THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE COURT OF APPEAL

Civil Appeal No. P178 of 2023

Between

RICHARD BECKLES t/a THE LEGAL CONSULTANCY

Appellant/Ancillary Defendant/First Ancillary Defendant

And

ROBERT JOHN

First Respondent/Claimant

KEELAN AARON HUNTE

Second Respondent/First Defendant/Second Ancillary Claimant

FIRST CITIZENS BANK LIMITED

Third Respondent/Second Defendant/First Ancillary Claimant

Panel:

Maria Wilson JA

Ronnie Boodoosingh JA

Geoffrey Henderson JA

Appearances:

Mr Shiv Sharma and Mr Adrian Byrne for the appellant

Ms Tara Thompson and Mr Justin Leung for the first respondent

Mr Justin Junkere and Ms Alana Praimdass for the second respondent

Mr Jean-Louis Kelly and Mr Dante Selman-Carrington for the third respondent

Date of Delivery: **17 July 2025**

JUDGMENT

Delivered by R. Boodoosingh JA:

1. This appeal arises from the judgment of Seepersad J who on a claim for negligence against the appellant, Richard Beckles t/a The Legal Consultancy (Mr Beckles), decided that Mr Beckles, an attorney at law, was negligent and awarded damages to the respondents. The case came about because of a property transaction involving the sale of a parcel of land, with an old building on it, described as Lot 216, located at the corner of Munroe Road, Barataria.

2. The respondents to the appeal are: Mr Robert John (Mr John), the true owner of the land; Mr Keelan Aaron Hunte (Mr Hunte), the purchaser of the land; and First Citizens Bank Limited (FCB), who loaned money to Mr Hunte to purchase the land, holding the property as security on the mortgage. Three other relevant persons, not part of the proceedings, were Mr Kevin Boodoo (Mr Boodoo) of Kaatar Real Estate Agency, Ms Claire Pascall (Ms Pascall), an attorney at law, then of two years call, who was employed by Mr Beckles, and an unknown, fake Mr Robert John (the fraudster) who presenting himself as Robert Ferguson John, purported to sell the property owned by the real Mr John to Mr Hunte.

3. The short story of the facts are as follows. Mr Boodoo of Kaatar Agency contacted Mr Beckles to prepare an agreement for sale of the property as Mr Hunte saw it and wanted to purchase it. The fraudster, it appears, had held himself out to Mr Boodoo as the owner of the property and had provided certain relevant documents to him. On Mr Beckles' instructions, his employee, Ms Pascall, prepared an agreement for sale, which was signed by Mr Hunte and the fraudster on 11 October 2019. Ms Pascall also prepared a Deed of Conveyance purportedly transferring the land to Mr Hunte. This was executed on 10 December 2019 for the sum of $840,000.00. At the same time, Mr Hunte mortgaged the property to FCB as security for a loan of $650,000.00. Ms Pascall, on Mr Beckles' instructions, also prepared this Deed of Mortgage since Mr Beckles was on FCB's panel of attorneys. Thus, the only attorneys who were involved in this transaction were Mr Beckles and Ms Pascal under the ambit of the Legal Consultancy. The real Mr John learnt of this transaction after his real estate agent (not Mr Boodoo) noticed the "For Sale" sign had been removed from the property by 16 December 2019.

4. In 2010, Mr John brought a claim against Mr Hunte to set aside the Deed of Conveyance and against FCB to set aside the Deed of Mortgage. FCB filed an ancillary claim against Mr Beckles for negligence. Mr Hunte, in turn, brought a claim against Mr Beckles and the fraudster. However, the fraudster has not been found. Seepersad J tried the claims together and gave judgment summarised as follows:

    i. The Deed of Conveyance in favour of Mr Hunte was set aside.

    ii. The Deed of Mortgage was set aside.

    iii. Mr Beckles t/a The Legal Consultancy was ordered to pay Mr John prescribed costs in the sum of $97,000.00.

    iv. Mr Beckles t/a The Legal Consultancy was ordered to pay Mr Hunte the sum of $525,652.20 together with interest from 19 July 2021 at a rate of 2 ½ % until the date of judgment in the sum of $24,770.45 and statutory interest after.

v. Mr Beckles t/a The Legal Consultancy was ordered to pay to Mr Hunte, prescribed costs on the sums awarded in the sum of $73,423.92.

vi. Mr Beckles t/a The Legal Consultancy was ordered to pay First Citizens Bank Limited the sum of $386,762.80 together with interest from the date that sum was advanced (i.e. 18 November 2019) at a rate of 2 ½ % until the date of judgment in the sum of $34,358.31 and interest at the statutory rate of interest from the date of judgment until repayment.

vii. Mr Richard Beckles t/a The Legal Consultancy, was ordered to pay First Citizens Bank Limited, prescribed costs on the sums awarded in the sum of $60,176.28.

5. At the appeal, these sums have not been contested. Three substantive points have been raised on the appeal. These are:

i. The judge allowed cross-examination on discrepancies on two documents, a national identification card and passport, and relied on this evidence when these matters were not particularised in the pleadings (The Pleading Point).

ii. The respondents agreed to the identification card and passport going into evidence as authentic documents, but the judge relied on the discrepancies in them in support of his finding of negligence (The Authenticity Point).

iii. Negligence was not made out on the case presented by the respondents (Was negligence made out on the evidence?).

The Pleading Point

6. Neither Mr Hunte nor FCB had specifically pleaded that there were discrepancies with and between the passport and identification card used by the fraudster in the property transaction. These were referred to as the newly identified suspicious matters. Mr Beckles submitted that due to the failure of Mr Hunte and FCB to plead any of the newly identified suspicious matters it was improper for these matters to be introduced, for the first time, at the trial or in cross-examination.

7. With the agreement of all parties, the judge at the trial decided that any evidence taken by him in response to questioning about the newly identified suspicious matters would be admitted *de bene esse*, pending the judge's final ruling on the authenticity objection and the pleadings objection. These, the judge addressed in his judgment.

8. He submitted that the pleadings in the ancillary claims filed by Mr Hunte and FCB did not specify any particulars that would have enabled him to address the newly identified suspicious matters in his witness statements. Allowing these matters to be introduced through cross-examination of Mr Beckles' witnesses—especially after the evidence for Mr Hunte and FCB had already closed and cross-examination was completed—was contrary to the fundamental principle that defendants must be given a clear and certain understanding of the case they must address.

9. From these submissions, Mr Beckles argued that allegations of professional negligence must have been specifically pleaded to provide him with sufficient notice of the case to be defended. Generalised or broad allegations of negligence were insufficient. The newly identified suspicious matters constituted specific particulars or facts that should have been expressly pleaded if Mr Hunte and FCB intended to rely on them. The judge was therefore incorrect in his pleading ruling.

10. He further asserted that by permitting evidence on the newly identified suspicious matters, the court effectively allowed Mr Hunte and FCB to amend their statements of case without filing an application for permission under the **Civil Proceedings Rules, 1998**, **as amended (CPR), Part 20**. This amounted to circumventing procedural requirements, and obtaining through cross-examination, what they likely would not have been granted through a formal application.

11. The judge should have considered, but did not consider whether—based on the matters actually pleaded (which did not include the newly identified suspicious matters) and the admissible evidence— Mr Beckles had breached his duty in tort and contract to exercise the care and skill of a competent attorney-at-law.

