IN THE HIGH COURT OF BELIZE A.D. 2023

CLAIM No. CV253 of 2023

BETWEEN:

[1] BRENDAN MANGAN

Claimant

and

[1] MANSEL C. TURTON

Defendant

Appearances:

Mr. Rene A. Montero for the Claimant
Mr. Ian Gray for the Defendant

2023: December 08th;

2024: April 15th & 17th;
May 29th.

JUDGMENT

Trial – Retainer Agreement – Breach of Retainer – Negligent Advice – Breach of Fiduciary and Trust Duties – Fraud – Unjust Enrichment – Limitation – Non-Compliance with Orders for Witness Statements – Damages.

[1] **ALEXANDER, J.**: The parties in this matter shared an attorney and client relationship. The relationship broke down and it led the claimant, Mr. Mangan, to approach the court seeking reliefs arising out of a breach of their retainer agreement ("retainer"). Mr. Mangan claimed that the defendant, his then attorney-at-law ("Mr. Turton"), breached the retainer between them on or about April 2008 by committing acts of fraud. In the alternative, Mr. Mangan has claimed breach of fiduciary duty and/or breach of trust and/or that Mr. Turton was negligent in acting on Mr. Mangan's behalf and in his advice and/or failed to act with reasonable skill and care or in the best interest of Mr. Mangan.

[2] Mr. Mangan also claimed unjust enrichment of Mr. Turton in receiving monies for legal services that were put to his own personal use. Mr. Mangan sought to recover under this head US$23,725.50, paid as retainer and other fees. In addition, he stated that he had paid the sum of US$300,000 on the advice of Mr. Turton towards the purchase of the property. He never received a transfer of the property in his name.

[3] I grant judgment against Mr. Turton and award damages as set out in paragraph 71 below.

History of proceedings

[4] I find it necessary, if not critical, to commence by providing a history of the proceedings, as Mr. Turton has made some serious allegations about the series of events that led up to the trial of this matter and about the pleadings. As an attorney-at-law and an officer of the court, Mr. Turton would be familiar with the practice and procedure of the court and be aware that records exist to confirm every stage of the proceedings. He would also be aware that due to no fault of the parties or the court, trials are sometimes vacated and/or rescheduled. Mr. Turton also should know about pleadings, how these are made or amended, and defended and that a defendant who is properly served has certain rights and obligations to answer the claim against him as well as the right to actively participate in the litigation process. I do not believe that, as an attorney-at-law, Mr. Turton would be a stranger to the court's processes.

[5] By claim form and statement of claim filed on 2nd May 2023 and personally served on 4th May 2023 at 4:40pm, Mr. Mangan commenced action against Mr. Turton. Mr. Mangan's claim contained serious allegations of fraud, professional impropriety, breaches of trust and fiduciary duties, negligent advice, unjust enrichment, and ensuing losses. It included a claim for loss of use and/or opportunity for which damages were claimed. It was a substantial claim brought against Mr. Turton.

[6] Mr. Turton is an attorney-at-law so would have appreciated the importance of defending the claim, attending *all* hearings, compliance with court orders, and providing evidence in

defence of the serious claims launched against him. Mr. Turton did file a defence, but thereafter, filed no witness statement nor did he comply with other CMC orders or attend the actual trial of the claim. He made no application for extension of time or for relief from sanctions so that he could file witness statements. An opportunity was given early to Mr. Turton to attempt a settlement/mediation of the claim, which he did not pursue. Instead, Mr. Turton ignored case management orders and approached the matter in a *laissez faire* and nonchalant manner. The trial proceeded undefended and without any evidence of Mr. Turton being placed before the court. An initial trial date of 27th November 2023 was lost due to no fault of Mr. Turton, as the court on the given date was engaged in the hearing of an urgent application. Mr. Turton was personally informed of the rescheduled date of **28th November 2023**, but he did not attend the trial nor was he represented. He did not contact the court to inform of any difficulties. The matter proceeded in his absence.

[7] About one month after the trial, on 3rd January 2024, Mr. Turton requested a rehearing of the trial. In his request filed on 3rd January 2024, he alleged that he had "personally appeared for trial in court on two (2) consecutive days, both in the morning and afternoon, but failed to obtain (sic) same." He did not identify the purported dates or if he had attended court on 28th November 2023 for the actual trial. He claimed simply that he had never received "any formal notice of a hearing" so asked that a *new* and *precise date* be set for trial. Since the initial trial date of 27th November 2023 was fixed at the case management conference and he did turn up on the set date and was personally advised of the rescheduled trial date (i.e. the following day), it was unclear as to what other "formal notice of a hearing" to which he was referring. I was aware only that the CMC order was approved by me on 27th July 2023, and it contained full directions including the trial date.

[8] In his request of 3rd January 2023, Mr. Turton also alleged that counsel for the claimant had "made a totally new claim for US$300,000 allegedly made to Defendant as the purchase price of real property" in court. This claim was allegedly made in the presence of this court, on some date on which Mr. Turton was not present. Mr. Turton knows or should know that a "totally new claim" is not pleaded or amended in this way, nor would any court entertain this aberration in pleadings.

[9] By notice filed on 23rd January 2024, he retained counsel, Mr. Gray, to act on his behalf. On 18th March 2024 at an oral hearing convened pursuant to the request of Mr. Turton, his counsel, Mr. Gray, asked that a new trial date be fixed so that he could cross-examine the claimant's witnesses. Mr. Gray's request was based on the huge sum of monies being claimed, since this would cause Mr. Turton financial ruin.

