

THE EASTERN CARIBBEAN SUPREME COURT:

**IN THE HIGH COURT OF JUSTICE
CIVIL DIVISION**

SAINT LUCIA

Claim Number: SLUHCV2024/0232 formerly SLUHCV2013/0320

BETWEEN:

FEDELIS EMILIEN

Ancillary Claimant

-and-

LORNE THEOPHILUS

Ancillary Defendant

Before the Honourable Mr. Justice Alvin S. Pariagsingh

Appearances: Mrs. Wauneen Louis – Harris for the Ancillary Claimant
Mr. V. Dexter Theodore, KC for the Ancillary Defendant

2025: January 20, 24 – trial
March 10, April 7 – submissions
April 28 – decision

JUDGMENT

**Claim for Indemnity, Contribution, Breach of Contract, Professional Negligence,
Agency, Vicarious Liability**

INTRODUCTION:

[1] **PARIAGSINGH, J:** – This is a claim for professional negligence against an attorney by a former client. This claim was made as an ancillary claim in proceedings to which the Claimant was one of four Defendants. To appreciate the present claim, some context is necessary.

HISTORICAL CONTEXT OF THE MAIN CLAIM:

☑ In the claim commenced on 12 April 2013 (“the main claim”), the Claimant, Mr William Mathurin, brought suit on behalf of the estate of Mr David Headley to recover the sum of \$87,000.00, representing the deceased’s share of the proceeds of sale.

- [3] It was contended that Mr David Headley was the owner of a one-half share in the property registered in the Land Registry as Block 1453B Parcel 557. The defendants to the main claim – Elgitha Duncan, Christina Felix, Pius Joseph and Fedelis Emilien – were all trustees for sale in relation to the land.
- [4] On 14 May 2012, the land was sold for the sum of \$174,000.00. Upon this sale, the estate of Mr David Headley became entitled to one-half of the proceeds, being \$87,000.00.
- [5] The main claim sought recovery of the \$87,000.00 from the Defendants on the basis that they had acted in breach of trust and had fraudulently appropriated the funds for their own benefit.
- [6] An appearance to the claim filed on 15 May 2013, was entered for the Fourth Defendant/Ancillary Claimant by “Lorne Theophilus Chambers” and signed by one “Dylan Norbert-Ingles”. A defence was filed on behalf of the Fourth Defendant/Ancillary Claimant on 22 May 2013, again signed by “Dylan Norbert-Ingles” under the name “Lorne Theophilus Chambers”. This defence included a certificate of truth not signed by the Fourth Defendant/Ancillary Claimant but by the same person, “Dylan Norbert-Ingles”.
- [7] In this defence, the Fourth Defendant/Ancillary Claimant, similarly to the other Defendants, contended that David Headley was the son of Felina Felix and died leaving eight (8) heirs, including her. From the defence and the reply subsequently filed, it was apparent that a central disagreement between the parties concerned who were the lawful heirs of Mr David Headley.
- [8] The matter was referred to mediation, but the parties were unable to settle. This led to an agreement on 12 February 2014 for submissions to be filed on the preliminary issue of who were the lawful heirs of Mr David Headley. Written submissions were filed, and

a decision on the preliminary issue was delivered by the Court on 7 March 2017. The relevant part of the decision reads:

“1. That Fedelis Emilien and the 7 other children of Reynold Jacob a.k.a. Louis Hippolyte, who are the half-siblings of David Headley, are not heirs of the deceased David Headley.

2.

3. The trustees for sale – Elgitha Duncan, Christian Felix, Pius Joseph and Fedelis Emilien – are to provide an account of the proceeds of the sale of the property known as Block 1453B Parcel 557, with documentary evidence in support thereof, on or before 31st May 2017. That Fedelis Emilien is to provide an account of the monies paid to her on the sale of the property and of how these monies were disbursed, with documentary evidence in support thereof, on or before 31st May 2017...”

[9] In compliance with the order of 7 March 2017, the Fourth Defendant/Ancillary Claimant provided the required account by the date specified. This account, though unsigned, bore the footnote that it was filed by “Lorne Theophilus Chambers, Solicitors for the Defendants”.