The New Suspicious Matters

12. The new suspicious matters came about in cross-examination of Mr Beckles and Ms Pascall. This cross-examination was based on documents which were part of the evidence in the case and which formed the basis of the identification used by the fraudster. Cross-examination was permitted on:

    i. the difference in the serial number on the fraudster's passport compared to the sequence of characters on the machine-readable section of the passport;
    ii. the photographs on the fraudster's passport and his identification card being apparently identical;
    iii. the differences in the style and spelling of the fraudster's signatures on the deed, identification documents, agreement for sale, letter consenting to the release of funds to the real estate agent and the real estate agent's "know your client form".

iv. the difference between the address “2122 Clifton Street” in the agreement for sale and “21-22 Clifton Hill” on the consent form to release the funds to the real estate agent.

13. The case, as presented by Mr Hunte and FCB, was that Mr Beckles had not done enough to confirm the identity of the fraudster, who purported to be Mr John. In particular, what followed from this was that neither Mr Beckles nor his associate had required the production of the original passport and identification card. If they had done so it would likely have been clear that the documents were fake since the photographs could not be the same on both documents and the sequence of the characters in the machine readable part would have been apparent. They chose instead to rely on a scanned copy of the identification documents, which they had not perused carefully. In his pleadings, Mr Beckles had asserted that the original identification documents were presented when the agreement for sale was executed.

14. The negligence was expressed in the pleaded cases of Mr Hunte and FCB to be a failure to ascertain the identity of Mr John by missing obvious matters coupled with other “red flags” as noted above. The Defence on the pleaded case that Mr Beckles could have mounted was to set out what he and Ms Pascall had in fact done, and to show that what they had done was sufficient in keeping with the ordinary duty of the exercise of reasonable care and skill.

15. Further, the particular being that “identification was not ascertained properly”, both FCB and Mr Hunte, through the evidence, either from them in their witness statements or by cross-examination, had the burden to establish their pleaded case on the evidence. The scanned copy of the passport and the identification card were documents in the case. Mr Beckles said these were examined and they were satisfied with the documents. Thus, it was open to the lawyers for FCB and Mr Hunte to cross-examine on what he had said in light of the documents. For example, at paragraph 16 of his witness statement, Mr Beckles stated:

"16. Throughout the transaction, and in particular at the time of the execution of each of the Transactional Documents, I was satisfied that:

(a) the Relevant Documentation provided a clear link between the Vendor and the Property and was documentation which in the ordinary course of things an owner would be expected to have;

(b) the IDs presented by the Vendor were in the name of the owner of the Property;
…"

16. This, according to Mr Hunte and FCB, opened the door for cross-examination to follow on what had been done to come to these conclusions. This necessarily would have led to drawing his attention to the content of the identification documents.

17. Additionally, Ms Pascal gave evidence in paragraph 7 of her witness statement that:

"7. On 11th October 2019, the Vendor, Mr. Hunte and Kevin Boodoo of KL attended The Legal Consultancy's then office at Suite 4A, No. 142 Belmont Circular Road, Port of Spain, for the purpose of executing the Agreement for Sale in my presence. I was presented with the original IDs of both the Vendor and Mr. Hunte and ensured that they matched the identity of the persons present."

18. Accordingly, Counsel for FCB and Mr Hunte were entitled to cross-examine her on this evidence regarding the process by which she satisfied herself of Mr John's identity.

19. This led to the cross-examination by Mr Kelly that she received copies of the identification documents from the Kaatar agency. She was asked if she took copies of these original identification documents and she said she made printed copies of the documents and she chose to annex to her witness statement the copies provided by the Kaatar agency (See CA Core Bundle, pages 416-417). This led to suspicion whether the original identification documents were ever presented to her or whether she simply relied on the emailed scanned copies sent to her.

20. This cross-examination went to the identity of the person presenting as Mr John. It was cross-examination on the documents used in the transaction and the contest on the pleaded case and the evidence of the process followed at the time of execution.

The Judge's Ruling on the Pleading Point

21. The judge on the pleading point stated as follows.

> "49. The second ground of objection ("the Pleadings Objection") was premised on the fact that the Ancillary Claimants failed to plead any suspicious circumstances in relation to the variances in the forms of identification. Accordingly, Counsel submitted that it was not open to the Ancillary Claimants to raise these matters by way of cross-examination.
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> 50. The Ancillary Defendant/First Ancillary Defendant argued that the Pleadings are devoid of any pleaded particulars in relation to the validity of the identification documents which were presented and with respect to the alleged differences in the Fraudster's signature in the various executed documents and/or the differences on the face of different documents in relation to his address.

51. This Court must therefore determine whether it should have regard to the aspects of Ms Pascall's and Mr Beckles's cross examination which covered these issues. The Court noted that at paragraphs 19 and 21 of the Second Ancillary Claimant's Ancillary Claim, the pleading sufficiently outlined that The Legal Consultancy knew or ought to have known that the Fraudster was not the actual owner of the land which was conveyed.

52. Courts must vigilantly guard its processes and ensure that all litigants are appraised, with a requisite degree of certainty, as to the parameters of the case which they must address. The ultimate goal is to ensure that there is procedural fairness.

53. The questions which were posed and to which The Legal Consultancy took objection, were based on documents which were agreed and there is no dispute as to the fact that these were used by the firm as Ms Pascall and Mr Beckles determined whether the transaction for the sale of land should proceed.

54. This Court holds the view that a clinical review of all the information which the conveyancers had in their possession, is necessary so as to determine whether or not The Legal Consultancy was negligent and/or failed to determine that there were suspicious circumstances which ought to have signalled that something was awry in relation to the identity of the Fraudster. It was pleaded that there was a failure to investigate the identity of the Fraudster and the questions asked during cross-examination fell under the cover of this general plea.

55. As a result the Court finds that the pleading objection is an argument which is also devoid of merit. Consequently, the Court shall proceed to consider the evidence which was elicited in response to the questions asked in relation to any

inconsistency or peculiarities on the face of the two identification documents, the differences as to the Fraudster's signature as well as the evidence in relation to the various addresses which were given for the Fraudster."

Law on Pleadings

22. A recent binding decision on how the issues in a case should be dealt with was the case of **Primeo Fund (in Official Liquidation) v Bank of Bermuda (Cayman) Ltd and Another [2023] UKPC 40** where at paras 148 to 149 the Board of the JCPC stated as follows:

> "148. The adversarial system of justice imposes on the parties the obligation to identify the issues that arise for determination in the litigation so that each party has the opportunity to respond to the points which the other party makes. The function of the judge is to adjudicate on those issues alone: Al-Medenni v Mars UK Ltd [2005] EWCA Civ 1041 ("Al Medenni"), para 21 per Dyson LJ. The lawyers representing each party adduce evidence, both oral and documentary, and cross-examine the witnesses of the other party in order to establish the case which they are advancing and to counter the case which the other party is making. The lawyers in their submissions at the end of the trial address the cases which have been put to the court. In The Owners of the Ship "Tasmania" and the Owners of the Freight v Smith, the Owners of the Ship "City of Corinth" (1890) 15 App. Cas. 223 ("The Tasmania"), 225 Lord Herschell stated:
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> > "The conduct of a cause at trial is governed by, and the questions asked of the witnesses are directed to, the points then suggested. And it is obvious that no care is exercised in the elucidation of facts not material to them."

