

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CLAIM MNIHCV 2023/0011

IN THE MATTER of a preliminary ruling on whether the claimant Providence Estate Limited (PEL) engaged before the High Court of Montserrat in multiple claims, being filed variously from 2012, has locus to bring action against the Government of Montserrat or anyone;

IN THE MATTER for this ruling of three claim numbers, specifically:

MNIHCV 2013/0025 (now MNIHCV 2023/0011),

MNIHCV 2013/0026, and

MNIHCV 2013/0027;

IN THE MATTER of the **Stamp Act** cap 17.02, the **Protection of Public Authorities Act** cap 18.10, and the **Companies Act** cap 11.12; and

IN THE MATTER of **rule 26.1(2)(i) Civil Procedure Rules** which as case management allows ruling on a preliminary issue.

BETWEEN

Claim MNIHCV 2013/0025

1. PROVIDENCE ESTATE LIMITED CLAIMANTS

2. OWEN ROONEY

AND

1. JOEL OSBORNE DEFENDANTS

2. INGRID OSBORNE

3. WARREN CASSELL (d.b.a. Cassell & Lewis)

4. MEREDITH LYNCH

5. AMELIA H. DALEY

6. DAVID BRANDT

Claim MNIHCV 2013/0026

1. PROVIDENCE ESTATE LIMITED CLAIMANTS

2. OWEN ROONEY

AND

1. DION WEEKES DEFENDANTS

2. JANINE DEBORAH-CARR WEEKES

(d.b.a. Engineering Design and Construction Ltd)

3. WARREN M. CASSELL

(d.b.a. Cassell & Lewis)

4. KHARL MARKHAM

Claim MNIHCV 2013/0027

1. PROVIDENCE ESTATE LIMITED

CLAIMANTS

2. OWEN ROONEY

AND

1. CLEO CASSELL

DEFENDANTS

2. WARREN CASSELL

3. MEREDITH LYNCH

4. DAVID S. BRANDT

APPAEARANCES

Mr Tim Prudhoe for PEL.

Mr. Owen Rooney appearing in person.

Ms. Renee Morgan for the Hon. Attorney-General, Registrar of Lands and the Registrar of Companies, and any affected governed office, Ms. Cedricia Shiell holding in her absence.

Mr. Jean Kelsick for the estate of Sir Howard Fergus.

Mr. Sylvester Carrott for Mr. Dion Weekes.

Ms. Marcelle Watts for Tropical Real Estate Ltd. and Clifford West.

Mr David Dorsett for Mr. David Brandt, absent.

2023 AUGUST 09

RULING

On whether PEL has locus to bring action

- 1 **Morley J:** On 07.07.23, argument was heard on a preliminary issue under **rule 26.1(2)(i) Civil Procedure Rules** (CPR) following filing of submissions on whether Providence Estate Limited (PEL) had locus to bring action, with ruling today, 09.08.23.
- 2 The story of PEL has become fiendishly complicated, over 16 years, through a hailstorm of filings, with multiple parties, and has created a paralysing gordian knot at the heart of the High Court on Montserrat.
- 3 As an overview, very simply, in 1989, PEL with Owen Rooney as a director acquired 53 acres of land; in 2007 attorney Warren Cassell fraudulently purported to own PEL and began selling the land; Rooney complained; Cassell eventually went to jail in 2012 (and again on re-trial in 2022); and some purchasers have been to the Privy Council (PC) in 2022 to establish what they might own. Rooney acted pro se, and from 2008, though mostly from 2012, filed many claims, arguably haphazardly and overlapping, suing to get back the land sold and for damages, against Cassell who it appears has no realisable assets, various others assisting him, and against the Government of Montserrat (GoM) for its institutions having originally accepted what Cassell¹ had said, thereby processing the land sales as negligence or misfeasance or being in on the fraud.

¹ The names of parties will be brevitised so, including as acronyms, for ease of reading and no disrespect is intended for not writing out full titles, and names, and the legalese of whether claimant or defendant.

- 4 Overall, Rooney has three plots of land left to get back, in total 3.234 acres, being plots 34, 35, and 39 (later subdivided into two parcels)², and in damages from various parties seeks US\$3.3m, inter alia from the GoM³.

The scale of proceedings

- 5 From looking through case numbers within papers filed for this argument – and blending an earlier separate spreadsheet prepared by Counsel Prudhoe at Annex A - it appears there have been at least 42 PEL claims under numbers MNIHCV –
1. 2007 2007/0028 – determined by court order of 21.09.07⁴
 2. 2007/0029 – parallel to 0028 (see Wood affidavit of 01.09.07⁵)
 3. 2008 2008/0022⁶
 4. 2012 2012/0013
 5. 2012/0014 – determined by PC decision on 01.12.22
 6. 2012/0015 – determined by PC decision on 01.12.22
 7. 2012/0016 – determined by PC decision on 01.12.22
 8. 2012/0017 – determined by PC decision on 01.12.22
 9. 2012/0019 – determined by PC decision on 01.12.22
 10. 2012/0020 – determined by PC decision on 01.12.22
 11. 2012/0029
 12. 2012/0035 – determined by PC decision on 01.12.22
 13. 2013 2013/0012
 14. 2013/0020

² See Rooney's pdf 'consolidation document', referred to and distributed during hearing on 07.07.23, p4, which shows he seeks return of: plot 34 as parcel 13/05/36 from Dion Weeks; plot 35 as parcel 13/05/35 from Sir Howard Fergus; and plot 39, mutated as parcel 13/10/55 into two, as now parcel 13/10/71 from Clifford West and parcel 13/10/72 from Clifton Cassell; all collectively covered by claims MNIHCV 2013/0026, 2017/0015, 2017/0018, and 2017/0019 (being claims 18, 31, 34, and 35 in this ruling).

³ See 'consolidation document' as above, p3.

⁴ B1p105.

⁵ B1p99.

⁶ This appears to be an action by PEL and Rooney claiming against the AG and the Land Registrar (then A Livingston Cassell), per papers embedded within case 2013/0026 (claim 18), later discontinued per Annex A.

15. 2013/0021
16. 2013/0024
17. 2013/0025 – embraced by the instant action
18. 2013/0026 – embraced by the instant action
19. 2013/0027 – embraced by the instant action
20. 2013/0028 – settled, per Counsel Prudhoe⁷
21. 2013/0030 – struck out on 29.12.14, per Counsel Prudhoe⁸

22. 2014 2014/0002
23. 2014/0005
24. 2014/0018
25. 2014/0019
26. 2014/0025

27. 2015 2015/0011 – struck out on 17.12.15⁹
28. 2015/0017

29. 2017 2017/0005
30. 2017/0014
31. 2017/0015
32. 2017/0016
33. 2017/0017
34. 2017/0018
35. 2017/0019
36. 2017/0029

37. 2018 2018/0027
38. 2018/0040

39. 2020 2020/0002

⁷ See 'claim 18' as appears at Annex A.

⁸ See claim 19 at Annex A and B2p25 at para 6.

⁹ B1p388.

40. 2021 2021/0023

41. 2023 2023/0011 – the instant action

42. 2023/0021

6 The parties, some sued or suing, sometimes both, and sometimes several times, relying on the filed papers and Counsel Prudhoe's spreadsheet, appear to be (separated into clumps):

1. PEL Primary claimants

2. Owen Rooney

3. Warren Cassell (currently in jail) Primary defendants

4. Cassell & Lewis Inc

5. David Brandt (currently in jail)

6. Meredith Lynch

7. The Governor GoM offices and officers

8. Attorney General (AG)

9. Registrar of Lands

10. Registrar of Companies

11. Comptroller of Inland Revenue

12. Financial Secretary

13. Commissioner of Police

14. Amelia Daley (Companies Registrar in 2007)

15. Violette Silcott (Comptroller of Inland Revenue in 2007)

16. Clifton Cassell Purchasers or assistants

17. Cleo Cassell

18. Kenneth Cassell

19. Kenneth Allen KC

20. Khari Markham (deceased in 2021)

21. Kathleen Allen-Ferdinand

22. Yvonne Weekes

23. Alyn Krause

24. Gail Krause

25. Phillip Brelsford
26. Joel Osborne
27. Ingrid Osborne
28. Clifford West
29. Dion Weekes
30. Janine Weekes
31. Ina Farrell
32. Keith Farrell
33. Sir Howard Fergus (deceased in 2023)
34. David Hodd
35. Phillip Fitzpatrick
36. Tropical Island Estates Ltd
37. Tropical Island Real Estate Ltd
38. Bank of Montserrat
39. St Patrick's Credit Union

- 7 In sum, there are at least 42 claims and 39 parties; and as the Registry records of hardcopy files have been in disarray, there may be more.