[10] I refuse Mr. Turton's request for a re-trial but did grant him an opportunity to file submissions in the matter by 12th April 2024. He did not meet that deadline date but did file submissions on 15th April 2024. I now set out in full the court's records of this matter, in the table below:

History of events in Claim No. 253 of 2023

Hearing Type	Date and Time	Attendances	Outcome
CMC	20/06/2023 10:30am	Mr. Montero for claimant/Defendant not present	Cost of $350 ordered against Defendant. First CMC adjourned to 12th July 2023 at 1:30pm to give Defendant the opportunity to attend.
CMC	12/07/2023 1:30pm	Mr. Montero for claimant/Mr. Turton present	Parties to have settlement discussions. CMC adjourned to 25th July 2023 at 9am for CMC directions to be given.
CMC	25/07/2023 9am	Mr. Montero for claimant/Mr. Turton not present	CMC orders issued. Trial date fixed for 27th November 2023 at 9am. Pre-Trial Review fixed for 8/11/2023 at 9am.
PTR	8/11/2023 9am	Court unavailable	PTR rescheduled to 16/11/2023 at 10am.
PTR	16/11/2023 10am	Mr. Montero for claimant/Mr. Turton not present	Non-compliance by Defendant with CMC orders. No witness statements filed by Defendant. Trial to proceed and trial date confirmed for 27th November 2023 at am.
Trial	27/11/2023 9am	Mr. Montero for claimant/Mr. Turton present in person	Trial not called. Court is dealing with an extensive/urgent matter. Marshal informs both counsel of new trial date. Trial adjourned to following day 28/11/2023 at 3pm to proceed
Trial	28/11/2023 3pm	Mr. Montero for claimant/Mr. Turton not present	Marshal unable to reach counsel by telephone number provided. Trial held. Directions given for written submissions to be filed by 8/12/2023.
Hearing on request of Mr. Turton	18/03/2024	Mr. Montero for claimant/Mr. Ian Gray for Defendant & Mr. Turton present in person	Parties informed that a new trial is refused. Defendant is allowed time to file and serve written submissions by 12th April 2024 and Claimant is to reply by 24th April 2024.

The Claim

[11] Mr. Mangan's claim is that sometime on or about April 2008, he retained Mr. Turton to advise and complete the sale and transfer of a portion of a property in Caye Caulker from Kenneth Roland St. Jean ("the vendor") to him. It was a beachside property.

[12] He entered an oral retainer with Mr. Turton to oversee the purchase and to ensure that Mr. Mangan receives title to it. By the retainer, the parties established an attorney-client relationship.

[13] At the material time, the property was purchased for investment purposes or to resell for profit. The vendor had a Transfer Certificate of Title Vol 25 Folio 47 dated 23rd July 1992 ("TCT") for the parcel of land containing 12.644 acres of land. The TCT was attached to his claim. The purchase price was agreed at US$300,000 for an estimated 1.33 acres to 2,14 acres of property including150 feet of beach front.

[14] As part of the retainer, Mr. Turton agreed to investigate the title to the property, prepare and file all documents including a Memorandum of Sale with the Lands Department, and to complete and effect the said transfer from the vendor to Mr. Mangan. Mr. Mangan pleaded that there were both express and implied terms of the retainer. On 21st April 2008, Mr. Turton lodged the Memorandum of Sale with the Lands Department but failed to advise Mr. Mangan that there was no final subdivision approval and that the Memorandum of Sale could not transfer the property to Mr. Mangan. Mr. Turton also failed to advise Mr. Mangan that the Memorandum of Sale was contrary to the Land Utilization Act, Chapter 188 of the Substantive Laws of Belize, R.E. 2011. He also did not advise Mr. Mangan that after it was lodged, it was marked "cancelled" by the Registrar of Lands. With full knowledge of the cancellation, Mr. Turton fraudulently and in breach of the retainer and/or his fiduciary duties continued to request and receive several payments towards the purchase of the property. Sometime in 2010, he advised Mr. Mangan, in writing, that title for his property would be ready in six weeks.

[15] Mr. Mangan's case is that he made all payments pursuant to the assurances and communications from Mr. Turton that the Memorandum of Sale would and did complete the transfer of the property to him and that he had good title. It was only in June 2022 when he visited the property that he discovered a structure on it. Checks with the Lands Department showed that the property was owned by a new entity.[1] Since then, Mr. Turton has steadily refused and/or failed to provide any information to Mr. Mangan. Mr. Mangan claimed damages for fraud and/or breach of the retainer or alternatively, for negligent advice, breach of fiduciary duty and/or breach of trust. He also claimed damages for loss of use and/or opportunity, or alternatively, an order for the sum of US$23,723,50 as monies had and received in the unjust enrichment of Mr. Turton.

The Defence

[16] The defence speaks for itself. It denies that the signatures on the documents attached are Mr. Turton's. By his defence, Mr. Turton denies knowing Mr. Mangan and raises limitation. I reproduce it in full here:

DENEFCE (sic)

The Defendant disputes the Claim by the Claimant on the following grounds.