As Dyson LJ stated in Al-Medenni, the judge may, in the course of a trial, invite or encourage the parties to recast or modify the issues but must respect a party's decision if the party refuses to do so. The consequence is that a judge may be compelled to reject a claim on the basis that it was advanced although the judge may think that the claim would have succeeded if it had been advanced on a different basis. In an adversarial system, fairness dictates that outcome. In Air Canada v Secretary of State for Trade [1983] 2 AC 394, 438 Lord Wilberforce stated:

> "In a contest purely between one litigant and another … the task of the court is to do, and be seen to be doing, justice between the parties … There is no higher or additional duty to ascertain some independent truth. It often happens, from the imperfection of evidence, or the withholding of it, sometimes by the party in whose favour it would tell if presented, that an adjudication has to be made which is not, and is known not to be, the whole truth of the matter: yet if the decision has been made in accordance with the available evidence and with the law, justice will have been fairly done."

149. It is a general rule that a party must advance his whole case at the trial. As Lewison LJ colourfully put it in a case concerning an appeal against a trial judge's findings of fact: "The trial is not a dress rehearsal. It is the first and last night of the show": Fage UK Ltd v Chobani UK Ltd, Chobani Inc [2014] EWCA Civ 5; [2014] FSR 29, para 114(ii). There are sound policy reasons for this general rule. First, there is a public interest in the efficient and proportionate resolution of disputes: Sainsbury's Supermarkets Ltd v Visa Europe Services LLC [2020] UKSC 24; [2020] Bus LR 1196,

("Sainsbury's"), paras 238-239; and UK Learning Academy Ltd v Secretary of State for Education [2020] EWCA Civ 370 ("UK Learning Academy"), para 44 per David Richards LJ. Secondly, fairness and substantial justice point in the same direction: parties are entitled to know where they stand at the trial and make their decisions relating to the conduct of the litigation in the knowledge of the issues which will be determined at trial: Jones v MBNA International Bank Ltd [2000] EWCA Civ 514 ("Jones"), para 52 per May LJ; parties are not to be vexed by the reformulation of claims in successive suits: Barrow, 260 per Sir Thomas Bingham MR."

23. Reference was made to the statement of Dyson LJ in **Al-Medenni v Mars UK Limited [2005] EWCA Civ 1041**. Fairness requires that a party must know the case it has to meet.

24. Where the claim is based on negligence, the particulars have to be clearly stated. However, a pleading is not the evidence. In **Charmaine Bernard v Ramesh Seebalack [2010] UKPC 15** Sir John Dyson SCJ stated:

> "Part 8.6, which is headed "Claimant's duty to set out his case", provides that the claimant must include on the claim form or in his statement of case a short statement of all the facts on which he relies. This provision is similar to Part 16.4(1) of the England and Wales Civil Procedure Rules, which provides that "Particulars of claim must include—(a) a concise statement of the facts on which the claimant relies". In *McPhilemy v Times Newspapers Ltd* [1999] 3 All ER 775 at p 792J, Lord Woolf MR said:
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> > "The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of

> proceedings identification of the documents upon which a party relies, together with copies of that party's witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader. This is true both under the old rules and the new rules. The Practice Direction to r 16, para 9.3 (Practice Direction – Statements of Case CPR Pt 16) requires, in defamation proceedings, the facts on which a defendant relies to be given. No more than a *concise* statement of those facts is required."

16. But a detailed witness statement or a list of documents cannot be used as a substitute for a *short* statement of *all* the facts relied on by the claimant. The statement must be as short as the nature of the claim reasonably allows. Where general damages are claimed, the statement of case should identify all the heads of loss that are being claimed. Under the pre-CPR regime in England and Wales, RSC Ord 18 r 7 required that every pleading contained a summary of the material facts and by r 12(1) that "every pleading must contain the necessary particulars of any claim". In *Perestrello v United Paint Co Ltd* [1969] 3 All ER 479, Lord Donovan, giving the judgment of the Court of Appeal, said at p 485I:

> "Accordingly, if a plaintiff has suffered damage of a kind which is not the necessary and immediate consequence of the wrongful act, he must warn the defendant in the pleadings that the compensation claimed will extend to

> this damage, thus showing the defendant the case he has to meet…
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> The same principle gives rise to a plaintiff's undoubted obligation to plead and particularise any item of damage which represents out-of-pocket expenses or loss of earnings, incurred prior to the trial, and which is capable of substantially exact calculation. Such damage is commonly referred to as special damage or special damages but is no more than an example of damage which is 'special' in the sense that fairness to the defendant requires that it be pleaded….
>
> The claim which the present plaintiffs now seek to prove is one for unliquidated damages, and no question of special damage in the sense of a calculated loss prior to trial arises. However, if the claim is one which cannot with justice be sprung on the defendants at the trial it requires to be pleaded so that the nature of that claim is disclosed…
>
> …a mere statement that the plaintiffs claim 'damages' is not sufficient to let in evidence of a particular kind of loss which is not a necessary consequence of the wrongful act and of which the defendants are entitled to fair warning."

17. These observations are applicable to Part 8.6 of the CPR as well as to Part 16.4(1) of the England and Wales CPR. In the present case, there was nothing in the original statement of case to indicate the heads of general damages that were being claimed. In order to satisfy Part 8.6, it was necessary to amend the statement of case to make good that omission."

25. These authorities establish a number of principles:

i. The parties have an obligation to identify the issues so that other parties may have the opportunity to respond.

ii. There is a duty to adduce evidence and to cross-examine to establish a party's case.

iii. The whole case is to be advanced at the trial.

iv. The parties have a duty to include in their pleaded cases a short statement of all the material facts that are relied upon.

v. Pleadings have to be read together with the witness statements.

vi. The pleaded facts mark the parameters of the case and establish the issues for determination.

vii. The witness statements develop and advance the evidence in support of the pleaded facts. Appropriate cross-examination must address the issues in the case.

The Pleadings in these Proceedings

26. FCB pleaded against Mr Beckles that it retained his firm to act on its behalf in perfecting its security for the advance of its mortgage loan to Mr Hunte. There were implied terms of the retainer that Mr Beckles would exercise reasonable skill and care in the performance of the retainer and had a duty in tort to the same effect. Mr Beckles confirmed that the firm had investigated title and the title was good and that the property was properly vested in "Mr Robert John". This translated to the person who acted as the fraudster. Mr Beckles impliedly represented by this that the

information provided "in respect of the fraudster was satisfactory". At paragraph 8, FCB pleaded that the fraudster had purported to be Mr John, when he was not. There was a difference in address; the deed stating one being in the United States while the other was "No. 2122 Clifton Street, Port of Spain". The address for Robert John contained in a Grant of Letters of Administration in 2014 was Pranz Gardens, Claxton Bay, Pointe a Pierre, Trinidad. Another law firm, Messrs Quamina and Co had dealt with the grant. The WASA bill dated 4 December 2019 had provided Robert John's address as "care of Una Brown Hermitage Village Claxton Bay". FCB also pleaded at paragraph 8 f. that Mr Beckles' associate, Claire Pascall, prepared a report on 16 January 2020 which indicated that the fraudster was an elderly gentleman in need of assistance and that Mr Beckles' firm relied on the identification provided by a real estate company. Further, Mr Beckles provided no information that his firm "took any steps of its own volition to obtain information relative to the fraudster". The particulars of the breach of retainer and/or negligence were then stated as follows:

(a) Failing, notwithstanding that the Defendants were or ought to have been aware of the matters set out at paragraph 8 above, to take any or any adequate steps to confirm that the fraudster was not authorised to transfer the Property to the 1st Defendant.