- 8 The progress of claims up to 39 was stayed in 2018 pending Court of Appeal decision on 15.02.18 in four, these being brought against PEL as four appeals MNIHCVAP 2016/0008, 9, 10, and 11, led by nine parties who had bought land from Cassell, being Phillip Brelsford, Joel Osborne, Ingrid Osborne, Alyn Krause, Gail Krause, Kenneth Allen, Yvonne Weekes, Kathleen Ferdinand, and Kharl Markham, originally being six claims as MNIHCV 2012/0014, 15, 16, 17, 19, and 20, consolidated as a seventh, 2012/0035 (claims above as 5, 6, 7, 8, 9, 10 and 12), originally decided at the Montserrat High Court by Bristol J on 28.04.16. That decision by Bristol J went on appeal via the Court of Appeal to the PC, where on 01.12.22, as **Brelsford et al v PEL & Owen Rooney 2022** UKPC 46, simplified, the PC ruled PEL still owned the land sold for want of due diligence enquiry by the purchasers. Once the PC reached its decision, the stay lifted, and the work of the High Court has then returned to clearing the remaining claims up to 39, now joined by three more, where:
 - a. As 40, 2021/0023 is an amalgam filing by Counsel Morgan on 01.12.22 (the date the PC decision was announced), conflating eight claims, being 17, 23, 30, 31, 33, 34, 36, and 40, to mount the locus argument as a preliminary point;

- b. As 41, 2023/0011 as an eportal digital migration of hardcopy filing is a conflation of claims 17, 18, and 19 as a convenience to replace 2021/0023, agreed between counsel and the court on 05.04.23, to mount the locus point, being the formal claim number to this action, as above in the header; and
 - c. As 42, 2023/0021 is a fresh argument seeking judicial review of a decision of 15.06.23 of the Companies Registrar Fabian Singh not to accept as filed amended PEL paperwork offered on 01.05.23.
 - d. However, research has shown five claims - 1, 2, 20, 21 and 27 - have ended, as determined, struck off, or settled, meaning it appears, along with the seven original cases for the PC decision of 01.12.22, subtracting therefore twelve, there are now 29 to resolve, plus a new one as claim 42, meaning apparently 30 claims outstanding, of which specifically claims 17, 18, and 19 are captured by this filing as claim 41.
 - e. In sum, this filing as 2023/0011 embraces four claims – 17, 18, 19, and 41 - with 26 claims yet to be determined.
- 9 With a population of only 5000 on Montserrat, it appears every island counsel has been at some point involved in PEL suits, some for years, and more recently from the AG Chambers Crown Counsel Morgan has appeared, assisting the GoM, being a formidably able younger lawyer with a company law background.
- 10 Of further importance has been the arrival into the proceedings since March 2023 of Counsel Prudhoe, to represent PEL, thereby assisting Rooney's lonely pro se vigil, of 3 Hare Court in London, practicing out of Turks and Caicos, and a member of the Bar of Montserrat, called by this judge, whose London Chambers assisted Rooney in the PC hearing, encouraged by this judge, and who is a match for Counsel Morgan. He has garnered what paperwork can be found, (noting hardcopy seems missing from the Registry where files had for some years been kept loose and hodge-podge in a large collapsed cardboard box), tidied the issues, and along with Counsel Morgan, though adversaries, together they have brought much needed focus.
- 11 As said, Counsel Morgan has identified a common theme running through all the suits, asserting neither Rooney nor PEL have locus: this has meant, with input from Counsel Prudhoe helping him, Rooney is now poised to discontinue as a private litigant, as notified on 26.06.23, though he is nervous he may face costs implications, to be decided later.

- 12 The issue therefore for this ruling has narrowed to whether PEL lacks locus, with Counsels Morgan and Prudhoe taking the lead, and with input supporting Morgan from Counsels Carrott and Dorsett. It is understood by the court all parties still interested in the PEL litigation have been here represented, including David Brandt who is in jail though he is represented by Counsel Dorsett, while there have been no applications from Cassell, through counsel or pro se, in jail with Brandt, doubtless knowing of these proceedings, (and whose participation would be curious as his fraud caused the litigation, while the court is wary he would use the proceedings impermissibly to relitigate his conviction).

Setting the stage for argument

- 13 On 01.12.22, laying out her stall, as a generic defence to claims 17, 23, 30, 31, 33, 34, 36, and 40, Counsel Morgan pleaded¹⁰:
- a. Procedurally,
 - i. PEL has not been authorised by a quorum of directors or a majority shareholding to bring the claim (the paperwork point); and
 - ii. Claims 17, 23, 30, 31, 33, 34, 36, and 40 are barred as against GoM institutions and officers under **s2 Public Authorities Protection Act** cap 18.10 (PAPA) as not brought within six months of the impugned acts (the PAPA point); and
 - b. Substantively,
 - i. The GoM denies fraud;
 - ii. The GoM denies negligence and misfeasance;
 - iii. The GoM denies it can be liable for the actions of the purchasers and assistants.
- 14 There were then 11 case management hearings on: 15.12.22; 2, 10, 17, and 24.02.23; 6, 13, 24, and 31.03.23; 05.04.23; and 03.07.23.
- 15 In submissions filed on 14.12.22¹¹, and in particular on 17.04.23¹², Counsel Morgan expanded her paperwork argument to include failure to pay stamp duty, meaning all PEL

¹⁰ B1p13.

¹¹ B2p5.

¹² B2p10.

documentation is inadmissible, and Counsel Prudhoe made his first appearance on 24.03.23.

- 16 By court order of 05.04.23, to set up the locus argument on claims 17, 18, and 19, the following 16 claims were referenced in the header:
- a. (Claim 14 above) MNIHCV2013/0020
 - b. (15) MNIHCV2013/0021
 - c. (16) MNIHCV2013/0024
 - d. (17) MNIHCV2013/0025
 - e. (18) MNIHCV2013/0026
 - f. (19) MNIHCV2013/0027
 - g. (20) MNIHCV2013/0028
 - h. (22) MNIHCV2014/0002
 - i. (23) MNIHCV2014/0005
 - j. (24) MNIHCV2014/0018
 - k. (25) MNIHCV2014/0019
 - l. (26) MNIHCV2014/0025
 - m. (30) MNIHCV2017/0014
 - n. (31) MNIHCV2017/0015
 - o. (33) MNIHCV2017/0017
 - p. (40) MNIHCV2021/0023
- 17 Setting out the evidence for contemplation of locus, over 601 pages and then 88 supplemental pages, (to be called Bundle 1¹³ and Supplemental Bundle¹⁴), various affidavits were filed or had been previously filed:
- a. For the GoM,
 - i. Dulcie James (Companies Registrar) on 27.02.14 and refiled on 17.04.23¹⁵, 12.08.15¹⁶, and 22.03.23 and refiled on 17.04.23¹⁷;
 - ii. Donilla Cuffy (Deputy Financial Services Commissioner) on 19.04.23¹⁸;

¹³ Bundle 1 – B1p1-601.

¹⁴ Supplemental Bundle – SBp1-88

¹⁵ B1p39.

¹⁶ B1p577.

¹⁷ B1p117.

¹⁸ B1p273.

- iii. Jamiel Greenaway (Land Registrar) on 20.04.23¹⁹;
- iv. Shivonne White (Deputy Company Registrar) on 09.06.23²⁰; and
- b. For PEL, Rooney on 30.10.13²¹, 30.10.13²², 30.10.13²³, 11.10.16²⁴, 11.05.23²⁵ and 16.06.23²⁶.

18 Submissions of 55 pages were filed as follows, (with 219 pages of authorities in support, to be called Bundle 2²⁷, filed by Counsel Morgan, noting in addition Counsel Prudhoe separately filed 174 pages of authorities):

- a. On 14.12.22, by Counsel Morgan²⁸;
- b. On 17.04.23 by Counsel Morgan²⁹;
- c. On 17.05.23, by Counsel Prudhoe³⁰;
- d. On 09.06.23 by Counsel Morgan in reply³¹;
- e. On 13.06.23 by Counsel Carrott³²; and
- f. On 06.07.23 by Counsel Dorsett³³.

19 At hearing on 07.07.23, Rooney was briefly cross-examined by Counsel Morgan, seeking to establish he has not been consistent as to PEL history and who have been the directors.

The factual background

20 The parties do not agree on much and so to start a neutral overview is needed, which I adopt I hope as impeccable from the 2022 judgment of the PC at paras 9-30.

¹⁹ B1p325.

²⁰ B1p558.

²¹ B1p16.

²² SBp8.

²³ SBp25.

²⁴ B1p33.

²⁵ B1p335.

²⁶ SBp55.

²⁷ Bundle 2 – B2p1-274.

²⁸ B2p5.

²⁹ B2p10.

³⁰ B2p24.

³¹ B2p37.

³² B2p43.

³³ Not in Bundle 2, filed late, and where the primary point was Rooney in person has no locus, overtaken by Rooney being now poised to discontinue his claims in his own name.

