[2016] CCJ 9 (AJ)

IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction

ON APPEAL FROM THE COURT OF APPEAL OF GUYANA

CCJ Appeal No GYCV2015/007
GY Civil Appeal No 66 of 2012

BETWEEN

CHEE YIU KWANG
MILLICENT DENISE MURRAY **APPELLANTS**

AND

TSUI YOKKEI a.k.a CHEEKEE **RESPONDENT**

Before The Honourables **Mr Justice Saunders**
Mr Justice Wit
Mr Justice Hayton
Mr Justice Anderson
Mme Justice Rajnauth-Lee

Appearances

Mr Devindra Kissoon, Mr Rajendra N Poonai and Mr Naresh Poonai for the Appellants

Mr Mohabir Anil Nandlall, Mr Manoj Narayan and Ms Sasha S Mahadeo for the Respondent

JUDGMENT

of

Justices Saunders, Wit, Hayton, Anderson and Rajnauth-Lee

Delivered by

The Honourable Mme Justice Rajnauth-Lee

on the 20th day of May 2016

Introduction

[1] In this appeal this Court has considered two important issues for Guyanese land law. The first is what is required to establish fraud under section 22(1) of the Deeds Registry Act (the Act).[1] This question arises by virtue of successive sales of a parcel of land located in Bartica, Guyana. By section 22(1) of the Act every transport vests in the transferee full and absolute title. The proviso to section 22(1) contains an exception for fraud in the hands of all parties or privies to the fraud once an action is commenced within twelve months of the discovery of the fraud. The Act does not provide either definitions of the word 'fraud' or the phrase 'privies to the fraud' or what is required to establish fraud. We are of the view that where a vendor agrees to sell land to a purchaser and then subsequently agrees to sell the same land to a second purchaser, the vendor will clearly have committed fraud as long as the prior agreement for sale is subsisting. Where the second purchaser agrees to purchase the land with actual knowledge of the prior sale, this will make him or her privy to the fraud. Both the conduct of the vendor and the subsequent purchaser will fall within section 22(1) of the Act. The second issue is whether the failure of a first purchaser of immovable property to oppose the passing of transport to a subsequent purchaser bars the first purchaser from seeking to set aside the transport on the basis of fraud under section 22(1) of the Act. We are of the view that the first purchaser's claim in fraud cannot be barred if he did not have actual notice of the passing of transport.

[2] The First Appellant, Chee Yiu Kwang (Kwang) was the nephew of the Respondent, Tsui Yokkei also known as Cheekee (Cheekee). The Second Appellant, Millicent Denise Murray (Millicent) was the sister of Cheekee's son in law, Martin Anthony Murray (Martin). Martin was married to Cheekee's daughter and held powers of attorney on behalf of Kwang and on behalf of Millicent. Both Kwang and Millicent resided in Canada. Cheekee resided with his wife at Lot 38 First Avenue, Bartica, (the disputed property) which was owned by Kwang by transport.

[1] Cap 5:01 of the Laws of Guyana.

[3] Sometime in 1996, Cheekee moved onto the disputed property and began to operate a restaurant. Permission was given to him to move into the disputed property either by Kwang or Kwang's father, Cheekee's brother.[2] He was told to reside on the disputed property, to effect the necessary repairs and renovations to the residence and restaurant located on the disputed property, and to operate the restaurant. He was also told to maintain and upkeep the disputed property and to pay all rates and taxes in relation thereto. He did not effect any major renovations and repairs because of financial difficulties but maintained the disputed property as best as he could. He also began operating the restaurant.

[4] In the year 2000, Kwang returned to Guyana and offered to sell to Cheekee the disputed property for US$90,000.00, which offer Cheekee accepted. Cheekee alleged that he made a down payment of US$20,885.00 and it was agreed that he would pay the balance as he earned until full payment was effected. Kwang issued a receipt written in Chinese. Subsequently, Cheekee made several payments through bank transfers to Kwang in Canada amounting to approximately US$13,394.00 through Scotia Bank at Bartica. Martin did all those transactions on behalf of Cheekee. The parties have accepted that Cheekee paid Kwang the total sum of US$34,399.99.

[5] According to Cheekee, he was given that long term payment plan, since it was acknowledged and agreed that massive repairs and renovations had to be carried out on the disputed property and that he, Cheekee, would bear the costs of those repairs. Those repairs were carried out in 2003, and cost approximately G$3,000,000.00. According to Cheekee, the repairs included changing the entire roof, doors and windows, painting the entire building, constructing a beer garden, cementing the floor of the restaurant and replacing the fire place and kitchen. Cheekee also paid the rates and taxes on the disputed property. The parties have accepted that Cheekee occupied more than one half of the building and Martin ran a beer garden from one quarter of the building. Martin rented out another part of the building at G$55,000.00 per month, until sometime in the year 2009 when that rent was paid to Millicent.

[2] Although Cheekee had pleaded that he had been put into possession of the disputed property by Kwang, in his oral evidence, he said that it was Kwang's father who had put him into possession. This inconsistency did not appear to affect Cheekee's credibility in the view of either the trial judge or the Court of Appeal.

[6] Cheekee alleged that in July 2005, Millicent and Martin approached him and informed him that Millicent was desirous of purchasing the disputed property. She offered to refund him all the monies that he had paid to Kwang. Millicent had prepared a document in her own handwriting for Cheekee's signature. Cheekee refused to sign and rejected the offer. The document read as follows:

> *July 29/05*
>
> *I Denise Murray is owing Chee Yui Kwang "Uncle Chickie" in Berbice. The sum owing is US$30,000 which will be paid by Denise Murray after transport for building purchased in Guyana. The building Lot #38 First Avenue, Berbice, Guyana.*
>
> *This is in agreement with "Chickie" at the time of purchase – or he has the option of taking his portion of the land.*
>
> *Signed and sealed*
>
> *(Signature of Denise Murray)*

[7] According to Cheekee, in 2006, without his knowledge and consent, and while he was in possession of the disputed property, Kwang conveyed the disputed property to Millicent by way of transport No. 270 of 2006 (dated May 17, 2006). On July 10, 2006, Cheekee commenced an action against Kwang and Millicent alleging, *inter alia*, that transport No. 270 of 2006 was passed fraudulently and seeking, *inter alia*, orders cancelling the transport and directing the Registrar of Deeds to pass transport over the disputed property in favour of Cheekee.