1. Defendant denies having any knowledge of the subject matter of Claimant's Claim.
2. Defendant further denies that any of the signatures appearing in the paperwork attached to the Claimant's Claim are his, the Defendant's signatures.
3. Defendant hereby further asserts that if in fact there is any credibility to the Claimant's Claim, Claimant by virtue of the law of statutory limitation has forfeited his right to sue the Defendant.
4. Paragraph 4 of Claimant's Claim states that Claimant retained Defendant in about 2008 to advise and complete the sale and transfer of a property.
5. In paragraph 4 of his STATEMENT OF CLAIM, Claimant states:

"On or about April 2008, the Claimant retained the Defendant to advise and complete the sale and transfer of a portion of a property from Kenneth Roland St. Jean to him …" To be truthful, I had never met, seen or spoke to Claimant before he suddenly showed up at my front gate around July of 2022.

6. Defendant reserves the right to have the issues herein resolved at a pretrial conference.

[1] Weezie Ocean Front Hotel and Garden Cottage Limited.

The Reply

[17] In a very terse reply, Mr. Montero, counsel for Mr. Mangan, responded that the defence is further evidence of Mr. Turton's fraud and deceit and denies limitation.

Evidence

[18] Mr. Mangan filed a witness statement on 31st August 2023. He was the only witness in the matter. He exhibited a wealth of documentary evidence to support his claim. Mr. Mangan stated that he lives at 14 Pepper Lane San Carlos, California, USA and that Mr. Turton is an attorney-at-law who resides at #5 Eyre Street, Belize City, Belize. Mr. Turton also practices law in the State of Texas, USA. On or about 2008, he retained Mr. Turton to advise, oversee the purchase, and complete the sale and transfer of a portion of a beach side property on Caye Caulker to Mr. Mangan. At that time, the vendor held in his name a TCT, which he provides in evidence.

[19] Pursuant to the retainer, Mr. Turton prepared a Memorandum of Sale to transfer the property to Mr. Mangan. Mr. Turton then advised Mr. Mangan that all documents were in proper order and to make the first payment to the vendor. Mr. Turton also advised him that the Memorandum of Sale was the required document to transfer the property to Mr. Mangan and that he, Mr. Turton, would file the Memorandum of Sale with the Lands Department to complete the transfer process.

The Retainer Agreement

[20] The retainer commenced with a part payment of US$500 for preparation of the Memorandum of Sale. On 3rd April 2008, Mr. Mangan paid the retainer fee at the office of Mr. Turton and was issued with a receipt signed by Mr. Turton's assistant and wife, Mrs. Maureen Turton. The receipt dated 3rd April 2008 was attached to his witness statement.

[21] On 4th April 2008, Mr. Mangan paid an additional sum of US$275 for a title search and towards the registration of the Memorandum of Sale. He received a receipt dated 4th April 2008 signed by Mrs. Maureen Turton, the assistant to Mr. Turton. He attached this receipt to his witness statement. On 10th April 2008, Mr. Turton advised him to make the 10% deposit of US$30,000 to the vendor. He provided evidence of this in the form of a cashier's cheque. On 19th April 2008, pursuant to the retainer, Mr. Turton prepared the Memorandum of Sale. On 21st April 2008, Mr. Turton lodged the Memorandum of Sale with the Lands Department. On lodgement, it was given entry number "1088/08" and were inscribed with the words "lodged for records by Mansel C. Turton on the 21st Day of April 2008 at 3:30 p.m." It was signed by the Registrar of Lands. Mr. Mangan produced in evidence the Memorandum of Sale that was prepared by Mr. Turton, including the last page reflecting its lodgement at the Lands Department.

[22] It is Mr. Mangan's evidence that on the said 21st April 2008, Mr. Turton called him in the USA and informed him that he had filed the Memorandum of Sale and that "everything was in order." I will at this point detail the evidence of Mr. Mangan as to his understanding of the content of the retainer since no written agreement was provided to the court. Mr. Mangan's evidence is that there were both express and implied terms of the retainer.

[23] As part of the agreed terms, Mr. Turton was to investigate title to the property, file all necessary documents with the Lands Department, complete and convey the transfer of the property to Mr. Mangan, pay the Lands Department all fees (including for registration and stamp duties), keep Mr. Mangan who was out of the jurisdiction updated and ensure that proper title was passed to him.

[24] As part of the implied terms of the retainer agreement, Mr. Turton was to carry out Mr. Mangan's instructions with diligence, exercising due care and skills in the performance of his service. Mr. Turton was to take all necessary steps to protect the interest of Mr. Mangan by all proper means, report to him on all documentation received and on the results of any investigations made. Mr. Turton was to notify Mr. Mangan of any additional requirements or documentation needed to complete the transfer. Critical implied terms were that Mr. Turton would identify and warn of any defects in title and obtain good title to the property for Mr. Mangan. It was also implied that acting in the best interest of Mr.

Mangan would involve Mr. Turton acting promptly and ensuring that Mr. Mangan does not suffer financial loss and/or is not taken advantage of by Mr. Turton or the vendor.

[25] Instead, Mr. Turton informed Mr. Mangan that the said "cancelled" Memorandum of Sale did transfer the property to Mr. Mangan and continued requesting and receiving more funds from him. On 28th March 2009, Mr. Turton advised him that the transfer was complete and to make the final payment to the vendor. Pursuant to that advice, Mr. Mangan made the final payment to the vendor in the sum of US$270,000 by cheque. He attached a copy of the cheque dated 28th March 2009.

