

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

**GRENADA
CLAIM NO. GDAHCV2024/0041 (formerly GDAHCV2005/0209)
BETWEEN:**

**IN THE MATTER OF SECTION 22 OF THE WEST INDIES ASSOCIATED STATES
SUPREME COURT OF GRENADA ACT CHAPTER 336 OF THE 1990 REVISED
EDITION OF LAWS OF GRENADA**

AND IN THE MATTER OF THE APPLICATION OF

THE NATIONAL COMMERCIAL BANK OF GRENADA LIMITED

Claimant

and

[1] IAN FRANCIS

[2] IAN FRANCIS

(In his capacity as personal representative of the estate of Juliana Francis)

Defendants/Ancillary Claimants

[1] RENWICK & PAYNE, A FIRM

[2] MARGARET BLACKBURN

[3] MICHELLE EMMANUEL STEELE

[4] NIGEL STEWART

Ancillary Defendants

Before: The Hon. Mr. Justice Raulston L. A. Glasgow

High Court Judge

Appearances:

Mr. Gregory Delzin SC, Ms. Ariel Agostini and Mrs. Amy Bullock-Jawahir for the
Claimant and Ancillary Defendants

Ms. Gennilyn Ettienne for the Defendants and Ancillary Claimants

2024: November 2nd;

2025: May 2nd;

July 25th, 31st; (Submissions)

November 17th.

JUDGMENT

- [1] **GLASGOW, J.:** This judgment addresses two primary issues: first, whether, as alleged in the counterclaim, the claimant (hereafter referred to as “the bank”) and the ancillary defendants (hereafter referred to as “the lawyers”) were negligent or otherwise failed in their duties to the defendants/ancillary claimants (hereafter referred to as “the Francises”); and second, whether the Francises remain obligated to satisfy the mortgage and further charges executed over the property in any respect or at all.

Factual Background

- [2] The relevant facts are as follows. On 27th August 1992, Simeon Francis purchased two lots of land (Lot 4 and Lot 5) from Elisha Baptiste by virtue of a conveyance which contained, among others, the following restrictive covenants, as raised in paragraph 5 of the claim by the bank:

“(d) Not to erect on the said property more than one main building with garage accommodation and permitted outbuildings.

(e) Not to erect or maintain on the said property or any part thereof any building which with its garage and permitted out-buildings shall cost less than one hundred and fifty thousand dollars to be calculated at the net cost of material and labour or construction estimated at prices current at first January one thousand nine hundred and ninety-one”

- [3] Simeon Francis subsequently subdivided “Lot 5” into two parcels and sold one of those parcels to the first defendant (hereafter referred to as “Mr. Francis”) by a conveyance dated 4th July 1997.
- [4] Mr. Francis financed the purchase of the parcel of land (hereafter referred to as “the property”) by way of a mortgage from the bank, also dated 4th July 1997. On 19th July 1999, the Francises executed a first deed of further charge, followed by a second deed of further charge on 26th April 2002 intending to facilitate the construction of a dwelling house and other related matters with respect to the property. It is this intention to erect a dwelling house which gave rise to a potential breach of restrictive covenant “(d)”, ultimately leading to the circumstances discussed in this claim. For the

purpose of this judgment, any reference to the “restrictive covenant” is accordingly a reference to covenant “(d)”.

Case History

- [5] This matter was bifurcated. On 1st July 2022, this court issued a judgment interpreting the orders made in **Suit Nos. 582 of 1999** and **185 of 2000**, specifically regarding the restrictive covenant on “Lot 5”. It was determined that the proper construction of those orders did not preclude the Francises and their successors in title from constructing or occupying a dwelling house on the property¹.
- [6] The trial continued on 2nd November 2024 and 2nd May 2025 for the purpose of determining the remaining issues arising from the bank’s prayer for relief as outlined in paragraph three of the claim form filed on 27th April 2005, and from the Francises counterclaim filed on 9th June 2005. In paragraph three of its prayer, the bank seeks a declaration that the Francises are liable for the mortgage debt. By their counterclaim, the Francises seek a declaration that the deeds of further charge are not binding on them, as well as general and special damages, including all costs incurred subsequent to their acquisition of the property.

The Current Proceedings

- [7] The Francises have failed to pay the bank as agreed in the terms of the mortgage and deeds of further charge. The bank asserts that it has suffered loss as a result of this default with arrears continuing to accumulate. The bank therefore seeks a declaration that the Francises are liable to pay the sums due under the mortgage and deeds of further charge.
- [8] In their defence and counterclaim, the Francises allege that the bank breached the duty of care arising in the context of a banker-client relationship. They contend that the bank failed to ensure that they were adequately informed about the restrictive covenant prior to executing the deeds of further charge.

¹ The court also addressed the interpretation of the restrictive covenant

- [9] The Francises further allege that the lawyers, acting as their solicitors, failed to properly advise them of the restrictive covenant affecting the property. They assert that by accepting instructions and payment, the lawyers were duty bound to provide competent legal advice. The Francises contend that the alleged failure to identify and disclose the restrictive covenant amounts to a breach of that duty, resulting in loss and damage. The Francises also claim the bank is tasked with the negligence of the lawyers.

Legal Analysis

- [10] The Francises raise several issues in submissions filed on their behalf, including allegations of a breach of joint retainer and negligence by the lawyers, the bank's responsibility in agency for that alleged negligence, failure of being afforded the opportunity for independent legal advice, negligent misrepresentation by omission, and breach of the banking agreement by the bank. The sole issue raised by the bank is whether the Francises are liable to pay the debt.

Case for the Francises

- [11] Having reviewed the Francises' pleadings, two issues arise for determination. The first is whether the lawyers owed the Francises a duty of care to advise them on the restrictive covenant at the time of the deeds of further charge. The second is whether the bank, by advising the Francises to retain the lawyers, is responsible for any loss suffered by the Francises as a result of the alleged negligence of the lawyers.
- [12] The drafting of the defence and counterclaim left some room for confusion. However, after some effort, the case for the Francises was decipherable. It seems that the crux of the Francises' claim against the bank and the lawyers is set out in the defence filed on their behalf especially at paragraphs A3 and B26 to 28 and in the counterclaim. While reciting all of the defence and counterclaim may lengthen this ruling, replicating the defence and counterclaim may aid elucidation of what transpired and the basis of the Francises' defence

“A. THE FIRST AND SECOND-NAMED DEFENDANTS’ REPLY TO THE STATEMENT OF CLAIM.

