COMMONWEALTH OF THE BAHAMAS 2014/CLE/gen/00500

IN THE SUPREME COURT

Commercial Law & Equity Division

BETWEEN

HUGHES CHARLES PERPALL

1st Plaintiff

AND

ROSCOE PERPALL

2nd Plaintiff

AND

CATHLEEN JOHNSON- HASSAN
d/b/a JOHNSON HASSAN & CO.

Defendant

Before:	**The Hon. Madam Justice G. Diane Stewart**
Appearances:	**Mr. Obie Ferguson for the Plaintiffs**
	Mr. Norwood Rolle for the Defendant
Judgement Date:	**2nd December 2022**

RULING

1. By Writ of Summons filed 10th April 2014, the Plaintiffs, Hughes Perpall **("the First Plaintiff")** and Roscoe Perpall **("the Second Plaintiff")** seeks damages against the Defendant, Cathleen Johnson- Hassan **("the Defendant")** for the cost of property and a building constructed in the amount of $129,000.00 and costs.

2. The Defendant, at all material times, was an Attorney operating under the firm name Johnson- Hassan & Co. In September 1988 the Defendant acted on behalf of the First Plaintiff in the purchase of Lots No. 9, 10 and 11 in Block number 56 in

Nassau Village Subdivision situate in the Eastern District of the Island of New Providence.

3. During the process of purchasing the properties, the Defendant advised the First Plaintiff that the title of Lots No. 9, 10 and 11 was good and marketable. It was later discovered that the Defendant failed in conducting her title searches either to notice or to be alerted sufficiently enough to bring to the First Plaintiff's attention that the said properties were the subject of several court actions, in which orders were made, which could adversely affect the title of the same. The First Plaintiff purchased the properties based on the Defendant's opinion of title.

4. In or about 16th June 2004, the Second Plaintiff claimed to have retained the services of the Defendant to act on his behalf in conveying Lots No. 9, 10 and 11 from the First Plaintiff to the Second Plaintiff. The Second Plaintiff avers that the said retainer/ agreement was made orally in June 2004 between himself and the Defendant and that the Defendant agreed to represent him in the purchase of the property and the Second Plaintiff paid the Defendant for her professional services rendered in advising and preparing the conveyance. He avers that the Defendant advised him that the title of the properties was good and marketable.

5. The Second Plaintiff claims to have acted on the advice of the Defendant in purchasing the properties from the First Plaintiff and thereafter began construction of a building. The contract to purchase the Lots was made between the First and Second Plaintiffs on or before June 2004. The Conveyance from the First Plaintiff to the Second Plaintiff is dated 16th June 2004 and the construction of the building commenced sometime thereafter.

6. The Plaintiffs have now discovered that the title to the said properties were defective. The Plaintiffs allege that the Defendant had failed to notify the Second Plaintiff that Block 56 is one of a number of blocks of land subject to the Supreme Court Order made in Common Law Action No. 583 of 1988 between Arawak Homes Ltd. and John Sands. The Defendant thereby had a duty to advise the Plaintiffs of the said action and warn them concerning the risk to the title and the adverse outcome of the action.

7. By Consent Order filed 1st April 2015, it was ordered that the Judgment in Default of Defence filed on 12th August 2014 against the Defendant in the matter be set aside.

8. By a Defence filed 29th April 2015, the Defendant maintained that reasonable care and skill was demonstrated in conducting business with and on behalf of the First Plaintiff and admits that she did advise the First Plaintiff that there was a good and marketable title regarding Lots No. 9, 10 and 11. She denied however that she was

negligent and/or in breach of a duty to the First Defendant in the course of conducting the title search.

9. The Defendant maintained that in June 2004, the First Plaintiff instructed her to convey the Lots to the Second Plaintiff by way of gift and denies that she was retained by the Second Plaintiff as alleged. The Defendant further denies that she advised the Second Plaintiff as alleged and again denies that she was negligent and/or in breach of a duty to the Second Defendant in the course of conducting the title search.

