CR 44/12 R v. FLOYD HALL

CR 40/12 R v. JEFFREY HALL

CR 37/12 R v. MELBOURNE WILSON

CR 38/12 R v. CLAYTON GREENE

IN THE SUPREME COURT OF

THE TURKS AND CAICOS ISLANDS

(CRIMINAL)

THE KING

V.

(1) FLOYD BASIL HALL

(2) JEFFREY CHRISTOVAL HALL

(3) MELBOURNE ARTHUR WILSON

(4) CLAYTON STANFIELD GREENE

CORAM: AGYEMANG CJ

FOR THE CROWN: MR ANDREW MITCHELL KC; WITH HIM MR. QUINN HAWKINS, MS KATHERINE DUNCAN, AND MS ENJALEEK DICKENSON

FOR THE FIRST DEFENDANT: MR. EARL WITTER KC, WITH HIM MR. KAYODE SMITH; INSTRUCTED BY MS. LEANNA BROOKS CAMPBELL

FOR THE SECOND DEFENDANT: MR. IAN WILKINSON KC, WITH HIM MS KIMONE TENNANT; INSTRUCTED BY MR. JAHMAL MISICK

FOR THE THIRD DEFENDANT: MR. ALAIR SHEPHERD KC, WITH HIM MR. JAMES SHEPHERD; INSTRUCTED BY MR. ARI COMERT

FOR THE FOURTH DEFENDANT: MR. RICHARD BENDALL, WITH HIM MS. KISHANTA HALL COMERT (AS BOTH JUNIOR AND INSTRUCTING COUNSEL)

SUBMISSIONS COMPLETED ON 16 JUNE 2023

JUDGMENT DELIVERED ON 25 SEPTEMBER 2023

JUDGMENT

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1) By reason of the unfortunate associations of delay and public expenditure with which this trial has been characterised for more than a decade in the life of this country, it must be recognised, that what should have been a trial within a reasonable time, of men arrested in 2010, 2011, and 2012, became what may only be described as a burden to them, and to the administration of justice in these islands. The end of these proceedings in these circumstances must be acknowledged with the gravity it deserves.
2) I could not begin this judgment without acknowledging the industry, tact, and resourcefulness of counsel on both sides, and the patience of the defendants who through trial and retrial, maintained their respect for the Court and upheld its dignity at all times, and in all circumstances.

3) In this judgment the background of accountability must be acknowledged. This includes the accountability of the Governor who sits in the Executive Council of the Turks and Caicos Islands (ExCo)/Cabinet and must bear responsibility for what he concurs with and orders, Ministers of the Crown who owe a fiduciary duty to the Crown and the country, and attorneys whose practice must be in accordance with the law. The fiduciary duty of Ministers to not put their personal gain above their public duty set out in a document described as ***Responsibilities and Procedures for the Executive Council and Government Business***[1] is also considered.

4) In the circumstances of economic prosperity within the grasp of the country, and heightened political activity spurred by promises made in politicians' manifesto to empower Turks and Caicos Islanders (Belongers), is the question of what may be considered acceptable conduct or may constitute inappropriate conduct that transcends the bounds of lawful activity for persons in public office, with attendant fiduciary duties.

5) This judgment in many ways concerns the administration of Crown land, a highly valued resource of the Crown which owns it.[2] It is administered by the Government of the Turks and Caicos Islands (TCIG), which participates in its sale for the benefit of the Belongers. Crown land administration during the period of this indictment, was governed by a policy which was little known or understood, even by persons entrusted with its administration. The lack of certainty opened the door for abuse in how it was accessed. The Crown Land Policy is central to three Counts charged in this Information; it is therefore important to provide a summary of its content.

6) In the Government's Gazette of 1 July 1994, the Government, stating its commitment to the development of the islands for the purpose of enhancing the living standards of the Belonger population, set out a Crown Land Policy. In this policy which made land available to Belongers for both residential and commercial development, it was provided among other things, that land would be made available on three-year leases to Belongers for large scale commercial

[1] CX4 para. 21

[2] s. 2 of Crown Land Ordinance CAP 9.08; also s. 2 of the Physical Planning Ordinance CAP 9.02.

development, being projects of not less than $5million. This would enable the lessee to apply for the freehold title on the expiry of the lease provided that the lessee had completed the development. It was provided that in exceptional circumstances government consideration would be given to the grant of freehold title in the form of an option to purchase. The freehold purchase price would be fifty percent (50%) of the undeveloped value of the site at the time the lease was executed. Where freehold title was granted, it would be subject to a charge in favour of the Crown. The discount would be a debt to the Crown. If the freehold interest was transferred to a non Belonger in the only possible circumstances of a licensed financial institution exercising its power of sale, the debt had to be repaid. With particular reference to commercial development, the policy was to dispose of land for commercial development by non-Belongers on terms that would provide security for the developer in a project that would benefit the islands and could not be provided by Belongers.

7) In 2004, what appeared to be changes to the Crown Land Policy, were introduced by Press Release on 1 April 2004. These included the provision that with regard to residential land, the Minister for Natural Resource rather than the Executive Council would grant approvals. ExCo would continue to approve CCPLs. Also, the lease must be executed within nine months, or it would lapse. It was also provided that no Crown land would be given for commercial purposes unless a Belonger had 51% in the entity to be given land. That the Belonger would pay no more than 50% of the Open Market Value of the land and a maximum of 25% the value per acre in the other islands except for Providenciales.
8) In 2005, the Policy was further revised. In this revision, a discount was to be allowed to Belongers only. It could not be transferred to non-Belongers. It was provided that no individual Belonger would be granted a discount for more than 10 acres; each Belonger would be eligible for one discount up to 50% of purchase price, up to 10 acres, except on Providenciales where the discount would be limited to 25%. If the land was sold within 5 years, the full discount would be repayable. If the land was sold between 5-10 years, half the discount was repayable. An

allowance was made for two or more Belongers to combine their ten-acre lots in order to participate in major tourism projects.

9) This was the process of acquisition: all Belongers twenty-one years old would qualify for a discount. Discounted lands would be on Conditional Purchase Lease (CPL) terms. Freehold title would be granted if the CPL terms were met by the specified deadline. If the terms were not met, the lessee would have to refund the discount to TCIG to obtain the freehold, or the land would revert to TCIG. All Crown land allocations were to be published in the Gazette to make the process open, transparent and accountable. A Crown Land Unit was to be established, and the Chief Valuation Officer's decision was made subject to the appeal process.

10) In 2007-2008, there was another revision. There were no major changes save for renumbering paragraphs and the slight amendment of a few provisions, including valuations.

11) The Crown Land Policy was plagued with problems in its outworking. These were highlighted in what was referred to as the Barthel Report of 2005. In that report, among other things, the following comments were made of the Policy: it was uncertain, it was inadequate to meet the needs of the system of land administration, it did not define what was meant by a Belonger-controlled entity which made it subject to abuse. In this regard, Tatum Fisher-Clerveaux who was Assistant Commissioner and later Deputy Commissioner of lands during the years 2006-2008 acknowledged that it was not well-known and even officials who dealt with Crown land did not always know of its content.

12) Because Crown land is disposed of by the Governor acting for the Crown and the Government of the Turks and Caicos Islands which administers the land for the Belongers, in the counts charging economic loss, all three are said to be victims.

Burden of Proof

13) I begin this judgment by setting out the duty of this court at the close of the trial, which is to determine whether on all the evidence (the Prosecution's as well as the defence, if any), the Prosecution has discharged its burden of proving the guilt of the defendants beyond a reasonable doubt. In these indictments, the court has regard to the fact that the burden on the Prosecution (to prove the guilt of each of

the defendants beyond a reasonable doubt), never shifted at any time, and it was not the duty of any of the defendants herein to prove their innocence.

14) On the standard of proof, I am guided by learning from the seminal judgments.

In ***Woolmington v DPP***[3] Viscount Sankey said:

"... the prosecution must prove the case beyond reasonable doubt. This statement cannot mean that in order to be acquitted the prisoner must "satisfy" the jury... If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner… the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained";

Also, in ***Miller v. Minister of Pensions***[4] where Denning J (as he then was) defining the standard of proof stated: *"That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of a doubt…If the evidence is so strong against a man as to leave only a remote possibility in his favour, which can be dismissed with the sentence 'of course it is possible, but not in the least probable,' the case is proved beyond reasonable doubt, but nothing short of that will suffice."*

15) After the conclusion of the case for the Prosecution, this court sitting as a tribunal of fact, found that a *prima facie* case had been made on all the counts. That *prima facie* case in this judge-alone trial, was that the Prosecution had made out a case which taken at its highest, could lead a reasonable tribunal to the conclusion that the crime charged was committed, and therefore there was a case to answer.

In ***Smith v R***[5]**,** Hamel-Smith JA said that *"The directions on the burden of proof and standard of proof could not be faulted; the judge cautioned the jury that* ***they had to consider all the evidence and, as the finders of fact, they would have to decide what evidence they were prepared to accept and then they had to be***

[3] [1935] UKHL 1
[4] (1947) 2 All E.R. 372
[5] [2020] TCACA 12 at para 26

satisfied to the extent that they felt sure that when they looked at all the evidence, they were prepared to accept, the appellant was guilty of the offence*. He cautioned them not to speculate and, if they were in doubt, they had to give the appellant the benefit of the doubt and acquit him."* [Emphasis mine] For guidance in the making of findings of fact on the totality of the evidence after the finding of a *prima facie* case, I have been assisted by the reasoning and learning in the persuasive judgment of the Supreme Court of Canada in ***R v. Proudlock,[6]:***

"…Such is not the situation when all the presumption of law does is to establish a prima facie case. The burden of proof does not shift. The accused does not have to "establish" a defence or an excuse; all he has to do is to raise a reasonable doubt…. it will be sufficient if, at the conclusion of the case on both sides, the trier of fact has a reasonable doubt."

Good Character

16) In this judgment, I have regard to the good character direction that must advise the consideration of the evidence in the assessment of the evidence of the defendants, as necessary. ***R v. Vye[7]***, provides guidance on the assessment of a defendant's credibility, as well as how it may view the likelihood that the defendant may be disposed to the commission of the crime charged. This extends even to assessing exculpatory statements made by the defendants to the police. I set out excerpts on the two limbs (credibility and propensity):

Limb 1 Credibility

"…it is now an established principle that where a defendant of good character has given evidence, it is no longer sufficient for the judge to comment on general terms. He is required to direct the jury about the relevance of good character to the credibility of the defendant …"

Limb 2 Propensity to Commit Crime

"We have come to the conclusion that the time has come to give some clear guidance to trial judges as to how they should approach this matter…our conclusion is that such a direction be given where a defendant is of good character."

[6] [1979] 1 S.C.R. 525
[7] [1993] 1 WLR 471

These matters will be taken into consideration as necessary.

The Defendants

17) The four defendants - First Defendant: Floyd Basil Hall (FBH) Second Defendant: Jefferey Hall (JCH), Third Defendant: Melbourne Arthur Wilson (MAW) and Fourth Defendant: Clayton Stanfield Greene (CSG) were arraigned on five Counts of offences to which they all pleaded not guilty.

18) The said counts are:

Count 1- **Conspiracy to Defraud**

Count 2 - **Conspiracy to Defraud**

Count 3 – **Bribery**

Count 4 - **Conspiracy to Defraud**

Count 5 - **Concealing or Disguising the Proceeds of Criminal Conduct contrary to section 30 (2)(a) of the Proceeds of Crime Ordinance 1998**

I will deal with the counts *seriatim*.

COUNT 1 - CONSPIRACY TO DEFRAUD

19) PARTICULARS OF OFFENCE: *FLOYD BASIL HALL between the 1st day of August 2003 and the 31st day of December 2008, conspired together with Michael Eugene Misick and McAllister Eugene Hanchell to defraud the Crown, the Government of the Turks and Caicos Islands and/or the Belongers, by arranging the transfer of Crown Land at Water Cay on terms that were contrary to the economic interests of the Crown, the said Government of the Turks and Caicos Islands and/or the said Belongers*.

Case Summary

20) In Count 1, the Crown alleges that Floyd Basil Hall (FBH), a Deputy Chief Minister in 2004, and a member of the Executive Council (ExCo), agreed with two of his colleagues: Michael Misick and McAllister Hanchell (unindicted alleged co-conspirators) to carry out the unlawful purpose of 'arranging' to sell Crown land to an Aulden Smith (also, Smith) at Water Cay at an undervalue, to facilitate a resale which would provide Smith with a windfall in which they shared, while

depriving the Crown/TCIG and/or Belongers of their due in the sale of Crown land, an injury to their economic interest.

The Prosecution's Case

21) The evidence led in support of the charge by the Prosecution, is that on 25 November 2002, Smith applied for a Conditional Commercial Purchase Lease (CCPL) of three acres of land on Plot Number 61203/37PT, at Water Cay. He filled out an application form [8]on which he stated that he intended to use it for a commercial venture – building six cottages (25 x25) which he was going to finance from private funds.

22) On 28 January 2003, the Clerk to ExCo informed the Permanent Secretary/ Natural Resources that ExCo had among other things, rescinded its decision to grant the CCPL which Smith had applied for, but had granted approval of an offer of freehold title to five acres of land at the price of $150,000 per acre to him, with no Belonger discount, for the purpose of constructing a commercial venture. This was said to be the result of a decision of ExCo to sell the land outright, granting freehold title to applicants for land at Water Cay at $150,000 per acre, without the benefit of a Belonger discount. In that communication the same treatment was meted out to a Trevor Saunders.

23) In response to his application, Aulden Smith, received a letter of 18 February 2003 [9]under the hand of Terry N. Smith, Permanent Secretary/Natural Resources, informing him that ExCo had approved for him, the grant of a freehold title to five acres on Parcel Number 61203/37, at a price of $150,000 per acre without the Belonger discount. He was also advised to pay survey fees of $1,500 and to signify his acceptance of the offer of the freehold title, by signing the attached copy of the letter and returning it to the Ministry of Natural Resources at Grand Turk.

[8] CX 139
[9](CX 138

24) Smith did sign the attachment signifying acceptance on 14 March 2003[10], and proceeded to make payment of the survey fees, which he did in two instalments. He took no further steps.

25) In an internal memorandum of 27 November 2003, the Assistant Director of Lands and Surveys informed the Registrar of Lands, that pursuant to the approval by ExCo, and following a survey and the subsequent registration of the land, the five-acre Parcel 61203/39, was assigned to Aulden Smith.

26) In that same communication, the other gentleman Trevor Saunders was assigned Parcel 61203/38.

27) On 28 June 2004, by a nominee agreement, a company Apollo Management Consultants Limited was *inter alia*, nominated to hold a subscriber share in a company named Ashley Properties Ltd (Ashley Properties) for the benefit of Aulden Smith.

28) On 30 June 2004, per a letter, signed on behalf of the said Apollo Management Consultants, a request was made of the Board of Directors of Ashley Properties for one ordinary share in that company to issue.

29) On 15 September 2004, Ervine Quelch wrote to Carlos Simons. He sent to him a share certificate in the name of Appollo Management Consultants Ltd., for Aulden Smith for safekeeping.

30) Antecedent to these happenings, was the formation of the company Ashley Properties. Pieces of evidence in this regard, are that on 28 June 2004, an unexecuted Corporate Services Agreement form,[11] was filled out. An entry on that form, indicated that FBH was the "Beneficial Owner" of the company known as 'Ashley Properties Ltd' a name that was written over the name 'High Octane Products' which had been crossed out. The same appeared on another undated document headed "Application for the Formation of a Turks and Caicos Company". FBH was stated on it to be its beneficial owner, and the person to whom correspondence was to be sent. On that document was written by hand what has been deciphered to read: *"File Note: Do application to take over. FB don't want*

[10] 2003 (CX 138a1D)
[11] CX498

Co anymore will allow Smokey to use to take title to property obtained from previous Administration – owes FBH Normal fees and discount will not apply."

31) In another document headed Client Information Sheet, the name of Ashley Properties was provided as the client's name and the date of its formation, as 28 June 2004. There was on its face, a note written by hand, which has been deciphered as:

"Floyd advised if ok to pass on to Smokey. EQ Due diligence material?? Hold land-cruise and others got from Govt. Owes Floyd money. One way to get paid back – Likely to be developed. Bring identification documents in due course."

32) It was not clear from the evidence whether the company used by Smith to take the land from the Government was the existing company belonging to FBH which was used by Aulden Smith, or a new company formed for Aulden Smith, for, in the minutes of the nominee agreement appointing Apollo Management Consultants, the company Ashley Properties was apparently formed for Aulden Smith for whom they held the subscriber share and the additional share issued two days later.

33) The share issued two days later was sent to Carlos Simons Esq., for safe keeping on 15 September 2004. Nonetheless, on 23 March 2005, FBH who was paying bills for some companies, paid $1,475 for Ashley Properties upon a cheque for the global sum of $3175, made out to Morris Cottingham Corporate Services.

34) On 4 July 2004, Aulden Smith wrote to the Chief Minister under the heading: *"Re: Aulden Smith - Parcel #61203PT Water Cay Subdivision."*. He informed the Chief Minister that the said piece of land was offered to him in his personal capacity, but that he now wished to use a company he had incorporated: Ashley Properties Limited, as a holding entity for the purchase. He made a request for ExCo to amend its offer of 18 February 2003 to him, and to grant the parcel of land to Ashley Properties on the same terms and conditions as the offer made to him personally.

35) The reason for the request was that he had had challenges in his efforts to secure funding for the acquisition, and now wished to involve partners in the acquisition and development of the property.

36) On 4 August 2004, the Chief Minister introduced Smith's request to ExCo by Oral Mention. The persons present included FBH. After considering the request, ExCo

recommended approval, which the Governor concurred in, and ordered accordingly.

37) For an unexplained reason, ExCo's approval was not communicated to Smith until 2nd December 2005, when by a letter under the hand of Alice Williams, Commissioner for Lands to Ashley Properties Ltd, addressed to be in the care of Ervine Quelch of Grand Turk, that company was informed of ExCo's 4 August 2004 decision to grant to it freehold title in Parcel 61203/37 (described after survey as 61203/39).

The land was described as, a five-acre lot, and was offered for the price of: $150,000 per acre. Ashley Properties was required to pay a registration fee of $10.

38) On 1 December 2005, Ashley Properties entered into a loan agreement with Secured Lending Ltd (Secured Lending), to secure a loan of $100,000. Secured Lending was a company owned by a Peter Wehrli who also owned a development company Aquarius Ltd. Rather incongruously, Ashley Properties' resolution to obtain the loan was passed by the company on 6 December 2005.

39) Aulden Smith took $95,000 out of this loan of $100,000, for himself and sent the balance of $5,000 to be disbursed by two cheques: $4,500 to the credit of FBH and $500 to the credit of Ervine Quelch.

40) It was later referenced in a letter by Ariel Misick (now KC) of Misick & Stanbrook to Ashley Properties, that the loan transaction apparently entitled Aquarius Ltd to a first offer of the land allocated to Ashley Properties once it was purchased.

41) On 9 March 2006, Norman Saunders, attorney for Trevor Saunders sent a sale/purchase agreement to Ariel Misick (now KC) for the sale of his land 61203/38. The price of the sale was $2,250,000.

42) About 19 to 27 January 2006, pending the transfer of the freehold title in the land, Ashley Properties entered into negotiations with a company: Sextant Business Consultants, for the sale of the land described as 61203/39 at the price of $2,700,000.

43) On 3 April 2006, the Governor, acting for the Crown and the Government of the Turks and Caicos Islands (TCIG), transferred the land to Ashley Properties which transfer was registered on 5 April 2006.

44) On 10 April 2006, the negotiations for the sale to Sextant Business Consultants having apparently encountered difficulties, Ashley Properties sold the land (61203/39 at Water Cay) of which it had become the registered owner free from any encumbrance, to Aquarius Ltd for $2,250,000. As aforesaid, the principal of Aquarius Limited was Peter Wehrli of Secured Lending from which Ashley Properties had borrowed $100,000. Not surprisingly therefore, the loan of $100,000 was deducted from the sale price of $2,250,000; so was the purchase price of $750,000, along with stamp duty of $73,125, Registration Fees of $10, and copy of Register fee of $3.50.

45) After all the disbursements, Ashley Properties received the sum of $1,324.361.50 as proceeds of the land sale.

46) On 19 April 2006, Aulden Smith wrote to Ervine Quelch of Morris Cottingham Corporate Services, directing him to transfer the sum of $1,247,211.50 out of the sale proceeds of $1,324.361.50, to Scotiabank account number 73099 in the name of 'Stanfield Greene'. The said sum was described as the balance of the sale proceeds, less agreed negotiation fees, and disbursements.

47) The next day: 20 April 2006, Aulden Smith wrote to Clayton Stanfield Greene (CSG), the principal of Stanfield Greene Attorneys, instructing him to make some disbursements which included the following: the transfer of $267,*850 "to the order of your client as repayment of a loan"* and a transfer of $325,000 to Chalmers & Co., with the balance of $654,361.50 being held to Aulden Smith's order.

48) The person described as the "client" (of Stanfield Greene Attorneys), in Aulden Smith's instructions, turned out to be FBH for whom the sum of $267,850 was credited on the 20 April 2006 and in a ledger of the law firm, in the name of 'John Doezer' and described as a payment of a loan. 'John Doezer' has been admitted to be a fictitious name for FBH in the ledger of Stanfield Greene Attorneys.

49) The $325,000 to be sent to Chalmers & Co. was rather sent by cheque to the order of Belize Bank, without reference to any particular account. The bank credited it to the account of then Chief Minister Michael Misick and a Vanessa Hutchinson.

50) It is the case of the Prosecution that FBH and the unindicted alleged co-conspirators (Michael Misick (MM) and McAllister Hanchell (McH)) knew that

there was a developer willing to pay so much for the land. With that knowledge, they "arranged" the sale by Government to Aulden Smith at an undervalue.

The purpose, they allege, was to enable him to sell the land and make a profit. When it was so done, Aulden Smith shared the windfall he received from the resale with FBH and MM.

The plan to do this was said to be in breach of the fiduciary duty of Ministers of the Crown to seek the best for the Crown in a sale of Crown land. That duty it was said, was to not involve themselves in any transaction that would put their personal gain above their public duty, as provided in the document titled: ***Responsibilities and Procedures for the Executive Council and Government Business***[12]**.** FBH's alleged act, and the benefit he gained was therefore pursuant to this allegedly unlawful arrangement which allegedly deprived the Crown/TCIG and/or Belongers of their due (the best price) in the sale of Crown land.

FBH

51) FBH, who pleaded not guilty to the charge of Conspiracy to Defraud, has given evidence in his defence, denying wrongdoing in the sale of land to Aulden Smith which he resold, and from which he received money. The substance of his evidence is that while the money given to him came out of the proceeds of Aulden Smith's sale of land, it was not connected to the sale, but to a longstanding relationship in which he extended a helping hand to Aulden Smith, including unpaid loans over many years.

52) It is his evidence that he and Aulden Smith had been very close friends from youth, having struck up a friendship when they were boys living at Overback in Grand Turk. Thus, when in adult years, Smith was struggling in his business, FBH provided him with assistance in the form of professional services such as business plans, business documents, and financial work requisite for commercial undertakings. This assistance which went on for years, was rendered free of charge, as Smith was not in a position to pay him for such services. He testified that they carried on this way for many years, during which FBH also loaned him funds,

[12] CX4

possibly in the region of $60,000. The understanding was that whenever he could afford to repay FBH, Smith would do so.

53) It was pursuant to this relationship, FBH alleges, that Aulden Smith asked him to assist him to get a partner to develop his property on Water Cay. He advised him to incorporate a company for the purpose, as he believed it to be the easiest route to getting a partner and capital for his development and would also provide a liability cover for any project he might want to undertake. He then sent him on to Ervine Quelch of Morris Cottingham Corporate Services, for assistance in this regard.

54) To assist with the corporate vehicle, FBH gave permission for a company he had incorporated: Ashley Properties Ltd, to be used by Smith for his purpose, which was to get a partner and access to capital to assist in the development. He also (to allay the fears of Ervine Quelch regarding payment of corporate fees), undertook to pay fees for the company Ashley Properties, which he began to pay periodically. Specifically, in March 2005, Smith allegedly told him he could not afford to pay an amount of $1475 which represented two invoices from Morris Cottingham and asked for assistance. FBH agreed to settle the bill, expecting to be paid whenever Smith was in funds.

55) FBH has denied being the author of the incorporation document that named him beneficial owner of Ashley Properties[13] pointing out that he never signed it. He asserts also that he had not seen Smith's letter of 4 July 2004 to the Chief Minister, before these matters came up at the trial. He admits that he was at ExCo when Smith's request to take his allocation by the company Ashley Properties was introduced by the Chief Minister and discussed on 4 August 2004. However, he could not say why there was such delay between ExCo's approval and the communication of it to Ashley Properties. It was his opinion that it may have been due to the well-known bureaucratic inefficiency of the time.

56) FBH asserts that Smith never told him that he was going to sell the land. Thus, his information was always that Smith was in search of a partner to develop the land, the purpose for which the company Ashley Properties had been incorporated.

[13] , (CX 498)

Smith's subsequent plans to sell the land and his negotiations in that regard, were therefore unknown to him.

57) Regarding the $4500 he received from the $100,000 loan which turned out to be part of the sale, he alleges that Ervine Quelch informed him that Aulden Smith had sent $5000 in payment of his corporate expenses. These, having been paid by FBH, FBH told Ervine Quelch to deduct the $500 which he owed to him, and to pay the balance of $4,500 to him. He had no idea that the sum came from a loan contracted by Aulden Smith. Sometime after this, Smith having sold the land, FBH received money out of the sale proceeds.

58) FBH recounts what he knew of the sale in these words: *"I think it was sometime shortly after Aulden Smith had sold the property to I think Peter Wehrli, he contacted me to indicate that he had a payment for me in respect of the funds I had loaned him, and payment in respect of the corporate work I provided to him, and for all the assistance I provided him over the years, he was making a gift to me and he had arranged for that to be paid to Stanfield Greene"*.

59) Later he was notified by both Ervine Quelch and Clayton Greene of the money that was to be given him: the sum of $267,850 which he received. After the sale, Ervine Quelch petitioned the Permanent Secretary of Finance on behalf of Aulden Smith for a refund of stamp duty paid in excess, he (FBH) after a discussion with the Permanent Secretary Heartly Coalbrooke, refused the request.

Discussion

60) It is to be noted that the charge against FBH on this count is a conspiracy to defraud the Crown/TCIG and/or Belongers by arranging the transfer of land in a manner that adversely affected the economic interests of the Crown/TCIG and Belongers.

61) In this regard, the Prosecution alleges that FBH, who owed a fiduciary duty to the Crown, entered into an agreement with Michael Misick and McAllister Hanchell, also Ministers of the Crown, to dishonestly arrange for the Government to sell Crown land to Aulden Smith at an undervalue, which land Aulden Smith would resell for so much more than the purchase price, leading to profit from which they would benefit, an unlawful venture. The shared objective of the agreement was to

deprive the Crown/TCIG and Belongers of their due in the land sold to Aulden Smith.

62) At the close of the case, this court sitting as a judge alone, must be sure from the evidence led that FBH is guilty of the charge of Conspiracy to Defraud.

In the consideration of the evidence in relation of the burden of proof, I have regard to the following elements of the crime of conspiracy to defraud:

1. **Agreement**:

In **Glanville Williams & Dennis Baker Treatise of Criminal Law** an exposition on what constitutes a conspiracy is set out in these terms:

*"**There must be a common agreement to which all of the alleged conspirators are privy**. Any agreement to commit the crime, communicated to the other party or parties, constitutes a conspiracy.*

***The essence of criminal conspiracy is the agreement. The focus has to be on the agreement, not merely on the fact that there was more than one offender.** The fact that there were two or more offenders is totally irrelevant, unless those offenders shared a criminal goal which they mutually intended to bring about. One cannot recklessly join a conspiracy; that is why the mental element for conspiracy requires the parties to intend to agree and intend that the agreement be carried out".*

In ***Scott v Metropolitan Police Commissioner [1975] AC 819*** Viscount Dilhorne provided the locus classicus for the crime of Conspiracy to Defraud:

"[I]t is clearly the law that an agreement by two or more by dishonesty to deprive a person of something which is his or to which he would or might be entitled [or] an agreement by two or more by dishonesty to injure some proprietary right of his, suffices to constitute the offence of conspiracy to defraud."

Lord Griffiths also, in ***Yip Chui-Cheung v. R***[14] *stated: "The crime of conspiracy requires an agreement between" two or more persons to commit an unlawful act with the intention of carrying it out…".*

2. **Unlawfulness:**

In ***Tarling (No.1) v. Government of the Republic of Singapore and Others***[15]

[14] [1994] 99 Cr. App. 406 at 410

[15] (1980) 70 Cr. App. R 77

"…The case of conspiracy is an agreement to perform an unlawful act. ***The evidence of agreement must be precise, and it must be clear that the act agreed to be done is unlawful in some specific respect****…"* per Lord Keith of Kinkel. [emphasis, mine]

3. **Dishonesty: R v Barton[16]:** The degree and standard of the dishonesty required to be proved is contained in the dictum of the Lord Chief Justice in R v. Barton [2020] EWCA Crim 575 at 121 **"***We endorse the explanation given in the Crown Court by Hickinbottom J in R v Evans (Eric) and others [2014] 1 WLR 2817 at [38] and following, that there must be a dishonest agreement which includes unlawfulness, either as to the object of the agreement or the means by which it will be carried out. It is not necessary to prove an intent to deceive or an intent to cause economic or financial loss to the victim or victims, but instead either a proprietary right or interest of the potential victim must be injured (or potentially injured). As it was put in R v H [2015] EWCA Crim 46 at [31], the defendant must act with an intention to prejudice another's rights. The agreement need not necessarily include the commission of a substantive offence if carried out"*

4. **The Standard - Barton and Anor v. R [17]** *"… the test of dishonesty formulated in Ivey remains a test of the defendant's state of mind – his or her knowledge or belief – to which the standards of ordinary decent people are applied. This results in dishonesty being assessed by reference to society's standards rather than the defendant's understanding of those standards."*

5. **Proprietary Loss -** Per Lord Diplock in ***Scott v. Metropolitan Police Commissioner*** *"Where the intended victim of a "conspiracy to defraud" is a private individual the* ***purpose of the conspirators must be to cause the victim economic loss by depriving him of some property or right corporeal or incorporeal to which he is or would or might become entitled****. The intended means by which this is to be achieved must be dishonest…Dishonesty of any kind is enough."* [my emphasis]

63) There had to be proven a dishonest intent regardless of whether what was agreed to be done was actually carried out. The test of dishonesty is whether an ordinary

[16] [2020] EWCA Crim 575
[17] 2020 EWCA Crim 575

and honest person, believing the same facts as the defendant, would consider the defendant dishonest in the activity under question. The agreement that FBH allegedly participated in with the unindicted alleged co-conspirators had to be precise, and unlawful in a specific way, see: ***Tarling v. Government of Singapore***[18]**.** The proof of the present charge would commence with an "arrangement" of the sale of land at an undervalue.

64) Thus, in the proof of this charge of Conspiracy to Defraud against FBH, the Prosecution must prove beyond a reasonable doubt, that in the sale of land by the Crown/TCIG to Ashley Properties:

a. there was an agreement by FBH and his alleged co-conspirators to arrange the sale of Crown land by the Government to Aulden Smith which he would resell.
b. the sale of Crown land to Aulden Smith would be conducted in a manner that it would be sold for less than it was worth, in order that its resale would yield a profit.
c. that they intended to prejudice the Crown/TCIG Belongers' proprietary right (economic interest in the sale of Crown land at Water Cay) in the way the transaction in question was carried out.

65) No direct evidence was led of the agreement between FBH and the unindicted alleged co-conspirators, necessary in the proof of the charge. The Prosecution therefore led circumstantial evidence from which the court could infer such an agreement, a dishonest one, of which FBH was a part, to carry out the unlawful purpose of arranging the sale of land to Aulden Smith with intent to injure the economic interest of the owners of Crown land.

66) In this regard, the Prosecution were required to lead evidence to show that:

a. the alleged co-conspirators must have had an understanding that Aulden Smith did not intend to develop the land but would sell it, and further,
b. the land was undervalued, and they knew it to be so.
c. the determination of the price of the land must have been within the control or influence of the alleged co-conspirators.

[18] (1978) 70 Cr App R 77 176

67) All these could be established by circumstantial evidence which, taken together would lead to the conclusion that FBH was guilty of the offence of Conspiracy to Defraud, see: the example of a three-corded rope by Pollock CB in **R v. Exall**[19]:

"It has been said that circumstantial evidence is to be considered as a chain and each piece of evidence as a link in the chain, but that is not so…It is more like the case of a rope comprised of several cords. One strand of the cord might be insufficient to sustain the weight but three stranded together may be quite of sufficient strength. Thus, it may be in circumstantial evidence, that there may be a combination of circumstances no one of which would raise a reasonable conviction or more than a mere suspicion, but the three taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of."

Lord Simon in ***DPP v Kilbourne***[20]describing how circumstantial evidence in the evaluation of evidence, stated that it *'works by cumulatively, in geometrical progression, eliminating other possibilities.'*

68) I therefore look to the actions of FBH and the alleged but unindicted co-conspirators: MacAllister Hanchell and Michael Misick in the entire sale transaction by Ashley Properties to Aquarius Ltd, and FBH's own evidence. It is from these that the court may reach a conclusion (or otherwise), that there was the required dishonest agreement with intent to cause loss to the Crown/TCIG and Belongers.

The Agreement

69) It must be noted that there does not appear to be evidence of McAllister Hanchell's conduct from which may be inferred his participation in an agreement to use dishonest means to arrange the sale of Crown land to Aulden Smith at all. There was no evidence of any role he played beyond participating in the deliberations at ExCo, which as a member of ExCo, was his duty.

[19] R v Exall (1866) 4 F & F 922 at 929
[20] [1973] AC 729

70) There is no evidence that he knew anything besides what ExCo had been informed about Smith's desire to take the land through a company, in order to aid its acquisition and development.