A1. Save as in [sic] hereinafter expressly admitted the First and Second-named Defendants deny each and every allegation contained in the Claimant’s Statement of Claim and put the Claimant to the strict proof thereof.

A2. As to paragraph 1 of the Statement of Claim, the First and Second-named Defendants have no knowledge of the Claimant’s legal constitution other than the Claimant purports to be a Bank and as such is subject to the provisions of the Banking Act No. 4 of 1993.

A3. As to paragraph 2 of the Statement of Claim, the First and Second-named Defendants state that their joint and several relationship with the Claimant is subject to the provisions of the aforesaid Act, and to the various Banking Agreements, Loan Agreements and Indentures of Mortgage and Indentures of further charge executed by the First and Second-named Defendants.

In particular, the First and Second-named Defendants state that the Claimant had at all material times a fiduciary duty towards the Defendants and, arising out of the appointment of the Claimant’s agents, Messrs. Renwick and Payne, the Claimant owed a duty of care to the Defendants with respect to any and all acts of commission or omission on the part of Messrs. Renwick and Payne.

A4. Paragraphs 4, 5, 6, 7 and 8 of the Statement of Claim are admitted.

A5. Paragraph 9 of the Statement of Claim is admitted with respect only to the first and fourth sentences thereof which for convenience are reproduced below: “Master Cottle opined that the judgement against Simeon Francis in Suit No. 582 of 1999 was binding on his successors in title and the said Ian Francis in Suit No. 582 of 1999 ‘would be in contempt of court if he persisted in behavior which was in breach of the covenants of the deed’”, and ‘Master Cottle informed the second and third applicants herein (Simeon Francis and Ian Francis) who were then present in court, that they would be in contempt of court if they were to live in the house they had constructed on the Lot.’

The remaining sentences of the said paragraph are denied and the Claimant will be put to the strict proof thereof.

A6. Paragraph 10 of the Statement of Claim is admitted as a fact.

A7. Paragraph 11 of the Statement of Claim is denied and the facts upon which this denial is made are set out hereunder.

A8. Paragraph 12 of the Statement of Claim is denied and the Claimant will be put to the strict proof thereof and the facts upon which this denial is made are set out hereinunder.

B. THE FACTS AND REASONS FOR THE FIRST AND SECOND-NAMED DEFENDANTS' DENIAL OF THE CLAIM

B1. The First and Second-named Defendants were, in 1997, engaged to be married. They are now married to each other. Neither the First-named Defendant nor the Second-named Defendant had, prior to 1997, been involved in the purchase or sale of property, and neither of them had any experience or expertise in this area.

B2. The First and Second-named Defendants had, since before 1997, a banking relationship with the Claimant to the extent that they maintained current and savings accounts with the Claimant.

B3. In or about the month of April, 1997, the First and Second-named Defendants requested a loan from the Claimant for the purpose of purchasing a plot of land at Corinth, St. David's from the First-named Defendant's brother, Simeon Francis. The Claimant agreed to that loan subject, amongst other things, to a mortgage on the land and to the Conveyance and Mortgage documents being prepared at the expense of the borrower by the firm of Renwick and Payne of St. George's, Grenada.

B4. Such Conveyance and Indenture of Mortgage were prepared by the aforesaid firm and were executed by the First and Second-named Defendants and were registered in the Deeds and Land Registry of Grenada in Liber 16-97 at page 84 and Liber 16-97 at page 178 respectively.

B5. By invoice dated 23rd June, 1997, Messrs. Renwick and Payne submitted their charges in the amount of \$990.00 to the Claimant with respect to preparing and recording the aforesaid documents, and the bank account of the First and Second-named Defendants was debited for that amount. A true copy of the said bill of charges is annexed to this Statement, marked "I&JF#1".

B6. It is a fact that the predecessor title to the said land was by way of a Conveyance dated 27th August, 1992 of Lot 5 of Corinth Estate from Elisha Baptiste and Corinth Plantation Limited to Simeon Francis, and that Conveyance included a covenant binding on Simeon Francis and his successors in title to the effect that only one principal dwelling house could be built on the said Lot 5. It is a fact that there was no covenant restraining Simeon Francis from sub-dividing the said Lot 5 or from selling or otherwise disposing of any part of the sub-divided Lot 5.

B7. In or about the month of July, 1999, the First and Second-named Defendants requested from and were given a further loan by the Claimant for the purpose of constructing a dwelling house on the aforesaid land. It was a condition of the Claimant's disbursement of funds that the firm of Renwick and Payne, Solicitors for the Claimant, be instructed by the Defendants to prepare a Certificate of Clear and Unencumbered Title to the land and a Deed of Further

Charge on the aforesaid Mortgage. The firm of Renwick and Payne prepared those documents, and the Deed of Further Charge was duly executed by the First and Second-named Defendants and was registered in the said Registry in Liber 27-99 at page 295.

B8. By invoice dated 19th July, 1997, Messrs. Renwick and Payne submitted their charges in the amount of \$1,925.00 to the Claimant with respect to preparing and recording the aforesaid documents, and the bank account of the First and Second-named Defendants was debited for that amount. A true copy of the said bill of charges is annexed to this Statement, marked "I&JF#2".

B9. The First and Second-named Defendants commenced building a dwelling house on the said land, and drew down funds from the Claimant for that purpose.

B10. In or shortly after December 1999, the First-named Defendant was served with Claim No. GDAHCV 1999/0582, wherein Simeon Francis's predecessor in title, one Elisha Baptiste, claimed damages for breach of covenant contained in the predecessor conveyance, and an Order restraining the First-named Defendant from continuing construction and further ordering him to demolish and remove whatever had been at that time constructed. The Claimant, Baptiste, relied on a covenant given by Simeon Francis to build no more than one dwelling house on the property conveyed to him. Simeon Francis had divided the land conveyed by Baptiste and had sold approximately one half to Hyacinth Hypolite who had at that time already completed a dwelling house on his half of the land.

B11. The service of the aforesaid Claim No. GDAHCV 1999/0582 was the first indication to the First and Second-named Defendants that such a restrictive covenant might exist which might affect their right to build on their land. No such restrictions was brought to their attention by the Claimant or by the Claimant's agent, Messrs. Renwick and Payne or by Messrs. Renwick and Payne in their capacity as Solicitors for the Defendants as a result of the title search performed by Messrs. Renwick and Payne in July 1999.

B12. On 21st January, 2000, Mr. Justice Kenneth Benjamin restrained the First-named Defendant from further construction until trial or further order.