10. The Defendant further maintains that the First Plaintiff having disposed of his interest in the Lots has no legal right to bring an action thereon. The Defendant avers that the alleged cause of action did not arise within six years before this action and is therefore barred by Section 5 of the Statute of Limitations Act, 1995.

11. The Defendant filed a Notice of Hearing of the preliminary point to decide the limitation issue and whether the First Plaintiff having disposed of his interest had any legal right to bring this action.

EVIDENCE

Plaintiffs Evidence

Witness Statement of Hughes Perpall filed 6th February 2017

12. Mr. Hughes Perpall stated that the Defendant has been his attorney in several transactions. She further acted for him again on the purchase of Lots 9, 10 and 11 and that he only purchased these properties on the Defendant's advice that the title was good and marketable. He also agreed to transfer the said Lots to the Second Defendant for good and valuable consideration under the advice of the Defendant.

13. At a meeting with the Defendant, she agreed to represent both Plaintiffs in the transfer and assured them that the title to Lots 9, 10 and 11 was good and marketable. The First Plaintiff stated that had he been informed by the Defendant that the title was defective he would not have agreed to transfer the same to the Second Plaintiff and that is the only reason why he proceeded with the transaction.

Witness Statement of Roscoe Perpall filed 16th November 2016

14. Mr. Roscoe Perpall stated that in the meeting with the Defendant, the First Plaintiff explained to her that the Second Plaintiff wanted to purchase the Lots from him. After discussions concerning the sale and purchase, the Defendant recommended that the best way to convey the property was by Deed of Gift. He then questioned

the title of the property and again the Defendant informed him that the title was good and marketable.

15. In or about May 2004, he retained the legal services of the Defendant to represent him in the conveyance transaction. He was subsequently invoiced for services rendered in the transaction and he paid the same in full.

16. After completion of the property transfer the Second Plaintiff took possession of the Lots and commenced constructing a two story apartment building thereon. After the construction began, he was approached by the late Wilfred Coakley who told him that that the property belonged to Arawak Homes Ltd. He became immediately concerned and contacted the Defendant who assured him that he had nothing to worry about and reiterated that the property was good and marketable. He proceeded with construction on the land.

17. In order to complete the construction of the building, the Second Plaintiff applied for and was approved for a mortgage loan by Scotia Bank Bahamas Ltd. The bank instructed the firm Obie Ferguson & Co. to prepare a legal mortgage of the lots subject to the Deed of Gift. The firm subsequently informed the Second Plaintiff and the bank that the title was defective. The Defendant was contacted and informed. The Second Plaintiff, the Defendant and Mr. Obie Ferguson tried to pursue a resolution and the Defendant was amenable to amicably settling the same, however she has failed and/or refused to do so.

18. Arawak Home Ltd. the adjudged owner of the Lots have repossessed the same and demolished the Second Plaintiff's building thereon. The Second Plaintiff further believe that the Defendant has breached her duty or care owed both in contract and in tort and that her failure to exercise reasonable skills to demonstrate professional competence has caused the Second Plaintiff loss and damage in the sum of $129,000.00 being the value of the construction.

Defendant's Evidence

Witness Statement of Cathleen Hassan filed 16th January 2017

19. The Defendant, Cathleen Hassan stated that sometime around June or July 2004 she was instructed by the First Plaintiff to prepare a Deed of Gift to and an affidavit of citizenship for Lots No. 9, 10 and 11 for his brother, the Second Defendant Plaintiff.

20. When both documents were complete, both Plaintiffs visited her Chambers to execute the same on 28th May 2004 and she was advised by the First Plaintiff to send the Deed of Gift to the Second Plaintiff.

21. She further contended that all billing for services was directed to the First Plaintiff and that at no time was she acting under the instruction of or on behalf of the Second Plaintiff

SUBMISSIONS ON PRELIMINARY ISSUE

Plaintiffs Submissions

22. The Plaintiffs submits that the Defendant was professionally negligent as she breached a duty of care owed to them in both contract and in tort.