The factual background

9. PEL was incorporated in Montserrat in September 1989. It was a close company and wholly owned by two American developers, Mr Walter Wood as to 60%, and Mr Rooney as to 40%. Mr Wood and Mr Rooney were also its sole directors. At some point before 1995, PEL acquired various parcels of land in the parish of St Peter's in Montserrat, including the parcels of land the subject of these proceedings. PEL did not at that time develop the land and, as the judge found, in September 2001 it was struck off the register for failing to file its corporate returns, although that did not preclude the possibility of an application being made to restore it to the register at a later time.
10. By early 2007, at the latest, Mr Cassell had become interested in developing land in Montserrat and became aware of the land owned by PEL. Towards the end of July 2007, Mr Cassell reached an agreement with Mr Wood to purchase his shares in PEL, and on 30 July 2007 Mr Wood purported to transfer those shares to Mr Cassell or, more accurately, to Cassell & Lewis Inc. The share transfer recorded that the consideration for the transfer was EC\$810,000.
11. Mr Cassell also took steps to try to restore PEL to the register and made an application for that purpose on 9 August 2007. In that application Mr Cassell described himself as the only director of PEL. In fact, however, he had no basis to make that application or to describe himself in that way. The directors of PEL were Mr Wood and Mr Rooney.
12. On 4 September 2007 Mr Cassell purported to make another application to restore PEL to the register, and on this occasion the application was made in the High Court. Mr Cassell made and filed an affidavit in support of the application in which he explained that Mr Wood was the founder, the chief executive officer and a former director of PEL; that Mr Wood had transferred all of his shares in PEL to Cassell & Lewis Inc, and that he, Mr Cassell, was the sole director and beneficial owner of Cassell & Lewis Inc and an intended director of PEL. He continued that he had now realised that PEL had to be reinstated to the register to deal with its business affairs and the property which it owned. The affidavit did not mention Mr Rooney; nor did it disclose that Mr Rooney was a director of PEL and that he was a substantial shareholder.
13. The application to restore PEL was apparently supported by an affidavit made by Mr Wood and filed on 21 September 2007 in which he explained that he was a director, founder and former shareholder of PEL; that he had sold his shares and interests to Cassell & Lewis Inc; that Mr Cassell was the sole beneficiary and owner of Cassell & Lewis Inc; that PEL had been struck off the register for failure to file its annual returns; and that he supported and authorised the application to restore PEL to the register in order to complete his transfer of shares and to allow Mr Cassell to be appointed as director of PEL in his place, and to allow Mr Cassell to proceed with the business of the company. It was implicit in this evidence that Mr Cassell was not at that point a director of PEL. Again, the affidavit made no mention of Mr Rooney.
14. PEL was restored to the register by order of the High Court made on 21 September 2007. A few days later, on 24 September 2007, what purported to be a notice of change of directors from Mr Rooney and Mr Wood to Mr Cassell was filed. It recorded that Mr

Rooney and Mr Wood ceased to be directors on 21 September 2007, and that Mr Cassell was appointed as a director on that day. The trial judge, Bristol J (Ag), noted that this filing was not in the prescribed form and was not signed by a director or authorised officer of PEL.

15. Then, in early December 2007, Mr Cassell filed what purported to be a resolution of members dated 21 September 2007. This document recorded that only two persons were present, namely Mr Cassell, as "Shareholder", and Meridith Lynch, as "Interim Secretary"; that Mr Rooney had refused to return to Montserrat and had not made any contact with the members of the company for several years and that the requirement of notice of the meeting had been waived. The document, signed by Ms Lynch recorded that it was resolved that Mr Rooney and Mr Wood be removed as directors of the company effective on 21 September 2007 and that Mr Cassell was appointed as a director "with immediate effect" as from 1 July 2007.
16. The Court of Appeal observed and the Board agrees that it was implicit in the findings of the judge that Mr Rooney did not participate in the meeting at which this resolution was said to have been passed, and that he was not aware of the application to restore PEL to the register. The Court of Appeal also noted that the resolution purportedly appointing Mr Cassell as a director with effect from 1 July 2007, supposedly did so as from a date when PEL had not been restored to the register.
17. Nevertheless, despite these deficiencies, as from 21 September 2007, at the latest, Mr Cassell proceeded as if he were the sole director of PEL, as became clear from his activities in purporting to sell the various parcels of land the subject of these proceedings to the appellants.
18. The appellants fall into four groups. The first comprises Kenneth Allen, Yvonne Daly-Weekes and Kathleen Allen Ferdinand. A fourth member of this group, Khari Markham, died on 3 September 2021. It is not clear on what basis Mr Markham's estate is proceeding with this appeal. They wished to buy parcel 59. They dealt with Mr Cassell who purported to represent and be acting on behalf of PEL. These appellants entered into an oral agreement to buy the land in 2007 and executed the relevant transfer document in September 2007, before PEL had been restored to the register; and Mr Cassell signed the relevant documents, purportedly on behalf of PEL, on 8 October 2007. These appellants were registered as proprietors on or about 31 October 2007.
19. The second group comprises Joel and Ingrid Osborne. They wished to buy parcel 56. They dealt with Mr Cassell who again held himself out as having authority to act on behalf of PEL. Indeed, they felt that since Mr Cassell was apparently a lawyer and appeared openly to be conducting the affairs of PEL, there was no reason to doubt that he was acting with the authority of PEL. They entered into an agreement to purchase parcel 56 in August 2007, again before PEL had been restored to the register, and they were registered as proprietors of the land on 31 October 2007.
20. The third group comprises Alyn Krause and Gail Cimon-Krause. They wished to buy parcel 14. They were represented by a lawyer, Mr David Brandt, and again they dealt with Mr Cassell who held himself out as having authority to act on behalf of PEL. They

signed an agreement to purchase this parcel of land on 9 November 2007 and the transfer document on 11 January 2008. Alyn Krause gave evidence that they were registered as proprietors on 25 January 2008.

21. Finally, there is Mr Brelsford. He wished to buy parcel 15. He dealt with Mr Cassell who held himself out as having authority to act on behalf of PEL in connection with the sale to him of this parcel, just as he had in relation to the other parcels. He signed an agreement to buy this parcel of land on 7 January 2008 and he gave evidence that he was registered as proprietor on 19 February 2008.
22. It has been alleged that the appellants purchased their respective parcels of land at a significant undervalue. But there is no finding that this was in fact the case, and the Board will therefore attach no weight to the allegation in resolving the various issues arising in this appeal.
23. The activities of Mr Cassell in purporting to have authority to sell PEL's land came to the attention of Mr Rooney in the summer of 2007, and those activities together with his conduct in the months which followed led in due course to Mr Cassell's prosecution in Montserrat for fraud and various other offences. Indeed, he and his company Cassell and Lewis Inc were convicted of counts of conspiracy to defraud, procuring the execution of valuable securities by deception and money laundering. Their appeals to the Court of Appeal were dismissed except that relating to money laundering, where it seems the charge had been laid under the wrong statute.
24. Mr Cassell and Cassell & Lewis Inc then appealed to the Board against their other convictions. That appeal succeeded for reasons elaborated by Lord Hughes, giving the judgment of the Board at [2016] UKPC 19. Nevertheless, as Lord Hughes explained at para 3, the evidence of the Crown was largely unchallenged, and the essential facts, as recorded in that judgment, were not disputed. A number of those facts provide useful background to the present dispute and it is convenient to mention them at this point. The first is that the transfer of Mr Woods' shares to Cassell & Lewis Inc was contrary to the article 14(b) of the Articles of Association of PEL which provided that any other shareholders, materially here Mr Rooney, had a right of pre-emption. This was ignored by Mr Wood and Mr Cassell in purporting to transfer Mr Wood's shares to Cassell & Lewis Inc.
25. Secondly, Mr Rooney's lawyer contacted Mr Cassell in July 2007, explained that Mr Rooney had a 40% interest in PEL and was one of its directors, and asked why PEL's land was being offered for sale. He was told that Mr Wood had sold and transferred his shares to Mr Cassell, and there followed a series of offers by Mr Cassell to buy Mr Rooney's interest, none of which was accepted, a matter hardly consistent with the recital in the purported resolution sent by Mr Cassell to the registry in December 2007.
26. Thirdly, the transfers of the various parcels of land from PEL to buyers were all signed by Mr Cassell purporting to act as a director of PEL. It was Mr Rooney's case and it was accepted by the jury in the criminal proceedings in the assize court that he, Mr Rooney, had not been told of these particular sales and transfers, and he did not take part in them. In every case, the money was paid to Cassell & Lewis Inc.

27. Fourthly, when he discovered the sales Mr Rooney began legal proceedings in 2007 in Virginia, USA ("the Virginia proceedings") against Mr Cassell, Cassell & Lewis Inc and Mr Wood. As Lord Hughes explained, at para 13 of the judgment of the Board in the criminal proceedings, Mr Rooney sought a declaration that the transfer of Mr Wood's shares in PEL to Cassell & Lewis Inc was null and void for breach of the right of pre-emption and damages. The Virginia proceedings, although issued in 2007, were amended in 2008 to include details of further sales which had by that time taken place. The basis of Mr Rooney's complaint was, among other things, that he had been deprived of his right of pre-emption and had had no knowledge of or participation in the sales. The proceedings were served on Mr Cassell, at the latest, by the summer of 2008 and his response was to challenge the jurisdiction of the court. The proceedings nevertheless continued and on 3 October 2008 the Virginia court gave judgment for Mr Rooney against Mr Cassell and Cassell and Lewis Inc, in each case in default of appearance or defence.
28. It is to be emphasised that at Mr Cassell's trial in the assize court, he did not dispute or offer any significant explanation for the core facts related by Lord Hughes and which the Board has summarised above. Mr Cassell's defence to the charges laid against him was that there had never been an agreement to defraud Mr Rooney; and he had never had an intention to do so. Nor had he made any false representation, and at no time had he deceived any government agency. Given the essential facts were not in dispute, the question at the criminal trial in the assize court was whether or not they established the commission of the offences with which Mr Cassell was charged. The reasons for the quashing of the conviction by the Board arose largely from the trial judge's directions to the jury and are not relevant to the issues raised by this appeal.
29. Reverting now to the activities of Mr Cassell in Montserrat, in 2008 the Attorney General intervened by requesting the Land Registry to defer registering any more transfers (or purported transfers) of parcels of land belonging to PEL. Mr Cassell began proceedings challenging that intervention, but as Lord Hughes related, they were overtaken by Mr Cassell's arrest in early November 2008.
30. The respondents have submitted further documents to the Board on this appeal which they say show that Mr Cassell has recently been found guilty of the offence of concealing the proceeds of criminal conduct contrary to section 33(1)(a) of the Proceeds of Crime Act, Cap 4.04.