B13. The First and Second-named Defendants advised the Claimant of the aforesaid Claim and the Restraining Order and ceased all further work on their house.

B14. On April 6th, 2000, Suit No. 2000/0185 was issued and served on Simeon Francis and Hyacinth Hypolite by the aforesaid Elisha Baptiste, claiming, inter alia, a Declaration that construction by the Second-named Defendant therein (Hyacinth Hypolite) of the second dwelling house on the land originally

conveyed by Baptiste to Simeon Francis was in breach of restrictive covenants and seeking a restraining order against Hypolite.

B15. The First and Second-named Defendants were advised by the Claimant that the Claimant had instructed Messrs. Renwick and Payne to resolve the matter and that, to use the words of the Claimant's Loan Officer *"The lawyers will sort it all out after the house is finished, go ahead with the building, and how much money do you need to finish?"*.

B16. As a result of the assurances given by the Claimant's Loans Officer, the First and Second-named Defendants applied for and were granted a further loan to complete the roof. Disbursement of the additional funds was conditional upon the preparation and registration by Messrs. Renwick and Payne of a Second Deed of Further Charge. Such Deed was executed on 26th, April, 2002 and is registered in the said Registry in Liber 9-2002 at page 669.

B17. By invoice dated 10th April, 2002, Messrs. Renwick and Payne submitted their charges in the amount of \$796.00 to the Claimant with respect to preparing and recording the aforesaid documents, and the bank account of the First and Second-named Defendants was debited for that amount. A true copy of the said bill of charges is annexed to this Statement and is marked "I&JF#3".

B18. By Order made by Hon. Mr. Justice Denys Barrow on 5th February, 2003, in Claim No. 2000/0185 it was declared that the First Defendant therein (Simeon Francis) was in breach of the restrictive covenants in his conveyance from Elisha Baptiste.

B19. In striking out the Statement of Claim in Claim No. 1999/0562 in his Judgement dated 25th September, 2003, Master Brian Cottle states at para. 9 thereof: *"I pause to add that the striking out of this statement of claim is an abuse of process does not leave the Claimant with some remedy. Simeon Francis already has a judgement of this count against him declaring that he is in breach of the covenants in the deed. This judgement is binding not only on him but also on all his successors in title. Ian Francis would be in contempt of court if he persists in behavior which is in breach of the covenants. There is no need to pursue this claim any further."* (author's emphasis)

B20. Out of respect for the judgements of Hon. Mr. Justice Denys Barrow and Master Brian Cottle, and contrary to the advice of the Claimant, the First and Second-named Defendants have not completed their house and have been obligated to take rented accommodation.

B21. Acting on the advice of the Claimant that "the matter would be resolved, the First-and Second-named Defendants continued to make timely payments against their indebtedness to the Claimant with respect to the Mortgage including the two Deeds of Further Charge, until in October 2003 the unequivocal Judgement of Master Cottle made it clear that they would not be able to complete their house.

B22. By letter dated 22nd. October, 2003, the First and Second-named Defendants advised the Claimant that, as of that date, they has suffered financial loss in the amount of \$257,899.63.

B23. At some time shortly after 22nd. October, 2003, the First and Second-named Defendants attended at a meeting with the Claimant and a partner in the firm of Renwick and Payne at the offices of Ms. Celia Clyne-Edwards, who was at that time advising the Defendants. At that meeting, the representative of Renwick and Payne presented a document entitled 'Analysis of (1) Claim No. GDAHCV 1999/0582 - Elisha Baptiste vs Simeon Francis and Ian Francis, and (2) Claim No. GDAHCV: 2000/0158 - Elisha Baptiste vs. Simeon Francis and Hyacinth.'

At that meeting, the representative of Renwick and Payne, referring to Master Cottle's judgement that 'Ian Francis would be in contempt of court if he persists in behaviour which is in breach of the covenants' advised the Defendants that 'This statement carries little weight if any at all' and 'we do not think that Ian Francis would be in contempt of court if he completes his house and moves in.'

B24. Being aware of the sanctions available to the court in the event of any contempt and also being aware that it would be themselves rather than the Claimant or Messrs. Renwick and Payne who would be liable to face such sanctions, and having noted Ms. Clyne's opinion that she could not concur with Messrs. Renwick and Payne's opinion, the Defendants did not take any steps to complete their house.

B25. Because the uncompleted house has stood empty for in excess of two years, it has suffered damage by weather and vandalism to the extent that it would now be impractical and unreasonable for the Defendants to complete it and make it fit for dwelling.

B26. The Defendants state that, in consequence of the foregoing, the Claimant both by itself and through the negligence of its agent, Messrs Renwick and Payne for whose acts and omissions [sic] the Claimant is responsible, is in breach of the banking agreement between the Claimant and the Defendants, and the Claimant's claims must therefore fail.

B27. The Defendants state that, in consequence of the foregoing, the Claimant both by itself and through the negligence of its agent, Messrs Renwick and Payne for whose acts and omissions [sic] the Claimant is responsible, was in breach of the duty of common care which is implicit in any relationship between banker and client, and the Claimant's claims must therefore fail.

B28. The Defendants state that, in consequence of the foregoing, the Claimant, by insisting on that title searches and preparation of the

aforesaid Mortgage and the First and Second Deeds of Further Charge be performed by its own Solicitor, Messrs. Renwick and Payne, placed itself in a position whereby it owed a duty of care to the Defendants with respect to the acts of commission or omission [sic] of Messrs. Renwick and Payne, and was in breach of that duty, and the Claimant's claims must therefore fail. (Bold emphasis mine)

BY WAY OF COUNTERCLAIM

C1. The Defendants repeat paragraphs A1 to A8 and B1 to B26 of their Defence.

C2. The Defendants aver that Ms. Margaret Blackburn, Ms. Michelle Emmanuel-Steele and Mr. Michael Stewart, the First, Second and Third-named Defendants by Counterclaim are and were at all material times partners in the firm of Renwick and Payne the Fourth-named Defendant by Counterclaim, and as such are each responsible in law for the negligence of any of them or any person or persons acting for the said firm.

C3. In consequence of their acceptance of the instructions of the Defendants and the payment of their fees on three occasions, the Defendants by Counterclaim were contractually bound to the Defendants to provide competent legal services. By failing to discover and communicate to the Defendants the existence of a restrictive covenant on the title of their land, **prior to the Defendants entering into a Second and Third Deed of Extra Charge**, the Defendants by Counterclaim are in breach of the said contract, and are liable for the losses and damage thereby caused to the Defendants. (Bold emphasis mine)

C4. As a result of their giving legal advice to the Defendants the Defendants by Counterclaim have assumed a common duty of care to the Defendants, and in consequence of the foregoing, were negligent in the performance of that duty, and are liable for the losses and damage thereby caused to the Defendants.