23. The Plaintiff relied on **Barclays Bank plc v Weeks Legg & Dean (a firm) et al [1998] 3 All ER 213 at 222**, where Millet LJ considered the meaning of a good and marketable title as follows:-

> **"A purchaser is entitled to be satisfied 'that his vendor is seised of the estate which he is purporting to sell, in this case the fee simple, and that he is in a position, without the possibility of dispute or litigation, to pass that fee simple to the purchaser.' (See Re Stirrup's Contract [1961] 1 All ER 805 at 809, [1961] 1 WLR 449 at 454 per Wilberforce J.)**
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> **Where the title shown is less than perfect, the question is whether the risk is 'so remote or so shadowy as to be one to which no serious attention need be paid ... the test must always be: would the court, in an action for specific performance at the instance of the vendors, force a title containing the alleged defect upon a reluctant purchaser?' (See Manning v Turner [1956] 3 All ER 641 at 643, [1957] 1 WLR 91 at 94 per Stone V-C.)**
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> **A title which, though technically defective, is one which the purchaser is bound to accept, is known as 'a good marketable title'. The meaning of the expression is well established. In Pyrke v Waddington (1852) 10 Hare 1 at 8, 68 ER 813 at 816 Turner V-C said '... the rule rests upon this, that every purchaser is entitled to require a marketable title; by which I understand to be meant, a title which, so far as its antecedents are concerned, may at all times, and in all circumstances, be forced upon an unwilling purchaser ... and that this is the true rule to be applied in such cases, is, I think, the more apparent, from the repeated decisions that the Court will not compel a purchaser to take a title which will expose him to litigation or hazard ...."**

24. The Plaintiff submitted that on the evidence provided, the Defendant has been professionally negligent. Based on the content of the title search report, the Defendant ought to have warned the Plaintiffs that the outcome of certain legal actions might affect the title.

25. For the Plaintiff to succeed in an action for negligence against a skilled person, the Plaintiff must pass the test as outlined in **Bolam v Friern Hospital Managemnt Committee [1957] 2 All ER 118 at 112** as follows:-

> **"Before I turn to that, I must tell you what in law we mean by 'negligence'... But where you get a situation which involves the use of some special skill or competence, then the test as to whether there has been negligence or not is not the test of the man on top of a Clapham omnibus, because he has not got this special skill, the test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill; it is well established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising hat particular art."**

26. In **Western Trust Savings Ltd. v Clive Travers & Co. (a firm) 1997 PNLR 295**, the Court stated that when providing a service associated with conveyancing it is, **"...the primary task of a solicitor in such circumstances to ensure that the lender obtains good and enforceable title in the property which will secure lending."**

27. The Plaintiffs also submitted that the existence of the conveyance is admitted by the Plaintiffs and Defendant so the absence of the production of the physical document is not fatal to the Plaintiffs' case. However, the conveyance was and is incapable of being stamped because the property in question was and is owned by Arawak Home Ltd. which was discovered as a result of a title search following instructions from Scotiabank Bahamas Ltd.

28. It is the Plaintiffs position that pursuant to **Section 5(2) of the Limitation Act, 1995 ("the Act")** the Plaintiffs have twelve years from 12th June 2009 or at the latest 14 January 2011 and not six years as proffered by the Defendant. Therefore the preliminary point will fail as the Writ was filed within the prescribed time. The limitation period would be twelve years because the conveyance is a written instrument that is signed, sealed, and delivered conveying some interest.

29. **Section 5(2) of the Act** provides:-

> **"An action upon an instrument under seal shall not be brought after the expiry of twelve years from the date on which the cause of action accrued."**

Further **section 14(1)** of the Act provides:-

> **"An action for damages for negligence, other than one to which section 11 or 12 applies, shall not be brought after the expiration of fifteen years from the date (or, if more than one, from the last of the dates) on which there occurred any act or omission-**
> **(a) which is alleged to constitute negligence; and**

(b) to which the damage in respect of which damages are claimed is alleged to be attributable (in whole or in part)."

