



[2024] JMCC COMM. 47

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE COMMERCIAL DIVISION

CLAIM NO. SU2022CD00436

BETWEEN	NATIONAL FUELS & LUBRICANTS	CLAIMANT
AND	TOTAL JAMAICA LIMITED	1ST DEFENDANT
AND	PETER ASHER	2ND DEFENDANT

Mr. Keith Bishop, Ms. Shanique Scott and Mr. Janoi Pinnock, instructed by Bishop & Partners, Attorneys-at-law for the Claimant

Mr. Maurice Manning KC, Mrs. Caroline Hay KC, Ms. Allyandra Thompson and Ms. Alexandria Fennell instructed by Nunes, Scholefield, Deleon & Co. Attorneys-at-law for the 1st and 2nd Defendants

Civil procedure- Sections 152, 158, 162 and 168 of the Registration of Titles Act- Sections 3, 4 and 27 of the Limitation of Actions Act- Whether the Claim is statute barred-Whether the Defence of laches is available-Whether properties owned by the Claimant were fraudulently transferred to the 1st Defendant- Evidence of handwriting experts

IN OPEN COURT

Heard on: 15th -16th, 22nd, 29th and 30th April, 1st- 3rd, 7th and 30th May, 6th, 14th, 18th, 26th and 27th June, 27th September, 7th October and 19th December, 2024

STEPHANE JACKSON-HAISLEY, J

INTRODUCTION

- [1]** The Claimant, the National Fuels and Lubricants Ltd (NFL) had been operating in Jamaica for some time under the leadership of Mr Roylton DeCambre. He was the Chief Executive Officer of NFL and had been engaged in the business of operating a number of service stations at locations across Jamaica with six of them being in the Corporate Area and the others outside the Corporate Area. Mr DeCambre was the majority shareholder and was in charge of the operations of NFL. In around September 2003, he decided to sell his service stations due to his declining health. He entered into negotiations with his former employers Shell Co (WI) Ltd. to sell the service stations. However, the negotiations with Shell Co did not proceed and thereafter Total Jamaica Limited (Total), the 1st Defendant entered the picture and negotiations followed.
- [2]** The Claimant and the 1st Defendant entered into a transaction in which the 1st Defendant agreed to purchase the Claimant's eight service stations and other assets. The 2nd Defendant Mr Peter Asher was at all material times the Company Secretary of the 1st Defendant and an Attorney-at-law. It is the essence of the Claimant's claim that the eight properties were fraudulently transferred to the 1st Defendant without the Claimant being paid and that it was the 2nd Defendant who fraudulently executed the Instruments of Transfer.
- [3]** The claim is to recover damages for fraudulent execution of Instruments of Transfer and the transfer of titles belonging to the Claimant into the name of the 1st Defendant. The Claimant alleges that the signatures on the Instruments of Transfer purporting to transfer properties registered at Volume 1285 Folio 692, Volume 1340 Folio 602, Volume 1189 Folio 944 and 945, Volume 1208 Folio 452, Volume 1046 Folio 213, Volume 1114 Folio 215, Volume 1116 Folio 467, Volume 798 Folio 26, 27, 29, 30 and 32 are not his and as a result of the fraudulent transfers, he has suffered loss and incurred expense.

[4] The Defendants deny that the properties were fraudulently transferred and have instead countered that the Claimant wilfully and with the assistance of Attorneys-at-law who guided him through the process, transferred the properties with full knowledge, settled debts outstanding to other entities pursuant to a Settlement Agreement and the balance sale proceeds paid over to the Claimant's then Attorneys-at-law.

THE CLAIMANT'S CASE

[5] I will provide a summary of the evidence given from the witnesses who testified on behalf of the Claimant.

[6] Mr. DeCambre in his evidence stated that in 2003 he decided, due to ill health, to sell his gas stations located at:

- a. Holland Bamboo
- b. Bog Walk
- c. Harbour View
- d. Heroes Circle
- e. Stanton Terrace
- f. Mona
- g. Washington Boulevard; and
- h. Marcus Garvey Drive.

[7] He asserted that he was introduced to the General Manager of Total, Mr. Luc Maiche and several verbal agreements were arrived at which included negotiations with NFL's dealers to sign 10-year agreements to continue with Total. Mr. DeCambre stated that even though he had reservations, he proceeded with the sale to Total and received a payment of Four Million, One Hundred Thousand United States Dollars (US\$4,100,000.00) for Goodwill, a non-compete agreement,

the trade name of NFL and gas station equipment in dealer outlets. During cross-examination, Mr. DeCambre admitted receiving the agreed payment however, contended that this payment had nothing to do with the sale of the properties owned by his companies.

[8] Mr. DeCambre averred that the 2nd Defendant, Mr. Asher, subsequently attended his office with documents for him to sign and he commenced executing the top document, however he questioned why Mr. Asher had the documents and not Mr. Phillipson. He also asked about the verbal agreement for the sum of Six Million United States Dollars (US\$6,000,000.00) to be paid “under the table” which represented a payment for the eight gas station at land only value and at that point, he hesitated to sign any further documents but proceeded to make a call to Mr. Phillipson. He then observed Mr. Asher leaving the building with the documents.

[9] Mr. DeCambre stated that sometime later he became suspicious that Total had taken possession of the gas stations and to confirm his suspicions, he visited some of the gas stations but was refused entry by armed security and police men. He stated that he visited the National Land Agency (NLA) and obtained copies of the titles for the properties owned by NFL, Decvale and RD’C which showed that they were fraudulently transferred to Total. Mr. DeCambre contended that he did not sign the transfers, neither did he affix the company seal to those documents. He stated that he obtained the services of three (3) different forensic document examiners who all confirmed his suspicion that the signature and seal on the Instruments of Transfer were fraudulent.

[10] He stated that after years of enquiry about the matter, in or about November 2018 he found out that an escrow account held at the National Commercial Bank on Constant Spring Road, St. Andrew had fraudulent signatures of his then Attorney-at-law and there were several fraudulent instructions for withdrawals for payment to Mr. Asher and the Stamp Commissioner for stamp duty and transfer tax for the gas stations. He contended that Mr. Asher has not accounted for several

withdrawals from the escrow accounts which were subsequently deposited to his account at another bank.

- [11] Mr. DeCambre asserted that the property located at Holland Bamboo had no registered title however, it was transferred in 2018 to Total by way of a Power of Attorney for which he gave no instructions. He refuted the evidence of Ruth Baker and June DaCosta and stated that he never met these individuals, nor did he give instructions regarding a Power of Attorney.

- [12] He contended that NFL and his family suffered significant financial loss including loss to the values of the properties, income from selling petrol, operating food marts and rental income for the ATMs at the stations. He stated further that he lost his house, his family and his wife; and his children had to drop out of school because he was left with no income to provide for his family.

- [13] During cross-examination, Mr. DeCambre made several contradicting statements. He indicated that the Agreement for Sale attached as "NFL1" to the Particulars of Claim is fraudulent as he didn't sign the mentioned agreement but was simply following his Attorney's instructions to sign the Particulars of Claim.

- [14] He stated that some of the information in the police reports given to the Fraud Squad had incorrect information and he was simply asked to sign typed statements after the police took the statements in writing. Mr. DeCambre contended that Detective Sergeant Garfield Livingston incorrectly stated in the statement given on July 9, 2019 that he signed a Sales Agreement with Ms. Sandra Morris on January 22, 2004 to sell the eight (8) service stations to NFL for Two Million, Two Hundred and Forty-Nine Thousand, Nine Hundred and Ninety-Nine Dollars and Ninety-Nine Cents (\$US2,249,999.99). Mr. DeCambre admitted that he made no amendments to the incorrect information in the police report though he made other visits to the Fraud Squad subsequently and made other reports.

- [15] When pressed by King's Counsel Mr. Manning, Mr. DeCambre stated that he pursued a criminal case against Mr. Asher when he found out that the documents were fraudulently executed and that he did not commence a civil claim though he discovered the fraud some time in 2004. He admitted to executing an affidavit filed on August 25, 2004 by Usim Williams & Co in an injunctive claim. He however, denied making any of the payments mentioned therein to dealers to terminate their franchise, denied knowledge of payment of stamp duty and transfer tax and further denied knowledge of payment to staff for redundancy payments which were outlined in the affidavit. Mr. DeCambre denied engaging the services of Myers, Fletcher & Gordon to conclude the sale of the service stations and indicated that he did not provide instructions on how the settlement sum should be apportioned.
- [16] Mr. DeCambre denied instructing Mr. Stephen Shelton KC to write to Total regarding a billboard and an air conditioning unit left at the Harbour View location, denied executing an Agreement dated August 30, 2006 for the completion and finalisation of the Sale and Purchase agreement entered into on January 22, 2004 for the billboard and air conditioning units. He further denied providing instructions regarding the withdrawal of the claim. Mr. DeCambre contended that he gave no instructions to Mr. Shelton KC to stamp or record a Power of Attorney that was allegedly given by his 84-year-old mother. King's Counsel Mr. Manning requested that a Witness Summons be issued for Stephen Shelton KC. The Court allowed the Witness Summons to be issued, and Mr Shelton came and gave evidence on behalf of the Defendants.

Evidence of Peter Shoucair

[17] Mr. Shoucair who was summoned to give evidence regarding his witnessing of documents executed by Mr Asher asserted that he has known Mr. Asher for in excess of fifty (50) years and is well acquainted with his signature. He further asserted that over time, documents were sent to him by Mr. Asher for witnessing and since he is well acquainted with Mr. Asher's signature, he witnessed the documents without him being present. He also gave evidence that Mr DeCambre did not sign the documents in his presence. Mr. Shoucair accepted that he was cautioned against that practice and has now resorted to making a note of all items witnessed.

Expert evidence of Sergeant George Dixon

[18] After strenuous objections from King's Counsel Mrs. Caroline Hay, the Court admitted four (4) expert reports of Sergeant George Dixon, one of the Questioned Documents Examiners engaged by Mr. DeCambre. Each of the reports have some amount of similarities in the assessment of known and questioned documents, however each will be discussed in turn below.

[19] In his report labelled Exhibit D (1), Sergeant Dixon stated that the following documents were received on May 2, 2019 and June 4, 2019 for identification and comparison purposes at the Questioned Documents section from Mr. Roylton DeCambre:

Known handwriting

- i. One government of Jamaica Drivers licence bearing known specimen handwriting/signatures of Julia D'Cambre issue dated 16-01-2014 ("K1A")
- ii. One Elector ID card bearing known specimen handwriting/signatures of Julia D'Cambre issue date 16-01-2014 ("K1B")
- iii. One Government of Jamaica application for motor vehicle transaction bearing known specimen handwriting/signature of Julia D'Cambre ("K1C")

- iv. One sale agreement between first choice auto and Julia D'Cambre bearing known specimen handwriting/signatures of Julia D'Cambre dated 29-02-2008 ("K1D")
- v. One Mutual Security Bank Ltd Cheque #0000023000 bearing known specimen handwriting/signatures of Julia D'Cambre dated 23-03-1995. ("K1E")
- vi. One Royal Bank of Jamaica cheque #0000473900 bearing known specimen handwriting/signatures of Julia D'Cambre dated 6-05-1988 ("K1F")
- vii. One legal size paper bearing known specimen handwriting/signatures of Roylton D'Cambre dated 2-05-2019 ("K2")
- viii. Two legal size paper bearing known specimen handwriting/signatures of Roylton D'Cambre dated 24-10-2014 ("K2A-B")
- ix. One legal size paper bearing known specimen Seal of RD'C International Limited dated 4-06-2019 ("K3")
- x. One letter size paper bearing known signature/handwriting Specimen of Peter Asher dated 29-04-2019 ("K4")
- xi. One letter size paper bearing known specimen Seal of National Fuels & Lubricants Limited dated 27-10-2014 ("K5")

Questioned Documents

- i. One Power of Attorney bearing purported handwriting/signatures of Roylton and Julia D'Cambre dated 18-09-2006 ("Q1")
- ii. One Instrument of Transfer Volume 1340 Folio 602 bearing purported handwriting/signatures Roylton D'Cambre dated 25-02-2004 ("Q2")
- iii. One Instrument of Transfer Volume 1208 Folio 452 bearing purported handwriting/signatures of Roylton D'Cambre dated 25-02-2004 ("Q3").
- iv. One Instrument of Transfer Volume 1046 Folio 213 bearing purported handwriting/signatures of Roylton D'Cambre dated 24-02-2009 ("Q4")
- v. One Instrument of Transfer Volume 1362 Folio 857 bearing purported handwriting/signatures Roylton D'Cambre dated 26-04-2004 ("Q5")

- vi. One Instrument of Transfer Volume 1208 Folio 452 bearing purported handwriting/signatures of Roylton D'Cambre dated 25-02-2009 ("Q6")
- vii. One Instrument of Transfer Volume 1114 Folio 215 bearing purported handwriting/signatures of Roylton D'Cambre dated 25-02-2004 ("Q7")
- viii. One Instrument of Transfer Volume 1285 Folio 692 bearing purported handwriting/signatures of Roylton D'Cambre dated 25-02-2004 ("Q8")
- ix. One Instrument of Transfer Volume 798 Folio 26, 27, 29, 30 and 32 bearing purported handwriting/signatures of Roylton D'Cambre dated 25-02-2004 ("Q9")
- x. One Instrument of Transfer Volume 1189 Folio 944 and 945 bearing purported handwriting/signatures of Roylton D'Cambre dated 25-02-2004 ("Q10").