71) There was also no proof that he knew that Aulden Smith would sell the land and at what price. Nor, was there any evidence that he worked with, or carried out any activity in concert with FBH or Michael Misick. Thus, there is no evidence from which his participation in an agreement to bring about the sale of the land at an alleged undervalue to Ashley Properties for the purpose of its resale by Aulden Smith, with the intent to cause economic loss to the Crown/TCIG and/or Belongers, may be inferred.

72) Regarding Michael Misick, the evidence was that having been importuned by Aulden Smith in a letter of 4 July 2004 he placed Aulden Smith's request before ExCo for a decision to be made. The request related to the offer of freehold title made to Aulden Smith by ExCo on 18 February 2003 in respect of Parcel 61203/39, at Providenciales. The offer was made by ExCo differently constituted by the People's Democratic Movement (PDM) Government which left office in late 2003. Aulden Smith wished for ExCo - now constituted by the Government of the Progressive National Party (PNP) - to amend the offer, which was made to him personally, by making the same offer to a company (Ashley Properties) he had incorporated to hold the land. The reason Smith gave for making the said request was that he had had difficulty in finding the funds to purchase the land offered. Therefore, he now wished to get a partner to help him raise funds to acquire and develop the land.

73) ExCo, having considered the request, gave its approval for the offer of freehold title to 61203/39 which had been made to and accepted by Smith a year before, to be now made to his company Ashley Properties Ltd, on the same terms including the price of the land.

74) The minutes of the ExCo meeting before the court do not include the deliberations of ExCo. There is therefore no evidence of any notable role played by FBH, Michael Misick, and McAllister Hanchell who were present, beyond participation in the work of ExCo, which may lead to the inference that they championed the

case of Aulden Smith, for the Government to continue with the Aulden Smith contract, with a new offeree: Ashley Properties Ltd.

75) The evidence led shows therefore that the decision to continue with the contract with Aulden Smith through his company Ashley Properties, was ExCo's, with which the Governor concurred, and upon which he made an order approving the request. While the matters that informed their decision is not apparent from the minutes of ExCo, the evidence of Ariel Misick KC, giving evidence for the Prosecution, was that the purchase of land through a company was a phenomenon well known and accepted in these islands, commonplace, and done for many reasons including, the inclusion of partners for the purpose of development. Mr. Misick KC was a credible witness on whose evidence I place much credit.

76) It must be recalled that Aulden Smith's letter of 4 July 2004 to the Chief Minister had indicated that he wished for partners to acquire and develop the land. Thus, ExCo's decision - as concurred in by the Governor and ordered accordingly - continued the contractual relationship which began with the acceptance of ExCo's offer by Smith on 14 March 2003, in accordance with established practice of supporting the development of land by a Belonger by permitting him to complete the purchase of the land through a corporate vehicle.

77) The Prosecution, echoing the words of then Senior Crown Counsel Rhondalee Braithwaite Knowles (RBK) and H/E Richard Tauwhare, former Governor of these islands postulates *that "If the Crown and TCIG became aware of the process by which ministers involved themselves in a Crown land transaction for personal gain with the Belonger purchaser not intending to develop the land as per the original conditions the TCIG would have been able to stop the transaction".*

78) This statement presumes that the alleged conspirators, all Ministers, knew that Aulden Smith did not intend to develop the land at the time his request was granted by ExCo. However, that supposition is no more than that, for the evidence before the court is that in Aulden Smith's letter of 4 July 2004 to the Chief Minister by which he made his request to ExCo, he was clear that he intended to develop the land and needed partners. There was no evidence from which an inference may be

drawn that even as they participated in ExCo's deliberations they had different information and knew otherwise - that Aulden Smith intended to sell.

79) There is no denying that the legal effect of Aulden Smith introducing Ashley Properties as a new party in place of himself to the agreement for the sale of land between himself and the Government, represented a novation in their contract for the sale/purchase of the land. A novation entitled the other party (the Government) to a rescission of the contract (as novation could release the original parties from further performance of the original contract), see: ***Scarf v Jardine***[21]**.** ExCo however, as it was entitled to do, elected to continue with the contract, on the same terms as the offer to Aulden Smith in February 2003, substituting the new party Ashley Properties.

80) The price of the freehold had been communicated to Aulden Smith on 18 February 2003 by the Permanent Secretary, Natural Resources. Aulden Smith had accepted the offer of the freehold on 14 March 2003 at the said communicated purchase price. That contract for the sale of land which came into being at that point, which he supported with part-performance by paying survey fees, is what was continued with Ashley Properties at the request of Aulden Smith, and the election of ExCo.

81) It is doubtful that ExCo, having elected to continue with the contract, could have changed the purchase price, unless it wished to vary the contract which carried other consequences, and was clearly not its intent in continuing Aulden Smith's contract with a different party. Thus, there does not appear to be anything untoward about its decision to offer the land to Ashley Properties on the same terms which included the purchase price of $150,000 per acre.

82) Thus, there is no evidence that the land was sold to Ashley properties at an undervalue, for the sale to Ashley Properties on the same terms to Aulden Smith at the contractual price which was communicated to him was not demonstrated to have been for less than it was worth. On the contrary, the documentary evidence is that ExCo, wanting to reap its highest benefit from the land, in considering Aulden Smith's application for a CCPL for three acres of land, decided rather to transfer the freehold in five acres of Crown land to Smith at the price of $150,000 per acre.

[21] [1882] 7 AC 345

The offer stated that he would not be allowed the Belonger discount which he would have been entitled to receive under the extant Crown Land Policy of 1994.

83) There is no evidence also, that FBH or any of the unindicted alleged co-conspirators had the knowledge that when ExCo granted the request to offer the freehold to Ashley properties, Aulden Smith intended to sell the land.

84) There was evidence before the court that ExCo's act of approving the re-offer to Ashley Properties did not aid, facilitate, or enable the resale of the land by Aulden Smith. Indeed, the evidence is that land contiguous to Aulden Smith's, which was allocated at the same time to a Trevor Saunders, was sold by that gentleman for the same sum of $2,250,000 to the same company Aquarius Ltd. And that sale on those same terms was not through a corporate vehicle.

85) There was therefore no reason why Aulden Smith in the year following the acceptance of the offer of the freehold and his part-performance, could not have completed that contract that came into being by tendering the purchase price, and then like his fellow allocatee and neighbour Trevor Saunders, sell it, as the latter did, if his intention was to sell it.

86) Carlos Simons J (as he then was) giving evidence for the Prosecution, asserted firmly, that it was not necessary to incur the cost of incorporating a company to take land, if all one wanted to do was to sell, as an individual could sell land (as Trevor Saunders did, for as much money). Ariel Misick KC testified that purchasing property through the use of a corporate vehicle was a well-known phenomenon with many advantages, and that it was one for many reasons chief among which is, getting partners for development.

87) These pieces of evidence from witnesses on whose evidence the court will place much credit, gives Aulden Smith's request a ring of truth: that when he engaged with The Chief Minister for an offer to Ashley Properties, he did intend to develop the land that had been offered to him as an individual, with partners. There would therefore have been no reason for ExCo to doubt his intentions, a matter that makes the allegation that FBH and the alleged unindicted co-conspirators knew that he was going to sell the land, improbable. Going by the evidence of Carlos Simons J and Ariel Misick KC, both witnesses of truth, the use of a corporate vehicle to

acquire land was to attract partners for development. The said evidence made it improbable that FBH knew that the land was to be sold, for after all, he gave to Aulden Smith the corporate vehicle that would have enabled him to get partners for development but would not add value in a sale.

88) Since the knowledge by FBH and the other alleged conspirators that Smith was going to sell the land was not proven, I am bound to say that they could not have known that there was another willing to pay so much more for it than what it was sold for, and that Aulden Smith was going to sell to that person or entity.

89) The use of Ashley Properties was the only thing connected to FBH which was relevant in the re-offer by ExCo, and eventual sale of the land to Aulden Smith. Yet there is no gainsaying that without a demonstration that the use of a company would be a vehicle to give Aulden Smith an advantage he would not have got otherwise, to enable him to sell, it possesses little significance in the proof of the crime charged in Count 1 which alleges that the sale of the land at Water Cay was "arranged" by FBH and his alleged unindicted co-conspirators "on terms that were contrary to the economic interests of the Crown, the said Government of the Turks and Caicos Islands and/or the said Belongers."

90) It appears that there was an absence of cogent evidence from which an agreement to arrange the sale of land to Aulden Smith to achieve the unlawful objective of injuring the economic interest of the owners of the land in its sale could be inferred. Thus, the Prosecution turned its energies to finding the required agreement in the alleged conspiracy in the manner in which the proceeds of the sale were distributed.

91) At the close of the case for the Prosecution, it was observed, in the ruling on his no-case submission, that if FBH, a Minister of the Crown knew that he would profit from the resale of what was sold to Aulden Smith for a commercial development to empower Belongers, even as recipient of money he was owed by Aulden Smith, he would be complicit in what was questionable activity.

92) At the close of the evidence, the duty of the court as a tribunal of fact, is to look at all the evidence and be sure, that the Prosecution has proven the guilt of the defendant FBH beyond a reasonable doubt.

93) In the performance of this duty, I will be guided by learning from the learned authors of Archbold cited by Baker J in ***R v. Barking and Dagenham Justices ex Parte Director of Public Prosecutions [1994] Lexis Citation 2485*** which took guidance from the summary jurisdiction of magistrates as judges of law and fact, to submit the following, that *"…even where at the close of the Prosecution's case,* ***or later,*** *there is some evidence which if accepted, would entitle a reasonable tribunal to convict, they nevertheless have the same right as a jury to acquit if they do not accept the evidence, whether because it is conflicting, or has been contradicted, or for any other reason."* [emphasis supplied]

Also, Per Hamel-Smith JA ***Smith v. R [2020] TCACA 12***:

"The directions on burden of proof and standard of proof could not be faulted; the judge cautioned the jury that they had to consider all the evidence and, as the finders of fact, they would have to decide what evidence they were prepared to accept and then they had to be satisfied to the extent that they felt sure that when they looked at all the evidence they were prepare to accept the appellant was guilty of the offence…"

94) FBH's evidence related to two matters: that he did not know that Aulden Smith had decided to sell the land, and also, it was after the sale that Aulden Smith informed him of it, and of the money he had sent to him through Stanfield Greene Attorneys. That FBH had no knowledge that at the time he assisted Aulden Smith with the company he had an intention to sell the land he was purchasing from the Government, is believable, and supported by the evidence of credible Prosecution witnesses on the advantage in using a corporate vehicle to purchase land. It is very believable that FBH would not have gone to the trouble of assisting Smith to incorporate a company, which had value only if he was going to develop the land, but not if he was going to sell it, if he had known that the land was to be sold by Smith.

95) I also find his explanation for why Smith would send him so much money, believable, and reasonably probable, in the light of corroborative pieces of evidence by Simons J and CSG (co-accused): both witnesses testified that FBH performed many acts of generosity to Smith a businessman (restaurateur) who was

sometimes in financial peril. Smith was said to have acknowledged to persons that he was beholden to FBH who had "been there" for him. Smith himself was described as an engaging character, larger than life, and very generous when he had the means.

96) Evidence was also adduced of financial transactions among friends in these islands, which also gave credence to FBH's description of the relationship he had with Aulden Smith, which included his giving of many undocumented loans to him. The evidence was that loans were often contracted upon a handshake, with no date of repayment spelt out, but with an understanding that it would be repaid at some point when the recipient was in funds. In this regard, CSG (co-accused) gave unrelated evidence of a loan of $25,000 he received from his former senior in chambers: Clive Stanbrook, upon a handshake which was repaid three years later.

97) In these circumstances, FBH's evidence that he gave loans to Aulden Smith without documentation was not improbable. Nor, was it improbable that when Aulden Smith had the means, he would lump the various undocumented loans and include a gift from his windfall to a friend who had seen him through difficult financial circumstances.

98) These matters: evidence of FBH's close relationship with Aulden Smith (acknowledged at Smith's funeral); his generosity to Aulden Smith over many years (acknowledged by Simons J and the fourth defendant); Smith's own generous nature attested to by Simons J; the evidence that FBH's acts of kindness and generosity were provided upon trust and were undocumented, and the culture of undocumented loans among friends, are corroborative of, and give credence to the evidence of FBH that the $267,850 Smith gave to FBH through CSG, were funds in the nature of the repayment of many loans and a gift for FBH, and not a payout for "assisting" Smith in the lawful activity of "flipping".

99) But even in the absence of an explanation by FBH regarding the money, the Prosecution failed to adduce evidence to tie FBH (who assisted Smith with the corporate vehicle for the purchase), and Michael Misick (who having been importuned by Aulden Smith, placed his request before ExCo for its consideration), to any agreement to sell at an undervalue. This was because the sale

of the land by the Government to Aulden Smith was not shown to have been at an undervalue. I have already indicated that the other alleged co-conspirator: McAllister Hanchell was not demonstrated to have had any involvement in the whole transaction at all.

100) Thus, the Prosecution failed to adduce evidence in support of an agreement to achieve the unlawful objective of causing injury to the economic interest of the Crown/TCIG and Belongers, of the alleged co-conspirators with FBH. In the circumstance, this court cannot find an agreement among the alleged conspirators, which is the basis of the conspiracy alleged.

Unlawfulness

101) The Prosecution failed to prove that there was unlawfulness in either the sale by the Crown/TCIG to Aulden Smith (for there was no proof that it was done to enable its sale to Aquarius Ltd at a profit), or the sale by Aulden Smith to Aquarius Ltd. Ariel Misick KC, giving evidence for the Prosecution described "flipping" in these terms: A agrees to sell property to B for so much. B then agrees with C to sell that property to him at a higher price, thus making a profit. He added, that it was not unlawful, and that it was recognised and provided for in both the Stamp Duty Ordinance, and the Crown Land Policy which arranged for the payment of the Belonger discount if such land was "flipped". It is apparent (from the description) that what Ashley Properties was engaged in with Aquarius Ltd was the well-known and accepted commerce of 'flipping'.

102) Perhaps 'flipping' the land that Aulden Smith had applied for after stating in his application that he would use it in a commercial venture, defeated the program of empowerment of Belongers through participation in development contained in the Crown Land Policy. Aulden Smith had repeated this intent in his letter to the Chief Minister the next year: 4 July 2004, to secure the re-offer to Ashley Properties. Therefore, the sale of the land that was sold to him, may be seen as objectionable. Yet, 'flipping' being a recognised and not an unlawful enterprise, and Aulden Smith having accepted an offer of five acres, and completed that contract (albeit using Ashley Properties), Ashley Properties became the owner of the land. It could therefore deal with the land as it wished, including selling it.

Indeed, it is doubtful that there could have been any restriction in the use to which the land was put including the sale of it, in the light of ***s. 86 (1) and (3) of the Registered Land Ordinance CAP 9.01.***

103) The sale by Ashley Properties to Aquarius was therefore not an unlawful enterprise. It is perhaps in recognition of this that Aulden Smith the vendor of the land, and the giver of the monies to FBH, was never charged with any offence, and he has not been named as a co-conspirator in this charge. Nor, was it even suggested that the twin transaction: the sale of land by Trevor Saunders on the same terms to the same developer, not using the corporate vehicle, caused any alleged loss to the Crown/TCIG, and/or Belongers.

Loss to Crown/TCIG and/or Belongers

104) For the offence of Conspiracy to Defraud to succeed, there must be evidence of loss of right to property or interest therein to the victim, see: Lord Diplock's dictum in ***Scott v. Metropolitan Police Commissioner:***[22] *"where the intended victim of a "conspiracy to defraud" is a private individual, the purpose of the conspirators must be to cause the victim economic loss by depriving him of some property or right corporeal or incorporeal to which he is, or would or might become entitled. The intended means by which the purpose is to be achieved must be dishonest."*

105) It is without doubt that proof of injury to the right of the victim of the alleged crime is *sine qua non*. In this regard, the Prosecution postulated that the fact that Peter Wehrli was prepared to pay so much for the land five days after it was sold to Smith is evidence of what could have been paid to TCIG if it had had the opportunity to sell directly to Aquarius Ltd.

106) I must admit that at the close of the Prosecution's case and without the benefit of defence evidence, I was persuaded by that argument which I now retreat from as being without merit. This because there is no evidence that in 2003 when the purchase price was communicated to Aulden Smith, the land was worth more than the offer made to him, or that another purchaser may have been prepared to

[22] [1974] AC 819 at 841 para A-C:

pay more for it in 2003. That may have made the case that it was sold at an undervalue at the time the contract price was determined. There was therefore no evidence that the Crown/TCIG and/or Belongers would have had a right to more than the price at which the land was offered in 2003 to Aulden Smith which having been accepted, resulted in a contract between the Government and Aulden Smith, continued in the contract with Ashley Properties.

107) The 2003 price was the purchase price under the continued contract and there is no evidence of impropriety in that transaction. Thus, the sale of that land by Aulden Smith in 2006 to a developer lately arrived, for a price which was above the contract price fixed in 2003, was simply a commercial reality, and not evidence of loss to the Crown. This is because the Crown had divested itself of its interest in the land as soon as that contract was entered into in 2003, its interest being limited to the receipt of the purchase price, see: ***Lysaght v. Edwards***[23].

108) At the close of all the evidence, there is no evidence that there was economic loss or injury to the economic interest of the Crown/TCIG and/or Belongers, in the sale of land at Water Cay by the Government to Aulden Smith.

The Belonger Lots and the Peter Wehrli Land Sale

109) Two other matters in respect of which evidence has been led under Count 1 are: the matter of the disposal of Belonger lots, and the sale of land to Peter Wehrli at Water Cay.

110) Mr. Witter KC argues that Count 1 is bad for duplicity by including more than one conspiracy in one count. He repeats arguments made at the close of the case for the Prosecution which I have previously overruled for the following reasons: ***R 22(2)*** of our ***Criminal Procedure Rules 2021*** provides the following: *"More than one incident of the commission of the offence may be included in the allegation, if those incidents, taken together, amount to a course of conduct having regard to the time, place or purpose of commission".* I am also guided by the dictum of Lawton J in ***Greenfield [1973] 3 All ER 1050:*** *"A conspiracy count is bad in law if it charges the defendants with having been members of two or more*

[23] (1876) 2 Ch.D 499

conspiracies…Duplicity in a count is a matter of form; it is not a matter relating to the evidence called in support of the count".

111) I am satisfied that evidence on the Belonger lots and the sale of land by Government to Peter Wehrli, offered as part of the narrative of the transactions at Water Cay to show *"a course of conduct having regard to the time, place or purpose of commission,"* was properly led. However, it failed to supply the needed evidence of the conspiracy to defraud charged in Count 1 for the following reasons:

112) The matter of the Belonger Lots at Water Cay was offered to demonstrate the wrongfulness of the purpose of the Belonger (residential) Lots which were allegedly created by ExCo at Water Cay, for the apparent benefit of Ministers FBH, Michael Misick and McAllister Hanchell and their families and friends. It was to show *"a course of conduct having regard to the time, place or purpose of commission"* of the crime of conspiracy to defraud. More particularly it was aimed at showing that Ministers were involved in unlawful, or simply wrongful conduct in the manner in which Crown land was disposed of at Water Cay by the Government.

113) The matter of the sale of land to Peter Wehrli was in respect of dealings of Government in the sale of Crown land to a Mr. Peter Wehrli at Water Cay. There was an intimation that there was some wrongdoing when the Government discontinued negotiations with Ian Meredith regarding the sale of land at Water Cay, in favour of Peter Wehrli, who was additionally allegedly permitted to draw down land without carrying out the development he had contracted to undertake, leading to a landbank situation.

The Belonger Lots

114) The Prosecution's case regarding the Belonger Lots, is that the Ministers who applied for and were allocated land for themselves, family members and friends abused their position, for they placed their private interests above their public duty. This is because they participated in the decision to make land available for Belonger use, and then profited from that decision. This was said to be in breach of the code of conduct ***(Responsibilities and Procedures for Executive Council***

and Government Business)[24], to which Ministers subscribed upon assuming office.

115) Evidence was led in this regard, that ExCo granted approval for the subdivision of Parcel 61203/50, to be zoned for residential-related development. By it, five two-acre lots close to the land sold to Ashley Properties on Water Cay, were made available for purchase by Belongers. The process of the creation of the five two-acre lots was this: On 23 August 2005, the Director of Lands and Surveys, wrote to the Director of Planning, seeking his comments on the proposed mutation of Parcel No. 61203/50, into five two-acre parcels for the purpose of granting Commercial Conditional Purchase Leases to Belongers for the purpose of Tourism Development. Paper 05/733, prepared by the Permanent Secretary of the Ministry of Natural Resources was presented to ExCo by Minister for Natural Resources, Galmo Williams. ExCo decided to approve the zoning for Residential-related development.

116) Between June and November 2005, applications for conditional purchase leases were made by certain members of ExCo, and other persons connected to them. Michael Misick, Althea Williams (wife of Minister Galmo Williams and mother-in-law of McAllister Hanchell), McAllister Hanchell and FBH, applied for land on 10 June 2005, 12 August 2005, 20 September 2005, and 1 November, 2005, respectively. Elliot Hall, the brother of McAllister Hanchell, also applied for land in an undated application.

117) All the applications were successful. On 9 November 2005, Michael Misick, Althea Williams, and McAllister Hanchell received offer letters which they accepted. On 16 November 2005 and 13 February 2006, Elliot Hall and FBH respectively received their offer letters. FBH accepted the offer on 10 September 2006. He however took the freehold title in the name of a company Tropic Isle Ltd on 29 August 2007.

118) The five 2-acre Belonger parcels were each sold at a freehold price of $250,000 with a 75% Belonger discount thereon, to the offerees. Thus, in relation

[24] CX4

to parcel 61203/54, offered to FBH, the Belonger discount which was 75% of the value of the land was the sum of $187,500.

119) FBH paid the purchase price of $62,500 which was the discounted value, along with the survey fees of $700, the Stamp Duty of $10 and Registration Fee of $6093.

120) The Prosecution's case is that the Ministers who applied for and were allocated land that they had taken a decision to make available for Belonger use, abused their position, for in accordance with the code of conduct document (***Responsibilities and Procedures for Executive Council and Government Business***[25], they placed their private interests above their public duty.

121) I am not persuaded that the mere fact of acquiring the said parcels was a breach of the fiduciary duty of Ministers. There is no evidence that the decision to make the properties available for residential use by Belongers in response to an ExCo Paper prepared by the Permanent Secretary of Natural Resources and presented by the Minister Galmo Williams (who has not been accused of wrongdoing) was influenced by the consideration that it would benefit the Ministers and their friends and family. After the decision was made, the Ministers applied for land at different times: MM - 10 June 2005, McAllister Hanchell - 20 September 2005 and FBH -1 November 2005.

122) In this charge in which Ministers who applied for land are accused of the abuse of their position as fiduciaries in the allocation of land to themselves their families and friends, the Prosecution bore the burden to adduce evidence to show that having participated in the decision to make land available for Belonger residential use, there was dishonesty in how they received their allocations, in that there was a manipulation of the process of allocations by the Ministers for them to acquire the land for themselves and their associates; and also that the transaction resulted in economic loss to the Government.

<u>The System of Land Allocation</u>

123) Ms. Tatum Fisher Clerveaux employed in the Crown Lands Unit in 2006-2007 as Assistant Commissioner of Lands and promoted in 2008 to Deputy

[25] CX4

Commissioner gave evidence regarding the process of creating subdivisions of land for allocations, and the process of allocation following applications. Regarding the process before her time, she gave archival knowledge which she obtained from the records.

124) It was her evidence that the process of creating a subdivision began with popular demand for land in a particular area. A number of institutions would be involved in this: the Crown Land Unit, working with the Lands and Surveys would provide the design for the creation. Consultations would be held with stakeholder institutions like the Planning Department, Land Survey Department, DECR (where relevant). All the information acquired through this process would inform a Cabinet Paper which would be presented by the Minister for Natural Resources to Cabinet. If ExCo approved, the Land Survey Department would be tasked to stake out the property and prepare a survey file. Thereafter, the land would be made available.

125) Leroy Charles (former Director of Lands and Surveys and then, of Survey and Mapping) and Leo Selver (former Permanent Secretary for Natural Resources), gave evidence regarding the process of allocations which followed applications by Belongers in the years before 2006. Central to it was that it was a well-regulated process which involved consultation with heads of institutions that informed a ExCo/Cabinet prepared by the Permanent Secretary and presented to ExCo/Cabinet by the Minister.

126) The process as described would seem to negate any involvement of Ministers in the creation of the subdivision, other than ExCo's responsibly for approving the creation. It was the evidence of Ms. Tatum Fisher Clerveaux that after land was made available through the creation of a subdivision, the Crown Land Unit had the responsibility of publicising the availability of land to members of the public, which they usually did by word of mouth. Thus, after ExCo's approval of the Paper prepared by civil servants (technocrats) for the creation of the subdivision, there was nothing preventing qualified Belongers from applying for land at Water Cay. No evidence that there was deliberate absence of

information, or other form of obstruction that would prevent other Belongers from applying, was led.

127) Given the evidence on the system of applications and allocations, it appears to be an unrealistic and an unfair stretch to say that because FBH and the unindicted alleged co-conspirators were involved in the decision by ExCo to create lots for Belonger residential use, if their own applications went through the process and they were selected for allocation through a transparent system, they would be in breach of their fiduciary duty to the Government. That seems to be the case of the Prosecution which led evidence of the fact of allocation to Belongers, without evidence from which a manipulation of the system of allocation that was the result of the abuse of power, or dishonest conduct, may be inferred. It seems to me that even as fiduciaries of the Crown/TCIG, the act of buying land at Water Cay created in the manner in which it was made available, was hardly a breach of fiduciary duty, rising to a criminal act.

128) In my judgment, a demonstration that the system of the Water Cay land allocation was flawed, having been improperly influenced by FBH and the alleged co-conspirators, was particularly important in the proof of this charge, having regard to the evidence of technocrats in charge of the process who as Prosecution witnesses, testified to the contrary. There was no such demonstration.

Injury or economic loss to Government

129) There was also no demonstration that by applying for and receiving the allocations, the sale of the land to the Ministers and their privies resulted in economic loss to the Crown/TCIG and /or Belongers.

130) The evidence led was that the sale of Crown land was conducted upon the valuation of the Government's Chief Valuation Office (Mr. Hoza) and was subject to the Belonger discount as determined by the Crown Land Policy for land on various islands. A sale based on the valuation of Mr. Hoza without a demonstration of untoward influence in the allocations of land at Water Cay, could not constitute proof that the land was sold to Ministers and their relations at an undervalue as the Prosecution alleges. This is so, even in the face of the private valuation of the land

by McAllister Hanchell after the fact, which set the value of the land higher than what the Chief Valuation Officer declared it to be. Furthermore, it would not only be unrealistic, but would also be unfair to so find through a comparison of the values ascribed to the land in 2008, when the valuation upon which the Ministers and had purchased the land was conducted in 2005-2006, in the face of evidence of fluctuating values of one of one of the parcels, in that in 2008, it was valued at $1,200,000 but valued at $700,000 in 2014.

131) Thus, there was no proof of loss of revenue to the Crown/TCIG and/or Belongers at the time of the impugned sale of land to the Ministers and others related or said to be connected to them.

Peter Wehrli's acquisition of Water Cay land

132) Further evidence on the charge in Count 1 was with regard to the dealings of Government in the sale of land to a Mr. Peter Wehrli at Water Cay – an intimation that there was some wrongdoing when the Government discontinued negotiations with Ian Meredith in favour of Peter Wehrli who was allegedly permitted to draw down land without carrying out the development he had contracted to undertake, leading to a landbank situation.

133) FBH explained that there was nothing untoward with the Governments' dealings in that regard. He explained how that transaction came about in these terms: the newly elected PNP Government of which he was part, found itself in dire financial difficulties. He alleged that there was no money to conduct the business of government; the Government therefore sought to borrow funds against the security of Crown land. Having allegedly been prevented from doing so by the then Foreign and Commonwealth Office (FCO), the Government was left with no choice but to source funds another way. This it did, by engaging with TCInvest and the Attorney General's Chambers to find a project for which funds may be payable to the Government. So it was that the Government was introduced to Ian Meredith who had been in negotiation with the previous government of the PDM for the development of land at Water Cay.

134) According to FBH, preliminary things were done to negotiate with Ian Meredith, and TCInvest having been tasked to conduct due diligence, the Government readied itself to sign an agreement with Meredith's company. Unfortunately, what it got were excuses and delays. Meredith who said he had secured a major partner Lubert Adler for the project, did not come through on the deadlines imposed.

135) Rather, Ian Meredith as the documentary evidence shows, made further promises, and sent a cheque for $104,000 as a goodwill payment that his company would proceed with the transaction. At this time, by reason of the Government's dire circumstances which were leading to an imminent overdraft, Meredith was informed that the Government was keeping its options open in order to consider other willing developers. It was in these circumstances that the Chief Minister commenced talks with two developers.

136) The clear evidence is that sale of land to Peter Wehrli which came after the negotiations with Ian Meredith, followed a proposal presented to Government at the Government's invitation, for him to pay the sum of $11.7 Million to the Government for the purchase of 70 acres of land. The proposal, introduced by the proposed purchaser's attorney Ariel Misick KC, was in these terms: to *"purchase land on Water Cay…the proceeds of which are to be used as collateral for raising public debt to finance needed infrastructure". The premise for the Proposal was "the need to secure urgent public debt financing in accordance with the borrowing guidelines".*

137) That the Government was in dire need of funds was clear from the evidence.

Discussion

138) What was therefore clear from the evidence led by the Prosecution was that Ian Meredith who had been in negotiations for some time with successive governments, did not meet the demands of the exigent situation the Government found itself in, and it was not unreasonable for the Government to abandon him for Peter Wehrli who had ready cash for Government's coffers at that critical time- $11.7 Million ready money. There was also evidence from RBK regarding why Ian

Meredith was dropped: which is, that during Ian Meredith's negotiations with the Government, there was evidence of some payments by the developer to certain persons. An inquiry was launched at the Attorney General's Chambers, and the negotiations with Meredith were discontinued.

139) The totality of the evidence in that regard demonstrates that the Government's decision to deal with Peter Wehrli at the material time of Mr. Wehrli's proposal - and in the light of the prevailing circumstances of a Government which was in dire need of funds to fulfil its budgetary needs, was consistent with a desire to ensure the ability to pay of the potential developer having regard to issues of governance, rather than evidence of any underhand dealings.

140) Thus, although it appears that Wehrli "suddenly" appeared on the scene, and was treated with such leniency by the Government which permitted him to draw down on land (creating a land bank situation) and granted him amendments to the Development Agreement (that allowed him to not adhere to the terms of his contract with the Government regarding agreed development), could be suggestive of some impropriety, yet it was hardly proof of such in the absence of evidence that FBH or any member of the Government profited from private dealings with Peter Wehrli in this matter in which the Government dealt with him in place of Ian Meredith.

141) Unless it was shown that Peter Wehrli had had improper dealings with FBH solely, or with him and the unindicted alleged co-conspirators which resulted in improper dishonest gain to them, the evidence represented no more than perhaps poor judgment; it was proof of nothing, and provided no evidence or even background to any alleged agreement among the three named alleged co-conspirators to arrange the purchase of land at Water Cay to defraud the Crown/TCIG and Belongers otherwise entitled to the gain they made for themselves.

142) There was documentary evidence that Peter Wherli made payments to the PNP Government. The first of such: $400,000, was on 27 January 2007 which was outside the time Aulden Smith received ExCo's approval (2004, although it was

communicated in 2005). By itself, even payment to a political party was not suggestive of wrongdoing in the face of evidence by two Prosecution witnesses: Ariel Misick KC and Carlos Simons J (as he then was), that such was how the financing of political parties was done in that era when there was no legislation regulating such. It was their evidence that politicians had to finance their political ambitions with their own monies and donations Evidence was also led that commercial entities in the islands financed political activity by giving donations to the two dominant parties in the islands: PDM and PNP.

143) As aforesaid, the evidence regarding the Belonger lots and Peter Wehrli's transactions was led in proof of Count 1, central to which was Aulden Smith's transaction from which FBH obtained a clear financial benefit.

144) The said pieces of evidence fell short of what they were offered in proof of, for they fell short of providing the *"…course of conduct having regard to the time, place or purpose of commission"* as related to the alleged conspiracy in the Aulden Smith transaction. Certainly, the period of the alleged conspiracy: 1st day of August 2003 and the 31st day of December 2008, was too wide, and it was not clear how the scattered acts regarding which evidence was led, were relevant in proof of the conspiracy that had been alleged in the transfer of Crown land at Water Cay to Aulden Smith. Their relevance was doubtful, as they did not appear to be part of a chain of evidence from which an agreement by FBH and the unindicted co-conspirators to defraud the Crown/TCI and/or Belongers could be inferred. Even as background evidence, their probative value would have come from the making of a connection between the Government of the day's dealings with Peter Wehrli that permitted him to own vast tracts of land at Water Cay, with the circumstance of Ministers and their family members buying land for a residential purpose also at Water Cay, and with the Aulden Smith sale and resale of Crown land at Water Cay.

145) The court has not found the proof of any unlawful activity by FBH in any of these three situations, with Michael Misick and McAllister Hanchell, from which a dishonest agreement to cause injury to the economic interest of the Crown/TCIG and/or Belongers could be inferred.

146) Having had regard to all the evidence, it is manifest that the Prosecution has failed to discharge its burden of proving beyond a reasonable doubt, that FBH conspired with unindicted co-conspirators Michael Misick and McAllister Hanchell, to arrange the transfer of land at Water Cay between the 1st day of August 2003 and the 31st day of December 2008, in a manner that caused economic loss to the Crown/TCIG and/or Belongers.

147) Count 1 therefore fails and FBH is acquitted and discharged from it.