[8] By their amended defence, Kwang and Millicent admitted the agreement for sale, but alleged that Kwang and Cheekee had agreed that Cheekee had four (4) years to pay the purchase price of US$90,000.00. They contended that Cheekee made payments up to 2002 and did not pay the full purchase price by the year 2004. They admitted that Cheekee carried out some repairs to the building, but stated that those repairs were for the improvement of his own restaurant business. They alleged that in 2004 Kwang had offered Cheekee the option of keeping his portion of the land and property representing 1/3 of the disputed property for the total sum paid by him which amounted to 1/3 of the purchase price. They further alleged that Cheekee agreed to the offer, but in 2005, refused it and

wanted a refund of the monies paid by him. In July 2005, Millicent wrote Cheekee putting both options to him. He then agreed to accept the refund. It was on that basis that the disputed property was conveyed to Millicent and transport passed. Kwang and Millicent contended that Cheekee never opposed the passing of the transport and had full knowledge that the property had been purchased by Millicent. Nothing was done without Cheekee's knowledge, they alleged. It was after transport was passed and Millicent enquired how the monies should be sent to him, that Cheekee refused the money. These proceedings were subsequently filed.

Judgment of Chang CJ (Acting)

[9] Chang CJ did not accept that there was an agreement between Cheekee, Kwang and Millicent for Millicent to purchase the disputed property from Kwang and for Millicent to repay Cheekee the monies paid to Kwang. He questioned why Cheekee would agree to accept a refund of US$34,399.99 only when he had expended a further G$3,000,000.00 on substantial repairs and renovations to the disputed property. He further questioned why Cheekee would agree to a mere refund and forego his contractual right to purchase the disputed property when he was carrying on a thriving business on the disputed property and it was his only means of livelihood.

[10] Chang CJ found as a fact that Kwang never terminated the oral contract for the sale of the disputed property to Cheekee and that in respect of that oral contract, Cheekee had paid by the end of 2002 a total of US$34,399.99. Chang CJ also found as a fact that in March 2006, while there was a subsisting contract between Kwang and Cheekee, Kwang made an agreement with Millicent to sell the property to her and that Millicent was fully aware of the pre-existing contract between Kwang and Cheekee. The trial judge also found that the agreement between Kwang and Millicent was made and executed without the knowledge and concurrence of Cheekee. The trial judge observed that even if it was agreed between Cheekee and Kwang that Cheekee would pay the balance of the purchase price in 2004, time was never made of the essence of that contract, and further that no notice was ever sent to Cheekee by Kwang making time of the essence. He also found that Kwang and Millicent had unlawfully agreed that the part-payment of US$34,399.99 made by Cheekee

would be used as a credit payment for the benefit of Millicent who would later refund same to Cheekee.

[11] Accordingly, the trial judge found that fraud had been established. He therefore ordered that the transport passed by Kwang to Millicent be set aside by reason of fraud, Cheekee having commenced the action within one year of the discovery of the fraud as required by section 22(1) of the Act. He further ordered that Kwang pass transport to Cheekee in respect of the disputed property upon the payment of the balance of the purchase price, that is to say, the sum of US$55,601.00. Cheekee had paid into court the sum of US$55,601.00 on August 14, 2006. In addition, it was ordered that all mesne profits derived by Millicent from her rental of part of the premises at G$55,000.00 per month since 2009 were to be paid to Cheekee within one month of the trial judge's judgment. Costs in the sum of G$50,000.00 were awarded to Cheekee.

Judgment of the Court of Appeal

[12] Kwang and Millicent appealed to the Court of Appeal. The Court of Appeal comprising Singh Ch (Acting), Cummings-Edwards JA and Reynolds J (additional judge) dismissed the appeal. The Court of Appeal upheld the trial judge's finding of fraud. They however pointed to the trial judge's finding of fact that Kwang and Millicent had unlawfully agreed that part-payment of US$34,399.99 made by Cheekee would be used as a credit payment for Millicent. They were of the view that there was no evidence to support such a finding. They nevertheless concluded that the trial judge's decision was correct and fair and found no justifiable reason to disturb it. The Court of Appeal awarded costs in the sum of G$250,000.00.

Fraud

[13] The issues whether fraud has been established and whether Millicent was privy to such fraud assume central importance to the resolution of this appeal. Kwang and Millicent argue that the trial judge erred in holding that the 2006 transport should be set aside based on fraud. This finding of the trial judge cleared the way for Cheekee to obtain specific

performance of his 2000 oral agreement with Kwang pursuant to the Civil Law of Guyana Act.[3]

[14] Chang CJ held that the conduct of the Kwang and Millicent coupled with that of their agent, Martin, was 'tainted with equitable (if not legal fraud) designed to defeat the rights in equity of the plaintiff who, to their knowledge, had effected substantial repairs and renovations to the property on the understanding that the sale would be executed and the property conveyed to him.'[4] This conclusion was upheld on appeal. The Court of Appeal held that Kwang and Millicent had embarked on a 'scheme of unconscionable conduct'[5] such as to amount to equitable fraud.

[15] Kwang and Millicent launched a dual attack to this aspect of the courts' decision. First, they submitted that Cheekee's pleadings were woefully deficient as none of the matters stated therein amounted to fraud. There was no dishonest conduct or fraudulent scent arising from the subsequent sale to Millicent. Furthermore the mere fact that Millicent knew of Cheekee's unregistered interest in the said property was not by itself a sufficient basis upon which to predicate a finding that she was privy to the fraud. In this regard, express reliance was placed on the decision of the Judicial Committee of the Privy Council in *Waimiha Sawmilling Co Ltd v Waione Timber Co*[6] which established that fraud could not be assumed 'solely by reason of knowledge of an unregistered interest.'[7] Second, Kwang and Millicent argued that Cheekee's own inequitable conduct operated as a bar to any claim of fraud. Particular emphasis was placed on the fact that the 2000 agreement contemplated that the sale would be completed by 2004, Cheekee failed to make any further payments towards the purchase price after 2002 and did nothing to oppose the passing of the transport to Millicent even after having had notice of the intended sale and the transport which was advertised. Having rested on his laurels, Cheekee's only available recourse was to seek a return of his deposit.

[3] Cap 6:01 of the Laws of Guyana, section 3(d)(iii).
[4] No 424-W of 2006, unreported, (delivered on October 30, 2012) at p. 23.
[5] Civil Appeal No 66 of 2012, unreported (delivered on January 28, 2015) at p. 7.
[6] [1926] A.C. 101.
[7] ibid 106.