[20] Sergeant Dixon opined that after carefully examining and comparing the documents, it is his professional opinion that:

- i. The document labelled Q1 as Roylton and Julia D'Cambre is not identified to have been signed by one and the same author of documents labelled K1A-F and K2-K2A-B.
- ii. The signature appearing for Roylton D'Cambre on documents labelled Q1, Q2, Q3, Q4, Q6, Q7, Q8, Q9 and Q10 is not identified to be signed by one and the same person as documents labelled K2-K2A-B.
- iii. The seal appearing on the documents labelled Q1, Q2, Q3, Q4, Q6, Q7, Q8, Q9 and Q10 is not identified to be one and the same Seal appearing on the document labelled K3 (RD'C INTERNATIONAL LIMITED)
- iv. The Seal appearing on documents labelled Q2, Q3, Q4, Q6, Q7, Q8, Q9 and Q10 is not identified to be one and the same Seal appearing on documents labelled K5 (NATIONAL FUELS & LUBRICANTS LIMITED).
- v. The handwriting appearing on the left on documents labelled Q2, Q3, Q4, Q6, Q7, Q8, Q9 and Q10 and also that of the writing of the names on documents labelled Q1 (Julia D'Cambre and Roylton D'Cambre) and Q5,

appears to have been written by one and the same person as the author of the handwriting appearing on document labelled K4; written out as Peter J Asher Attorney at Law.

vi. Document labelled Q5 is Identified to be signed by one and the same Roylton DeCambre author of document labelled K2-K2A-B.

[21] He also noted that the names appearing on document labelled Q1 at the section signed, sealed and delivered by Roylton D’Cambre and Julia D’Cambre is written by one and the same person as the author of the written name Peter J. Asher Attorney-at-law at Q5 and K4. He further opined that signs of forgery are present in the execution of the signature, the signatures reflect poor line quality and that this is a case of simulated forgery.

[22] In his report labelled Exhibit D (2), he stated that the listed documents were received on May 2, 2019 for identification and comparison purposes from Mr. Roylton D’Cambre. He noted that after carefully examining and comparing of the documents in the questioned document and known signatures/handwriting, it is his professional opinion that the documents labelled Q1 as Roylton D’Cambre do not appear to have been signed by one and the same author of documents labelled K1A-F and K2. He further noted that the names appearing at the section marked signed, sealed and delivered by Roylton D’Cambre and Julia D’Cambre were written by one and the same person. In this report, he also opined that signs of forgery are present in the execution of the signatures, that the signatures reflect poor line quality, and that this is a case of simulated forgery.

[23] In the expert report labelled Exhibit D(3), Sergeant Dixon stated that on July 9, 2019, the known and questioned documents were received for identification and comparison purposes at the Questioned Documents Section of the Fraud Squad. He stated that after carefully examining and comparing the questioned and known signatures/handwriting, it is his professional opinion that:

- i. The document labelled Q1 as Roylton and Julia D’Cambre is not identified to have been signed by one and the same author of documents labelled K1A-F and K2-K2A-D.
- ii. The signature appearing for Roylton D’Cambre on documents labelled Q1, Q2, Q3, Q4, Q6, Q7, Q8, Q9 and Q10 is not identified to be signed by one and the same person as documents labelled K2-K2A-D.
- iii. The seal appearing on the documents labelled Q1, Q2, Q3, Q4, Q6, Q7, Q8, Q9 and Q10 is not identified to be one and the same seal appearing on the document labelled K3 (RD’C INTERNATIONAL LIMITED)
- iv. The seal appearing no documents labelled Q2, Q3, Q4, Q6, Q7, Q8, Q9 and Q10 is not identified to be one and the same seal appearing on documents labelled K5 (NATIONAL FUELS & LUBRICANTS LIMITED).
- v. The handwriting appearing on the left on documents labelled Q2, Q3, Q4, Q6, Q7, Q8, Q9 and Q10 and also that of the writing of the names on documents labelled Q1 (Julia D’Cambre and Roylton D’Cambre), appears to have been written by one and the same person as the author of the handwriting appearing on document labelled K4; written out as Peter J Asher Attorney at Law.

[24] He further opined that the names appearing on the document labelled Q1 at the section marked signed, sealed and delivered by Roylton D’Cambre and Julia D’Cambre are written by one and the same person as the author of the written name Peter J Asher labelled at K4.

[25] In the final report labelled “Exhibit D(4) and dated August 20, 2020, Sergeant Dixon stated that on August 17, 2020, documents were received at the Questioned Documents Section for identification and comparison. He indicated that after carefully examining and comparing the documents listed above, the documents labelled as Q1-Q7 do not appear to have been signed by one and the same author of documents labelled K1A-C. He stated further that the questioned documents consist of too many inconsistencies with each other and do not appear to be of

natural variations. He opined that the signatures on the questioned documents for Peter Asher reflect the same pen strokes and movement as in the signatures appearing for Ian Phillipson. He stated that it would appear that the same pen was used with the same amount of pressure placed on the paper therefore, based on his knowledge and expertise, the documents were signed by one and the same person.

- [26]** He recommended that the original documents in question be submitted and during cross-examination he admitted that his assessment was not based on a review of original documents. He accepted that he was not present when the documents were submitted to the Fraud Squad and instead stated that the custom was that when documents are submitted, a case file is created and then assigned. He confirmed that he would not know if the signatures were actually made by Mr. DeCambre as he didn't personally see him make the signatures.
- [27]** Sergeant Dixon denied King's Counsel Mrs. Hay's suggestion that a person's signature varies overtime and countered that though an individual's age may affect their handwriting, it forms a difference not a natural variation. He also denied the suggestion that an assessment of pen pressure could only be based on original markings but countered that an assessment could be made on photocopies based on the thickness of the line, line quality and the consistency of the pattern.

THE DEFENDANTS' CASE

- [28]** The evidence on behalf of the Defendants was presented by the 2nd Defendant on his own behalf as well as on behalf of the 1st Defendant. The other parties who gave evidence were Ms. Ruth Baker who was a Legal Assistant employed at the law firm Ian Phillipson & Co during the period 2003 to 2005, Mrs. June DaCosta,

the Justice of the Peace who witnessed the Power of Attorney and Mr Stephen Shelton, King's Counsel. Below is a summary of the evidence of these witnesses.

Evidence of Peter Asher

- [29]** Mr. Asher's evidence is that in or around 2003, Total's representatives commenced discussions with Mr. DeCambre regarding the acquisition of the Claimant company and as a result of those discussions, an agreement was reached for the purchase of certain assets of NFL, Decvale Services and RD'C. He stated that in or around 2004, he was a sole practitioner who represented Total in the proposed transaction and at that time NFL was represented by Ian Phillipson & Co. until replaced by Stephen Shelton KC.
- [30]** He stated that it was agreed that the assets including the service stations would be sold for the sum of Nine Million One Hundred Thousand United States Dollars (US\$9,100,00.0) and the overall transaction included:
- a. An Agreement for Sale dated January 22, 2004 for land being variously located and being parts of Mona Heights, Harbour View, Little Retreat, Rosedale, Bybrook, Maverley, Greenwich Pen and Holland Bamboo for US\$2,249,999.00;
 - b. An Agreement for Sale dated January 22, 2004 of the Fairbanks Park, Manchester service station for US\$666,667.00:
 - c. An Agreement for Sale dated January 22, 2004 of the Featherbed Lane service station for US\$500,000.00;
 - d. An Agreement for Sale dated January 22, 2004 of the Clarendon Park, Clarendon parcel of land for US\$83,334.00
 - e. An Agreement for Sale dated January 22, 2004 for the assets, benefit of contracts, exclusive rights tradename, goodwill, equipment and succession rights for US\$4,100,000.00; and
 - f. A Non-Competition Agreement for consideration of US\$1,500,000.00.

- [31]** Mr. Asher asserted that the Agreements for Sale, Transfers and all relevant documents were drafted by Ian Phillipson & Co and forwarded to him in his capacity as Attorney for Total for review and comments. He denied Mr. DeCambre's assertion of any verbal or "under the table" arrangements for the sale of the assets. He instead countered that all agreements were in writing.
- [32]** He contended that once the Transfers were agreed and finalised, they were forwarded to him for execution by Total's representatives and at that instance, the slots for Transferor were already executed by NFL's representatives as this was arranged by its Attorneys. During cross-examination, Mr. Asher admitted that though the normal course is that the purchasers should execute the Agreements first, in this case it was decided upon between Counsel that the Vendor will execute first.
- [33]** He averred that during the negotiations, it was agreed that Total would direct portions of the payment of the purchase price to Royal Bank of Trinidad and Tobago Limited (now Sagicor Bank Jamaica Limited) to settle the debts of Mr. DeCambre and NFL. He further averred that there was an agreement that Total would pay the Stamp Commissioner all the relevant portion of taxes including the Transfer Tax, Stamp Duty and Registration Fees from the purchase price which was done and is evidenced by letter dated January 27, 2004 from National Commercial Bank confirming that the sum of One Million, Two Hundred Thousand United States Dollars (US\$1,200,000.00) was debited from Total's foreign exchange saving account and transferred to an escrow account held between NFL and Total.
- [34]** During cross-examination, Mr. Asher accepted that there was an agreement that Total would advance the payment of government duties instead of the attorney who had carriage of sale. He denied any untoward withdrawals from the escrow account and contended that he could not have made withdrawals without Mr. Maiche or Mr. Phillipson's knowledge since they were also signatories on the

escrow account. He denied the assertion that the escrow account was not operated in the best interest of the Claimant and instead gave a detailed report of the payments made from the escrow account to settle the Claimant's liabilities and the balance paid over to his Attorney who had carriage of sale.

[35] He averred that an undertaking was issued by Total's banker to NFL's Attorneys in the sum of Four Million, One Hundred and Eighty Thousand United States Dollars (US\$4,180,000.00) on the condition that certain requisites would be satisfied. By letter dated March 31, 2004, Total confirmed that the requisites were satisfied and issued instructions to NCB to transfer the sum of Three Million, Seven Hundred and Twenty Thousand United States Dollars (US\$3,720,000.00) to Ian Phillipson & Co. leaving a balance of One Million, Three Hundred Thousand United States Dollars (US\$1,300,000.00) of the purchase price to be paid to NFL. This balance, he stated, represented the sum of Five Hundred Thousand United States Dollars (US\$500,000.00) for the Featherbed Lane service station and the sum of Eight Hundred Thousand United States Dollars (US\$800,000.00) being held in escrow for boundary rectification and title defects to the various properties. Mr. Asher denied the assertion that only a portion of the sale proceeds was received and instead countered that all sums in relation to the sale were paid over to or on behalf of Mr. DeCambre's companies.

[36] Mr. Asher asserted that a letter was issued to NFL indicating that the operations of the stations have been transferred to Total effective April 1, 2004 and Total took possession of the properties. He asserted further that he has seen several letters prepared by NFL and sent to various operators and dealers advising of the change of ownership and that there was even an agreement that certain of NFL's employees would continue in Total's employment to ensure smooth transition of the business. Mr. Asher indicated that as Total did not have haulage trucks to supply the service stations for several months, an arrangement was entered into with another company owned by Mr. DeCambre for the rental of its haulage trucks.

[37] Mr. Asher indicated that in or around March 2005 he joined the law firm of Ian Phillipson & Co and save for some residual housekeeping matters, the transaction between NFL and Total was essentially completed. He also indicated that further negotiations took place in 2006 between Mr DeCambre and Total aimed at settling the remaining aspect of the transaction however, at that instance, Mr. DeCambre was represented by Mr. Stephen Shelton KC. Mr. Asher said that he has seen correspondence where Total paid to Myers, Fletcher & Gordon the sum of Two Hundred and Ninety-Three Thousand, Nine Hundred and Forty-Four United States Dollars and Ninety-One Cents (US\$293,944.91) and another sum of Thirty Million, Four Hundred and Five Thousand, One Hundred and Seventy-Five Jamaican Dollars and Eighty-Five Cents (J\$30,405,175.85) was paid to Petrojam Limited. This settled all indebtedness to NFL.

[38] Mr. Asher expressed that at no time between April 1, 2004 and September 2006 did Mr. DeCambre bring any proceedings alleging he had been defrauded of his land and deprived of his gas stations. He countered that Mr. DeCambre agreed to sell and transfer his properties to Total and since the matter concerned complex commercial transaction, both parties were represented by separate Counsel. Mr. Asher asserted that at all material times, he handled himself in a professional manner and denied that he acted in contravention of the Legal Profession Act.

Evidence of Ruth Baker

[39] Ruth Baker testified that she was employed as a Legal Assistant at the Law Firm of Ian Phillipson & Co during the period 2003 up to 2005 and assisted with drafting several documents including sale and purchase of properties and assets. She further stated that her involvement included arranging for bank transfers on Mr. Ian Phillipson's instructions.

[40] Ms. Baker indicated ed that Mr. Phillipson represented Mr. DeCambre and several of his companies including National Fuels and Lubricants Limited, Decvale

Services Limited and RD'C International Limited in the sale of properties and assets. She confirmed that Mr. Ian Phillipson had carriage of sale, and she assisted him in preparing the documentation including the Agreements for Sale, the Transfers, statement of accounts and all relevant documents required to give effect to the sale. She confirmed that she met and became acquainted with Mr. DeCambre who was the required signatory on most, if not all documents and she had to communicate with him either orally or in writing. She asserted that she became very familiar with Mr. DeCambre's signature and confirmed that he signed all the Agreements for Sale and land transfers on behalf of NFL.

[41] Ms. Baker also confirmed Mr. Asher's assertion that Total was a new entity in Jamaica and Mr. Asher was trying to get an exemption from the Ministry with regard to duties payable, therefore he took the documents for assessment at the stamp office. She further stated that several properties had mortgages registered on them and it was agreed that Total would settle the mortgages from the purchase price. She averred that an escrow account was established at NCB in the joint names of NFL and Total with the sum of Eight Hundred Thousand United States Dollars (US\$800,000.00) and it was agreed that the funds would not be released until the rectification of outstanding breaches for some properties. She confirmed that the sale price excluding the sum in escrow and the sum sent to discharge the mortgages were transferred to Ian Phillipson & Co. as Attorneys-at-law with carriage of sale and having received same, the net sale proceed was transferred to Mr. DeCambre.

[42] Ms. Baker averred that to her knowledge the remedial actions were never carried out by Mr. DeCambre despite their urging. She also indicated that in 2005, Mr. Asher joined the firm however by this time, Ian Phillipson & Co. no longer represented Mr. DeCambre and his companies.