[26] On 20th April 2009, Mrs. Maureen Turton, the office assistant, advised him that the next step was to make stamp duty payments for the property and that he was required to make another retainer payment to complete the process. On 21st April 2009, Mr. Turton through Mrs. Maureen Turton requested a payment by wire transfer to Mr. Turton of US$14,500 for stamp duty plus US$4,125 in attorney fees. He attached the correspondence in which Mrs. Maureen Turton requested payment on behalf of Mr. Turton.

[27] Subsequently, on 22nd May 2009, Mr. Mangan sent the monies by wire to "Mansel C. Turton, Frost National Bank, San Antonio, Tx, 78296, routing no. 114000093, Acct No 015899524." Mr. Mangan attached copies of the outgoing wire on 22nd May 2009 totalling US$18,625 from his Washington Mutual Account, confirming the domestic wire transfer order and the Outgoing Wire Transfer Notice dated 22nd May 2009.

[28] In July 2009, Mr. Turton requested via telephone that an additional retainer payment of US$2,062.50 was required to complete the transfer. On 9th July 2009, Mr. Mangan wired US$2,062.50 from his Chase Bank Account to Mr. Turton. He attached evidence of this Outgoing Wire to his witness statement. On 18th May 2010, he again wired US$200 to Mr. Turton, via his Chase Bank Account. He provided evidence of this wire.

[29] On 11th July 2010, Mrs. Maureen Turton informed Mr. Mangan by email that the title to the property would be ready in six weeks. He provided a copy of this email. He did not receive the title documents.

[30] Almost a year and a half later, on 20th December 2011, Mr. Turton requested another retainer payment for his work. Mr. Mangan made a further payment of US$2,063 to Mr. Turton via a cashier's cheque. A copy of the cheque dated 20th December 2011 was attached in evidence. By this time, Mr. Mangan had paid a total of **US$23,725.50** directly to Mr. Turton and, on Mr. Turton's advice and assurances, paid the sum of **US$300,000** to the vendor. He provided evidence of the full sums paid to the vendor.

[31] It was only in June 2022, when he visited Belize that he discovered Mr. Turton's fraud and fiduciary breaches, including the concealment of the cancelled Memorandum of Sale from Mr. Mangan. Having lost the property and the investment opportunity to resell at a profit, he asked that damages be assessed in the sum of US$323,725.50 paid to the vendor and Mr. Turton.

Issues

[32] The issues, as the court finds them, are whether Mr. Turton has acted fraudulently and in breach of his fiduciary duties and/or retainer agreement and/or acted negligently and, if so, what damages could be recovered?

Discussion

[33] Having set out the evidence in full, I do not propose to do any detailed rehashing of it in my analysis. It is taken that the evidence went in unchallenged and that Mr. Turton has provided no evidence to the contrary. I turn to consider first the allegation of fraud.

Fraud

[34] Mr. Mangan claimed that Mr. Turton committed fraud in the conduct of the failed transfer. In his affidavit, he alleged that Mr. Turton would have been aware that the Memorandum of Sale was cancelled, and it could not have been used to transfer the property to Mr. Mangan. Despite this, Mr. Turton *knowingly* and intentionally made assurances to him that the transfer was in progression and advised Mr. Mangan to make the final payment

of US$270,000 to complete the transfer. Mr. Turton went further to advise that the deed for conveyance of the property would be available within a six-week timeframe and that all was in order. On these assurances, Mr. Turton demanded and received payments for a transfer that he knew could not and did not occur given the cancelled document.

[35] I have considered whether Mr. Turton's acts constituted fraud. The mere appearance of fraud is not the required proof of fraud. The evidence showed that Mr. Turton had knowledge of the cancellation or having filed the Memorandum of Sale, was in the position to discover the cancellation. Was this knowledge, without more, capable of constituting fraud? The evidence showed that he persisted in giving advice, which substantially contributed to fraud on Mr. Mangan. There was no evidence of any motive by Mr. Turton for committing the fraud.

[36] In **Derry v Peek**,[2] the elements necessary to constitute fraud were set out as: (i) proof of the fraud; (ii) making a false representation knowingly and without belief in its truth or making it recklessly, or careless whether it be true or false; and (iii) if fraud is proved the motive is immaterial. Knowledge of the fraud is critical where it involves transfer of land. Mr. Gray submitted that the tri-partite test for fraud was not satisfied on the evidence and that there was an absence of evidence that Mr. Turton acted against the financial interest of Mr. Mangan or was dishonest or knowingly caused him risk of loss. I disagree.

[37] In the present case, Mr. Turton was bound by the retainer to ensure title was properly passed to Mr. Mangan. He could not safely abstain from making proper inquiries into the propriety of the transaction between Mr. Mangan and the vendor, as that was his responsibility. In his answer to the claim, Mr. Turton did not raise as a defence that he made inquiry into the title of the vendor or found it deficient or gave any advice not to proceed with the purchase. His defence did not address the cancelled Memorandum of Sale. Rather, Mr. Turton denied knowing Mr. Mangan, alleging that he "had never met, seen or spoke to the Claimant before he suddenly showed up at my front gate around July of 2022." He also denied that it was his signature on the documents provided to the court. Mr. Turton's response to the claim was to impeach the credibility of Mr. Mangan,

[2] [1889] 14 A.C. 337.

and to take cover behind the limitation defence. I assume from his defence that the records in the Lands Department showing that he had submitted the Memorandum of Sale, which was subsequently cancelled, were not to be viewed by me as credible. I find the defence filed by Mr. Turton to be a weak and unconvincing answer to the claim. In fact, the evidence before me showed that Mr. Turton participated in, or he had knowledge of the fraud based on which he proffered assurances and advice to Mr. Mangan. His advice included that the transfer was initially in progress, then it was completed, and that the final payment should be made. This is the fraud perpetrated on Mr. Mangan since by the time of advising that the balance of the consideration should be paid, Mr. Turton fully well knew that the Memorandum of Sale was cancelled or, in any event, it was unable to transfer title to Mr. Mangan. There was no evidence of his motive for his ill-advice but, in any event, the test in **Derry v Peek** is that motive is immaterial once the other two elements are satisfied.