30. The Plaintiffs accordingly submit that they are within time to commence and litigate their action against the Defendant for professional negligence. They rely on **Haward et al v Fawcetts (a firm) and others (2006) UKHL 9** where the Court examined the degree of knowledge required to commence an action for professional negligence:-

> **"8. Two aspects of these 'knowledge' provisions are comparatively straightforward. They concern the degree of certainty required before knowledge can be said to exist, and the degree of detail required before a person can be said to have knowledge of a particular matter. On both these questions courts have had no difficulty in adopting interpretations which give effect to the underlying statutory purpose.**
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> **9. Thus, as to the degree of certainty required, Lord Donaldson of Lymington MR gave valuable guidance in Halford v Brookes [1991] 1 WLR 428, 443. He noted that knowledge does not mean knowing for certain and beyond possibility of contradiction. It means knowing with sufficient confidence to justify embarking on the preliminaries to the issue of a writ, such as submitting a claim to the proposed defendant, taking advice, and collecting evidence: 'suspicion, particularly if it is vague and unsupported, will indeed not be enough, but reasonable belief will normally suffice'. In other words, the claimant must know enough for it to be reasonable to begin to investigate further.**
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> **15. ... There may be difficulties in cases where a claimant knows of an omission by say, a solicitor, but does not know the damage he has suffered can be attributed to that omission because he does not realise the solicitor owed him a duty. The claimant may know the solicitor did not advise him on a particular point, but he may be totally unaware this was a matter on which the solicitor should have advised him. This problem prompted Janet O'Sullivan, in her article 'Limitation, latent damage and solicitors' negligence', 20 Journal of Professional Negligence (2004) 218, 237, to ask the penetrating question: unless a claimant knows his solicitor owes him a duty to do a particular thing, how can he know his damage was attributable to an omission?**
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> **21. ... for time to run, something more was needed to put Mr. Haward on inquiry. For time to start running there needs to have been something which would reasonably cause Mr. Haward to start asking questions about the advice he was given.**
> **90. What the claimant must know to set time running is the essence of the act or omission to which his damage is attributable, the substance of what ultimately comes to be pleaded as his case in negligence. That essence or**

substance here could no doubt be characterized in either of two ways: either as the act of recommending investment in the company (or omitting to caution against it-on the particular parts of this case these are two sides of the same coin), or, with greater particularity, the act of recommending investment without first carrying out the investigations necessary to justify such positive advice... True, under the former the claimant knows nothing beyond the fact that his advisers led him into what turned out to be a bad investment; he does not know, as under the latter characterization he would, that he has a justifiable complaint against his advisers. But he surely knows enough (constructive knowledge aside) to realize that there is a real possibility of his damage having been caused by some flaw or inadequacy in his advisers' investment advice, and enough therefore to start an investigation into that possibility, which section 14A then gives him three years to complete."

31. The Plaintiffs only discovered the negligence after the title report was obtained in 2008.

Defendant's Submissions

32. The Defendant submits that as the conveyance between the two parties was dated the 28th May 2004, time runs for six years from that date for limitation purposes.

33. **Section 5(1) of the Act** states:-

"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

34. Alternatively, **Section 13 of the Act** also provides:-

"13. (1) This section shall apply to any action for damages for negligence, other than one to which section 11 or 12 applies, where the starting date for reckoning the period of limitation under subsection (4)(b) falls after the date on which the cause of action accrued.

(2) Section 5 shall not apply to an action founded on tort to which this section applies.

(3) An action to which this section applies shall not be brought after the expiry of the period applicable in accordance with subsection (4).

(4) Such period as aforesaid is either — (a) six years from the date on which the cause of action accrued; or (b) three years from the starting date as defined by subsection (5), if that period expires later than the period mentioned in paragraph (a).....

