendant and the fifth defendant could not

- cause or direct the first or second defendant, as the fee simple owner thereof, to convey it to the third defendant;
- h. The plaintiff has adduced no evidence of fraud, collusion or anything of the sort; and the mere assertion by words is insufficient to discharge the burden of proof;
 - i. In relation to the \$500,000.00 fixed deposit, the first conveyance having been declared null and void, the fixed deposit account was the only remaining security for the aforesaid loan to the Freeport Church;
 - j. Having regard to the terms of the 1997 facility letter and the 1998 mortgage, the fifth defendant had a right to call on the fixed deposit to satisfy the loan debt owed by the borrowers at its sole discretion (see clause 6 of the mortgage); and the evidence is that is what the fifth defendant did;
 - k. The unassailable evidence is that the fixed deposit was in the name of the Freeport Church and not the plaintiff. The Freeport Church is not the plaintiff or a party to these proceedings and, in any event, the plaintiff has no standing to seek an accounting of those funds. Therefore, the plaintiff's request for an accounting of the said sum of \$500,000.00 ought to be dismissed;
 - l. As for the satisfaction of mortgage, the same was done pursuant to the fifth defendant's statutory obligation by virtue of section 32 of the Conveyancing and Law of Property Act, chapter 138.
 - m. Moreover, the plaintiff has sustained no loss or damage as a result of the fifth defendant's acceptance of funds at the direction of the fourth defendant to satisfy the exposure of the fifth defendant and otherwise liability that the plaintiff was obligated as guarantor to pay had there been a default in payment.
 - n. Consequently, the plaintiff's action against the fifth defendant cannot be sustained as a matter of fact or law and, therefore, should be dismissed in its entirety with costs to the fifth defendant.

473. Counsel for the plaintiff, in response says that the submissions on behalf of the fifth defendant are wholly without merit and he makes the following observations and or submissions:

- a. Mrs Burrows' evidence is that the fifth defendant questioned whether the Incorporated Trustees would go along with using the Property in the way the fourth defendant suggested, showing that they had doubt about the matter. The problem is they proceeded to their own peril without seeking to inform or obtaining the consent of the Incorporated Trustees to use the Property in the manner requested by the fourth defendant;
- b. The Incorporated Trustees have specifically pleaded particulars of fraud against the fifth defendant in its writ and those particulars show that the fifth defendant did not inform the Incorporated Trustees that the Property they tendered as security would be used as security for an entirely different facility when they should have done so according to *Brownlie v Campbell*. That was fraudulent;
- c. As to the security deposit and the satisfaction, counsel for the fifth defendant is attempting to make the Conveyancing and Law of Property Act an instrument of fraud. The plain and unambiguous language in the satisfaction states the Incorporated Trustees paid off the mortgage when Mrs Burrows admitted at trial that it was the fourth defendant who paid off the mortgage. Therefore, the satisfaction is false and a part of the machinations of the fourth and fifth defendants;
- d. The statute does not condone the issuing of fraudulent satisfactions. Since the satisfaction is fraudulent, the security deposit should not have been applied to bring the Incorporated Trustees' mortgage facility to a close without the Incorporated

Trustees' consent and thus the fifth defendant still holds that \$500,000.00 as security to the order of its mortgagee, the Incorporated Trustees.

474. As a general rule, where an allegation of fraud is made, particulars must be given: Per Lord Denning in the case of *Associated Leisure Ltd v Associated Newspapers Ltd* [1970] 2 QB 450 at p.46. It is the duty of counsel not to enter a plea of fraud on the record "unless he has clear and sufficient evidence to support it." Any charge of fraud or misrepresentation must be pleaded with utmost particularity. (The Supreme Court Practice, 1979, note 18/8/4). "In the common law courts, no rule was more clearly settled than that fraud must be distinctly alleged and as distinctly proved, and that it was not allowable to leave fraud to be inferred from the facts". Per Theisger, LJ in *Davy v Garret* (1877) 7 Ch.D. 473, 489). "General allegations, however, strong may be the words in which they are stated, are insufficient to amount to an averment of fraud of which any court ought to take notice." *Wallingford v Mutual Society* 5 App Cas. 697. (1979 English Supreme Court Practice notes at paragraph 18/12/11). See also *Seaton v Seddon* [2012] 1 WLR 3636.

475. While, it is accepted that the standard of proof where fraud is alleged is on the balance of probabilities, Lord Denning in the case of *Bata v Bata* [1959] p 35, at page 37, opined as follows:

"... there may be degrees of probability within that standard. The degree depends on the subject matter. A civil court, when considering a charge of fraud, will naturally require for itself a higher degree of probability than that which it would require when asking if negligence is established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature; but still it does require a degree of probability which is commensurate with the occasion."

476. Or, as Lyons J, in the case of *Arawak homes Ltd v Sands* [2003] BHS J. No. 163; 1991 No. 127, para 181, put it:

"on the question of the weight of the evidence necessary to support an allegation of fraud the courts require a greater preponderance of evidence due to the seriousness of the allegation". (See *Bringinshaw v Bringinshaw* (1938) 60 CLR per Dixon and Sabola, C.J. in *C.B. v Arawak Homes Limited*, Supreme Court Common Law Action No 385/1985.