[10] Thereafter, an indication was recorded by the judge in an order dated 11 July 2017 that the Fourth Defendant/Ancillary Claimant was willing to repay the sums wrongfully disbursed to her from the estate of David Headley. This indication was disputed, as discussed later in this judgment. It is noteworthy, however, that the Fourth Defendant/Ancillary Claimant was not present in Court when this indication was recorded. At that hearing, Ms Kera Khodra appeared for the Defendants.

[11] Several hearings followed which were adjourned to permit the Fourth Defendant/Ancillary Claimant to be present via Skype. Eventually, on 1 October 2019, the Fourth Defendant appeared via Skype, and upon hearing from her, the judge adjourned the matter for her to obtain legal representation. At that hearing, Mr Lorne Theophilus appeared for the Defendants.

[12] On 9 December 2019, a notice of acting was filed by Mrs Wauneen Louis-Harris, indicating that she now acted on behalf of the Fourth Defendant/Ancillary Claimant. On 14 January 2020, the matter came on for hearing, with the Fourth Defendant/Ancillary Claimant now separately represented, and was adjourned for an all-parties conference. The matter was adjourned to 17 March 2020.

[13] Before the adjourned date, on 6 March 2020, the Fourth Defendant/Ancillary Claimant filed the instant ancillary claim.

THE ANCILLARY CLAIM:

[14] The Ancillary Claim Form states that the Ancillary Claimant seeks an indemnity or contribution as a result of a breach of contract or breach of duty of care by the Ancillary Defendant in advising the Ancillary Claimant as to her rights under the estate of the deceased, David Headley.

[15] The Ancillary Claimant contends that the Ancillary Defendant acted for her by virtue of an oral contract evidenced in documents. She further contends that he employed a legal secretary in his office who acted as his agent at all material times.

[16] Her case is that it was an implied term of the oral contract that the Ancillary Defendant would exercise reasonable care and skill, or alternatively, that he owed her a duty of care in negligence, in acting for her in two transactions, the first being her appointment as one of the trustees for sale, and the second being the transfer of land executed on 14 May 2012.

[17] Her pleaded case is that she was informed by a legal secretary at the chambers of the Ancillary Defendant that she was acting as his agent and that she, the Ancillary Claimant, was entitled to be paid the proceeds of sale from the parcel of land on the basis that she was a lawful heir of David Headley, deceased. She also contends that she received the proceeds of sale based on her belief and the trust and confidence reposed by her in the agent of the Ancillary Defendant. She relies heavily on a cheque

signed by the Ancillary Defendant and delivered to her by the secretary in support of her claim. She contends that the Ancillary Defendant, acting through his agent, had a duty to make proper, full, and necessary inquiries into the law of succession and to properly advise her.

THE DEFENCE TO THE ANCILLARY CLAIM:

[18] The ancillary claim is denied in its entirety. The Ancillary Defendant contends that, up to December 2010, he practised with the firm Theophilus, Pierre & Mondesir. His practice ceased in December 2010 when he began campaigning for a seat in the upcoming general election in 2011. He states that the Ancillary Claimant was known to him as she had been married to a deceased cousin of his wife. He contends that she was not his client, nor was she a client of any attorney in his former chambers, until the sale, which was the subject of the main claim, became contentious, at which point, she was represented by Dr Dylan Ingles.

[19] He asserts that he was never consulted by the Ancillary Claimant, either directly or indirectly. He also contends that, after December 2010, he had no secretaries who acted as his agents. He avers that the individual referred to by the Ancillary Claimant, Ms Leona Charles, was, prior to 2006–2007, his personal secretary, but around that time became an employee of the firm Theophilus, Pierre & Mondesir. His case is that, after he ceased practice in December 2010, all matters he had conduct of were transferred to one or another of three lawyers who continued the firm.

[20] Once sworn in as a Minister of Government on 6th December 2011, he was prohibited from practising law as a condition of being assigned a ministerial portfolio. He states that he was given a period of six months to wind down all existing matters, and during this period, he liaised with Ms Leona Charles, whose duty it was to present him with cheques drawn from his client's account for signature and return to the client, representing the completion or partial completion of retainers.