Evidence of June DaCosta

- [43] Mrs. June DaCosta gave evidence that she is acquainted with Mr. Stephen Shelton KC and sometime in 2006 it would appear that she witnessed a Power of Attorney signed by Roylton DeCambre and Julia DeCambre. She stated that the normal protocol for witnessing documents is that she would meet the client in a conference room along with a secretary or the Attorney and upon seeing the person sign the documents, she would then affix her signature and stamp.
- [44] Mrs. DaCosta asserted that she is unable to recollect the particular moment in time in September, 2006 but she confirmed that her signature is affixed to the document. Mrs DaCosta refuted Counsel's suggestion that she did not in fact witness Mr. DeCambre's signature as she has no proof of his attendance in her presence. She did not accept this suggestion.

Evidence of Stephen Shelton KC

- [45] King's Counsel, Mr. Stephen Shelton appeared as a summoned witness on behalf of the Defendants and testified that he has known Mr. DeCambre for in excess of forty years and had represented him and his companies in the past. He confirmed that he has knowledge of the transaction between NFL and Total with respect to the sale of the gas stations having received copies of some documents prepared by another Attorney from Mr. DeCambre's office.
- [46] Mr. Shelton KC explained that he was first introduced to the transaction when Mr. DeCambre spoke to him about a Court Order made against him in relation to Petrojam which had a penal notice typed in the margin. He averred that Mr. DeCambre informed him that he owed Petrojam but needed time as he didn't have the money then but expected the money from Total through the sale of assets. Mr. Shelton KC averred that Mr. DeCambre informed him that Total had paid some money but there were difficulties with the titles for some of the stations. He further

averred that he participated in discussions which resulted in an agreement being executed between all the seller's entities and Petrojam and it was agreed that Petrojam would give NFL time to realize the amount owed. He stated further that there was an arrangement for Total to pay over the difference between what it owed the seller entities less the amount paid to Petrojam, to Myers, Fletcher & Gordon.

[47] King's Counsel stated that during the course of negotiations, there were a lot of discussions between the parties directly which did not include the parties' attorneys-at-law however, a document that was prepared by Total was sent to him which he amended based on instructions from Mr. DeCambre. This document consisted of two (2) Powers of Attorney which were agreed and approved by Mr. DeCambre. King's Counsel Mr. Manning requested that the original Power of Attorney dated September 18, 2006 that was provided by Mr. Shelton KC be marked as Exhibit E.

[48] Mr. Shelton KC gave evidence that Mrs. June DaCosta was employed at Myers, Fletcher & Gordon in the Property Department and she functioned as a Justice of Peace providing the service of witnessing documents for clients and the firm. He denied Mr. DeCambre's assertion that he had no instructions to file suit or to execute a Joint a Notice of Discontinuance regarding the claim surrounding a billboard and AC units and instead countered that that was part of the agreement. He also denied the assertion that he conspired with and assisted Mr. Asher.

[49] During cross-examination Mr. Shelton KC asserted that Mr. DeCambre executed the Agreement in his presence. He refuted the assertion that letters which were addressed to Mr. DeCambre were not sent and posited that letters are usually dispatched by bearer and the individuals or representative of the entities have to sign the bearer's book acknowledging receipt. Mr. Shelton KC also refuted Counsel's assertion that he did not get Mr. DeCambre's instructions in writing and

instead offered to show the court the engagement letters in his possession where the firm was retained.

Expert evidence of Katherine Koppenhaver

- [50]** The Defendants relied on the expert report of Ms. Katherine Koppenhaver. Ms. Koppenhaver reviewed twenty-four (24) questioned documents of Roylton DeCambre, eight(8) known signatures of Roylton DeCambre and one(1) known signature of Peter J. Asher and opined that the questioned signatures of Roylton DeCambre have the same characteristics as his known signatures. Ms. Koppenhaver also stated that without identification as to questioned or known, it is impossible to identify each questioned signature or known signature because all the characteristics of Roylton DeCambre's signature are similar in appearance and contain all of the habits of Roylton DeCambre in the known and the questioned.
- [51]** Ms Koppenhaver opined that having identified that Roylton DeCambre is the author of the questioned signatures, Peter J. Asher is eliminated as having written the questioned signatures. Her report further set out that no one can duplicate all the intricate subconscious writing habits of another, therefore signatures that are forged usually have some signs of forgery which include tremor in the writing line, patching letter segment, retracing known signatures, pen lifts to check their progress and dissimilar letter form. Ms. Koppenhaver opined that none of these characteristics are present in the questioned signatures neither are there are signs of forgery in any of the initials and signatures of Roylton DeCambre.
- [52]** During cross examination, Counsel sought to discredit the expert as she was previously engaged by Mr. DeCambre and she also did a peer review of his signature. Counsel also sought to discredit the report as it was prepared using copy documents and there was no evidence that the expert reviewed original documents.

SUBMISSIONS ON BEHALF OF THE CLAIMANT

- [53] The submissions, on behalf of the Claimant were presented by Mr. DeCambre in person. He commenced by identifying the factual disputes in the case and asking the Court to make its own assessment of the demeanour of the witnesses to determine whether or not a witness was telling the truth.
- [54] Mr. DeCambre submitted that the key issue is whether the Defendants fraudulently facilitated the transfer of the properties and that any factual dispute regarding whether the Claimant or its principal signed the Agreements for Sale or other related agreements is not material to resolving this central issue.
- [55] He pointed out that NFL is seeking to undo the transfers by virtue of section 158 of the Registration of Titles Act (ROTA) and seeking to impeach Total's certificates of title under sections 70 and 71 of the ROTA. He submitted that the Claimant is entitled to damages for the Defendants' fraudulent misrepresentation to the Registrar of Titles that the Instruments of Transfer were validly executed pursuant to section 162 of the ROTA.
- [56] Mr. DeCambre submitted that taking into account the total evidence of Mr Shoucair coupled with the fact of counsel who caused the Transfers to be stamped without observing the guard rails pertinent for a proper transfer, taken together with the evidence of the expert witness for the Claimant lead to the conclusion that there was dishonesty of some sort that amounts to actual fraud. He contended that the higher standard of proof for "actual fraud" is applicable as explained by Laing J at paragraphs 60-63 in **Brilliant Investments Limited v Jennifer Messado and Others [2019] JMCC COMM 26**. He outlined the concept of indefeasibility of title as explained by Harris JA in **Harley Corporation Guarantee Investment Company Limited v Estate Rudolph Daley et al [2010] JMCA Civ 46** who relied on the Privy Council decision of **Assets Company Limited v Mere Roihi and Others [1905] AC 176** and submitted that it was clear that the ordinary degree of

diligence was lacking by the 2nd Defendant as well as the Justice of the Peace Mr Shoucair who witnessed the signature on the Transfers.

[57] He suggested that the Court could consider the lower test for fraud and contended that the Claimant can succeed in a claim for false misrepresentation by proving that the Defendants knowingly made the false representation or did so without an honest belief in its truth. He submitted that if fraud cannot be proven, then the Claimant can still succeed by showing that the Defendants acted recklessly in making the representation. He relied on **Bevad Limited v Oman Limited SCCA No, 133 of 2005 (unreported) delivered July 18, 2008** where Harris JA summarized the law as follows:

“If fraud is proved, there is no necessity to establish that there was no intention on the part of the defendant to injure or defraud the claimant. The true test is whether the Claimant was induced by the false statement to act as he did.”

[58] Mr. DeCambre submitted that NFL can succeed in its claim if it can be proved that the Defendants fraudulently or recklessly represented to the Titles Office that NFL executed the Instruments of Transfer.

[59] He contended that the unchallenged evidence is that Mr. Melhado was not a Director or Secretary of NFL when the Transfers were purportedly signed by him or at any time therefore and he did not have apparent or ostensible authority to act on behalf of NFL. He relied on **Speedways Jamaica Limited v The Shell Company (W.I.) Limited and Guy Morris SCCA No. 66 of 2001** where Harrison P adopted the concept of ostensible authority as defined in **Armagas Ltd v Mundogas SA (The Ocean Frost)**. Mr. DeCambre submitted that the evidence shows that Mr. Melhado’s authority as an Administrative Manager was limited to administrative matters accordingly, the Defendants had no reasonable basis to believe that he was authorized to sign the Instruments of Transfer on NFL’s behalf.

- [60] In support of his position that he did not sign the Instruments of Transfer he relied on the expert witness, Mr. George Dixon. He suggested that the Court should not rely on the expert evidence of Ms. Katherine Koppenhaver as she was retained and paid to review his signature where she concluded that the “*signatures cannot be identified because they are oversimplified, and it is not possible to identify [him] or anyone else who could have written the signatures in question.*” He therefore contended that the Court should not accept her conclusion that he is the author of the questioned signatures as the findings are contradictory.
- [61] Mr. DeCambre submitted that as the Transfers were not executed in accordance with section 152 ROTA, they are not valid. He relied on the dicta of Laing J in **Neale Brown and Sharon Brown v Michael Brown [2019] JMCC COM 9** who found that “*as to attestation and the procedure for the generation of the seventh schedule certification is a “positive and obligatory one”, failing obedience to it, the POA is not a valid power of attorney.*”
- [62] He submitted that the Court should conclude that the Instruments of Transfer were not duly executed. He further submitted that Mr. Asher caused the Transfers to be lodged at the Tiles Office either knowing that they were not duly executed or without an honest belief that they had been duly executed. He further submitted that Mr. Asher as an attorney-at-law of in excess of 30 years, knew or ought to have known that Mr. Melhado was not authorized to sign the transfers on behalf of NFL as he was neither a Director nor Secretary at the material time.
- [63] Mr. DeCambre submitted that the defence of Limitation of Actions cannot assist the Defendants since he became aware of the fraud seven (7) years after the gas stations were transferred and that the property in Holland Bamboo was only recently transferred.

SUBMISSIONS ON BEHALF OF THE DEFENDANTS

[64] Mr. Manning, King's Counsel on behalf of both Defendants commenced his submissions by setting out the background to the transaction entered into between NFL and Total and submitted that the central issues surrounding the case are:

- a) Whether the claim is statute barred or offends the doctrine of Laches; and
- b) Whether the Claimant's allegations of fraud have been proved based on the evidence, particularly the documentary evidence, before the Court

[65] In support of his position that the Claimant's claim is statute barred, King's Counsel relied on Sections 3, 4(a) and 27 of the Limitations of Actions Act which cumulatively provide that an action to recover land or rent should be brought within twelve (12) years after the time to bring the claim. King's Counsel also pointed the Court to Section 168 ROTA which provides that:

"No action for recovery of damages sustained through deprivation of land, or any estate or interest in land shall lie or be sustained againstthe person who applied to be registered as proprietor in respect of such land, unless such action shall be commenced within the period of six years from the date of such deprivation...."

[66] He relied on **Ray Electra Jobson-Walsh and Gilbert Jobson v Administrator General of Jamaica, Baron Stephens and Ors ("The Jobson-Walsh Case") [2015] JMSC Civ 89** where Simmons J (as she then was) opined at paragraphs 58, 59 and 61 that:

"[58] The Claimants in this matter are seeking to set aside the first agreement on the basis that it was fraudulent. The general rule is that in matters such as this, the claim is subject to a limitation period of six (6) years after the commission of the alleged fraud (see Muir v Morris (1979) 16 JLR. 398).

[59] There is however an exception to this rule where the alleged fraud can be categorized as a concealed fraud. Section 27 of the Limitation of Actions Act states:

"In every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud shall, or with

reasonable diligence might, have been first known or discovered....

[61] *Section 27 of the Limitation of Actions Act places a burden on the claimants to prove that the alleged fraud could not have been discovered with “reasonable diligence”. In considering this matter, I have noted that in 1982 and 1984 when the original suits were filed the claimants were children. I accept their evidence that the relevant time they were not in a position to question the validity of the first agreement or to participate in the conduct of the litigation. However, I have also noted that at that time, Mr. Rudyard Stephens and Mr. Exley Hoo were both alive and that Mr. Jobson’s estate was represented by the Administrator General. I also bear in mind that all parties were represented by counsel.*

[67] King’s Counsel asserted that the principle was reinforced by Master Thomas in **Liz Zhou et al v Yvonne Spencer [2022] JMSC Civ 171** and submitted that the case falls within the scope of Section 168 ROTA in so far as it is seeking Damages (loss of income) stemming from the alleged fraudulent deprivation of land. King’s Counsel submitted that in that context, the claim should have been pursued within six (6) years from the date of such deprivation and the claim as it relates to Damages in the form of “rental income” for the ATMs. The claim seeking to recover rent must have been pursued within twelve (12) years from the date that the right first occurred, or from the date that the fraud (if concealed) should have been first known or discovered.

[68] King’s Counsel contended that the Claimant’s case is an abuse of the Court’s process as the Claimant was aware of all the material on which it mounts its allegations of fraud, having received copies of the alleged fraudulent transfers in 2006. It was submitted that the Claimant’s claim for Damages became statute barred on April 1, 2010. Reliance was placed on **Winston Finzi v Jamaican Redevelopment Foundation Inc, & others [2023] UKPC 29** where the Privy Council dismissed the appeal and noted that:

“allegations of fraud are not to be regarded as some kind of open sesame which have only to be uttered to enable a party to engage in a new round of litigation of disputes that have been compromised or decided. In this case it is clear that, well before he entered into what was meant to be a final settlement of all outstanding claims, Mr. Finzi had all the material on which

he now relies to allege fraud, and that he had ample opportunity to deploy it in the earlier proceedings if he had thought fit to do so. He has offered no explanation of any merit for the fact that he did not.”

[69] King’s Counsel submitted that the Claimant has no redress in Equity as the Courts of Equity are not equipped to grant Damages for Fraud as confirmed in Halsbury’s Laws of England, Vol 47, paragraph 14. He further submitted that equity ought not to award a litigant who has sat on their rights and not sought to enforce them in a timely manner. Reliance was placed on the unreported case **Amrit et al v Duncan Bay Development Company Limited Suit No. E 356 of 1998 delivered August 13, 2001**.