(b) The Ancillary Defendant (Mr Beckles) advised the Ancillary Claimant (FCB) that all was in order to advance the said sum when there were several suspicious matters as identified in paragraph 8 hereof.

27. Mr Hunte in his ancillary claim against Mr Beckles set out a detailed factual history. At paragraph 13 he pleaded:

"By an email sent to Keelan Aaron Hunte dated 25 November 2019, Ms. Pascall confirmed that there was proper title as the

property was "…properly vested in Robert John". The Legal Consultancy thereby impliedly represented that they were satisfied that the information provided in respect of the Vendor was satisfactory."

28. At paragraph 19, Mr Hunte pleaded:

"Keelan Aaron Hunte contends that The Legal Consultancy knew or ought to have known or had notice of the following facts prior to or at the execution of the deeds:

a. the Vendor was not the same person as the Claimant who he had purported to be;
b. the Claimant's address was stated as "…No. 13108 Tilden Avenue, North Champlin, Minnesota, 55386, United States of America…" in Deed No. DE201402041044D001 whereas the Vendor provided his address as "…No. 2122 Clifton Street, Port of Spain…";
c. The title search report evidenced as Exemplification of Letters of Administration with Will annexed of an estate in Trinidad and Tobago, which grant was dated 21 March 2014, showing that the Claimant's local residential address was "…Pranz Gardens, Claxton Bay, Pointe-a-Pierre…";
d. The WASA bill dated 4 December 2019, which was provided to the Ancillary Defendant had the Vendor's address stated thereon as "…care of Una Brown Hermitage Village Claxton Bay…";
e. The Claimant had previous dealings with the law firm of J. Clarence-Quamina & Co. who prepared the deed registered as No.

DE201402041044D001 and extracted the grant of representation; and

f. The Certificate of Payment and receipts for payment of Land and Building Taxes issued by the Inland Revenue Division of the Ministry of Finance were not in the Vendor's name."

29. Paragraphs 20, 21 and 22 stated:

"20. In breach of contract and/or negligently, The Legal Consultancy failed to exercise all proper skill and care, diligence and competence in and about the purchase and/or conveyancing of the Property.

PARTICULARS OF NEGLIGENCE

21. In breach of their implied duty and/or in breach of their said tortious duty of care, the First Ancillary Defendant:

a. failed to, notwithstanding the First Ancillary Defendant's knowledge of or notice of the matters set out at paragraph 19 hereinabove, to make any or any adequate investigations as to confirm the identity of the person purporting to transfer the property;
b. failed to advise the First Defendant/Second Ancillary Claimant of the several suspicious matters set out at paragraph 19 hereinabove;
c. failed to advise the First Defendant/Second Ancillary Claimant of his right to seek independent legal advice;
d. permitted the First Defendant/Second Ancillary Claimant to proceed with the purchase of the Subject Property without giving any or any adequate advice;

e. failed to undertake a diligent search to ensure good marketable title could pass from the person purporting to transfer the property;
f. failed to advise the First Defendant/Second Ancillary Claimant on all matters relevant to the purchase of the Subject Property; and
g. failed to provide the First Defendant/Second Ancillary Claimant with good marketable title to the Subject Property as a result of their failure to meet the standard of a reasonably prudent conveyance.

22. Had the first Ancillary Defendant acted competently it would have discovered and advised Keelan Aaron Hunte about the Vendor's identity and he would not have proceeded with the purchase."

30. These pleaded facts by FCB and Mr Hunte were the basis of their challenge to the conduct of Mr Beckles. FCB and Mr Hunte put in issue the question of Mr Beckles' investigation of the identity of the purported Mr John. This is reflected in the following pleaded facts: (1) the information provided "in respect of the fraudster was unsatisfactory"; (2) the fraudster had purported to be Mr John when he was not; (3) the suspicious circumstances included different addresses; (4) Mr Beckles' firm had relied on the identification provided by the real estate agent, (which was a scanned copy of his identification sent as an attachment to an email); (5) Mr Beckles failed to take steps to confirm that the fraudster was authorised to transfer; (6) Mr Beckles impliedly represented that they were satisfied with the information provided; (7) the vendor was not the same person as the Claimant; (8) the vendor had previously dealt with a different attorney; (9) Mr Beckles failed to make any or any adequate investigations to confirm the identity of the person; (10) Mr Beckles failed to advise on suspicious matters.

31. Based on these pleadings, Mr Beckles was able to put forward a full Defence explaining what he and his colleague had done. In that pleaded case, he asserted that Ms Pascall had examined the identification documents. Both he and Ms Pascall were satisfied, based on the identification documents, that the fraudster was in fact Mr John. The documents were also in evidence.

32. Thus, the issue of proof of identity was raised by Mr Hunte and FCB and whether Mr Beckles and Ms Pascall had done enough to verify his identity and whether on an examination of the documents, it was reasonable for them not to notice the various inconsistencies and discrepancies. It follows therefore that Mr Beckles and Ms Pascall were open to be cross-examined on whether they had noticed these inconsistencies and discrepancies. If they had not noticed these, it might follow that they were negligent not to have become suspicious and thus to advise Mr Hunte and FCB that there were suspicious circumstances regarding the identification documents. Thus, the ability of "the Mr John" (the fraudster) to pass good title was suspect.

33. While it might have been better to specifically set out in the statement of case what the actual discrepancies and inconsistencies were, the failure to do so was not fatal. All of the parties knew the identity of the fraudster was in issue. Identity is proved by identification documents. The scanned copies were in evidence. Cross-examination on the documents was therefore fair game. The thrust of the cross-examination was related to matters being drawn to the attorneys' attention which they ought to have noticed and become suspicious about. And the judge was entitled to consider the evidence which came out of cross-examination. It is noteworthy that both Mr Beckles and Ms Pascall on being cross-examined acknowledged these inconsistencies and discrepancies and Mr Beckles, at least, accepted some of them were suspicious circumstances. In this context, it is difficult to appreciate what difference particularising the issues with the identification documents would have made in the preparation of the case by Mr Beckles. It came down to whether they noticed these matters at the time of the transaction or they did not. The

question which the judge concluded on was, why did they not notice these matters at the time of execution?

34. The judge was therefore correct to regard the pleading point as not being a bar to cross-examination on the passport and identification card and on other inconsistencies in the documents used in the transaction.

The Authentication Point

Mr Beckles' Submissions

35. Mr Beckles presented submissions addressing the authenticity of the identification documents submitted by the fraudster. The first basis for objection was that neither Mr Hunte nor FCB had served a notice to prove the identification documents at trial. Consequently, they were deemed to have admitted their authenticity pursuant to Part 28.18(1) of the CPR. Furthermore, the parties had expressly agreed in their List of Agreed Documents that the identification documents were authentic. As a result, Mr Hunte and FCB were precluded from challenging the authenticity of these documents.