C5. Insofar as the Defendants by Counterclaim were acting as legal advisers to both the Claimant and the Defendants, the Claimant is responsible in law for the acts and omissions [sic] of the Defendants by Counterclaim, in consequence of which the Defendants claim in Counterclaim against the Claimant for the losses and damages caused to the Defendants arising from the negligence of the Defendants by Counterclaim.

AND THE DEFENDANT CLAIMS AGAINST THE CLAIMANT AND THE DEFENDANTS BY COUNTERCLAIM

a) A declaration that the aforesaid **Deed of Further Charge and Second Deed of Further Charge with respect to the Indenture of Mortgage made 4th.**

July, 1997 between the Defendants and the Claimant are not binding on the Defendants, Ian and Juliana Francis. (Bold emphasis mine)

b) General Damages

c) Special Damages being all costs expended by the Defendants subsequent to their purchase of the said land,

d) Costs

e) Such further and other relief as to this Honourable Court seems just”

[13] I extract from the foregoing, especially paragraphs A3 and B26 to 28, that the Francises’ defence against the claimant bank is that the bank, by insisting that the Francises retain and utilise the services of the bank’s lawyers in the preparation of the mortgage and the various deeds of further charge, is in breach of the banking agreement between the bank and the Francises. Those paragraphs also suggest that the defence for the Francises is that the bank is also liable for any acts of commission or omission committed by the lawyers. Curiously though, while the Francises counterclaim against the bank and the lawyers, it is apparent from the defence and counterclaim that the Francises seem to be only lamenting about the lawyers’ failure to advise them of the presence of the restrictive covenant before the execution of the deeds of further charges, and not the conveyance and the mortgage. See C3 of the counterclaim. Even more curious is the request for relief in the form of a declaration that the deeds of further charges are not binding on the Francises. Yet later in the prayer for relief, they seek special damages for all expenses that they have incurred subsequent to the purchase of the land.

[14] It is not open to this court to assume what is the case for the Francises. It would seem to me that as I have stated above, while in the defence, particularly at paragraphs A3 and B26 to 28 thereof, the Francises seem to be complaining about all the transactions, be it the conveyance, mortgage and deeds of further charge, they have counterclaimed and sought relief only in relation to the deeds of further charge. It is well established that parties are bound by their pleadings². I note though that counsel for the Francises who, to be fair to her, was only retained long after the pleadings were filed, raised arguments about all the transactions. I cannot see how the Francises could be permitted to do so when they claim relief only in respect of the

² George W. Bennett Bryson’s & Co. Ltd. v George Purcell ANUHCVP2011/0023

deeds of further charge. Ward JA in the case of **National Lotteries Authority v Jerome De Roche**³ summarised the importance of pleadings in the following terms:

“[35] The purpose that pleadings are intended to serve has been articulated by this court on numerous occasions. Often cited in this regard is the case of *East Caribbean Flour Mills Limited v Ormiston Ken Boyea* which cites approvingly the case of *McPhilemy v Times Newspapers Ltd*. There, Lord Woolf MR articulated the function of pleadings this way:

‘The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party’s witness statements, will make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader. This is true both under the old rules and the new rules.’

[36] In *East Caribbean Flour Mills*, Barrow JA succinctly summed up the principles derived from this and other authorities, at paragraph 43:

‘The position, as gathered from the observations of both their Lordships, is that the pleader makes allegations of facts in his pleadings. Those alleged facts are the case of the party. The “pleadings should make clear the general nature of the case,” in Lord Woolf’s words, which again I emphasize. To let the other side know the case it has to meet and, therefore, to prevent surprise at the trial, the pleading must contain the particulars necessary to serve that purpose.’

[37] This court has adopted this stance as it relates to pleadings as reflected in cases such as *Saint Lucia Motor & General Insurance Co. Ltd v Peterson Modeste*.

[38] In short, therefore, the claimant must plead the essential facts that constitute its case, and those facts must be sufficient to establish a cause of action and to enable the other side to know the case it has to meet in sufficient detail.

³ GDAHCVAP2021/0025

[39] CPR 8.7A prohibits reliance on allegations or facts not pleaded unless the judge gives permission, or the parties agree. CPR 10.5 and 10.7 place similar strictures on the defendant by providing respectively that the defence must set out all the facts on which the defendant relies to dispute the claim and that a defendant may not rely on any allegation or factual argument which is not set out in the defence, but which could have been set out there, unless the court gives permission or the parties agree.

- [15] As lamentable as this state of affairs may be, this court is constrained to restrict its ruling on the matters pleaded and the reliefs sought.

Joint retainer on the deeds of further charge

- [16] Counsel for the Francises argues that by virtue of an alleged joint retainer, the lawyers acted as legal advisers to both the bank and the Francises with respect to all the deeds. However, as I have indicated previously, the Francises seek relief only in respect of the deeds of further charge. Relying on authorities including **Clark Boyce v Mouat**⁴, **Hilton v Barker Booth & Eastwood**⁵, **Mortgage Express v Bowerman & Partners**⁶, and **Halifax Mortgage Services Ltd v Stepsky**⁷ counsel submits that a solicitor acting under a joint retainer, obtained through informed consent, owes fiduciary duties to both clients.

- [17] To succeed in establishing a joint retainer, the Francises must first establish the existence of a retainer between themselves and the lawyers. As noted in **Halsbury's Laws of England**⁸, the formation of a retainer is equivalent to the making of a contract for the solicitor's employment.

- [18] Counsel for the Francises argues that a solicitor-client relationship may be inferred from conduct of the parties and relies on the decision of the Chancery Court in

⁴ [1994] 1 AC 428

⁵ [2005] UKHL 8

⁶ [1995] Times 1 Aug (CA)

⁷ [1996] 2 ALL ER 277

⁸ 5th edn. (2020), vol 66, para 515

Midland Bank Trust v Hett Stubbs⁹, where Oliver J., citing Scott LJ. in **Groom v Crocker**¹⁰, stated that a retainer will be presumed if the conduct of the parties shows that the relationship of solicitor and client was in fact established between them.