477. Fraud is said to be proven when it is shown that a false representation has been made (i) knowingly, (ii) without belief in its truth or (iii) recklessly, careless whether it be true or false... To prevent a false statement being fraudulent, there must, I think, always be an honest belief in its truth: Per Lord Herschel in the case of *Derry v Peek* (1889) 14 App. Cas. 337, at page 374. His Lordship continued at page 375:

"... when a false statement has been made the questions whether there were reasonable grounds for believing it and what were the means of knowledge in the possession of the person making it, are most weighty matters for consideration."

478. Per Lord Halsbury at page 344:

"... if, ... the facts are reconcilable with the innocence of the directors, and with the absence of the mens rea which I consider an essential condition of an action for deceit, the mere fact of the inaccuracy of the statement ought not to be pressed into constituting a liability which appears to me not to exist according to the law of England."

479. The evidence is that although the Property was purportedly conveyed to the plaintiff in 1998, that conveyance was declared to be null and void by the third conveyance and the Property was, at the request/direction of the fourth defendant, by the third conveyance conveyed by the second defendant to the third defendant. The evidence also is that sometime in 2002 the fourth defendant applied to the fifth defendant for a loan to facilitate his purchase of the Sunland Lutheran School.

480. As I understand the evidence, it was during meetings between officers of the fifth defendant and the fourth defendant, accompanied by his attorney, and members and or officers of the Freeport Church, held between March and April 2003 that the fifth defendant was made aware of the defect in the first conveyance, the existence of the third conveyance in favor of the third defendant and the likely effect of those circumstances/facts on the validity of the 1998 mortgage. According to Mrs Burrows, the fifth defendant's primary concern was, understandably in my view, "curing its vulnerability in the mortgage transaction", which concern was, no doubt alleviated when, apparently, during one of those meetings the officers of the Local Church not only acknowledged the indebtedness to the fifth defendant, but confirmed that they were prepared to satisfy the same, which they eventually did.

481. However, the plaintiff contends that by holding those meetings and having the aforesaid discussions with the fourth defendant and others without the plaintiff's knowledge or consent, the fifth defendant acted fraudulently.

482. The evidence is that the 1997 commitment letter was addressed to the Society and the Local Church. And while counsel may be correct that the discussions/meetings of which Mrs Burrows spoke were with persons who were not "representatives of the Incorporated Trustees", since the fourth defendant was no longer one of the trustees, the fact is that that letter was also addressed to the Local Church; the meetings/discussions were held with the fourth defendant, who, as indicated, was not only the Pastor of the Local Church, but was also one of the persons who signed the 1997 commitment letter on behalf of the Local Church; as well, he was a signatory on the Local Church's bank account with the fifth defendant and the person with whom the fifth defendant had also dealt in relation to the account.

483. As for counsel for the plaintiff's argument/observation that Mrs Burrows was "led to alter the Incorporated Trustees' banking facilities" without the plaintiff's knowledge or consent", while Mrs Burrows admitted that no contact was made by the fifth defendant with the plaintiff or any of the Trustees in relation to this matter, the fact is that once the 1998 conveyance was determined to be defective and or null and void, the 1998 mortgage which was granted by the plaintiff to the fifth defendant on the basis that the plaintiff was the owner or legal title holder of the Property, so far as it purported to create a charge over the Property, was also invalid, or at the very least, defective.

484. It is not disputed that the 1997 loan to the Local Church was a "demand loan" and the 1998 mortgage a demand mortgage in which the plaintiff covenanted to pay to the Bank the sum which shall then be owing on the balance of the banking account..." By clause 6 thereof, it was agreed that the "Bank shall be entitled to apply all or any moneys received by it from the Mortgagor or any person or persons liable to pay the same to the Mortgagor's account to any account of the Mortgagor with the Bank to which the same may be applied in the discretion of the Bank".

485. The evidence is that while the mortgage was in the name of the plaintiff, the debt was that of the Local Church. So, the first conveyance having since December 2002 been declared null and void, the outstanding loan was then left partially secured by the funds held on the aforesaid fixed deposit. I accept the submission of counsel for the fifth defendant that pursuant to the terms of the 1997 commitment letter, the terms of the demand mortgage and the fact that the fixed deposit had been assigned to the fifth defendant as collateral for the loan, the fifth defendant was entitled to call on the fixed deposit to satisfy the debt owed by the borrower at its sole discretion which it did. In that regard, the evidence is that the funds from the fixed deposit were, at the direction of the fourth defendant who was at the time Pastor of the Local Church, applied against the loan and the balance thereof was paid from the proceeds of a loan granted by the fifth defendant to the third defendant.

486. In the circumstances of this case where the fifth defendant was dealing with the person with whom they had always dealt and from whom they had always taken instructions with respect to the loan and the Local Church's account with them, and not having ever met or had any dealings with the Incorporated Trustees or any of them, and not having received any instructions that the fourth defendant was no longer pastor or authorized to deal with matters pertaining to the Local Church, I cannot say that by engaging in meetings and or discussions with the fourth defendant, without the plaintiff's knowledge or consent, that the fifth defendant acted fraudulently.