35. The starting date for reckoning the period of limitation as defined in this section is the earliest date on which the Plaintiff had both the knowledge required for bringing an action for damages... and a right to bring such action. The Second Plaintiff had both the knowledge required for bringing an action for damages on 12th June 2009 and the right to bring the action. Time would run for three years from that date.

36. Per Lord Esher MR in **Read v Brown (1888) 22 QBD 128,131**, a cause of action accrues at the earliest time at which an action can be brought **"when a complete and available cause of action first comes into existence."**

37. The general rule in contract law is that where negligence results in a breach of contract, time runs from the negligence and not the damage. The breach of contract is the cause of action and time runs from the date of the breach which will be the date of non- performance or negligence, and not from it being discovered or from the occurring of the damage. **Howell v Young [1824-34] All ER Rep 377** 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 from the time when the plaintiff discovered that the security was insufficient and therefore the action was barred.

38. The Defendant further relied on **Forster v Outred & Co. [1982] 2 All ER 753** where the Plaintiff in February 1973 executed a mortgage on her house for the security for her son's borrowings at her solicitors office. She believed that the mortgage was in relation to a temporary bridging arrangement and it was not until 1975 when a demand was made upon her by the mortgagee that she discovered the truth. In 1980 she issued a writ against the solicitor claiming they has been negligent in not making her aware of the true nature of the transaction The Court of Appeal held that her loss was suffered in 1973 when she executed the mortgage, this being the act of reliance on the defendant's advice. This case, she submits, lays down a rule that the cause of action accrues from the date of reliance. However, it is crucial to this decision that a financial loss had been incurred not in 1975 when the demand was made upon her, but at the earlier date when she obtained an interest which was of less value to her and demonstrably less than if the defendants had done their duty. In the words of Templeman LJ in **Baker v Ollard & Bentley (1982) 126 SJ 593** "the alleged cause of action accrued on the date when the property was conveyed to the Plaintiff, not at a later date when problems arose. That is the date when the actual damage was suffered..."

39. There is a common law rule that is relevant to a claim by a purchaser namely that a person who is not the owner of the property when the cause of action accrues cannot sue. The rule was set out in the context of builders and subsequent purchasers by Lord Denning in **Spraham-Souter v Town and Country Development (Essex) Ltd. [1076] QB 858 p 868**. If the cause of action had

already accrued when the subsequent purchaser takes possession, he has no right against the builder if there had not been a contractual assignment of the cause of action.

40. It is the Defendant's submission that the cause of action in contract accrued in August 1998 for the First Plaintiff and July 2004 for the Second Plaintiff upon the purchase of the Lots. However the cause of action in tort accrued on May 2009 or at the latest 14th January 2011with regard to the Second Plaintiff. On this date he had both the knowledge that he had suffered damage and that the title to the Lots was in question, giving him a right to bring this action

ISSUES

41. The issues which the Plaintiff maintains are to be determined in the action are:-

i) Whether the Defendant confirmed to the First Plaintiff that the title to Lots 9, 10 and 11 was good and marketable having regard to the title search?
ii) Whether it is reasonable for her First Plaintiff to rely on the opinion of the Defendant that the title to the said lots was good and marketable?
iii) Whether the Defendant owed both Plaintiffs a duty of care and whether the same was breached?
iv) What is the effect of the Statute of Limitations on this action?
v) What remedy is available for the Second Plaintiff?

42. The issues as outlined by the Defendant are:-

vi) Whether the Defendant is liable to the Plaintiffs as alleged in contract and/or in tort?
vii) Whether the Plaintiffs are statute barred from bringing this cause of action according to the Limitation Act?
viii) Whether the First Plaintiff has a claim and/or cause of action in these proceedings having disposed of his interest, both equitable and legal in the Lots?
ix) Whether the Second Plaintiff is statute barred in these proceedings?