COUNT 2 – CONSPIRACY TO DEFRAUD

148) PARTICULARS OF OFFENCE:

FLOYD BASIL HALL, (FBH) JEFFREY CHRISTOVAL HALL (JCH) and MELBOURNE ARTHUR WILSON (MAW) *between the 1st day of January 2004 and the 30th day of June 2006, conspired together with Michael Eugene Misick, Lillian Boyce, Samuel Ernest Been, Quinton Albert Hall and Earlson McDonald Robinson to defraud the Crown, the Government of the Turks and Caicos Islands and/or the Belongers, by arranging the transfer of Crown Land at North West Point on terms that were contrary to the economic interests of the Crown, the said Government of the Turks and Caicos Islands and/or the said Belongers.*

Case Summary

In this Count, it is the case of the Prosecution that FBH, JCH, Ministers of the Crown, and their attorney MAW, agreed with unindicted alleged co-conspirators: Michael Eugene Misick, Lillian Boyce, Samuel Ernest Been, Quinton Albert Hall and Earlson McDonald Robinson to defraud the Crown/TCIG the owners of Crown land and /or Belongers, by entering into a dishonest agreement to arrange the sale of Crown land to four Belongers at an undervalue for the purpose of enabling them to sell at a profit. They allege that the Government was put at risk of economic loss in this transaction in which the alleged co-conspirators were said to know that the land was worth much more to the foreign developer to whom the Belongers sold the land, than the Government was going to get from the sale to the Belongers.

The Prosecution's Case

149) The evidence led in support of the charge commences with the filling out of application forms for Conditional Commercial Purchase Leases (CCPLs) for the purpose of condominium development by Floyd Basil Hall (FBH) the first defendant, and Jeffrey Christoval Hall (JCH), the second defendant, both Ministers of the Crown, on the 27th of January 2004.

150) On the 25th of March 2004, two other persons: Samuel Been and Earlson Robinson, made similar applications for CCPLs for hotel development.

151) On the 3rd of May 2004, Quinton Albert Hall (QH) FBH's brother, also applied for a CCPL to build four structures with a Bank loan, as well as funds raised in a partnership.

152) FBH withdrew his application before it could be considered by ExCo at its 12 May 2004 meeting.

153) At the 12 May 2004 meeting, ExCo recommended the grant of CCPLs to fourteen named persons including the four applicants: JCH, Earlson McDonald Robinson, Samuel Been and Quinton Albert Hall who will hereafter be referred to as 'the four Belongers. Each lease was over five acres of land. The lands contained in this approval were, Parcels No. 60000/81, 83, 85, 87, 91, and 93 "for the purpose of constructing various commercial developments as listed against their names". JCH who was Acting Chief Minister that day, declared his interest and recused himself from the meeting.

154) On the 8th of May 2004, all four applicants: received formal responses to their applications from Ms. Alice Williams, Commissioner of Lands by which they were informed (anachronistically) that ExCo had approved their lease applications on 12 May 2004. JCH, Quinton Albert Hall, Earlson McDonald Robinson, and Samuel Been, had been granted CCPLs over Parcels 60000 Lots 1, 2, 3, and 4 respectively. Identical terms of the CCPLs regarding the post-survey communication of rent, freehold price were communicated in the separate letters by which they were each asked to pay survey fees of $1,500.

155) On the 8th of September 2004, ExCo approved some applications for freehold title to enable the applicants to *"... secure the necessary financing to develop their various projects"*.

In that list of persons granted freehold title, were JCH who was granted freehold title over Parcel 60000/Lot 1 (it appears that Quinton Hall and Earlson Robinson's, grant over 10401/300 and 60606/84 respectively was unconnected with the instant Parcel 60000 transaction).

156) On the 31st of January 2005, ExCo approved the combination and subdivision of Parcels 60000/76,78, 80 and 96 at North West Point, Providenciales (NWP). A survey of the NWP lands was undertaken on the 12th of April 2005. The surveyed land was registered and given lot numbers in June 2005.

157) Following the survey exercise, the CCPL Lots 60000/1, 2, 3 and 4 allocated to the four Belongers corresponded to Parcels 138,139, 140 and 141 respectively.

158) On the 24th of May 2005, JCH received another letter from Mr. Leo Selver Permanent Secretary of the Ministry of Natural Resources. This time, he was offered a lease in respect of Parcel No. 60000/151 over 5 acres. He was asked to indicate his acceptance, which he did. The three other gentlemen: Earlson McDonald Robinson, Samuel Been and Quinton Albert Hall received similar letters, allocating to them, Parcel Nos. 60000 Lots 138, 139 and 152 respectively.

159) Two days later, on 26 May 2005, Temple Mortgage wrote to JCH in response to his request for financing to be provided for all four Belongers, that $6M would be provided "subject to final committee approval". It was the evidence of Arthur Robinson, an official of Temple Mortgage, that the "comfort" letter was given routinely to applicants for freehold titles, to support their applications.

160) On the 6th of June 2005, FBH wrote to the Minister of Natural Resources, Galmo Williams on behalf of JCH, forwarding to that Minister, a letter from Temple Mortgage of 26 May 2005.

161) In that letter, Minister Galmo Williams was advised of the availability of funding for the four Belongers to secure freehold title over their combined twenty-acre lot.

Attached to the letter were their offer letters of the 24th of May 2005, as well as receipts for the payment of the $1500 survey fees for Lots 151 in the name of JCH and 152 in the name of Quinton Hall.

162) The next day: 7 June 2005, the four Belongers each signed an agreement described as an Offer to Purchase with a David Wex (on behalf of a company to be incorporated). They were the vendors of land. For JCH, the land on offer was described as Combination and Subdivision of Parcels 60000/76,78,80 and 96 Part Lot 13. The price of sale/purchase was said to be $2,144,000. Quinton Hall's offer was described as: Part Lot 14, for the price of $1,355,000; Earlson McDonald Robinson's offer was for Part Lot 16 for the price of $1,357,000, and Samuel Been's was also described (inaccurately), as Part Lot 14 for the price of $2,144,000. Among the terms of each Offer to Purchase was the payment by the Purchaser of an initial deposit of $50,000 for each vendor, to their solicitor, Mclean's International Attorneys (Mclean's), in trust. A second deposit of $200,000 for each vendor was to be paid upon expiry of what was said to be the 'Condition Period'. The balance of the purchase price for each sale transaction was to be paid on closing. The Condition Period was a period of one hundred and twenty (120) days during which the Purchaser would satisfy himself 'in his sole, absolute and unfettered discretion, as to the property in every respect and from every perspective'.

163) The third defendant MAW, an attorney and a partner at McLean's witnessed the execution of that document for each vendor.

164) On the 27th of June 2005, David Wex, transferred the deposit of USD$200,000, to McLean's, which sum (less the bank charges, bringing it to $199,985), was recorded in McLean's client trust account ledger under the name of David Wex, Number 25-251, and placed on a Certificate of Deposit with Temple Securities, a securities company affiliated with McLean's.

165) Thereafter, Minister of Natural Resources Galmo Williams Per ExCo Paper 05/426, informed ExCo that the four Belongers were negotiating for financing in the sum of $6 million from Temple Mortgage, and that they had received a 'letter of comfort' from that financial institution to back the application for the grant of freehold title to their combined twenty acres of land.

166) On 7 July 2005 at its 17th meeting presided over by Ms. Mahala Wynns, Acting Governor, with both FBH and JCH present, ExCo recommended the approval, and reaffirmed the freehold offer granted to JCH, Quinton Hall and

Earlson McDonald Robinson, over what was described as "Parcel now 60000/150, 151, and 152" and approved the grant of freehold title to Samuel Been over Parcel 153. It was said to be *"for the purpose of pursuing their tourist development."* Neither FBH nor JCH recused themselves form the discussions.

167) ExCo's decision was made upon Paper 05/426, [26]prepared by Leo Selver and presented by Minister Galmo Williams, regarding whom there has been no charge, or even suggestion of impropriety. This was the content of that ExCo Paper:

"The following applicants have expressed interest in obtaining Free Hold Title on Various Parcels of land in North West Point, Provo.

(1) Mr. Earlson McDonald Robinson

(2) Mr. Jeffrey C. Hall

(3) Mr. Quinton Hall (Albert)

(4) Mr. Samuel Ernest Been

Block 60000, North West Point has attracted a number of applicants interested in Tourist Related Development on 12 May 2004. Executive grant [sic] approval of Commercial CPL to the four applicants, for the purpose of pursuing their purpose development. However, the land was not properly surveyed.

Copy of Approval Letters- Annex 1

On 8th September 2004, Action Minute No. 04/843 Paper No. 04/512 Executive Council granted offer of Free Hold Title to Mr. Jeffrey Hall, Mr. Quinton Albert Hall and Mr. Earlson McDonald Robinson in reference to Parcel 60000. The offer was not executed because the parcels survey registration and valuation was not completed

Copy of Action Minute 04/843 Paper 04/512 Annex 1

To date, the survey registration and valuation of the area has been completed. The applicants were assigned their parcel numbers, survey fees has [sic] been paid and they are prepared to pursue the proposed development

See Table 1 Annex 3

In an effort to secure funding for these projects the four applicants mentioned above are presently negotiating with a lending Financial institution Temple

[26] CX 302

Mortgage Corporation Ltd. The lending institution is prepared to finance their project with a loan of ($6,000,000.00 six million dollars, subject to the grant of Free Hold title on Parcels 60000/150,151,152, &153.

Copy of letter from Temple Mortgage Corporation – Annex 4."

168) The decision of ExCo was communicated to them by Mr. Leo Selver, Permanent Secretary Natural Resources in separate letters to the four Belongers on 19 July 2005. The numbering differed from the original allocations before survey: Lots 60000/1,2,3,4 communicated to the applicants by the Commissioner of Lands in the letter dated 8 May 2004, and which following survey, corresponded to Lots 138, 139, 140 and 141 respectively. It also differed from the Lots 138,139, 151 and 152 communicated to the applicants by the Permanent Secretary of the Ministry of Natural Resources on the 24th of May 2005.It however corresponded with the Lots13 -16 contained in the Offers to Purchase signed on 7 June 2005.

169) On the 9 August 2005, Hugh O'Neill, (HON) an attorney of considerable experience (twenty-five years of legal practice at the time) in the islands, also a Belonger, informed MAW that he had been instructed by David Wex to represent him as Purchaser in the transaction for the purchase of land of the four Belongers.

170) Between August and September 2005, the two attorneys communicated on various matters pertinent to the transfer of the Crown land to the Belongers. HON communicated his client's position that the sale of land began with the four offers to purchase, which had now become the sale of twenty acres of contiguous land, be effected through a company rather than by the four individuals.

171) On 15 August 2005, a company Urban Development Limited (Urban Development) was incorporated by MAW to acquire the land in respect of which the freehold title had been offered to the four Belongers. Each of the four Belongers held two of the company's eight shares.

172) As the two attorneys continued their correspondence, HON criticized many aspects of the sale transaction. In reaction to these, MAW sought advice from Alice Willams, the Commissioner of Lands.

173) In a letter of 6 October 2005, MAW communicated advice he had received from Alice Willams to HON in these terms: that rather than the transfer of twenty

acres of land, there would be separate transfers of five acres to each of the four Belongers, following which the land would be transferred to their company Urban Development, and that upon that transfer, the Belonger discount would be discharged, rendering the land free from all encumbrances.

174) MAW also suggested the alternative transaction of acquiring the land by use of a Belonger who would hold the majority share for ten years from the day of transfer, but not be involved in profit sharing and dividends. The two attorneys continued discussions on a range of pertinent matters including the liability for stamp duty. In one such letter, MAW advised Hugh O'Neill that all that was required to bring the matter to a rest was that the Belonger discount be repaid by Hugh O'Neill's client.

175) Between 6 and 7 October 2005, the two engaged in correspondence ranging from the implications of transfer by the four Belongers as individuals, the stamp duty payable, the Belonger discount and the effect of the charge to be registered on such land in the circumstance of the sale of condominium units to non-Belongers.

176) An understanding was reached that Urban Development would secure a draft Development Agreement for the purchaser, although both HON and the purchaser would provide input also.

177) On the 2nd of November 2005, the four Belongers, describing themselves as principals of Urban Development Ltd, wrote to the Chief Minister under the head 'Urban Development Ltd' requesting for a Development Agreement for the company, as well as an agreement with the Crown/TCIG regarding the charge on the property, in order to finalize construction by summer 2006.

178) At the ExCo meeting of the 24th of November 2005, a paper on the subject "Proposed Hotel/Condominium Development – North West Point, Providenciales" was introduced by the Chief Minister.

There followed a discussion on how to deal with the Belonger discount when condominium units were to be sold to non-Belongers. It was also recorded that ExCo "approved conceptually the proposed sponsors' proposal for construction of a condo hotel villas and related amenities on parcel #60000/150,151,152, 153…North West Point".

179) Various items were also approved for the proposed construction, including a collateral agreement for the Crown, TCIG and Urban Development Ltd (Urban Development), exemptions in respect of duty, taxes for a period of twenty years, work permits for persons connected with the project, and approval to negotiate a development agreement with TC Invest with input from the Attorney General's Chambers.

180) On that same day, the Chief Minister wrote to the Directors of Urban Development informing them that ExCo had approved their Development Proposal Agreement and had further agreed to void the registration of any incumbent's registration of freehold title on 60000/150, 151, 152, 153.

181) In ExCo's deliberations on matters connected to NWP, JCH recused himself on at least two occasions. FBH also recused himself on one occasion.

182) MAW commenced an email exchange with then Senior Crown Counsel Rhondalee Braithwaite-Knowles (RBK) who had the carriage of the Development Agreement on behalf of the Crown/TCIG, as well as Clayton Been of TCInvest.

183) MAW sent iterations of a draft Development Agreement as well as a Collateral Agreement[27]to RBK. In both of them, the agreement was described to be, on the cover page: 'Between The Crown and The Government of the Turks and Caicos Islands and Urban Development Ltd in relation to a Proposed Resort Development By Blue Resort Developments (TC) Ltd and Urban Development Ltd'. This was so, although 'Developer' was defined to mean 'Urban Development Ltd, a company incorporated in the Turks and Caicos Islands.'

184) RBK, in working on that draft, at first removed the reference to Blue Resorts Developments Limited (Blue Resorts), and explained to MAW that she had done so as it did not accord with the instructions she had received from ExCo.

185) There was correspondence between them, with MAW mostly apparently seeking direction from RBK. In one such email, MAW requested an explanation of the words "owned or controlled" contained in the Crown Land Policy regarding what constituted a Belonger company with 51% of the shares of the company. He asserted in there that foreign investors were seeking clarification.

[27] (CX384 and CX387)

186) It was the evidence of RBK that MAW had indeed made references to Blue Resorts, but that while she was unclear of its role, she understood it to be the funder of the development.

187) Clayton Been who was also engaged in correspondence with MAW (and was at some point attended upon by both MAW and JCH), also testified that he always understood that there was a foreign investor, but that the development was to be undertaken by the four Belongers.

188) On 6 March 2006, MAW wrote to Clayton Been seeking changes to the Draft Development Agreement which he said was for the comfort of "the investors" who were insisting that it was the first time they were doing "such a major project outside Canada".

189) In further email exchanges with RBK, MAW attached a version of the draft Development Agreement produced by David Wex which sought to negotiate certain terms. RBK wrote to Clayton Been, attaching the suggested wording of 'the developer' to her memorandum to him.

190) For some reason not apparent from the emails, or the evidence of either RBK or Clayton Been, FBH was copied in certain emails between RBK, MAW and Clayton Been relating to the Development Agreement. Also, in a memorandum of the 23rd of March 2006, Clayton Been apprised FBH of the state of the negotiations regarding provisions on termination in the development agreement with the "developer" which required ExCo's approval.

191) Following these matters, a Development Agreement (produced with input from MAW and TCInvest), dated 30 March 2006 in respect of the twenty-acre parcel now described as 60000/150,151,152,153 was executed between the Crown and The Government of the Turks and Caicos Islands and Urban Development Ltd.

192) In the agreement, "Developer" was defined as: Urban Development Ltd, and Blue Resorts Development Ltd. Both companies were said to be TCI incorporated companies, having the same registered address of McLean's International Attorneys (McLean's), Providenciales.

193) On 11th of April 2006, a cheque post-dated to 18th April 2006, in an amount of $6,800,000 was sent to McClean's by HON from the account of Blue Resorts Development (TC) Ltd. (Blue Resorts).

194) On that same day: the 11th of April 2006, MAW was notified of the cheque in a letter in which certain demands were made. One of the demands was the execution of an Indemnity Agreement by the four Belongers, to release Urban Development and Blue Resorts Development from liability, should the Belonger discount (which they had received), have to be repaid.

195) The sum of $6.8 Million was recorded in McLean's ledger in the name of 'David Wex (25-251)'.

196) As was done with the $200,000 paid by David Wex under the Offers to Purchase, it was placed by the firm on a Certificate of Deposit with Temple Securities.

197) Two days later, that is, on the 13th of April 2006, Urban Development Ltd. transferred its eight issued shares to Blue Resorts.

198) Blue Resorts was a company incorporated by HON to acquire the shares of Urban Development Ltd. Its beneficial owner was HON a Belonger. It was therefore a Belonger company. Blue Resorts Development Ltd was in turn owned by Hibernian Trust Company Ltd also a Belonger company owned and controlled by HON.

199) On 2nd May 2006, the Governor, acting for the Crown/TCIG, transferred the land approved for the four Belongers, to Urban Development Ltd for the consideration of $1,367,000, which was the discounted value of the twenty-acre parcel of land. A discount in the sum of $1,368,000 was granted to Urban Development Ltd as it was believed to be owned by Belongers. This sum of $1,368,000 was to be repaid to the Crown if within ten years of the date of transfer, less than fifty-one percent (51%) of Urban Development Ltd was owned or controlled by a Belonger. It must be recalled that by that date all eight shares of Urban Development belonging to the four Belongers had been transferred to Blue Resorts.

200) On the 15 May 2006, MAW gave instructions to Temple Securities, to pay out monies placed on Certificates of Deposit, directly to certain persons. The instruction to pay out the money was given by David Wex.

201) Evidence was led by the Prosecution to show, that the customary way in which term deposits were dealt with at McLean's was to recall the money back into the firm's client trust account, for a cheque to be issued by the firm to the recipient. The direct payment from Temple Securities of monies on Certificate of Deposit therefore appeared to be an aberration.

202) The persons who received cheques directly from Temple Securities, from the $6.8 Million were: Quinton Albert Hall - $1 Million; Samuel Been - $1 Million; Earlson Robinson - $1 Million; Timothy Smith $500,000; Alliance Realty $1,809,104.91.

203) Alliance Realty was a company incorporated by Temple Trust Company Ltd on the 7th of October 2005. It was owned by MAW jointly with JCH and two others in a shareholding structure of: twelve shares, five each of which were held by MAW and JCH, with the two others: Andrew Jones and Terry Selver holding one share each (this was until 18th of February 2009 when the other three transferred their shares).

204) It is unclear what role Alliance Realty played in the entire transaction. However, it must be noted that the Timothy Smith who had worked for TC Realty (later Sotheby's) and had been part of the NWP transaction from the beginning, had ceased to work for TC Realty (Sotheby's), and had started working for Alliance Realty. TC Realty (Sotheby's) was not paid any commission.

205) Alliance Realty also apparently served as a conduit to pay monies to both MAW and JCH who withdrew monies from its account after $1,809,104.91 was paid by MAW into its account, for twenty-two disbursements were made from the $1,809, 104.91. Disbursements from the account of Alliance Realty's First Caribbean Bank account indicated certain payments into the account of Jeffrey and Charles Hall by bank draft: the sums of $110,000 and $39,587.75, as well as a $50,000 bank draft to Eleanor Hall said to be JCH's wife.

206) From the $200,000 paid earlier by David Wex as an initial deposit under the Offers to Purchase, a cheque for $100,000 on 13 December 2005 was issued to JCH. The cheque was however paid into an account in the name of Melbourne Wilson and Mavis Wilson, from which JCH received $50,000. On the 10th of February 2006, another $20,000 was paid out of that deposit to JCH.

Discussion:

The Law

207) I reproduce the working definition of the crime of conspiracy to defraud which is: that it is committed when two or more persons enter into an agreement for an unlawful purpose. The design by which it is to be achieved must be dishonest, and the intent should be, to deprive another of a proprietary right or interest. In the instant case, the injury spelt out in the charge, is the "economic interest" of the Crown/TCIG and/or Belongers.

208) I also, recapitulate the elements in the proof of the offence:

An Agreement: Per Viscount Dilhorne in ***Scott v Metropolitan Police Commissioner [1975] AC 819***: *"[I]t is clearly the law that an agreement by two or more by dishonesty to deprive a person of something which is his or to which he would or might be entitled [or] an agreement by two or more by dishonesty to injure some proprietary right of his, suffices to constitute the offence of conspiracy to defraud*""

Unlawfulness: Per Lord Chief Justice ***in Barton and Anor v. R 2020 EWCA Crim 575***: *"there must be a dishonest agreement which includes unlawfulness, either as to the object of the agreement or the means by which it will be carried out.*

Dishonesty: Per Lord Chief Justice in Barton [supra] stating the court's preference for the approach in ***Ivey v Genting Casinos (UK) (trading as Cockfords Club) [2017] UKSC 67; [2018] AC 391*** to the approach espoused in ***R v Ghosh [1982] QB 1053***; *"... the test of dishonesty formulated in Ivey remains a test of the defendant's state of mind – his or her knowledge or belief – to which the standards of ordinary decent people are applied. This results in dishonesty being assessed by reference to society's standards rather than the defendant's understanding of those standards".*

Proprietary Loss: Per Lord Diplock in *Scott "...there may or may not be an intent to cause economic or financial loss to the proposed victim or victims. But there must at least be an intent to prejudice of endanger the proprietary or economic interest of others; mere recklessness as to such a possibility would not suffice."*

Thus, in the proof of the charge in Count 2, the Prosecution must prove the following:

1. FBH, JCH, MAW, Michael Misick, Lillian Boyce, Samuel Been, Earlson McDonald Robinson and Quinton Hall entered into an agreement.
2. The agreement was for the unlawful purpose of arranging the sale of land at NWP in a dishonest manner.
3. The agreement must have intended economic loss to the Crown/TCIG and or Belongers.

The Agreement

209) At the close of the Prosecution's case, this court held that all three persons charged under this count had a case to answer. The court made it clear, that it had found a dishonest agreement to withhold from the Government, the Belonger discount due to it in a sale by Belongers to non-Belongers; that the four Belongers, working with their attorney MAW, agreed to a transaction that would deprive the Government of its due in the transaction.

210) The court set out its finding on the agreement (requisite in the charge against the defendants), in paragraphs 206 and 208 of the ruling on the submission of no case:

"206. ... the evidence led, shorn of all its niceties, shows that from the beginnings of the transaction, when the four Belongers signed Offers to Purchase with David Wex, the four Belongers always intended to sell the Crown land which had been offered to them for various commercial purposes, a perhaps, not unlawful venture. But then came the agreement of MW with the four Belongers to participate in what the sale transaction became from the time Hugh O'Neill introduced himself as attorney for David Wex. Thus, whether or not what the transaction later became had been the original intention of four Belongers and their attorney (as has been strenuously canvassed on behalf of MW), they all went along with it. ***Therein lies the***

agreement by which the transaction was advanced. This "new" transaction was not for the Belongers to possess the land at all, but for them, through their company Urban Development, to sell their allocations complete with the Belonger discount and a Development Agreement by the transfer of the shares in Urban Development to which the land was transferred by the Crown/TCIG." [emphasis supplied]

*"208. In my judgment, this court sitting as a reasonable tribunal of fact could infer from all these****, an agreement by four Belongers (one of whom was apparently a front for FBH), aided by their attorney (together with unindicted co-conspirators who benefitted directly from the proceeds), to carry out the unlawful purpose of defrauding the Crown/TCIG through the subterfuge of getting land under the guise of Belonger participation in development, complete with Belonger discount, and benefits in a Development Agreement (provided to them to empower them as Belongers), which they sold for a large profit. This they did without the repayment of the Belonger discount."*** [emphasis supplied]

Of proprietary loss, the court held at paragraph 215: *"...****a prima facie case has been made that by their agreement, the four Belongers, assisted by their attorney MW (and certain unindicted persons) engaged in a transaction through which the Crown and TCIG were injured in their proprietary interest in the land in three ways: in the price at which it was resold by the four Belongers through the transfer of the shares of Urban Development, in the loss of the Belonger discount which should have been repaid when the four Belongers divested themselves of their interest in the parcels allocated to them, to the ultimate purchaser David Wex, and in the provision of a Development Agreement which gave concessions intended to incentivise the development by the Belongers, but which simply enhanced the value of what was sold by the Belongers, "sweetening the deal", and enriching them.*** *An inference may be made therefore, that the transaction was contrary to the economic interests of the Crown."* [emphasis supplied]

211) Against each of the defendants: FBH, JCH, and MAW, the court held for the said reasons, that the evidence against each of them could lead a jury to the conclusion that they had conspired to defraud the Crown (owners of the land), the

Government, and/or Belongers for whose benefit land was administered in these islands.

212) However, in the closing submission of the Crown, the Prosecution has made this strong assertion: *"The case for the prosecution is NOT and has never been that the fraud related solely to the Belonger discount, since* ***the gravamen of the conspiracy is the scheme to obtain Crown land by abuse of their position as Ministers/politicians in the TCIG at a fraction (22%) of the value they and others knew it was to be bought for, while at the same time, making false representations to enrich themselves at the expense of the TCIG/the Crown and the Belongers****. The obtaining of the Belonger discount is just a small piece of the evidential jigsaw supporting the case that this scheme was to obtain as much money as possible."* [emphasis supplied]

213) Thus, the agreement they allege is one in which the named Ministers and politicians (including unindicted alleged co-conspirators), arranged the transfer of land from the Crown to persons to whom it was allocated. The said agreement was stated to be an abuse of their fiduciary duty to seek the best price in a sale of Crown land, in that knowing that it was going to be bought for so much, it was intended to arrange the sale of Crown land at NWP to the four Belongers, for the purpose of enabling a sale by them for profit, with the intent that the economic interest of the Crown/TCIG and/or Belongers in Crown land, would be injured.

The court did not find that alleged agreement.

214) What the court found to be an agreement, was not one that dealt with how the Crown divested itself of Crown land at NWP in the sale to the four Belongers, but the four Belongers who had been allocated land, sold it in a 'flipping' transaction, in a manner that injured the right of the Crown/TCIG and Belongers, to the Belonger discount. This matter of the avoidance of the Belonger discount has been described by the Prosecution as: *"... just a small piece of the evidential jigsaw supporting the case that this scheme was to obtain as much money as possible,"* and not the agreement they sought to prove in the conspiracy charged.

215) At the close of the case, this court as trier of fact, must have regard to the totality of the evidence to determine if the offence of Conspiracy to Defraud

charged in Count 2, has been proven beyond a reasonable doubt. The evidence must show that the alleged conspirators: FBH, JCH, MAW Samuel Been, Earlson McRobinson, Quinton Hall, Michael Misick and Lillian Boyce, participated in an agreement which was intended to cause injury to the economic interests of the Crown/TCIG and/or Belongers in the manner in which the Crown divested itself of its interest in Crown land at NWP. This 'manner' was that knowing that Crown land at NWP was worth so much to a buyer, they would arrange for the sale to the Belongers at an undervalue for them to sell it at a profit. It must also be mentioned that it was an alleged conspiracy spanning a period by different actors at different times.

216) I bear in mind that these are the matters that constitute a conspiracy:

"There must be a ***common agreement*** *to which all of the alleged conspirators are privy. Any agreement to commit the crime, communicated to the other party or parties, constitutes a conspiracy*[28].

The essence of criminal conspiracy is the agreement. The focus has to be on the agreement, not merely on the fact that there was more than one offender. ***The fact that there were two or more offenders is totally irrelevant, unless those offenders shared a criminal goal which they mutually intended to bring about.*** *One cannot recklessly join a conspiracy; that is why the mental element for conspiracy requires the parties to intend to agree and intend that the agreement be carried out…"* [29]

The first element to be proved in a conspiracy charge, is that the alleged conspirators were participants in an agreement which was dishonest, was intended to achieve an unlawful purpose, with the intent of injuring the proprietary right of another. ***Scott*** [supra] defines it succinctly thus: *"... an agreement by two or more by dishonesty to deprive a person of something which is his or to which he is or would be or might be entitled and an agreement by two or more by dishonesty to injure some proprietary right of his, suffices to constitute the offence of conspiracy to defraud".* The English Court of Appeal in ***R v. Mehta*** [30] provides further clarity

[28] Glanville Williams & Dennis Baker Treatise of Criminal Law

[29] Ibid.

[30] [2012] EWCA Crim 2824, paras 36-37,

by describing it *as "…an umbrella agreement pursuant to which the parties enter into further agreements which may include parties who are not parties to the umbrella agreement."* It is required that the parties to that agreement have a common unlawful purpose or design: "common design means a shared design. It is not the same as similar but separate designs".

217) Regarding participation in the agreement, it was stated in ***R v Griffiths***[31]**,** that "…***all must join in the one agreement, each with the others, in order to constitute one conspiracy***. They may join in at various times each attaching himself to the agreement, anyone may not know all the other parties, but only that there are other parties, anyone may not know the full extent of the scheme to which he attaches himself, but what each must know is that there is coming into existence or is in existence, a scheme which goes beyond the illegal which he agrees to do". [emphasis supplied].

218) To prove the conspiracy alleged, the Prosecution had to prove the agreement they alleged had the objective of injuring the economic interests of the Crown/TCIG and/or Belongers (who were entitled to the maximum price for Crown land), by selling the Crown land at an undervalue to persons they knew would sell it at a profit. This agreement alleged by the Prosecution *("the scheme to obtain Crown land by abuse of their position as Ministers/politicians in the TCIG at a fraction (22%) of the value they and others knew it was to be bought for…")* was the 'common' or 'umbrella' agreement to which other alleged conspirators had to be seen to have participated in even if they joined it at different times, see: .

Thus, the Prosecution had to prove that:

a. FBH, JCH, MAW and the unindicted co-conspirators participated an agreement in which NWP land would be sold for less than it was worth.
b. That having knowledge of how much a purchaser would be willing to pay for it, ($7M) arranged for it to be sold at an undervalue ($1,367,000).
c. That the agreement was intended to yield a profit to persons to whom the land was sold when they resold it to David Wex, a non-Belonger.

[31] [1965] 49 Cr App R 279

d. That the sale at an undervalue, was to put the Crown/TCIG and /or Belongers at risk of economic loss, in that they were entitled to reap the maximum benefit from the sale of Crown land but were prevented from doing so.

219) The Prosecution failed to prove any of these.

220) It is manifest that in the instant case as in many cases on conspiracy, no direct evidence of the alleged agreement entered into by the defendants and the unindicted alleged co-conspirators has been led by the Crown. The alleged agreement must therefore necessarily be proved by circumstantial evidence. Circumstantial evidence has been described as *"... evidence of surrounding circumstances which by undesigned coincidence, is capable of proving a proposition with the accuracy of mathematics"* see: ***Teper v R***[32]**.** It may require more than one strand of evidence to prove the crime charged, but will, put together with other strands, lead a reasonable man to a conclusion of guilt, see: per Pollock CB's example of the strength of a three-corded rope as opposed to the single strand in ***R v. Exall*** [supra]: the *"combination of circumstances no one of which would raise a reasonable conviction or more than a mere suspicion, but the three taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of."* The evidence from which such an agreement may be inferred, may be: *"acts signifying agreement, acts preparatory to offences, or the offences themselves. Such acts are, of course, only evidence of the agreement."* ***Glanville Williams and Dennis Baker*** *[supra].*

221) The evidence led against the FBH, JCH MAW and unindicted co-conspirators: Michael Misick, Lillian Boyce (LB) Samuel Been(SB) Earlson McDonald Robinson (EMR), and Quinton Hall (QH), which was that they were all part of the alleged scheme to sell Crown land to yield considerable profit for the purchasers (and them), commenced with the process of the allocation of the land, the crux of which is that an arrangement was made to ensure that the four Belongers were allocated land which was twenty acres of beachfront land which would be sold without encumbrance and along with a Development Agreement.

[32] [1952] A.C.

222) The evidence led by the Prosecution related to the process by which the four Belongers applied for, and were granted approvals for CCPLs, and later, freehold titles to land at NWP. In this process, there was no evidence from which an inference may be made that any of the alleged conspirators in this indictment was involved in it, save that FBH, JCH and any of the unindicted alleged co-conspirators were members of ExCo who were involved in the process of approving what was placed before them for the deliberations. No evidence was led that showed any of them showing interest above the ordinary in the performance of this duty. JCH was alleged to have recused himself, having declared his interest in the applications to be considered on 12 May 2004.

223) Evidence was led of shifting allocations for the four Belongers: the Lots 1-4 which were allocated to the four individuals corresponded to Lots to 138, 139, 140 and 140 after survey. However, in their allocation letters lots corresponding to Lots 1 and 2 after survey which were allocated to the persons previously allocated pre-survey lots 3 and 4. The other two lots 151 and 152, corresponding to Lots 13 and 14 were allocated to JCH and QH who had previously been allocated Lots 1 and 2. Then there was a further change that brought the four lots together again as 150,151,152, 153 corresponding to Lots 13, 14, 15 and 16.

224) While the Prosecution intimated that this was evidence of wrongdoing, no fingers were pointed at any of the named alleged conspirators save MAW, the attorney. The Prosecution alleged in their Opening, that the anomaly in the numbering of the lots, was a shifting of the land until a large piece made up of contiguous beachfront land fit for David Wex was found, and that this came after MAW was told that David Wex did not want disjointed pieces of land. He allegedly went away and returned with new lots. The evidence led did not disclose this.

225) What the evidence did disclose, was that by Paper 05/426, [33]prepared by Leo Selver and presented by Minister Galmo Williams to ExCo, the reason for the allocations of the said plots was provided. This included the fact that when the four Belongers were first approved for CCPLs, the land had not been properly surveyed or valued., that later on 8 September 2004 when freehold titles were granted to

[33] CX 302

them, “the offer was not executed because the parcels survey registration and valuation was not completed.” The paper informed ExCo, that at the time of the Paper, the survey, registration and valuation had been completed and the applicants had been assigned their parcel numbers, had paid their survey fees and were now “prepared to pursue the proposed development”.