- [19] This court, in **Sunsystems Limited et al v Grenada Co-Operative Bank Limited et al**¹¹ relied on dictum from Lightman J in **Dean v Allin & Watts (a Firm)** where his Lordship observed that:

“...As a matter of law, it is necessary to establish that A&W by implication agreed to act for Mr Dean: an implied retainer could arise where on an objective consideration of all the circumstances an intention to enter into such a contractual relationship ought fairly to be imputed to the parties...**No such retainer should be implied for convenience, but only where an objective consideration of all the circumstances make it so clear an implication that the solicitor himself ought to have appreciated it.**”

- [20] The evidence establishes, and this court accepts, that the lawyers were instructed by the bank in the course of the transactions relevant to this discourse, that is the deeds of further charge. Indeed, the Francises themselves acknowledge that between the years 1997 and 2000, the lawyers acted exclusively on the bank’s instructions.
- [21] Counsel for the Francises submits that the Francises’ reliance on the advice of the lawyers entrenches a presumption of a retainer. However, the advice said to have been relied upon was not placed before the court. Mr. Francis’ own evidence was as follows:

“No one gave me any advice about the documents which I was asked to sign.”

- [22] For the purposes of the claim and relief being sought by the Francises, that is to say that the deed of further charges are not binding on them, the only evidence offered by the Francises in support of the alleged retainer in respect of those deeds is of evidence of payments to the lawyers for the preparation of the deeds of further charge. However, the mere payment of fees does not, in and of itself, without more, create a solicitor-client relationship, or give rise to a contractual retainer. Counsel for the bank

⁹ [1979] Ch 384

¹⁰ [1939] 1 KB 194

¹¹ GDAHCV2023/0015

and the lawyers argues that these payments were made pursuant to an express term of the agreement between the bank and the Francises. The cost of preparation of the mortgage and deeds of further charge was to be borne by the Francises as stipulated in the relevant clauses of the deeds which provide:

"All costs charges and expenses properly incurred hereunder by the Bank and all other moneys properly paid by the Bank and all other moneys properly paid by the Bank including charges and expenses which the Bank may pay or incur in investigating the title to the said hereditaments and drawing stamping registering perfecting or enforcing this security... shall be charged on the said hereditaments ..."

- [23] Furthermore, all invoices for legal services rendered by the lawyers were issued to and addressed in the name of the bank.
- [24] In these circumstances, I am not satisfied that the Francises have established the existence of a joint retainer, or any retainer as between themselves and the lawyers, with respect to the completion of the deeds of further charge.

Duty and breach of the lawyers

- [25] The restrictive covenant affecting the property originated with the 1997 conveyance and mortgage. However, as indicated earlier, even though the Francises' lament the bank and the lawyer's conduct on all the transactions, they seek relief only in respect of the deeds of further charge. They allege that, in the course of the title search undertaken in preparation for the deeds of further charge, the lawyers were negligent in failing to discover and disclose the restrictive covenant. See the second sentence of paragraph C3 of the counterclaim.
- [26] Counsel for the Francises argues that the lawyers assumed a duty to provide competent legal services, which included investigating title and advising on any encumbrances. This duty, counsel submits, extended to the restrictive covenant and pending litigation in **Suit Nos. 582 of 1999** and **185 of 2000**, and the alleged failure to do so constituted a breach of duty resulting in loss.

- [27] To determine whether such a duty existed, it is necessary to consider the legal principles governing when a duty of care arises in professional or advisory relationships of this nature.
- [28] It has been established that the lawyers were retained by the bank to prepare the deeds of further charge. This involvement in the transaction forms the foundation of the negligence alleged by the Francises.
- [29] No authority has been provided to this court establishing that solicitors owe a duty to advise borrowers of the existence of restrictive covenants on property being purchased, in circumstances where the solicitors are retained by the lender and not by the borrowers. Counsel for the Francises referred to **Mortgage Express v Bowerman & Partners**¹² which affirmed the principle that solicitors must disclose to a lender any information adversely affecting the property or the value of the security. That duty, however, runs from solicitor to lender, and not, as in the present claim, from solicitor to borrowers.
- [30] In this context, reference can be made to **Crosse and Crosse v Lloyds Bank Plc**¹³, where solicitors appealed against a judgment entered in favour of a bank for professional negligence. The facts of that case are comparable: a bank funded the purchase of land which was subject to restrictive covenants limiting its developable area. The solicitors failed to advise the bank of the existence and effect of those covenants, and the bank suffered loss when the land was later sold at a deficit. The trial judge's finding of negligence was not disturbed on appeal. That case reaffirms that in such transactions, a solicitor's duty of care is owed to the lender, not to the borrower.

- [31] Further, the authors of **Halsbury's Laws of England**¹⁴ state that:

“Following investigation of title, the solicitor is required to make a report on title to his lender client certifying that he has carried out a full investigation in

¹² [1995] Times 1 Aug (CA)

¹³ [2001] EWCA Civ 366

¹⁴5th edn. (2023), vol 23, para 383

accordance with the lender's instructions and that the title to the property is good and marketable. ... At the stage when the report on title or certificate is submitted to the lender, there should be no remaining queries on the title, any such queries having been clarified during the course of investigation of title.”

- [32] Consistent with these principles, I find that the lawyers owed a duty to advise the bank on material issues affecting title. The nature of such a duty was explained in **Headley Byrne & Co. Ltd v Heller & Partners Ltd**¹⁵, where the House of Lords held that a duty of care arises where a reasonable person, knowing that their skill and judgment are being relied on, undertakes to apply that skill in circumstances where the other party in fact relies on it.
- [33] With particular reference to third party reliance on the duty to the bank (particularly the Francises’ reliance on the advice given by the lawyers to the bank), the imposition of such duty may be founded on the framework established in **Caparo Industries Plc v Dickman et al**¹⁶, which requires: foreseeability of harm, a relationship of proximity between the parties, and that it be fair, just and reasonable to impose a duty of care in the circumstances. These criteria guide the court in assessing whether the lawyers owed a duty of care to the Francises through their engagement by the bank.
- [34] Against that background, the determination of the issue of negligence turns on when it became incumbent upon the lawyers to disclose the existence of the restrictive covenant, the potential effects of same and the pending litigation affecting the property.
- [35] It seems to me that any duty held by the lawyers to discover and advise the Francises of the implications of the restrictive covenant arose at the time of the preparation of the conveyance and a duty to advise the bank of the implications of the same arose from the time that the lawyers were instructed to prepare the mortgage. Further, where the bank is concerned, that duty flowed from lawyer to client, the bank, not only at the time of the receiving of instructions in respect of the mortgage but each time that the

¹⁵ [1964] AC 465

¹⁶ [1990] 2 AC 605

lawyers received the bank's instructions to prepare each subsequent document. Once a lawyer receives instructions to prepare a deed, he or she is duty bound to conduct proper searches and advise the client of any adverse matters thereby disclosed.