36. He submitted that by admitting the authenticity of the fraudster's identification documents, Mr Hunte and FCB were barred from asserting at trial that these documents were not genuine and were either forged or fraudulent. This was particularly relevant given that the authenticity of the documents had not been disputed in the pleadings. Additionally, the witness statements filed on behalf of Mr Hunte and FCB did not raise concerns about forgery, and trial preparations proceeded on the assumption that the authenticity of these documents was not in question.

37. Accordingly, Mr Hunte and FCB should not have been permitted to question the witnesses in a manner that implied the identification

documents were forged or fraudulent. They should also not have been allowed to rely on the content of the identification documents or this line of questioning to establish that the documents were fraudulent or that a reasonable and prudent legal practitioner should have been alerted to the risk.

38. Mr Beckles relied on a High Court case from Jamaica, **Jamaica Money Market Brokers Limited and JMMB International Limited v Pradeep Vaswani and Santoshi Limited [2012] JMCC Comm. No. 5(1),** per Mangatal J. on the meaning of the word authenticity, which held that in the absence of an application to prove a document that document was "prima facie admissible or presumed admissible, so far as their genuineness and validity (as distinct from their truth), go": para 8. In another case cited, **Nageh v David Game College Limited and Another [2013] EWCA Civ 1340** the question of the authenticity of a document arose where the defendant had admitted in his pleadings that it was his signature on the document and he failed to serve a notice to prove the document. Moore-Bick LJ determined that the authenticity of the document was not in issue when he stated:

> "19….The authenticity of the April 2005 document was not in issue. The Defendants had admitted in their defence that Mr Game had signed it and had not attempted to withdraw that admission or challenge the authenticity of the document until they made their application for permission to amend. They were, of course, entitled to dispute its meaning and effect, which they did in para 27 of the defence, but that is as far as it went. To deny that a document contains or evidences a legally binding agreement is quite different from disputing the authenticity of the document itself. Unless and until the Defendants withdrew the admission in para 14 of the defence they were not entitled to deny Mr Game's signature. Nor were they entitled to say that the document was no his, in the sense that he had not signed it and was not bound by its contents. In the ordinary way a person adopts and is bound by the contents

of a document to which he puts his signature. Of course, the Defendants would not be bound by the document if the words had been added after Mr Game had signed it and without his authority, but in that case it would be a forgery and not authentic. That is exactly the case that the judge had refused the Defendants permission to make.

20. For reasons which are unclear to me the judge failed to deal in his judgment with Mr Evans-Tovey's submissions about the authenticity of the April 2005 document and, moreover, failed to face up to the consequences of finding that Mr Game had not signed it. If he had done either of those things he would, or at any rate should, have realised that the Defendants were not entitled to dispute the authenticity of the document or contend that they were not bound by it. Contrary to Mr Gorton's submission, it would still have been open to them to contend that the document was of no contractual effect or did not bear the meaning which Ms Nageh attributed to it, but that is a different matter."

39. There is this useful passage taken from **Atkin's Court Forms, Evidence Vol 18 (4), 80 [2025 LexisNexis Subscriptions, 2nd ed.], Admission of evidence by agreement**, which sets out the different types of agreements relating to documents and what these represent:

"The most common method of admitting written hearsay in evidence is by agreement. It is in this way that evidence, other than experts' reports, are admitted every day, thus saving costs and preventing delay. No particular form is necessary, but it is important that there should be no ambiguity as to what is agreed. There are three types of agreement:

1. the parties may agree that a statement in a document should be agreed evidence upon the point,

neither party being able to controvert it by other evidence. This is the normal understanding when medical reports or similar are 'agreed'. If a party wishes to agree something less, they should make this clear. Where medical reports are incomplete or do not in fact agree, it is desirable that the doctors be called to give supplementary evidence;

2. the parties may agree that a statement in a document should be admissible in evidence, each of them being at liberty to controvert it by other evidence. This is seldom a wise form of agreement, unless, of course, the maker of the statement cannot be called as a witness, when it may be unavoidable. If there is to be controversy and the maker of the statement is available, they should be called. In particular, the court will often refuse to decide a controversy of medical or scientific opinion on written statements. Accordingly, it is wrong for parties to 'agree' medical reports from doctors who differ on a point of substance;

3. the parties may agree a document as a document. This dispenses of proof of its making and authenticity but does not make it admissible as evidence of the truth of its contents."

40. In this case, the agreement fell under the third point above. It was an agreement that the copy of the identity documents put before the court was an authentic document in the sense that it was what the parties all agreed were used in the transaction, but they were not admissible as evidence of the truth of its contents. Thus, the agreement did not mean that the respondents were agreeing that these were genuine identity documents issued by the respective government department and

verifying the truth of the information contained within the documents, such as that the photograph of the man shown was in fact Robert Ferguson John, born 14 May 1954 etc.

The Judge's Reasoning on the Authentication Point

41. The judge stated as follows:

> "44. The first basis for the Authenticity Objection was that, Mr. Hunte and FCB failed to serve a notice to prove the two forms of identification (ID's) at trial and as a consequence, they were deemed to have admitted their authenticity pursuant to Part 28.18(1) of the Civil Proceedings Rule 1998 (as amended) ("the CPR"). The parties to the Ancillary Claims in fact expressly agreed in their List of Agreed Documents that the IDs were authentic. As a consequence, Counsel submitted that the Ancillary Claimants were precluded from raising issues of authenticity with regards to the said IDs.
>
> 45. The Court in its resolution of this objection considered the purport and effect of Part 28.18(1) of the CPR and formed the view that in the absence of the filing of a notice to prove the authenticity of a disclosed document, there is a prima facie presumption that the document as disclosed, is genuine and valid.
>
> 46. On the factual matrix before this Court, it is evident that there is no dispute that the two forms of identification which were presented to verify the identity of the Fraudster were, in fact, the documents which were disclosed and used during the transaction. These were a purported copy of the biometric page from his passport and a copy of the Fraudster's National Identification Card. The Ancillary Claimant accepted the fact

that these disclosed documents were genuine in so far as they were the actual forms of identification which were presented and utilised during the course of the land transaction.

47. The said position does not however prevent an examination of the said documents so as to determine whether or not, on their face, they evidenced discrepancies and/or defects which ought to have raised concerns in the minds of the lawyers as to their bona fides or whether the careful, reasonable and prudent legal practitioner ought to have identified these visible defects or deficiencies and/ or whether these circumstances should have alerted such a careful practitioner that the said documents may have been forged and/ or were fraudulent.

48. The position advanced by the Ancillary/ First Ancillary Defendant on this issue is therefore simply devoid of merit. There was no dispute that the disclosed forms of identification were the actual documents which were presented by or on behalf of the Fraudster and that they were considered and reviewed before the transaction closed. The admission as to authenticity by the Ancillary Claimant, however, in no way prevented the Ancillary Claimant/ the First Ancillary Claimant from exploring the issue as to whether on the face of the said documents there were obvious or identifiable factors which were capable of signalling that the said presented documents may have been fraudulent. Consequently, this Court holds the view that, subject to its resolution of the Pleadings Objection, the questions asked during cross examination, in relation to the identification documents, were not asked in violation of Part 28.18 (1) of the CPR and they may provide invaluable assistance to the Court."