[16] Cheekee emphasised that fraud was a term that was often used in different contexts. The lower courts correctly found that based on the totality of the circumstances, there was sufficient evidence of fraud by Kwang and that Millicent was privy to that fraud. In particular Cheekee pointed to several badges of fraud which operated to make Millicent privy to the fraud, such as her knowledge of (i) the prior sale, (ii) that Cheekee had paid US$34,399.99 towards the purchase price, (iii) that Cheekee was in possession, (iv) that Cheekee was not refunded his deposit and (v) that Cheekee had not rescinded the agreement for sale. Furthermore Cheekee argued that the subsequent sale from Kwang to Millicent was highly suspicious given that it was shrouded in mystery, the transport recorded a significantly reduced purchase price of G$6 million for a property which was in a prime commercial location and that Martin, who acted as the attorney for both Kwang and Millicent, was Cheekee's son-in-law and had been entrusted with making periodic payments via bank transfer towards the purchase price in pursuance of the 2000 oral agreement. Cheekee also submitted that *Waimiha Sawmilling Co Ltd* was inapposite given that it dealt with fraud in the context of registered land.

The Legislative Framework

[17] Before delving further, a brief examination of the legislative framework governing land law in Guyana seems in order. This Court has previously had cause to examine various aspects of Guyanese land law, notably in *Ramdass v Jairam*[8] (equitable interests in land of a purchaser put into possession), *Ramdeo v Herallal*[9] (lodging of a caveat on registered land) and *Ramkishun v Fung Kee Fung*[10] (obtaining specific performance of an agreement for sale against an heir to property). On this occasion, this Court has been called upon to determine the meaning of fraud in the context of successive purchasers of land under the deeds registration system.

[18] Guyanese land law is grounded in the Roman-Dutch tradition; a vestige of operations of the Dutch West India Company (*West-Indische Compagnie*) which since 1621 established

[8] [2008] CCJ 6 (AJ); (2008) 72 WIR 270.
[9] [2009] CCJ 3 (AJ); (2009) 79 WIR 320.
[10] [2010] CCJ 3 (AJ); (2010) 76 WIR 328.

a strong presence in then three colonies of Essequibo, Berbice and Demerara.[11] The company's Order of Government expressly provided for the application of Dutch and Roman law to the colonies. The position was further cemented in 1629 by order of the Netherlands Government which provided that 'the law applicable to all the Dutch colonies was the Political Ordinance of 1580, which … provided the authority for the transplantation of Roman-Dutch law in criminal matters, family law, law of property, contract and regulation of government.'[12] When these colonies were ceded to the British, their existing legal systems remained in force in accordance with the dictates of the doctrine of reception. In fact express provision was made for this eventuality in the 1803 Articles of Capitulation for Essequibo and Demerara which provided that Dutch 'Laws and Usages of the Colony' were to remain in force and be respected.

[19] The uniting of the three colonies as British Guiana by Letters Patent 1831 set the stage for the gradual introduction of English common law to supplant Roman-Dutch law. The 1828 Commission of Enquiry for British Guiana had recommended the introduction of English criminal law only, owing to the fact that "the Civil Law in force there, as contra-distinguished from the Criminal Law, is simple and well adapted to the wants and usages of the people."[13] By 1914, however, this position changed with the Common Law Commission recommending the introduction of English common law in a wide array of legal spheres such as:

> all mercantile matters, to all domestic relations (including marriage, judicial separation and divorce, the law of husband and wife, parent and child, guardian or curator and minors, and master and servant), to the law of delict or torts, agency, suretyship, liens, intestate succession, and in fact to all the law of persons, things, obligations, inheritance, and every other description of matters whatsoever not dealt with by legislation, or otherwise expressly exempted.[14]

[11] Jane Matthews Glenn, 'Mixed Jurisdictions in the Commonwealth Caribbean: Mixing, Unmixing, Remixing' (2008) 12 Electronic Journal of Comparative Law 1.
[12] Rose Marie Belle Antoine, *Commonwealth Caribbean Law and Legal Systems*, (2nd ed. Routledge-Cavendish 2008) 62.
[13] Second Report of the Commissioners of Enquiry into the Administration of Criminal and Civil Justice in the West Indies and South American Colonies, United Colony of Demerara and Essequibo and Colony of Berbice (1828) 3.
[14] Report of the British Guiana Common Law Commission quoted in Ledlie, JC, 'Roman-Dutch Law in British Guiana and a West Indian Court of Appeal' (1917) 17 Journal of the Society of Comparative Legislation 210, 216.

[20] However express provision was made for the continuation of Roman-Dutch law to govern immovable property. This was owing to the fact that the commissioners had "no desire to introduce the complicated incidents of (English) real property law."[15] Further assimilation of the legal system was effected through the 1916 Statute Law Commission, culminating in the passage of the Civil Law of British Guiana Ordinance, 1916,[16] the legislative precursor to the present Civil Law of Guyana Act. The aim of the 1916 ordinance has been explained thus:

> The heart of the legislation is section 3, which provides in large and general terms for the abrogation of Roman-Dutch law and the introduction of English common law, although some aspects of Roman-Dutch property law are specifically preserved, notably the principle of absolute ownership of land and the rules relating to conveyancing by judicial transport, mortgages and real servitudes. In the result, therefore, the old law in Guyana gave way almost completely to the English common law in 1916. Only vestiges of Roman-Dutch law, notably relating to land, remain.[17]

Marshall[18] puts the matter thus:

> The introduction of English common law was not as extensive nor as early as in the other conquered or ceded territories. The system of Roman-Dutch law continued to apply after the cession of the territory by the Dutch to the British in 1803 and remained in force until 1917. By the Civil Law Ordinance of 1916, certain specified Roman-Dutch institutions were preserved, namely, conventional mortgages or hypothecs of movable and immovable property, easements, *profits à prendre* and real servitudes and the right of opposition to transports and mortgages. At the same time, the doctrines of English equity were introduced and the doctrines of personal property were made applicable equally to movable and immovable property in Guyana.

[21] Section 3 of Civil Law of Guyana Act provides in pertinent part that:

> (b) the common law of Guyana shall be the common law of England as at the date aforesaid including therewith the doctrines of equity as then administered or at any time hereafter administered by the courts of justice in England, and the High Court shall administer the

[15] ibid 217.
[16] No 15 of 1916.
[17] ibid, Jane Matthews Glen (n 11) at 14.
[18] O.R. Marshall, 'West Indian Land Law: Conspectus and Reform,' (1971) 20(1) Social and Economic Studies 1, 2.