21 What this sets out is:

- a. Rooney's interest in PEL was in 2007 in a sense 'hijacked' by Cassell, meaning he has not been able to develop or sell the land to make profit until claims settled, land being registered to strangers, so that his grievance is understandable.

- b. However balancing this, it appears, though there is evidence reported by email in 2007 of infrastructure input by Rooney valued at \$1117000ec³⁴, no land was in fact developed for actively-pursued sale between 1989 and 2007; it may be the development project was much affected by hurricane Hugo in 1989 which devastated Montserrat, and then the terrible volcanic destruction of Plymouth and flight of the community during 1995-97.
- c. Further, earlier failure by Rooney to file corporate returns from 1990 meant PEL was struck off in 2001, notwithstanding it owned 53 acres, such that PEL lying apparently lifeless on file may have been what attracted Cassell's attention in 2007, and for which it appears Cassell paid Wood \$810000ec (about US\$300000) for his shares, then behaving as if he had bought the whole company.
- d. In sum, from 1989 PEL had 53 acres, which was supposed to be developed, was not much, was struck off in 2001, Cassell improperly inveigled an apparent ownership of Wood's shares, though at significant cost to him, then sold land in 2007 ignoring Rooney, who has cried foul, but himself had not sold any, now seeking return of the land and damages for being wronged and the ensuing costly 16 years litigation.

22 As analysis here begins, a curious feature of the argument offered by Counsel Morgan, now in 2023, is it may unseat the 2022 PC decision, as it could mean PEL never had standing to argue for the return of the subject lands in claims filed as long ago as 2012³⁵, rendering the litigation over many years with many thousands of pages and hundreds of filings entirely moot.

23 Further, an undoubted complication has been Rooney represented himself, and PEL, doing his best, but his style has been to write seemingly overlong documents, blending facts with opinions and arguments, which greatly complicates understanding the history, as well as filing arguably too many actions. There has been so much material offered in cascade it is likely inevitable if trawling through the minutiae for a party to find something to disagree on over every event. No matter what the outcome of this judgment, I expect there may be challenge by someone somehow to any apparent fact. For this reason, I do not propose to review every argument offered and the intricacy of every dispute but will instead settle on an

³⁴ B1-p107.

³⁵ Note, claims 1, 2 and 3 from 2007 and 2008, are indistinct as papers are missing, it is not clearly before the court who sued who or applied for what, no materials being cited in the arguments, though it appears: claim 1 (2007/0028) was an application by Cassell for reinstating PEL(see B1p105); claim 2 (2007/0029) was a parallel action by Cassell inputting affidavit from Walter Wood (see B1p99); and claim 3 (2008/0022) was by Rooney and PEL against the Land Registrar and AG, later discontinued per Annex A.

overarching vista to determine locus, being mindful of **rule 1 CPR** of the overriding objective in civil proceedings being to deal with cases justly.

- 24 I start with the following facts, as evidenced by the filed paperwork:
- a. On 07.09.89, PEL was incorporated³⁶, and during its first meeting on 08.09.89 appointed Wood and Rooney directors at respectively 60% and 40% shareholdings, with Rooney appointed Secretary and Treasurer.³⁷
 - b. For want of filing annual returns from 1990³⁸, PEL was struck off the companies register on 04.09.01³⁹.
 - c. On 30.07.07, Cassell paid Wood \$810000ec for his PEL shares transferred to Cassell & Lewis Inc⁴⁰, at a time when Rooney was it seems gravely ill undergoing treatment for *'five inoperable tumours in his lungs, diabetes, obstructive pulmonary disease, and heart failure'*⁴¹; the court surmises at the time it may have been thought by Cassell and Wood he would soon die, which may be why he was ignored by Cassell.
 - d. On 04.09.07, Cassell applied as case 2007/0028 to restore PEL to the companies register⁴², which was supported by Wood⁴³, filing an affidavit in a parallel action 2007/0029, so that on 21.09.07 Heigertwood-Octave J ordered PEL's restoration⁴⁴.
 - e. On 24.09.07, Cassell then filed a notice of change of PEL directors, removing Wood and Rooney, and appointing himself sole director.
 - f. On 04.10.07, in an important email, Rooney wrote to the Companies Registrar, who was Amelia Daley as Registrar of the High Court, pointing out he remained a director, warning Cassell's filings should be ignored, saying he had been gravely ill, and complaining Wood has not contributed to PEL development and should not be able to leave the project⁴⁵; the court surmises Rooney and Wood had fallen out given the project had not proceeded, and in obtaining \$810000ec from Cassell Wood was getting out and something of his investment back.

³⁶ B1p49; note however, technically PEL was incorporated on 31.08.89 by Montserratians John Weekes, a barrister, and his wife Elsa, per B1p60, and it appears per Rooney's affidavit of 11.05.23 at B1p347 at para 47, John Weekes was later jailed, curiously being another jailed lawyer associated with Montserrat, and PEL, along with lawyers Cassell and Brandt.

³⁷ B1p73.

³⁸ B1p80-84.

³⁹ B1p87.

⁴⁰ B1p88.

⁴¹ B1p107.

⁴² B1p92.

⁴³ B1p99.

⁴⁴ B1p101.

⁴⁵ B1p107.

- g. On 29.11.07, Amelia Daley wrote to Cassell to say she needed a resolution showing change of directors from two to one⁴⁶, which Cassell did on 04.12.07⁴⁷ by filing a document signed by Meredith Lynch as *'interim secretary'*, though at the time formally Rooney was secretary, purporting to report the outcome of a meeting of directors on 21.09.07, being of Cassell alone, where his appointment as director was back-dated to 01.07.07, and where notice to Rooney (and Wood) had been *'waived for an extraordinary general meeting'*, removing Wood and Rooney as directors, with the reason for removing Rooney being because he was *'refusing to return to Montserrat and not having made any contact with the members of the company for several years'*.

25 The effect of the paperwork filed on 04.12.07 was, following the court order reinstating PEL on 21.09.07, without Rooney knowing, Cassell was then recorded at the High Court as a director of PEL effective from 01.07.07, Rooney and Wood were recorded as no longer directors from 21.09.07, with Cassell having filed notice of change to his being lone director of PEL from 24.09.07⁴⁸. Rooney tried to be get reinstated up to April 2008 but was refused by the Registrar⁴⁹, who was relying on the court order of 21.09.07 reinstating PEL at the request of Cassell, who was effective from 21.09.07 the sole director, (and who had by affidavit on 04.09.07⁵⁰ reported himself an *'intended'* PEL director), all leading therefore to land sales by Cassell in charge of PEL's 53 acres being recognised, including from before 21.09.07, causing changes in the land ownership being recorded the Land Registry.

26 Rooney then sought to overturn the transfer of shares from Wood to Cassell and succeeded in a judgment of Leslie Alder J from Fairfax County Virginia US on 03.10.08, as inter alia Wood's shares ought to have been offered to him first, where the judgment also awarded to PEL against Cassell and Cassell & Lewis Inc US\$6657492 for civil conspiracy and US\$3688157 for intentional interference with contract⁵¹, (though nothing has ever been paid).

⁴⁶ B1p109.

⁴⁷ B1p110.

⁴⁸ B1p103.

⁴⁹ B1p111-116.

⁵⁰ B1p94.

⁵¹ B1p144.