Did the agreement on admissibility of the identification documents prevent cross-examination and reliance by the judge on their content?

42. The essential point raised by Mr Beckles is the effect of the respondents agreeing to the copies of the identification card and passport going into evidence. This is distinct from them agreeing to the actual physical identification card and passport going into evidence. Neither of these original items were produced or put into evidence at the trial. By not objecting to, or alternatively, by agreeing to the documents, had the same effect. This allowed the scanned copies of the documents to go into evidence without the documents having to be proved in the usual way by calling the maker of the documents. The maker of these documents was the person who made the scanned copies, not the maker of the original actual identification card or passport. If the actual identification card and passport were produced at the trial, the makers of those documents, which would be a relevant officer from the Elections and Boundaries Commission (EBC) and the Immigration Office respectively would have been required to attend to prove the authenticity of the documents, if they were not agreed. If they were agreed, there would be no need for the relevant officers of the EBC or the Immigration Office to appear.

43. The context of the document in question is relevant. The above is stated to make the point that all that agreement as to "authenticity" means in the context of this case is that these are the documents which the parties assert were used in the transaction. In this case, it was scanned copies of both documents. As the reservation in parenthesis in the **Jamaica Money Market** case identified, it did not prove the "truth of the content" of the document. As that applies to this case, the agreement did not mean that these were scanned copies of a **genuine** identification card and passport. It also did not automatically mean that the information contained in the document was true (the truth of the content). It was not an admission that the identification documents were genuine in the sense that they were true, valid identification documents properly issued by the respective government departments. It was simply an acknowledgment by all the parties that these were the documents used in the transaction.

44. It did not erase the pleaded case that the man who presented himself as Mr John was not fraudulent. It also did not mean there was an acceptance that identity was not an issue. If this was the effect of admitting them into evidence, there would have been no need for a trial because this would mean the respondents had conceded that the actual identification cards and passport were genuine and had been issued to "the Mr John" who had presented himself as the real Mr Robert John, the owner of the property.

45. The **Nageh** case is a different case from the present one. In that case there was acceptance on the pleadings that the document was signed by Mr Game. The signature was his. Thus, the document was genuine as opposed to a forgery. There was not by that admission acceptance necessarily that the content of the document was in fact true or that the document had a particular meaning, but only that the document had been signed by him and was authentic and valid as opposed to being a forgery.

46. The difference with the present case is that here the parties were accepting that these were the genuine scanned copies presented, whether or not they were in fact truthful documents. No parallel of a signature was in issue.

47. The judge was therefore correct to rule in the manner he did, which was to allow interrogation of the genuineness of the identification documents and to rely on the evidence given on this.

Was negligence proved in the circumstances of this case?

48. The third basis of the appeal challenged the judge's finding that Mr Beckles was negligent. Mr Beckles submitted that the judge, having wrongly taken account of the "new suspicious matters", the finding of negligence was based on a wrong premise. I have already addressed the issue whether the judge was entitled to consider these matters.

49. It is well established that an appeal court will not lightly overturn a judge's findings of fact unless it can be shown that the judge took account of materially irrelevant evidence, failed to take account of materially relevant evidence, misconstrued the evidence or the analysis was demonstrably unreasonable: **Beacon Insurance v Maharaj Bookstores Limited [2014] UKPC 21**, and other cases.

50. I will therefore set out the key findings of the judge on negligence.

The Judge's Findings and Conclusions on Negligence

51. At paragraph 2 of his judgment, the judge noted that the principal facts were not in dispute. From paragraphs 15 to 41, he summarised the evidence of both sides. The judge, in particular, summarised the evidence of both Ms Pascall and Mr Beckles at paragraphs 35 to 40, including admissions. This included their evidence on being taken through the inconsistencies in the case related to the identification documents but also signatures, spellings of names, differences in addresses and the manner in which the transactions were handled. He then came to general principles of law, findings of fact and conclusions based on applying the law to the facts as he determined them.

52. The general principles of law applied by the judge can be gleaned from the following paragraphs:

> "65. The ordinary duties of an Attorney-at-law in a conveyancing transaction were examined by the Court in the cases of **Prestige Properties Ltd v Scottish Provident Institution and another [2002] EWHC 330 (Ch)** and **Patel v Freddy's Ltd and others [2017] EWHC 73 (Ch).**
>
> 66. In *Prestige* (supra) Mr. Justice Lightman said at paragraph 45:

> "First a solicitor should not be judged by the standard of "a particularly meticulous and conscientious practitioner. The test is what the reasonable competent practitioner would do having regard to the standards normally adopted in the profession": per Oliver J in Midland Bank v. Hett Stubbs & Kemp [1979] Ch 384 at 402-3. Second in determining whether a solicitor has exercised reasonable skill and care, he should be judged in the light of the circumstances at the time. His actions and advice may with the benefit of hindsight be shown to have been utterly wrong, "but hindsight is no touchstone of negligence": Duchess of Argyll v. Bueselinck [1972] 2 Lloyds Rep 172 at 185."

67. In *Patel* (supra) the Court was concerned with the obligations of a Solicitor to check the identity of a vendor. Bearing in mind the "know your client" procedure which was required by the money-laundering legislation in the United Kingdom, Cook J. accepted that it was the task of the vendor's solicitor to check the identity of his or her client so as to establish not only that the vendor's name was what the vendor said it was but also that the vendor was really the owner of the property to be transferred. The judge accepted that it was not the normal professional practice for a purchaser's solicitor to check the identity of the vendor unless there were special circumstances that would have justified him so doing.

68. Based on the law as outlined in *Prestige* (supra), the prevailing test in relation to skill and care requires consideration as to what the reasonable and competent practitioner would do having regard to the standards which would normally be adopted in the profession. The requisite degree of care must also be measured as against the operative circumstances at the material time.

69. Lawyers have a duty of care towards their clients and they must exercise a reasonable degree of caution and skill in the discharge of their professional obligations. When they act for purchasers, they must ensure that the legal and full equitable ownership of the acquired land is transferred to their client."

53. The key findings of fact by the judge included:

"81. On the operative facts, the Fraudster was not represented by an attorney but by a real estate agent. The Legal Consultancy had a pre-existing working relationship with this real estate agent and there is no evidence which suggests that this real estate agency was operated by an attorney-at-law.

…

85. The evidence in this matter revealed that on the face of the identification documents which the Fraudster presented, there existed inconsistent information which was readily ascertainable upon a visual review of same. There was a discrepancy between the serial number placed on the biometric page of the passport and the machine readable number endorsed on the bottom of the said passport page. This discrepancy was significant and did not require a forensic analysis to be identified. It was readily obvious once one carefully inspected the said document. Mr Beckles and Ms Pascall both accepted that they had not seen the discrepancies at the material time and they acknowledged that if they had noticed same their suspicion would have been aroused. It is rather unfortunate and in fact unacceptable, that a closer examination of the document was not engaged before the transaction was concluded.

…

87. There was also an unusual and unexplainable similarity between the photograph which appeared on the Passport and the photograph on the Fraudster's National Identification Card.