[21] He contends that he did not perform any legal services for the Ancillary Claimant or anyone else during the period December 2011 to May 2016, while serving as a Minister. In any event, he maintains that the legal secretary with whom the Ancillary Claimant conferred was not an attorney-at-law and was not authorised to dispense legal advice or to act as his agent in respect of any matter.

[22] He further states that he found out about this matter casually, at a Friday night street party, when he met the First Defendant in July 2016. By that time, the matter before the Court had already been under way, and Mr Ingles had ceased his employment with the firm and no longer resided in this jurisdiction. He contends that on 1 November 2018, he invited the First Defendant to his chambers, where he confronted Ms Charles, who admitted that he knew nothing of the transaction. This, he says, occurred while the Ancillary Claimant was on the phone.

THE REPLY:

[23] In her reply, the Ancillary Claimant contended that she had been a client of the Ancillary Defendant since 2006, when he extracted a grant of letters of administration in the estate of her deceased husband. She contended that the Ancillary Defendant had provided her with an undertaking to serve as a witness in proceedings against the secretary, Ms Charles, in a letter. She also contended that Mr Dylan Ingles was an employee of the Ancillary Defendant.

[24] She relies on a letter dated 24 December 2018 as evidence that the Ancillary Defendant terminated the services of Ms Charles, thereby confirming her position that Ms Charles was indeed an employee of the Ancillary Defendant.

DISCLOSURE:

[25] The parties were unable to settle the ancillary claim through discussions or mediation. On 23 October 2024, directions were given for standard disclosure to be made by 9 December 2024 and for witness statements to be filed by 13 January 2025. The trial of the ancillary claim was fixed for 20 January 2025.

[26] The Ancillary Claimant disclosed ten documents that she intended to rely on at trial. The Ancillary Defendant disclosed no documents. Neither party filed any notice to prove documents disclosed pursuant to Rule 28.18 of the CPR, and as such, all documents disclosed are deemed to be authentic.

THE EVIDENCE:

The Ancillary Claimant, Ms Fedelis Emilien:

[27] The Ancillary Claimant's evidence largely replicated her pleaded case, save for reliance on certain documents that were not disclosed. In particular, reliance was placed on a letter dated 28 August 2019 and a copy of a cheque, both of which were never disclosed. The cheque was, however, attached to the reply and attached to a letter to the Registrar. This is not disclosure for the purpose of Part 28 CPR.

[28] In cross-examination, the Ancillary Claimant admitted that she was aware the Ancillary Defendant ran for election in 2011 and was subsequently appointed as a Minister. Her evidence was that the Ancillary Defendant extracted a grant of representation in the estate of her deceased husband in 2006, who died in 2005. She admitted that she moved to the USA in 2013 and, apart from short visits back to Saint Lucia, had been living there permanently. In her estimation, she visited about twice a year, except during the COVID period and the first five years after her migration, during which she visited only once per year. Prior to that, she resided in Saint Lucia.

[29] She admitted that she had not seen the Ancillary Defendant at his office on either 28 November 2011 or 6 June 2016. The Ancillary Claimant was vague about dates and in particular, could not recall when she first went to the office she contends was that of the Ancillary Defendant, except to say she believed it was the same year as the sale transaction. When shown the Deed of Transfer, she accepted that she signed the deed on 14 May 2012. In her answer to counsel when shown the deed, she said:

Q. The deed of transfer was May 2012? You see the date of execution?

A. 14 May 2012, that is the execution date

Q. That is the date you went to Leona Charles' office and signed

A. Yes

[30] This exchange occurred in the context of the witness having already given evidence that on this occasion she did not see the Ancillary Defendant at the office where she signed the deed. She also accepted that during the three to four times she attended that office prior to signing the deed, she never saw the Ancillary Defendant there. Her evidence was that the only person she saw and had conversations with was Ms Charles, and she admitted that she got in contact with the office in relation to the sale transaction because Ms Charles telephoned her.

[31] Her evidence was that when Ms Charles called her, she went to the office but did not have to ask for Ms Charles, as she already knew her. Between that initial contact and the signing of the deed, she did not meet with any lawyer. Her evidence was clear that on one occasion she saw a lawyer at the office, Mr Pierre. She admitted that she did not produce any receipts proving payment to any lawyers, nor could she recall signing any engagement letter.