[38] I find that there is proof of the fraud. I find that Mr. Turton knowingly made false representations, without belief in the truth of them and/or that he persisted in his untruths, either recklessly or carelessly as to whether they were true or false. In the face of a cancelled Memorandum of Sale, Mr. Turton also acted in breach of his fiduciary duties and/or the retainer by financially milking Mr. Mangan for retainer and other fees for over three years. The evidence shows that it was a feast participated in and actively encouraged by his office assistant and wife, Mrs. Maureen Turton, who signed receipts and demanded retainer fees on behalf of her attorney husband. I accepted the evidence which showed that at least at the time when Mr. Turton advised Mr. Mangan on 28th March 2009 to make the final payment of US$270,000 to the vendor because the process was completed, Mr. Turton knew that this advice was flawed and that the Memorandum of Sale was cancelled. For a period of over three years thereafter, Mr. Turton demanded and received payments, as needed, for retainer fees to provide a service that he knew he could not provide. His conduct in so doing was disparaging of his profession, particularly as a conveyancer. In my judgment, the fraud by Mr. Turton is proved.

Retainer Agreement

[39] The evidence pointed to an oral retainer being entered into by the parties, as no written agreement was provided in evidence. On the clear evidence before me, Mr. Mangan instructed Mr. Turton to act on his behalf to get a property conveyed to him and made payments for that service. Pursuant to the retainer, Mr. Turton prepared and submitted the Memorandum of Sale to the Lands Department. There were numerous receipts, wire transfers and other documents evidencing the attorney/client relationship. In any event, nothing prevents a retainer from being made orally, in writing or inferred from conduct.

[40] While a written retainer shields an attorney-at-law from future potential claims and defines the scope and terms of the attorney/client relationship, and it is always advisable as good practice, the absence of a written retainer is no cover or excuse for saying that none exists. As a rule, the terms, and limits of a retainer are questions of facts to be determined afresh in each case. Moreover, the retainer can give rise to both express and implied contractual obligations, to which ordinary principles of contractual obligations would arise.

[41] I find instructive and wish to identify with certain guiding principles on the implied terms of a retainer as set out by Jackson LJ in **Sharon Minkin v Lesley Landsberg (Practising as Barnet Family Law)**.[3] These included: (i) carrying out the tasks as instructed by the client and agreed to by the solicitor; (ii) proffering advice that is reasonably incidental to the work to be done; (iii) in determining what advice is reasonably incidental, it is necessary to have regard to all the circumstances of the case, including the character and experience of the client; (iv) in relation to (iii) it is possible to give definitive guidance, but one can give fairly bland illustrations. An experienced businessman will not wish to pay for being told that which he already knows. An impoverished client will not wish to pay for advice which he cannot afford. An inexperienced client will expect to be warned of risks which are (or should be) apparent to the solicitor but not to the client; and (v) the solicitor and client may by agreement limit the duties, which would otherwise form part of the retainer. As a matter of good practice, the solicitor should confirm such agreement in

[3] [2016] 1 WLR 1489, para 38.

writing and if he fails to do so, the court may not accept that any such restriction was agreed.

[42] In the instant case, I am satisfied that the retainer arose when Mr. Mangan instructed Mr. Turton to represent him in the purchase of the property. Mr. Turton's services were orally retained in April 2008. There was irrefutable evidence of consideration passing, as Mr. Turton requested and received fees for his services. He then prepared and lodged the Memorandum of Sale. There is no disputing this evidence or the evidence of the official records from the Lands Department and/or the several receipts and other documents before me. The evidence of the existence of the retainer was incontrovertible. In my judgment, all the principles in **Minkin** were satisfied. I find on the evidence, therefore, that there was a retainer between the parties.

[43] Moreover, I find that Mr. Turton has breached the retainer. The present retainer involved non-contentious business. Mr. Turton, as a conveyancer, ought to have carried out his instructions under the retainer with due diligence and by proper means. He failed to do so. He ought to have consulted with Mr. Mangan on any question of doubt. He failed to do so. He ought to have warned Mr Mangan of defects in the title. He failed to do so. He ought to have kept Mr. Mangan properly informed about the transaction and to protect Mr. Mangan's interest. He failed to do so. Mr. Turton wholly and unequivocally breached the retainer when he failed to perform the work for which he was retained and remunerated. The question arises now as to whether Mr. Turton was negligent in his actions.

Negligent Advice

[44] I find as a fact on the evidence that Mr. Turton breached his duty of care in tort in giving and/or failing to give proper advice to Mr. Mangan. The duty of care[4] arises, "only if it is foreseeable that if the advice is negligent, the recipient is likely to suffer damage, and that there is a sufficiently proximate relationship between the parties and that it is just and

[4] Cordery on Legal Services; Division F; General Principles; Section 3B Origin and existence of duty; 1 Solicitors; para 3154,

reasonable to impose the liability." The tortious duty that arises includes a duty to take reasonable care and not to cause economic loss to the client from advice given.