88. For all legal transactions the signature or mark of the contracting party is usually required. The evidence established numerous obvious differences in the various signatures which the Fraudster appended to the various documents which he signed during the course of the transaction. These variances were as follows:

a. The signatures on the Deed of Conveyance, appears to contain two “T”s in the name ‘Robert’ and the second letter in the name ‘Ferguson’, appears to resemble an “o” and not an “e”.
b. The signatures on the Identification card and Passport appear to be carbon copies.
c. The aforementioned signatures when compared against the signatures in the agreement for sale and deed of conveyance are very different.
d. The signature on the letter from Robert John addressed to The Legal Consultancy authorizing payment to KL appears to be spelt as ‘Ferugson’ and not ‘Ferguson’.
e. The name and signature on the “Know Your Client Form” is spelt as ‘Robert Furgson John’ and at the end of the same document the signature is different again and appears as ‘Robert Fougson John’.

89. There were evident variations in the manner in which the Fraudster spelt his name and to even the untrained eye, the various signatures bore distinct differences. These variances were readily noticeable and any reasonable person looking at the various signatures must have reasonably realised that it was highly unlikely that an individual would misspell or misstate his or her name. The variations which existed as between the various signatures which the Fraudster affixed to the various documents which The Legal Consultancy had in its possession,

ought to have alerted the careful, thorough and vigilant practitioner that something was awry. The Legal Consultancy abdicated its responsibility to its clients, engaged in shoddy work and as a consequence failed to protect Mr Hunte's interest or FCB's interest. The lawyers did not properly investigate the identity of the Fraudster and they did not detect the significant discrepancies which ought to have alerted them as to the bona fides of the Fraudster.

90. The evidence further established that the various documents which formed part of the transaction referenced various addresses. In the agreement for sale the Fraudster's address was stated as 2122 Clifton Street but in the release of funds consent it was stated as 21-22 Clinton Hill. These addresses were also different from the address stated in the deed by which the land was vested in the Claimant. The differences as it related to the Fraudster's address were material and substantial. These discrepancies should have been detected by the lawyers who acted for The Legal Consultancy and they should have aroused their suspicion."

54. The conclusions of the judge applying the general legal duties to the role performed by Mr Beckles and his firm included:

"82. …..In a conveyancing transaction the attorney acting on behalf of the purchaser has an obligation to ascertain that the person purporting to sell the land has the interest and title to do so and reasonable certainty as to the identity of the vendor is an integral part of this obligation. Where the vendor is legally represented the obligation as to identity verification should not be as heightened as there is an expectation that the vendor's attorney, as a minister of justice, an officer of the court and one who is bound by the provisions of the Legal Profession Act, would verify the identity of the vendor.

83. Where however, the vendor is not legally represented, greater caution must be exercised so as to establish the *bona fides* of the vendor.

…

86. …. A lawyer involved in a conveyancing and mortgage transaction should undertake a careful examination of the presented forms of identification so as to be satisfied as to the identity of the parties and it is unacceptable that a careful and critical review of the documents was not engaged. If such a review was undertaken, it is likely that a professional who was exercising due care and skill so as to protect the best interest of his/ her client would have formed a suspicion as to the validity of the presented identification documents.

…

91. When all of the aforementioned matters are taken together and they are juxtaposed as against the wave of unlawful conduct which prevails in this society, there existed an evident requirement for the exercise for vigilance so as to protect the best interest of the purchaser and there was an egregious failure by The Legal Consultancy to discharge its professional and fiduciary obligations towards Mr Hunte and FCB.

…

94. On the totality of the information which was available prior to the execution of the deed and mortgage, there were a plethora of red flags which signalled that caution was required with respect to the identity of the Fraudster and his connection with the land which was purportedly conveyed to Mr Hunte. Given the existence of the unusual and special circumstances which were reasonably ascertainable, the lawyers for The Legal Consultancy had an obligation to undertake a thorough review so as to determine the true identity of the Fraudster and more particularly to satisfy themselves that the said individual was vested with the interest in the subject land to be conveyed and

over which FCB was advised to hold a mortgage. A reasonable and competent attorney equipped with the totality of the information with which Ms Pascall and Mr Beckles were furnished would have identified these warning flags once a meticulous examination of the available documents was engaged. On the evidence, the Court is resolute in its view and finds as a fact that Ms Pascall and/or Mr Beckles were negligent in their failure to alert the First and Second Ancillary Claimants as to the risk of fraud."

Discussion

55. Mr Beckles does not take issue on the appeal with the applicability of the tests outlined in the cases of **Prestige Properties** and **Patel** quoted from above. The test the judge was required to apply was that the conduct of the attorney at law was to be judged to "the standard of what the reasonably competent practitioner would do having regard to the standards normally adopted by the profession". The standard was not that of a "particularly meticulous and conscientious practitioner": **para 11: 087, Jackson and Powell on Professional Liability, ninth edition, 2022, Sweet & Maxwell / Thomson Reuters**.

56. The issue taken is with the judge taking account of the evidence which he did and the conclusions the judge drew from these findings of fact as they relate to the duties imposed on Mr Beckles. In other words, Mr Beckles suggests that the judge overstated the obligation his firm had as attorneys at law to Mr Hunte and FCB to do more to ascertain or confirm the identity of the vendor.

57. The judge was quite entitled to consider the evidence put before the court on the identification documents and the discrepancies in the signatures, spelling of names and addresses. The evidence, in particular the cross-examination, naturally flowed from the pleaded cases and the issues brought out by the parties. Identity of the vendor was put in issue by the

inconsistencies and discrepancies identified by the judge and recited above. The circumstances of this case demanded an enquiry to confirm the identity of the vendor.

58. The judge took account of relevant evidence which largely included the transaction documents used. He did not take account of irrelevant material. The judge did not misconstrue the evidence, but carefully summarised it and recited the key findings in his judgment. His conclusions were entirely reasonable having regard to the totality of the evidence.

59. There were multiple failings by Mr Beckles and Ms Pascall when all of the evidence is considered.

60. First, they failed to properly scrutinise the identification documents. As the judge noted, a careful examination of these documents would have revealed errors. There was no need for forensic analysis of them. It ought to have been apparent on examination that the photograph used was the same on both the identification card and the passport. There was a discrepancy on the letters preceding the passport number between "TA" and "TB" on the same page. The signatures on the passport and identification card appeared to the judge to be a "carbon copy". These were specific findings of fact.

61. Second, they failed to observe other errors on key documents. The judge identified the spelling differences in different documents. As the judge observed, one would expect a person to know how to spell his name. The judge found that the variations would be visible to "even the untrained eye". This was another specific finding of fact.

62. Third, they failed to observe other discrepancies on key documents. This included differences in addresses and numbering.

63. This cumulatively led to an inadequate executing process to verify the true identity of the vendor leading to the failure to adequately protect the purchaser and the mortgagor. The judge found these discrepancies ought to have been capable of discernment to even the untrained eye.

