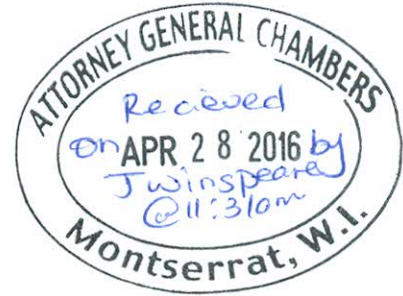


THE EASTERN CARIBBEAN SUPREME COURT
COLONY OF MONTSERRAT CIVIL

IN THE HIGH COURT OF JUSTICE

CLAIM NO: MINIHCV2012/0035
CONSOLIDATION OF CLAIMS
MNIHCV2012/0014
MNIHCV2012/0015
MNIHCV2012/0016
MNIHCV2012/0017
MNIHCV2012/0019
MNIHCV2012/0020



BETWEEN:

CLIFTON CASSELL
KENNETH ALLEN
YVONNE DALEY-WEEKES
KATHLEEN ALLEN-FERDINAND
KHARK MARKHAM
ALYN RUSSEL KRAUSE
GAIL ANN CIMONO-KRAUSE
PHILIP BRELSFORD
JOEL OSBORNE
INGRID OSBORNE
CLIFFORD WEST

Claimants

and

PROVIDENCE ESTATE LIMITED
OWEN ROONEY

Defendants

Appearances:

Mr. Khari Markham with Ms Chivone Gerald for the Claimants
Owen M Rooney in person and on behalf of the First Defendant

2016: April 20
2016: April 28

JUDGMENT

Purchase of land – Bona fide purchaser for value without notice – meaning of notice – purchase from a company - application of the indoor management rule

BACKGROUND

1. **Bristol, J. [AG]:** Each of the Claimants bought land from either Warren Cassell (WC) and Cleo Cassell (CC), as predecessor in title of Providence Estate Limited, the First Defendant (PEL), or directly from PEL.
2. At all material times WC held himself out as representing PEL as a director and/or shareholder.
3. On or about the 16th of February, 2012, after the said land purchases, WC was convicted in the criminal assizes in Montserrat of, inter alia, conspiracy to defraud PEL and/or Owen Rooney, the Second Defendant (OR). These convictions were in respect of PEL's land sales.
4. The claims are brought by the several Claimants to confirm their titles to their respective parcels in light of the said convictions. The convictions are not otherwise relevant for the determination of the issues in these proceedings.
5. The Second Defendant is a shareholder and director of PEL.
6. At the Pre-Trial conference held on the 20th April 2016, Counsel for the Claimants agreed that the knowledge of a solicitor is knowledge of the client. This is correct in law as notice to a solicitor of a transaction, and about a matter as to which it is part of his duty to inform himself, is actual notice to the client. **[Rolland v Hart (1871) L.R. 6 Ch. App. 678]**. It is accepted that WC was at all material times a partner of Cassell & Lewis.

THE CLAIMS

MNIHCV2012/0014 Clifton Cassell (Parcel 72)

MNIHCV2012/0020 Clifford West (Parcel 71)

7. These Claims are identical.
8. Each Claimant bought from WC and CC.
9. Both Claimants aver that they were not aware of any material irregularity within PEL when WC and CC bought from PEL and they acted in good faith and in reliance on the clear title as registered and were bona fide purchasers for value without notice.
10. PEL by way of defence denies that the Claimants were bona fide purchasers for value without notice and counterclaimed for, inter alia, a declaration that PEL is the owner of the particular parcels.
11. A simple Defence to Counterclaim was filed repeating the Statement of Claim.

MNIHCV2015/0015 Kenneth Allen & Ors (Parcel 59)

MNIHCV2012/0016 Alyn Krause & Anr (Parcel 14)

MNIHCV2012/0017 Phillip Brelsford (Parcel 15)

MNIHCV2012/0019 Joel Osborne & Anr (Parcel 56)

12. These Claims are identical.
13. Each Claimant bought from PEL.
14. The Claimants all aver that:
 - (i) At all material times WC represented PEL who held himself out to be a director, agent, attorney and or officer of PEL.

- (ii) They were bona fide purchasers for value without knowledge of any omission, fraud or mistake committed by PEL or WC or Cassell & Lewis (WC's law firm), and they did not contribute to any omission, fraud or mistake.

15. Allen & Krause, in addition, plead that they were not aware of any material irregularity within PEL and dealt with WC in good faith, relied on the indoor management rule and assumed that all necessary internal approvals of PEL had been satisfied.

16. The material parts of the Defences are identical as PEL avers that:

- (i) The Claimants were not bona fide purchasers for value without notice.
- (ii) WC was never a director of PEL.
- (iii) The instruments of transfer were not executed as required by Section 107 of the Registered Land Act as no seals were affixed neither were the required signatures of a director and secretary.
- (iv) The common seal of PEL was not affixed as required by section 25(6) of the Companies Act.

17. PEL counterclaims for a declaration that PEL is the owner of the relevant parcels.

18. The Defence to Counterclaim simply repeats the Statement of Claim.

THE EVIDENCE – PEL

19. Counsel for the Claimants agreed that recourse may be had to PEL's records at the Companies Registry, being public documents. It is accepted that these documents are being referred to, not as to the truth of their contents, but as to the fact of their existence.