226) The Prosecution also alleged that the process of allocation and the grant of the freehold titles to the four Belongers was characterised by misleading information. They pointed to the 8 May 2004 letters written to the four Belongers separately which incongruously referenced ExCo’s decision of 12 May 2004 and the grant of allocations of four congruous lots: Lots 1-4. Then there is a reference to the 24 May 2005 letters which were said to reference the 12 May 2004 ExCo approval. Furthermore, after the land was surveyed, the offers of CCPLs were said to be in respect of lots 151 and 152 for JCH and QH respectively, while Earlson Robinson and Samuel Been were allocated 138 and 139 respectively. It is manifest that the lots were separated and were on two different sides. They corresponded to Lots 1 and 2 and 14 and 15. But on 7 June 2005, the four signed Offers to Purchase relating to Lots 13-16 corresponding to Lots 150-153, in respect of which ExCo later granted freehold titles for the four Belongers.

227) But while this evidence showed that the allocations had changed, no cogent evidence was led from which the court may conclude that the Ministers or politicians charged or named as alleged co-conspirators, were responsible for it. On the contrary if there was misleading information, it was found in the work of public servants and perhaps Minister Galmo Williams who presented Paper 05/426 which resulted in the grant of freehold titles to the lots 60000/150, 151, 152, 153, and not any of the alleged conspirators here.

Land Allocation

228) The process of allocations in the period of the NWP transaction (2004-2005), was described in some detail by Leroy Charles the Director of Land and Surveys, and later of Survey and Mapping, Leo Selver who assisted the Permanent Secretary in the Chief Minister’s office with Crown land matters among other

things, as well as Tatum Fisher Clerveaux (Assistant and Deputy Commissioner of Lands 2006-2008), whose evidence covered a longer period - up to 2007.

229) Leroy Charles and Tatum Fisher-Clerveaux who were technocrats in the administration of Crown land, testified of the multi-stakeholder approach to the determination of allocations with input from relevant institutions such as Department Environment and Coastal Resources (DECR), before ExCo Papers were prepared and presented by the Minister to ExCo, from 2004-2007. Leroy Charles, speaking of the collective decision-making by heads of relevant institutions added that *"the prime movers involved in the selection of the names would have been the Permanent Secretary and the Minister."*

The Permanent Secretary at the time of the instant transaction was Leo Selver, and the Minister was Galmo Williams.

230) Regarding these two, there has been no allegation of impropriety in this entire matter of the NWP sale. Leo Selver gave evidence of the happenings with land allocation in 2003 when he worked at the Office of the Chief Minister, stated, that the Permanent Secretary who at the time was Gloyd Lewis, Leroy Charles, and the Commissioner of Lands were the ones who made the determination on allocations before the Permanent Secretary sent it to the "elected representative" being a member of ExCo. Leo Selver told of how the Chief Minister moved to another Ministry, taking his Permanent Secretary Gloyd Lewis with him; Galmo Williams then became the Minister for Natural Resources.

231) Leo Selver, who worked with Gloyd Lewis on Crown land matters at the Office of the Chief Minister in 2003, and later as Permanent Secretary of Natural Resources, at the time of Galmo Williams averred that he deferred to Leroy Charles whom he considered to be experienced.

232) Mr. Leo Selver who communicated to JCH that his land allocation (which previously had been Lot 1 corresponding to Lot 138 after survey) was not 151, also wrote to an Evan Leroy Garvey who had been allocated Lot 14, on 8 May 2004, Lot 149 on 24 May 2005, and Lot 140 on 9 June 2005.

233) It was manifest from their evidence that the system of land allocation at the time of the NWP allocations was not controlled by Ministers and politicians, but

by heads of institutions, pivotal among whom were Leroy Charles and the Commissioner of Lands Alice Williams, who worked with the Permanent Secretary in determining allocations, and that following this, the Permanent Secretary worked with the Minister (Galmo Williams at this time). The evidence was that it was the deliberations of these persons and their further consultations with relevant stakeholders, that resulted in the preparation of an ExCo Paper by the Permanent Secretary for its presentation by the Minister to ExCo.

234) Regarding the price at which Crown land was sold, the evidence was that it was determined upon the valuation of the Chief Valuation Officer who at the time material to this charge, was Mr. Shabaan. Hoza. The said gentleman gave evidence that his valuations were arrived at professionally. Regarding ministerial involvement in his valuations, that conscientious gentleman asserted there was an occasion in a land sale at East Caicos, that the Premier criticised his valuation as being too high. On another occasion, his valuations were questioned in the setting of an ExCo meeting. But he was emphatic that the criticisms led, not to a change in his professional valuation, but in his decision to add an explanatory note regarding how the figures were arrived at using comparable market values.

235) The evidence led by the Prosecution therefore did not show interference in the allocation of Crown land that began with applications by Belongers or interference with valuations, by FBH or any Ministers or politicians. Such evidence was necessary, as the evidence of Leroy Charles and Tatum Fisher Clerveaux would negate such interference.

236) There was also evidence that pre-survey numbers often changed after survey. An example of this was the land allocated to Aulden Smith which was 61203/37, which later after survey, became 61203/39. His neighbour Trevor Saunders' changed at the same time. This is also reflected in the changing allocation numbers of Evan Leroy Harvey who had been granted CCPL over Lot 14, on 8 May 2004, but was granted Lot 149 on 24 May 2005, and Lot 140 on 9 June 2005.

Thus, while the obviously shifting numbering of the four Belonger allocations indicated changes in the allocation, it was not by itself, proof of manipulation. And

without any evidence that it was done by FBH, JCH or the Ministers (unindicted co-conspirators) in pursuance of the corrupt objective of "arranging" the sale of the land at NWP, there could be no finding of dishonesty, or matters upon which the agreement alleged by the Prosecution may be inferred. This was more so as the evidence clearly shows that it was the collective decision on allocations by the institutional heads working with the relevant Permanent Secretary, that was sent to ExCo for their approval, and not the work of a single person, subject to manipulation by outside authority.

237) Thus, ExCo's decision on 7 July 2005 to grant freehold titles in the lots described as 60000/150 151, 152, and 153 to the four Belongers, was informed by ExCo Paper 05/426, prepared by Leo Selver and presented by Minister Galmo Williams, regarding whom no allegation of complicity has been made.

238) It was during this time of allocations by offers of CCPLs that the four Belongers signed individual Offers to Purchase with David Wex. In the Offers to Purchase, the Belongers were to assure their title, which meant that they would have had to purchase the land and then sold to David Wex and his yet-to-be-formed company. The Offers to Purchase were the evidence that the persons who executed them as vendors had commenced the process of 'flipping' their allocations. 'Flipping' as the credible evidence of Ariel Misick KC showed, was: the sale by B to C of what B had agreed to purchase from A. That witness on whose evidence the court will place much credit, testified, that not only is 'flipping' not unlawful, but it is recognised and provided for in both the Stamp Duty Ordinance, and in the Crown Land Policy.

239) Thus, until that point, the decision to 'flip' the land as individuals which was lawful activity, was what the transaction was about.

240) In this imminent "flipping", there was no evidence of an unlawful design to deprive the Crown/TCIG and/or the Belongers of their due in the sale of Crown land by Belongers to non-Belongers. There was also no evidence that any of the alleged conspirators, were involved in the process of Crown land allocation including purchase price determination. Indeed there was also no evidence of the involvement of any of the alleged conspirators save the four Belongers in this plan to flip the individual allocations once they received title.

241) It was not until Hugh O'Neill (HON) was introduced as the attorney for David Wex at a time when the process of selling the allocations of the four had already began and David Wex had paid the initial deposit under the Offers to Purchase, that everything changed from what was not an unlawful enterprise, to one in which through the subterfuge of using Belonger companies connected to HON, the sale of the land would be effected through share transfer, for the purpose of depriving the Crown/TCIG and Belongers of their due: the Belonger discount.

242) It was in pursuance of this mechanism, introduced by HON, that it became necessary to secure a Development Agreement.

243) The acts of JCH as a member of ExCo who owed a duty of care to it, was largely in pursuance of the goal of securing the Development Agreement for Urban Development which at the time was owned by the four Belongers. So were MAW's acts. He also pursued that goal working with officialdom: RBK and TCInvest. JCH pretended that the Belongers were to be the developers of the land, with ExCo, and MAW did the same with RBK and TCInvest. By their acts, they succeeded in securing both the Development Agreement approved by ExCo, and the removal of the registration of a charge on the land, in favour of a collateral agreement.

Michael Misick the Chief Minister had received a letter from the four Belongers who described themselves as principals of Urban Development and requested the two items: a Development Agreement, and a discussion on the fate of the charge that should run with the land sold at a discount. The evidence is that the Permanent Secretary prepared an ExCo Paper which was presented by the Chief Minister.

244) The information provided to ExCo, was that the four Belongers had pooled their land for a hotel/condominium development and required a Development Agreement, and a discussion on the charge that would run with the land. They were said to be the developers of the land.

245) The meeting agreed to a Development Agreement and made a decision to substitute a collateral agreement in place of the charge that should be registered on land sold at a discount. Although it was disclosed to ExCo that David Wex and his company Urban Capital Properties LLC was financier, there was no indication that

the land in the in the development, was to be sold to him and that the development would be by him, not the four Belongers.

246) FBH, Michael Misick, and Lillian Boyce were all members of ExCo. All ExCo's discussions after the approvals were upon the information by which Urban Development was introduced to it. There is no evidence that any of the named Ministers save JCH, knew that the land was to be sold to David Wex, or at all.

247) Not only did JCH keep the information to himself, but he continued the pretence that began with his silence when ExCo approved the freehold title granted to the four Belongers for 'their tourist related development'. He continued the pretence in his signing of the letter of 2 November 2005 to the Chief Minister, in which the four Belongers of whom he was one, were said to be the principals of Urban Development Ltd, the proposed developer of the twenty-acre beachfront land at NWP. He also recused himself in ExCo discussions which were based on the premise that the four Belongers, as principals of Urban Development were the proposed developers of the NWP land. Thus, it was the general knowledge of ExCo (as H/E Richard Tauwhare stated in his evidence), that he was part of the development, and there is no evidence that any of the alleged co-conspirators knew otherwise.

248) But while the Prosecution did not prove that any of the alleged conspirators was involved in arranging the sale of land at an undervalue, to the four Belongers, they did lead evidence of wrongdoing regarding the sale to David Wex, in the manner that deprived the Crown/TCIG and Belongers of their due: the Belonger discount.

249) It has been pointed out that in the crime of Conspiracy to Defraud charged, there must be evidence of an agreement or, from which, an agreement may be inferred. It must be one conspiracy, and all participants must be part of it, even if they joined at different times, and an individual conspirator did not know who else was in it, see: ***Griffiths*** [supra]**.** In ***Mehta,*** [supra] it was held that out of that 'umbrella agreement,' other smaller agreements may emerge, but there should be a shared objective among the participants.

250) The agreement alleged by the Prosecution was that the purchase of the Crown land would be made to the Belongers who would sell at a profit to a person known to be willing to pay so much more for it, thus putting what should have

gone to the Crown, into private pockets. The evidence available to the court at the close of the Prosecution's case, was that the Belongers to whom the land had been offered would sell it to a non-Belonger without a repayment of the discount given to Belongers.

251) The Prosecution was not able to establish the single 'umbrella' agreement. The evidence rather provided scattered pieces of evidence to which they attributed wrongdoing by certain persons, and not the acts from which "the one agreement" (***Griffiths***)[supra] could be inferred. This single agreement did not even appear to have a time of commencement. that would tie in two or more of the alleged co-conspirators in the alleged scheme to defraud the Crown/TCIG and/or Belongers in the transfer of Crown land.

252) The period of the alleged conspiracy: *"between the 1st day of January 2004 and the 30th day of June 2006"* contained in the Count, would seem to place the agreement anytime between the applications for land, the Offers to purchase, all the way to the receipt of the proceeds of the sale. It was simply impossible to prove. FBH and JCH applied for their allocations on 27 January 2004. Was that when the agreement was hatched between them? When FBH discontinued his application but helped his brother to apply for land, was that a new agreement to now use QH, or was it simply an altered agreement? What was the substance of that agreement? From the evidence, it was to purchase Crown land as Belongers. There is no evidence that they planned to sell their allocations. On 12 May 2004, ExCo approved CCPLs for four contiguous lots to be allotted to the persons who in this judgment, are referred to as the four Belongers. These are the persons who eventually arranged to sell their allocations to David Wex. The arrangements to sell to David Wex on the evidence of MAW, commenced with an approach to him by Timothy Smith which resulted in him scouting for land in the NWP area for David Wex. The search produced the four Belongers who entered into individual agreements (Offers to Purchase) to sell to David Wex in the transaction that has become the subject of this criminal charge. In the meantime, JCH wrote to Temple Mortgage on behalf of all four Belongers for funds to support their application for freehold titles. That would indicate that when that letter was written in May 2005,

the four were dealing with their allocations as one entity for the purpose of securing funding. However, when in June 2005 they signed the Offers to purchase, they did so as individuals. Thus, the decision to sell, could only have come after April 2005 when MAW was introduced to David Wex, and could not have been pursuant to the alleged agreement between FBH JCH and perhaps QH, for David Wex had not at that time, been introduced to MAW which resulted in the Offers to Purchase.

253) There is no evidence, as I have pointed out, that in the allocation, or in the pricing, there was any work done in concert by any of the alleged conspirators to bring about the sale of the Crown land at NWP to the Belongers at an undervalue so that the land could be sold on.

254) Apart from MAW and the four Belongers (including JCH), there was no evidence that the other alleged co-conspirators knew of the impending sale to David Wex, or at all. When Hugh O'Neill (HON) introduced his scheme, only MAW and the four Belongers were involved, none of the other alleged conspirators were involved in it. HON's appearance was in August 2005 and his scheme related to the transfer of the Crown land to non-Belongers in the manner in which the four Belongers would sell their allocations to David Wex through a share transfer from one Belonger company to another, thereby avoiding the repayment of the Belonger discount. It was for this that HON requested and received for the benefit of his clients, an indemnity agreement.

255) Thus, there is no evidence of a common, or 'umbrella' agreement of certain date to which the actions of the alleged conspirators may be made referable.

256) If the evidence of unlawfulness and injury to the Crown/TCIG and Belongers had demonstrated the objective of the conspiracy alleged by the Prosecution: that the land at NWP would be sold at an undervalue (a fraction of its worth – 22%) to allow for a resale that would yield a profit to the participants to the detriment (injury to economic interest) of the Crown/TCIG and Belongers, the acts of JCH and MAW and the three other Belongers regarding which the court found evidence of an agreement at the close of the Prosecution's case, could constitute a part of that alleged agreement as being just narrower in scope and

involving fewer people than what the Prosecution states to be its case, see ***R v. Johnson and Ors, [2020] EWCA Crim 482.***

257) But not so in the present circumstance, for the two 'agreements' are decidedly different and there was no shared objective between the persons alleged to have "arranged" the sale of the land, and the ones who were not involved in making the sale, but worked in concert to sell on what they purchased in a manner that caused injury to the right of the owners/administrators of Crown land.

I use the word 'agreement' for what the court found at the close of the Prosecution's case, loosely. This is because the Prosecution which bears the burden of proving the charge in Count 2, have discountenanced the evidence relating to the withholding of the Belonger discount form Government, describing it as *"a small piece in the evidential jigsaw"* to prove the conspiracy they allege.

258) It is clear then, that the first element of the charge of Conspiracy to Defraud in Count 2, which the Prosecution alleges is an agreement hatched among FBH, JCH MAW and unindicted alleged co-conspirators to arrange for the sale of Crown land at NWP an undervalue, for the purpose of enabling its resale at a huge profit to them and intended to injure the economic interest of the Crown/TCIG and/or Belongers, has not been proven.

259) The Prosecution bore the burden to prove what they alleged.

Even so, I will examine the evidence led in proof of the charge against each defendant.

FLOYD BASIL HALL (FBH)

Prosecution's Case

260) The Prosecution's case against FBH is that he was part of an agreement by which land at NWP would be sold for less than its worth, to be sold on by the four Belongers to David Wex for a huge profit and personal gain to them (he, being the principal of QH). He allegedly used his impecunious brother Quinton Hall (QH) to front for him in the NWP transaction.

261) In this alleged agreement, very little evidence was led of FBH's involvement, a summary of which is: he started an application with JCH which he

withdrew. He helped his brother to make an application, allegedly in substitution for him in order to hide his participation in the NWP transaction. He was then alleged to be involved in backstage activity to further the scheme. This included his writing a letter to Galmo Williams, a ministerial colleague in favour of another ministerial colleague JCH. By this letter, he forwarded the "letter of comfort" from Temple Mortgage as well as other documentation on the offers of CCPLs to the four Belongers (including the payment of the $1500 survey fees for Lots 151 allocated to JCH and 152 allocated to Quinton Hall), to the said Minister, the day before the Offers to Purchase were signed.

262) By these, the Minister introduced the subject at ExCo, informing it that Temple Mortgage had offered them $6M which would be used in the purchase of the freehold. FBH was also present at a number of ExCo meetings at which a Development Agreement for Urban Development, understood by ExCo to be owned by the four Belongers was discussed. It included a discussion on the use of a collateral agreement rather than the registration of charge on the land – a phenomenon that could become a problem when condo units were sold to non-Belongers. FBH participated in that discussion.

263) On 24 March 2006, like JCH, FBH recused himself from a Cabinet meeting at which the development by Urban Development was discussed.

FBH was inexplicably copied into emails between Clayton Been and RBK on the NWP transaction.

When the $1Million share of QH, of the proceeds of the sale was sent to CSG, CSG placed it in his firm's account opened at TCI Bank with FBH's funds taken from his 'John Doezer' account. There appeared to be no clear owner of the funds as both QH and FBH appeared to make withdrawals. Among the first withdrawals were the sums of $20,000 paid into a Belize Bank account which was applied for FBH's benefit - half for a credit card bill and the other half for GBL Holdings connected to FBH, and the sum of $15,000 which was paid to FBH directly.

Other withdrawals were made by QH, while others were said to have been applied at his direction. However, a year later, FBH received $300,000 from the $500,000 that had been returned from the certificate of deposit. Also, the Prosecution alleges

that the sum of $150,000 was paid to a construction company: Johnston International, on FBH's behalf for use on a building at Grand Turk called Harbour House which was acquired by the company Whale Watchers Ltd.

FBH

264) FBH denies being a part of any conspiracy. He also denies any involvement with the NWP transaction which he owns was his brother QH's transaction with other Belongers. FBH has explained that the acts pointed to by the Prosecution were not done because of self-interest. He denies that the application form for a CCPOL filled out for him by JCH while the latter filled out his own application form, was any form of collusion for a nefarious purpose. Narrating the circumstances, FBH alleges that JCH informed him that he had heard that land was available at NWP and that he was going to apply for land there. FBH was interested in acquiring land there but he was too busy to do so at the time. He therefore asked JCH who was going to make an application, to fill out a form for him as a favour. When the form came to him filled out, he signed it and submitted it. Shortly after this, he discovered that the land (although at NWP), was not in the Amanyara area which he preferred. That was why he withdrew his application. He however assisted his brother (QH) to make an application by filling out a form for him, which QH signed.

265) FBH denies that he communicated with Leroy Charles or Leo Selver regarding the allocations to be made to the Belongers, nor did he participate in the reallocation or movement of the lots in the NWP transaction.

266) He alleges that because of the economic activity between Grand Turk and Providenciales, many shuffled between the islands as did he. He therefore ran errands, taking documents from one place to another. It was on one occasion when he was returning to Grand Turk from Providenciales to Grand Turk, that JCH who wished to submit documents to Minister Galmo Williams at Grand Turk, asked him to run that errand for him. He took the documents to Grand Turk, but being quite busy at the office that day, he sent them by courier under the cover of an explanatory letter of 6 June 2005 letter to Minister Galmo Williams.

267) Regarding ExCo meetings, he alleges that he performed his duty as a member, and in that regard, he often drew the attention of the meeting to errors at the instance of officials of TCInvest. It was on one such occasion that having been apprised by TCInvest that the wording on the charge on the discounted land was imprecise, he drew the attention of the meeting to it to effect a correction. He asserts also, that on the day he declared an interest at an ExCo meeting on the NWP development, he did so because his brother's interest was involved, and that while he did not have to recuse himself, he did so as he sometimes did when the Chief Secretary who was familiar with his family, asked him to do when issues relating to his family members came up.

268) He denies that he had any dealings with the alleged conspirators regarding the NWP transaction, or with David Wex whom he met once in his office, but informally, or any of. That meeting he said, was unscheduled, and happened when David Wex, in the company of a local pilot whose aircraft had problems, paid him a visit in his office. David Wex had inquired about the investment potential in the Turks and Caicos Islands. There was however no discussion of NWP.

269) FBH asserts that there was no reason beyond informing him as Minister of Finance, of developments in the negotiation for the NWP Development Agreement which had financial implications (such as the duty reduction period made by the developer), that emails from RBK to MAW were copied to him and other persons: Gloyd Lewis, Clayton Been and Conrad Higgs.

Discussion

270) I make mention once again that circumstantial evidence must lead to the conclusion of the guilt of FBH, that he was involved in this agreement to arrange the sale of the land at NWP at an undervalue in order to enable its resale for profit, with the intent to injure the economic interest of the Crown/TCIG and Belongers.

271) Evidence was led that the NWP transaction had two parts: the allocation of the land to the Belongers following a process of application, and leading to a purchase from the Crown, and the arrangements to sell to non-Belonger David Wex. Regarding the first, the evidence of FBH's involvement is that his application was filled with the same hand as JCH's and that after he discontinued his own

application, he helped his brother to make an application in his own name, and he was the author of the letter of 6 June 2005, which was a cover for documents submitted to Minister Galmo Williams to further the application for freehold title for all four Belongers, although it was submitted on behalf of JCH. While there is no evidence that FBH was involved in the second, which was the sale of the land to David Wex and his group of non-Belongers, the Prosecution alleges that he was involved in it as the principal of his brother QH who fronted for him.

272) Evidence has been led to show that QH was a participant, he signed an Offer to Purchase with David Wex. He also signed the letter of 2 November 2005 to the Chief Minister seeking a Development Agreement for Urban Development. His two shares in Urban Development were transferred along with the others' to Blue Resorts, and he signed the indemnity.

273) Evidence was also led to show that he was impecunious, and was shown to have borrowed monies from TCInvest for businesses that did not work, leaving him with unpaid debts. A picture of his abject circumstances was painted that he could hardly take care of his family. At the time of the sale, QH was a mature student in the USA.

274) Further evidence was led to show that when the $1M paid as QH's share of the proceeds of the NWP transaction was received, FBH participated in it, allegedly, taking the 'lion's share' of it.

275) The court is invited to infer from all these, that QH's circumstances made it improbable that he participated in the NWP in his own right, rather than as a frontman for FBH. Thus, the evidence led to portray FBH's involvement, must be seen in the light of his own involvement as principal of QH.

276) In this charge of Conspiracy to Defraud, the Prosecution asserts that Ministers and politicians including FBH. were involved in a scheme to arrange to sell Crown land at an undervalue, knowing that a prospective purchaser was willing to pay so much for it. It was to dishonestly enable its resale at a big profit to the persons involved in it, thereby causing injury to the economic interest of the Crown/TCIG and Belongers who should have realised maximum gain from the sale of Crown land, but were prevented from doing so.

277) To prove the existence of such an agreement of which FBH was a part, evidence of the part played by the alleged conspirators including FBH in the details of the sale of the Crown land at NWP to the four Belongers, starting with his application later abandoned, and QH's application which allegedly took the place of his own, the allocation of the land, the price at which it was to be sold, had to be led. The evidence had to show also that he (and the alleged co-conspirators) knew of the arrangements made for the sale to David Wex, including the price he had agreed to pay for it.

278) FBH has been charged not as a participant in the purchase of the Crown land that was the subject of the sale by share transfer, but as the principal of QH his brother and alleged frontman.

279) But the evidence in this regard is weak for many reasons. Starting with the application, FBH's explanation that the form was filled out on his behalf, is a matter that raises no controversy in the light of the evidence of Leroy Charles, that it was in fact common practice for persons to fill out application forms for friends and family. That he withdrew his application and helped his brother with his application, should not be indicative of any dishonest design, as his brother, QH was entitled as a Belonger to make his own application.

280) The Crown Land Policy of which the Prosecution led evidence, entitled every Belonger above eighteen years to an application for Crown land, and though QH was said to be impecunious, that would not be a bar to this application for land. For there was no requirement of the proof of financing. Furthermore, as the transaction he later participated in was essentially the 'flipping' described by Ariel Misick KC as: A agrees to sell a thing to B, B then agrees to sell it to C at a profit, he was likely to make a profit to help with his financial difficulties.

281) There is no evidence that FBH who as a member of ExCo, participated in discussions to grant benefits to Urban Development, knew about the Offers to Purchase which were the beginnings of the NWP transaction.

282) There is also no evidence that he ever had dealings with Hugh O'Neill (HON), David Wex, MAW or the Belonger allocatees in the details of how the sale of the land allocations by the four Belongers was to be effected. Nor was there

evidence of his involvement with any of the named alleged conspirators, regarding the circumstances preceding the allocation of the land to the four Belongers that commenced with the process of an application.

283) The minutes of ExCo meetings showed that the approval by Exco of a Development Agreement and collateral agreement (which replaced the charge on discounted land), was anchored on the information provided to ExCo by the Chief Minister. It was that the four Belongers had decided to pool their pieces of land to make twenty acres of land and had incorporated Urban Development Limited to hold it for development. That was the Paper placed before ExCo.

FBH, a member of ExCo participated in the discussions.

284) While there is evidence that FBH drew the attention of the meeting to corrections in the minutes regarding the discussions on the proposed development at NWP, and that he made contributions regarding the charge on the land which should be replaced with a 'side letter', there is no evidence from which the court may conclude that he was promoting his own interest.

285) This is because the NWP Paper that was introduced by the Chief Minister, and upon which the discussions were based, was on the subject of the development of the land, not the sale of it. Thus, unless it was demonstrated that FBH knew that the land was to be sold, his participation in the discussion must be seen in the light of what was before ExCo which was action to aid the development by a company owned by Belongers. The decisions, based on what was before ExCo, were decisions for which all its members were collectively responsible.

286) While it was the evidence of H/E Richard Tauwhare regarding how Ministers made it a practice to (dishonestly) introduce topics for discussion by Oral Mention, and not upon Papers which should invite discussion upon sober reflection, no discussions were held at the instance of FBH in such manner in this matter of the development at NWP.

287) As aforesaid, ExCo's discussions that yielded benefits for Urban Development was for a development that was to be undertaken by Belongers. No evidence was led that FBH or any other member of ExCo save JCH, knew that the

land the subject of their deliberations which were to facilitate or to aid in the Belonger development, was in fact the subject of a sale agreement with David Wex.

288) For these reasons, in this charge of Conspiracy to defraud against FBH there has been little evidence of his involvement in anything from which a dishonest agreement to arrange the sale at a fraction of the price, with intent to defraud the Crown/TCIG in the sale price of Crown land, may be inferred.

The submission of the 6 June 2005 letter to Minister Galmo Williams which promised funds for the purchase of the freehold even if it had not (as it stated), been on behalf of JCH, would hardly have secured any advantage beyond the approval of the grant of freehold titles. Even FBH's participation in the discussion in the replacement of the registered charge, in the context of a Paper placed before Cabinet could not, lead to the conclusion that he was acting to further the sale to the Belongers in a transaction in which he was the alleged principal of a participant – QH.

It seems to me also, that the evidence that FBH recused himself from an ExCo meeting at which the NWP development was discussed was more consistent with what he alleged: that he did so on account of his brother's interest, than with the intimation that having allegedly gone to the trouble of distancing himself from the NWP transaction (by use of a front man), that he should declare himself to be a participant to ExCo, by his recusal.

289) The participation of FBH in the alleged conspiracy, was anchored mainly on two things: QH's impecuniosity, and FBH's enjoyment of the proceeds of the sale deposited in a bank account of Stanfield Greene Attorneys in the name of QH. The Prosecution invites an inference from the evidence led, that QH's circumstances as an impoverished individual made it improbable that QH participated in the venture for himself, and further, that the evidence of the benefit FBH got from the proceeds shows that he was the one for whom the proceeds were intended, as the principal.

290) Both FBH and QH appeared to have made withdrawals from the $1M.

But there were curious disbursals also, such as $150,000 to Michael Misick, the Premier who was the colleague of FBH and a personal friend of QH who had been his

chauffeur, $200,000 given out as a loan (which was repaid shortly afterwards) to FBH's friend Harold Charles, $150,000 paid to Johnston International for the repair of Harbour House which had started its life as an investment project for FBH and his two friends but reportedly, later had QH replacing FBH. Then there was the payment to Lisa Hall, wife of FBH of $300,000 from the funds, a year later, after the $500,000 placed on a certificate of deposit, matured with interest of $22,000. All these disbursals lent themselves to grave suspicion as they all appeared to be connected more with FBH, than with QH.

291) FBH gave evidence that all the disbursals were made with the consent of QH, a matter than was corroborated by CSG, the co-accused with whom the funds had been lodged. Regarding the payment for Harbour House, he explained that the disbursal was QH's, for while he had once been part of that project, he had turned over his interest to QH and had ceased to be a participant in it at the material time. Regarding the $300,000 paid to Lisa Hall, FBH explained that $200,000 of that amount was in repayment of a loan of that amount contracted by FBH from Richard Padgett on behalf of QH for Harbour House of which QH had become part owner. Of the remaining $100,000, $75,000 represented QH's contribution in a property that was being purchased by FBH through his wife Lisa Hall's company Summerhill Holdings; the remaining $25,000 was repayment of various loans FBH had given to QH over a period of time. All the sums were put together in the purchase of the property by Summerhill Holdings of which QH was to have twenty to twenty-five equity interest. However, that investment came to nought when the economy of the western world collapsed at the material time and affected the fortunes of these islands in no small way.

292) FBH bore no burden to prove his innocence, but he gave evidence regarding these matters which certainly provided some explanation for the disbursals.

293) In charging FBH with conspiracy, the Prosecution had the burden to adduce evidence of an agreement for the Government to effect the sale of land in a dishonest manner to persons (including his brother who allegedly participated in the sale as his alleged frontman), and that FBH participated in the agreement.

There was no evidence that though penurious, QH a Belonger entitled to Crown land, participated in the NWP transfer of Crown land and its sale to David Wex and his group through share transfer, was a front for FBH in the transaction.

The evidence led of FBH's actions were not such as to lead to any conclusion that he was the principal of QH, or that he participated in the agreement alleged by the Prosecution which had the objective of defrauding the Government in the manner in which the sale of the land at NWP was conducted.

294) In this judge-alone trial in which the court is both tribunal of law and fact, I have regard to the totality of the evidence, and find that there is there is no evidence of the conspiracy of Ministers and politicians (alleged co-conspirators,) in arranging the sale of the land at NWP at an undervalue to Belongers for the purpose of enabling a profitable sale by them. Nor was there cogent evidence to link FBH with any activity from which his participation in such an agreement either by himself or through his brother QH, may be inferred.

295) The Prosecution has the burden of proving beyond a reasonable doubt, that FBH was involved in the transaction at NWP, and that he was part of a conspiracy to defraud the Crown/TCIG and Belongers in the transfer of land to the four Belongers at an alleged undervalue, knowing that it was to be bought for so much. They have not succeeded in proving the guilt of FBH in the offence as charged in Count 2.

296) The charge of Conspiracy to defraud against FBH in Count 2 therefore fails, and FBH is acquitted and discharged from the charge in Count 2.

JCH

297) JCH chose (as was his right), to continue his participation in the trial without calling evidence. Per Mottley P in ***Inelus v R***[34]:

"...in a criminal trial the burden of proving the defendant's guilt remains on the prosecution for the entire duration of that trial....a defendant is entitled to sit in the dock and is entitled to say and do nothing,' that was his legal right and it is a right enshrined in the law."

[34] 2018] TCACA 20 at para. 31

At the close of the case, the court's duty is to look at the totality of the evidence to see whether the Prosecution made out its case, as the burden of proof remained on them to prove JCH's guilt beyond a reasonable doubt.

298) JCH was charged with conspiring with others: FBH, MAW charged in the count, and unindicted alleged co-conspirators: Michael Misick, Lillian Boyce, Earlson McDonald Robinson, Samuel Been and Quinton Hall. They were alleged to have arranged the sale of land at North West Point in such a manner as to injure the economic interest of the Crown/TCIG and/or Belongers.

299) I have already discussed that the agreement found by the court at the end of the Prosecution's case with regard to Count 2, is not what the Prosecution has alleged at the close of the trial.

300) This court will therefore examine the evidence led by the Prosecution to determine whether the Prosecution proved beyond a reasonable doubt that JCH participated in the agreement which was alleged to be *"the scheme to obtain Crown land by abuse of their position as Ministers/politicians in the TCIG at a fraction (22%) of the value they and others knew it was to be bought for, while at the same time, making false representations to enrich themselves at the expense of the TCIG/the Crown and the Belongers"*.

301) The proof of this required evidence (although circumstantial) which would demonstrate that JCH was part of "the one agreement", see: ***R v Griffiths***[35], from which a dishonest agreement for that unlawful purpose, could be inferred, leading to the conclusion of guilt.

302) It is manifest that no such evidence was led from which such an agreement among the alleged conspirators (JCH, FBH, Michael Misick, Lillian Boyce, Samuel Been, Earlson McDonald or Quinton Hall), may be inferred regarding the processes and circumstances that led to the sale of the land at NWP to the four Belongers. I say so for the following reasons:

The allocation

[35] supra

The Process

303) The case against JCH begins with the process of the allocation of the land. That process began with an application by JCH, a Belonger who was seeking land for commercial development on 27 January 2004 for a CCPL. On that day, he also filled out an application for FBH. Thus, the two applications were of the same date and were in the same hand. To explain how this happened, FBH testified that JCH done so as a favour to him as he was busy at the time.