[70] As it relates to the allegation of fraud, King’s Counsel submitted that the Claimant was required to set out the facts and circumstances that are being relied on to prove that the Defendants have or were motivated by a fraudulent intention. It was also argued that the Claimant’s Particulars of Claim do not outline any facts or circumstances to adequately demonstrate that the 1st Defendant was motivated by a fraudulent intention as set out in **Ray Electra Jobson-Walsh and Gilbert Jobson v Administrator General of Jamaica, Baron Stephens and Ors (“The Jobson-Walsh Case”)**, **Paul Duncanson v Derrick Sharpe and Marva Sharpe [2023] JMSC Civ 34** or **Ervin McLeggon v Daphne Scarlett and the Registrar of Titles [2017] JMSC Civ 115**.

[71] King’s Counsel advanced that Mr. DeCambre is not a credible witness and that he has contradicted himself during amplification of his evidence and has been inconsistent during cross-examination. It was further submitted that Mr. DeCambre’s own evidence reveals fundamental contradictions and also confirms that he was fully aware that he negotiated the sale of assets from NFL to Total. He pointed out Mr. DeCambre’s letter of November 22, 2005 in which he states:

“whilst Total continues to enjoy unmolested, the benefits of these stations I am requesting that I be given unlimited time in which to produce clear title and claim my US\$800,000 plus interest. It is right that Total enjoys

the benefit of what they paid for but I must also enjoy the proceed of my fifteen years of work and I will not surrender the sum of money”.

- [72] King’s Counsel contended that Mr. DeCambre knew that only the sum of Eight Hundred Thousand United States Dollars (US\$800,000.00) remained outstanding, and that that sum was being withheld pending rectification of the titles. King’s Counsel suggested that the Court should consider Mr. DeCambre’s pattern of indicating that he did not sign a document and in the instances where he admits to signing a document, he denies the content that appears under his signature. He relied on dicta in **Luke Smith v Pahk Limited and Delano Smith [2018] JMSC Civ 2** as well as **Thorton v Northern Ireland Housing Executive [2010] NIQB 4 paras 12 & 13** and argued that the Court should not overlook the glaring discrepancies in Mr. DeCambre’s evidence.
- [73] On the other hand, King’s Counsel highlighted that Mr. Asher’s conduct has been consistent with the acceptance that the sale was legitimate and completed. It is submitted that the Defendants have furnished the Court with copious contemporaneous documents to prove that the transactions were legitimate and both Defendants have fulfilled their contractual and professional obligations. There is evidence that the Agreements were all in writing, that NFL’s assets were sold to Total for Nine Million, One Hundred Thousand United States Dollars (US\$9,100,000), that there were no “under the table” agreements and that the Claimant has received the purchase price under the Agreement for Sale.
- [74] King’s Counsel submitted that the cogency of the Defendants’ case and the documentary evidence presented disproves any allegation of fraud that has been asserted by the Claimant and urged the Court to reject Mr. DeCambre as a credible witness. He submitted further that the Defendants’ case is corroborated by the evidence of Mr. Shelton, King’s Counsel who gave evidence that through his firm Myers, Fletcher & Gordon, he acted for Mr. DeCambre and his companies and also that there is evidence which supports that the fact that the Claimant executed

the Powers of Attorney It was also submitted that Mr. Shelton gave independent evidence contradicting the assertions of fraud by Mr. DeCambre and no challenge was mounted to his evidence. King's Counsel urged the Court to accept Mr. Shelton KC as an independent witness who is a professional of long standing whose integrity and powers of recall were not questioned.

[75] King's Counsel also urged the Court to accept the evidence of Ruth Baker who was employed at the Law firm of Ian Phillipson & Co. during the material time and who assisted in preparing the documentation in relation to the transaction. He drew the Court's attention to Ms. Baker's evidence that the Transfers were prepared by her and sent by bearer to Mr. DeCambre's office for execution. He contended that Ms. Baker gave forthright and honest responses and urged the Court to accept her as a credible witness highlighting her frankness in admitting that she did not see either Mr. DeCambre or Mr. Colin Steele sign any of the documents nor can she be sure that all sums due to Mr. DeCambre were paid.

[76] As it relates to the expert evidence, King's Counsel urged the Court to accept the evidence of the Certified Questioned Document examiner, Ms. Katherine Koppenhaver whose years of experience dwarfs that of Mr. Dixon. He contended that her report gives an overview of the questioned and known documents and outlined the examination conducted and the methodology used to come to her conclusion. He argued that Ms. Koppenhaver is a credible witness who is impartial and independent and forthright, and she has admitted that she was previously requested to peer review Mr. DeCambre's signature and she then gave an inconclusive report. He further stated that Ms. Koppenhaver's conclusive opinion now is derived from the fact that she had many more signatures, and her conclusion is that the questioned documents were authored by Mr. DeCambre.

[77] He pointed the Court to the dicta in **Paul Griffiths v Claude Griffiths [2017] JMSC Civ 136** where Thompson-James J evaluated the evidence of the handwriting expert and accepted that though there were limitations, she accepted the expert's

evidence while at the same time conducting her own appraisal of the signatures. King's Counsel also urged the Court to consider the dicta in **Regina v Fitzroy Fisher SCCA No. 2/2000, delivered July 20, 2000** as well as **Davis v Edinburgh Magistrates [1953] S.C. 34 at 40.**

- [78] In contrast, King's Counsel argued that the evidence of Mr. Dixon, the Questioned Document Examiner in support of the Claimant's case, reveals a lack of professionalism and impartiality and he failed to appreciate the importance of not interfering with potential court exhibits. Further that the expert's findings that "*the names appearing on document labelled Q1 at section signed, sealed and delivered by Roylton DeCambre and Julia DeCambre is written by one and the same person as the author of the written name Peter J Asher Attorney-at-Law Q5 and k4*" cannot be taken as credible as he did not demonstrate how he arrived at the conclusion in his report. King's Counsel stressed that the report lacked any sort of examination or methodology used to arrive at the decision and submitted that Sergeant Dixon did not assist the Court but rather gave findings to condemn the Defendants rather than give objective independent evidence.
- [79] King's Counsel submitted that a lack of explanation as to how Sergeant Dixon arrived at his conclusion is detrimental to the case. He submitted that he failed to give the Court guidance on how it should treat with the expert evidence and argued that the Court should refrain from accepting his evidence as credible. He pointed the Court to dicta in **B v IVF Hammersmith Ltd. (R, third party) [2020] QB 93** and submitted that the Court should look at the scientific method that Ms. Koppenhaver used to arrive at her conclusion.
- [80] King's Counsel concluded that based on the evidence captured, Mr. DeCambre's allegation of fraud cannot be proved, is inconsistent and unreliable and does not come close to meeting the high standard required for a court to make such a finding. He pointed out that no evidence was led of a claim for damages including billions of dollars of lost income and there is no evidence to ground a claim for

damages allegedly flowing from lack of sale of petrol fees from the ATM machines, or the operation of food marts.

[81] He contended that Judgment should be granted for the Defendants on the premise that the claim is statute barred and unjust under the doctrine of Laches, that the Claimant has not sufficiently pleaded and proved its allegations of fraud, and the pleadings fail to outline any causal link between the alleged fraud and the claim for billions of dollars.

ISSUES

- I. Whether the Claimant's case is statute barred or offends the doctrine of laches
- II. Whether the Claimant's allegation of fraud has been proven?
- III. Whether the Defendants are liable to the Claimant for loss of income?

LAW & ANALYSIS

Whether the Claimant's case is statute barred or offends the doctrine of laches

[82] The Defendants have raised the Defence of Limitation. If successful, this would provide them with a complete defence to the Claim. Despite this Defence having been raised by the Defendants, the Claimant did not file any Reply disputing this. The Claimant has however, sought to address this by way of the evidence presented and, in the submissions, advanced.

[83] The Claim Form and Particulars of Claim were filed on March 19, 2019. The matter relates to Agreements for Sale dated January 22, 2004 and Transfers dated February 25, 2004, some fifteen years before the commencement of the Claim.

The Claim is for Damages for fraudulent transfers and for loss of income and so the relevant date to consider would be the date of the transfers.

[84] In determining whether the Claim is statute barred, the Court has to be guided by the provisions of sections 3, 4(a) and 27 of the Limitation of Actions Act which provide as follows.

3. No person shall make an entry, or bring an action or suit to recover any land or rent, but within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to some person through whom he claims, or, if such right shall have not accrued to any person through whom he claims, then within twelve years next after the time at which the right to make such entry, or to bring such action or suit, shall have first accrued to the person making or bringing the same.

4. The right to make an entry or bring an action to recover any land or rent shall be deemed to have first accrued at such time as hereinafter is mentioned, that is to say –

(a) when the person claiming such land or rent or some person through whom he claims shall, in respect of the estate or interest claimed, have been in possession or in receipt of the profits of such land, or in receipt of such rent, and shall while entitled thereto have been dispossessed, or have discontinued such possession or receipt, then such right shall be deemed to have first accrued at the time of such dispossession or discontinuance of possession, or at the last time at which any such profits or rent were or was so received;

27. In every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any fraud. land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud shall, or with reasonable diligence might, have been first known or discovered:

[85] Sections 3 and 4 relate specifically to cases dealing with recovery of land. Although this matter relates to land, the way in which the Claim is presented it is not couched as a claim for recovery of possession or for recovery of the land but rather as one seeking damages for deprivation of land. Section 168 of the Registration of Titles Act is therefore applicable and provides that:

No action for recovery of damages sustained through deprivation of land, or of any estate or interest in land, shall lie or be sustained against the Registrar or against the Assurance Fund, or against the person upon whose application such land was brought under the operation of this Act, or against the person who applied to be registered as proprietor in respect of such land, unless such action shall be commenced within the period of six years from the date of such deprivation.

[86] Section 168 sets a six-year limitation period for actions to recover damages for the loss of land or interest in land. This matter is an action for damages for the loss of property due to the alleged fraudulent transfer and for loss of income. The limitation period for fraud, which is often referred to as the tort of deceit, is six years. This is expressed in the **Liz Zhou et al v Yvonne Spencer** case cited by the Defendants, where my sister Thomas J indicated the following:

“It is by now well established that the limitation period for all torts including fraud is 6 years”

[87] The exception to this general principle relates to actions for assault and battery for which the limitation period is four years which is not relevant here as this is a claim for fraudulent transfer. The Claimant must therefore have commenced the Claim within the period of six years after the alleged fraudulent transfer. However, section 27 of the Limitations of Actions Act provides an exception to this rule, and this is where the fraud is alleged to have been concealed, in which case the right to bring the Claim would have accrued at the time of discovery of the fraud or when such fraud shall or with due diligence, might have been first known or discovered.

[88] The Defendants having raised in their Defence the fact that the Claim is statute barred, it would have been incumbent on the Claimant to reply relying on the provisions of section 27 of the Limitation of Action Act if they were in fact saying that the fraud had been concealed. The Claimant failed to expressly aver this except that in the Particulars of Claim it was indicated that on the 1st of April, 2004 the Claimant became aware of the 1st Defendant taking over seven service stations

and that Mr DeCambre attended the Titles Office and discovered that the titles were transferred in the name of the 1st Defendant. The Claimant does not in the Particulars of Claim state the date on which this discovery was made. However, in Mr DeCambre's witness statement he said that on April 2, 2004 he was refused entry into the gas stations and subsequently went to the NLA for copies of the titles but was told they were not available. By the year 2005 he had reported the matter to the Fraud Squad. It is clear from this that by the year 2005 he was of the view that a fraud had taken place.

[89] Mr. DeCambre, in his witness statement spoke about the challenges he faced in being able to get copies of the transfers. He said although he reported the matter to the Fraud Squad, he was unable to secure copies of the titles and transfers. It can perhaps be inferred, with some stretch, that the fact that he said he was unable to secure copies of the titles and transfers, this means that they were concealed. His inability to secure copies of the titles and transfers could mean that he did not have all the material necessary to particularize the fraud and properly plead the case as fraud must be specifically alleged and it is not sufficient to make general allegations. He outlined in cross-examination that, without the transfers that the NLA could not find he could not go to court.

[90] In the **Ray Electra Jobson-Walsh** case, the Court made it clear that the general rule is that in matters such as this, the claim is subject to a limitation period of six years after the commission of the alleged fraud. Further that section 27 of the Limitation of Actions Act places a burden on the Claimant to prove that the alleged fraud was concealed and could not have been discovered with "reasonable diligence".

[91] Therefore, not only is the Claimant required to prove concealment, but he also has to prove that the alleged fraud could not have been discovered with due diligence. In the instant case, it is clear to me that having reported the matter to the Fraud Squad, Mr DeCambre had formed the view that there was a fraud against the

company. Although in his witness statement he is silent as to when he received the transfer documents, in a statement given by Mr DeCambre to the police on February 10, 2021, he expressly stated that it was in 2006 that he received copies of the fraudulent transfers with the help of Mr Shelton QC (as he then was). Even armed with these documents, he does not file action until 2019, some thirteen years later. With respect to Holland Bamboo property, the Claimant highlighted that it was transferred in 2008 and that this forms part of one Agreement and as such the claim concerning some of the properties falls within the limitation period.

[92] In any event according to Mr DeCambre, he had not signed any transfer to effect the transfer of his property and so he would at the very least be armed with the necessary evidence to establish this. Under these circumstances, it would be difficult to say that he was unaware that a fraud had taken place and that the fraud was concealed. Even if there was the existence of this concealed fraud, the right to bring the suit shall be deemed to have first accrued at the time at which such fraud shall, or with due diligence might, have been first known or discovered.

[93] The burden therefore rests on the Claimant to show that he acted with “reasonable diligence” in seeking to discover this fraud. Based on the evidence relied on by the Claimant, it would be hard pressed to prove this, as Mr DeCambre has asserted that he did not in fact sign the relevant Transfers. If he did not sign any documents to effect the transfers of his property, then he ought to have known that there was some fraud involved. The fact of him becoming aware on the night of April 1, 2004 that Total Jamaica Ltd had taken possession of his gas station and having reported the matter to the Fraud Squad in 2005 would suggest that had he acted with diligence, he would have been able to unearth any “alleged fraud” around the time he recognised that his gas stations were taken over. Having admitted receiving documentary evidence from 2006, he would have had the material necessary to bring a Claim in fraud and one fulfilling the requirement for specificity and particularization by at the very least 2006.