- 27 On 09.09.09, Rooney then proceeded to host a meeting of shareholders and directors of PEL, and in a lengthy minute⁵²:
- a. stripped Wood of being a director -
 - i. for failing to manage PEL for 18 years,
 - ii. failing to support a fraud investigation by police,
 - iii. failing to pay property taxes,
 - iv. failing to comply with the alien landholding licence requiring development of PEL,
 - v. unjustly enriching himself to the value of US\$199000 by allowing Cassell to sell plots 26 and 27 belonging to Rooney; and
 - vi. who did not attend despite six notices;
 - b. appointed as directors his wife Janice Rooney and Susan Edgecombe (of Tradewinds Real Estate, whose premises were the registered office for PEL);
 - c. appointed Pannell Kerr Forster as PEL auditors;
 - d. appointed himself PEL chairman;
 - e. declared Wood's shares conveyed to Rooney;
 - f. declared Wood gifting plot 38 to Cassell a nullity;
 - g. identified plots 14, 15, 16, 17, 19, 26, 27, 34, 35, 39, and 40 as wrongly sold by Cassell, some being mutated, valued at US\$719231;
 - h. identified plots 35, 36, 37, 38 as wrongly the subject of attempted sale by Cassell, receiving EC\$55383.50 in deposits from John and Yvette Ryan;
 - i. identified all sales as being for below market value;
 - j. demanded from Wood and Cassell compensation to purchasers and investors as -
 - i. EC\$55383.50 to John and Yvette Ryan as return of deposit on plots 35-38,
 - ii. EC\$70000 to Sir Howard Fergus for plot 35,
 - iii. EC\$105000 to Keith and Ina Farrell for plot 19,
 - iv. EC\$80000 to Dion Weekes for plot 34,
 - v. EC\$418967.25 to Kenneth Allen and Khari Markham for plots 14, 15, 16, and 17 (marked at the Land Registry parcel 13/10/59),
 - vi. EC\$67000 to Joel and Ingrid Osborne for plot 40 (parcel 13/10/56),
 - vii. EC\$30000 to Warren and Cleo Cassell for plot 39 (parcel 13/10/55),
 - viii. US\$199000 to Alyn and Gail Krause for plot 26 (parcel 13/10/15),

⁵² B1p146-165.

- ix. US\$80000 to Phillip Brelsford for plot 27 (parcel 13/10/27), and
- x. US\$417533 to Phillip Fitzpatrick for investment in PEL;
- k. Conveyed to Rooney lots 4-8 (parcels 13/10/83-87) and plots 26-27 (parcels 13/10/14-15); and
- l. Sold plot 12 to Gary and Nancy Taber.

28 There is next correspondence dated 14.05.12⁵³ where Rooney writes to Dulcie James as Companies Registrar from 16.11.11⁵⁴ to remove the '*clutter*' created by Cassell and thereby regularise his control of PEL. This letter arose after Cassell had been convicted by jury on 16.02.12⁵⁵ and then jailed for offences of dishonesty concerning PEL. Indeed, Rooney wrote thrice more on 13.06.12⁵⁶, 15.06.12⁵⁷, and 23.06.12⁵⁸ and of interest he said:

a. On 13.06.12:

I am honestly at a loss to comprehend what the problem is in recognising that I am the lawful director...of PEL...I had warned the Comptroller of Inland Revenue Violette Silcott and AG Eugene Ottunye on 29.09.07. I also warned your predecessor Amelia Daley on 04.10.07 as well as the AG, and to be extra sure Daley could not claim she had not been warned I asked the legal department to forward my warning ...And on 04.12.07, I once again warned Violette Silcott of the fraud...Just 89 minutes later a sham minute of meeting was filed to record a resolution of members that had never taken place to cover up the fact Amelia Daley had notarised a fraudulent land transfer to Joel and Ingrid Osborne dated 21.09.07...Daley also allowed Cassell to waive the statutory requirement of notice of meeting when she had been warned repeatedly that Cassell had no standing in PEL, and to back date Cassell's purported directorship to 01.07.07 which...was another cover because Cassell had actually sold land to his relative Ina Farrell in June 2007 and to Dion Weeks on 26.07.07, both before 30.07.07 when the purported transfer of shares from Wood to Cassell & Lewis Inc had taken place....It would have been impossible for Amelia Daley to have restored PEL to the register without a meeting of the board of directors. In other words, she did it to cover up for the purported land transfers to Cleo and Waren Cassell, Joel and Ingrid Osborne, and Ina and Keith Farrell on 21.09.07, to Kenneth Allen...on 08.10.07, and to Dion Weekes on 23.10.07, because PEL could not have been restored to the company register until [there was] the resolution signed by a director and company secretary [filed on 04.12.07, where] all the sales mentioned occurred prior to the date of filing.

[Square brackets added].

b. On 15.06.12:

⁵³ B1p169.

⁵⁴ B1p577.

⁵⁵ B1p584 para 37.

⁵⁶ B1p182.

⁵⁷ B1p184.

⁵⁸ B1p192.

The Crown could not even put your predecessor [Amelia Daley] on the witness stand in Cassell's criminal trial in February because of her collusion and incompetence...A clerk at the inland revenue fraudulently misrepresented herself as the Company Secretary [Meredith Lynch]...not just by signing fake meeting of minutes...but she had also fraudulently signed four land transfers...And has the GoM done anything to restore its image of credibility? Of course not. It just swept the matter under the table and these individuals still work for the GoM making it look like a pirates' den to the civilised world.
[Square brackets added].

c. On 25.06.12:

I am being placed at an extreme disadvantage because Amelia Daley, Violette Silcott...had refused to give me truthful information...despite over 245 warnings to government, the result of which had been it costing me hundreds of thousands of dollars in legal and fraud investigator fees....

- 29 By reply on 25.06.12⁵⁹, Dulcie James reported the paperwork showed the '*status regarding the ownership and management of PEL is uncertain*' and so no clutter was cleared. From this point on, progress on PEL being restored as to land and directorship slowed, essentially awaiting court orders, like the PC decision of 01.12.22, and this.
- 30 Then on 17.10.13⁶⁰, there was an extraordinary meeting of the PEL board of directors, producing resolution, altering the articles of association to allow decision making by one director, authorising litigation by PEL '*with respect to restoration of title for all its lands*', and recording Janice a director, along with Karen Leduna and Mahalia Acuna as alternate directors, though not mentioning Susan Edgecombe.
- 31 The instant three suits (claims 17, 18, and 19) were then filed on 30.10.13.
- 32 Oddly - notwithstanding the minute of 09.09.09⁶¹ dismissing Wood as a director and claiming his shares while appointing Janice Rooney and Susan Edgecombe directors, and the later resolution to litigate of 17.10.13⁶² not mentioning Edgecombe - during 03-20.11.17, to update paperwork Rooney filed annual returns for PEL for the period 2001-2016⁶³, citing Wood as being a director throughout, and a shareholder up to 10.02.11, when it is said on the filings he transferred his shares to Rooney; moreover, in later materials this is contradicted by

⁵⁹ B1p194.

⁶⁰ B1p199.

⁶¹ B1p146.

⁶² B1p199.

⁶³ B1p273-323.

certification signed by Wood and Rooney the share transfer occurred for US\$1 on 10.05.17⁶⁴, while by affidavit of 11.05.23 Rooney reports Wood ceased to be a director on 05.04.17⁶⁵, Rooney then appointing his step daughter Julia Honculada PEL director on 28.08.17⁶⁶. What all this means is it is unclear who were the directors of PEL in 2012-2017 when the most significant claims 4-36 during 2012-2017 were filed.

33 Wood sadly died on 18.02.21⁶⁷.

34 Finally, on 01.05.23, attempt was made by Counsel Prudhoe for PEL to file amended returns for 2001-2016⁶⁸, as the November 2017 filings were said inaccurate⁶⁹, but the returns were not accepted by the Companies Registrar (now Fabian Singh) by letter of 15.06.23⁷⁰, Counsel Morgan suggesting they amounted to an attempt *'to revise wholesale the corporate history of PEL'*⁷¹, (which has given rise to claim 42).

The PAPA point

35 Of the instant actions embraced by this ruling, being claims 17, 18 and 19 above:

- a. 2013/0025 (17) was filed on 30.10.13 at 15.29hrs⁷², being PEL and Rooney against Joel Osborne, Ingrid Osborne, Warren Cassell (as Cassell & Lewis Inc), Meredith Lynch, Amelia Daley and David Brandt, alleging fraud inter alia by GoM employees Ameila Daley and Meredith Lynch, seeking at least EC\$1250000;
- b. 2013/0026 (18) was filed on 30.10.13 at 15.34hrs⁷³, being PEL and Rooney against Dion Weekes, Janine Weekes, Warren Cassell (as Cassell & Lewis Inc) and David Brandt, further noting the Land Registrar appears added later⁷⁴, seeking at least EC\$19959945;

⁶⁴ B1p448.

⁶⁵ B1p345 para 40.

⁶⁶ B1p346 para 42 and B1p549.

⁶⁷ B1p346 para 41.

⁶⁸ B1p506-548.

⁶⁹ B1p348 paras 51-61.

⁷⁰ B1p70.

⁷¹ B2p41 para 42.

⁷² B1p4.

⁷³ SBp1.

⁷⁴ See Annex A.