304) Evidence was led by the Prosecution that the practice of persons filling out applications for CCPLs for friends and family was not uncommon and was in fact acceptable practice, as Leroy Charles, the Director of Lands and Surveys and later of Survey and Mapping, acknowledged. The similar applications were therefore, not evidence of any sinister design or purpose. The said gentleman, as well as Tatum Fisher-Clerveaux (from the records preceding her 2006 employment), also gave evidence of a clear, transparent system of land allocation which was arrived at collectively by heads of relevant institutions regarding who should be allocated what land. The evidence was of a well-regulated system which did not appear to be subject to manipulation by any outside authority unconnected to the process.

305) The price at which the land was sold was determined by the Government valuer: The Chief Valuation Officer who at the material time, was Mr. Hoza. Mr. Hoza defended his valuations as having been given professionally. Evidence was led that while Mr. Hoza's valuations had a shelf life of six months, or if circumstances changed, the evidence was that the valuations were used long after its six-month life. There was no intimation by Tatum Fisher Clerveaux who acknowledged this, that this was a result of wrongdoing by the persons in charge of the system, Ministers and politicians in general, or the persons named in the indictment including JCH.

ExCo Approval

306) Evidence was led that on 12 May 2004, a Paper [36]on the subject of Applications for land at North West Point, was presented by the Minister for Works

[36] 04/279

Utilities and Communication before ExCo. On that day, JCH who was Acting Chief Minister, recused himself from the discussion, declaring his interest in it.

ExCo approved the grant of CCPLs for fourteen persons including JCH and the three others who together later formed the company Urban Development. The approval of ExCo was communicated to the offerees with pre-survey lot numbers, being No. 60000/1,2,3,4.

307) On the 8 of September 2004 when ExCo approved freehold titles for nine persons, JCH was one of these successful applicants, but the only one among the four Belongers for whom freehold title to land at NWP (Parcel 60000) was approved. No evidence of wrongdoing or a manipulation of the system of allocations by any of the persons named in this indictment (Michael Misick, FBH, Lillian Boyce or JCH) was led regarding these matters. While Michael Misick (unindicted alleged co-conspirator) had been the Minister in charge of Natural Resources, in 2003, the evidence was that in 2004 when the NWP allocations were made, the Minister responsible for Natural Resources was Galmo Williams who took over from Michael Misick. However, on 8 September 2004, it was Michael Misick who presented a paper to ExCo requesting for the freehold titles to various persons for three different reasons: some had developed the land, some needed funds to complete their developments, and others needed freehold titles to raise funds from financial institutions. JCH was approved for freehold title over lot 6000/Lot 1[sic].

308) No evidence was led in criticism of ExCo's approval, and the concurrence of the Acting Governor (who in absence of the Governor , was presiding), was not criticised as being improper, out of the ordinary, or a manipulation of the system for the sake of dishonestly furthering the object of an unlawful sale of land at NWP to the four Belongers.

309) When on 7 July 2005, ExCo recommended the approval, and reaffirmed the freehold offer granted to JCH, Quinton Hall and Earlson McDonald Robinson, over what was described as "Parcel now 60000/150, 151 and 152" and approved the grant of freehold title to Samuel Been over Parcel 153, it was said to be "for the purpose of pursuing their tourist development".

There was a discrepancy in the identity (numbering) of the lots that was communicated to the four Belongers, including JCH at various times: while the pre-survey allocation numbers were stated to be Lots 1-4, this changed over time until the four Belongers received allocations of Lots 150-153 which in the redistribution of numbers, corresponded not to the Lots 1-4, but to Lots 13-16. While this curious state of affairs raised questions, it did not appear to be unprecedented, for there was evidence that the allocations sometimes changed. In the instant matter, ExCo was informed in a Paper[37] that the allocation of Lots 150-153 differed from the first allocation in May 2004, for such reasons as the existence of undetermined variables: survey, registration, valuation.

The lots 150-153, were said to be the result of the completion of the entire exercise, all matters connected thereto settled, and that the numbering was now, 60000/150-153. The said ExCo Paper justified the grant of freehold titles to the applicants. No evidence was led that JCH or any of the alleged co-conspirators influenced the Paper upon which ExCo granted its approval of freehold titles. Thus, in the absence of any evidence tying any of the named alleged conspirators including JCH to the change of numbering for the four Belongers for the corrupt purpose of enabling a sale of the Crown land to injure the proprietary rights of the Crown/TCIG and/or Belongers, the court cannot be in a position to conclude that such was the result of wrongdoing or manipulation or that it was by the alleged conspirators in this Count.

310) The only evidence led by the Prosecution suggestive of wrongdoing by nameless persons regarding the allocation of land was given by David Green the realtor from Turks and Caicos Realty who was edged out of the NWP transaction by Timothy (Tim) Smith, his manager at the office.

It was his evidence that he met four gentlemen at a meeting with David Wex. David Wex had indicated that he wished to obtain land for a one-room condominium development. At that meeting four purchase agreements were given to him by Tim Smith which he took to the office, then Sotheby's. They were not signed or dated in his presence.

[37] ExCo Paper 05/426

311) At the core of his evidence was that when he visited the land to be purchased by David Wex, he found it not to be the beachfront land David Wex required, but iron shore land, and that following a survey that he advised to undertake, the allocation of land to the owners who were dealing with David Wex, changed.

312) The problem with Mr. Green's evidence was that if it were believed, the only proper inference the court could make, was that unidentified persons wanting to get the type of land that David Wex wanted, manipulated the allocations of the four Belongers from iron shore to beachfront land. It did not provide the identities of the alleged culprits, nor did it point a finger to any of the persons charged on this count as having been involved in the manipulation of the land allocation.

313) But evidence was led, that following the offer of the CCPL before the grant of freehold title, JCH entered into an agreement to sell the land allocated to him to one David Wex who signed the document as Purchaser for a company to be incorporated. On that same day, three other persons: Samuel Been, Quinton Hall and Earlson McDonald who had also been granted CCPLs after applications made at various times, entered into similar agreements with the same purchaser for the sale of their own land allocations for various sums of money.

314) The link between the different transactions was their use of a common solicitor (McLean's), and a common witness to their signatures MAW. MAW recounted how he got involved in the transaction through an introduction by Timothy (Tim) Smith, to David Wex, a developer who wanted to do a joint venture development with Belongers.

315) Evidence was given that this sale contemplated by JCH, and the other three persons (the four Belongers) has been described as "flipping", a commercial activity, known, and acceptable in the islands as not being unlawful. There was no evidence of the involvement of any other Minister except JCH in the individual transactions for the sale of land with David Wex. There was thus no evidence that any of the Ministers named as co-conspirators, save JCH the participant, knew that the land was to be sold.

The sale with Development Agreement

316) It was not until Hugh O'Neill (HON) commenced his representation of David Wex and his group in the transaction, that the 'flipping' of the raw land with Planning Permission (began by the execution of the Offers to Purchase), changed to the sale of land, enhanced with a Development Agreement negotiated with the Government, conducted by way of a transfer of shares. In that scheme, the allocations of the four Belongers would be transformed into shareholding in a company. The shares would be transferred to a Belonger company. Through the said scheme the land would be transferred to David Wex.

317) The goal of this, as HON informed David Wex in correspondence, was to avoid the payment of what he called the 'Belonger fee' of over $1M, but which in reality was the repayment of a discount allowed to Belongers to empower them to purchase Crown land.

318) In furtherance of this scheme, Urban Development Ltd (Urban Development) was incorporated at the instance of David Wex.

Hugh O'Neill (HON) described the thinking that went into that in this manner:

"The purchase by Mr. Wex was initially proposed to be done from four individuals. That posed, in my view, problems for a purchaser who wanted to develop over a20-acre area. It also posed an issue that if Mr. Wex and his group were dealing with four different vendors, if any vendor failed to complete or create difficulties with respect to completing at the same time, or changed their mind, or their price, he could be stuck in a situation where he would have to buy arts of the property and not all of it. so it was in the interest of the purchaser…" "It was ultimately agreed that the four Belongers would make an application to acquire all of the property in a single entity."

319) The scheme required that the sale of the land should include a Development Agreement. Also, the Belongers who were in the process of divesting their interest in the land allocated but yet to be sold to them, wanted the charge that was placed on land sold at discounted value, to be removed, and be replaced with a collateral agreement.

320) To secure these benefits for the purchaser David Wex, in order to enable the sale to him and his group of non-Belongers, JCH, and the other three Belongers,

describing themselves as principals of Urban Development, wrote to the Chief Minister on 2 November 2005, requesting for a Development Agreement for the company to undertake commercial development. They also asked that the charge on property subject to the Belonger discount, be considered.

321) This letter which kickstarted ExCo's deliberations on Urban Development, ended with the sentence: "We will be grateful if we can reach an agreement by December 1st in order to finalize construction by summer 2006". This was an intimation that Urban Development as constituted at the time, was going to be the developer of the hotel/condominium development. However, JCH who signed the letter as one of the principals of Urban Development knew that arrangements were underway for the land (twenty acres of pooled five-acre allocations) to be sold to David Wex, when the requests were made.

322) On 24 November 2005, the Chief Minister introduced a Paper on the 'Proposed Hotel/Condominium Development, North West Point' to ExCo. ExCo approved the requests of the said principals of Urban Development (referred to as 'sponsors') In particular, it approved a Development Agreement as well as a collateral agreement between the Government and Urban Development in lieu of the charge that would ordinarily run with the land. Various other concessions were granted. The Attorney General and TCInvest were tasked to negotiate a Development Agreement and the approved collateral agreement with Urban Development. ExCo came to a decision after its members held some discussion on the need to not inhibit condominium sales by encumbering the sale of each unit with the charge on the land on which the condominiums were built. After the meeting, the Chief Minister that same day, advised the Directors of Urban Development of ExCo's approval and of its further agreement "to void the registration of any incumbent's registration of freehold title on 60000/150, 151, 152, 153".

323) At a number of ExCo meetings, the development was discussed. ExCo did so with the understanding communicated to it by the Paper introduced by the Chief Minister, that the four Belongers, principals of Urban Development, were the proposed developers of the twenty-acre stretch of land at NWP. This was so,

although ExCo had been apprised that the development would cost $190M, and David Wex and his Urban Capital Property LLC were introduced to as the financiers of the project.

324) JCH, one of the four Belongers who knew that the Belongers were not going to develop the land, and that the process of 'flipping' their allocations had commenced with the signing of the Offers to Purchase, did not disclose this to ExCo.

325) Indeed, before this time, when ExCo was called upon to grant freehold titles to the four Belongers to enable their tourist development, JCH who knew that the Offers to Purchase had been signed a month before, and that the sale to David Wex was underway, made no disclosure to ExCo, which had been informed that the four Belongers were going to develop the land. ExCo reaffirmed the grant of freehold titles to the four Belongers on 7 July 2005 to enable their tourist development.

326) After the incorporation of Urban Development, and the letter of 2 November 2005, signed by the four Belongers as principals of Urban Development, ExCo's discussions relating to the Development Agreement, the removal of the charge in favour of a Collateral Agreement, and the discussion on other benefits, were all to facilitate or aid the company Urban Development (whose principals at that time were the four Belongers believed to be prospective developers), in its development.

327) JCH, was the member of ExCo, who knew that in the impending sale (flipping) to David Wex, none of the Belongers were going to be part of the development of the hotel and condominium units. Once again, he breached his duty of disclosure when he failed to disclose this to ExCo, and rather than correcting the information given to ExCo (that the four principals of Urban Development who had pooled their land for a commercial development were going to be the developers), he fed the lie by recusing himself time and again from ExCo meetings at which the matter was discussed. This was in a bid to secure a Development Agreement which had become part of the sale of the land by Urban Development to David Wex. In this regard, it was the evidence of H/E Richard Tauwhare that it

was known from the beginning that JCH was part of the development – and JCH never indicated otherwise.

328) It has been argued strongly on behalf of JCH that he properly declared his interest and recused himself in ExCo's discussions in accordance with the dictates of the code of conduct governing the activities of Ministers: ***Responsibilities and Procedures for Executive Council and Government Business***[38]. That argument fails to recognise that in not disclosing the true nature of the transaction, that the land was to be flipped, and that his only interest was in the purchase money, ExCo was placed in a position in which it misapprehended the nature of the interest of the four Belongers as vendors, and not developers of the land for which all the concessions were sought.

329) In the belief that the four Belongers as principals of Urban Development were the prospective developers of the twenty-acre beachfront land at NWP, ExCo approved a Development Agreement negotiated to aid Belonger commercial development, as part of the sale of the land to four Belongers for whom freehold titles had already been approved. However, it was a fact that at the time of the sale by the Government of the land to Urban Development, the company no longer belonged to the four Belongers. Thus, the benefits negotiated for them, were passed on as part of the sale by share transfer to David Wex; and the Belonger discount was not paid.

330) JCH as did all the participants in the scheme, received proceeds of the land sale which was by share transfer. JCH's was not received by him directly but was sent to the account of Alliance Realty Ltd, a real estate company he co-owned with MAW. From that account, he withdrew monies and made disbursements.

331) It is manifest from the evidence that ExCo was blindsided by one of its own (JCH) who was not only in breach of his duty of disclosure, but carried on a deception that enabled the sale began by the execution of the Offers to Purchase, but altered in the mechanism by HON.

332) Therefore, far from showing that the alleged co-conspirators FBH, MM, LB fellow Ministers and members of ExCo were part of an agreement to conduct the

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sale of the land at NWP for the unlawful purpose of enabling a windfall, the evidence shows that JCH who alone knew that the land to be sold, hid the true nature of the transaction from his ExCo colleagues who believed that the Belongers were to be the developers and that he (JCH) was part of it. There is no evidence that any member of ExCo (besides JCH) knew that the land was to be sold at all, or for the price for which it was sold to David Wex.

333) It must be recalled that the Chief Minister, Michael Misick who was importuned by the letter of 2 November 2005 to get a Development Agreement and to start a discussion on the charge to be registered on the land, was informed that the four Belongers were the principals of Urban Development which was working towards commencing construction in the summer of 2006. This letter formed the basis of an ExCo Paper which was placed before ExCo. When ExCo granted the request of the four Belongers, the Chief Minister in writing to them, informed them that approval had been given for their proposed development. There is no evidence that there was any backstage activity between JCH and the Chief Minister from which it may be inferred that Michael Misick, the Chief Minister knew anything different from what the letter of 2 November 2005 had stated to be the fact of the matter.

334) The same goes for the other members of ExCo indicted and unindicted as alleged co-conspirators: Michael Misick, FBH, and Lillian Boyce. Their participation in ExCo deliberations on the matter (even if they appeared to champion the cause of Urban Development), may not lead to an inference of their participation in a scheme to defraud the Government, in the absence of evidence that they knew that the land was to be sold by the Belongers, who would therefore not be the developers of it.

335) There is therefore no evidence as the Prosecution alleges, that any of the named Ministers alleged in this Count to be co-conspirators, participated in any 'arrangement' to sell the land to the Urban Development (which at that time, was owned by the four Belongers), in a manner that would enable a lucrative sale for them, for there was no evidence that any of them, as members of ExCo (save JCH), knew that the land was to be sold for so much more than the purchase price.

336) In this charge against JCH which alleges that he is part of a conspiracy in which Ministers and politicians arranged the sale of the Crown land at NWP to the four Belongers in a dishonest manner in order to defraud the Crown/TCIG and Belongers, in the price at which the land was sold (allegedly at a fraction of its value), the Prosecution bore the burden of persuasion which included the burden of adducing evidence that JCH participated in the said agreement which is described in the decisions of *Griffiths* and *Mehta* [supra], as 'the one [umbrella] agreement' or the "common agreement" to which other persons join (even if at different times).

337) Thus, if the Prosecution had succeeded in proving that the alleged co-conspirators being the named Ministers/politicians (FBH, Michael Misick or Lillian Boyce) had known of the impending sale to David Wex, and had participated in ExCo's approval that ushered in the sale by the Government, that would have been evidence that they knew the sale to be at an undervalue, for a purchaser with ready money was prepared to pay so much for it.

338) From such conduct would the agreement (which is *sine qua non* in proof of a conspiracy), have been inferred. Unfortunately, there was no evidence of such an agreement.

339) This is so, even though JCH was clearly involved in wrongdoing, being in breach of his duty of disclosure to ExCo about the nature of the transaction: that the four Belongers were not going to develop the Crown land they were about to purchase but were going to divest themselves of their interest in the land to a another who would undertake the development. JCH also participated in the scheme calculated to deprive the Government of the Belonger discount in a sale by a Belonger to a non-Belonger within ten years of purchase, assisting in this enterprise by ensuring through his conduct (silence and pretence), that ExCo would provide a Development Agreement which would be part of the sale of the land to David Wex - a request introduced by Hugh O'Neill.

340) However, not having found evidence of his participation in the agreement alleged by the Prosecution that the sale of the land at NWP to the four Belongers was conducted at an undervalue for the purpose of enabling their sale of it to

persons willing to pay so much more for it, in order to make a profit, and by it to injure the economic interest of the Crown/TCIG and/or Belongers in the sale Crown land, the Prosecution failed to prove that JCH was a participant in a conspiracy to defraud the Crown/TCIG and/or Belongers in the manner in which the land at NWP was sold to the four Belongers.

341) The Prosecution failed to prove the charge of Conspiracy to Defraud against JCH.

342) JCH He is therefore acquitted and discharged from the crime charged in Count 2.

MAW

Prosecution's Case

343) The Prosecution's case against MAW an attorney, is that he represented four Belongers in a criminal enterprise to defraud the Crown/TCIG of its due in a Crown land sale that should have yielded the maximum benefit for the Crown/TCIG and/or Belongers but did not. Specifically, the Prosecution alleges that MAW was a part of a conspiracy by which land was sold to Belongers at a fraction of its value to enable them sell to non Belongers who were prepared to pay what it was worth. The transaction which would yield a windfall for the vendors would injure the economic interests of the Crown/TCIG and/or Belongers. MAW, the attorney in the transaction, also benefitted from the proceeds.

344) The background to the case against MAW began when on 7 June 2005, he witnessed the execution of four separate Offers to Purchase between David Wex (for a company to be incorporated) as purchaser, and four persons: JCH, Samuel Been, Earlson McDonald Robinson, Quinton Hall (the four Belongers) as individual vendors of four contiguous parcels of land at North West Point (NWP), Providenciales over which the vendors had each been granted a CCPL.

345) The Offers to Purchase were agreements pending the grant of freehold titles by the Government to the said vendors. The parties had a single solicitor: McLean's International Attorneys (McLean's).

346) On 27 June 2005, David Wex sent an initial deposit of $200,000 ($50,000 for each vendor) under the executed Offers to Purchase. At this time MAW was acting for both parties to the transaction.

He placed the money on fixed deposit from which in December 2005, he withdrew $100,000 into his own bank account and paid $50,000 to JCH.

347) On 9 August 2005, Hugh O'Neill (HON) wrote to MAW introducing himself as attorney for David Wex in the transaction. In that correspondence, HON referred to the Offers to Purchase provided to him and sought information on various aspects of the transaction including the identity of the land. There followed a series of letters between the two attorneys by which MAW furnished HON with transfer documents as well as draft charge documents.

348) HON communicated a scheme by which the proposed sale to David Wex and his group would now be effected through the transfer of the shares of the four Belongers in a company to another Belonger company. This would be the process: the four Belongers would incorporate the company to purchase the land from the Government. By the transfer of their shares in it to another company, their interest in the land would be transferred to the purchasing company. That company would by that process, own the land once the Government sold the land to the company incorporated by the Belongers. Thus, unlike the previous transaction in which the vendors would themselves purchase the land for resale to David Wex, in this new transaction, the vendors would never own the land.

349) In furtherance of this, MAW incorporated a company: Urban Development Ltd (Urban Development) to purchase the land allocated to the four Belongers.

350) A further understanding was reached that Urban Development would obtain a Development Agreement and Development Order, so that the transfer of shares would transfer the land allocations as well as the Development Agreement negotiated between Urban Development and the Government.

351) In all his correspondence with MAW, HON maintained, and MAW was left in no doubt, that HON was acting for David Wex and his group, and that the transaction to be effected through the transfer of shares, was the sale of land began

by the execution of the Offers to Purchase, under which an initial deposit of $200,000 had been paid for the four vendors.

352) On 6 October 2005, MAW with whom HON had discussed the Belonger discount (HON referred to as the non-Belonger fee), wrote to HON enclosing a draft Development Agreement (DA) and Development Order (DO), and apprised him of advice he had received after consulting Ms Alice Williams, the Commissioner of Lands.

353) MAW in this letter, also provided three alternatives on the way forward with the transaction, being a transfer of the land to each individual, a transfer of all four pieces of land to Urban Development and the payment of the Belonger discount, or the keeping of a token Belonger who would hold the majority shares but not participate in profit-sharing.

354) There followed a discussion between the two regarding the payment of stamp duty which HON insisted would have to be paid twice if the land was transferred to the Belongers as individuals. MAW roundly rejected this. Further correspondence regarding the fulfilment of the terms of the Offers to Purchase was exchanged between the attorneys; this included what was to be done at the end of the "initial 120-day period", and the payment of the second deposit $200,000 for each of the vendors– a total of $800,000.

355) On 31 October 2005, HON in a further email to MAW, set out what was his understanding of matters discussed at a telephonic meeting held among HON, MAW, Tim, and David Wex. That letter referred among other things, to discussions between MAW and the Attorney General's Office regarding the possibility of a Collateral Agreement in lieu of a charge to be registered against the property; alternative discussions regarding the said charge on property, and MAW's confirmation to the meeting that his clients would *"...take care of the transfer of title into their names and onward into a single corporation*".

356) On 2 November 2005, the four Belongers wrote to the Chief Minister that they were principals of Urban Development and requested a Development Agreement, and a discussion on the charge that would run with the land sold at a discount. On 24 November 2005, ExCo, before which a Paper was introduced on

the subject by the Chief Minister, approved among other things, a Development Agreement and a Collateral Agreement in lieu of the charge on the land in the Land Register, for Urban Development and tasked the Attorney General and TCInvest to negotiate one with Urban Development.

357) In furtherance of the Development Agreement, MAW sent a draft Development Agreement to RBK, and commenced the negotiation of a Development Agreement with both RBK and TCInvest.

358) In an email of 11 November 2005, MAW wrote to David Wex directly, to inform him that the ExCo had approved all their requests, and made a request for Tim Smith of Alliance Realty, to be paid the commission on the transaction, rather than Turks and Caicos Realty. Further correspondence was between then was regarding the $800,000 deposit which MAW asked HON to hold onto.

359) On 13 December 2005, authorised by David Wex who wrote directly to MAW that same day to make payment to his clients, a cheque for the sum of $100,000 was issued from the trust account of McLean's to JCH. It was however deposited in the First Caribbean International Bank account belonging to Melbourne and Mavis Wilson. Out of this $50,000 was paid to JCH. Two months later, a further sum of $20,000 was paid to JCH out of the now remaining deposit of $100,000.

360) On 7th February 2006, the discussion and negotiations of MAW, RBK and TCInvest resulted in the execution of a Development Agreement.

361) After further negotiations (brought about mainly by concerns raised and comments made by Clayton Been of TCInvest), this 7 February 2006 Agreement was replaced with a Development Agreement of 30 March 2006.

362) On 11 April 2006, MAW received from HON a letter enclosing a cheque of $6.8 Million drawn on a company: Blue Resorts Developments (TC) Ltd (Blue Resorts), post-dated to 18 April 2006 with this caveat: *"These funds may only be released upon the written instruction of David Wex of Urban Capital Property Group"*.

The following directives were also given: that there would be a delivery of all shares of Urban Development with appropriate share transfers, to Blue Resorts; that there

should subsequently be a release of sufficient funds to pay for the land allocated to the Belongers which was being acquired by Urban Development; the stamp duty must be paid on the sale to the Belongers; an indemnity must be provided by Belongers as beneficial owners of the shares, against future liability to Government, the Crown or otherwise. The release of the balance of the funds to the current shareholders was authorised.

MAW followed the directives.

363) On the same day (11 April 2006), the Indemnity Agreement directed at Urban Developments Ltd. Blue Resorts Developments (TC) Ltd in the care of Hugh O'Neill & Co BCM Cape Building Leeward Highway, Providenciales, was entered into jointly and severally by the four Belongers.

364) On 13 April 2006, the eight shares of Urban Development were transferred to Blue Resorts Company (TC) Ltd.

Effectively therefore (to the knowledge of MAW), when the land that the Crown/TCIG had offered to the four Belongers was transferred to Urban Development Ltd on 2 May 2006, they were not the principals of that company. The new owner of the shares and of the land transferred by the Government, was Blue Resorts Developments (TC) Ltd (Blue Resorts).

365) The Development Agreement had been negotiated for Urban Development (owned at the time by the four Belongers), and Blue Resorts, said to be also a company with the same address as Urban Development: McLean's. HON's name and his relationship with Blue Resorts was kept out of the Development Agreement, so was David Wex.

366) In his evidence before this court and in the email of HON to David Wex[39], the structure of the sale was explained by HON to David Wex in this manner: the shares of the Belongers in Urban Development were transferred to Blue Resorts. By it the right to freehold title which was the asset of Urban Development was transferred to Blue Resorts. However, Blue Resorts was not the ultimate beneficiary, as it was in turn owned by another of HON's companies, Hibernian

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Trust Ltd which held the land in trust for David Wex and his associates, for whom HON acted as attorney.

367) This structure served one purpose: that the land in respect of which David Wex and the four Belongers had entered into individual Offers to Purchase, was sold to David Wex and his group comprised on non-Belongers, without the payment of the Belonger discount.

368) Curiously, MAW apparently participated in the transaction itself, and not just as attorney for the vendors in the transaction. McLean's, of which he was a partner, received $70,000 being legal fees, out of the funds. But beyond the professional work was his personal participation through the use of his real estate company Alliance Ltd.

369) Also, Tim Smith a realtor working with Alliance Realty received $500,000 as commission, instead of Turks and Caicos Realty (Sotheby's), at the direction of MAW. The sum of $1,809,104.91 was paid out of the $6.8M sent by Blue Resorts as proceeds of the sale through share transfer, to the account of Alliance Realty. From this account, both MAW and JCH withdrew funds for their use.

MAW:

370) MAW denied the case of the Prosecution, and in his defence, testified that the transaction was never a sale of land, but a joint venture development, although sums of money were paid to the four Belongers.

371) In summary, his evidence was that Tim Smith, a real estate agent for whom he had acted professionally in an immigration matter, introduced David Wex to him, as a developer who was looking to enter into a joint venture relationship with Belongers. In particular, he alleged the following:

Tim Smith had tasked him to find persons who had land in the area of NWP for David Wex. MAW undertook the task by making personal contact with Sammy Been; he also made official enquiry. Through one Cecile Simmonds of the Land Survey Department, and the Permanent Secretary for Natural Resources, he received information on individuals who owned land in that area. It was his evidence that he was not involved in the application for the Crown land, the allocations (CCPLs) or the grant of freehold title to the Belongers who became involved in the transaction.

He denied David Green's evidence that he went onto the land with anyone involved in the transaction.

He testified that following his scouting for owners of land at NWP at the direction of Tim Smith, David Wex arrived in the country and met with the following persons at Salt Mills in Grace Bay: MAW, Sammy Been, Earlson McDonald Robinson, and Tim Smith. At the meeting, David Wex allegedly made it clear that he was looking for persons who would be co-developers with him.

372) Thus according to MAW in acting for the parties, he understood that he was representing the four Belongers, as well as David Wex in the joint venture (not a sale of land), providing legal advice, taking instructions, and putting the process together. Upon this alleged understanding, he opened a file in his office to the knowledge of his two partners, the secretaries and all the associates.

373) He alleged that sometime after the meeting, Tim Smith showed up at his office with the Offers to Purchase already signed by the parties. Noting the contents (that it was a sale), he drew Tim Smith's attention to two things: that he was not aware that the land would be sold, and secondly, that the gentlemen did not own the land, but only had a right to purchase it. Upon MAW's request, Samuel Been collected the Offers to Purchase and discussed the document with the other persons involved. Samuel Been returned to him with the Offers to Purchase signed by the four Belongers.

Although MAW was not present when the Belongers signed them, he, witnessed the signatures upon the assurance of Samuel Been that they were signed in his presence.

374) It was MAW's evidence, that despite the contents of the Offers to Purchase, he always believed that the transaction was a joint venture development with David Wex and that although the Belongers were getting paid for the land, he understood that they would be part of a joint venture, and that the payment was "one part of the development."

375) He alleged that he held that belief and continued his representation of his four Belonger clients on the basis of what he first understood the transaction to be: a joint venture development. This was so, even when the transaction changed to become an acquisition of land rather than the joint venture arrangement, he had

understood it to be before HON (a very senior attorney) was retained by David Wex and his group. He explained that when HON took issue with the draft transfer documents as well as draft charges that he had sent to him, he raised these concerns with the Commissioner of Lands in a telephone consultation. The result of that consultation was communicated to HON in MAW's 6 October 2005 letter.

376) Even so, he alleged that the incorporation of Urban Development to put the Belonger parcels of land in one entity was to facilitate their becoming a part of the joint venture, and not for the purpose of a sale of land, alleging*: "Urban had nothing to do with him…Urban was concerned with the four Belongers and David at the time, so it had nothing to do with Hugh O/Neill."*

377) Despite his evidence that he always believed the transaction of the four Belongers with David Wex to be a joint venture relationship, he curiously acknowledged the sale of the allocated land through a share transfer, to Blue Resorts. In this regard he complained that HON simply told him that Blue Resorts was a Belonger company but failed to apprise him of the structure of companies involved in the sale of the land to David Wex and his group. Thus, his understanding of the mechanism for the sale of the land was that the transfer of the land would be to Blue Resorts through a sale of the shares of Urban Development, and that being a transfer from one Belonger company to another, it would not require the payment of the Belonger discount.

378) He alleged that he negotiated a Development Agreement which he considered to be integral to the development with RBK of the Attorney General's Chambers, with the understanding that it was: "… the bigger part, much, much bigger part of the development…"

379) He described the process of getting the Development Agreement as: getting a draft using a precedent from The Amanyara agreement and a template from the Attorney General's Chambers, and sending it to Rhondalee Braithwaite Knowles (RBK), Principal Crown Counsel of the Attorney General's Chambers. Following this, he was involved in extensive consultation with RBK which was through communication on a frequent basis (sometimes two or three times a day).

380) It was MAW's further evidence that in his correspondence with RBK, he disclosed the involvement of David Wex; that the transaction *"...was a development involving four Belongers and a Canadian investor David Wex who never did any investment outside of Turks and Caicos Island"* and that he did nothing wrong when following HON's introduction of the sale to David Wex, he facilitated a share transfer to a Belonger company. He denied being part of the alleged conspiracy to defraud the Crown/TCIG and/or Belongers in the manner in which the sale of Crown land to Belongers was conducted.

Discussion

381) The evidence led in the case against MAW, is that in his representation of the four Belongers in the sale of their land allocations to David Wex and his group, he employed the dishonest apparatus of a share transfer from one Belonger company to a Belonger company. Thus, when the Government sold the land to Urban Development believing it to be owned by the four Belonger-developers, it was in fact owned by Blue Resorts Development through which it was sold to David Wex and his group of non-Belongers. The sale was therefore to non-Belongers who were the developers, and it was done without a payment of the Belonger discount.

382) In his defence, MAW alleges that he did not know that the four Belongers were involved in a sale of land with David Wex at all. He also incongruously, alleges that HON informed him that the sale of the shares was to the Belonger company Blue Resorts but failed to disclose to him the share structure, thus he did not know that the sale was ultimately to David Wex.

383) The lack of truth in both assertions is manifest. The first flies in the face of documentary evidence which he witnessed: Offers to Purchase by which his clients described as vendors, promised to sell land to David Wex who was representing a company to be formed. Regarding the second, there is overwhelming evidence that MAW who had received a deposit from David Wex under the Offers to Purchase, understood, from the time HON came into the transaction, that the land was to be sold to David Wex through the transfer of shares. MAW was left in no doubt at any

time throughout the negotiations, that HON was representing David Wex and his group in the transaction, which was for the sale of land at NWP, for in every correspondence, HON indicated that David Wex and his group, his clients, were purchasers under the Offers to Purchase and the four Belongers, were vendors of land at NWP. MAW also, in direct correspondence with David Wex asserted the same. There is the further evidence of MAW in a telephone conversation with HON and David Wex in which matters pertinent to the sale, including the charge on the land were discussed. David Wex, in December 2005 authorised MAW to pay out $100,000 out of the $200,000 deposit to the Belongers. When the $6.8 Million was paid for the land through the share transfer, it was David Wex who authorised payment for it.

384) MAW, being aware that the transaction was a sale to David Wex, concealed that fact in his dealings with Government, in order to secure a Development Agreement for Urban Development which was to be part of the sale. Thus, in negotiating the Development Agreement for Urban Development, MAW, disclosed to RBK, the participation of "investors" in what would be a Belonger development: *"...the circumstances are as follows, the beneficial owner in the land holding company will be a Belonger, with 51% of the shares, but the people that will controlling [sic] the project will be the investors".*

385) Despite the presence and work of HON as attorney for David Wex, MAW exclusively dealt with officialdom: (RBK, as well as TCInvest), relaying the requests and demands of David Wex (which were conveyed to him by HON) with no mention of HON at all, describing David Wex and his group as investors and providing his own office address as the address of both Urban Development and Blue Resorts, both locally incorporated. By all this, MAW gave the impression that David Wex and his group, were funding development to be undertaken by his clients the beneficial owners of Urban Development. It is small wonder both RBK and Clayton Been testified that they understood there was foreign investment in the $190M development, but that the developers were the Belongers who were at that time, the beneficial owners of Urban Development.

386) MAW was the attorney for the four Belongers. On his own showing, he dealt with only one of them: Samuel Been whom he described as the representative of the group of four. MAW's evidence in that regard was incredible with respect to JCH who played his part at ExCo to portray that he was part of the Belonger development, in order to secure concessions and a Development Agreement which would be part of the sale of the land.