[32] The Ancillary Claimant explained the receipt issued under the hand of Ms Charles by agreeing with counsel that Ms Charles contacted the Inland Revenue Department, and that the information for payment of taxes on the sale was sent to Ms Charles, to whom the sum was paid. She admitted that when the time came to sign the deed, it was Ms Charles who called her. She also admitted that she did not see the Ancillary Defendant when she signed the Deed of Transfer or when she received the cheque. When asked if she believed Ms Charles was a lawyer, she responded:

“I did not give it a thought. I just thought she was acting on behalf of the lawyer who runs the office. At the time I was not seeking a lawyer. I know it is Lorne Theophilus Chambers, a firm, so I thought everything was alright.”

[33] Yet, her evidence was that she never asked for an appointment with any attorney. Later in cross-examination, the Ancillary Claimant gave an inconsistent response as follows:

Q. When did you first get to know she (Ms Charles) was just a secretary?

A. I have always known her to be a secretary.

[34] She admitted that it was only after the election in June 2016 that the Ancillary Defendant became involved in the matter. The Ancillary Claimant admitted she did not know whether the defendants in the main claim were represented by Mr Ingles between 2013 and 2016. Her evidence was that, while she was in the USA, Ms Charles called her once to say that Mr Ingles would appear in court for her. When probed, she stated that she appeared in the matter twice, once in the previous year and once when the judge asked her to appear via Skype.

[35] Her evidence was that the money at the heart of the main claim was spent. She stated that she shared it with her siblings. She could not recall how much she gave to each sibling but estimated giving each around \$4,000.00 and keeping the remainder. She also clarified that no part of the money remained available.

[36] Interestingly, the Ancillary Claimant said in cross-examination that she was informed of the judgment in the claim via a call from Ms Charles. She accepted that the judgment she referred to was the one delivered in March 2017. She maintained that the person she was dealing with, Ms Charles, gave her the impression that she was liaising with the Ancillary Defendant. In fact, she admitted it never crossed her mind to double-check, as she trusted Ms Charles.

[37] She also admitted that her deceased husband was related to the wife of the Ancillary Defendant, but said she only reached out to the Ancillary Defendant after he left government office.

Evidence of Mr Lorne Theophilus:

[38] Mr Lorne Theophilus gave evidence concerning his involvement in the matter, both as a former practitioner and regarding events arising from his former legal chambers. He explained that prior to the establishment of Lorne Theophilus Chambers, he practised as a sole practitioner for a brief period, and before that, had been part of the partnership Theophilus, Pierre & Mondesir for approximately seven years. Ms Leona Charles served as his personal secretary from as early as 1995, continuing in that role intermittently through various iterations of his practice, including during partnerships with Mr Michael St Catherine and Mr Shawn Innocent.

[39] Mr Theophilus described Ms Charles as a person he trusted. Her duties included handling administrative matters, arranging client appointments, typing legal documents, and managing office logistics. She also occasionally presented cheques which he signed for disbursement from the client account. He clarified that although there was a joint account during the partnership, there was no designated “client account” for the firm; rather, he operated his own account, including one at First National Bank, through which disbursements were made.

[40] He denied any knowledge of the present matter until around 2016, when he was approached by Ms Elgitha Duncan on the streets of Gros Islet. He insisted that, prior to that time, he had not been informed by Ms Charles or anyone else about the proceedings, and that the appearance of his chambers on the court record in 2013 was not something he authorised. While defences were filed by the chambers, he attributed those to his junior at the time, Mr Dillon Ingles, and not to his own direct involvement.

[41] He stated that he had not been formally retained by any of the Defendants and that any assistance he later provided was on a pro bono basis.

[42] Mr Theophilus confirmed that he had not been contacted directly by the Ancillary Claimant until around 2017 and that thereafter, he only dealt directly with Ms Duncan and Ms Emilien. He acknowledged that he represented all the Defendants, despite only having spoken to two of them. He became aware that Ms Charles was communicating with the Ancillary Claimant without his knowledge or authority and denied any assertion that she was acting on his instructions.