43. Both parties agreed to have the issue of limitation dealt with as a preliminary issue.

DECISION ON PRELIMINARY ISSUE

Statute of Limitations Act, 1995

44. The Defendant raised the preliminary issue that the First Plaintiff does not have a claim to a cause of action in these proceedings and that both the First and Second Plaintiffs claims are statute barred by virtue of the provisions of the Statute of Limitations Act.

45. The Plaintiffs submit that time ought to begin to run from 12th May 2009 which is the time the Plaintiff knew enough to make it reasonable for them to investigate whether they had a cause of action or not.

46. Alternatively, the Defendant submits that the cause of action in contract accrued in August 1998 for the First Plaintiff and at the latest 2004 for the Second Plaintiff, when they each purchased the Lots. However the cause of action in tort accrued on 12th May 2009 or at the latest 14th January 2011 with regard to the Second Plaintiff.

47. Section 5 states:-

> **"(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) actions to enforce the award of an arbitrator where the submission is not by an instrument under seal; (c) actions to recover any sum recoverable by virtue of any written law; (d) actions to enforce a recognisance.**
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> **(2) An action upon an instrument under seal shall not be brought after the expiry of twelve years from the date on which the cause of action accrued: Provided that this subsection shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Act.**
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> **(3) An action shall not be brought upon any judgment after the expiry of six years from the date on which the judgment became enforceable, and no arrears of interest in respect of any judgment debt shall be recovered after the expiry of six years from the date on which the interest became due."**

48. Furthermore, and/or alternatively, subject to the claim by the Defendant that this action is statute barred for negligence, Section 13 states:-

> **"13. (1) This section shall apply to any action for damages for negligence, other than one to which section 11 or 12 applies, where the starting date for reckoning the period of limitation under subsection (4)(b) falls after the date on which the cause of action accrued.**
>
> **(2) Section 5 shall not apply to an action founded on tort to which this section applies.**
>
> **(3) An action to which this section applies shall not be brought after the expiry of the period applicable in accordance with subsection (4).**
>
> **(4) Such period as aforesaid is either — (a) six years from the date on which the cause of action accrued; or (b) three years from the starting date as defined by subsection (5), if that period expires later than the period mentioned in paragraph (a).**

(5) For the purposes of this section, the starting date for reckoning the period of limitation under subsection (4)(b) is the earliest date on which the plaintiff or any person in whom the cause of action had earlier vested had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action.

(6) In subsection (5), "the knowledge required for bringing an action for damages in respect of the relevant damage" means knowledge both — (a) of the material facts about the damage in respect of which damages are claimed; and (b) of the other facts relevant to the current action mentioned in subsection (8).

(7) For the purposes of subsection (6)(a), the material facts about the damage are such facts about the damage as would lead a reasonable person who had suffered such damage to consider it sufficiently serious to justify the institution of proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(8) The other facts referred to in subsection (6)(b) are — (a) that the damage was attributable in whole or in part to the act or omission which is alleged to constitute negligence; (b) the identity of the defendant; and (c) if it is alleged that the act or omission was that of a person other than the defendant the identity of that person and the additional facts supporting the bringing of an action against the defendant.

(9) Knowledge that any acts or omissions did or did not, as a matter of law, involve negligence is irrelevant for the purposes of subsection (5). (10) For the purposes of this section and section 15, a person's knowledge includes knowledge which such person might reasonably have been expected to acquire — (a) from facts observable or ascertainable by such person; or (b) from facts ascertainable by such person with the help of appropriate expert advice which it is reasonable, in the circumstances, to seek, but a person shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable only with the help of expert advice so long as that person has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice."

49. This Court must decide what is the applicable limitation period based on the causes of action pleaded.

50. The Defendant was initially retained by the First Plaintiff in or around August of 1998 to represent him in the purchase of three lots, in Block 56, in the Nassau Village Subdivision.

51. The conveyance of the lots to the First Plaintiff was dated the 21st of September 1998.

52. Around June or July 2004 the Defendant was instructed to prepare a Deed of Gift of the same lots from the First Plaintiff to the Second Plaintiff. Based on these instructions she prepared the Deed of Gift.