387) But it was curious for an attorney to indicate that he undertook the representation of persons, and dealt with their property without receiving instructions, and that he witnessed their signatures without seeing them sign documents.These in my judgment, demonstrate that MAW was driven by considerations other than propriety or professional ethical considerations in arranging the transaction. This is the crux of the matter: it is manifest that MAW, the attorney in the sale was no mere conveyancer for he profited from the transaction. Not only did he keep for himself, the $50,000 out of the $100,000 issued to JCH which he paid into his family's account, but through Alliance Realty, a company he incorporated with JCH and two minor shareholders during the life of the transaction, he also received a share of the proceeds of the sale. That company became the vehicle with which JCH also received his share of the proceeds, after Tim Smith of that same company received $500,000.

388) Thus, there is no denying that MAW was motivated by his own desire to share in ill-gotten gain, which the scheme of HON would deliver, bringing about the sale of the Crown land by the four Belongers, to David Wex and his group of non-Belongers, without a repayment of the Belonger discount.

389) In order to prove the charge of conspiracy to defraud against MAW, it is for the Prosecution to show that he was part of the dishonest agreement for land to be sold at an undervalue for the purpose of profit-making.

390) Relying on the authorities already cited, and more particularly in ***Scott***, conspiracy to defraud is: *"an agreement by two or more persons by dishonesty to deprive a person of something which is his or to which he is or would be or might be entitled …an agreement by two or more by dishonesty to injure some proprietary right of his…"* MAW's actions must be referable to such an agreement for him to

be seen as a part of the alleged conspiracy, see*: "…all must join in the one agreement, each with the others, in order to constitute one conspiracy. They may join in at various times each attaching himself to the agreement…*" see: ***R v Griffiths [supra]***

391) The agreement has been described as a scheme by Ministers/politicians FBH, JCH. Michael Misick, and Lillian Boyce, Samuel Been, Earlson McDonald Robinson and Quinton Hall who knowing how much the land at NWP was worth, arranged the sale to the Belongers in order that they would sell it for a huge profit, thus injuring the economic interests of the Crown/TCIG and/or Belongers.

392) From the evidence, MAW's dealings with officialdom were limited to the Attorney General's Chambers where he dealt with RBK, and TCInvest where he dealt mostly with Clayton Been. There is no evidence that in representing the four Belongers from the time he witnessed the Offers to Purchase until he distributed the proceeds of the land sale, MAW dealt with any Ministers or politicians save for JCH with regard to the HON-style sale which included a Development Agreement and the withholding of the Belonger discount.

393) As I held in the consideration of the case against JCH, no evidence was led regarding the involvement of the Ministers named in Count 2 (both indicted and unindicted) in the determination of the purchase price, or the process of land allocation which followed an application for a CCPL which could end in the grant of the freehold title.

394) What the evidence shows is that members of ExCo were apprised that NWP was to be developed into hotel/condominiums by Belongers who had already received allocations of five-acres each and had pooled them into a twenty-acre parcel held in a company Urban Development. They were seeking a Development Agreement and a discussion on the charge that would run with the land even when condominiums were sold.

395) Upon that information ExCo granted concessions, including the removal of the charge on the land, replacing it with a collateral agreement. It further tasked the Attorney General to work with TCInvest to negotiate a Development Agreement.

396) ExCo also granted the freehold title to land described as 60000/150-153, voiding the registration of any incumbent's registration of freehold title on 60000/150, 151, 152, 153.

397) The evidence may reveal an agreement by MAW with at least JCH, (and perhaps Samuel Been unindicted co-conspirator) founded upon a scheme introduced by HON, to sell the NWP land with the advantage of concessions contained in a Development Agreement, while avoiding the repayment of the Belonger discount in a sale of Crown land by Belongers (who had received a discount), to non-Belongers. It does not reveal an agreement with the named Ministers and politicians for the unlawful purpose of selling Crown land at an undervalue to enable its resale which would result in a windfall for the Belongers, and which would injure the economic interests of the Crown. TCIG and/or Belongers.

398) I have held that the agreement to sell Crown land at an undervalue to enable its resale for profit, is different from the agreement to sell land purchased at its determined price in such a manner as to avoid the payment of the Belonger discount. Thus while there was evidence of the latter, it was not the agreement alleged by the Prosecution which was: *"... the scheme to obtain Crown land by abuse of their position as Ministers/politicians in the TCIG at a fraction (22%) of the value they and others knew it was to be bought for, while at the same time, making false representations to enrich themselves at the expense of the TCIG/the Crown and the Belongers. The obtaining of the Belonger discount is just a small piece."*

399) As was held in *Griffiths*, all alleged conspirators must be part of "the one agreement" although they may join at different times. In *Mehta*, it was explained that there must be a common design; 'the one agreement' would be the umbrella agreement to which others may join.

400) In this indictment in which what is alleged is an agreement to arrange a sale of land by the Government to the four Belongers at an undervalue for the purpose of a lucrative resale, MAW whose objective, after HON came onto the scene as attorney for David Wex, was concerned with selling the land in a manner that

would deprive the Crown/TCIG and Belongers of the Belonger discount, could not be said to have joined himself to the alleged agreement which had a decidedly different objective. In any event, the Prosecution has asserted that the Belonger discount was not the agreement they alleged at all but was only *"a small piece of the evidential jigsaw supporting the case that this scheme was to obtain as much money as possible"*.

401) Viscount Sankey stated in ***Woolmington v DPP [supra]***, that *"... the prosecution must prove the case beyond reasonable doubt. This statement cannot mean that in order to be acquitted the prisoner must "satisfy" the jury... If, at the end of and on the whole of the case, there is a reasonable doubt, created by the evidence given by either the prosecution or the prisoner… the prosecution has not made out the case and the prisoner is entitled to an acquittal. No matter what the charge or where the trial, the principle that the prosecution must prove the guilt of the prisoner is part of the common law of England and no attempt to whittle it down can be entertained."*

The Prosecution did not succeed in proving the agreement they alleged. It is therefore clear that the first element of the charge against MAW: that he participated in an agreement with any of the alleged conspirators: JCH, FBH Michael Misick, Lillian Boyce, Samuel Been, Earlson McDonald Robinson and Quinton Hall (QH) to arrange the sale of land at NWP in a manner that would injure the economic interest of the Crown/TCIG and/or Belongers, was not proven.

402) The Prosecution has therefore failed to prove the charge of conspiracy to defraud against MAW.

He is accordingly acquitted and discharged from Count 2.

Count 3 Bribery

403) PARTICULARS OF OFFENCE

FLOYD BASIL HALL (FBH) between the 1st day of August 2003 and the 31st day of August 2009 accepted inducements directly or indirectly from Richard Padgett and related and connected entities by unlawful corrupt payments or other rewards (in the

form of cash, credit, entertainment and other advantages), whilst serving as a Minister of the Crown in the Government of the Turks and Caicos Islands so that he would act in a way that was contrary to the ordinary rules of honesty and integrity expected of Ministers of the Crown.

Case Summary

The case of the Prosecution against FBH is that he received monies from a proposed developer: Richard Padgett (RP) the majority shareholder in Ocean Point Development Ltd (Ocean Point), which induced him to perform his duties as Minister of the Crown (Deputy Minister in the Government of the Turks and Caicos Islands), to favour RP. These monies were allegedly paid to FBH when he was in a position to grant favours to RP who was a developer. Thus, the monies were allegedly given as bribes to influence FBH in the performance of his duties.

The evidence led included the background of what appeared to be a relationship between RP and FBH beyond that of Minister and developer at a time when FBH dealt with matters connected to RP's plans for pursuing certain developments.

The evidence specifically related to payments by RP to FBH connected to the Third Turtle Club on invoices claiming for services rendered by FBH in the capacity of realtor. These were allegedly payments connected to RP's Planning Appeal which was determined by FBH. There were also payments connected to RP's acquisition of Breezy Point/Thatch Cay at East Caicos after apparently elbowing persons who had been in serious negotiations with Government, the remission of stamp duty on that transaction and the subsequent exchange of land at Breezy Point for so much more valuable land. There was also the remission on stamp duty for a land swap between RP and his business partner John Gill, at a time FBH had requested for a "loan" from RP to FBH for his brother Quinton Hall (QH).

The Evidence

1. The Third Turtle Club Planning Appeal and the $375,000 Finder's Fee

404) In 2004, Ocean Point Development Ltd (Ocean Point) acquired land in a private transaction to purchase a derelict hotel known as the Third Turtle Club, for the purpose of a resort development and to develop it into a resort. As aforesaid, RP was that company's majority shareholder. This is how the purchase was done:

On the 1st of March 2004, an Agreement for Sale and Purchase was executed by Provident Ltd (represented by Bengt Soderqvist, the vendor's broker), Oceanpoint Trading Limited, the purchaser, and three companies in the care of attorney Paul Dempsey - Tucai Investments Ltd, Bern Ltd and Third Turtle Inn Ltd - acting on behalf of the Omani Royal Family for the sale of the Third Turtle Inn property (the Third Turtle), to Ocean Point Trading for the price of $6,000,000.

Ocean Point Trading changed its name on 30 March 2004 to Ocean Point Development Ltd. On the 8th of April 2004, the attorneys for Ocean Point Development Ltd (Ocean Point, or OPDL), issued a cheque for $195,000 to National Colony Realty which was the commission payment on the transaction to the vendor's broker: Bengt Soderqvist.

405) On 25th April 2004, FBH who was a Minister of the Crown, wrote to RP on the letterhead of Paradigm Financial Group which he signed as Director, making a demand for the payment of money in these terms:

"Dear Mr. Padgett,

Re: Purchase of Old Third Turtle Inn Property.

It was good seeing you and Simon a couple of days ago and to learn of your closing on the Third Turtle Inn property.,

Congratulations.

I am writing this note to follow up on our discussion at our last meeting, I am pleased to know that you will honour our agreement made back in 2002 to pay to Platinum Realty a commission in the event you purchase any of the properties I had shown you back then.

As you know, the above property was shown to you by me and in this regard we have settled on a commission of $300,000. You have indicated to me that I can expect this payment sometime in the future, once you have had a chance to formalise some outstanding business matters which could take several months. I am prepared to wait on you and trust that I have your assurance that you will make every effort to have this attended to as soon as possible…"

406) Following this, Ocean Point (OPDL) made payments to Platinum Realty Limited upon two supporting documents: a document dated the 6th of November

2003 and described as "Heads of Agreement for the sale of the Third Turtle Club Property" (CX1377) which described Platinum Realty Limited as an introducing broker in respect of the property.

407) An invoice dated 6th February 2006 on the letterhead of Platinum Realty Limited (Platinum Realty) addressed to OPDL was for the payment of the sum of $375,000 to another company: Paradigm Corporate Management Ltd.

According to Marcus Hawkins Chief Financial Officer or Finance Director of OPDL, the invoice was supposed to reflect the Heads of Agreement and the work done by Platinum Realty to find the Third Turtle Club site for RP.

The invoice contained the following narration: 2.5% of Purchase Price of $5 Million described as "fees relating to the November 2003 introduction and subsequent negotiation for the purchase of the freehold development opportunity formerly known as Third Turtle site…" $250,000 was said to be in respect of a transaction of October 2002, in respect of a success fee relating to the Outline Development Permission for the Third Turtle Club, and a success fee related to an appeal lodged by Ocean Point Development. These represented 5% of the Purchase Price, being the sum of $250,000.

408) The invoice (CX 1365) was for the total sum of $375,000 which was paid in two tranches: $250,000 on 8 February 2006, and $125,000 on 14 February 2006. Due to the lack of funds, Marcus Hawkins the Financial Director, sent an email on 13 February 2006 to officials of the First Caribbean Bank in these terms:

"…we have used $250,000 of the $252,000 paid expenses …to meet part of an invoice that was not shown on the preapproved list…We know that there is another $125,000 of this liability coming due imminently and have provided shareholder funds on a short term basis to cover this." It was apparent that Ocean Point had not included this expense in its budget. Nor, was that surprising, as according to Marcus Hawkins he had not known of it as a liability, but that it had come in the form of a request that came after a site visit to the Turtle Inn site in which FBH was found to be in the company of RP and the Chief Minister. He alleged that yielding to this request was a course he strongly opposed, as did both RP and Simon

Padgett. They all allegedly considered the request to be illegal. It was his understanding that the request was a way to channel funds to FBH.

Marcus Hawkins admitted that the invoice on the letterhead of Platinum Realty Limited for the payment of the sum of $375,000 to another company: Paradigm Corporate Management Ltd. was in fact a fictitious one, created at the office of Ocean Point Development Ltd, for the bank, to enable payment in these circumstances, in accordance with the standard practice to provide documentation on transactions over a certain amount ,such as the instant one was.

409) It must be noted that just prior to these payments in February 2006, FBH in December 2005, performed a ministerial function related to Padgett's company's application for planning permission for the Third Turtle site – the grant of an appeal which was referenced in the invoice.

410) The Prosecution's case is that the sum of $375,000 claimed in the invoice, and in respect of which payment was made to the account of Paradigm Corporate Management on behalf of FBH, could not have been in respect of the 'finder's fee' it purported to be, but was a bribe to FBH linked to his performance of that ministerial function, disguised as a 'finder's fee'. Evidence was led in that regard to demonstrate that despite FBH's claims, he had had nothing to do with the purchase of the Third Turtle site, for none of the persons involved in it had any recollection of any role he played in it. These persons included Mr. Dempsey, who was the attorney for the vendor family; he had no recollection of any role FBH whom he knew well, or Platinum Realty, played in that purchase. Marcus Hawkins, the Finance Director of OPDL and one of its four shareholders (initially five), testified also, that he did not recollect any involvement of FBH or Platinum Realty in that sale. It was his recollection that Bengt Soderqvist of National Colony Realty was the broker in the transaction. It is Marcus Hawkins' further evidence that it was in late 2005 that he was first told of Ocean Point's alleged liability to FBH (the existence of which he denied). Regarding this, it was his testimony, that it was his understanding at an in-house discussion, that FBH had requested for money from the company, and it was to be presented as 'finder's fee'.

411) He further recounted that before this time, FBH was known to him and that he first met him in November 2003 at a meeting arranged for an introduction by Miller Simons O'Sullivan. FBH was introduced as the new Finance Minister. RP was also at the meeting. This was Marcus Hawkins' first visit to the islands on the invitation of RP who had been on a fact-finding tour to Florida in the USA, and then on to TCI. The trip was to evaluate potential investment opportunities. Thus, they went in search of places and worked with different realtors who took them to different places, one of which was to the Third Turtle. It was his evidence that he knew at the time, that RP was dealing with Bengt Soderqvist regarding that property.

412) A few weeks later on 3 December 2003, RP received a letter from Acting Chief Minister Jeffrey Hall, stated therein to be in response to RP's letter of 27 November 2003. In the said letter, the Minister gave some assurances relating to customs duties, Permanent Resident Certificates for qualified persons and work permits for necessary expatriate staff in the Third Turtle Development.

413) On Marcus Hawkins' return to London, he saw FBH at a trade investment function at the Mandarin Oriental Hotel in Central London although he did not speak with him. RP and his son Simon Padgett had also attended the same function. At that meeting, he was introduced to Michael Misick the Chief Minister and a Mark Fulford. It was after this that RP began corresponding with the Office of the Chief Minister regarding investment opportunities.

414) The third occasion was at dinner at Nobu Restaurant in London which FBH joined after the meal was done. The purpose was to explore investment opportunities in these islands. The Third Turtle was discussed as a potential project over dinner, which would have been in the absence of FBH who joined them after attending another function.

415) Marcus Hawkins testified that FBH never at any of these meetings (which came after Hawkins' visit to the islands in November 2003), mentioned any connection to Third Turtle Club or the sale of that property. He was therefore not aware of any involvement of FBH in the purchase of the Third Turtle, a thing he would have expected to be told, as he was a shareholder in the purchasing company.

416) Nigel Schofield, a solicitor and friend of RP, testified that he learned of the latter's interest in acquiring a piece of land in the TCI in April 2001; Bengt Soderqvist, who was the listing broker for the property testified that it was he who introduced RP to the Third Turtle Property before February 2002, but that RP had not been interested in it.

He also did not recall any role played by FBH in the purchase of the Third Turtle. During cross-examination, he owned that a 'finder's fee' was not unknown in the islands although it was not a common feature in real estate transactions. He also acknowledged that RP at some point, mentioned a disagreement he was having with FBH over the amount payable to FBH as 'finder's fee'.

417) The Prosecution led evidence regarding how the sum of $375,000 which was paid on the instruction of FBH to Paradigm Corporate Services for the benefit of Platinum Realty was disbursed:

a. $ 5,000 was transferred to a credit card in the name of FBH;
b. $ 36,631 was to be paid to Provo Travel
c. $ 30,000 was sent to an account in the name of Chief Minister
d. $17,999 was paid to Lucayan Ventures
e. $161,268.92 was sent to the FCIB account of Chalmers Misick.
f. 25,000 was sent to Chalmers &Co
g. $77,000 was sent to Stanfield Greene which was placed in a ledger in the name of John Doezer
h. $23,000 was sent to Lee & Astwood.

418) FBH denied that he had received directly or indirectly, corrupt payments in the form of cash, credit, entertainment and other advantages to induce him to act contrary to the ordinary rules of honesty and integrity expected of a Minister of the Crown. It was his evidence, that in his dealings with RP he was mindful of his duty not to act dishonestly as he was conscious of his duty to act honestly as a Minister in the Government of the Turks and Caicos Islands.

419) Describing the relationship he had with RP, FBH testified, that he first got acquainted with RP at a place called the Tiki Hut in the Turtle Cove area of Providenciales. At that time, he (FBH), was employed as a Financial Controller in

a business called Gilley's Enterprise. He also owned a private business called Paradigm Corporate Management Limited, and another called Business Consultancy Services Limited which the trade name Platinum Realty Limited. In or about 2001 or 2002, he averred that during that meeting at the Tiki Hut, having found that RP was interested in commercial real estate in the islands, he told him about land for sale at the present location of Seven Stars, (formerly Allegro), "and a couple of other sites". He then physically went to show RP the Third Turtle site.

420) Regarding the payment of the $375,000 paid to Paradigm Corporate Management, he testified that it was not payment upon an invoice at all (as the invoice produced by the Prosecution was not his deed), but that it was an amalgamation of two sums of money deposited in that account: $105,000 which was an agreed 'finder's fee' for showing RP the Third Turtle Inn site which was payable to Platinum Realty, and a $270,000 wedding gift from RP to Michael Misick, which was in reality, the price tag to secure RP's invitation to the very expensive and high-profile wedding of Michael Misick.

421) Explaining how the two payments were merged in the transfer to him, FBH testified that he had understood from discussions at a meeting with RP and Michael Misick, held at the office of the Chief Minister, that RP wanted an invitation to the wedding of Michael Misick and a Lisa Raye McCoy which was promoted extravagantly as "the wedding of the century." The reason RP had allegedly sought the invitation was that he hoped to be introduced to a high-profile actor or star (the guitar player Eric Clapton being his preference), who may accept to become the ambassador to promote the Third Turtle Inn property. According to FBH, he knew that this promotion of an enterprise in the islands by A-list actors and actresses, would not be the first in the islands, as Parrot Cay, and Dellis Cay had famous Hollywood brand ambassadors.

422) The 'finder's fee', he alleged, was for his service in finding real estate for RP to purchase. He explained that the sum of $105,000 paid by RP as the 'finder's fee', was in fact, reduced from what had been agreed with RP, being five percent (5%) of the purchase price of the Third Turtle Inn property, which having been sold for $6 Million, entitled FBH to $300,000. He alleged that RP however reduced the

sum of $300,000 due to him, as he intended to split the five percent (5%) commission on the sale between him and Bengt Soderquist the broker, to whom he had to pay $195,000, leaving $105,000 for FBH.

423) FBH alleged that the global figure of $375,000 was sent to him in order that RP might make just one payment: to him for his service in finding him real estate, and to Michael Misick for the wedding gift. He testified that Michael Misick who was expecting the payment of $270,000, directed disbursements from it when FBH received it. It was his evidence that the said sums were not connected to his determination and the grant of Ocean Point Development Ltd.'s Planning Appeal as alleged by the Prosecution.

424) The circumstances of the said Planning Appeal are, that on 18 May 2004, the Chief Minister, in his capacity as Minister of Planning, issued a policy directive increasing the height of condominium and/or hotel buildings "***within the Grace Bay vicinity"*** to seven floors.

On 8 August 2005, RP's OPDL applied to the Physical Planning Board for permission to develop the Third Turtle site which he had brought privately, to the specifications of: seven floors (storeys), with the upper site rising up to four floors. The Physical Planning Board (PPB) in response, granted him approval for five floors with a maximum of 3 floors on the upper site. While this approval fell short of his application, it was said to be in keeping with existing or proposed development in that area.

425) On 11 October 2005, OPDL appealed the decision of PPB, to the Chief Minister who as Minister for Planning, could review the decision. The Notice of Appeal, received by the Department of Planning, was sent in a file to FBH who at that time, was Acting Chief Minister.

426) Evidence was led that the Chief Minister did return to his duties and was present at Cabinet between 12 October and 30 November 2005. Even so, it was not until 14 December 2005, that the Chief Minister being away once again, and FBH acting as Chief Minister, granted the appeal of Ocean Point. Ocean Point was notified of this on 3 January 2006.

427) This grant of appeal became the subject of judicial review proceedings. The declaration sought was that as Acting Chief Minister, FBH whose responsibilities did not extend to acting as Minister for Planning, wrongly granted the appeal as he did not have the requisite authority to do so.

Later, the Chief Minister reheard the matter and granted the appeal.

428) It was the evidence of FBH that although his receipt of $375,000 (through Paradigm, in February 2006 was close in proximity to the determination of the planning appeal, there was no connection between them. It was his evidence that he granted the appeal believing that he had the authority to do so, and that the said mistaken belief was not held by him alone, but by the Permanent Secretary of the Office of the Chief Minister, and the Director of Planning from whom he received advice.

429) He described the circumstances in which he performed what he thought was his duty as follows: that RP had been complaining to him of the slow process of his application, and this was within the time frame to which he was bound to secure funding for his project in the circumstance in which finance and marketing teams were coming to the islands to evaluate the project.

430) Thus, when the Planning approval fell short of what was requested for, OPDL appealed. The appeal papers were delivered to FBH at his office. He requested for background documents from the technocrats who were responsible for preparation of the documents. This background material consisted on the complaints (objections) that were lodged during the period of public consultation. He then consulted with the officials of the Planning Department: Clyde Robinson – the Director of Planning, Zhavago Jolly, Ogail Awad, and the Permanent Secretary from the Chief Minister's Office.

431) He reviewed the documents and decided that the appeal should be determined on written representations. In furtherance of the matter, having reviewed the summaries of complaints lodged with the Planning Department, and having appointed a period of time for the written representations to be made, he granted the appeal, although he limited the request for seven storeys to the lower site, and four storeys on the upper site.

The 'Finder's Fee' and the Commission of Inquiry

432) In July 2009, when the Commission of Inquiry had been called, a shareholders meeting was held in the offices of OPDL regarding which the following was recorded:

"It was agreed that all references relating to OPD and it's [sic] shareholders in any future correspondence relating to the CoI and/or Platinum Realty would do so in the generic group form as opposed to referring to shareholders individually."

Also,

"The issue of the Platinum payment in 2006 was discussed and it was confirmed that in April 2004 at the completion all shareholders were aware of an outstanding commission payment to Platinum Realty, but at that time, no funds were available for the payment of the said commission…"

433) It was the evidence of the Finance Director and shareholder Marcus Hawkins, that the first statement was a whitewash of the relationship between members of OPDL and FBH. The second, he described as inaccurate, intended to legitimize the payment the company did not know about. It is certainly curious that even so late in the day, and during the time of the Commission of Inquiry, RP spoke of the payment to Platinum Realty as a commission and did not differentiate between what was paid to Platinum as commission, and what was allegedly sent with that sum as a wedding gift to Michael Misick.

434) These matters supported the Prosecution's case that the payment of the $375,000 to Paradigm Corporate Services for FH was a bribe, as it was undoubtedly linked to FBH's work on the Planning Appeal.

East Caicos Breezy Point and $200,000 donation

435) RP had a company called Caicos Sol. On 24th of January 2005, 92 acres of land at East Caicos referred to as Breezy Point, together with additional land (three acres) referred to as Thatch Cay, were sold to Caicos Sol for $4.2 Million.

The Prosecution alleged that the transaction was a corrupt one which favoured RP (that company's principal), who supplanted competitors who had been in serious negotiations with the Government of the Turks and Caicos Islands, due to bribes

that he paid to FBH. That transaction also concluded with the remission of the payment of Stamp Duty by FBH as he had the power to do by virtue of his office as Deputy Premier.

436) These are the matters antecedent to the impugned transaction:

In 1995, a William Grenier (Mr. Grenier) principal of Pagebrook TC Ltd (Pagebrook), commenced negotiations with the Government for the creation of a cruise ship port on the island of East Caicos. In that year, the TCI Government signed an Option and Authorisation Agreement with Pagebrook. The agreement which provided for a joint venture partnership, to be known as the East Caicos Development Corporation assured the TCI Government a share in the project. The length of the option was two years determinable by mutual agreement or upon the happening of certain eventualities.

437) The agreement apparently stood extended, for the proposal was presented by Mr. Grenier, to successive Governments of the TCI. Having allegedly been rebuffed by the Washington Misick Government, the successive Government headed by Derek Taylor continued to deal with Mr. Grenier, and so did the Progressive National Party (PNP) Government of which FBH was the Deputy Chief Minister, from late 2003.

438) The development proposed at East Caicos was contained in a proposal of the development of 7,000 acres of land which was to include hotels, condominiums, shops, residential dwellings, and a cruise ship port. The land required for this development included one thousand three hundred and seventy-five (1,375) acres of land owned by a Bermudian company referred to as Solar Enterprises. Thus, the acquisition of this land for the proposed development was to be the subject of negotiation between the company Pagebrook, and that company.

439) Pagebrook conducted feasibility studies which they said cost about $5Million. They had promised to use the East Caicos Development Corporation to raise funds on the New York and Toronto Stock Exchange.

As the years rolled on, they failed to do this.

440) When Pagebrook Ltd presented their proposal to the Chief Minister of the PNP Government (Michael Misick), there was an apparent delay in receiving a response. Mr. Ariel Misick QC (as he then was), therefore wrote, as attorney for Pagebrook, to Mr. Grenier and Mr. Brough of KPMG on 27 August 2004, informing them of the approach to the Government of another developer interested in East Caicos. This was information that had come to him at a meeting with the Chief Minister, the Deputy Chief Minister (FBH) and the Minister of Immigration (JCH).

441) By reason of this turn of events, Mr. Brough of KPMG, acting for Pagebrook, wrote on 21 December 2005, to the Chief Minister acknowledging that much patience had been exhibited by the Government, and setting out Pagebrook's difficulties in raising funds for the development. On behalf of Pagebrook, Mr. Brough asked for one last chance to demonstrate that it had the funds to execute the project. The cut-off date which he suggested, and which was approved later by ExCo, was to be the 30th of April 2005.

442) Pagebrook introduced Cockerell Interests (Cockerell) as an investor to partner with Pagebrook and others to undertake the development. Due diligence was conducted by TCInvest. It was the first of such an effort by the Government of TCI since Pagebrook began its approach in 1995. A letter from a Vice President of Goldman Sachs, a world-renowned investment company was presented to the Government. In the letter was information that Goldman Sachs held in its custody on behalf of Cockerell, money in cash and marketable securities in excess of $300 Million.

443) There was however no firm commitment from Cockerell that the monies would be expended on the East Caicos project, as certain steps had yet to be undertaken. It was the evidence of Phillip Franshaw, the focal person for Cockerell, that he did not believe that the cruise ship port which was integral to the proposal would be built. This was because, as he supposed, Cockerell, a yacht-owning family would have preferred a luxury marina. However, engineering and technical feasibility and costing had to take place before this could be determined. Yet he

was confident that the development would have gone on even without a cruise ship port.

444) After a number of months, during which various proposals were made by Pagebrook/Cockerell to the TCI Government including a requirement for the TCI Government to enter into a Collaboration Agreement, to inter alia, identify the various project components, agree funding methods, and to participate in a meeting in Texas, where Cockerell was based.

445) While these negotiations regarding the project continued, other negotiations commenced for the sale of a shoe-shaped land in the area required for Pagebrook's development: Breezy Point.

446) Breezy Point was described as beachfront land ,ninety-two acres in size. To prepare that piece of land for sale, the Chief Valuation Officer of the islands: Mr. Hoza conducted a valuation and valued it at $13.2 Million. The main consideration for this valuation was said to be "the marriage value" of land owned by Solar Enterprises which lay behind Breezy Point, and Breezy Point. A combination which he believed would enhance the value of the Solar Enterprises land, would yield the "marriage value", which he felt the Crown should benefit from. Mr Hoza however later submitted a revised valuation which abandoned this "marriage value" and dropped the figure from $13.2 Million to $4.2 Million.

447) On the 10th of August 2004, ExCo agreed to sell Breezy Point to a Mr. Harrison Isaac of HEGNI, an Architectural firm out of Bermuda. In February 2004, it began negotiating to purchase land at Breezy Point. Eventually, HEGNI put in a bid for all of Breezy Point.

448) ExCo's approval for the sale of Breezy Point to HEGNI was communicated to that company, together with an agreed draft transfer document. However, the negotiations apparently slackened, due to HEGNI's inaction, and ExCo's consequent decision to withdraw the offer by 17 December 2004. At HEGNI's request, time was extended for performance by the Government.

449) On the 8th of December 2004, FBH communicated the interest of RP in the purchase of the same land to ExCo. RP had sought to purchase the land for $2 Million inclusive of stamp duty.

450) At the 6th of January 2005 meeting of ExCo, it was decided that Government would sell the 95 acres of land (Breezy Point's ninety-two acres and Thatch Cay's three acres), to either RP or HEGNI, whoever made a non-refundable ten percent deposit for the land first, which deposit was to be paid on or before the 31st of January 2005. 21 March 2005 was set as the closing date.

451) On the 18th of January 2005, RP paid the deposit of $421,635.51, and purchased the land (Parcels 30200/3 comprising 92 acres and 30200/4 (Thatch Cay) comprising 3 acres) on the 24th of January 2005, for $4.2 Million, with a waiver of stamp duty.

452) The Stamp Duty Remission Order which waived the payment of stamp duty for RP, was signed by FBH on the same day: the 24th of January 2005.

453) A month later on the 24th of February 2005, Mr. Padgett paid $200,000 to the account of the PNP at Belize Bank. Out of this, FBH took $50,000 for himself.

454) The sale of Breezy Point did not appear to have gone well, for a year later, RP complained to the Premier that after the survey of the land, it was discovered that the boundary went at one point out to sea, and that for a large part, there was no land apart from the beach. In his letter, he asked to either be permitted to grow vegetation to correct the problem or be given new land in a swap. The Government did the latter.

455) It was FBH's evidence that the Government chose the land swap option, because it had been embarrassed by the matter, and wanted to rectify the situation. To fix this, Cabinet on 6 December 2006 gave its approval for RP to be given replacement land of 530 acres, and 6380 feet of beachfront land, for his 92 acres and 10,400 feet of beachfront.

It must be noted that FBH was not at the Cabinet meeting that day and did not participate in the deliberation that resulted in the Governor's concurrence. This allegedly soured relations between the Premier and RP as he had allegedly requested for 1000 acres and had received only 530 acres as replacement land.

456) It was the evidence of FBH that the $200,000 paid by RP to Belize Bank for PNP, was not paid as a bribe, but a donation to PNP whose governance efforts he was supportive of (he had stated his support in his application for Belongership).

According to FBH, RP donated this money at a time when there were no restrictions on political financing or restrictions on how the financing was handled. It was because of this, and the lack of time at a busy time, that he did not make a distinction between monies paid as donations to the party, and his own monies. He alleged that it was pretty much the culture at the time to make no distinction between personal funds and campaign donations, and there was no requirement to do so. Thus, having allegedly used his money for the party in the 2003 campaign, the $50,000 he received from that $200,000 was the party allegedly paying him back. The said expenditure related to such politicking activities as: school activities for the children, students going back to school, hand-outs on Valentines' Day, Mothers' day, Father's Day and other holidays in which mothers received gift baskets, roses, and gifts for the elderly and other assistance, including helping people build their homes. Out of the $50,000 alleged reimbursement from RP's $200,000, he reimbursed his brother Derrick $20,000 for arranging back to school items for the children periodically from New Jersey in the USA

457) FBH denied remitting stamp duty from the sale of land which Cabinet had determined should be sold at $4.2M inclusive of stamp duty. He testified that he signed the Stamp Duty Remission Order after his Permanent Secretary Mr. Heartly Coalbrooke, with whom he consulted, advised him to do so, in order that the Commissioner of lands would not think that the stamp duty should be assessed and paid on the sale.

"Loan" for Quinton Hall and Blue Horizon Land Swap

458) The Prosecution also led evidence that on 17 July 2007, FBH wrote to RP requesting a loan of $200,000 for the benefit of his brother Quinton Hall (QH). It was to be paid to Stanfield Greene Attorneys, for the account of Whale Watchers Ltd. FBH undertook to repay it. The Promissory Note issued for the repayment was not signed until later, although it is not clear when that was.

459) On that same day (17 July 2007) that FBH requested for the "loan" from RP, RP wrote to FBH requesting for the remission of stamp duty on the purchase

of land in a swap deal between RP and John Gill, regarding the Blue Horizon Resort Property.

460) An email from FBH to RP which on its face appeared to have been produced on 25 July 2007 read:

"Dear Richard,

I am trying to address the stamp duty issue on the properties you spoke to me about, however, I need you to provide me with the parcel numbers and the names of the companies that the properties would be transferred to and from.

As soon as you can provide me with that information I will attend to your requirement."

461) At the 22 August 2007 Cabinet meeting, FBH by Oral Mention, presented RP's request for land owned by Caicos Sol Ltd to be transferred to the new Caicos Sol Ltd. FBH confirmed that this was the subject of the request for the remission of stamp duty. Cabinet approved the land swap in principle, subject to John Gill's indicating that he had no objection to it. The evidence of John Gill is that FBH in fact granted total remission of stamp duty as requested by RP.