[36] As I have stated above, the Francises only seek relief for these failures with respect to the deeds of further charge. As it concerns these deeds, the evidence for the lawyers highlights the failures. Mrs. Emmanuel-Steele's evidence in paragraphs 3 to 25 of her witness statement indicates that:

"3. I am familiar with the First-named Defendant as I have had personal interactions with him account of this Claim. The Firm also acted on his behalf in or about July 1997 in a sale/purchase transaction. He was purchasing a lot of land from his brother, Simeon Francis, and was financing the purchase via a mortgage from the Bank. I know the Second-named Defendant to be the (now deceased) wife of the First-named Defendant.

4. Pursuant to instructions received, the Firm conducted searches in the Deeds and Land Registry of Grenada, as is the usual course, in order to establish 'good title' to the said lot of land in ensuring that there were no encumbrances on the said lot of land.

5. The said searches determined that the previous owner, Elisha Baptiste sold a portion of land to the said Simeon Francis who then appeared to divide the said portion of land into two lots, one of which was the lot being sold to his brother.

6. It was determined that the title was good, no encumbrances over the said lot of land were discovered. However, it was noted that there were restrictive covenants imposed on the said lot of land by the previous seller.

7. The said covenants were as follows:

'(d) Not to erect on the said property more than one main building with garage accommodation and permitted outbuildings.

(e) Not to erect or maintain on the said property or any part thereof any building which with its garage and permitted out-buildings shall cost less than One Hundred and Fifty Thousand Dollars to be calculated at the net cost of material and labour or construction estimated at prices current at first January One Thousand Nine Hundred and Ninety-one.'

8. There was no covenant prohibiting sub-division of Simeon Francis' lot of land, therefore Simeon Francis was entitled to sell a portion of his lot. The Firm was also not instructed in relation to the use of the said lot of land.

9. The First-named Defendant attended the offices of the firm and executed the Mortgage and the Conveyance, having read same.

10. In or about June 1999, the Bank instructed the Firm to prepare a Deed of Further Charge in favour of the Bank. The Firm did not act on behalf of the Defendants for this transaction as the Deed of Further Charge is a security document prepared in favour of the Bank.

11. Again, the Firm conducted searches in the Deeds and Land Registry in order to establish 'good title'. At this point in time there were still no encumbrances on the said lot of land.

12. In or about March 2002 the Bank instructed the Firm to prepare a Second Deed of Further Charge in favour of the First-named Defendant. The Firm did not act on behalf of the Defendants for this transaction.

13. Again, the Firm conducted searches in the Deeds and Land Registry in order to establish 'good title'.

14. This third search revealed that two law suits affected the said lot of land,

i. One suit was filed against Simeon Francis (the First-named Defendant's seller) and the First-named Defendant. Copies of the pleadings and orders filed in this suit form part of the Claimant's List of Documents, numbered 11-15, filed herein

ii. The other suit was filed against Simeon Francis and Hyacinth Hypolite. Copies of the pleadings and orders filed in this suit form part of the Claimant's List of Documents, numbered 7-12, filed herein;

both the First-named Defendant and Hyacinth Hypolite were the purchasers of one lot of land from Simeon Francis, part of a larger lot of land purchased from Elisha Baptiste. The Ancillary Defendants also advised the Bank that, in the Suit against the First-named Defendant there was an injunction against the First-named Defendant preventing him from completing the construction of his house on the basis of a covenant affecting the said larger land to the effect that only one main building could be built thereon.

15. The Firm also corresponded with the Law Firm of G.E.D. Clyne, which said Law Firm were the Attorneys-at-Law representing the First-named Defendant in the Suit against him, in order to ascertain the status of the suit. We were advised by the said Law Firm that the matter had been inactive for over a year and that they intended to apply for the suit to be deemed abandoned in the circumstances pursuant to the then existing

Civil Procedure Rules. She also informed that she had filed a Counterclaim against Elisha Baptiste as he was apparently also in breach of covenants made by him in respect of the larger lot of land.

- 16. The Firm advised the Bank of these two suits and the injunction against the First-named Defendant which would affect the Bank's security under its Mortgage if a judgment against the First-named Defendant was entered. The Bank was also advised on the information received from the First-named Defendants said Attorney's at-Law, G.E.D. Clyne.**
- 17. The Bank sometime later sent instructions to the Firm to proceed with preparing the Second Deed of Further Charge, in its favour which the Firm carried out.**
- 18. At no point in time following the preparation of the Conveyance did the Firm act for or take instructions from the First-named Defendant. The First-named Defendant did however attend the office of the Firm in order to execute the Deed of Further Charge and the Second Deed of Further Charge.**
- 19. On 5th February 2003, the Claim against Hyacinth Hypolite was concluded in the High Court and that the Court granted certain declarations as claimed in the Claim against Hyacinth Hypolite and Simon Francis. The Order is referred to in number 10 of the Claimant's List of Documents. On 25th September, 2003, the Claim against the First-named Defendant came up for hearing and was struck out by Master Cottle on the basis of Res Judicata, and also that to permit the Claim to continue would amount to an abuse of process of the Court. Master Cottle further in his judgement stated that the First-Named Defendant "would be in contempt of Court if he persisted in behaviour which is in breach of the covenants in the deed". The Order of Master Cottle forms part of the Claimant's List of Documents, numbered 15, filed herein. The Firm's Analysis of this Order of Master Cottle also forms part of the Claimant's List of Documents, numbered 16, filed herein.**
- 20. It was in or about 2003 that the Defendants complained about their legal situation and the fact that they had been prevented by the Court from completing the construction of and moving into their house. The Bank informed the Firm of the complaint being made by the First-named Defendant, particularly by letter dated 22nd October, 2003 (this letter forms part of the Defendants' List of Documents filed herein). The Firm then communicated with the Law Office of G.E.D Clyne in relation to the outcome of the Claim against the First-named Defendant. Based on research and enquiries prepared an analysis of the legal claims filed and the implication of their Outcomes. This Analysis was shared with the said Law Office, the Bank and the First-named Defendant.**
- 21. The conclusion formed in the Analysis was that the Court left the issues unresolved in that:**