> doctrines of equity in the same manner as the High Court of Justice in England administers them at the date aforesaid or at any time hereafter;
> (c) the English common law of real property shall not apply to immovable property in Guyana;
>
> …
>
> Provided that –
>
> (i) immovable property may be held as heretofore in full ownership, which shall be the only ownership of immovable property recognised by the common law and shall not be subject to any rule of succession by primogeniture or preference of males to females, or to any other incident attached to land tenure or to estates in lands in England and not attached to personal property in England;
> (ii) the law and practice relating to conventional mortgages or hypothecs of movable or immovable property, and to easements, profits a prendre, or real servitudes, and the right of opposition in the case of both transports and mortgages, shall be the law and practice now administered in those matters by the Supreme Court;
> (iii) the relief by judgment for specific performance shall be granted in the case of immovable property on the same principles on which it is granted in England in the case of contracts relating to land or to interests in land.

[22] Justice Désirée Bernard, former Judge of the Court, observes that this legislation 'sought to codify certain portions of the Roman-Dutch Law in relation to immovable property. Section 3 (c) expressly provided that the English common law of real property shall not apply to immovable property in Guyana.'[19] This is the legal structure which remains in place up to the present day. Land ownership in Guyana takes the form of either a deed/transport or title. This dual system of land registration is governed by two distinct legislative schemes: the Act and the Land Registry Act (the LRA). [20] The Act facilitated the recognition of titles issued under the Dutch system which was built on the 'custom of transferring land before some judicial officer.'[21] On the other hand, the LRA came into force in 1961 and provides for a system of registered land patterned after the Torrens

[19] Désirée P Bernard, 'The Impact of English Common Law on Caribbean Society' (2014) 97 Amicus Curiae 19, 21.
[20] Cap 5:02 of the Laws of Guyana.
[21] The Hon. J.W. Wessels, *History of the Roman-Dutch Law*, (The Law Book Exchange, Ltd 2005) 495.

system from Australia. The objects of the LRA, as gleaned from section 4(1), are to 'simplify the title to land and facilitate dealing therewith and to secure indefeasibility of title to all registered proprietors…'

[23] There is a clear line of demarcation between the Act and the LRA. Nowhere is this more evident than in section 3(2) of the LRA which states the position quite definitively: 'the Deeds Registry Act shall not apply to registered land.' It follows therefore that both statutes create separate and distinct systems of land registration and furthermore that one system operates to the exclusion of the other.

Fraud under Section 22(1)

[24] The property at the core of this appeal is owned by transport, falling under the purview of the Act. As such, section 22(1) of the Act plays a pivotal role in this appeal. It provides that:

> … every transport of immovable property other than a judicial sale transport shall vest in the transferee the full and absolute title to the immovable property or to the rights and interest therein described in that transport, subject to-
>
> (a) statutory claims;
> (b) registered incumbrances;
> (c) registered interests registered before the date of the last advertisement of the transport in the Gazette;
> (d) registered leases registered before the date of the last advertisement of the transport in the Gazette
>
> Provided that any transport, whether passed before or after the 1st January, 1920, obtained by fraud shall be liable in the hands of all parties or privies to the fraud to be declared void by the Court in any action brought within twelve months after the discovery of the fraud, or from the 1st October, 1925, whichever is the more recent.

[25] Section 22(1) of the Act therefore provides that a transport can be declared void on the ground of fraud. It also targets persons who have been privy to the fraud by rendering the transport fraudulently obtained, liable to be declared void. However as mentioned earlier, the Act fails to provide any definition of the term 'fraud' itself. This stands in contradistinction with the LRA, where fraud is negatively defined. While section 69(1) of

the LRA dispenses with the need to prove a chain of title, section 69(2) goes on to provide that knowledge of the existence of any instrument, fact or thing, trust, right or interest, unregistered or unprotected or omission to search a register not kept under this Act shall not of itself be imputed as fraud. It would therefore be patently wrong to adopt a similar line of reasoning when interpreting section 22(1). Such a construction is specifically foreclosed given the clear demarcating line drawn between both statues, as discussed above.

[26] Therefore it falls to this Court to determine whether the impugned conduct of Kwang and Millicent is such as to trigger the operation of section 22(1) of the Act. The courts below have held that the actions of Kwang and Millicent amounted to fraud.

[27] It bears note that fraud is an amorphous concept and courts have steadfastly refused to place strict limits on its exact parameters. In the 1886 case of *Reddaway v Banham*, Lord MacNaghten famously observed that:

> … fraud is infinite in variety; sometimes it is audacious and unblushing; sometimes it pays a sort of homage to virtue, and then it is modest and retiring; it would be honesty itself if it could only afford it. But fraud is fraud all the same; and it is the fraud, not the manner of it, which calls for the interposition of the Court.[22]

[28] These observations can be traced even further to a letter of June 30, 1789 written by Lord Hardwicke to Lord Kames where his Lordship advised that 'Fraud is infinite and were a Court of Equity … to define strictly the species of evidence of it, the jurisdiction would be cramped, and perpetually eluded by new schemes which the fertility of man's invention would contrive.' [23] By virtue of section 3 of the Civil Law of Guyana Act these equitable principles administered by the courts of justice in England apply with equal force in Guyana.

[22] [1896] A.C. 199, 221.
[23] Cited in Holdsworth, A History of English Law (1972) 262.