462) That would tie the work of FBH in Cabinet, to money he had asked RP to provide to him, albeit dressed as a loan for his brother ,regarding which he offered himself as the primary obligor.

463) It was the evidence of FBH that in a conversation with RP (who had become his friend), RP spoke to him about having some money to loan to Turks and Caicos Islanders to get them into business. It was FBH's view that this was so that RP would be seen to be actively helping natural-born Turks and Caicos Islanders (Belongers). It was for this reason that he went to him for a loan on behalf of his brother QH. According to him, the money was needed to carry out extensive repairs to the second and third floors of the Harbour House building at Grand Turk. He alleged that his brother Quinton (QH), was the owner of Harbour House and he had to make a contribution towards the repairs.

464) QH who allegedly needed money for this contribution, authorised FBH to explore the possibility of getting a loan for the repairs. Thus did FBH discuss the matter with RP, who allegedly agreed to make the loan available. FBH explained

that he promised to repay it because he was the one known to RP, not his brother QH. He asked RP to make out the loan to Stanfield Greene Attorneys for the benefit of Whale Watchers Ltd, the company that owned Harbour House. The loan was used in the repairs and part of it was rented out, but that before the whole building could be rented out commercially, a tropical storm (Hannah) and a hurricane (Ike) caused such massive damage that the building became unsuitable for occupancy and the building was eventually lost.

465) FBH, admitting that the Promissory Note on the 'loan' transaction was backdated to read the 1st of August 2007, although the money was sent on 17 August 2007, alleged that he did so upon the direction of RP who wanted the date on the Promissory Note to reflect the date the loan was made out to make certain the interest payable. He testified that when he signed the Promissory Note, he did not have any material before him and he also could not remember the date the money had arrived, but he did recall that he had requested for the loan in July, so it was not an issue for him, to date it 1 August 2007.

466) It was his further evidence, that the loan was repaid when RP asked for it back, and that not having "liquidity", at the time, he paid RP what he owed which included other debts, with assets he had.

Discussion

467) The offence of Bribery at common law, has been described as *'the receiving or offering [of] any undue reward by or to any person whatsoever, in a public office, in order to influence his behaviour in office, and incline him to act contrary to the known rules of honesty and integrity'* **see: *Russell on Crime*[40]** The description of Public Officer covers any officer who discharges any duty in the discharge of which the public are interested, and especially so if he is paid out of a public fund, see: ***R v. Whitaker*[41].**

[40] (12th ed 1964), p 381.
[41] 1914] 3 KB 1283, 10 Cr App Rep 245

468) The issue to be determined from the evidence, is whether there was an intention on the part of RP in giving the monies, to influence FBH to act improperly in the performance of his public duties, in order that RP would secure a benefit. In determining this, I have regard to the size of the monies paid and the proximity of the payments to requests for FBH to perform an official function for RP's benefit:

a. There is the 24th of January 2005 sale of **Breezy Point** to RP with a remission of Stamp Duty. On the same day, with the payment by RP of the large sum of $200,000 to the account of the PNP at Belize Bank, out of which FBH got $50,000.

b. There was the 14 December 2005 determination of a **Planning Appeal** by FBH in wrongly, in which he gave to RP, what had been denied by officials of the Physical Planning Board. It was followed by the very large payment of a total of $375,000 of the 8 and 14 of February 2006 'finder's fee'.

c. On 17 July 2007 when RP wrote to FBH, requesting for the **Remission of Stamp Duty** on the Blue Horizon Resort land swap deal, FBH also wrote to RP requesting a 'loan' of $200,000 for the benefit of his brother QH.

469) The evidence presented by the Prosecution, is circumstantial evidence from which the court must come to the conclusion of the guilt of FBH in the offence charged in Count 3. Circumstantial evidence was described as a three-corded rope by Pollock CB in ***R v. Exall*** [supra] in his insightful dictum:

"It has been said that circumstantial evidence is to be considered as a chain and each piece of evidence as a link in the chain, but that is not so…It is more like the case of a rope comprised of several cords. One strand of the cord might be insufficient to sustain the weight but three stranded together may be quite of sufficient strength. Thus, it may be in circumstantial evidence, that there may be a combination of circumstances no one of which would raise a reasonable conviction or more than a mere suspicion, but the three taken together may create a conclusion of guilt with as much certainty as human affairs can require or admit of."

470) The following are the pieces of evidence led by the Prosecution in proof of the charge of Bribery:

Breezy Point

The evidence of how RP with uncommon speed, elbowed both Pagebrook/Cockerell and HEGNI out of the purchase of Breezy Point, which he later gave up in exchange of land more than five times its size, is difficult to view in any light other than that FBH who introduced RP as a prospective developer for East Caicos, influenced the acquisition by RP.

471) Breezy Point was said to be the Crown jewels of the East Caicos land which included the development of a cruise ship port in the proposal of Pagebrook. When Cockerell became involved, the introduction of a luxury marina rather than a cruise ship port, became a matter which would have been determined following the carrying out of engineering analysis and financial implications of the project. While the sale of Breezy Point did not sound the knell on the project, it was the evidence of Mr. William Grenier, the principal of Pagebrook and Mr. Philip Franshaw, the main player in the Cockerell representation in the project, that it undermined the project in no small way.

However, the evidence showed that despite Mr. Grenier's evidence that so much work had been done by Pagebrook before the PNP Government assumed the reins of Government, and that they were all but ready to put a shovel to the ground, that was hardly the case, for the over $5M said to have been expended by Pagebrook could not be confirmed by its attorney Mr. Misick KC. The alleged amount, if it was expended, was done pursuant to an agreement that had ran its course until the PNP Government gave Pagebrook audience again.

It was also manifest that there was no real agreement between Pagebrook and its partner Cockerell regarding the nature of the development (cruise ship port or luxury marina) which on the showing of Philip Franshaw would have reached the point of determination after engineering and financial analysis had been done to move the two companies in the direction they wished go.

Nor was it lost on the court, that despite the protestations of Mr. William Grenier, the project proposal required land for the development, a large part of which was the Bermudian land which was never secured by Pagebrook/Cockerell.

Even the structure of participation in the project: whether it was to be a joint venture with the Government or a development by Pagebrook/Cockerell was yet to be determined; and evidently, Cockerell's commitment was never indicated as the meeting to determine all these never happened. It was the evidence of Philip Franshaw that Cockerell would never have made a commitment without the head of the family's business' say-so.

That he said would only come after the Government had met with him. That meeting never happened, and Cockerell's interest, on Franshaw's evidence, waned.

472) Thus, on the totality of the evidence, I could not fault the Government for failing to deal exclusively with Pagebrook whose principal's grandiose schemes of development, were unsupported by actual investment funds for so many years, or Cockerell (which perhaps able to provide funding), never at any time committed funds to the project.

473) But with respect to the Government's dealings with HEGNI, I cannot help but note how HEGNI's negotiations which admittedly had been slow-moving, but which were accommodated by the Government, were supplanted by RP.

474) RP was introduced by FBH to Cabinet as a person interested in acquiring land which was under negotiation between the Government and HEGNI. These negotiations had been accommodated by the Government, as HEGNI did not have ready funds.

475) After RP was introduced to Cabinet as an interested buyer of Breezy Point, Cabinet gave a deadline of 31 January 2005, for whichever of the two proposed purchasers would pay the deposit on the purchase price. RP who had ready money was the obvious winner. He bought the land, supplanting HEGNI when he produced ready money on 18 January 2005, before the deadline.

476) FBH (who had introduced him to Cabinet) granted a remission of stamp duty on the transaction (as it turned out, unnecessarily), that same day. That RP made payment within a very short deadline aimed at pushing out anyone without ready funds, became more than a suspicious circumstance when after the sale, FBH remitted stamp duty on the transaction in the exercise of his discretion as Deputy Premier. It has been argued on behalf of FBH that the stamp duty was not

necessary, as Cabinet had agreed that the purchase price of $4.2Miliion should be inclusive of Stamp Duty. Thus, it is argued that there was no act from which wrongdoing may be inferred. But that contention fails to recognise that when FBH purported to remit the stamp duty he thought it necessary to do so in order that RP might not pay it. Thus, it matters not that it was in fact unnecessary. I am in no doubt (upon the evidence), that FBH intended the exercise of his power under ***s. 32 of the Stamp Duty Ordinance,*** to remit stamp duty, to be a favour granted to RP, which it would have been, but for that anomalous circumstance of Cabinet approving a sale inclusive of stamp duty.

That the events were followed closely by the payment of RP of the sum of $200,000 into the account of PNP of which FBH was treasurer, out of which he helped himself to $50,000, made the link between the sale to RP in these circumstances in which he elbowed out HEGNI, and the payment, obvious.

477) The fact that RP, a year after the sale, complained in a letter to the Chief Minister, that the land was just beach with no land attached to it, is indicative of the fact that he performed no due diligence. He knew nothing about the land for which he paid money so hastily, after he was placed in competition with HEGNI which he won with ready funds. This transaction for the sale of land was unlike the Crown land for Belongers which was allocated often without survey. This was land RP had put in a bid for, but obviously knew nothing about. This is indicative of the fact that he wanted land for his own purpose, he was introduced to the existence of land which he made a bid for, was told that it had become a race between persons for who could bring money, and he did it, all without even knowing the land. It becomes evidence which taken with the other matters, leads me to the conclusion that FBH who introduced him as an interested person to Cabinet, was the wind behind his sails for which FBH received $50,000 out of the $200,000 paid to PNP a month after the sale and the purported remission of stamp duty.

478) These pieces of circumstantial evidence, lead me to the irresistible conclusion that the payment of $200,000 to the PNP of which FBH was the treasurer and out of which FBH received $50,000, was a reward to FBH for

introducing RP in the sale of Breezy Point, and for his purported action to remit stamp duty on the sale.

Finder's Fee

479) The monies FBH received from RP included the payment of $375,000 to FBH through his company Paradigm Corporate Management. FBH, the Deputy Premier was in a position to perform favours for RP, a proposed developer who was dealing with Government. One such favour (which FBH believed he could perform), was the purported determination of a Planning Appeal lodged by RP who had been refused what he had applied for by the Physical Planning Board (PPB). It turned out that FBH had no authority to determine the appeal, not being the Acting Planning Minister, although he temporarily held the portfolio of Acting Chief Minister.

His explanation that he held an honest belief that he could do so (as did the civil servants who gave him advise), did not alter the deed, for he believed himself to be in the position to grant the said favour.

480) The communication of the grant of the Planning Appeal (January 2006), was followed shortly by the payment of the $375,000 (February 2006). The payments appeared to be linked to the grant of the appeal, as a reward for the performance of that function which was beneficial to RP's company.

481) FBH's explanation was that only part of that money was paid to him ($105,000), and that the rest ($270,000), was a wedding gift for Michael Misick. However, this split of the money into a 'finder's fee' and a wedding gift for Michael Misick, was negated by the evidence of Marcus Hawkins regarding the attempt by RP in 2009 (when the Commission of Inquiry had been set up), to whitewash the payment as having been a liability for real estate work known to all the shareholders of RP's company OPDL. In that enterprise, RP who was trying to cover his tracks, did not make any distinction regarding that single payment: he got his company's shareholders to agree that what was paid Platinum Realty was liability for commission, known by the shareholders. There would have been no

reason to add the $270,000 as known liability to FBH, if it was indeed paid as a wedding gift.

482) It was also worth noting that the invoice created for the bank to make payment to FBH, included a narration of work done towards the grant of the Planning appeal for which the bill was $250,000. That the money was paid to Paradigm Corporate Management Services on a fictitious invoice created by OPDL, raises the question of why they would do so. Marcus Hawkins' evidence that it was not a known liability of the company, and that they had to scramble for money to pay, and to create a document upon which the bank would make payment, has the ring of truth in the light of the evidence of Dempsey and Bengt Soderqvist, which showed that FBH performed no service in the sale of the Third Turtle Club for which a legitimate payment could be made.

483) The story woven around the receipt of $375,000 by FBH which he first demanded in the sum of $300,000 in his letter of 25th April 2004 for finding the Third Turtle Inn site for RP, was transformed into the sum of $105,000 (which he received), when after the fact, RP allegedly chose to pay commission of $195,000 out of it to Bengt Soderqvist. Unsurprisingly, FBH admitted that the change in the 'agreement' was not recorded in writing.

As aforesaid, the evidence of FBH that he was due a 'finder's fee', was against the background of all the players in that transaction denying any involvement of FBH in it: the broker Bengt Soderqvist, the lawyer Dempsey, and Marcus Hawkins who was Financial Director at Ocean Point all denied that FBH participated in the sale. The evidence also, regarding how the company Ocean Point rallied to find money for FBH, informing the bank as such, gave credence to the testimony of Marcus Hawkins the Financial Director, that this was not a liability known to the company, the most telling part of which is that the company OPDL, scrambling for a reason to pay the money to FBH, created a fictitious document of 6 February 2006 upon which the payment was made.

484) If FBH's story of a finder's fee were to be believed, it would mean that as a Minister in the Government of the Turks and Caicos Islands, he had had to perform the ministerial function of determining a Planning appeal for the development of

land in respect of which he had business relations with the prospective developer, and for which he had made a demand for payment in that relationship. The appeal was the exercise of discretion by the Minister for Planning.

485) The said situation would speak of its own impropriety which was not improved with the evidence of FBH that the 'finder's fee' which RP allegedly unilaterally reduced to $105,000, was paid along with a 'wedding gift' of $270, 000 to Michael Misick. This is because, even going by FBH's story of the circumstances under which the Chief Minister, in his office agreed with RP on the payment of the $270,000, that "wedding gift", was more in the nature of a trading of favours between a high Government Official and a developer (or worse, an extortion), than the gift alleged.

I have considered the evidence in its totality. I am sure that the strength of the Prosecution's evidence was unaffected by the evidence of FBH.

I am in no doubt at all that the $375,000 was paid by RP to FBH, not under any unwritten contract for the service of finding real estate which no-one (including his business partners), knew about save the two of them. And FBH had come through for RP. Regarding the Planning appeal which he determined (without authority as it turned out), FBH purporting to exercise the powers of Acting Planning Minister in his position of Acting Chief Minister (in the Chief Minister's absence), granted RP the seven stories RP had been previously denied.

Loan

486) Regarding the "loan" allegedly contracted by FBH for his brother QH, that a Minister of the Crown should purport to source a loan from a prospective developer, is in itself improper and would lend itself to a perception of bribery, if the borrower, a public servant was called upon to perform a ministerial act for the prospective developer/lender. This is because as lender, the developer would be in the position to exert influence over him in matters in which he was interested, if the Minister was in a position to deliver what he desired.

Thus, insisting that the payment by RP to FBH of $200,000 was a loan to FBH for his brother, although FBH was the primary obligor, missed the point. It should not have happened even if it was a loan[42].

487) It was evidence led by the Prosecution that the 'loan' was repaid after the Commission of Inquiry had begun its work and mention had been made of FBH's relationship with RP. This was disclosed in the evidence of Barrie Cooke whose assistance had been required (quite wrongly) by FBH and his wife LH to transfer landed property already transferred to them, to RP, at this time.

488) The repayment of the 'loan' was in an apparent response to the urgent demand by RP for it. It was a surprising turn of events, for the evidence showed RP's switch from making no demand for repayment at all, to urgently demanding repayment so many months after it would have been due.

489) It commenced with RP's letter of 1 June 2009 to FBH, which was (as he said), to *"formalise the loan arrangements with respect to the sum of Two Hundred Thousand United States Dollars (US$200,000.00) previously lent by me to you as evidenced by the Promissory Note of 1st August 2007".* Interest said to have accrued on the sum, had been capitalized. The terms of the loan now included interest of ten percent with a repayment to be upon written demand giving thirty days' notice.

490) In an email of 8 July 2009 to RP, FBH offered RP three properties: one at Richmond Commons valued at $160,000, Leeward valued at $190,000, and Golf course which he thought might be valued at $250,000.

491) The flurry of activity that followed resulted in the FBH transferring two of his properties in September 2009, and the placing of a charge on a third in favour of RP to settle his indebtedness which included the $200,000 and other liabilities.

492) The dating of the Promissory Note that recorded the loan was also somewhat confused. There was a discrepancy regarding when a precedent was obtained for RP for the purpose. The controversy emanated from the evidence of Nigel Schofield to whom RP turned for a precedent which was dated 25 July 2007 but was more likely to have been sent on 25 September 2008 (as the footer of the

[42] CX 4. para. 24

email indicated), and an email from RP to himself, but copied to his son Simon Padgett, indicating that as late as 11 April 2009, RP was seeking to have the Promissory Note witnessed by Nigel Schofield. Thus, regarding the 'loan' itself, what was offered as a record of it, and its terms are as I have previously described: a Promissory Note of doubtful origin and custody that recited matters (of repayment) of which the 'lender' seemed to be oblivious (insisting that it was two-month term loan which the Promissory note did not say), produced at a time that is not easy to settle on, whether September 2008, April 2009 or other.

It is no wonder that FBH stated that he and his brother allegedly passed up the chance of repaying the 'loan' in favour of investing in a venture that was not successful.

493) All this was indicative of an attempt to characterise the payment of $200,000 as a loan, and not the payment of money to secure a favour from FBH in the performance of his duties as Deputy Premier, and member of Cabinet in the stamp duty remission request relating to the Blue Horizon land swap.

But the consideration of all the evidence on the matter, leads me to the conclusion that the said payment was merely dressed as a loan, and that it was in fact paid to secure that favour.

494) It cannot go without mention that on the same day FBH made his "request", RP also made a request of FBH for remission of stamp duty in the Blue Horizon land swap deal which he got (one hundred percent, was the evidence of John Gill who was in the transaction with RP). The evidence is that FBH by Oral Mention introduced what RP had requested for, to Cabinet the following week, and obtained the remission.

495) Although there was no burden on FBH to prove his innocence, he gave evidence in his defence, and I have had regard to it. The evidence led by the Prosecution provided proof of the allegation that the 'loan' was in fact, a bribe, paid to secure a favour from FBH in the performance of his duties as Deputy Premier, and member of Cabinet in the stamp remission request in the Blue Horizon land swap, and not the loan that FBH alleged.

496) The consideration of all the evidence led in proof of the charge of Bribery: the Third Turtle Inn and its link to the determination of the Planning Appeal, the payment of $200,000 to the PNP out of which FBH received $50,000, paid after the Breezy Point sale and remission of stamp duty, and the $200,000 'loan' which was requested on the same day RP requested for the remission of stamp duty, leads me to the conclusion that FBH received the said monies as bribes, to influence his performance of his duty as a pubic officer, to favour RP and his company OPDL.

497) At all times material to the payments, FBH was Deputy Chief Minister/Premier, a public officer, and RP was a businessman who was in the process of acquiring and developing properties in the islands. That situation placed FBH in a position to do favours for RP, and/or for RP to exert undue influence on FBH where their relationship was characterised by money payments, even if it was transactional, which is not the case here.

498) Bribery is *"'the receiving or offering [of] any undue reward by or to any person whatsoever, in a public office, in order to influence his behaviour in office, and incline him to act contrary to the known rules of honesty and integrity*" see: **Russell on Crime.**

499) I am sure from all the evidence led in all the cases, that the Prosecution proved beyond a reasonable doubt, that the payments of $375,000, from RP to FBH through his company Paradigm Corporate Services, $200,000 from RP to PNP from which FBH received $50,000, and $200,000 paid by RP to FBH, dressed as a loan but was not, have been proven by the Prosecution as having been paid to influence FBH, a public officer in the performance of his duty, and that they were received as bribes by FBH from RP. The Prosecution has succeeded in proving the guilt of FBH in the charge of Bribery on Count 3, beyond a reasonable doubt.

500) He is accordingly convicted of the offence of Bribery charged in Count 3.

Count 4 Conspiracy to Defraud

501) PARTICULARS OF OFFENCE

FLOYD BASIL HALL between the 1st day of January 2006 and the 31st day of December 2008, conspired together with Michael Eugene Misick, McAllister Eugene

Hanchell, and Harold Charles to defraud the Crown, the Government of the Turks and Caicos Islands and/or the Belongers, by arranging the transfer of Crown Land at West Caicos on terms that were contrary to the economic interests of the Crown, the said Government of the Turks and Caicos Islands and/or the said Belongers.

Case Summary

502) In this count, the Prosecution alleges that FBH and three others (two Ministers of the Crown and his friend Harold Charles), conspired to defraud the owners of Crown Land: The Crown/TCIG and/or Belongers of their due in land that was the subject of an agreement with a development company, but was freed up for Belongers for commercial development at West Caicos.

503) FBH and his friend Harold Charles to whom land was allocated for commercial development, used it to raise a loan from a bank on a private transaction in circumstances in which, having used a fraction of the loan for the purpose of land acquisition, they used up the rest in profligate spending unconnected to the purpose of the loan, treating the loan as a boon to be shared among the borrowers, their friends and families.

504) Evidence was led that the land that was sold to three companies connected to FBH, was sold at a valuation by the Chief Valuation Officer which was far less than private valuers produced, but that not only did FBH fail to inform Cabinet of this pursuant to his fiduciary duty to the Crown, but that he failed to disclose also his interest in the transaction, to Cabinet.

505) It is therefore the case of the Prosecution that FBH, as Minister of the Crown, breached his fiduciary duty as he personally benefited from these transactions, and did not make known to Cabinet the other valuations of which he was aware. The Prosecution alleges that the Crown/TCIG and or Belongers, owners of Crown land were deprived of the opportunity to sell the land for much more than it received for it.

Prosecution's Case

506) The background to the transaction is traced by the Prosecution from the decision to free up land the subject of a contract between TCIG and a developer

Logwood Development Company for the benefit of Belongers. Evidence has been led in this regard that in 2001, the Government of Turks and Caicos signed a Development Agreement with Logwood Development Company (Logwood) regarding development on the island of West Caicos. Among its provisions was clause 23.1 which stipulated: *"23.1 The Government covenants that it will not, without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed) permit development (other than Belonger housing and ancillary community facilities) on the Island on land which is held by Crown at the date hereof (excluding Development land) for a period of 10 years following the date of grant of detailed development permission for the Land Area A Infrastructure Works provided that if no application for such detailed development permission is made for such works or having been made is refused the said period of ten years shall run from and including the date of this Agreement".*

507) There appeared to be a good relationship between Logwood and TCIG which permitted Logwood to draw down on land following a revision of their agreement. Even so, there also was the drive to amend the agreement to permit Belonger commercial development. This drive, on the testimony of RBK, was preceded by enquiries made by the Chief Minister and FBH from her while on a trip for Government business to London, United Kingdom.

508) This effort to free up land for the benefit of Belongers, resulted in the decision of Cabinet on March 21 2007 approving a subdivision to create seven parcels to be owned by Belongers for "Tourism Related Development on West Caicos".

509) Pursuant to this decision, Cabinet, on April 11, 2007, approved the subdivision of Block 70100 West Caicos to create twenty-two (22) survey lots for tourism related development. The Attorney General's Chambers was tasked to amend the Logwood Development Agreement to permit tourism-related development in this subdivision by Belongers. This having been done, the Chief Valuation Officer: Mr. Shabaan Hoza provided a valuation of the lands.

510) Three companies, all connected to FBH, participated in the acquisition of some of the land freed up for Belonger commercial development: Palm Ridge which was incorporated on 11 October 2006, previously known as Cockburn Harbour Heritage Limited, Cedar Palms incorporated on 16 April 2007 formerly known as FGMR, and the Armoire Ltd.

511) Upon their application for land, the three companies were granted Conditional Commercial Purchase Leases (CCPLs).

512) On 25 July 2007 Minister McAllister Hanchell presented a Paper to Cabinet for the approval of freehold titles over parcels 70100/52-75 for certain individuals and companies which had been granted CCPLs. The evidence shows that at the said meeting, FBH declared that Mrs Paula Stewart who had an interest in the subject, was his sister, and left the room for deliberations to take place in his absence. There is no evidence however, that he mentioned his own interest in the three companies, being The Palm Ridge, Cedar Palms Ltd and The Armoire which were also affected by ExCo's action.

513) Cabinet's decision to approve freehold titles was communicated to the directors of the companies on the 7th of August 2007 by the Assistant Commissioner for Lands. The lands in respect of which the three companies had received CCPLs were valued by Mr. Hoza as follows: Parcels 70100/57, 66, 66, 67, 6. 73, 74 and 75: $3,840,000 (for Palm Ridge Ltd); Parcels 70100/60, 61, 62, 63, 64, 65, 69, 70, 71: $5,580,000 (for Cedar Palms Ltd) Parcels 70100/52, 53, 54, 55 and 56, valued at $3,762,000, (for The Armoire Ltd).

514) On 20 August 2007 (about two weeks after the communication of Cabinet's approval), Harold Charles, one of the principals of the three companies, and friend of FBH, commissioned private valuations by Rosie Nicholls of BCQS (a quantity survey firm), and Tim Naylor of Construction Advisory Services Ltd (CASL, also a quality survey firm), for the purpose of securing financing.

515) Evidence was led that FBH flew to West Caicos with both valuers.

516) The values provided by two external valuers) were - per Rosie Nicholls of BCQS: Parcels 70100/57, 66, 66, 67, 6. 73, 74 and 75 (for Palm Ridge Ltd) - $10,000,000;

Parcels 70100/60, 61, 62, 63, 64, 65, 69, 70 and 71(for Cedar Palms Ltd) - $8,000,000 Parcels 70100/52, 53, 54, 55 and 56 (for the Armoire Ltd) - $6,250,000, Per Tim Naylor of CASL: Parcels 70100/57, 66, 66, 67, 6. 73, 74 and 75 (for Palm Ridge Ltd) - $22,500,000;

Parcels 70100 60, 61, 62, 63, 64, 65, 69, 70 and 71 (for Cedar Palms Ltd) - $17,000,000;

Parcels 70100/52, 53, 54, 55 and 56 (for the Armoire Ltd) $9,500,000

517) On the 12th of September 2007, in accordance with the valuation of the Chief Valuation Officer, the Minister of Natural Resources, Mr. McAllister Hanchell, under the delegated authority of Cabinet, offered the parcels of Crown land, to the three companies: the Palm Ridge Ltd, Cedar Palms Ltd and The Armoire Ltd.

The purchase price was fifty percent (discounted value) of the valuation by Mr. Hoza; stamp duty and registration fees were also to be paid.

518) Thus, did Palm Ridge Ltd pay the purchase price of $1,920,000, with stamp duty of $187,200 and registration fees of $70.

Cedar Palms Ltd paid a purchase price of $2,790,000 with stamp duty of $272,025 and registration fees of $90.

The Armoire Ltd paid a purchase price of $1,881,000, with stamp duty of $183,397.50, and registration fees of $50.

519) The purchase by the three companies for commercial development was financed by a loan from Belize Bank, guaranteed by FBH, and his partner Harold Charles. By letter, to Morris Cottingham Corporate Services (MCCL), FBH directed how Harold Charles was to undertake this.

520) The loan for the purchase, an amount of $19.4 Million was contracted by the three companies on the 9th of October 2007.

As part of the agreement with the bank, it was to be disbursed in this manner:

Crown land acquisition	-	$7,240,000.
Stamp duty and registration fees on land acquisition	-	$706,183.50
Stamp duty relating to the loan	-	$50,495
Bank legal fees	-	$58,200

Working capital	-	$ 2.5 M
Commitment Fee	-	$1Million
To repay existing debt		$1.5M
Funding Term Deposit (used to service the loan)		$6,345,121.50

521) After TCIG was paid its due for the land and stamp duty, the amount of $706,183.50 was returned by TCIG as an overpayment and was repurchased by the Belize Bank. This is how that was disbursed: half of the value of this draft: $353,091.75 was credited to the account of Paradigm Corporate Management Ltd, a company connected to FBH; the other half of the money was paid to Harold Charles. This left an overpayment of $6,167.50 which was later applied by FBH in his company's (Tropic Isle Ltd.) purchase of land at Water Cay.

522) On the 20th of September 2007 Minister Hanchell sought Cabinet's amendment of its minute in relation to the land allocation. In that meeting also, FBH declared his sister's interest in the transaction, and left the room, but once again, failed to indicate his own interest.

523) As aforesaid, it is the case of the Prosecution that the conduct of FBH amounted to a conspiracy to defraud the Crown/TCIG and/or Belongers their due as the land was sold at an undervalue to FBH's knowledge.

FBH

524) In his defence, FBH acknowledged these facts: that on 21 March 2007, the subject of creating a Belonger subdivision for tourism-related development West Caicos was introduced by Oral Mention to Cabinet and that after its deliberations on that day, Cabinet approved 7 parcels for tourism related development; that on 11 April 2007 it also approved the creation of 22 survey lots out of subdivision of Block 70100. The Attorney General was given the task to amend the Logwood Development Agreement to permit tourist related development by Belongers. It was his evidence however, that he had no part in the negotiations that followed the said decision of Cabinet, and that he had not been copied in on any of the correspondence between the Attorney General's Chambers (RBK), and Conrad Griffiths, attorney for Logwood.

525) It was his evidence that after the land at West Caicos was made available, three companies connected to him: the Palm Ridge, the Cedar Palm, the Armoire went through the process of acquiring land by making an application for land for commercial purposes, and that after they were granted CCPLs they applied for and were granted freehold titles. The prices of the parcels was communicated to the companies.

526) The negotiations regarding the financial arrangements for the purchase were made with Belize Bank and were led by Harold Charles who had over $15million worth of assets and a close relationship with that bank. The initial understanding was that Harold Charles was to guarantee the loan along with Ervine Quelch. However, as Mr. Quelch was not known to the Bank, FBH at the request of the Bank became the second guarantor.

Belize Bank loaned the three companies the sum of $19.4 Million for the purchase, and approved the disbursements of the sum, including the working capital of $2.5 million.

527) The three companies which received the offer of freehold titles, then paid for it in full. It turned out that the Government was paid more than it was due in stamp duty. The Land Registry therefore returned the sum of $706,183.50 which was purchased by the bank. Harold Charles then negotiated with the bank for the money to be returned to the guarantors as he wished to use the funds in his company, SkyKing. The Bank returned the overpayment to both Harold Charles and FBH in equal parts: $353,091.75, being half of the sum for Harold Charles' business SkyKing and the other half: $353,091.75 to FBH's company Paradigm.

528) FBH denied that he had hidden his involvement in the West Caicos commercial venture from his colleagues, insisting that although the minutes of Cabinet meetings did not so indicate, he did in fact declare his interest as he recused himself from all pertinent discussions. Explaining why that omission was never corrected although he was known to seek corrections meticulously, he alleged that ordinarily, members did not pay particular attention to errors except where they stood out, but that he had from time to time sought corrections at the instance of officials at TCInvest.

529) Regarding his trip to West Caicos with the valuers, it was his evidence that he went on that trip to assuage his curiosity as he had never seen West Caicos; he took the opportunity to do so when the valuers flew over to do their work. However, that was the extent of their interaction in relation to their work, for neither Rosie Nicholls nor Tim Naylor sent him their valuations after they were done with their work, and he never knew the values they had ascribed.

Discussion

530) FBH faces the charge of conspiring with others: Michael Misick and McAllister Hanchell, to defraud the Crown/TCIG and/or Belongers. In my consideration of this charge, I am guided once again by the celebrated dictum of the Lord Chief Justice in ***Barton*** regarding what constitutes the crime of conspiracy to defraud: *"We endorse the explanation ... that there must be a dishonest agreement which includes unlawfulness, either as to the object of the agreement or the means by which it will be carried out. It is not necessary to prove an intent to deceive or an intent to cause economic or financial loss to the victim or victims, but instead either a proprietary right or interest of the potential victim must be injured (or potentially injured) ... the defendant must act with an intention to prejudice another's rights. The agreement need not necessarily include the commission of a substantive offence if carried out…Conspiracy to defraud does not apply to agreements to achieve a lawful object by lawful means. But there is no requirement of unlawfulness or aggravating feature over and above a dishonest agreement which includes an element of unlawfulness in its object or means…"* (my emphases)

531) As has been discussed earlier in this judgment, for the proof of the charge beyond a reasonable doubt the following must be established:

a. That there was an agreement between FBH, Michael Misick, McAllister Hanchell and Harold Charles to arrange the purchase of land at West Caicos
b. That the agreement was dishonest and aimed at achieving an unlawful purpose of selling the land to the three companies at an undervalue.
c. That it was intended to injure the economic interest of the Crown/TCIG and/or Belongers.

The Agreement

532) The Prosecution led evidence that after FBH initiated a discussion with RBK which resulted in an amendment to the Logwood agreement, a process to make land at West Caicos available for Belonger commercial development at West Caicos, began. As was customary, the Cabinet Paper on the subject was prepared by the Permanent Secretary. Before the ink was dry on Cabinet's approval, FBH using three companies connected to him (two of which underwent name changes) formed a consortium to acquire land for commercial development.

533) FBH then proceeded to manipulate the allocation to the three companies. This was in 2007 when on the evidence of Ms. Tatum Fisher Clerveaux, allocations were determined by the Minister, Permanent Secretary or even members of staff. FBH succeeded in getting the lots he required for the three companies by engaging with Minister Hanchell and his Permanent Secretary Ms. Judith Campbell.

534) With the CCPLs granted, freehold titles were also granted to the three companies. FBH went with private valuers commissioned by his business partner Harold Charles for the purpose of securing bank financing for the purchase of the land.

535) The valuations produced by the two valuers was much more than the valuations of the Chief Valuation Officer Mr. Hoza which were used in the sale by the Government to the three companies.

536) While the Prosecution alleges a conspiracy to defraud the Government in the sale of the land, two main pieces of evidence were led in support of the charge: the first, was that FBH, allegedly having knowledge of higher values produced by external valuers, and in breach of his duty of disclosure to Cabinet, failed to inform Cabinet of them. The said circumstance is what allegedly led to the sale of the land at an alleged undervalue to the three companies connected to FBH. The second piece was evidence of profligate spending of the loan contracted to purchase the land which was far in excess of the price of the land. The spending led to the loan not being serviced, with its consequences, including the fact that the Belonger commercial development for which the land was made available never did happen because of these matters.