- c. 2013/0027 (19) was filed on 30.10.13 at 15.36hrs⁷⁵, being PEL and Rooney against Cleo Cassell, Warren Cassell, Meredith Lynch and David Brandt, alleging fraud inter alia by GoM employee Meredith Lynch, seeking the same at least EC\$19959945.
- 36 Distilling the overall litigation strategy, Rooney has brought multiple actions on his own behalf and caused PEL to claim for:
 - a. Restoration of land to PEL which had been sold by Cassell;
 - b. Damages against Cassell and those who helped him for fraud or misfeasance;
 - c. Damages against the GoM for fraud and misfeasance on the part of its officers; and
 - d. Damages against the GoM for negligence on the part of its officers.
- 37 What is immediately clear is there cannot be action for 36d, as out of time, being claim for damages against the GoM on the part of its officers if executing their duty, but in good faith negligently getting it wrong. This is because **s2 PAPA** states:

Action etc against any person in respect of act done in execution of duty
Where any action, prosecution, or other proceeding is commenced against any person for any act done in pursuance or intended execution of any Act, or of any public duty or authority or of any alleged neglect or default in the execution of any such act, duty, or authority, the following provisions shall have effect -

 - (a) The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within six months next after the act, neglect or default complained of, or in the case of a continuance of injury or damage, within six months next after the ceasing thereof...
- 38 Though in a sense a locus point, as it affects being able to sue, it is more a bar created by a limitation period, being six months. Concerning legal actions against the offices of the Companies Registrar or Land Registrar, or Comptroller of Inland Revenue, or High Court Registrar, or in addition the Governor, AG, Financial Secretary, or Police Commissioner, these must have commenced within six months of knowing of whatever is the impugned act.
- 39 In the instant action, pleaded defendants include government employees Amelia Daley and Meredith Lynch, the former being originally the Companies Registrar in 2007, the latter a clerk in the Inland Revenue, though none of the parties in the case header are pleaded specifically as GoM offices (as above). However, these offices do variously appear as defendants in Annex A and elsewhere in claims, noting -

⁷⁵ SBp18.

- a. (Claim 15 above) 2013/0021 – claims against the Land Registrar;
- b. (18) 2013/0026 - an instant claim, Land Registrar added as a later defendant⁷⁶;
- c. (21) 2013/0030 - struck out, did include Land Registrar, Companies Registrar, Governor;
- d. (30) 2017/0014 – Land Registrar, AG;
- e. (31) 2017/0015 – Land Registrar, Companies Registrar, Comptroller of Inland Revenue, Financial Secretary, AG;
- f. (33) 2017/0017 – Land Registrar;
- g. (34) 2017/0018 – Land Registrar, Companies Registrar, Governor; and
- h. (35) 2017/0019 – Land Registrar, Companies Registrar, Governor.

40 This begs who for the GoM does Counsel Morgan actually represent in these proceedings as they pertain to 2013/0025, 2013/0026, and 2013/0027 (claims 17, 18, and 19): the answer would appear to be at least the Companies Registrar (Daley) and possibly the Inland Revenue (Lynch) in claim 17, and the later added Land Registrar in claim 18; otherwise in theory Counsel Morgan herself would not have locus to make argument on claims 17, 18, and 19, irrespective of PEL lacking locus.

41 Here, for the purposes of **PAPA**, the impugned act was for government institutions through its officers to have recognised Cassell as directing PEL from sometime between June and December 2007, which is what then led to land being recorded as sold, giving rise to the chaos at PEL.

- a. It is clear from the warning by Rooney to Daley as Companies Registrar (and also High Court Registrar) on 04.10.07 he was aware she appeared to have recognised Cassell as director.
- b. It does appear arguable the Land Registrar and Companies Registrar were at least negligent in processing Cassell's activity, as there were warnings from Rooney, and the paperwork pertaining to Cassell's control of PEL was perhaps questionable on its face.
- c. In his minute of 09.09.09, the scale of events was fully known to Rooney, and then in his letter of 25.06.12 (as above) he said he had sent 245 warnings.
- d. This all means action against government institutions if negligent ought arguably to have commenced by June 2008, being within six months after at the latest the questionable filing on 04.12.07, or even by April 2008 as six months after the warning email to Amelia

⁷⁶ Note, the file for 2013/0026 (claim 18) shows as the case evolved, the 'Registrar of Lands' was added as a defendant, consistent at SBp2 with relief 6 claimed during the first filing on 30.10.13 seeking an injunction against that office.

Daley on 04.10.07 on learning land was being recorded sold; moreover, even if this might be fudged to await the outcome of Cassell's criminal trial on 16.02.16, proving fraud, giving rise to the letters to Dulcie James of June 2012 - which in any event may not be a correct approach - claim against the GoM ought to have arisen by January 2013 at the very latest, and here action was then at least ten months too late, being October 2013.

- 42 The bar appears notionally to apply to fraud too, and also misfeasance, not just negligence, as the legislation contemplates barring *'prosecution'*, or any action or proceeding, for any *'act'*, which thereby may contemplate barring action for greater culpability than negligence. However, this observation is logically redundant as fraud is not a duty of government, nor misfeasance, and therefore not an execution of duty, so **PAPA** would not apply; while in parallel, if anyone in government office acting fraudulently is thereby not acting in the execution of GoM duty, then the GoM should not be automatically open to being sued for the damage created by fraudsters in its ranks on a frolic of their own, unless there is failure of oversight, possibly creating vicarious liability, but which would first require fraud to be found as against an individual. To my mind, this may mean GoM liability for fraud by an employee might come later, but not at inception of the action, where the inception is so late as to be long outside the **PAPA** timeframe.
- 43 So, if the six months pass, individuals such as Daley or Silcott or Lynch can be pursued for fraud, privately, but not as GoM offices, and the action will be for their personal acts, each pursuable as dishonestly being in on a scheme with Cassell to pretend him the PEL director and thereby abusing their public office privately to help him.
- 44 It may be argued the meaning in **s2 PAPA** of *'in the case of a continuance of injury or damage, within six months next after the ceasing thereof'*, means action against the GoM can be at any time until all the claims concerning PEL land loss are over, which yet persist, as until then injury or damage has not ceased. But in my judgment, this is not so: the arguably wrongful act by GoM offices was to recognise Cassell as Director empowered to sell PEL land, which was not a continuance of injury or damage, but an event finalised distinctly with the filing on 04.12.07 of the supposed minutes of the extraordinary general meeting changing directors on 21.09.07. The wrongful act by the GoM offices, as arguable negligence, ended not later than 04.12.07 and has not been continuing since, while Rooney was aware of the

impugned filing of 04.12.07 on that very day, as he reports above in his correspondence with Dulcie James of June 2012.

- 45 Moreover, to entertain the claims would defeat the very purpose of **PAPA**, which is designed to prevent exactly what is happening here, namely claim in negligence against the government for long ago events, with exponential growth in the size and complexity of the claim over time. To sue the government, there must be rapid action, within six months of knowing of the wrong, lest good governance can be paralysed, as has happened here in a sense to the High Court Registry through this multiple litigation.
- 46 This is an important finding on the law and facts, applying to all claims. It means Rooney through PEL can no longer rely on mere GoM negligence by its offices, and therefore cannot seek to recover the US\$3.3m from it for that negligence, whose pockets may be deep enough. Instead, he must seek to recover this sum from the private individuals identified in the various claims, who may have no funds, possibly bankrupting them if successful, notably from Cassell, and possibly from Brandt, and others, and perhaps from government employees privately if he can show on balance they were in on the fraud, like perhaps Daley and Lynch, or others, giving rise to misfeasance, (which may be difficult to prove); and if he can, he may later raise GoM vicarious liability. What will no longer work in this litigation is perhaps to hope for a payout from the GoM for a government officer being merely negligent in their official duty of care by having recognised Cassell as PEL director empowered to make land sales: a claim for negligence by the GoM offices should have been brought far earlier than October 2013⁷⁷.
- 47 Counsel Prudhoe may counter there have been arguments in earlier proceedings to prevent the claims proceeding, which failed, so that this point can be considered already settled, or could have been and so should be estopped from being raised now as too late. He points out there were three sets of locus arguments spread across nine claims, being in -
- a. (Claim 14 above) 2013/0020,
 - b. (16) 2013/0024 twice,
 - c. (17) 2013/0025,
 - d. (18) 2013/0026 twice,

⁷⁷ Of interest, there was claim 3 (2008/0022) which it seems was brought by PEL and Rooney against the AG and Land Registrar, later discontinued, per Annex A, and its existence begs whether PEL did actually make a claim in 2008 possibly within timeframe of s2 PAPA, further begging why it was discontinued.

- e. (19) 2013/0027 twice,
- f. (20) 2013/0028 twice,
- g. (22) 2014/0002 twice,
- h. (23) 2014/0005 twice, and
- i. (27) 2015/0011.

48 Of interest, there is an interim judgment concerning 2014/0005 (claim 22) on an application to strike out, dated 13.08.15⁷⁸ by Combie-Martyr J, in which the parties are cited in the header as Cassell, Brandt, Daley, Silcott, Lynch, and Brelsford, but in the judgment there are also claims referred to concerning Allen, Markham, the Weekes, and the Farrells. Yet in this judgment, there is no reference to **PAPA**; it was not argued and there is no material to show it ever has been.

49 This begs whether it should have been. Clearly, it should. There is the impression with so many filings folk gave up trying to process each case carefully, and perhaps a degree of exhaustion has arisen leading to incomplete submissions.

50 However, the argument the point should have been taken earlier might be a good one were it not for the language of **s2 PAPA**, which is mandatory, saying an action '*shall not lie*', meaning if the Act applies it should be enforced, even if not earlier argued.

51 Finally, the court notes Counsel Prudhoe did not address **s2 PAPA** in his submissions filed on 17.05.23, notwithstanding they were raised by Counsel Morgan in hers of 14.12.22⁷⁹, also noting she has characterised GoM offices as defendants as her header in all her filings as, (repeated by Counsel Carrott):

Between

Providence Estate Limited	Applicants
Owen Rooney	
And	
Registrar of Lands	Respondents
Registrar of Companies	
Honourable Attorney General	
HE the Governor of Montserrat	

⁷⁸ B1p362.