[29] The boundaries of fraud were addressed by this Court in *Ramkishun*.[24] Wit JCCJ noted that 'fraud' in section 22(1) of the Act was used in a broad sense and has a wide meaning. The following passages from *Ramkishun* merit being set out:

> [23] Fraud like freedom comes in many shapes. On the one hand, there is the more serious and obvious form of fraud, in legal parlance "common law fraud." On the other hand, there are various forms of "unconscionable conduct" or "improper behaviour" which qualify as "constructive fraud", "quasi fraud" or, a rather curious expression, "equitable fraud." The first question to be answered therefore is whether fraud within the meaning of the proviso is limited to "common law fraud" or whether it has a broader meaning which includes "equitable fraud".
>
> [25] It is clear that in equity the concept of fraud was used in the much wider sense of 'unconscionable conduct' and that it was not limited to false statements or other forms of intentional deceit. At first, the equitable rules did not apply to common law actions but after law and equity were fused in England in 1873 these rules applied to those actions as well. It is therefore not illogical that in later statutes the word 'fraud' was interpreted in the wider equitable sense. In effect, this was what happened for example when the courts consistently interpreted the word 'fraud' in s26 of the English Limitation Act 1939 in this manner. In the *Allicock* case George J referred to the judgment of Lord Evershed MR in *Kitchen v Royal Air Force Association*[3], where the Master of the Rolls said that the word 'fraud' in this provision 'is by no means limited to common law fraud or deceit. Equally it is clear … that no degree of moral turpitude is necessary to establish fraud within the section'. Another Master of the Rolls, Lord Denning MR, dealing with the same provision, was equally clear in *King v Victor Parsons & Co (a firm)*[4] where he said:
>
> > 'The word "fraud" here is not used in the common law sense. It is used in the equitable sense to denote conduct by the defendant or his agent such that it would be "against conscience" for him to avail himself of the lapse of time … Like the man who turns a blind eye. He is aware that what he is doing may well be a wrong, or a breach of contract,

[24] ibid (n 10).

> but he takes the risk of it being so. He refrains from further enquiry least it should prove to be correct; and says nothing about it. The court will not allow him to get away with conduct of that kind.'

[30] In our view, the facts of this case trigger the operation of the proviso to section 22(1) of the Act. Kwang sold the disputed property to Millicent at a time when they both had actual knowledge that there was in existence a prior agreement for sale to Cheekee. While the prior agreement was subsisting and could be performed, Kwang sold and transferred the disputed property to Millicent thus breaching the prior agreement. Millicent knew of the prior agreement for sale; she nevertheless participated in the breach by purchasing the disputed property and accepting the transport. She was therefore a participant in the breach as well as a privy to the fraud. The requirements of the section as to fraud have therefore been squarely established. It is interesting to note that the facts of this case disclose additional elements which arouse the conscience of the Court. Both Kwang and Millicent knew that Cheekee was in possession of the disputed property, had effected repairs to the disputed property, and had made several payments towards the purchase price. It is also clear that Millicent had full knowledge that Cheekee would be adversely affected by the subsequent sale and transport of the property to her. Why else would she prepare the document dated July 29, 2005 for Cheekee's signature? This document gave Cheekee the express option of 'keeping his portion of the land.' Why would she have approached Cheekee at all in trying to purchase the property? In our view, the conduct of Kwang and Millicent with the knowledge outlined above amounts to unconscionable conduct such as is covered by the concept of fraud and being privy thereto within section 22(1).

[31] Kwang and Millicent strenuously argue that mere knowledge can never amount to fraud. In short, they say that they have no case to answer in relation to fraud given that Cheekee's pleaded case is contingent on Millicent's knowledge of the prior sale. In this regard, express reliance is placed on the decision of the Privy Council in *Waimiha Sawmilling*.[25] However such reliance is wholly misplaced.

[25] ibid (n 6).

[32] *Waimiha Sawmilling* arose against the backdrop of the New Zealand Land Transfer Act which provided that a person took a title free of all encumbrances except those identified in the register and except in the case of fraud. The relevant statutory provision went on to state that 'the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud.' We note that this provision is substantially similar to section 69(2) of the LRA. In *Waimiha Sawmilling*, the Privy Council emphasised that its discussion of fraud was in relation to 'actions seeking to affect a registered title'. As such, *Waimiha Sawmilling* can be distinguished as it was concerned with a specific statutory system for the registration of titles. The definition of fraud in the case was specifically based on the New Zealand Land Transfer Act that was being interpreted. That Act bore close resemblance to the LRA as opposed to the Deeds Registry Act (the Act). We are therefore of the view that the definition of fraud provided in *Waimiha Sawmilling* is inapposite to this appeal.

[33] In any event the decision is also distinguishable on the facts. The appellants in that case had entered into an agreement with Mr Howe giving them the right to cut timber, carry it away, build a sawmill and lay roads on tramways on a parcel of land situate in Waimiha, New Zealand. Under the Land Transfer Act, these rights could not be registered so the appellants entered a caveat against the title to the property in order to protect their interests. A few years later, Mr Howe terminated the agreement and re-entered the land. He applied for and was granted a court order by Sim J discharging the caveat. The appellants never appealed this order. Mr Howe then sold the property to Mr Wilson, who established the respondent company and transferred the property into its name. The appellants sought to argue that the transfer ought to be set aside on the ground of fraud, namely that Mr Wilson knew that they had commenced suit against Mr Howe for breaching their agreement. The court disagreed, holding that no fraud could be laid at the feet of the vendor. There was nothing to prevent the vendor from proceeding with the subsequent sale of the property given that the caveat in relation thereto had been removed and the appellants had failed to appeal the order granting its discharge. Therefore the second sale could not be deemed fraudulent and the vendor was perfectly entitled to sell.

[34] It follows that the appellants' reliance on *Roberts v Toussaint*,[26] is also misconceived. In *Roberts*, Wooding CJ expressly approved of the test set out in *Waimiha Sawmilling*, noting that:

> But fraud is not proved by the wanton use of the label "fraudulent", nor is a transaction negatived by a cavalier description of its as "alleged". Moreover, in actions in which a registered title is being impeached, fraud means some dishonest act or omission, some trick or artifice, calculated and designed to cheat some person of an unregistered right or interest: See *Waimiha Sawmilling Co v Waione Timber Co* ([1926] A C 101, PC, 38 Digest (Repl) 893, *1183) ([1926] AC at pp 106-107).[27]

[35] In any event, as noted in *Ramkishun*,[28] fraud as used in section 22(1) is wide in scope and is not limited solely to the *Waimiha/Roberts* formulation. The appellants' suggestion that fraud cannot arise from knowledge is therefore misplaced. Their submission also ignores the fact that section 22(1) of the Act is intended to capture both the person who has engaged in fraudulent conduct and the person who has been privy to the fraud and has obtained transport thereby.