[45] In **Cordery on Legal Services**, it is stated of the reasonable care and skill of a conveyancer that, "… it can more reasonably be the expectation of every acquirer of property that the solicitor will obtain good title or identify and warn of defects in title proposed to be acquired." The evidence is clear that Mr. Turton, as a conveyancer, did not exercise reasonable skill, care, and diligence in accordance with the expectation of Mr. Mangan who was the proposed acquirer of the property. This provides a complete answer to what has transpired in the instant case. Mr. Turton was fully aware that the Memorandum of Sale was cancelled yet he persisted in his course of conduct of recklessly and negligently failing to inform Mr. Mangan of this. It was foreseeable that his negligent advice would cause Mr. Mangan to suffer damage and loss. Moreover, Mr. Turton's duty to provide the services of a reasonably competent conveyancing attorney was *independent of* and additional to the implied terms of the retainer. I, therefore, accepted Mr. Mangan's evidence that showed that Mr. Turton did not act in good faith or in Mr. Mangan's best interest in the transaction. I find as a fact on the evidence that Mr. Turton breached his duty of care when he engaged in the legal fleecing of Mr. Mangan, by requesting and receiving payments based on false assurances.

[46] Given that there was no final subdivision approval at the time for the property, Mr. Turton must have known that his advice was negligent, the Memorandum of Sale could not transfer the property and that it was contrary to the Land Utilization Act. I therefore, also find as a fact that Mr. Turton was negligent and in breach of the retainer when he failed to advise that the Memorandum of Sale was contrary to the Land Utilization Act.

[47] Section 14 of the Land Utilization Act of Belize provides that, "The applicant shall not sell, lease, give or in any other manner alienate any part of the land which is to be subdivided until he has received the final approval of the Minister." There was no evidence that the vendor had final approval for the subdivision of the property. As such, any sale at that time would have been contrary to section 14 of the Land Utilization Act. Despite this, Mr. Turton took no steps to correct the error and/or to inform Mr. Mangan that the transfer

was impossible. Mr. Turton was negligent in identifying and warning of the defects in title and/or in obtaining title for Mr. Mangan. He did not only fail to advise about the hiccups in the transfer process, but he concealed the truth and continued to request/receive more funds and directed the final payment of the consideration, against the best interest of Mr. Mangan. There was no evidence that he exercised any reasonable skill and care in the matter and in the provision of the advice to Mr. Mangan to pay the vendor the full purchase price of US$300,000. In fact, I do not accept that Mr. Turton, who collected stamp duty fees, would have been able to pay stamp duty on a cancelled Memorandum of Sale. Mr. Turton provided negligent and reckless advice. He aimed to deceive and acted carelessly, recklessly and/or fraudulently in providing the professional services for which he was retained and paid. He breached his duty of care.

Fiduciary and Trust Duties

[48] Under the retainer, Mr. Turton owed Mr. Mangan a range of fiduciary duties, which are separate from his obligations in contract or duties in tort. These duties included the duty not to take any secret advantage, whether or not dishonesty is involved, and to make full disclosure of any interest he might have in the transaction for which his services were retained.[5] Mr. Turton breached every single one of these fiduciary duties. As a trustee, he failed to act in good faith, acted for his own benefit and to make a profit out of his trust.

[49] Despite being aware that he could not genuinely complete the conveyance, Mr. Turton continued to collect and use the legal fees for his own benefit, in breach of his fiduciary obligations. in further breach, he persisted in giving false assurances to Mr. Mangan to get him to make unnecessary payments to the vendor. I am satisfied on the evidence that Mr. Turton breached his fiduciary duties.

[5] Cordery, para 3159.

Unjust Enrichment

[50] As a basic principle, a claim for unjust enrichment is not a claim for compensation for loss but for recovery of a benefit unjustly gained by a defendant. The doctrine holds that "where the defendant is unjustly enriched at the plaintiff's expense, the defendant must make restitution to the plaintiff. Such a principle has its greatest scope in the area of quasi contract, but overlaps also into contract, tort and many areas of equity."[6]

[51] In **Jena Reyes v Amelia Johnston**,[7] this doctrine was discussed by the Court of Appeal, which referenced the case of **Benedetti v Sarwiris**,[8] where the focus was on the law of unjust enrichment.

[52] **Bendetti** endorsed the well-established questions that a court confronted with a claim for unjust enrichment must ask itself. These questions are: (i) Has the defendant been enriched? (ii) Was this enrichment at the claimant's expense? (iii) Was the enrichment unjust? (iv) Are there any defences available to the defendant? It is common ground that the first three questions must be answered in the affirmative, as confirmed in **Bendetti**. Further, **Bendetti** followed **Banque Fiananciere de la Cite v Parc (Battersea) Ltd**[9] where Lord Steyn stated that if the first three questions are answered affirmatively and the fourth negatively, then the claimant will be entitled to restitution and that the four elements "constitute the fundamental conceptual structure".

[53] I accept the undisputed evidence before me of the payment to Mr. Turton of US$23,725.50 for legal fees. Mr. Turton obtained the benefit, the enrichment was at Mr. Mangan's expense and, it was unjust. Given that Mr. Turton was paid in full for services that he did not perform, he must repay the US$23,725.50.