- [94]** I am therefore of the view that the Claimant's claim for Damages consequent upon the fraudulent transfers of the service stations became statute barred by 2012 at the latest, some six years after receiving copies of the "alleged fraudulent transfers". In relation to the Holland Bamboo property which he alleged was transferred in 2008, the latest time to bring this Claim would have been in 2014.
- [95]** The Claimant also seeks to recover Damages for loss of income which he particularized to include loss of income from selling petrol, operating food marts and rental income. If the Claim were to be dissected, and this aspect of the Claim deemed to come under the provisions of the section 3 and 4 of the Limitation of Actions Act, this should have been pursued within twelve years of the date the right to bring the action accrued. In respect of this the Claimant would also be statute barred by 2016 or latest 2018.
- [96]** The Defendants have also raised the Defence of laches, alleging that the Claimant sat on its right of action for fifteen years before bringing a claim. The Claimant's response was that its actions could not be regarded as an act of laches because of its inability to obtain copies of the Instruments of Transfer from the Titles Office to substantiate the fraudulent act.
- [97]** Laches is an equitable defence on which the Defendants can succeed if they can establish that the delay in bringing the claim was significant, unreasonable and resulted in prejudice to the Defendants. This prejudice alleged by the Defendants is that key witnesses of the Defendants have died, Mr Wellesley Melhado and Mr Ian Phillipson, attorneys-at-law who were integral to the completion of the agreement between the parties. The fact that both Mr Melhado and Mr. Phillipson were integrally involved in the transactions with the Claimant has not been denied so there is merit in the Defendants' submissions that the Defendants' case is prejudiced as they are no longer able to give evidence on behalf of the Defendants. However, there is more to laches than simply establishing that.

[98] The principle governing the doctrine of laches has been set out in the judgment of Lord Selbourne in the Privy Council decision of **Lindsay Petroleum v Hurd** (1874) LR 5PC 221 relied on by the Defendants. At page 239 Lord Selbourne opined as follows:

“Now the doctrine of laches in Courts of Equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has, by his conduct, done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases, lapse of time and delay are most material. But in every case, if an argument against relief, which otherwise would be just, is founded upon mere delay, that delay of course not amounting to a bar by any statute of limitations, the validity of that defence must be tried upon principles substantially equitable. Two circumstances, always important in such cases, are, the length of the delay and the nature of the acts done during the interval, which might affect either party and cause a balance of justice or injustice in taking the one course or the other, so far as relates to the remedy.”

[99] It is the party alleging laches who is required to prove it. The Defendants would be required to show that the Claimant acquired this knowledge but knowingly refrained from asserting its right. It is the undisputed evidence that Mr DeCambre was aware that a fraud had taken place at the latest in 2006. There was a delay of about thirteen years in commencing the Claim so the Defendants would be correct in saying there was this unwarranted delay. However, the Defendants would still be met with another hurdle.

[100] The Defence of Laches is only available where there is no statutory bar. In this case the Limitation of Actions Act is relevant and provide a bar and so laches would not be available to the Defendants. Even if the Limitation of Actions Act is found to be inapplicable, the Defendants would have another challenge as the doctrine of laches is only applicable where an equitable relief is sought. The Claimant herein is seeking Damages and not any equitable relief. In Halsbury’s Laws of England, Volume 47, paragraph 14 the following is said:

In equity the Plaintiff could not obtain damages for fraud, but he could obtain the rescission of a contract, or the setting aside of a deed or instrument and the restitution of property with a pecuniary adjustment that might be necessary on either side by way of accounting for profits of allowance for depreciation”

[101] It is therefore clear that in the Claim herein being one for damages, laches does not apply.

[102] Another issue has been raised by the Defendants which I will treat with briefly. They have alleged that the claim is an abuse of process based on the previous action that was brought. It was out of this action that a Settlement Agreement was arrived at. The Settlement Agreement provided inter alia that “NFL or RC or any related company irrevocably undertakes not to institute any proceedings whatsoever against Total, its servants or agents, assigns or affiliated entities in relation to the matters or any subject related to the matter”. I agree that if Mr DeCambre had a valid claim for fraud, he could have brought it in the same claim. There is merit in the submissions advanced by King’s Counsel that this claim may very well constitute an abuse of process.

[103] Based on my decision that the matter is statute barred, this would mean the Claimant’s case fails at the inception however if I am wrong in that I will consider the other issues raised.

Whether the Claimant’s allegation of fraud has been proven?

[104] The main issue to be determined by the Court is whether the Claimant’s allegation of fraud has been proven. The Claimant’s allegations of fraud are set out in the Particulars of Claim. They are particularized to the extent that they comply with the strictures laid down in the well-known case of **Wallingford v The Directors of**

Mutual Society [1880] 5 AC 685 at 697 in that it satisfies Lord Selbourne's pronouncement relating to fraud where at page 697 he said:

"With regard to fraud, if there be any principle which is perfectly well-settled, it is that general allegations, however strong may be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice."

[105] The Claimant was at pains to point out that the transfers were fraudulent and were effected by the 2nd Defendant acting as the agent of the 1st Defendant. It is categorically denied that Mr. DeCambre signed the Transfers and it was indicated that Mr. Wellesley Melhado who was a mere salesman was not authorised to act on behalf of the Claimant. Furthermore, the seal used was not the seal of the Claimant.

[106] Satisfying the requirement for particularization is not all that is required in a case of fraud. Harris JA in the case of **Harley Corporation Guarantee Investment Company Limited et al** [2010] JMCA Civ 46 in reliance on **Wallingford v The Directors of Mutual Security** and other cases stated the requirements at paragraph 57 of the judgment in these terms:

"It follows that to raise fraud, the pleading must disclose averments of fraud or the facts or conduct alleged must be consistent with fraud. Not only should the requisite allegations be made but there ought to be adequate evidentiary material to establish that the interest of a defendant which a claimant seeks to defeat was created by actual fraud."

[107] Similarly, the **Ray Electra Jobson-Walsh** case has set the stage for how a Court should go about determining whether the pleading and evidence is sufficient to mount and establish a claim for fraudulent deprivation of property. It mirrors the principles laid down in earlier case of **Harley Corporation**. The case of **Erwin McLeggan v Daphne Scarlett and the Registrar of Titles** cited on behalf of the

Defendants reiterates the definition of standard of proof in fraud matters where at paragraph 48 Anderson J noted:

“In a civil claim, such as this, since fraud is being alleged and fraud is a very serious allegation, the degree of probability required to prove such allegation against either or both of the defendants, will be that of a preponderance of probabilities, but will, within that framework, be for example, a higher degree of preponderance or probability, than would be required in order to prove negligence.”

[108] The Claimant must therefore set out the facts and circumstances that are being relied on to prove fraud. King’s Counsel on behalf of the Defendants submitted that the Claimant must also prove that the Defendants were motivated by a fraudulent intention, and he must establish a connection between the fraud averred and the injurious consequences. He contended that the pleadings do not outline any facts or circumstances to adequately demonstrate that the 1st Defendant was motivated by a fraudulent intention. I do not agree that the Claim is lacking in this regard. It is sufficient to say that the fraudulent transfers were effected by the 2nd Defendant and that they were done for the benefit of the 1st Defendant. If the result that followed is that the 1st Defendant has now benefited from the transfers and now owns these properties, then it would be clear that they possessed the necessary intention to deprive the Claimant of its properties and from that it could be inferred that there was this fraudulent intention.

[109] The act of effecting the Transfers inured and continues to inure to the benefit of the Defendants. I do not agree that a claim for fraud cannot rely on inferences to establish the relevant criteria for fraud. Fraud like any other fact can be proved by drawing inferences from proven facts. McDonald Bishop J (as she then was) in the case of **Bent v Evans** analysed the proof required and at paragraph 89 of the judgment pointed out:

“It is clear to me that an allegation of fraud ought not to be taken lightly and so the evidence to prove it must be as weighty as the allegation of it. I will venture to say therefore that fraud must not only strictly pleaded but must be strictly proved by those who assert its existence on the clearest most

cogent and indisputable evidence on a balance of probabilities. The pertinent question now is, has the claimant discharged this burden placed on him to warrant cancellation of the certificate of title on the basis of fraud? It is a consideration of this question that I will now turn.”

[110] McDonald Bishop J grappled with the meaning of fraud and in reliance on the Privy Council decision of **Assets Company Limited v Mere Roihi** (1905) A.C. 176 relied on by the Claimant, where she distilled the elements of fraud from page 210 of the judgment as follows:

- a) By fraud in the Act is meant actual fraud i.e. dishonestly of some sort, not what is called constructive or equitable fraud.
- b) The fraud which must be proved in order to invalidate the Title of the registered proprietor for value must be brought home to the person whose registered title is impeached or to his agents.
- c) A person who presents for registration a document which is forged or has been fraudulent or improperly obtained is not guilty of fraud if he honestly believes it to be a genuine document which can properly be acted upon.

[111] The Claimant in order to succeed in his claim, would have to provide evidence that the Defendants engaged in an act of dishonesty and that at the time this was done they possessed the intention of depriving the Claimant of the interest in his properties.

[112] I will examine the evidence given on behalf of the Claimant with reference to the particulars of fraud. On behalf of the Claimant, it was submitted that any factual dispute regarding whether the Claimant or its principal signed the Agreements for Sale or related agreements is not material to resolving the central issue. I do not agree with this. The Court must come to a determination in respect of the factual disputes. Suffice it to say that the determination of this aspect of the issue will be

based on the view I take of the credibility of the witnesses and the weight I place on the expert evidence given with respect to their examination of the alleged impugned handwritings.

[113] The Claimant contended that the Court should consider another test for fraud as set out in Halsbury's Laws of England as follows:

"Fraud, in a civil sense (sometimes called 'civil fraud'. Sometimes called 'commercial fraud') usually takes either the form of making a false statement or the suppression or withholding of the truth, where there is a duty to disclose the truth. Where representations are involved, proof of absence of actual and honest belief is all that is necessary."

[114] Mr. DeCambre submitted that NFL can succeed in the claim if it proves that the Defendants fraudulently or recklessly represented to the Titles Office that NFL duly executed the instruments of transfer when they knew this was not so. I will address this later.

Falsely presenting to the Registrar of Titles the seven Transfers, by misrepresenting that the Claimant had executed the said transfers.

[115] The evidence of Mr DeCambre is that he decided to divest himself of his seven service and arrived at an agreement and proceeded with the sale to Total. The agreed amount was Four Million, One Hundred Thousand United States Dollars (USD\$4,100,000.00) and he received payment for goodwill, non-compete agreement and trade name of National Fuels. He said when the time came for him to sign, he in fact started to sign and then he hesitated and asked why was Mr Asher in possession of the documents and not his attorney Mr Philipson. Despite not having signed the Transfer documents, on April 1, 2004 it came to his knowledge that Total Jamaica had taken control of his gas stations. He insisted that he did not sign these transfers, and he did not affix the company seal to them.

- [116]** The Claimant's position is inherently contradictory. In the Particulars of Claim signed by him, he averred that on the 22nd of January 2004, the Claimant entered into a Sales Agreement with the 1st Defendant to sell the 1st Defendant seven gasoline service station for the sum of Two Million, Two Hundred and Forty-Nine Thousand, Nine Hundred and Ninety-Nine United States Dollars (US\$2,249,999.00). Further that the Agreement is contained in writing and was executed by Royalton DeCambre, Chief Executive Officer of the Claimant. Not only was this averred in the Particulars of Claim but attached to it as an exhibit was the very copy of the Sales Agreement bearing the signature of Mr DeCambre. Interestingly enough, although Mr DeCambre went on to seek handwriting analysis of the Transfer documents, he never did this in respect of the Agreement for Sale.
- [117]** It begs the question at what point did he decide he was no longer interested in selling these properties and transferring his interests? Was this after he had collected the money for the transfers? What is the effect of this? When shown the transfer documents he continued to deny signing any of them. He also said that Mr Wellesley Melhado was not company secretary or an officer to the company and not authorised to sign on behalf of the company.
- [118]** Not only did he deny signing the Transfers in his evidence, but when confronted with the Agreement for Sale dated January 22, 2004 and other Agreements for Sale which conveyed all the service stations, he denied signing all of them. In his evidence he insisted that the agreements made were done verbally. When taxed further in cross-examination he continued to insist that he did not sign these agreements.
- [119]** Despite that insistence he had given a statement to the police dated July 9, 2019 in which he admitted signing the Agreement for Sale. In that statement he says that on January 22, 2014 (sic), he signed a Sales Agreement with Sandra Morris-Director of National Fuels and Lubricants to sell the eight mentioned service stations for the sum of Two Million, Two Hundred and Forty-Nine Thousand, Nine

Hundred and Ninety-Nine United States Dollars (US\$2,249,999.00) and that the late Mr. Ian Phillipson was the attorney representing National Fuels and Lubricants and his interest in the transaction and Peter Asher was representing Total Jamaica Limited in the matter.

[120] During cross-examination when confronted with this statement by him, he admitted having said it but explained that he mistakenly said this. When confronted with having signed the Particulars of Claim and the Certificate of Truth, he sought to say he merely signed what his attorney wrote. He even went as far as to say that his attorney said those words and that was 'before he found it was fraudulent'. However, this Claim was filed on March 19, 2019, the essence of which was that the transaction was fraudulent, that was and is the basis of the Claim, so how then could his attorney have said this before he found out it was fraudulent when the reason for bringing the Claim was because of the alleged fraud. This defied logic and common sense and showed the lengths that Mr DeCambre will go through to support his account even when it meant impugning another person's character. When confronted with signing the Claim, he indicated that truthfully, he didn't read the document. When asked if he knew he didn't sign then why did he certify this claim as being true and correct, his answer was 'probably naivety' and that he just signed where the attorney said to sign.

[121] Now having assessed Mr DeCambre, there is nothing naïve about him, particularly as it relates to business transactions, in fact I have found him to be quite artful.