- i. The Court declared that Hyacinth Hypolite and Simeon Francis were in breach of covenant
 - ii. The court struck out the Claim against the First-named Defendant and made no declarations that he was similarly in breach of the said covenants.
 - iii. Neither did the Court order him to demolish his house.
 - iv. Consequently, there was no order that Ian Francis could be in contempt of court if he completed and moved into his house.
22. In response to the said Analysis, the Law Office of G.E.D. Clyne wrote a letter to the Firm dated 16th December, 2003 (number 17 of the Claimant's List of Documents filed herein), indicating that they agreed that the Court "left the matter hanging for the parties to basically negotiate".
23. The First-named Defendant did not finish the house and consequently did not take up occupation. The Bank is hesitant to sell the property in order to recover some of the debt because of the uncertainty remaining in respect of the existing covenants and the Judgment of Master Cottle. The Bank fears that prospective purchasers will not wish to face a potential lawsuit. In view of these circumstances the Firm was instructed by the Bank to institute this Claim to obtain much needed clarity as to the legal position of the parties involved in the previous claims.
24. The Firm denies that it was in any way negligent in the preparation of the Conveyance or in any advice to the First-named Defendant. Further, the preparation of the security documentation in favour of the Bank were services rendered by the Firm on the Bank's behalf and pursuant to the Bank's instructions. In these circumstances there was no duty or obligation owed to the First-named Defendant.
25. The Firm denies that it is liable to reimburse the First-named Defendant for any costs expended subsequent to his purchase of the said lot of land as it is in no way responsible for the actions of the First-named Defendant in relation to the use of the said lot of land. Further the First-named Defendant continued to build even after the grant of the injunction and at a time when he was being advised by separate and independent legal counsel. He did nothing to mitigate his loss and cannot now seek to recover any resulting loss from the Firm." (Bold emphasis mine)

[37] It is evident from Mrs. Emmanuel-Steele's testimony that the lawyers failed to discover and advise the bank of the effect of the restrictive covenant in June 1999 when they received instructions to prepare the first deed of further charge. The lawyers had a

duty to advise the bank of the effect of the restrictive covenant on the property, and in failing to do so, breached that duty.

- [38] Extrapolating from the foregoing, it ought not to be a stretch of logic and beyond what can be deemed reasonably foreseeable in the **Caparo** sense to conclude that the lawyers knew or ought to have known that the Francisces, as the borrowers and parties affected by the deeds, would rely on the advice provided by the lawyers to the bank in relation to title. The restrictive covenant should have been identified, interpreted and communicated, as their existence had a direct impact on the rights and obligations not only of the bank but of the Francisces as well. Accordingly, the lawyers are liable in negligence in respect of the first deed of further charge.

Second deed of further charge

- [39] The evidence is that **Suit Nos. 582 of 1999 and 185 of 2000** were filed after the execution of the first deed of further charge, but prior to the second deed of further charge. **Suit No. 582 of 1999** was filed on 9th December 1999, and **Suit No. 185 of 2000** was filed 6th April 2000. Suit No. 582 of 1999 was served on Mr. Francis in December 1999 and Suit No. 185 of 2000 was served on Mr. Francis on 7th April 2000. Of significance is also the fact that Mr. Francis was served with an order of injunction granted by the court in Suit No. 582 of 1999 which enjoined against further construction on the lands belonging to the Francisces.
- [40] The crux of this is that by 7th April 2000, the Francisces had acquired actual knowledge of the restrictive covenant and the ongoing litigation. It is therefore difficult to see how they could seek relief for the failure to advise them of the restrictive covenant before they executed the second deed of further charge when the second deed of further charge, made on 26th April 2002, was executed by them after they were fully aware of both the restrictive covenant and related litigation. They claim though that they relied on advice from the lawyers and the bank's personnel that it was appropriate to enter the second deed of further charge. But I cannot see how responsibility for such a course of action could fall at the feet of the lawyers and the bank when it is the Francisces' own evidence that by the time of this second deed of further charge they

had retained lawyers with respect to the law suits and in particular the injunction granted in Suit No. 582 of 1999. That the Francises did not seek or rely on advice of their own attorney at that juncture can hardly, in my view, be the fault of the lawyers or the bank.

- [41] Therefore in relation to the second deed of further charge, I find that it would not be reasonable to extend the duty of care owed by the lawyers to the bank to the Francises as borrowers. As I have stated above, by the time that the second deed of further charge was executed, the Francises had actual knowledge of both the restrictive covenant and the ongoing litigation, and had obtained independent legal advice regarding their effect. Any failure by the lawyers to disclose matters already known to the Francises or that they ought to have known could not have caused them loss or prejudice. To impose liability on the lawyers would thus be inconsistent with established principles, and would extend the duty beyond its proper scope. Consequently, no actionable negligence arises in respect of the second deed of further charge.

Responsibility of the bank for loss suffered by the Francises

- [42] In their defence, the Francises contend that the bank owed them a fiduciary duty. The Francises also allude to a breach of a banking agreement.
- [43] In submissions, counsel for the Francises argues that the bank is liable for permitting and encouraging dual representation and for failing to ensure that the Francises were afforded adequate legal protection. I have already concluded that there was no joint retainer between the parties. But as stated above, the Francises' case is that the Bank is tasked with the negligence of the lawyers and ought to be responsible for any resulting loss suffered by the Francises.

- [44] Counsel for the Francises places reliance on **Woods v Martins Bank Ltd**¹⁷, **Royal Bank of Scotland v Etridge (No. 2)**¹⁸ and **Barclays Bank PLC v O'Brien**¹⁹. The decisions in **Etridge**²⁰ and **O'Brien**²¹, address the obligation of banks to ensure that vulnerable borrowers receive independent legal advice in circumstances suggestive of undue influence. However, no such allegation of undue influence forms part of the Francises' pleaded case, and those authorities are therefore of limited assistance to the issues presently before the court.
- [45] The general position is well settled: a bank is not, in the ordinary course, an advisor, to its customers and does not assume responsibility for advising on the merits of the facilities which it offers. Nevertheless, **Woods**²² recognises that where it is within the scope of a bank's business to give advice on financial matters, a duty of care to exercise reasonable skill and care may arise when such advice is in fact tendered.
- [46] As articulated in **Woods**, such a duty of care may arise where the advice relates to financial affairs, and it is within the scope of the bank's business. **Paget's Law of Banking**²³ also explains that:
- "It is important to keep in mind the fact that a bank only incurs liability if it actually undertakes to advise and it does so advise (a failure to advise would only potentially be actionable as a breach of a contractual obligation to advise, or if it was part of a rare duty to advise on an ongoing basis)..."
- [47] In the present case, the evidence establishes that the bank required, as a condition of the transaction, that the Francises specifically engage the lawyers to complete the relevant documentation.
- [48] It seems to me that the bank's involvement in the transaction extended beyond the mere facilitation of its commercial requirements. By directing the Francises to engage