[6] Hanbury and Martin Modern Equity, 4th Edition by Jill Martin, p 641.
[7] Civil Appeal No. 8 of 2018.
[8] [2013] UKSC Civ 1427.
[9] [1999] 1 AC 221 at page 227.

Limitation

[54] Mr. Turton raised limitation in his defence. In his submissions, Mr Gray, counsel for Mr. Turton, argued that there is a delay of 14 years in issuing proceedings against Mr. Turton. Mr Gray stated that the Limitation Act and the Registered Land Act provide for a claim to be brought within 12 years and 6 years respectively. Counsel failed to identify the sections in the Limitation Act and Registered Land Act on which he relied. Mr. Gray also advanced that a claim could be struck out where there were delays in bringing it and/or where it is brought in "wholesale disregard of the norms of conducting serious litigation and doing so with full awareness of the consequences." He relies on the case of **Habib Bank Ltd. v Jaffer (Gulzar Haider)**.[10] Mr. Gray failed to address the evidence that Mr. Mangan had only discovered the fraud in June 2022 when he returned to Belize and visited the property.

[55] Section 32 of the Limitation Act states:

> Where, in the case of any action for which a period of limitation is prescribed by this Act, either,
>
> (a) the action is based upon fraud of the defendant or his agent or of any person through whom he claims or his agent;
> (b) the right of action is concealed by the fraud of any such person as aforesaid; or
> (c) the action is for relief from the consequences of a mistake,
>
> the period of **limitation shall not begin to run until the plaintiff has discovered the fraud** or the mistake, as the case may be, **or could with reasonable diligence have discovered it** … [Emphasis added]

[56] Section 32 answers the argument of Mr. Gray and requires nothing further from me.

Damages

[57] Having established that limitation does not apply to cases of fraud, I considered the issue of damages. Mr. Mangan seeks to recover the sum of US$300,000 as damages. Mr.

[10] (2000) CPLR 438, CA.

Montero argued that the evidence establishes that Mr. Turton was negligent and breached the retainer, so Mr. Mangan is entitled to damages in that amount.

[58] It is settled law that the governing principle of damages is to put the party whose rights have been violated in the same position, so far as money can do so, as if his rights have been observed: see **Sally Wertheim v Chicoutimi Pulp Co**.[11]

[59] Generally, an award of damages would be made when an attorney-at-law breaches his duty. To be entitled to get the award, a claimant bears the burden to prove his losses. To avail himself of damages, Mr. Mangan would have to show that his loss was a direct consequence of Mr. Turton's negligence and breach of duty. He must also show the nexus between the harm and the duty of care,[12] specifically that Mr. Turton had failed to properly advise him in the transfer of the property from the vendor to himself. Mr. Montero relies on **Pilkington v Wood**,[13] to support his case for damages.

[60] In **Pilkington**, an interesting and persuasive conclusion was arrived at by Harman J which I would quote in full. **Pilkington** involved the purchase of a house by a claimant who, when he attempted to sell it, discovered that the vendor had given him a defective title. Harman J stated:

> I am of opinion that the so-called duty to mitigate does not go so far as to oblige the injured party, even under an indemnity, to embark on a complicated and difficult piece of litigation against a third party. The damage to the plaintiff was done once and for all directly the voidable conveyance to him was executed. **This was the direct result of the negligent advice tendered by the solicitor, the defendant, that a good title had been shown; and, in my judgment, it is no part of the plaintiff's duty to embark on the proposed litigation in order to protect his solicitor from the consequences of his own carelessness.** [Emphasis added].

[61] **Pilkington** held that the proper amount of damages was the difference between the market value of the property at the time of the breach with a good title and the market value it would have then had with a defective title. Mr. Montero submitted that damages

[11] [1911] AC 301.
[12] Manchester Building Society v Grant Thornton UK LLP UKSC 2019/0040.
[13] [1953] Ch. 770 at 778.

be assessed at the market value of the property in the sum of US$300,000, as a defective title has a zero-market value. He seems to be making the case that Mr. Mangan has a right to a complete indemnity for all losses *de facto* resulting from the breaches. **Pilkington** is not on all fours with the instant case, as no title, defective or otherwise, was passed to Mr. Mangan.

[62] The question is whether Mr. Mangan is entitled to recover the US$300,000 as damages for the breach? In cases of breach of an agreement, an aggrieved party is only entitled to recover such part of the loss actually resulting, as was at the time of the contract reasonably foreseeable as liable to result from the breach. Further, what was at that time reasonably so foreseeable depends on the knowledge then possessed by the parties or, at all events, by the party who later commits the breach. In my view, it would have been foreseeable to Mr. Turton that his negligent advice to pay the full consideration to the vendor would have caused Mr. Mangan to lose his money.

[63] In my judgment, it would also have been within the reasonable contemplation of the parties when the retainer was entered, and Mr. Turton assumed the duty of advising Mr. Mangan, that a defective title could not transfer the property and Mr. Mangan would have lost an investment opportunity. However, at the trial Mr. Mangan did not pursue the relief for damages for lost opportunity. There was evidence that Mr. Turton would have known of the defective title, yet he continued to advise that all was in order with the transfer. The damage was foreseeable and flowed directly from his negligent and reckless advice to Mr. Mangan to pay the full consideration to the vendor, who could not pass proper title. The loss of the US$300,000 is directly attributable to the advice.