[36] In a similar vein, the argument advanced on behalf of Kwang and Millicent that there was no proof of dishonest conduct on Millicent's part is also flawed. In 2005 Millicent floated the idea of purchasing the property to Cheekee but he rejected her offer. She then, without Cheekee's knowledge or approval, entered into an agreement with Kwang to buy the same property, and transport was passed to her in 2006. In our view, this conduct smacks of dishonesty such as to disturb the judicial conscience. Millicent's deliberate actions operated to undermine the prior agreement for sale in favour of Cheekee. Having obtained transport to the very property that Cheekee refused to part with, Millicent effectively placed the property out of his reach unless he could have the transport set aside on the ground of fraud. All the while Millicent had full knowledge that Cheekee had bought the property which he occupied and repaired. All of these circumstances raise a clear case of dishonest conduct on Millicent's part. Moreover, Millicent was privy to Kwang's fraud. In either case, the operation of section 22(1) is triggered.

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[26] (1963) 6 WIR 431.
[27] ibid 433.
[28] ibid (n 10).

[37] In addition, it has been submitted on behalf of Kwang and Millicent that Cheekee, having failed to complete the sale of the property by 2004, is debarred from raising the issue of fraud. We do not agree for the following reasons. First, the trial judge found that the 2000 agreement for sale did not contain any stipulation as to the completion date. Kwang never made time of the essence nor called on Cheekee to complete the sale. Second, in their grounds of appeal, Kwang and Millicent resist the setting aside of the transport by claiming that the subsequent sale to Millicent might have amounted to nothing more than a breach of contract for which Cheekee was entitled to damages. This submission cannot be reconciled with the argument that Cheekee breached the agreement by failing to complete the sale by 2004. Third, the alleged 'tripartite agreement' which was drawn up for Cheekee to sign was never put into evidence. Fourth, there is no evidence that Cheekee was ever refunded the monies paid under the agreement for sale, although such repayment was alleged to have been a term of the tripartite agreement. Having considered the totality of the evidence, we are satisfied that Kwang and Millicent presented no material to displace the conclusion that their conduct was unconscionable, dishonest and fraudulent. Both were party to and privy to each other's fraud thus falling within the clear wording of section 22(1).

[38] For the sake of completeness, it should be noted that Cheekee also alleges that the sale of the disputed property to Millicent at a substantially reduced price should also be considered a badge of fraud. We are of the view, however, that he cannot succeed on this aspect of his case. Cheekee had never pleaded that the disputed property was sold at an undervalue. At the trial before Chang CJ, Counsel for Cheekee sought to lead evidence from Mr Neville Blair, a senior valuation officer, who did a valuation of the property in 2006. However after objection from Counsel for Kwang and Millicent, who quite properly drew attention to the fact that there was no pleading to support this evidence, the trial judge refused to allow Mr Blair's testimony. Accordingly, in the absence of evidence as to the market value of the disputed property at the time of the passing of transport to Millicent, it is not possible for this Court to arrive at any conclusion as to whether that sale was at an undervalued price.

[39] It is notable that South African property law is also based on the Roman-Dutch system. The similarities between the South African and Guyanese systems were judicially recognised in 1963 in *Re Samson, ex p Official Receiver* where Dalton J observed that 'the whole purport of the Deeds Registry Ordinance' was 'the retention of the old law relating to transports and mortgages… In effect the law as it stood in this Colony before 1917 and in South Africa was retained.'[29] In *Ramkishun*, the Court also emphasised the importance of the law as it stood in South Africa and as it related to the concept of fraud in Roman-Dutch land law in Guyana.[30] In that regard, Wit JCCJ observed that:

> …given that it was 'the whole purport' of the Deeds Registry Act to retain 'the old law relating to transports' it would appear from these sources that the word 'fraud' in the proviso to s 23 of that Act includes the situation where the owner of a property or the administrator of the estate of which such property forms part intentionally breaches a contract of sale with a purchaser of that property in order to have it transferred to another who knows of the earlier contract but who nevertheless in his own interest participates and assists in that breach. Such a scenario also falls within the ambit of the proviso which provides that fraud can only be invoked against those who are 'privy and party' to it.[31]

[40] Before leaving this aspect of the appeal, some short observations on the development of South African jurisprudence relating to successive sales of property must be made. In South African law, successive purchases of land trigger the operation of the doctrine of notice (*kennisleer*). The doctrine posits that if A sells a piece of land to B and then to C and transfers it to C, C obtains an indefeasible right, unless he had knowledge at the time of the sale or at the time he took transfer of the prior sale to B. If C had such knowledge, the doctrine of notice would apply to enable B to recover the land from C. The rationale behind the doctrine is the protection of the first purchaser who has a personal right against the unlawful act of an acquirer of a real right.[32] The courts regarded the actions of the

[29] [1922] LRBG 133,134.
[30] [27]-[31] of *Ramkishun*.
[31] *Ramkishun* (n 10) at [34]. It should be noted that section 22 is cited as section 23 in another version of the Act. It is the same provision.
[32] *Hassam v Shaboodien* 1996 (2) SA 720 (C), 725.

subsequent purchaser as amounting to a 'species of fraud'[33] such as to justify the prior personal right operating to trump the real right.

[41] In *Ramkishun*, reference was made to this body of jurisprudence and in particular the decision of the Supreme Court of South Africa in *Dream Supreme Properties v Nedcor Bank.*[34] The decision in *Dream Supreme Properties* has since been clarified in *Meridian Bay Restaurant (Pty) Ltd & others v Mitchell*[35] where Ponnan JA emphasised that *Dream Supreme Properties* was confined to situations of attachment and execution. It had no application to the doctrine of notice in relation to successive sales. *Meridian* also clarified that the law in this area has moved away from a fraud construction in favour of the requirement of knowledge:

> with *Associated South African Bakeries (Pty) Ltd v Oryx & Vereinigte Bäckereien (Pty) Ltd* came the demise of the fraud construction. The court held that references to a species of fraud or *mala fides* on the part of the acquirer with knowledge in the earlier cases was nothing but a fiction to provide the doctrine of notice with theoretical support. According to Van Heerden AJA, any reference to fraud or *mala fides* in the context of the doctrine of notice should be avoided because it only gives rise to confusion. The only requirement for the operation of the doctrine, so he stated, is actual knowledge (or perhaps *dolus eventualis*) with regard to the prior personal right on the part of the acquirer. Once this requirement is satisfied, the holder of the personal right is afforded what is in effect a limited real right against the acquirer.[36]

[42] The current position in South African law is that fraud is no longer a necessary element to the doctrine of notice. As it now stands, the doctrine of notice is driven by the concept of knowledge. This position was clearly expressed in the recent case of *Le Roux v Nel*[37] where the Supreme Court of South Africa explained the doctrine of notice in relation to successive sales in the following terms:

> In support of their claim for transfer the appellants relied on principles embodied in what has become well known in our law as the doctrine of notice. The operation of this doctrine in the sphere of

[33] *Reynders v Rand Bank Ltd* 1978 (2) SA 630 (T), 637A referring to *Ridler v Gartner* 1920 TPD 249, 259-60.
[34] [2007] SCA 8 (RSA).
[35] [2011] ZASCA 30.
[36] ibid at [17].
[37] [2013] ZASCA 109 at [4].