[43] He explained that once he gained a full understanding of what had transpired during his absence from practice, particularly following a meeting in 2016 or early 2017, his professional relationship with Ms Charles deteriorated. He described it as acrimonious by 2018, culminating in a confrontation and a strongly worded letter dated 24 December 2018, in which he admonished Ms Charles and demanded that she “sort out her mess”. He confirmed that he ultimately ceased working with Ms Charles and regarded her conduct as fraudulent.

[44] When questioned about the use of a non-lawyer in managing client funds, Mr Theophilus defended the arrangement on the basis that Ms Charles was executing instructions related to cheques he had signed. He denied any suggestion that the arrangement breached the Legal Profession Act and maintained that administrative staff may be involved in disbursements, provided they are properly authorised.

[45] He also denied leaving client files in the care of Ms Charles when he left legal practice in 2010 to serve as a Minister. However, he acknowledged that she and Mr Ingles later worked at FICS, a financial services company owned by his father, during his absence from the legal profession. He resumed private practice thereafter.

[46] Regarding the Deed of Transfer and the involvement of Ms Emilien, Mr Theophilus confirmed that he was not present when the deed was executed and could not comment

on how it had been handled. He accepted that the notary listed on the deed was Mr Ingles, who at the time was a junior attorney employed at his chambers.

[47] He maintained that he had not formed any personal view regarding Ms Emilien's entitlement to proceeds from the estate until the matter was clarified in court and through discussions with counsel, particularly Mr St Clair. He did not recall any direct conversation with Ms Emilien about her entitlement and stated that no such responsibility was formally assigned to him. He denied instructing Ms Charles to communicate with the Fourth Defendant/Ancillary Claimant on his behalf and rejected any suggestion that she acted as his agent in a legal sense, although he accepted that she performed administrative functions.

[48] When it was suggested that his chambers had, through filed documents, effectively endorsed Ms Charles' conduct, he disagreed. He stated that those filings were not his own and did not reflect his position, particularly as he was unaware of the matter until years later. He also rejected the suggestion that he became involved in the matter only because he believed the Defendants were entitled to the proceeds. Instead, he maintained that he stepped in only after realising that significant irregularities had taken place.

[49] He was firm in his position that Ms Charles deceived not only him but also the clients and Ms Khodra, and that she bore personal responsibility for the state of affairs which led to the litigation. However, he denied having facilitated her conduct and maintained that his only involvement was aimed at remedying the situation once it came to light.

Evidence of Kera Khodra:

[50] Ms Kera Khodra testified that she began working with FICS in 2016, at which time Ms Leona Charles was already employed there. She confirmed that Ms Charles also previously worked with Mr Lorne Theophilus. When asked how she knew that Ms Charles maintained the file referenced in paragraph 6 of her witness statement, she explained that it was because the file had not been in her possession and that she later

learned about it when the matter arose. She said that Ms Charles apparently handed over the file when requested.

[51] Ms Khodra, who has been in legal practice for ten years, agreed that it is not typical for someone other than a legal practitioner to retain possession of a legal file where a lawyer is involved. She confirmed that she had no knowledge of the transaction in question prior to her involvement in 2016.

[52] She acknowledged that Ms Charles is not an attorney-at-law but served as a secretary. Ms Khodra confirmed that she entered an appearance on behalf of the Defendants, but denied being formally retained or instructed by any of the relevant parties, including Elgitha Duncan, Christina Felix, or Pius Joseph. Although she communicated with them, including via email and WhatsApp, particularly in relation to a Defendant who was overseas, she made it clear that no formal instructions had been given.

[53] In relation to paragraph 7 of her witness statement, she said she was told by Ms Duncan that Mr Joseph had no knowledge of the matter. However, she did not independently verify this information and did not include it in her witness statement. When asked whether such assertions amounted to hearsay, she initially expressed uncertainty and admitted that no hearsay notice had been filed.

[54] She was challenged on her expectation that the Court should accept her evidence despite not recognising what constitutes hearsay after a decade in the profession. She accepted that no documents had been signed in relation to her instruction as counsel.