¹⁷ [1959] 1 QB 55

¹⁸ [2001] UKHL 44

¹⁹ [1994] 1 AC 180

²⁰ [2001] UKHL 44

²¹ [1994] 1 AC 180

²² [1959] 1 QB 55

²³ John Odgers KC and Ian Wilson KC, *Paget's Law of Banking* (16th Edition) Paragraph 29.2

the lawyers in the preparation of the deeds of further charge, the bank assumed a contractual advisory function in the conduct of the transaction. In doing so, the bank conveyed to the Francises that the proposed arrangements with the lawyers were appropriate and sufficient to safeguard their interests, which as the evidence has established, was misguided.

- [49] In these circumstances, I conclude that the bank, having assumed an advisory role and directed the Francises to engage the lawyers, also bears responsibility for the negligent advice and preparation of the deeds of further charge prepared by the lawyers. The bank's own intervention placed the Francises in reliance upon the competence of the lawyers so engaged, making the bank liable for the negligence on the part of the lawyers in the execution of their duties.

Liability of the Francises to pay the bank

- [50] The bank seeks a declaration that the Francises are liable to pay the sums due under the mortgage and the deeds of further charge. It is argued that the Francises have not established any legal basis on which they should be relieved of this obligation.

- [51] In absence of fraud, misrepresentation, mistake or a plea of 'non est factum', a person is bound by the document they sign whether or not they have read it. Counsel for the bank refers to **Halsbury's Law of England**²⁴ which states that:

"Before a party executes a deed, it should be read by him, or correctly read over or fully and accurately explained to him, and he cannot be required to execute it until this has been done. If he is content to execute it without so informing himself of its contents, it will in general be binding on him, even though its contents are materially different from what he supposed, and even though he is himself illiterate or blind..."

- [52] Counsel for the bank also refers to **Saunders v Anglia Building Society**²⁵. Counsel argues that the Francises understood that they were executing legally binding documents which would facilitate further loans from the bank under the existing

²⁴ 5th edn. (2023) vol 32, para 234

²⁵ [1970] 3 ALL ER 961

mortgage, on the security of the property, and that the deeds of further charge were therefore not of a different character from that which they intended to sign and did in fact sign.

- [53] Counsel states further that the Francises are estopped from bringing this action or claiming that the deeds of further charge are not binding on them or that they are entitled to be reimbursed for all costs expended subsequent to the purchase of the property. Counsel refers to the case of **Freeman and another v Cooke**²⁶ which states:

"Where one, by his words or conduct, 'wilfully' causes another to believe in the existence of a certain state of things and induces him to act on that belief or to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time. More broadly, a party who negligently or culpably stands by and allows another to contract on the faith of a fact which he can contradict cannot afterwards dispute that fact in an action against the person whom he has himself assisted in deceiving. The term 'wilfully' in the rule must be understood to mean that, if not that the party represents that to be true which he knows to be untrue, at least, that he means his representation to be acted upon and that it is acted upon accordingly."

- [54] It could be said that when they executed all the documents, the Francises knew and understood that they were executing binding legal documents to obtain funds from the bank. But as I have found above, the lawyers owed a duty to the bank to discover the restrictive covenant and to advise firstly, the Francises, when they received instructions to prepare the conveyance, and secondly, to advise the bank of the same when they were received instructions to prepare the mortgage and deeds of further charge. Due to the state of the Francises' pleaded case, I am constrained to restrict myself to findings about the deeds of further charge. With respect to these deeds, as I have found above, the lawyers failed to properly advise the bank about the presence and effect of the restrictive covenant when they received their instructions to prepare the same. The Francises should not be made to pay for this failure since the bank is fixed with the failure of the lawyers for the reasons that I have explained above. The bank is equally liable for its role in this entire affair as explained above. But, as I have

²⁶ [1843-60] ALL ER Rep 185 page 186

further explained above, the Francises were aware or ought to have been aware of the restrictive covenant and its effect by the time of the second deed of further charge. The bank and the lawyers should not be held responsible for the Francises' decision to enter this transaction when the Francises with full knowledge (or presumed knowledge) of the restrictive covenant decided to enter the same in any event.

[55] In the circumstances, I find that the mortgage and second deed of further charge are valid and enforceable documents, binding on the Francises. The Francises remain liable to the bank for all sums due and owing under these instruments.

[56] I must reiterate however that this position is materially different in respect of the first deed of further charge. Having found that the lawyers acted negligently and that the bank owed a corresponding contractual duty, the bank cannot enforce liability arising under the first deed of further charge. Any loss attributable to the negligence regarding the first deed of further charge must properly rest with the lawyers and the bank, and cannot be imposed on the Francises.

Conclusion

[57] **IT IS HEREBY ORDERED** as follows:

(1) The claimant's claim is allowed to the extent that it is declared that the defendants are liable to the claimant to pay the debt due and owing under the mortgage made 4th July 1997 between the first defendant of the one part and the claimant of the other part recorded in the Deeds and Land Registry of Grenada in Liber 16-97 at page 178; and the second deed of further charge made 26th April 2002 between the defendants of the one part and the claimant of the other part and recorded in the Deeds and Land Registry of Grenada in Liber 9-2002 at page 669;

(2) The defendants' counterclaim is allowed to the extent that it is declared that the defendants are not liable to the claimant to pay the debt due and owing under the first deed of further charge made 19th July 1999 between the defendants of the

one part and the claimant of the other part and recorded in the Deeds and Land Registry of Grenada in Liber 27-99 at page 295;

- (3) The claimant and the ancillary defendants shall pay to the defendants damages for negligence in respect of the deed of further charge to be assessed if not agreed within twenty-one (21) days from today's date;
- (4) Failing settlement, the defendants shall file and serve witness statements and submissions with authorities with respect to assessment of damages on or before 15th December 2025;
- (5) The claimant and ancillary defendants shall file and serve witness statements and submissions with authorities with respect to assessment of damages on or before 15th January 2026;
- (6) The assessment of damages shall be conducted upon application by the defendants;
- (7) The parties each having some measure of success shall bear their own costs.

Raulston L. A. Glasgow
High Court Judge

By the Court

Registrar