[122] Even in the face of all of those prior statements and exhibits, Mr DeCambre insisted in his evidence on oath that he never signed the Agreement for Sale. This is blatantly inconsistent and rendered his evidence from the outset incapable of belief. Not only was his evidence inherently contradictory but it also contradicted the evidence of other persons whose veracity has not been impugned.

- [123]** It is the Claimant's case that when Mr Asher received the Instruments of Transfer neither Mr Melhado nor Mr DeCambre's purported signature had been attested to by the Justice of the Peace and that Mr. Asher subsequently sent the Instruments of Transfer to Mr Shoucair, then Justice of the Peace for him to have the signatures witnessed.
- [124]** The Claimant did succeed in proving that the documents were in fact sent to Mr Shoucair for him to witness them and that Mr Shoucair verified that he had witnessed them when he had not in fact done so. Mr Asher in his evidence indicated that when the transfer documents came to him from Mr Philipson's office they were already executed by Mr DeCambre and Mr Melhado, but they were not witnessed.
- [125]** Mr Asher's evidence supported the fact that the Transfers had not been signed by Mr DeCambre in the presence of Mr Shoucair. This supports the Claimant's assertion that he was aware that the signatures had not been attested in accordance with section 152 of the Registration of Titles Act. The Claimant has asked me to say that on this basis he therefore knew or ought to have known that this would render the Instruments of Transfer invalid and find that the Defendants fraudulently transferred the properties in the name of Total. The submission is also made that the Defendants' reliance on the invalid transfers is sufficient for the Court to find that the full purchase price had not been paid.
- [126]** This evidence supports the fact that there was an irregularity in how the documents were witnessed and that this did not comply with section 152 however this without more would not render the Transfers invalid. In order to prove the invalidity of the Transfer, the Claimant would have to establish that it was not in fact the majority shareholders Mr DeCambre and Julia DeCambre who signed the Transfers, and this is what they have attempted to do by virtue of bringing this case.

The seven properties were transferred in the name of the 1st Defendant without the Claimant having been paid by the 1st Defendant for the said properties.

[127] In the Particulars of Claim, it is asserted that on the 22nd of January 2004, the Claimant entered into an Agreement for Sale to sell the service stations for the sum of Two Million, Two Hundred and Forty-Nine Thousand, Nine Hundred and Ninety-Nine United States Dollars (US\$2,249,999.00) but there is no express indication as to whether the Claimant was paid any or some of these funds. It is further pleaded that Mr DeCambre on behalf of the Claimant executed other agreements for the sale of the service stations' additional land and equipment and renewal of leases which were not contained in the Agreement for Sale and that the payment made by the 1st Defendant was on account of these items. No other mention is made of the balance in the witness statement. Reference is made to this balance in the Particulars of Fraud where it is pleaded that the said properties were transferred without the Claimant having been paid by the Defendants for the said properties.

[128] With respect to the properties, it is the evidence of Mr DeCambre that on the occasion in February 2004 when the 2nd Defendant who was acting on behalf of the 1st Defendant attended upon the office of the Claimant with the transfer documents, he presented them to Mr DeCambre for him to affix his signature. During the signing Mr DeCambre asked the 2nd Defendant for the balance of the money for the said transfers and the 2nd Defendant told him that the Claimant's Attorney-at-law had the money. Mr DeCambre placed a call to his then attorney-at-law Mr Ian Phillipson and the 2nd Defendant immediately gathered the documents and ran from the Claimant's office.

[129] Mr DeCambre however does refer to money received from Total, he said for Goodwill, non-compete agreement, trade names of National Fuels and gas station equipment to the tune of Four Million, One Hundred Thousand United States Dollars (USD\$4,100,000.00) but he expressly indicated that this payment had

nothing to do with the sale of the properties owned by the company. Further that, at that time no Transfers had been presented to him for signing. In cross-examination he insisted that that purportedly was for non-compete, goodwill equipment, that sort of thing and that it was a way to break up the overall sum or for tax avoidance. He pointed out that essentially the transaction as per the verbal agreement was for Fifteen Million Dollars United States Dollars (US\$15,000,000.00) and he only received Four Million, One Hundred Thousand (US\$4,100,000.00) so he is owed a total of Ten Million, Nine Hundred Thousand United States Dollars (US\$10,900,000.00).

[130] Despite this lack of non-payment as asserted by the Claimant, the Claimant filed no action for recovery of the money owed and the instant action was not filed until fifteen years after the alleged fraudulent transfers were done. When asked in cross-examination if there is any document where he said he was owed this United States Ten Million, Nine Hundred Thousand Dollars (US\$10,900,000.00), he responded that that may be gleaned from his witness statement. When asked if he ever told the police that there was a shortfall of United States Ten Million, Nine Hundred Thousand Dollars (US\$10,900,000.00), he could not recall. An examination of his witness statement does not reflect any reference to this sum. Now, Mr DeCambre is asking the Court to accept that these exorbitant sums of money are outstanding, but he does not mention it in the Particulars of Claim, witness statement or in his statement to the police. I found this to be devoid of credibility.

[131] He agreed that he did not bring this claim for that significant outstanding balance but just for the fraudulent transfers. I found that incredible and certainly not consistent with the artful businessman Mr DeCambre has shown himself to be.

[132] He was shown a letter dated November 22, 2005 addressed to Christian Chammass of Total in France and he admitted to being the signatory. In this letter he admitted indicating in the following penultimate paragraph:

“Whilst Total continues to enjoy unmolested, the benefits of these stations, I am requesting that I be given unlimited time in which to produce a clear title and claim my USD\$800,000.00 plus interest. It is right that Total enjoys the benefit of what they paid for, but I must also enjoy the proceeds of my fifteen years of work, and I will not surrender this sum of money.”

[133] He was asked whether up until that point he acknowledged that Total had a right to be in possession of the gas station and a right to enjoy possession of them. He admitted writing the letter but said it was stupidly worded without the benefit of Counsel. He was asked whether he acknowledged that they were entitled to possession, and he accepted that having signed the letter he acknowledged the contents.

[134] He was asked whether when he gave a statement in September 2006 and whether he told Corporal Farquharson he has a balance outstanding of United States Eight Hundred Thousand Dollars (US\$800,000.00) and he said if it said so he did. He was asked whether he ever told anyone that he signed the documents but took the decision not to put the company seal on the document and he said he signed a document and that he started to sign the document, signed to a point and then told them he will instruct everyone not to sign or put the company seal on it. He further indicated that it was the officer who put on the letter ‘s’ on the pluralized document but that he signed the top document and stopped but he was referring to a bundle of document which was a stack.

[135] When the statement dated September 12, 2006 is perused, the words of Mr. DeCambre reflected therein were that:

“A part-payment was subsequently received leaving a balance of eight hundred thousand United States dollars which was due to be paid on completion of certain matters relating to the titles.

and

I told Mr Peter Asher that owing to the fact that I was only part-paid, I was willing to part-complete the transfer documents. I signed the documents but took the decision of not affixing my company's seal on this basis".

[136] It was further suggested to Mr DeCambre that this balance of United States Eight Hundred Thousand Dollars (US\$800,000.00) was agreed by him to be put into escrow pending rectification of boundary disputes and certain restrictive covenants or defects in title and he disagreed with this suggestion, however in his statement dated October 2, 2021 he said the following:

"I recall signing the agreement to open an Escrow account for Total Jamaica Limited to put a sum of Eight Hundred Thousand United States dollars (USD\$800,000.00) pending the rectification of boundaries and titles issues".

[137] He was confronted with an affidavit dated August 24, 2004 under his signature, filed in the Supreme Court on August 25, 2004 in Claim no. HCV 1133/2004. He admitted that a Freezing Order was made against NFL and admitted swearing to the affidavit and agreed having listed certain assets. He admitted referring to the United States Four Million, One Hundred Thousand Dollars (US\$4,100,000.00). What is evident from my examination of the affidavit is that there is no reference to other sums due to NFL and certainly nothing to the tune of Ten Million Nine Hundred Thousand United States Dollars (US\$10,900,000.00). He also admitted to saying that the 1st Defendant had sums for him in escrow. In the affidavit he made reference to sums being withheld pending certain rectifications to be done and pending settlement of a Court Order. He agreed with King's Counsel that this affidavit did not set out any other sums of money that may be due to NFL except the United States Eight Hundred Thousand Dollars (US\$800,000.00) mentioned to be in escrow.

[138] He also explained that the escrow account held at the National Commercial Bank was confirmed by a letter dated December 11, 2018 which listed the transactions

on the NCBJ/TOTAL Ja Ltd/National Fuels and Lubricants Ltd escrow account. He said that upon his written request he received a document from the National Commercial Bank with instructions for withdrawals for payments to Peter Asher which were purportedly authorized by Peter Asher, Luc Maiche and his attorney Ian Phillipson. He noticed inconsistencies with the signature purporting to be that of Mr Phillipson and so he engaged a handwriting expert to analyse the signature, and the expert confirmed that Ian Phillipson's signature was not only fraudulent but that the writer was Peter Asher.

[139] It was suggested to him that he received time from the 1st Defendant to satisfy the resolution of these disputes including boundary disputes and restrictive covenants that affected the Claimant's titles and that he asked for additional time to complete the process, and he agreed with these suggestions. He also agreed with the suggestion that he wrote to the 1st Defendant seeking compensation for billboards and air conditioning units only after April 1, 2004.

[140] It was further suggested that he engaged the services of the law firm Myers Fletcher and Gordon to assist in recovering sums of money that related to air conditioning units and a billboard, and he said he did not engage the services of Myers Fletcher and Gordon but rather that he asked a friend Mr Shelton to assist him. It was suggested that Mr Shelton King's Counsel was engaged by him to negotiate a settlement of all outstanding matters that existed between him and the 1st Defendant in 2006, and he expressly denied this. It was also suggested that he on behalf of himself and his companies entered into a three-party agreement, with Petrojam and the 1st Defendant dated August 30, 2006 and he refuted this.

[141] It was suggested that pursuant to that agreement and its terms he provided a Power of Attorney for himself to the 1st Defendant and from his company to the 1st Defendant and he said he did not, neither did his mother. He said he knew nothing about a Power of Attorney until it was submitted in the Defence and that it was used to fraudulently transfer a piece of land. It was suggested further that he also

provided instructions to his attorney-at law as to how the settlement sum were to be apportioned. He categorically denied this.

[142] It was specifically suggested to him that Mr Shelton King's Counsel on his behalf negotiated the agreement which is dated August 30, 2006, and he said that Mr Shelton was not acting on his behalf. It was suggested to him that he signed this agreement dated August 30, 2006 in the presence of Mr. Shelton and he said that Mr Shelton was not acting for him and the seals and signatures are fraudulent. When asked who Mr Shelton was representing, he said he was representing his friend and former co-worker Mr Asher. All this was said after having agreed that Mr Shelton had been his friend and attorney-at-law for many years. When asked whether he has reported Mr Shelton to the General Legal Council he said not yet but that he would do so when this matter is over.

[143] It was suggested to him that on September 15, 2006, his attorneys-at-law wrote to Mr Peter Asher indicating that he would give a letter of instructions in respect of monies that were due to him under a Settlement Agreement with the 1st Defendant and he said he gave no such instructions. It was further suggested that the letter of instructions referenced by Mr Shelton King's Counsel in the September 15, 2006 correspondence is the letter dated September 18, 2006 and his response was that this is a total clumsy fraud pointing out that 'Decvale 'is spelt 'Decval' and that the fraudster assumed it was spelt 'Decvale' but it is not. A nomination clause was shown to him relating to WIHCON and he said that this reflected another fraud.

[144] Interestingly, he admitted however that Mr Shelton King's Counsel filed a lawsuit on behalf of his company and that he wrote about monies being claimed on his behalf in respect of the billboard and the air conditioning. He was directed to look at the Settlement Agreement of September 20, 2006 which reflected a calculation of monies due to him after Petrojam's debt had been settled which amounted to Two Hundred and Ninety-Three Thousand, Nine Hundred and Forty-Four United States Dollars and Ninety-One Cents (US\$293,944.91) and he responded that this

is a far cry from the Ten Million, Nine Hundred Thousand United States Dollars (US\$10,900,000.00) that was owed. It was suggested that his lawyers calculated that an amount of Two Hundred and Ninety-Three Thousand, Nine Hundred and Forty-Four United States Dollars and Ninety-One Cents (US\$293,944.91) was the balance due to him after the settlement of the Petrojam debt and he again expressed that Mr Shelton King's Counsel is not his lawyer and that he has no knowledge of this document. It was suggested that Mr Shelton King's Counsel wrote and copied him on the letter of September 20, 2006 and his response was that he purportedly copied him. When asked if he got the letter, he responded that the copy is a sham.

[145] He was also asked whether Mr Shelton King's Counsel confirmed to Mr Asher that he has obtained Powers of Attorney for him as well as for NFL and he responded that he wrote that and that it had nothing to do with him as he knew nothing about the Power of Attorney. It was suggested that he gave Mr Shelton Powers of Attorney for himself, and NFL and he denied doing this and indicated that he did not give Power of Attorney to anyone. He even asked how could this be signed by his eighty year-old mother and why would he give a Power of Attorney and he is healthy and has his directors around him. He insisted that that too is fraudulent.

[146] There are in fact documents substantiating the suggestions of King's Counsel. Not only are there these documents, but Mr Shelton King's Counsel came to Court and gave credible, unimpeachable evidence of these transactions with Mr DeCambre. He indicated that he became involved in the aftermath of those transactions when Mr DeCambre spoke to him about the Court action in relation to Petrojam and he sent him a copy of the court order and it had a penal notice affixed to it typed in the margin of the court order. When shown the document, he said it represented the agreement between all the parties which were considered sellers entities. He expressed that Petrojam was made a party to the agreement on the understanding that Total would pay that sum directly to them. Total was to pay that amount on

behalf of NFL. This letter of September 15, 2006 is a letter under his signature copied to Roy DeCambre addressed to Mr Peter Asher.