⁷⁹ B2p7.

52 For the avoidance of confusion, which arises everywhere in the PEL filings, it is clear to the court the **s2 PAPA** point has always been at large in the instant proceedings. The whole rationale for Counsel Morgan's filings has been to try to extract the GoM from culpability in damages for what happened to PEL, the gravest danger being for mere negligence. It may be by this ruling applying **s2 PAPA** she has largely achieved her aim.

53 On 08.08.23, pre-ruling today 09.08.23, Counsel Prudhoe was alerted to the absence from him of submissions on **PAPA**, and helpfully promptly responded on email, reminding the court he came to the proceedings in March 2023, and was unaware of the filing of 14.12.22 until 16.06.23 when Counsel Morgan prepared the bundles, including Bundle 2 which included it, there having been no reference to **PAPA** during discussion leading to order on 05.04.23, case management on 03.07.23, nor in argument on 07.07.23. As reply to the **PAPA** point, he succinctly submitted:

...[PAPA] is a Red Herring.

...aside from it having been accept in the hearing on 7 July 2023 that fraud is a well-known basis by which to avoid the effects of limitation generally, the following additional matters are submitted at this time:

1. The legislation in question is common across several British Overseas Territories and is based on the discredited and long-repealed Public Authorities Act 1893 (a pre-cursor to the very first limitation legislation). A copy of that legislation is attached.
2. That UK legislation (on which the Montserrat legislation is based) was repealed in 1954 (attached).
3. Before the repeal of that UK legislation, the 1929 English Court of Appeal case of **G.Scammell & nephew v Hurley et al 1929** 1KB 419 makes clear that (Scrutton LJ) to entitle a public authority to the benefit of the legislation (there the 1893 UK Act) the public servant acts complained of must have been done in the *bona fide* intended execution of a statutory duty: at 427 (page 9 of the 31 page PDF judgment) -
"...It would appear, therefore, if illegal acts are really done from some motive other than an honest desire to execute the statutory or other legal duty and an honest belief that they are justified by statutory or other legal authority; if they are done from a desire to injury a person or assist some person or cause without any honest belief that they are covered by statutory authority, or are necessary in the in the execution of statutory authority, the Public Authorities Protection Act is not defence, for the acts complained of are not

done in the intended execution of a statute, but only in pretended execution thereof.”

4. As reflected by the fact that no submission of any kind (written or oral) on the s2. PAPA issue were made on behalf of the GoM on or in respect of the 7.7.2023 hearing, the Court is simply not in a position to know whether the fraud and / or the *G. Scammell and others* precedent is engaged. Had the s2 PAPA issue being pursued at the time of the April directions Order (attached), a direction for the filing of the 14.12.2022 skeleton would have alerted PEL's (then) legal representatives to its existence. That did not happen.
5. Instead, the 14.12. 2022 skeleton argument first appeared in the unilateral bundle of GoM on 16.6.2023 and was never even referenced in the hearing of 7.7.2023. Not once.
6. The 14.12. 2022 skeleton argument references as many as 9 proceedings – of which only 1 pleading (2013/0025 – now 2023/0011) was before the Court on 7.7.2023. All of those proceedings are needed for the proper analysis as to the effect of s.2 PAPA.
7. In respect of the single pleading that was before the Court: that of 2013/0025 – now 2023/0011, that appears at Bundle 1 pages 3-14 and from which (bundle page number 5 onwards), fraud is expressly pleaded.
8. The only GoM representative in that SINGLE pleading from those listed in the 14.12.2022 skeleton argument is the 5th Defendant (Amelia Daley) and against whom fraud is also pleaded (bundle page number 7). The Prayer for Relief seeks against that GoM defendant damages for misfeasance (pleaded relief 8). Proof of any of those claims would be a complete answer to limitation on the basis of *G. Scammell and others*.
9. Crucially, the Court has not been shown the pleadings in any of the other 8 claims in which the 14.12.2022 skeleton argument is said to have been filed. Thus necessarily preventing the Court from performing the same analysis.

54 These submissions when distilled seem to support the court's analysis: first, the GoM may yet be liable for fraud and misfeasance by its officers, if so proved, irrespective of **PAPA**, as it would not apply, as the *Scammell* case shows; while second, claim 17 (2013/0025) was embraced by the filing of 14.12.22, and it refers specifically to Daley (who was the Companies Registrar); to the court's mind both together mean the **PAPA** point as to suit for negligence is live in the instant action, not requiring analysis of the other claims, and a decision on it can apply universally through the litigation.

- 55 More, it is not a red herring, but fundamental, as **PAPA** closes off a negligence suit against the GoM, being possibly the easiest route to claim for losses from the one party who would be able to pay.
- 56 Finally, during hearing today on 09.08.23, Counsel Prudhoe making further submissions has articulated a clear position, namely that the actions raised by PEL are for fraud and misfeasance, not negligence, and he does not ask for further time to argue **PAPA**, though makes the point Counsel Morgan, having raised it in her pleading of 01.12.22, and submissions of 14.12.22, did not raise it in her filing of 17.04.23, nor during case management, nor during discussion on 07.07.23.
- 57 In sum, the first effect of this ruling is to declare any action for negligence against the GoM or its offices dismissed, as barred under **PAPA**, being so far the Companies Registrar, Land Registrar, Comptroller of Inland Revenue, High Court Registrar, the Governor, AG, Financial Secretary, and Police Commissioner.
- 58 Concerning costs in my discretion, there shall be no order against PEL for having sued government offices as the **PAPA** point should have been taken long ago by the GoM.

The paperwork point

- 59 What is left now to consider is the paperwork point, arising from the **Stamp Act**, and from arguable failing in the management of PEL and in keeping and filing its paperwork to show proper resolutions by the directors led to a permissible company decision being made to bring action.
- 60 Broadly, Counsel Morgan makes technical arguments, namely:
- a. Documents showing the existence of PEL have not been stamped under **s22 Stamp Act** and are therefore inadmissible in civil proceedings, meaning there can be no evidence admitted PEL exists nor Rooney ever a director, such that neither can appear before the court; failing which -
 - b. If leave can be granted to allow later stamping, permitted under **s21 Stamp Act**, it should be denied owing to the age of the proceedings, and how interest at 8% on the stampings

now exceeds 100% the original stamping value, which is reason to refuse late stamping; failing which -

- c. To launch action, whenever, including the instant actions from 2013, **PEL company article 71 of association** said there needs to be a resolution by two directors, none ever being reliably shown, there being uncertainty as to who were the directors, with the reality only Rooney has decided, as one director alone, so the decision to litigate is nullified as inoperative, meaning so too is the litigation; failing which -
- d. Wood as the second director, (if he was, as inconsistently suggested in returns filed in November 2017), can be inferred to be against litigation as it was his original idea in 2007 to support Cassell, so the mind of the company cannot ever be shown in 2013 via the two directors Rooney and Wood together to favour litigation against the activity of Cassell where Wood, being also the majority shareholder, must be against litigating against his own actions in 2007, meaning the litigation would never have been approved by both, as required, and is therefore wrongful (being a point strongly made by Counsel Carrott⁸⁰); failing which -
- e. If the correct approach is for PEL to issue a derivative claim under **s238 Companies Act**, it requires leave under **s239(1)**, which was not sought and should not be granted now as so late, and because Rooney is not strictly acting '*in good faith*' toward the company but in his own interests as it seems he thinks he is the company, that he and PEL are essentially the same.

61 To all of this, Counsel Prudhoe argues it has been, or should have been, argued before, and is '*an attempt to put lipstick on a pig*'⁸¹. I agree. PEL has been a party for years, since 2007, in 39 actions from 2012 at the direction of Rooney, (40 if including the 2008 action), on Montserrat, also in Virginia US, and finally before the PC in London; it is just clever sophistry to argue at this late stage it cannot seek redress from Cassell's fraud, proven at criminal trial. Ingenious as Counsel Morgan often is, I will simply estop argument PEL has no locus owing to imperfect paperwork, deploying my inherent jurisdiction to determine who will be heard before the court, and **r1 CPR** requiring the overriding objective is to deal with cases justly, where there is no doubt PEL was the subject of a fraud and should be allowed to seek relief.

⁸⁰ B2p51 para 35.

⁸¹ B2p25 para 7.

62 While the many technical arguments are dazzling in their intellect, creating a knot of logic exceedingly vexing to unravel, like the gordian knot I will simply cut it. I declare PEL has locus, meaning:

- a. Leave is given for the stamping late;
- b. Leave is given for derivative claim, if needed to be so called;
- c. The decision led by Rooney in 2013 in the instant proceedings (and earlier) as either a lone director, or with Wood (not engaging), or with his wife Janice and Susan Edgcombe as directors from 2009, or with his wife Janice by resolution 17.10.13, or as derivative claim led by him for the benefit of the company by reason of Wood impermissibly selling shares to Cassell, are all accepted, variously, as needed, to give grounding for action; so that
- d. I declare PEL locus to litigate is accepted as valid.