[64] I have also considered the issue of fraud and damages and found that the end-result does not differ from the breach discussed above. In further submissions, Mr. Montero pointed me to **Doyle v Olby (Ironmongers) Ltd**[14] and the dicta of Lord Denning, which I quote in full:

> Damages for fraud and conspiracy are assessed differently from breach of contract … On principle, the distinction seems to be this: in contract, the defendant has made a

[14] [1969] 2 QB 158.

promise and broken it. The object of damages is to put the plaintiff in as good a position, as far as money can do it, as if the promise had been performed. **In fraud, the defendant has been guilty of a deliberate wrong by inducing the plaintiff to act to his detriment.** The object of damages is to compensate the plaintiff for all the loss he has suffered, so far, again, as money can do it. In contract, the damages are limited to what may reasonably be supposed to have been in the contemplation of the parties**. In fraud, they are not so limited. The defendant is bound to make reparation for all the actual damages directly following from the fraudulent inducement.** [Emphasis added].

[65] Additionally, I considered the case of **Rodney Zimmermann v Mackinnon Belize Land & Development Ltd. et al**[15] where the first defendant was held liable for fraudulent misrepresentation and breach of contract and the claimant was awarded damages in the global sum of US$202,458.50 inclusive of the full purchase price, closing costs, stamp duty and filing fees. I quote liberally from the judgment of Young J:

> In Smith New Court Securities Ltd v Scrimeour Vickers (Asset Management) Ltd [1997] AC 254 at 267, the applicable principles in assessing damages for fraudulent misrepresentation which induced the purchase of property was summarized thus:
>
> > "(1) **the defendant is bound to make reparation for all the damage directly flowing from the transaction**; (2) although such damage need not have been foreseeable, it must have **been** directly caused by the transaction; (3) **in assessing such damage, the plaintiff is entitled to recover by way of damages the full price paid by him,** but he must give credit for any benefits which he has received as a result of the transaction; (4) as a general rule, the benefits received by him include the market value of the property acquired as at the date of acquisition; but such general rule is not to be inflexibly applied where to do so would prevent him obtaining full compensation for the wrong suffered; (5) although the circumstances in which the general rule should not apply cannot be comprehensively stated, it will normally not apply where either (a) the misrepresentation has continued to operate after the date of the acquisition of the asset or (b) the circumstances of the case are such that the plaintiff is, by reason of the fraud, **locked into the property**. (6) In addition, the plaintiff is entitled to recover consequential losses caused by the transaction; (7) the plaintiff must take all reasonable steps to mitigate his loss once he had discovered the fraud." [Emphasis added].

[66] In my judgment, Mr. Mangan is entitled to recover as damages the full price paid by him as consideration for a property he never acquired. He was not "locked into the property" as in the case of **Rodney Zimmermann**, he was actually locked out from the acquisition

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of the property that he paid full price to acquire. The loss of the US$300,000 was foreseeable as occurring from the fraud and it does not now lie in the mouth of Mr. Turton to say that he could not reasonably have foreseen it. Mr. Mangan is entitled to recover by way of damages the full price paid by him for the property in the sum of US$300,000.

Should the Defendant's submissions be struck out?

[67] Mr. Montero argued that Mr. Turton filed his submissions outside of the time limited by the court and failed to address the evidence or submissions filed on Mr. Mangan's behalf. He argued that this showed the continuing flouting of and blatant disregard of the court's processes and orders by Mr. Turton. The submissions must be struck out.

[68] Mr. Gray's submissions contained a strange mix of informal requests to strike out the claim, and to impose sanctions and costs on his own client, Mr. Turton, for non-compliance with court orders. Mr. Gray also asked that the court should allow Mr. Turton the opportunity to be heard. In the mix, Mr. Gray raised both constitutional and human rights arguments to wit that somehow Mr. Turton's rights to a fair public hearing and right to life, liberty and security of the person were jeopardised by having the trial in his absence and should the re-trial not be ordered. These submissions are baseless and are rejected outright. Strangely, Mr. Gray in his submissions loosely admitted that the only money received by Mr. Turton was BZ$46,000 and that "the information about the trial dates were (sic) misunderstood by the defendant" so he failed to show up for trial. According to Mr. Gray, to order Mr. Turton to pay damages of BZ$700,000 would be unjust and unfair, as Mr. Mangan had only proved that he paid the retainer fee to Mr. Turton but not that he had paid the purchase price to the vendor. This submission by Mr. Gray demonstrated a failure to appreciate the clear documentary evidence of the full payment of the purchase price to the vendor. Mr. Gray seems to be making a circuitous admission of the claim, via his submissions.

[69] Given Mr. Gray's submissions, I did not think it necessary to accede to Mr. Montero's request, as to strike it out would have changed nothing in my decision.

Costs

[70] Costs usually follow the event. Mr. Mangan is allowed his costs in this matter, which I will award on the prescribed scale.

Disposition

[71] It is ordered that:

1. Judgment on liability is granted to the claimant.
2. The defendant do pay the sum of BZ$47,451 (US$23,725.50) with interest at the rate of 3% per annum from the 20th December 2011 (i.e. date of last retainer payment) to the 29th May 2024 and thereafter at the statutory rate of 6% until payment in full.
3. The defendant do pay damages in the sum of BZ$600,000 (US$300,000) with interest at the rate of 3% per annum from 4th May 2023 (date of service) to 29th May 2024 and thereafter at the statutory rate of 6% until payment in full.
4. The claimant is awarded costs on the prescribed basis.

Martha Alexander

High Court Judge