64. I wish to add, that while the judge did not specifically make a finding of fact to this extent, it does seem probable that the original passport and identification card were not produced by the purported vendor, even though Mr Beckles and Ms Pascall said they were. I have concluded this based on the printed record of the documents and the responses in cross-examination. It is common knowledge, of which a court can take judicial notice, that identification cards and passports will carry different photographs since these photographs are taken by the Passport Office and the Elections and Boundaries Commission separately. Thus, the exact photograph will not be used on both documents. The lack of genuineness of these documents would have been easier to detect by looking at the actual passport and identification card. What seems more likely is that the attorneys relied on the scanned copies of the identification documents provided by the real estate agent. This particularly arises from the evidence Ms Pascall gave in cross-examination to Mr Kelly on 24 April 2023 that she chose to annex what was provided by the Real Estate Agency, Kataar, as opposed to the copy of the original identification documents she said was produced to her on the day of execution. She also spoke of printing the identification documents from an email copy (Core Bundle, page 417). This would have been from the email sent by Mr Boodoo of Kataar. If she had taken copies of the actual identification documents of the fraudster, those ought to have been put into evidence. The failure to produce those copies of documents can lead to an inference that copies of the actual documents were not made. If the actual identity documents were produced, a reasonably competent attorney would make a copy of them. But I hasten to add that this is an additional point and does not take away from the force and sustainability of the judge's findings independent of this point. Producing the original documents is an important part of the verification exercise for attorneys.

65. There were two principal failings. One was the failure to notice fairly obvious errors and inconsistencies. Two, there was no questioning of the vendor about these errors and inconsistencies. This led to the ultimate failure to advise both Mr Hunte and FCB that there were "red flags" or questions about the vendor's identity. Mr Beckles was required to ensure that the vendor was providing good title. Establishing good title included the responsibility to examine relevant documents to establish that the vendor was capable of passing good title to the purchaser. Identity was a key component of this requirement. The failings here denied Mr Hunte good title and exposed him to make mortgage payments to FCB with no benefit since the title passed to him was defective. FCB advanced money to Mr Hunte for the purchase of the property, which was, in these circumstances, unsecured.

66. A reasonably competent practitioner would have examined the identification documents carefully. Such a practitioner would also scrutinise the documents produced or generated during the transaction and notice fairly obvious discrepancies as identified by the judge. As the attorneys involved in the transaction accepted on being cross-examined, had they noticed these discrepancies, this would have led to suspicion on their part.

67. This is not to say that an attorney will in all cases be able to detect a fraudulent document by even looking at the actual document as opposed to a scanned copy. But, as the judge found, there were several discrepancies here which ought to have been picked up by even the untrained eye, without forensic examination. Identity fraud is becoming more sophisticated as time passes. The use of electronic documents provide an easier opportunity for forged documents to be generated and used. The need for reasonable verification steps becomes all the more necessary.

68. In transactions overseen by attorneys-at-law, verification of the identity of the parties is a critical aspect of modern practice. This is particularly

the case given the rise of identity theft and fraudulent transactions in this jurisdiction, which were well known at the time of this transaction. In cross-examination, Mr Beckles admitted that at the time of this transaction he was aware of recent cautions made by the Law Association of Trinidad and Tobago about the need for carefulness having regard to the increase in fraudulent land transactions. At the appeal, Counsel provided us with a document entitled, "Fraud and Identity Theft in Conveyancing Transactions and Certifications of Title to Property" dated 2 May 2019, circulated by the Law Association at the time. A few extracts from that document are of relevance in considering the standard that the governing body was suggesting was good practice and the risks and concerns which led to this. These included:

> i. "In recent times members of the Corporate Commercial and Conveyancing Committee of the Law Association… have observed an increasing number of questionable transactions involving the sale and purchase of real estate in Trinidad and Tobago."
>
> ii. "Possible methods whereby fraudulent misrepresentation can be utilized to commit fraud in relation to real estate include the following:
>
> a. Identity Theft:
>
> i. **Where the so-called "Vendor" uses false identification documents to impersonate the true Owner.**
>
> The so-called "Vendor" would falsely represent that he is the Owner of the property and present forged identification documents e.g. a National Identification Card, a Driver's Permit or a Passport."
>
> iii. "**a. Before Purchasing Property, Purchasers should engage in Preliminary Investigations and due diligence**
>
> ii. Obtain or ensure that your Attorney-at-Law obtains from the "Vendor" at least two originals and copies of documents to verify the Vendor's identity which are from a reliable and

independent source e.g. ID, Driver's Permit as well as Utility Bills, Banker's Reference;"

iv. "iii. Scrutinize these documents to see if there is evidence they are not authentic –check their dates of issue – for example, these ought not to be a weekend or public holiday; also look for evidence that it may have been tampered with."

v. "iv. Request from the "Vendor" copies of any Deeds or Title Documents to the property and ensure that utility bills in his name;"

vi. "vii. Compare the signatures of the Vendor in different documents."

vii. Under "Red Flags" was noted: "j. "Vendor's area of residence is not consistent with other profile details, such as employment."

These transactions occurred shortly after this document was circulated. Thus, Mr Beckles and Ms Pascall ought to have been aware of the increase of fraudulent land transactions and the need to ensure there was careful investigation and caution regarding the documents presented by the apparent vendor in this case, particularly as they were the only attorneys involved in these transactions.

Separate Representation

69. The only attorneys involved in this transaction were Mr Beckles and Miss Pascall of The Legal Consultancy. They had a relationship it seems with Mr Boodoo of Kataar Real Estate Agency. Kataar, it turns out, was acting for the fraudster vendor. In his witness statement, Mr Beckles stated at paragraph 4: "On 3rd October 2019 I received an email from Kevin Boodoo of Kataar Limited, an estate agent purporting to act on behalf of one Robert John ("the Vendor"). The email instructed The Legal Consultancy to prepare an agreement for sale…". Hence, Mr Beckles received documents from Kataar to prepare the agreement for sale. Mr Beckles

stated at paragraph 9 of his witness statement that the purchaser (Mr Hunte) retained his firm to act on his behalf by email of 7 November 2019. This was to do a search and to act in relation to the agreement for sale. By email of 22 November 2019, Mr Beckles was then retained by FCB to prepare the mortgage of the property.

70. In this jurisdiction, the purchaser usually pays for the preparation of the agreement for sale. Thus, strictly speaking, Mr Beckles was retained by Mr Hunte. There is no evidence that Mr Beckles was paid by the fraudster or Kataar. However, he accepted that he was "instructed" to prepare an agreement for sale.

71. The consequence of this was that there was no different attorney at law engaged in this transaction which, had that happened, might have established a degree of independence between the interests of Mr Hunte and the fraudster and between Mr Hunte and FCB. A separate attorney acting for the vendor would have had to establish the identity of his client for the purposes of the transaction, but also for other purposes related to laws on money laundering in property transactions. This would not take away from the obligation of the attorney acting for the purchaser or the mortgagor to take reasonable steps to verify the identity of the vendor to ensure that good title was being passed to the purchaser or that the mortgage was being properly secured. It is prudent and wise that different attorneys should act for a vendor and purchaser. Where this is not the case, the purchaser's attorney will be called upon to be extra vigilant to ensure the identity of the vendor in the transaction.

Conclusion

72. There is therefore no basis to disturb the findings of the judge on negligence. There was also no error of law, as the judge applied the correct legal test on negligence. His rulings on the pleadings, the admissibility of documents and the permissible ambit of cross-examination were in keeping with the law. His findings of fact are

justifiable on the evidence before him. The appeal is therefore dismissed and the orders of the judge affirmed. We will hear the parties on the costs of the appeal.

Ronnie Boodoosingh

Justice of Appeal

I have read the judgment of Boodoosingh JA and I agree with it.

Maria Wilson

Justice of Appeal

I too have read the judgment of Boodoosingh JA and I agree with it.

Geoffrey Henderson

Justice of Appeal