> successive sales has been described in previous cases along the following lines. The starting point is the basic principle of our law that a real right generally prevails over a personal right, even if the personal right is prior in time, when they come into competition with one another. Accordingly, in the ordinary course, if a seller, A, sells a thing –be it movable or immovable –to B and subsequently sells the same thing to C, ownership is acquired, not by the earlier purchaser, but by the purchaser who first obtains transfer of the thing sold. If the first purchaser, B, is also the first transferee, his or her right is unassailable. If the second purchaser, C, is the first transferee, his or her right of ownership is equally unassailable if he or she had purchased without knowledge of the prior sale to B. But, if C had purchased with such prior knowledge, B is entitled to claim that the transfer to C be set aside so that ownership of the thing sold can be transferred by A to B. In exceptional circumstances B may be allowed to claim transfer directly from the purchaser with knowledge.

[43] Notably, these recent refinements to the doctrine of notice in South Africa do not affect the conclusion of this Court that Millicent was privy to the fraud committed by Kwang within the meaning of section 22(1) of the Act. We are therefore of the view that the circumstances surrounding the successive sales of the disputed property amount to fraud within the meaning of section 22(1). In our view, Kwang and Millicent have provided no basis upon which to disturb the findings of the courts below on this issue. Fraud having been proved and Millicent having been privy thereto, the transport to Millicent ought to be set aside.

No opposition to the passing of transport

[44] Among the issues raised before us and also considered by the Court of Appeal was whether Cheekee's failure to oppose the transport prior to its being passed barred him from seeking to set aside the transport on the basis of fraud pursuant to section 22(1) of the Act. By virtue of Rule 6 of the Deeds Registry Rules,[38] the Registrar of Deeds is required to publish in the Gazette notice of the transport, mortgage or lease. Rule 8 of the Deeds Registry Rules provides that any person having a right to oppose the passing of a transport, mortgage, or lease shall do so in the manner and subject to the conditions now or hereafter prescribed by rules of court. Order 36 of the Rules of the High Court, Rule 52(1) stipulates

[38] Deeds Registry Act (n 1), Second Schedule.

that within fourteen (14) days of the first advertisement of the sale of any immovable property, any person having a right to oppose such sale may enter or cause to be entered an opposition to such sale.

[45] It was argued on behalf of Kwang and Millicent that not having opposed the transport, Cheekee was barred from commencing an action in fraud. Before the Court of Appeal, Counsel for Kwang and Millicent argued that Cheekee was aware of the sale but failed to oppose the passing of the transport. Indeed, before the Court of Appeal, it was submitted that Cheekee had testified before the trial judge that Millicent had approached him in 2005 and had told him that *she bought the place*. Accordingly, it was contended before the Court of Appeal that being aware of the sale to Millicent and having failed to oppose the transport, Cheekee had failed to protect his *in personam* right and had lost his right to launch this action.

[46] Singh Ch delivering the judgment of the Court of Appeal considered several authorities on the issue of the opposition to the passing of transport in the colony of British Guiana. In the case of *Ferreira v Ho-a-Hing*,[39] Sheriff J referred to and agreed with the earlier authority of *In re the petition of Elizabeth Van Kinschot*,[40] a judgment of Sir David Chalmers, Chief Justice. In *Van Kinschot*, the Chief Justice referred to the learning of the Dutch jurist Anthonius Matthaeus.[41] These cases demonstrate that under Roman-Dutch law a person could not lose the right to oppose the passing of transport unless he had actual notice of the passing of the transport. In *Van Kinschot*, Chalmers CJ had noted that Matthaeus had used the term '*contumacis silentii'* (being wilfully inactive or silent) in referring to cases where persons who had adverse interests were notified to come in and oppose the passing of transport but had failed to do so. Chalmers CJ was of the view that Matthaeus' argument was relevant to those cases where there was evidence of actual notice on the part of the persons who had adverse interests. Chalmers CJ further observed that unless there was evidence of actual notice, how could the person's '*silentium'* be

[39] 1896 L.R. B.G. 78.
[40] See full decision in the Report of Titles to Land Commission, 1892, Demerara, Appendix C. p. 9.
[41] Lib. I., cap XI, par. 30.

'*contumax*'? In other words, how could one argue that the person holding adverse interests wilfully failed to oppose the passing of transport unless that person had actual notice?[42]

[47] Singh Ch also observed that Dalton in his work *The Civil Law of British Guiana*[43] noted that the right of opposition was lost if a person after *due notice* failed to enter opposition to the passing of transport. Dalton referred to the above cases of *Ferreira* and *Van Kinschot* as supporting this proposition.

[48] Counsel for Kwang and Millicent, Mr Kissoon, argued before us that actual notice had been shown. We do not agree. The trial judge had found that Kwang never terminated the agreement for sale and did not indicate to Cheekee that he considered the agreement for sale at an end. We note that Kwang never notified Cheekee of any subsequent agreement for sale and never attempted to have Cheekee removed from the disputed property. The argument that actual or due notice had been given to Cheekee by Millicent, who was not a party to the agreement, who had no authority to give notice on behalf of Kwang and who merely alleged in July 2005 that *she had bought the place*, cannot be sustained. In any case, any attempt by Cheekee at that time to oppose the transport would have failed since there was no agreement between Kwang and Millicent until March 2006 and transport was not passed until May 2006. Simply put, there was nothing to oppose in July 2005.