[55] In relation to paragraph 9, she acknowledged that she had informed the Court of information that had been provided to her by Ms Charles. She was asked whether she ought to have verified that information with the Fourth Defendant directly. Although an objection was raised to that question, she later admitted to speaking with Ms Charles, Mr Theophilus, and Ms Elgitha Duncan.

[56] It was put to her that Ms Charles had never in fact said that she failed to inform Mr Theophilus of the matter, with reference to paragraph 8 of her statement. Ms Khodra confirmed filing an affidavit of service dated 18th February 2019 and identified her signature and the accompanying email. She confirmed her position as an attorney-at-law attached to Lorne Theophilus Chambers, an entity she said had become formally registered in 2017.

[57] She admitted that she was not employed by Mr Theophilus in 2012 or 2013 and could not speak to any conversations that may have taken place between him and Ms Charles during that time.

Evidence of Ms Elgitha Louis:

[58] Ms Elgitha Louis, formerly known as Elgitha Duncan, confirmed that she met with Mr Lorne Theophilus at a street party in Gros Islet, where she informed him of concerns regarding a property transaction. She stated that Mr Theophilus told her he was unaware of the situation. Ms Louis explained that she and the other Defendants assumed Mr Theophilus was involved throughout, because his secretary, Ms Leona Charles, repeatedly assured them that she would speak to him about the matter.

[59] Referring to paragraph 3 of her witness statement, Ms Louis clarified that the term “we” referred to herself and the other defendants. She confirmed that the office she attended was that of Mr Theophilus, and that Ms Charles, whom she had been liaising with, was his secretary. She accepted that Mr Theophilus signed the cheque used to disburse the proceeds of sale and viewed that as evidence that he was overseeing the transaction.

[60] She described a meeting in which she, Mr Theophilus, and a person named “Kera” telephoned Ms Charles to address allegations Ms Charles made against her, including claims that Ms Louis had been involved in calculating the property taxes. Ms Louis said she brought a personal notebook to that meeting to show her handwriting and clarify the matter.

[61] She recalled that no lawyer was present when she signed the deed; only Ms Charles. She also confirmed that she had not seen the registered deed before and had not come across any disclosure document relating to the transaction. When shown the deed during proceedings, she recognised the name of the notary as “Dillon Kevin Norman Ingles”, but could not confirm whether he was present when the deed was signed. While she recalled dealing with “Mr Dillon” early in the process, particularly in relation to the drafting of a will by Simon Felix, she was clear that Mr Ingles had not been present during the execution of the deed. She also stated that she had not retained or paid him for representation.

[62] Ms Louis emphasised that she and her co-defendants believed they were being represented by Mr Theophilus and his office throughout the proceedings. She confirmed that Ms Fedelis Emilien would attend court either in person or via Zoom. When asked, she acknowledged that Mr Dillon Ingles had been employed by Lorne Theophilus Chambers and had, in fact, made representations on their behalf in this case, although she had not personally instructed him or entered into any formal agreement for legal services.

[63] She recalled that the Court had ruled in 2017 that Ms Emilien was not entitled to a share in the proceeds of sale and directed that she be kept informed of proceedings electronically. Ms Louis explained that she took a cheque to the Inland Revenue Department to pay property taxes—a cheque which came from the sale proceeds, although she could not recall whose signature was on it. She confirmed that she also paid the estate agent, Ms Lynn Hanora, who had handled the sale and issued a receipt.

[64] Regarding the transaction, Ms Louis said she went to Mr Theophilus’ office due to prior issues with a will, and that Ms Daisy (the purchaser) approached the lending institution. When trustees were being appointed, Ms Charles made inquiries about David Headley’s siblings, and Ms Louis interpreted this as an effort to ensure that the correct individuals were paid.

[65] She stated that she believed the funds received by Ms Emilien were held in trust and that relevant documents concerning trusteeship were signed at Mr Theophilus's office. According to Ms Louis, Ms Charles managed all disbursements related to the sale.

[66] Ms Louis described Mr Theophilus's demeanour at the meeting in Gros Islet as calm, although she later stated that he told her Ms Charles acted dishonestly and fraudulently, allegations that were not mentioned in her witness statement. She insisted that these statements were made during the same meeting in which the call to Ms Charles had been placed.