53. The Defendant had advised the First Plaintiff that the title to the lots was good and marketable

54. The Defendant denies that she ever advised the Second Plaintiff that his title was good and marketable. In fact she denies that he was ever her client.

55. The Deed of Gift from the First Plaintiff to the Second Plaintiff was dated the 28th May 2004.

56. The Second Plaintiff discovered in or around May 2009 that Arawak Homes in fact owned the lots which he had been given by Deed of Gift and upon which he had started construction.

57. By an undated Title Search conducted sometime in 2008, it revealed that Block 56 "is a part of a number of Blocks in Nassau Village subject to Supreme Court Order." Accordingly, based on this title search and a subsequent letter sent to the Plaintiff's attorney by the Defendant which was dated May 12th 2009, it was known that the title of the lots was actually vested in Arawak Homes and not either of the Plaintiffs.

58. The title conveyed to the First Plaintiff was not good and marketable; further the same defective title was given by Deed of Gift to the Second Plaintiff.

59. I must decide whether or not the cause of action which accrued to either party is statute barred by virtue of the Limitation Act and if so when did it become statute barred.

60. In order to do so I must decide when the cause of action accrued. By virtue of the contract with the First Plaintiff and in accordance with **Forster v Outred & Co. [1982] 2 All ER 753** and **Holt v Holley & Steer Solicitors [2020] EWCA Civ 851.** It is well established that a cause of action in fact accrued when the actual damage was sustained. The damage would have occurred when the First Plaintiff purchased the three lots in reliance on his attorney's opinion on title and received his conveyance.

61. The claim against the Defendant can be brought both in contract and tort, as by virtue of the contract with the First Plaintiff the Defendant owed him a duty of care.

62. How long then does the limitation period run? The cause of action as pleaded in the Statement of Claim relates to the advice given, and the execution of the obligations arising from a contract for services between the First Plaintiff and the Defendant. The cause of action does not arise for the conveyance itself, and accordingly the limitation period is governed by Section 5(1) of the Limitation Act and not Section 5 (2). The limitation period of the cause of action accruing to the

First Plaintiff would have expired in August of 2004 at the latest. This action as commenced by the First Plaintiff against the Defendant is statute barred and ordered struck out.

63. The issue of whether or not the Second Plaintiff was a client of the Defendant so as to give rise to a cause of action in breach of contract and tort against her is an issue in dispute and can only be determined by hearing evidence and submissions on the matter and cannot be decided without the same.

64. If it is decided that a duty is owed to the Second Plaintiff, the limitation period would expire six years from the date when the Deed of Gift was executed based on her providing an opinion on title, which would have been six years from the 28th day of May 2004 and would have expired before this action commenced.

65. Even if one were to accept that there was no knowledge sufficient of the wrongdoing to ground a cause of action in tort in May of 2004, the evidence agreed between the parties showed that knowledge was acquired in 2008 and definitely by May 12th 2009 when the Defendant wrote to Counsel for the Plaintiff to arrange a meeting to resolve the matter. The cause of action would have expired as against the Second Plaintiff by May 2010 under Section 5 (1) or by virtue of Section 13 if there was insufficient knowledge in 2004, time would run for three years from May 2009 to 2012 which was also before this action commenced.

66. There is no claim by the Second Plaintiff against the First Plaintiff and accordingly there is no issue of a contingent liability arising against the First Plaintiff as a result of the action of the Defendant. I further need not address whether in fact the First Plaintiff had any action having disposed of his interest in the property to the Second Plaintiff as even if he did his right to pursue it is statute barred.

67. Accordingly, after a review of all the authorities, and evidence, and hearing the submissions of the parties, I am satisfied that the cause of action of both Plaintiffs are statute barred and the action is dismissed as against the Defendant.

68. The Defendant is entitled to her costs of the action to be taxed if not agreed.

Dated this 2nd day of December 2022

Hon. G. Diane Stewart