[49] Mr Kissoon also argued before us that Cheekee had received adequate notice by virtue of the publication in the Gazette of the passing of transport in accordance with the Deeds Registry Rules.[44] Counsel for Cheekee, Mr Nandlall submitted to the Court that the Gazette was not available in Bartica where Cheekee resided. Mr Kissoon on the other hand objected to Mr Nandlall's submission on the ground that no evidence had been led on this issue at the trial. We wish to make the point that it is not necessary for us to decide the issue of the availability of the Gazette in Bartica and the effect of that non-availability, if any. We are of the view that mere publication of the Gazette would not satisfy the actual notice test

[42] See also [66] of *Ramkishun* and *quaere* whether a person who has committed fraud under section 22(1) of the Act could ever argue wilful failure to oppose.
[43] LL.C. Dalton, *The Civil Law of British Guiana* ('The Argosy' Company Limited, Georgetown, Demerara 1921).
[44] ibid (n 38).

which Roman-Dutch law has always accepted. We observe that this accords with the judgment of the majority of this Court in the case of *Ramkishun.*[45] Wit JCCJ, delivering the judgment of the majority, made the point that Roman-Dutch law has not accepted the doctrine of constructive notice as that would require the recognition of equitable rights and interests in immovable property which was a concept repugnant to both Roman-Dutch law and the law as it stood in Guyana as the Court had recently confirmed in *Ramdass.*[46]

Specific Performance

[50] There has been a two-pronged attack on the grant of specific performance by Chang CJ. First, Mr Kissoon argued that Cheekee was in breach of his contractual obligations and failed to pay the balance of the purchase price of $55,601.00 only paying that sum into court when so ordered. Second, Mr Kissoon contended that specific performance ought not to have been granted since Cheekee failed to plead that he was ready, willing and able to complete the agreement for sale. Accordingly, it was argued that a court of equity should consider Cheekee's conduct as a bar to equitable relief.

[51] The availability of the remedy of specific performance in relation to immovable property is specifically provided by section 3(d)(iii) of the Civil Law of Guyana Act. This section provides that the principles upon which specific performance in the case of immovable property should be granted are identical to those operating in England in the case of contracts relating to land or to interests in land.

[52] Chang CJ found that Kwang had never made time of the essence and had never terminated the agreement for sale. He found therefore that there was a subsisting contract for the sale of the disputed property. He did not find that Cheekee had breached any of his contractual obligations. In addition, it was Cheekee's case which Chang CJ accepted that Kwang had agreed to allow Cheekee to pay the balance of the purchase price as he was able since he was responsible for making extensive repairs and renovations to the disputed property. There is therefore nothing before us to suggest that the trial judge was wrong to have made

[45] ibid (n 10).
[46] ibid (n 8).

the above findings or that Cheekee had breached any of his contractual obligations under the agreement for sale.

[53] We note that Kwang and Millicent never included as a ground of appeal before this Court that Cheekee's failure to plead that he was at all times ready, willing and able to complete was a bar to specific performance being granted in his favour. This was also not a ground of appeal before the Court of Appeal. Chang CJ was clearly of the view that Cheekee was ready, willing and able to complete the sale. During the hearing of Cheekee's ex parte application for an interim injunction before the High Court, Cheekee offered to lodge with the court and indeed paid into the court the balance of the purchase price, that is, the sum of US$55,601.00, on August 14, 2006. In all these circumstances, we do not consider it just and fair that this pleading point should be taken at this stage.

Mesne Profits

[54] Chang CJ granted an order that all mesne profits derived by Millicent from her rental of part of the disputed property at G$55,000.00 per month since 2009 be handed to Cheekee within one month of the rendering of his judgment. Counsel for the parties before us informed us that these monies are still outstanding, but that at some stage after the judgment of Chang CJ, Millicent stopped receiving the rental payments. Counsel, however, were not in a position to confirm that date or the amount now owing to Cheekee. We think that this is an appropriate case where all outstanding issues should be finalized before us. We will therefore urge that the parties return to us within six weeks of this judgment with a consent order which will set out the amount now owing to Cheekee as mesne profits and the date by which payment will be made to Cheekee by Millicent. In the event the parties cannot arrive at a consensus, the matter will be remitted to the High Court for an account of the mesne profits to be taken.

Disposition of the appeal

[55] In the light of the foregoing, we are of the view that actual knowledge by a subsequent purchaser of a prior sale would amount to that party being privy to fraud such as to satisfy a claim on the part of the first purchaser under section 22(1) of the Act. We are satisfied

that Kwang agreed to sell the disputed property to Cheekee and subsequently sold the same property to Millicent while the agreement for sale to Cheekee was subsisting. We are also satisfied that Millicent had actual knowledge of the prior sale of the disputed property to Cheekee. As such Cheekee has made out a claim in fraud under section 22(1) of the Act. As to Cheekee's failure to oppose the passing of transport from Kwang to Millicent, we are of the view that Cheekee did not have actual notice of the passing of transport. Accordingly, Cheekee's claim in fraud was not barred by his failure to oppose the passing of transport. As to the costs of this appeal, we have taken note that the parties have agreed that basic costs should be paid in this appeal.

[56] It is ordered and directed that:

(i) The appeal is dismissed.

(ii) The Registrar of Deeds is hereby directed to cancel Transport No. 270 of 2006 passed by Chee Yiu Kwang to Millicent Denise Murray on May 17, 2006 relating to Lot 38 First Avenue, Bartica.

(iii) The Registrar of Deeds is hereby directed to take all necessary steps to pass transport to Tsui Yokkei in relation to Lot 38 First Avenue, Bartica.

(iv) On the passing of transport, the Registrar of the Supreme Court is hereby authorized to pay out to Chee Yiu Kwang the sum of US$55,601.00 paid into court by Tsui Yokkei on the 14th August, 2006 together with such interest which may have accrued on the said sum.

(v) Millicent Denise Murray shall pay to Tsui Yokkei the mesne profits ordered by Chang CJ on August 30, 2012. The parties shall lodge with the Court within six weeks of this judgment any consent order which they shall arrive at which sets out the amount now owing by Millicent Denise Murray to Tsui Yokkei as mesne profits and the date by which such mesne profits will be paid. In the absence of such consent order, the matter will be remitted to the High Court for an account of the mesne profits to be taken.

(vi) Chee Yiu Kwang and Millicent Denise Murray shall pay to Tsui Yokkei the costs ordered by the courts below and the costs of this appeal agreed in the sum of G$1,705,250.00, representing basic costs for a respondent under the Court's Appellate Jurisdiction Rules 2015, Schedule 2, Part B.

_____/s/ A. Saunders_____
The Hon Mr Justice Saunders

_____/s/ J. Wit _____
The Hon Mr Justice Wit

_____/s/ D. Hayton _____
The Hon Mr Justice Hayton

_____/s/ W. Anderson_____
The Hon Mr Justice Anderson

_____/s/ M. Rajnauth-Lee _____
The Hon Mme Justice Rajnauth-Lee