[67] She agreed that Mr Theophilus offered to help resolve the matter by providing legal representation. She stated that, from the time the claim was filed, she and her co-defendants were represented by him or, when he was unavailable, by Ms Khodra. She acknowledged that prior to the Court's 2017 ruling on Ms Emilien's entitlement, there was no concerns about the transaction or how the proceeds were being handled.

[68] Ms Louis maintained that Mr Theophilus told her that Ms Charles' conduct was dishonest and that the call to Ms Charles had been made to clarify the issue. She recalled a heated exchange during that call, in which Ms Charles admitted that Mr Theophilus was unaware of the transaction, and stated that she was unwell and unable to deal with the matter. Ms Louis acknowledged that Ms Charles was Mr Theophilus's secretary for a long time and that she previously interacted with her in relation to other legal matters, including wills.

ANALYSIS OF THE EVIDENCE:

[69] The central question for determination in this ancillary claim is whether the Ancillary Defendant, Mr Lorne Theophilus, gave negligent advice, either directly or indirectly, to the Ancillary Claimant, Ms Fedelis Emilien, in connection with the sale of a parcel of land and the disbursement of proceeds therefrom. The Ancillary Claimant seeks indemnity or contribution on the basis that she was wrongly advised, through an alleged agent of

the Ancillary Defendant, that she was entitled to a share in the estate of the late David Headley.

[70] The resolution of this claim turns entirely on the credibility and reliability of the evidence adduced, as well as the legal implications flowing from it. The Ancillary Claimant gave evidence on her own behalf. The Ancillary Defendant gave evidence and called two supporting witnesses: Ms Kera Khodra and Ms Elgitha Louis (formerly Duncan).

[71] Having had the benefit of observing the witnesses, listening to their evidence, and reviewing the documentary record, I am not satisfied that the Ancillary Claimant has discharged the burden of proving either that she was a client of the Ancillary Defendant or that the Ancillary Defendant owed her a duty of care in law at the material time.

[72] The Court did not form a negative impression of the Ancillary Claimant. She conveyed the impression of being a simple person who, having previously dealt with the Ancillary Defendant's office in the administration of her husband's estate and having established a relationship with Ms Charles, assumed that the dynamics of the Ancillary Defendant's practice remained unchanged. Her admissions, as outlined above, did not convince the Court that she genuinely believed Ms Charles was not only employed by the Ancillary Defendant, but also acting on his instructions. However, the Court finds that the Ancillary Claimant's evidence, on a balance of probabilities, proves neither of these things.

[73] What is clear is that the Ancillary Claimant's case is based on assumptions which, in the Court's view, are properly explained by the Ancillary Defendant.

[74] On her own evidence, the Ancillary Claimant has not proven a retainer. She has not proven any contract between herself and the Ancillary Defendant, and her claim in contract must therefore fail. Similarly, regarding negligence, while a duty of care can arise as a matter of law in certain types of transactions, there is no evidence that the Ancillary Claimant retained the Ancillary Defendant prior to the 2012 transaction in a manner that would trigger such a duty. Even if the Ancillary Defendant voluntarily

assumed a role in acting for her after the 2015 judgment, no such duty can apply retrospectively to 2012.

[75] On the Ancillary Claimant's own evidence, I find that the Ancillary Defendant did not proffer any advice, either directly or indirectly, regarding her entitlement to a share in the estate of David Headley. Any such advice, by her own admission, would have occurred during a period when the Ancillary Defendant was not in practice due to his ministerial appointment.

[76] The Ancillary Claimant's account was that she received advice and payment from a long-standing secretary at the Ancillary Defendant's chambers, Ms Leona Charles, whom she believed to be acting with the authority of the Ancillary Defendant. However, her own admissions in cross-examination undercut the substance of this assertion. She candidly admitted that she never saw the Ancillary Defendant during any of her visits to the office, that she was not seeking legal representation at the time, and that she made no effort to speak with a lawyer or to verify Ms Charles' authority. She accepted that she knew Ms Charles to be a secretary and did not consider whether she was qualified to dispense legal advice.