63 By way of further observation:

- a. While Counsel Morgan gingerly cross-examined Rooney for an hour on 07.07.23 to show inconsistency in who were the PEL directors between 2007 and 2017, and in fairness made good points showing the evidence to an extent incoherent, the reality is the point is overtaken by PEL having been a litigant at the direction of Rooney since at least 2008, 15 years now, so that her efforts fail to unseat standing established by such longevity.
- b. The decision of Combie-Martyr J of 13.08.15⁸², though concerning strike out, is highly relevant as it specifically contemplated arguments on PEL locus (though none on the **Stamp Act**) offered by Brandt⁸³, Allen and Markham⁸⁴, the Weekes⁸⁵, and the Farrells⁸⁶, while it appears no arguments were offered by Daley, Silcott or Lynch (as individually named defendants); this reinforces it abuses court's process to be raising such arguments again, while it is just too late to be raising the **Stamp Act**, when it should have been at least eight years ago, if only by Daley who as previously High Court Registrar would know all about the Act.
- c. Moreover, concerning whether Rooney has ever produced a formal company resolution to litigate, therefore barring locus, inter alia where arguably he was acting alone as a

⁸² B1p362-381.

⁸³ B1p368 para 28.

⁸⁴ B1p369 para 33.

⁸⁵ B1p370 para 38.

⁸⁶ B1p371 para 42.

director bringing PEL action in breach of **article 71** of the company articles of association requiring two directors to decide:

- i. Counsel Prudhoe in his submissions on 17.05.23⁸⁷ pointed to the indoor management rule at **s19 Companies Act** which baldly states, curing the issue, unanswered by Counsel Morgan in her reply of 09.06.23⁸⁸:

For the avoidance of doubt, it is declared that no act of a company... is invalid by reason only that the act... is contrary to its articles;

- ii. Moreover, Counsel Prudhoe went on to point out it is settled law a company may ratify the prior acts of its directors with retrospective effect, per **New Falmouth Resorts v International Hotels Jamaica 2013** UKPC 11, and such ratification has been offered by PEL concerning the instant cases (claims 17, 18, and 19) in a resolution dated 09.05.23 signed by directors Rooney and Honculada⁸⁹, again unanswered by Counsel Morgan, while in any event there was the purported resolution of 17.10.13⁹⁰, which show at least an attempt to get the paperwork right, if inconsistently.

64 As to costs on the locus point, though PEL wins, I will make no order at this stage, as the point has been fully ventilated, and needed to be, ruminating on myriad paperwork inconsistencies, in the context of a preliminary ruling, as distinct from previously a strike out action, now setting the stage for the next phase of this litigation.

Conclusion

- 65 The outcome of these proceedings as a preliminary ruling under **r26.1(2)(i) CPR** is:
- a. PEL has locus to sue individuals for recovery of land and various damages, inter alia for fraud and misfeasance; but
 - b. PEL is barred under **s2 PAPA** from suing GoM offices for negligence in the execution of duty; and
 - c. There shall be no order as to costs.

- 66 The next phase of this litigation shall be:
- a. The costs implication of Rooney discontinuing in his own name, (see below at para 68);

⁸⁷ B2p34 paras 42-47.

⁸⁸ B2p37.

⁸⁹ B1p556.

⁹⁰ B1p199.

- b. Attempt to recover plots 34, 35 and 39 - being plot 34 as parcel 13/05/36 from Dion Weeks; plot 35 as parcel 13/05/35 from Sir Howard Fergus; and plot 39, mutated as parcel 13/10/55 into two, as now parcel 13/10/71 from Clifford West and parcel 13/10/72 from Clifton Cassell; all collectively covered by claims MNIHCV 2013/0026, 2017/0015, 2017/0018, and 2017/0019 (being claims 18, 31, 34, and 35 in this ruling);
- c. Identification of precisely who is being sued for fraud and why, and in particular among the defendants who in 2007 were government employees;
- d. Identification per defendant of what realistically is sought from each by PEL; and
- e. Next steps in claim 42.

67 The court having done its best to understand the complexities, I would like to thank all counsel and Owen Rooney pro se for their efforts in this litigation leviathan, particularly Counsels Morgan and Prudhoe for marshalling the confusing worldwide battlefield and bringing accurate fire.

68 Finally, as a postscript to reading this ruling, on hearing limited argument after from attending counsel, the court rules Rooney can discontinue his myriad actions in his own name, as in his application dated 26.06.23, with no order as to costs, as his withdrawal in person makes no difference to the body of litigation, he has never claimed in his name alone, always with PEL, meaning there have been no evident separately incurred costs⁹¹.

The Hon. Mr. Justice Iain Morley KC

High Court Judge

9 August 2023

⁹¹ B1p351 para 68.

ANNEX A**PROVIDENCE ESTATE LIMITED****INDEX OF LEGAL PROCEEDINGS****Prepared by Counsel Prudhoe**

	Claim Number	Claimant	Defendant
1	2007/0028		
2	2007/0029		
3	2008/0022 Discontinued	Providence Estate Limited & Owen Rooney	Registrar of Lands, AG
4	MNIHCV 2012/0014 MNIHCVAP 2016/0012 JC64/21	Clifton Cassell	Providence Estate Limited & Owen Rooney
5	MNIHCV 2012/0015 MNIHCVAP 2016/0011 JCPC 2019/0088	Kenneth Allen QC, Khari Markham, Kathleen Allen- Fernand, Yvonne Weekes	Providence Estate Limited & Owen Rooney
6	MNIHCV 2012/0016 MNIHCVAP 2016/0010 JCPC 2019/0088	Alyn Krause, Gail Krause	Providence Estate Limited & Owen Rooney
7	MNIHCV 2012/0017 MNIHCVAP 2016/0008 JCPC 2019/0088	Phillip Brelsford	Providence Estate Limited & Owen Rooney
8	MNIHCV 2012/0019 MNIHCVAP 2016/0009 JCPC 2019/0088	Joel Osborne, Ingrid Osborne	Providence Estate Limited & Owen Rooney
9	MNIHCV 2012/0020 MNIHCV 2016/0012 JC64/21	Clifford West	Providence Estate Limited & Owen Rooney

10	MNIHCV 2012/0035	Clifton Cassell, Kenneth Allen QC, Khari Markham, Kathleen Allen- Fernand, Yvonne Weekes, Alyn Krause, Gail Krause, Phillip Brelsford, Joel Osborne, Ingrid Osborne, Clifford West (Consolidated)	Providence Estate Limited & Owen Rooney
11	2013/0012 Settled	Providence Estate Limited & Owen Rooney	
12	2013/0020	Providence Estate Limited & Owen Rooney	David S. Brandt
13	2013/0021	Providence Estate Limited & Owen Rooney	The Registrar of Lands
14	2013/0024	Providence Estate Limited & Owen Rooney	David S. Brandt
15	2013/0025	Providence Estate Limited & Owen Rooney	Joel Osborne, Ingrid Osborne, Warren Cassell, Meredith Lynch, Amelia Daley & David Brandt
16	2013/0026	Providence Estate Limited & Owen Rooney	Dion Weekes, Janine Weekes, Warren Cassell, Khari Markham, Registrar of Lands

17	2013/0027	Providence Estate Limited & Owen Rooney	David S. Brandt
18	2013/0028 Settled	Providence Estate Limited & Owen Rooney	Ina Farrell, Keith Farrell, Warren Cassell, Meredith Lynch
19	2013/0030 Struck out	Providence Estate Limited & Owen Rooney	Registrar of Lands, Registrar of Companies, AG, H.E. The Governor
20	56 of 2013 (JCPC)	Cassell and another	
21	2014/0002	Providence Estate Limited & Owen Rooney	Allen Krause, Gail Krause, Warren Cassell, David Brandt, Kenneth Cassell, Meredith Lynch, Violette Silcott, Amelia Daley
22	2014/0005	Providence Estate Limited & Owen Rooney	David S. Brandt
23	2014/0018		
24	2014/0019		
25	2017/0005	Providence Estate Limited & Owen Rooney	Clifton Cassell, Clifford West
26	2017/0014	Providence Estate Limited & Owen Rooney	Registrar of Lands, AG
27	2017/0015	Providence Estate Limited & Owen Rooney	Clifton Cassell, Warren Cassell, Cleo Cassell, Kenneth Allen and Khari Markham, Registrar of Lands, Registrar of Companies, Comm. Of

			Police, Comptroller of Inland Revenue, Financial Secretary, AG
28	2017/0017	Providence Estate Limited & Owen Rooney	Registrar of Lands
29	2017/0018	Providence Estate Limited & Owen Rooney	Howard Fergus, Joel Osborne, David Brandt, Amelia Daley, Violette Silcott, Registrar of Companies, Registrar of Lands, Warren Cassell, H.E. The Governor
30	2017/0019	Providence Estate Limited & Owen Rooney	Bank of Mont., Kenneth Allen, David Brandt, Kharl Markham, Warren Cassell, Dion Weekes, Amelia Daly, St. Patrick's Credit Union, AG, Reg. of Companies, REG. OF Lands, H.E. The Governor, Clifford West, David Hodd