- [147]** He confirmed the settlement letter under his signature wherein he attached the duly executed Powers of Attorney. He also confirmed the Settlement Agreement bearing the date September 20, 2006 and explained that it set out the total amount to be paid less the amount paid to Petrojam. He confirmed that there was a balance of Two Hundred and Ninety-Three Thousand, Nine Hundred and Ninety-Four United States Dollars and Ninety-One Cents (US\$293,994.91) which his client Mr DeCambre agreed should be paid to Petrojam. He highlighted that this letter was copied to Mr DeCambre.
- [148]** He confirmed the existence of the two Powers of Attorney which he said were agreed by Mr DeCambre and apparently by Total. Although he admitted that he didn't draft the Powers of Attorney, he said he had to amend the draft Powers of Attorney which he sent to Mr DeCambre and then sent it to Total. In a letter from himself dated September 20, 2006 addressed to Mr Peter J Asher, he wrote to confirm that Powers of Attorney were executed by Royaltan DeCambre. He indicated that these two Powers of Attorney were stamped by his office, and they were returned to him and that he fulfilled the undertaking. He confirmed that in his files he had the original signed papers of the Power of Attorney.
- [149]** King's Counsel Mr Shelton's evidence confirmed a lot of what Mr DeCambre denied. He confirmed that he was in fact the attorney on record acting for Mr DeCambre and his companies and that there was an agreement between the Claimant and the 1st Defendant in relation to the balance owing which was supported by the letter of November 20, 2005 that the balance was Eight Hundred Thousand United States Dollars (US\$800,000.00). He confirmed that Mr DeCambre authorised the payment by Total to Petrojam. Although King's Counsel Mr Shelton was not able to say when the Power of Attorney was signed, he confirmed that based on his familiarity with Mr DeCambre's signature, it was he

who signed it and that it was he who provided it and that he subsequently amended it. This contradicts Mr DeCambre's evidence that he knew nothing about the Power of Attorney until he saw it in the Defendants' bundle of documents. The evidence of King's Counsel Mr Shelton sharply contradicts the evidence of fraud alleged by Mr DeCambre. He was unshaken in cross-examination. I had absolutely no reason to doubt his veracity and I am convinced of his truthfulness.

[150] Not only did I find King's Counsel Mr. Shelton to be a credible witness, but I also found the evidence of Ms. June DaCosta to be unimpeachable. Her evidence is that she worked at Myers Fletcher and Gordon as a legal assistance and Mr Shelton King's Counsel was there as an attorney-at-law. She was at the time a commissioned Justice of the Peace. She was shown a photocopy of a Power of Attorney dated September 18, 2006 signed by Mr Royalton DeCambre with her signature as witnessing the document. She testified that she would have followed the protocol and met them in the Conference Room where they would have been and that they signed in her presence. In cross-examination she insisted that they signed in her presence and that the seal was also affixed in her presence.

[151] If this were not enough, there exists other material that starkly contradicts Mr. DeCambre's account, some of which I will make reference to here. There is a letter titled 'Completion Letter' dated April 1, 2004 under the signature of Roylton DeCambre (not disputed by Mr DeCambre) in which he as Managing Director of the Claimant made certain representations. The completion letter was said to be furnished pursuant to the Agreement for Sale dated January 22, 2004 by NFL and Total of certain assets of the company related to the business of the retail sale and distribution of fuels comprising gasoline, diesel and aviation fuel and fuel oil in Jamaica. The letter indicated that certain sums will be retained by Total Jamaica and placed into the Escrow Account established pursuant to the Agreement pending completion of the boundary rectifications and or title defects. This related to several of the properties in respect of which Mr DeCambre is now alleging that the transfers were fraudulent.

[152] This was followed by a letter of same date also from Mr DeCambre addressed to all National Dealers commencing with these words:

“This is to advise that, as previously notified, the operations of the stations previously owned and/or operated by National Fuels and Lubricants Ltd. have been transferred to Total Jamaica Limited effective April 1, 2004.”

[153] This begs the question, if Mr DeCambre had not transferred these properties, why was he writing this letter. Based on all the inconsistencies in the evidence of Mr DeCambre, I arrived at the inevitable conclusion that Mr DeCambre is not a witness of truth. I accept that he was integrally involved in the negotiations of a final sum in order to bring the matter to a close and find as a fact that Mr. DeCambre did in fact give instructions to King’s Counsel Mr Shelton to act on his behalf and that he and his mother signed the Power of Attorney. I accept that it was Mr DeCambre who provided the instructions relating to the Settlement Agreement and that he was fully aware of this agreement in which the total outstanding sum was agreed to be Two Hundred and Ninety-Three Thousand, Nine Hundred and Forty-Four United States Dollars and Ninety-One Cents (US\$293,944.91) and the monies paid out to Petrojam I accept that Total paid this entire sum on behalf of NFL and that NFL was in receipt of these funds.

[154] It is also quite incredible that having been deprived of his service stations without the requisite payment he did not take any action for so many years to get his money or his gas stations back. I reject the evidence of Mr DeCambre and find as a fact that the Claimant was in fact paid the sums due under the transaction. This is further supported by the Settlement Agreement of September 18, 2006 in which Mr DeCambre on behalf of the Claimant, himself and DecVale Services and RD’C International Limited irrevocably instructed his attorneys to pay over the balance of the settlement sum. I have formed the view that Mr DeCambre was motivated

by a desire to extract more out of the bargain than he had originally agreed. I find as a fact that NFL was paid in full by the 1st Defendant for the properties.

The transfers of the properties were effected by the 2nd Defendant on behalf of the 1st Defendant by having unauthorized persons sign purportedly on behalf of the Claimant.

[155] I have rejected the evidence of Mr. DeCambre that he did not sign the transfers. This was based on my assessment of his evidence and the plethora of inconsistencies contained in it. However, I have to consider the impact of that on the handwriting expert relied on by the Claimant which came from the expert report and evidence of Detective Sergeant George Dixon which supports his evidence that the signatures on the Transfers are not his.

[156] Sergeant Dixon testified that he is a certified questioned document examiner. The essence of his evidence is that neither Mr DeCambre nor his mother Julia DeCambre signed any of the transfer documents or Power of Attorney and that they were signed by Mr Peter Asher. Further that the banking documents bearing the signature of Mr Ian Phillipson were not in fact signed by him but were instead signed by Mr Peter Asher.

[157] Mr Dixon boasts over eight years' experience as a document examiner, having been trained by the International Forensic Document Examiner Ms. Katherine Koppenhaver. Ms. Katherine Koppenhaver, also a certified questioned document examiner, of many more years and boasting an impressive list of qualifications and accolades to include being the founder of the International Association of Document Examiner provided an expert report that contradicts the evidence of Sergeant Dixon. The question therefore arises as to which expert's report is to be accepted by the Court. On the face of it, it may be assumed that the finding of the teacher may be more reliable than that of the student but that without more would

be a flawed approach as a student can surpass a teacher so a careful analysis of the evidence of each has to be conducted.

[158] Certain flaws have been highlighted by King's Counsel Mr Manning in the expert report of Sergeant Dixon and include the fact that some of Sergeant Dixon's reports are undated. It was pointed out that he received his instructions from the Questioned Documents Registry and received none of the alleged known or questioned documents directly from Mr DeCambre. It was pointed out that he agreed that in respect of his findings on Exhibit D1, he gave no analysis and did not in his report identify or demonstrate whether or not he had identified any differences. King's Counsel pointed out that nevertheless he agreed 'absolutely' with the statement put to him that 'to make an identification of questioned documents requires that there must be sufficient similarities and no fundamental unexplainable differences between the questioned signatures and the known exemplars and that it is always a two-fold process of analysing similarities and differences. King's Counsel also commented on the fact that the witness 'defaced the documents' and asked the Court to find that he had tampered with an exhibit.

[159] In cross-examination Sergeant Dixon agreed that he could not say how the documents he described as known came into existence and that he simply described them as known because they were submitted as known. He said he knew that it was Mr DeCambre who brought them to the office, not because he had seen him do so but because his signature appeared as having done so. He admitted that he was speaking to the procedure that obtains at the department and so is relying on an entry or record made by a third party. He said the specimen signatures would have been written at the Questioned Document Section, but he didn't see Mr DeCambre write them. He also agreed that he couldn't speak to whether Mr DeCambre produced a sheet of paper with genuine company seals and cannot personally speak to the authenticity of the writing on the paper bearing the specimen seal of RD'C International Limited. He however found one item that is an Agreement for Sale dated January 22, 2004 to bear the authentic writing of

Mr DeCambre. This operates as a discrepancy with the evidence of Mr DeCambre as according to him, he didn't even sign any Agreements for Sale.

[160] He was questioned regarding comparing like documents with like, in particular as it relates to the contemporaneity of the signatures suggesting that a more reliable finding is generated when the dates on the questioned documents and the dates on the document with the known signatures are close in time. He responded that there is a comfort zone with fifteen years which is accepted as contemporaneous. He agreed that natural variations are accepted in a person's handwriting and also said that aging could affect the handwriting which could cause a difference but not a variation.

[161] He accepted that it is critical to the value of his opinion for him to demonstrate his analysis and how he arrived at his findings or opinion but yet he confirmed in respect of the findings, that nowhere in the text of his report does he demonstrate his analysis in order to arrive at those findings. He accepted that he had identified the similarities and not the differences although he accepted that it is critical to the assessment process to demonstrate both similarities and difference as this strengthens the basis of the opinion. Although in his findings there is a heading "most telling differences in characteristics of Q1, Q2, Q3, Q4, Q6, Q7, Q8, Q9 and Q10 in comparison to K1A – K2", the items listed do not actually qualify as differences but seem to be his findings, that is "signs of forgery are present in the execution of the signature, the signatures reflect poor line quality and this is a case of simulated forgery.

[162] There is merit to the observations of King's Counsel in relation to this witness. He gave evidence that he wrote the word 'fraudulent' on the questioned documents. When it was suggested that he made writings on the document which were not required to identify them he said he didn't agree and that they were necessary for his working file. I found it unacceptable that it was necessary to write on these questioned documents for the purpose of his working file. However, I did not find

that this alone diminished the value of his opinion, but I found the lack of analysis to be remarkable. This is especially so in light of his evidence that he thought it to be critical to the value of his opinion, in particular the identification and explanation for the differences.

[163] I found some other aspects of his findings to be questionable. He was asked whether he agreed that “the characteristics of forgery include tremor, patching, retracing, tracing, pen lifts, erasures and dissimilar letter forms and he answered positively but yet nowhere in his report did he use those words. He also agreed that the sentence “*line quality is identified as the smoothness of the line based upon the speed of the writer, the faster the writing the more smooth the signature*” but yet he did not demonstrate in his report the analysis of the line quality. Neither did he go on to identify any other words he may have used that are characteristics of forgery.

[164] In relation to his findings regarding the signature of Mr Asher, he also accepted that he should identify fundamentally unexplained differences but yet there is nothing in his report that demonstrates an analysis of how he arrived at his finding that Mr Asher signed the documents. He accepted that his analysis was a similarity analysis and that there is no indication in his report about significant, unexplained fundamental differences.

[165] I noted the fact that the documents analysed were not contemporaneous and that some were signed fifteen years prior. I noted that he came to this conclusion that Mr DeCambre’s signature did not appear on all the Transfers, in respect of all the Transfer documents yet Mr DeCambre’s evidence is that he had started to sign the Transfer documents which means that at least one, maybe more, of the Transfers bore his signature but yet there is no differentiating finding in relation to any of the transfers. This presents a discrepancy on the Claimant’s case and a contradiction.

[166] In relation to the seals, during cross-examination he agreed that in respect of the procedure they would take a specimen of the seal, so the person does not have to come in with the actual seal. He agreed that Mr DeCambre would have come with a specimen of the seal and submitted them as known.

[167] The evidence of Ms Koppenhaver relied on by the Defendants is also not without fault. In the first instance, she had been contacted years prior by Mr DeCambre about analysing the signatures and had concluded that the signatures cannot be identified because they are oversimplified, and it is not possible to identify him or anyone else who could have written the signatures. So how is it that years later she is able to do this? She was questioned about this and explained that now she had more signatures to work with. On behalf of the Claimant, it was submitted that the Court should not rely on her current evidence that Mr DeCambre is the author of the questioned signatures and also that she failed to verify that the known signatures in her report were Mr DeCambre's and that this undermines the reliability of her conclusions. I found that Ms. Koppenhaver, like Sergeant Dixon operated with the acceptance that the known signatures were that of Mr. DeCambre although they did not witness him signing. There is no evidence that contradicts that these "known signatures" were not in fact those of Mr. DeCambre so it is acceptable to use them in coming to the analysis.

[168] My task is to compare the two contrasting reports and the evidence provided by both experts and the responses given under cross-examination. It is a question of which report is more reliable. When the expert report of Ms. Koppenhaver is examined, it does provide some amount of analysis. She outlined the examination conducted and the methodology used in arriving at her conclusion. In relation to Mr DeCambre's questioned signatures, she found them to be smoothly executed and consistent and found no signs of forgery. She noted a lack of conscious awareness of the act of writing. She explained the characterisers of genuine writing and noted that there was good line quality and good pressure patterns which are indicative of genuineness. She compared them with one of Mr Asher's signatures

to demonstrate the lack of resemblance to the questioned signatures of Mr DeCambre. Ms. Koppenhaver was more detailed in her explanations, in particular as it relates to her explanation of the line quality, explaining the effect of a writer slowing down on the writing.

[169] With respect to the question of exemplars, her account seems to be more acceptable and practical, that is the time frame within which exemplars should be given was two years before or two years after. Sergeant Dixon on the other hand said there is a comfort zone of fifteen years, and it is acceptable as contemporaneous. I find it difficult to grasp that in any sphere a period of fifteen years could be acceptable as contemporaneous. I agree with the point made by King's Counsel that based on the evidence of Ms. Koppenhaver, several factors could negatively influence or change a person's handwriting especially over such a long duration of time.

[170] I am grateful to King's Counsel for drawing my attention to the authority of **B v IVF Hammersmith Ltd (R, third party) [2020] QB 93** which provides some guidance on how to treat with expert evidence. At paragraph 176, the court commented:

"An expert witness may give evidence of her own observations, as well as opinion based on her knowledge and experience of a subject matter. However, the more that it is demonstrable that an expert has applied scientific methods to her task, the greater the weight that should be accorded to her product."