[77] More critically, she admitted that she did not retain the Ancillary Defendant, never entered into a contract of engagement with him, and never made any payment for legal services. Her understanding that "everything was alright" because the office bore the name "Lorne Theophilus Chambers" appears to have been an assumption based on her past dealings with the firm rather than any express confirmation from the Ancillary Defendant himself. She relied on her historical experience with the office, having obtained a grant of letters of administration in 2006, and extrapolated those expectations to a transaction occurring six years later, during a period when the Ancillary Defendant ceased active practice.

[78] The evidence of the Ancillary Defendant was, in contrast, clear and consistent. He explained that he ceased private practice in December 2010 ahead of the 2011 general

elections, and that, following his appointment as a Minister in December 2011, he was precluded from practising law. He stated that during the winding down of his practice, Ms Charles assisted with administrative matters and that cheques were occasionally presented to him for signature. While this arrangement was informal, there is nothing in the evidence to suggest that it was unlawful or that Ms Charles was authorised to offer legal advice.

[79] It is troubling that a cheque from the client account was issued to the Ancillary Claimant bearing the Ancillary Defendant's signature. That, at the very least, reflects a lack of prudence and oversight. However, the evidence supports the Ancillary Defendant's position that the cheque was presented in the ordinary course by Ms Charles, and that no inquiry was made into the underlying transaction. It is not uncommon for attorneys winding down practice to sign off on disbursements prepared by trusted administrative staff. That does not, in itself, give rise to a solicitor-client relationship or a duty of care in law, particularly where the disbursement was not preceded by a formal engagement or any form of advice.

[80] The suggestion that Ms Charles was acting as the Ancillary Defendant's agent also falls short on the evidence. There is no indication that Ms Charles had ostensible or actual authority to represent the Ancillary Defendant in 2011 or 2012. The registration of the business name "Lorne Theophilus Chambers" occurred after he demitted office and re-entered private practice, long after the material events. The termination letter issued to Ms Charles in December 2018 reflects the breakdown of a professional relationship and, if anything, supports the Ancillary Defendant's case that he was unaware of her involvement in the transaction. That letter is consistent with his account that, upon discovering the facts in or around 2016, he took steps to distance himself from Ms Charles and to investigate what had occurred. As such, the Ancillary Defendant could not be held vicariously liable for the actions of Ms Charles, as she was not his agent at the relevant time.

[81] I accept that the Ancillary Claimant genuinely believed she was dealing with a legitimate office and was acting under the impression that she was entitled to the proceeds. Her belief, however sincere, is not sufficient in law to ground a claim in contract or tort. She did not retain the Ancillary Defendant. There was no proximity, no advice, and no representation from him or from any attorney under his supervision during the relevant time.

[82] It bears emphasis that legal advice cannot be delegated to a secretary. If Ms Charles gave advice to the Ancillary Claimant purporting to confirm her entitlement to a share of the estate, she did so entirely outside the scope of her authority and in breach of her duties. The law does not permit a solicitor to be held responsible for unauthorised legal advice dispensed by an administrative staff member without the solicitor's knowledge, particularly when the solicitor was no longer in practice at the time.

[83] Lastly, the Ancillary Claimant's case is undermined by her own acknowledgement that the proceeds she received were spent and disbursed to family members, with no intention of returning the sums unless required to do so by court order. The purpose of indemnity or contribution is to ensure fairness between parties who share liability. It is not a mechanism to compensate a person for having spent money to which they were never entitled. If she had no right to the money, then no question of contribution arises.

[84] In sum, while I accept that the Ancillary Claimant was misled and that the administration of the sale was conducted in a manner that raises legitimate concerns, I do not find that the Ancillary Defendant is legally liable. The Ancillary Claimant's claim, however, sympathetically advanced, is not borne out by the evidence and must be dismissed.

[85] For completeness, given my conclusion above, it is not necessary to resolve the issue of prescription.

ORDER:

[86] For the reasons above, I make the following orders:

- 1) The ancillary claim filed on 6 March 2020, is dismissed.
- 2) The Ancillary Claimant shall pay the Ancillary Defendant's costs of the ancillary claim, calculated on the prescribed costs scale in accordance with the value of the claim (\$77,726.00), in the sum of \$14,158.90.



Alvin S. Pariagsingh
Judge

By the Court,

Registrar