487. As for counsel for the plaintiff's argument that by "cancelling" the 1998 mortgage by issuing an "admittedly false satisfaction" stating that the Incorporated Trustees paid off the mortgage when it was the fourth defendant who did, it seems to me that in the ordinary course of events, at the completion of the payments under the 1997 loan by the Local Church, a satisfaction in similar, if not identical, form would have been executed by the fifth defendant stating that the plaintiff had paid off the mortgage when in fact the mortgage would have been paid off by the Local Church. Consequently I find no merit in counsel for the plaintiff's argument that by executing the said satisfaction in the form which it did, the fifth defendant acted fraudulently and I find that in by executing the said satisfaction in the form which it did, the fifth defendant did not act fraudulently.

488. As for the complaint that the fifth defendant acted fraudulently when it used the plaintiff's \$500,000.00 security deposit and the Property for the benefit of the fourth defendant so that he could obtain his debenture, the evidence is that those funds belonged to the Local Church and not the plaintiff; and, by the date of the debenture, the Property had already been conveyed to the third defendant by the second defendant.

489. In that regard, I agree with counsel for the fifth defendant that to whom the second defendant, as its owner, chose to convey the Property had nothing to do with the fifth defendant. Nor could the fifth defendant have prevented the second defendant from conveying the Property to the third defendant. Further, there is no evidence that the fifth defendant had anything to do with the issuance of the third conveyance. Indeed, the evidence is that by the time the fifth defendant agreed to advance funds to the third defendant, the third conveyance had already been executed and it was the fourth defendant or his attorney who informed the fifth defendant of its existence.

490. As for counsel for the plaintiff's argument that the fifth defendant's primary motivation for perpetrating a fraud against the plaintiff was because of the error with the first conveyance and the plaintiff's title to the Property, the fifth defendant was exposed by some \$900,000.00 and wanted the situation rectified, it seems to me that such a stance by the fifth defendant should not be surprising. In the face of a defective conveyance, and an outstanding debt of \$900,000.00, it seems to me that two options were available to the fifth defendant. Apply the \$500,000.00 against the loan with the remaining balance left unsecured or proceed in the manner proposed by the third defendant which, at the time, had become seized of the Property. I do not see how the fifth defendant can be faulted for taking the decision it did and I find that, in applying the said sum of \$500,000.00 held on fixed deposit in the name of the Coral Road/Local Church against the loan to the Coral Road/Local Church, the fifth defendant did not act fraudulently.

491. As for Mr Maynard's assertion that the fifth defendant applied the plaintiff's \$500,000.00 to benefit the third defendant when it is undisputed that the moneys came from another entity, as I understand the evidence, the sum of \$500,000.00 belonged to the Local Church and it was applied against a debt incurred by the Local Church.

492. The evidence is the Property belonged to the second defendant who agreed to donate it to the fourth defendant while he was Pastor of the Coral Road Church. The fourth defendant's evidence is that the Property was intended for the members of the Coral Road Church not for the plaintiff. As pointed out by counsel for the fifth defendant, the Coral Road Church is not a party to

this action. When the second defendant discovered that the first conveyance was void, and it was still seized of the Property, it opted to convey the Property to the third defendant, who, then used it, along with other property to secure a loan from the fifth defendant, part proceeds of which were used to pay off the 1998 mortgage. It is, therefore, difficult to understand counsel for the plaintiff's assertion that the fifth defendant transferred the assets – presumably the said sum of \$500,000.00 and the Property – of the Coral Road Church to the third defendant, as the evidence clearly is that the \$500,000.00 was used to pay off the mortgage and the Property was conveyed to the third defendant by the second defendant not the fifth defendant.

493. So, having regard to the pleadings, the evidence led in support thereof, the submissions of counsel, the law and the authorities cited, I agree with the fifth defendant that the plaintiff has failed to discharge its burden of proof in relation to its allegations of fraud against the fifth defendant as the conduct of which the plaintiff complains does not, in my judgment, in the circumstances of this case, amount to fraud, not in the *Derry v Peek* nor the *Brownlie v Campbell* sense.

494. Moreover, even if I am incorrect in my findings with regard to the alleged breaches of confidentiality and fiduciary duty of loyalty and fraud, I would nevertheless dismiss the plaintiff's case against the fifth defendant on the ground that any cause of action which the plaintiff may have had arising out of the facts of this case became statute barred more than six years before the commencement of this action against the fifth defendant in July 2016.

495. The plaintiff's claims against the fifth defendant based on the torts of breach of confidentiality, breach of fiduciary duty of loyalty and or fraud are all dismissed with costs to the fifth defendant to be taxed if not agreed.

496. In summary then, each of the plaintiff's claims against each of the defendants is dismissed with costs to be taxed, if not agreed; and in the case of the fourth defendant, such costs are certified as fit for two counsel.

DELIVERED the 16th day of November A.D. 2021

(sgd) Estelle G. Gray Evans
Senior Justice