[171] I am of the view that the expert evidence of Ms Koppenhaver is more reflective of the use of scientific methods than that of Mr Dixon. In concluding I found her expert evidence and analysis to be more thorough and provided more explanation which resulted in it being more acceptable. According to her, the signatures in the questioned documents are that of Mr DeCambre so this eliminates Mr Peter Asher

as having forged Mr DeCambre's signature. I find her report to be consistent with what I found to be the credible evidence in this case.

[172] When the evidence of Mr Asher is assessed in the context of the evidence of Mr Shelton King's Counsel, Mrs DaCosta, Ms Baker and Ms. Koppenhaver, I found it to be more reliable than that of the evidence presented on behalf of the Claimant. I do not accept the evidence that unauthorised persons signed on behalf of the Claimant. I accept that Mr. DeCambre signed on behalf of the Claimant and that he on behalf of the company intended to give and did in fact provide valid transfers to the 1st Defendant.

The transfers were purportedly authenticated by placing a seal on the said transfers falsely representing the seal of the Claimant.

[173] Mr DeCambre indicated that not only did he not sign the Transfers, but he did not affix the company seal. When shown the Transfers, he not only denied signing, but he also testified that what appears on it is not NFL's seal and the NFL seal, where it says Limited it is on the right side of the seal and not at the bottom. He explained that the size is also different. When shown the Settlement Agreement dated August 30, 2006 purportedly signed in the presence of his attorney-at-law Stephen Shelton King's Counsel, he said Mr Shelton was not acting for him and the seals and signatures are fraudulent.

[174] When shown the letter of instructions referenced by Mr Shelton King's Counsel in the September 15, 2006 correspondence and asked if this letter was from him and his companies dated September 18, 2006, he responded that this is a total clumsy fraud. Decval in spelt Decvale. This is spelt DecVale, that's where they get caught. The correct seal is spelt Decval. The fraudster assumed it was spelt Decvale, but it is not so. It was suggested that he had more than one seal for the company, and he denied this.

[175] I have accepted the evidence of King's Counsel Mr. Shelton over that of Mr DeCambre. I therefore reject the evidence that he did not sign and that the seal used was falsely used by the Defendants in order to perpetuate this fraud. I reject that and find that the Claimant has failed to prove that the Transfers were purportedly authenticated with a seal which was falsely represented to be the seal of the Claimant.

The Transfers were purportedly witnessed and notarized by a Justice of the Peace whom the Claimant never met

[176] Mr Peter Shoucair's evidence is that he signed the Transfers, witnessing Mr DeCambre's signature and that of Mr Melhado although he did not meet them. He accepted that the documents were sent to him by Mr Asher and that he just signed them without these persons having appeared before him. He explained that at the time he was a newly minted Justice of the Peace and that he has now changed how he operates as a Justice of the Peace.

[177] The import of his evidence to the Claimant case is that it supports the point that there is no evidence that either Mr DeCambre or Mr Melhado signed any transfer documents in the presence of the Justice of the Peace and that the Transfers were sent to Mr Shoucair in his capacity as a Justice of the Peace for him to affix his signature. Although this to some extent supports the Claimant's case that Mr DeCambre did not sign the Transfers and that it was Mr Asher who signed them, in light of the view I have taken of the lack of veracity on the part of Mr DeCambre, I do not accept this to be true and I do not accept that there was any forging of Mr. DeCambre's signatures. I accept however that it was after Mr. DeCambre and Mr. Melhado signed the documents that they were sent to the Justice of the Peace for his signature. This is contrary to how Justices of the Peace are expected to witness documents.

[178] According to the Claimant if Mr DeCambre's signature on the Instruments of Transfer were not attested by Mr Peter Shoucair, they are not valid. This would result in a lack of compliance with section 152 of the Registration of Titles Act which provides as follows:

"Instruments and powers of attorney under the Act signed by any person and attested by one witness shall be held to be duly executed..."

[179] It was argued that this position was confirmed by Laing J in **Neale Brown and Sharon Brown v Michael Brown [2019] JMCC Comm 9**. where the Court considered the effect of section 152 and found that the provisions are positive and obligatory. Therefore, failure to comply would render the Instruments of Transfer invalid. I do not agree with these submissions that this would render the Instruments of Transfer invalid.

[180] In light of my finding that it was Mr DeCambre who signed the Agreements for Sale and the Transfer documents, this makes the transaction and the Transfers valid.

By having Mr Les Melhado who was not an officer of the Claimant sign the said Transfer on behalf of the claimant effecting the transfers in the name of the 1st Defendant (sic).

[181] On behalf of the Claimant, it was submitted that Mr Melhado was not a Director or Secretary of NFL when the Instruments of Transfer were purportedly signed by him or at any time and so he did not have the necessary capacity or authority to sign or the apparent or ostensible authority to act on behalf of NFL. Mr Melhado is now deceased and so his account is not available, however the account of Mr Shoucair also supports the point that Mr Melhado did not sign any documents in

the presence of the Justice of the Peace. However, the evidence of Mr Shoucair without more is not sufficient to establish that the signatures of Mr Melhado were forged or obtained fraudulently.

[182] The Claimant highlighted the information set out in the statement given by Mr Melhado to the police in which he expressed that he was responsible for all administrative aspects of the business and that he was not authorized to sign any cheque as this function would have been carried out by either Mr DeCambre or Miss Sandra Morris.

[183] In the evidence-in-chief of Mr DeCambre he asserted that Mr Wellesley Melhado (deceased), a former employee of NFL, while working with Total Jamaica Ltd, signed as Company Secretary of NFL although Mr Melhado was never authorized or in any official capacity to do so, as he was not a Director or Secretary of NFL.

[184] The evidence of Mr Shoucair is that neither Mr. DeCambre nor Mr Melhado who signed as Company Secretary was present when he attested his signature. There is as part of the agreed documents a statement of Mr Wellesley Melhado given to the police on April 12, 2006. Although this is not direct evidence given before me, it is something of which the Court can take note of and determine what weight to place on it. He indicated that he was previously employed to NFL in the capacity of Administrative Manager and Marketing manager. He spoke of the sale of NFL's assets to Total and the negotiations. By March 2004 everything was concluded, and monies were lodged to the account of NFL. He said subsequently Mr DeCambre showed him a document and asked if he signed it. It contained signatures which bore resemblance to that of his, Mr DeCambre's signature and the seal of NFL. He recalled that he signed quite a number of documents relative to the sale and was quite aware of what he was signing so he told Mr DeCambre it appeared to be one of the documents he signed in his office. He then suggested to him that if it was not prepared by his lawyer and signed in his office then it is not his signature.

[185] It would appear from the evidence of Mr DeCambre on this point that Mr Melhado was at the time an employee of NFL and any signature by him was made in the context of his position in the Claimant company. In light of that the Claimant has failed to prove that the Defendants were the ones who had Mr Melhado sign the transfers.

[186] I agree with the arguments advanced on behalf of the Defendants that the Claimant has not provided cogent evidence in support of its case that there was fraud in the transaction between the parties. The Claimant has had the benefit of the transactions. The seller's entities, mortgage debts have been settled. The Claimant's debts to Petrojam have been settled. The outstanding titles/transfers itemized in the Completion Letter of April 1, 2024 have been settled. I also agree that at every step of the way the Claimant and the seller's entities have received the benefit of the commercial transaction and cannot now set up a case that is contradictory to them receiving and holding on to the benefit of the transaction.

Whether the Defendants are liable to the Claimant for loss of income?

[187] In the Particulars of Claim, it is averred that as a result of the fraudulent transfers the Claimant has suffered loss in the sum of Six Billion, Four Hundred Million Jamaican Dollars (J\$6,400,000,000.00) due to loss of income. The claim for loss of income is said to have resulted from the fraudulent transfer. The Claimant has failed to prove any fraudulent transfer and so would not be entitled to loss of income.

[188] I have found the Claimant's case to be devoid of credibility. It may not be necessary to delve into the substance of the Defence, but in case I am found to be wrong in rejecting the Claimant's case, I will now consider the Defence's case.

The Defence

[189] In the Amended Defence, the Defendants had sought to dispute whether the Claimant can bring this claim firstly on the basis that the Claimant was put in receivership which has not come to an end. At trial the Defendants did not advance this point, and the essence of the Defence focused on the Claim being statute barred or subject to laches and a denial of the Particulars of Fraud as set out in the Claim. They averred that the Claimant and/or Mr DeCambre entered into a legitimate business transaction for the sale and transfer of assets owned and controlled by him, the Claimant and other entities and have been paid in full all sums due arising from the sale of the properties and assets. It is alleged that Total had paid the full purchase price for the properties.

[190] Mr Asher in his evidence indicated that he was the sole attorney-at-law for Total in 2004 and that he acted for Total in the transactions with NFL whose principal was Mr DeCambre who he communicated with in respect of the transaction. NFL was represented firstly by Mr Ian Phillipson of Ian Phillipson & Co and after he died Mr Stephen Shelton King's Counsel. With respect to the transfers he indicated that all Transfers and all relevant documents were drafted by Ian Phillipson and Co. and were sent to him for execution by Total. Neither himself nor Total's representatives would have had an opportunity to sign as "Transferor" as those slots would have already been signed by NFL's representatives as arranged by NFL's Attorneys.

[191] During amplification he was asked to comment on Mr DeCambre's statement that he carried the transfers to Mr DeCambre, and he started to execute them, and his response was "absolutely not". He maintained this response in respect of other

averments made by Mr DeCambre to include Mr DeCambre's assertion that the true sale price was Fifteen Million United States Dollars (US\$15,000,000.00) and that he was to receive another Six Million United States Dollars (US\$6,000,000.00) under the table. When shown the report of the handwriting expert Sergeant George Dixon, he forcefully denied signing the Power of Attorney, denied forging the signature of Mr DeCambre or that of Mr Phillipson or that of Mrs. Julia DeCambre. He denied conspiring with anyone to defraud Mr DeCambre of anything.

[192] In cross-examination the Transfers were shown to him, and he admitted signing but said that Mr. DeCambre's signature was already in place, but it was not witnessed. He said he would not have known if it was put there by Mr DeCambre as that's how they came from Mr Phillipson's office. He indicated that he did not see Mr DeCambre sign nor when the seal was affixed. He agreed that the writing in the margins was his handwriting. It was suggested to him that when he received this document what appears to be Mr DeCambre's signature would be on the document, and he accepted this and accepted that he did not see him sign. These suggestions are somewhat curious as it went against the grain of what the Claimant's case was, that it was Mr Asher who forged Mr DeCambre's signature. He only admitted writing the details with respect to the calling for the witness both in the column for the vendor and the purchaser. He also accepted that at the time he received the documents the signature of Mr DeCambre was not then witnessed. This was a clear irregularity in the procedure concerning how signatures are to be witnessed for documents of this sort and Mr Asher clearly acquiesced to this.

[193] He was also questioned in relation to the escrow account and although he admitted that he and Mr Phillipson were the only two signatories, he was aware that a third person Mr Maiche withdrew sums from the account. This is another irregularity that Mr Asher seemed to have acquiesced in. It was suggested to him that despite his evidence that his conduct with respect to this matter is not in keeping with the canons of ethics and the legal profession, that with respect to the witnessing he fell short in the sense that he facilitated the Transfers going to have it witnessed

which allowed the witnessing of a signature that is allegedly that of Mr. DeCambre. He did not agree with this but in truth when the circumstances are viewed, it is clear that Mr Asher fell short of what would have been expected as the proper approach to transactions of this nature. However, the question for me is whether the deficiencies in the way he handled the transaction equates to fraud.

[194] When taxed about whether monies due to NFL had been paid, he responded that he can say with a hundred percent certainty that every dollar due from Total to NFL and the related entities was paid in full.

[195] He relied on the testimony of witnesses to include Ms. Ruth Baker who gave evidence that during the time she worked with Mr Phillipson, he had carriage of sale in the transaction between NFL and Total. She lended credence to the evidence of Mr Asher when she asserted that the documents, referring to the Agreement for Sale and the Transfer documents were prepared by her as secretary and sent to Mr DeCambre with instructions to sign. Although she was not present when Mr DeCambre signed, she asserted that she became familiar with his signature and that he signed all the Agreements for Sale and Transfers. She recalled that the properties had mortgages which were cleared by Total. She was also aware of the escrow account. She confirmed that Mr Phillipson having done his Statement of Account transferred all the money due to Mr DeCambre and his companies to him. She confirmed that the completion letter was signed by him.

[196] During cross-examination she admitted that she did not see Mr DeCambre sign and that there is no way she could say for sure that all sums due to Mr DeCambre have been paid over. She also accepted that the way in which Mr Asher dealt with the issue of the waiver was not normal procedure. I assessed this witness and found her to be a forthright witness whose credibility remained intact. Her reference to Ms Asher's action as not being normal procedure supports her veracity and the fact that Mr Asher did act in a manner outside of what is consistent with the

cannons of ethics and the expectations of attorneys-at-law in transactions of this nature, but this without more does not translate to a fraud.

[197] It is true that no witness testified that they saw Mr DeCambre sign but based on my findings that is not necessary. Based on my findings the Defendants have successfully refuted the Claimant's case. I am satisfied on a balance of probabilities that it was Mr. DeCambre and Mr. Melhado who signed the transfers on behalf of the Claimant and that the transfers were valid. The Claimant has failed to discharge the burden of proof in establishing that the Agreements for Sale and the Transfer documents were forged and that the properties were transferred to the 1st Defendant fraudulently. I am also satisfied on a balance of probabilities that all sums due to the Claimant were in fact paid by the 1st Defendant. The Claimant has failed to prove any liability. In light these findings, there is no basis to consider the issue of quantum of Damages.

DISPOSITION

[198] As a consequence of the failure of the Claimant's case, the Court finds in favour of the Defendants. My orders are as follows:

1. Judgment for the Defendants
2. Costs to the Defendants to be agreed or taxed.

.....
Stephane Jackson Haisley
Puisne Judge