537) The allegation that there was a conspiracy to defraud the Crown/TCIG and/or Belongers in the manner in which the sale of land at West Caicos for the three companies connected to FBH was conducted, must be proven by evidence from which may be inferred a dishonest agreement between FBH and some, or all of the persons named in the indictment, to achieve that unlawful purpose.

538) While Michael Misick and McAllister Hanchell were named along with Harold Charles and FBH as involved in the conspiracy, the evidence led regarding the acquisition of the land and its aftermath pointed to FBH and Harold Charles as the main players. The court must therefore examine the evidence to see whether from the actions of these persons named but unindicted, with FBH, an inference may be made that there was an agreement to bring about the sale of the land at West Caicos to the three companies: Cedar Palms, The Armoire, and Palm Ridge, at an undervalue.

539) The evidence led commences with efforts to make land available for Belonger commercial development out of land contracted to Logwood. As aforesaid, evidence was led of both the dissatisfaction of FBH and the Chief Minister with the Logwood agreement which restricted commercial participation of others in West Caicos for ten years, and their actions to make land available for the purpose. These actions were FBH's call on RBK to speak to the Premier on the matter, and discussions that followed in Cabinet that led to the creation of twenty-two lots for Belonger commercial development.

540) There does not appear to be any evidence in relation to the Premier regarding the sale of the land so made available for purchase by the three companies.

541) In respect of McAllister Hanchell, the evidence was that he was in charge of granting allocations. He also was the Minister to present matters relating to land acquisitions to Cabinet. In this regard, he presented a Paper prepared by his Permanent Secretary for the consideration of Cabinet to make the required land for Belonger commercial development available at West Caicos, and subsequently sought an amendment of it.

542) FBH wrote to him before applications were made for land at West Caicos by the three companies, and he directed that they go through the application process. However, FBH wrote to him later directing how the land allocations to the three companies were to be made.

543) Apart from evidence led that FBH dealt with McAllister Hanchell regarding the location of the allocations to the three companies, no evidence from which an agreement hatched among FBH, his colleagues in Cabinet and his business partner (indicted co-conspirators) to cause loss to the Crown/TCIG and Belongers in the manner in which the pieces of land was sold to the three companies could be inferred.

544) Regarding FBH, evidence was led that he interfered in the process of land allocation to his three companies, this he did in correspondence with Minister Hanchell and Ms Judith Campbell. No evidence that there was any involvement of Minister Hanchell or any other person following the allocations to bring about the sale at an undervalue was led. However, evidence was led to show the following acts of FBH: He initiated the discussion with RBK on making land available for Belongers' commercial development at West Caicos. He was involved in the production and presentation of the Paper that was placed before Cabinet. The discussion at Cabinet commenced on 21 March 2007 when it was agreed that seven parcels be made out of a subdivision approved by Cabinet; it resulted in Cabinet approving 22 lots for Belonger commercial development, on 11 April 2007.

545) Shortly after Cabinet's approval, FBH on 16 April 2007, had the names of two of his companies which formed part of the land-acquisition consortium changed and two others formed. The companies with changed names were Cedar Palms and Armoire Ltd. FBH was the beneficial owner of the Palm Ridge Ltd, incorporated on 11 October 2006. It was the third company in the consortium formed to develop commercial property at West Caicos. Thus, he was very much a part of the three companies which had Harold Charles, Ervine Quelch and others, as shareholders. FBH asserted that the companies were Belonger-owned, and that apart from persons he knew, there were other participants in the companies that were unknown to him.

546) On that same day, of 16 April 2007 FBH wrote to Judith Campbell the Permanent Secretary of Natural Resources on her personal email address (FBH said it was because it was common to use personal emails as the Government email was unreliable). That email was to request for specific allocations of land contained in a spread sheet allocations.

He also requested that once the Minister signed the letters of allocation, he would arrange their collection.

547) FBH then wrote to Minister Hanchell apparently directing how the three companies' allocation was to be done. In his email, FBH referred to a discussion they had had regarding changes FBH wished to have made in the allocations to Cedar Palms and The Armoire, when the survey was completed in the subdivision. The changes related to certain lots being dropped, some being added, and others being kept as was. That two lots (23 and 24) were not shown on the present submission but were contained in information given to the Minister by Mr. Charles. He also requested that the subdivision be registered so the companies could apply for the freehold. FBH wrote again that "somebody was interested in Lot 17 and that Lot 21 was unaccounted for and could be reissued".

548) The three companies were indeed granted allocations and later freehold at the prices determined by the Chief Valuation Officer with the application of the Belonger discount.

Dishonesty

549) For the court to find dishonesty in the alleged agreement to bring about that unlawful purpose which would lead to economic loss, it was not enough to show that FBH tampered with the process of allocation at this time. It had to be shown that there was an agreement among the named conspirators to sell the West Caicos land at an undervalue, in that the land was worth more than what the companies were made to pay for it.

550) The evidence was that Crown land was sold on the valuations of the Chief Valuation Officer who at the material time, was Mr. Hoza.

551) That the said gentleman was well qualified in his business was without question. Having risen through the ranks first as a United Nations Volunteer, and

then as a Valuation Officer, he sharpened his skills over the years to become a Member of the Royal Institute of Chartered Surveyors. Whatever any misgivings anybody may have had about his work, it was his evidence that he remained at post, practising his profession as head of the Valuation Unit until he retired in 2020.

552) As head of the Valuation Unit, Mr. Hoza signed off on valuations conducted at the request of the Government which request was made by the Director of Lands and Surveys, the Permanent Secretary of the Ministry of Natural Resources, the Minister of Natural Resources, or TCInvest.

553) It was his evidence that his main objective in his valuations, was to maximise revenue for the Government, and that there had been complaints that his valuations were too high.

Unfortunately, as Tatum Fisher-Clerveaux explained in her evidence, while the valuations were given a lifespan of mostly six months, or was made subject to changing conditions, sales of Crown land were often conducted on such valuations sometimes years after, without regard to the caveat.

554) No evidence was led that FBH or any of the unindicted co-conspirators exerted any undue influence in the production of the valuations, or the manipulation of the system by which the said valuations were produced. The evidence led was that following Cabinet's decision to make land available for Belonger commercial development, companies that applied for land and received allocations were told of the purchase prices which were based on Mr. Hoza's valuations.

555) Following the communication of the prices of the land to the three companies, Harold Charles commissioned private valuations for the purpose of raising bank financing. There was evidence that this was standard practice for persons who wanted bank loans, as the banks would not accept the valuation provided by the Government. Indeed, it was the evidence of Tatum Fisher-Clerveaux that even the Government officials turned to private valuers when they found the valuations by Mr. Hoza the Chief Government valuer, too high.

556) Ms. Tatum Fisher Clerveaux's evidence showed that external valuations could be lower than the Government's valuations. This would mean that the

commissioning of external valuation after the grant of land by the government was not indicative of suspicion by Harold Charles (or FBH) that the values would be higher, or evidence of dishonesty, but simply that it was required for bank financing.

557) The Prosecution alleges that FBH who found out that the private valuations were higher than the valuations used in the sale to the three companies kept silent, just as he did over his involvement in the venture. It is not clear how even that dishonest act if there were such, could lead to an inference that there was an agreement to arrange the sale at an undervalue to the three companies.

558) Since there was no evidence that FBH or any of the unindicted alleged conspirators tampered with the pricing of the land sold to the three companies, the Prosecution's case rested on this: that FBH knew from the private valuations that the pieces of land were worth far more than the companies had been made to pay for them.

559) No doubt, the evidence of higher values could only have come after the land prices were communicated to the three companies and it is assumed that perhaps the communication of private valuations by FBH to Cabinet, coming after the fact could have made a difference, especially having regard to other Prosecution-led evidence that valuations based upon different considerations (including the impact of the Logwood Agreement) could yield different results.

But this puts the cart before the horse, for there must be proof that FBH in fact knew of the higher private valuations.

560) At the close of the case of the Prosecution, the court held that a *prima facie case* had been made against FBH. The finding was predicated upon one main thing, that he knew of the valuations which were far higher than the ones that had been used in calculating the prices of the land sold to the three companies connected to him but failed to disclose that information to Cabinet, as he was required to. The court was of the view that if on 20 August 2007, he was in the company of valuers who were commissioned by Harold Charles to value the lands the subject of their freehold application, then he must have known the valuations they produced, but did not inform Cabinet in breach of his duty of disclosure.

561) In his evidence, FBH explained how it was that he was found on the flight to West Caicos in the company of Rosie Nicholls and Tim Naylor which was unconnected with the work of the valuers: that he simply wanted to see West Caicos as he had never been there. But he denied that the valuers disclosed the valuations to him after they completed their work.

562) The Prosecution argue that FBH had been demonstrated to be so astute and meticulous in his ways, that it was unlikely that he would not have request for the valuations. Perhaps. But in a criminal trial in which the Prosecution bears the burden of proving its case beyond a reasonable doubt, the likelihood or otherwise to be surmised from FBH's character as one with an eye for detail, could not be the proof of what was so pivotal to the charge: his knowledge of the valuations. He is alleged to have dishonestly kept the valuations which would have informed Cabinet to arrange a sale to the three companies in a manner that would have been more profitable for the Government. The failure to disclose the valuations has been pointed out as leading to a sale which led to economic loss for the Crown/TCIG and Belongers.

563) The Prosecution ought therefore to have adduced cogent evidence that FBH knew of the valuations. They did not. On the contrary, FBH's evidence, viewed in the light of evidence led by the Prosecution that in a not dissimilar circumstance of a private valuation for the bank financing of residential property, RBK was not informed of the result of the valuation, there is evidence that it was perhaps not customary to inform the borrower of money when such private valuations were commissioned for the purpose of securing bank financing. That was enough to raise a doubt regarding whether FBH was given the information. That doubt could very easily have been resolved if the private valuers who had been accompanied by FBH to West Caicos, had been asked if they had provided him with the valuations, or if there was any circumstance of which they knew regarding the valuations from which the court could infer that FBH had the requisite knowledge. Although the valuers gave evidence for the Prosecution, this was not asked. The doubt that the said piece of evidence raises, must inure to the benefit of FBH.

564) In the instant matter, there were two private valuations. The valuation report of Rosie Nicholls, although initiated upon a request by Harold Charles, was said to be for, and on behalf of BCQS. Unlike Tim Naylor's (which were addressed to Harold Charles), there was nothing on the face of the reports to show that they were submitted to him. Granted, that as a co-guarantor of the loan, the possibility that FBH was shown Tim Naylor's valuations by Harold Charles could not be ruled out, it could not however, be assumed. FBH, as Deputy Premier, was per his evidence very busy, and left the ordering of his personal business to trusted persons such as CSG. It may not be assumed therefore that he would have been provided with information by Harold Charles, assuming that the said gentleman did receive the valuations. And as aforesaid, the Prosecution had opportunity to adduce such evidence from the private valuers who both gave evidence before the court but did not. FBH's denial that he knew of the valuations, is reasonably probable having regard to the circumstances. In coming to a conclusion on the matter, I have had regard to this: that although FBH the court found a prima facie case at the close of the Prosecution's case, he had no burden to prove his innocence. The court must then consider the totality of the evidence to determine whether on all the evidence, it was sure that FBH was guilty of the offence charged.

565) FBH's evidence was that he was not shown the valuations.

Was it wilful blindness, that although he could have asked for them, he did not because he did not want to know what the valuers had found? In the consideration of this point, it is important to note that from the evidence of Tatum Fisher Clerveaux, Mr. Hoza's high valuations are what drove even public officials to seek external valuations. Mr. Hoza himself testified that to the knowledge of FBH both as a member of Cabinet and his own confidante, the complaint against his work was that his valuations were high. Thus, it could not be said that external valuations were invariably higher, and that FBH deliberately avoided making enquiry. While the evidence of his good character was sufficiently assailed during cross-examination, I have had regard to these matters, and the doubt raised by the evidence of RBK regarding her own private valuations, to accept his word that he did not in fact know of the valuations.

566) Another allegation against FBH with regard to the transaction, is that he failed to disclose his interest in the West Caicos venture to Cabinet. This was said to be a breach of his duty to disclose conflicts of interest. Evidence was led, that on 25 July 2007 when a discussion was held on the West Caicos development, FBH declared that his sister Paula Stewart had an interest in the development, and left the room, but did not disclose his own interest. FBH is adamant that he did disclose his interest but that it was omitted from the minutes.

567) In considering this, I have regard to the evidence of FBH's dealings with the records of Cabinet which demonstrate that of all the members of ExCo/Cabinet, FBH was the one who would not abide errors in the record, for on a number of occasions, he was the one to point out errors in minutes. Indeed, between 28 September 2005 and 22 November 2006, FBH initiated the correction of minutes eleven times. Some of the corrections were grammatical, others involved language usage, and even punctuation.

568) Thus, his explanation that he did not seek to correct such an egregious error because nobody else paid attention to errors in minutes was impossible to believe in the circumstances. Seeing that this was a record that could impact upon his duty of disclosure, it was certainly out of character for FBH shown to be meticulous, to have neglected to point out that the declaration of his interest in the West Caicos transaction to Cabinet had been missed in the minutes.

569) I am confident that FBH did not declare his interest in the West Caicos development. But while that could constitute a breach of his duty of disclosure to Cabinet, it was not evidence of the agreement requisite in proof of the conspiracy alleged.

570) The proof of a conspiracy is often by circumstantial evidence. Describing it Pollock CB in ***Exall*** [43]stated: *"It has been said the circumstantial evidence is to be considered as a chain…It is more like the case of a rope comprised of several cords. One strand of the cord might be insufficient to sustain the weight, but three stranded together may be quite of sufficient strength. Thus, it may be in circumstantial evidence- there may be a combination of circumstances no one of*

[43] 176 E.R. 850 at 853

which would raise a reasonable conviction or more than a mere suspicion; but the three taken together may create a conclusion of guilty with as much certainty as human affairs require or admit of."

Thus, the individual strands of evidence regarding the involvement of the Michael Misick, McAllister Hanchell and Harold Charles could sufficiently paint the picture of the conspiracy alleged. Unfortunately, it did not.

571) While the evidence of the mission to make land available for Belonger development from the Logwood agreement which involved FBH and Michael Misick, was suggestive of interest in Belonger acquisition at West Caicos, it did not tie Michael Misick in with the sale of the land to FBH's three companies at prices which the prosecution alleges should have been much more, save for FBH's alleged act of concealing higher private valuations.

572) The evidence also that McAllister Hanchell who dealt with land allocations as Minister for Natural Resources was dictated to by FBH in the allocations to the three companies, showed at best that he permitted tampering with the process to favour his colleague. It did not tie in with the alleged concealment by FBH of the higher valuations from Cabinet, which is the basis of the case against him.

573) Harold Charles was shown to have an interest in the sale. He was involved in securing bank financing and was a co-guarantor of the loan of $19.4 M with FBH. The valuation of Tim Naylor was addressed to him and therefore he presumably knew the values ascribed to the land for the three companies. He benefitted personally from the money, in that part was made to pay a loan he had contracted with FBH, he also made use of half of what was returned by the Government overpayment of stamp duty.

574) FBH was shown to have been involved in the discussions that resulted in land at West Caicos being made available out of the Logwood Agreement for Belonger commercial development. When ExCo approved the creation of the twenty-two lots, he used his three companies to apply for land at West Caicos. Two of the companies were repurposed to apply for the land. FBH manipulated the allocation to the three companies by writing to McAllister Hanchell and the Permanent Secretary Ms. Judith

Campbell of the Ministry of Natural Resources. He benefitted personally from the loan that was contracted to purchase the land (to the tune of about $1,424,603).

575) While there was no evidence that he interfered with, or influenced the valuations by Mr. Hoza which were used in determining the purchase price of the pieces of land, he is alleged to have known of the higher valuations presented by the private valuers commissioned by his co-guarantor for the purpose of securing a loan from the bank. These, he allegedly concealed from Cabinet against his duty of disclosure.

576) Putting all the pieces of evidence together, these were the circumstances: the process to make land available to Belongers; the use of FBH's companies to purchase land; the sale of the land which were on values provided by the Chief Valuation Officer, with no information supplied by FBH regarding the higher values of the land he had allegedly been provided with and the loan contracted to purchase the land which was so much more than the price of the land, and appeared to have been distributed to persons not demonstrated to have been connected with the land.

577) Having regard to the role each of the alleged conspirators was alleged to have played, there is no evidence of a concerted action by them from which may be inferred a dishonest agreement to bring about the sale of Crown land at West Caicos to the three companies connected to FBH, with intent to injure the economic right of the Crown/TCIG and/or Belongers in the sale of the land to the three companies connected to FBH.

578) The Prosecution also seems to be making the case that *"As a result of the transaction, the conspirators were able to leverage the value ascribed by the two private sector valuers to the prejudice of the Crown/TCIG and/or Belongers by the unusual step of getting free money from a loan secured against the purchase of Crown Land".*

579) This appears to be a different case put forward by the Prosecution, for while in one, it is asserted that the sale of the Crown land was at an undervalue because Cabinet was not told of the higher valuations available for the land, this second case, contained in Prosecution's submissions, is regarding the amount of the loan.

The allegation is that the higher valuations were used to get much more money than would have been loaned to the three companies. It is not clear what the alleged agreement, even between FBH and Harold Charles, the partners in business and co-guarantors of the loan, was said to be, or what the loss to the Crown/TCIG and/or Belongers was, in any of these two circumstances.

580) To prove the offence of conspiracy to defraud, the Prosecution had the burden to adduce evidence to prove an agreement which is dishonest and must be for an unlawful purpose, with intent to cause injury to the stated victim, see: As Viscount Dilhorne in ***Scott***[44]

581) From the evidence, it is not apparent that there was any agreement among the alleged conspirators including FBH, which was intended to achieve the unlawful purpose of selling the West Caicos land at an undervalue to the economic loss of the Crown/TCIG and/or Belongers. To be sure, the evidence led showed a link between the conversation of Michael Misick and FBH with RBK which resulted Cabinet's decision to free up the land, with the purchase by three companies connected to FBH. However, that circumstance was unconnected in purpose or objective with FBH's alleged decision to keep from Cabinet, valuations that would have informed a higher pricing of the land. Nor was it connected to the alleged dishonest purpose of *"leverage[ing] the value ascribed by the two private sector valuers to the prejudice of the Crown/TCIG and/or Belongers by the unusual step of getting free money"* which was also belatedly, stated to be the case of the Prosecution.

582) The unlawful purpose of FBH and the alleged co-conspirators by the agreement also not clear from the evidence, for while in one breath the Prosecution appeared to point to FBH's failure to equip Cabinet with information (of higher valuations) to inform the purchase price of the pieces of land, they also appeared to point to the sale of the land which was allegedly used to "*leverage the value ascribed by the two private sector valuers"* to get free money for themselves, friends and family. But whatever unlawful purpose alleged by the Prosecution,

[44] supra

(which is uncertain), what is certain is that FBH's knowledge of the higher values was pivotal to the case, and that was not proven.

583) The Prosecution points to FBH's alleged failure to disclose what he knew of the higher valuations and his failure to disclose his interest in the three companies to Cabinet as evidence of his dishonesty. I have held that he certainly did not disclose his involvement in the three companies, and that was in breach of his duty of disclosure mandated by [45]the Code of conduct governing ministerial appointment and the carrying out of Government business. That may well be dishonest. However, the said dishonesty of FBH alone, is not what was required to be proved as an element if the charge of Conspiracy to Defraud, which should have been among the alleged conspirators, rather than his alone. Nor, have I found FBH's conduct in this regard as evidence of such agreement. Keeping to the guidance provided in Pollock CB's dictum in ***Exall*** [supra], I have not found in the several strands presented to this court, the dishonest agreement which must be proven in the charge of Conspiracy to Defraud.

584) Having found that there was no evidence of a dishonest agreement among the alleged conspirators, perhaps this last ingredient of the charge of conspiracy to defraud may be dispensed with. Out of the abundance of caution however, I discuss the matter of economic loss.

585) Was there loss to the Crown/TCIG and/or Belongers?

In Adams v R, the Privy Council provides the following guidance: *"... In Welham v. Director of Public Prosecutions (1960) 44 Cr.App.R. 124, [1961] A.C. 103 Lord Radcliffe said, at p. 141 and p. 124: "What [the law] has looked for in considering the effect of cheating upon another person and so in defining the criminal intent is the prejudice of that person." A person is not prejudiced if he is hindered in inquiring into the source of moneys in which he has no interest. He can only suffer prejudice in relation to some right or interest which he possesses.,"* and *"Lord Goff of Chieveley further stated, at p. 272 and pp. 279–280: "The question whether particular facts reveal a conspiracy to defraud depends upon what the conspirators*

[45] CX 4

have dishonestly agreed to do, and in particular whether they have agreed to practise a fraud on somebody."

586) FBH's conduct in the handling of the loan he and Harold Charles procured to purchase Crown land appeared to be profligate. While the Belize Bank had agreed to other components to be covered by the loan besides the purchase of the land, there is evidence that some of the money including what was described as 'working capital', was used in questionable ways including being distributed to persons for no documented reason.

587) The result was that not only was the loan of $19.4 Million much more than was needed, and the arrangements made for its repayment so inadequate, that it led to the unfortunate circumstance of non-payment and its consequences for persons who should have known better: FBH a Chartered Accountant and Harold Charles, a businessman.

588) While it was not clear from FBH's interview whether the land had been repossessed by the Bank following the failure of the borrowers to repay the loan, or that it was simply left undeveloped, the fact that it was made available from the Logwood Agreement to enable commercial Belonger participation which was not achieved was unfortunate and may have been wrong on many levels of morality but was not evidence of criminality.

589) However, at the close of all the evidence, it is apparent that the Government which sold the land upon Mr. Hoza's valuation divested itself of what was Crown land for a price that was fixed for the purpose. The purchase price was paid in full. Indeed, there was an overpayment of stamp duty that was returned. Since FBH did not know that the Government could have got so much more per the external valuations, he could not have communicated it to Cabinet. In the absence of knowledge of the private valuations, Mr. Hoza's valuation were the only values available at the time of the sale and were in fact used to the determination of the purchase price.

590) Regarding whether Mr. Hoza's valuations would have been affected by the private valuations if such had been brought to the attention of Cabinet, is the question raised by the answers of the private valuers in cross-examination, which

is that valuations may vary depending on what method a valuer used, and importantly, on the information available to the valuer. On her admission, Rosie Nicholls did not have the Logwood Agreement supplied to her. How it would have impacted on neighbouring lands and affected their valuations was therefore not a consideration in her valuation. Without establishing that all three valuations were done on the same or equal information basis, it may be precipitate to suggest that the higher values were the correct ones, and that it could have influenced the valuations of Mr. Hoza on which the purchase price was based. That is the only circumstance under which it may be said without contradiction that there was economic loss to the Crown/TCIG, and/or Belongers.

591) I find then that there was no proof of injury (or loss) to the economic interests of the Crown/TCIG and/or Belongers, an essential element in the crime of conspiracy to defraud.

592) I am sure that the Prosecution failed to lead evidence from which a dishonest agreement hatched with the unindicted co-conspirators Michael Misick, McAllister Hanchell and Harold Charles, for the unlawful purpose of arranging the sale of the West Caicos lands to the three companies connected to FBH at an undervalue, leading to the economic loss of the Crown/TCIG and/or Belongers.

593) The Prosecution has therefore failed to prove the charge of Conspiracy to Defraud against FBH as charged in Court 4.

He is therefore acquitted and discharged from Count 4.

Count 5 Concealing or Disguising the Proceeds of Criminal Conduct contrary to section 30 (2)(a) of the Proceeds of Crime Ordinance 1998

594) PARTICULARS OF OFFENCE

CLAYTON STANFIELD GREENE between the 1st day of January 2006 and the 31st day of August 2009 concealed or disguised the proceeds of criminal conduct knowing or having reasonable grounds for suspecting it to represent in whole or in part directly or indirectly the proceeds of criminal conduct committed by Floyd Basil

Hall, with a view to avoiding the making or enforcement of a confiscation order or avoiding prosecution for unlawful conduct.

Case Summary

The fourth defendant Clayton Stanfield Greene (CSG) is charged on Count 5 under section 30 (2)(a) of the Proceeds of Crime Ordinance 1998 with the offence of Concealing or Disguising the Proceeds of Criminal Conduct. It is the case of the Prosecution against CSG, that CSG, an attorney who in 2005, had practised law for more than a decade, on a number of occasions, received into the client trust account of Stanfield Greene Attorneys, sums of money from, or connected to FBH which he, knowing or having reasonable grounds to suspect were criminal funds, concealed and/or disguised in his client account ledgers in order to protect FBH from the consequences of such criminal activity, being, prosecution, or confiscation.

The Law

595) The legal regime under which transactions took place in the period 2006 to 2009, was the ***Proceeds of Crime Ordinance (POCO) 1998,*** and the ***Proceeds of Crime (Money Laundering) Regulations 2000.***

The relevant section reads:

"30 (2) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole, or in part directly or indirectly represents another person's proceeds of criminal conduct if he

(a) conceals or disguises the property; or

(b) converts or transfers that property or removes it from the jurisdiction,

for the purpose of assisting any person to avoid prosecution for an offence to which this Ordinance applies or to avoid the making or enforcement in his case of a confiscation order

(3) In subsections (1) and (2), the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it."

576) It is manifest that the first ingredient of the crime is that the criminal provenance of the property (funds in this case) is a fact necessary for the commission

of the offence, see: ***R v. Montila***[46]*: "…the origin must be proved, and the evidence which goes to prove knowledge or reasonable grounds to suspect …will often be sufficient to justify the inference that the origin of the property was coincident with that state of mind."* As the court famously put it: *"A person cannot know that something is A when in fact it is B. The proposition that a person knows that something is A is based on the premise that it is true that it is A. the fact that the property is A provides the starting point. Then there is the question whether the person knows that the property is A."*

596) In ***R v Sally Lane and John Letts (AB and CD)***[47], the UK Supreme Court affirmed the rulings of both the Crown Court at a preparatory hearing and the Court of Appeal regarding the meaning of the words: *"has reasonable cause to suspect" in section 17(b) of the Terrorism Act 2000 of the United Kingdom.* This decision, coming after ***R v. Saik*** in which the House of Lords held that the expression "having reasonable cause to suspect" meant 'actual suspicion', the UK Supreme Court in this Appeal held that it did not mean actual suspicion which would be determinable upon a subjective test, but that the "objectively-assessed reasonable cause for suspicion is sufficient, an accused can commit this offence without knowledge or actual suspicion of the use of the money (in that case for terrorist activity). In ***R v. Saik***[48]***,*** Lord Steyn provided insight into the consideration of evidence regarding an offence requiring at least reasonable grounds for suspicion: *"The margin between knowledge and suspicion is perhaps not all that great where the person has reasonable grounds for his suspicion. Failure to ask or to obtain an answer to the obvious question may be described as wilful blindness…"*

Section 30(3) of the 1998 POCO defines the expression "concealing or disguising" in these terms:

"(3) In subsections (1) and (2), the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it."

[46] [2004]1 WLR 314 HL
[47] 2018 UKSC 36
[48] [2006] UKHL 18 at 62

597) It is manifest from all these that in the money laundering charge under section ***30 (2)(a) of the Proceeds of Crime Ordinance 1998,*** the Prosecution bore the burden to prove beyond a reasonable doubt, that the funds which CSG dealt with as connected to FBH, were the proceeds of crime, that CSG either knew, or had reasonable grounds to suspect (on the objective test) that the monies that he received were in whole or in part, proceeds of crime, and further, that his purpose, which was concealing or disguising them, was grounded in that knowledge or reasonable grounds for suspicion, the objective, being to prevent the prosecution of FBH or the confiscation of the funds.

598) It is a matter not in controversy, that CSG is the cousin of FBH - who at all times material to the charge, was the Deputy Chief Minister (2003-2006), Deputy Premier (after 2006), and member of the ExCo (ExCo) of these islands.

The following are the funds which are the subject of the charge:

Proceeds From Water Cay Transaction (Count 1)

599) It is the case of the Prosecution that the balance of proceeds of the sale of land at Water Cay by Ashley Properties Ltd (Ashley Properties): $1,247,211.50 was sent from Morris Cottingham Corporate Services to Stanfield Greene Attorneys whose principal was CSG, at the instruction of Aulden Smith (Smith), the beneficial owner of Ashley Properties. From the funds: Smith instructed CSG to make some disbursements, one of which was the sum of $267,850 to FBH. The other was the sum of $325,000 to the law firm of Chalmers and Co, which ended up in the Belize Bank account of Michael Misick. Both were politicians: the Deputy Premier and the Premier respectively.

600) The Prosecution alleges that CSG who placed the sum for FBH in his law firm's ledger in the false name of John Doezer, concealed or disguised these funds for FBH a politician, for the purpose of preventing the prosecution of FBH, or an order of confiscation of the funds. They allege that CSG did this, knowing that they were proceeds of FBH's criminal activity, or that he had reasonable grounds to suspect that it was such. In this regard, the Prosecution has led evidence that the funds CSG received on behalf of Smith for disbursal were not transactional funds, but were in respect of a land sale transaction with which he had little connection.

They also allege that the transaction that yielded the funds was the sale of land that had been arranged by the two politicians, and a third: McAllister Hanchell in such a manner that was dishonest and would lead to economic loss to the Crown/TCIG and/or Belongers.

601) CSG denies these and alleges that the funds were proceeds of a sale for which he was engaged by Smith to act as his attorney, at a fixed fee of $20,000.

602) Giving evidence on matters antecedent to the transaction, CSG has testified that his relationship with Aulden Smith which preceded the sale transaction, was such that he sporadically did legal work for him for which he received no remuneration. One such work was when Smith asked him to write a letter to the Chief Minister in the new administration in 2004, regarding the purchase of land at Water Cay. This was the context: in 2003, Aulden Smith had received an offer of freehold title to land at Water Cay. He had not been able to raise funds to purchase it. It was CSG's further evidence that Aulden Smith had indicated to him that due to his lack of funds, he wanted to have the transaction for the purchase between him and the Government, to now be conducted through a corporate vehicle. The name of the company he had incorporated for the purpose was Ashley Properties Ltd (Ashley Properties). The purpose was to place him in a position to get partners to help with the acquisition and the development of the land. According to CSG, he was familiar with the use of a corporate vehicle to purchase land, he also knew that it had advantages, he therefore wrote the requested letter for Smith. This was on 4 July 2004.

603) Sometime after this, Smith sought him out again, and about once or twice. This time, he asked CSG if he knew of anybody who would be interested in purchasing the land. He was not aware of Ashley Properties' dealings with other potential buyers and had never heard of the company Sextant Business Consultants Ltd with which Ashley Properties apparently entered into prior negotiations through their attorneys: Skippings and Rutley before the sale to Aquarius Ltd. But Smith having indicated to him his plan to sell, also allegedly asked CSG be to his attorney in the transaction. Thus, did they settle on the fee of $20,000, being slightly less than the 1% of the sale price of $2,250,000 to be earned on the transaction as conveyancing fees.

604) According to CSG, he had fully expected as the vendor's attorney to do the conveyancing, but that as it turned out, Ariel Misick (QC, now KC) of Misick and Stanbrook (his former employer and mentor), drafted the conveyancing documents and there was little for him to do, save to review the contract to see whether it accorded with his instructions on the structure of the sale.

Having agreed to a fixed fee arrangement, he did not keep his eyes on the clock for the transaction. He had occasion to speak with Ervine Quelch who appeared to have carriage of the sale (although he was not an attorney). To this gentleman he made his complaint (which was never addressed), that in the column of the contract document requiring the name of the vendor's attorney, was written the word "None" rather than Stanfield Greene Attorneys, which was the attorney for the vendor.

One task he did perform, (jointly with Ervine Quelch, after the sale), was to write to the Permanent Secretary of the Ministry of Finance to request for a refund of stamp duty which had been paid twice, in alleged error. He characterises the transaction as the 'flipping' of land by Smith who had purchased land from the Government free from all encumbrances. He did not consider it to be unlawful, but more than that, Ariel Misick KC's involvement gave him comfort that it was a legitimate transaction.

605) Following the sale, he received the sum of $1,247,000 from Ervine Quelch, representing the balance proceeds of the sale from Ashley Properties. Smith then gave him instructions on disbursals. Not having concerns, he dealt with the funds by carrying out Smith's instructions. He credited FBH's ledger which was in the name of John Doezer, with the $267,850, as instructed. Regarding the disbursement to Chalmers & Co., it is his further evidence, that the day after he had received the instructions, Smith returned to him to say that a disbursal to Chalmers & Co. contained in the instructions he had given orally, should now be a cheque written out to Belize Bank. Unhappy with receiving altered instructions, he drafted the instructions he had received from Smith and gave it to him to sign. He then carried out the instructions of Smith, issuing a cheque in the name of Belize Bank.

Discussion

606) At the close of all the evidence, I have found that the Water Cay transaction carried out by Aulden Smith was not an unlawful one: it was not connected to, or derived from a conspiracy of which FBH was a part, to defraud the Crown/TCIG and or Belongers. The proceeds of the sale were therefore not proceeds of crime.

Since the funds must be characterised as the proceeds of crime for the money laundering offence charged against CSG to succeed, see: *R v. Montila* [supra] a not guilty verdict in the charge of conspiracy to defraud regarding FBH must necessarily rule out any case that the proceeds of the sale of the land at Water Cay were proceeds of crime. FBH has been found to be not guilty of the charge of conspiracy to defraud in the Water Cay land sale by Ashley properties to Aquarius Ltd, the proceeds of which FBH received $267,850.

607) The Prosecution therefore failed to prove that CSG who received the funds and disbursed them according to the instructions of Aulden Smith, knew or had reasonable grounds to suspect that the funds were proceeds of crime which they were not. Thus, the Prosecution failed to prove that in dealing with the funds, including placing the money for FBH in FBH's John Doezer account, he did so to conceal or disguise the funds in order to prevent the prosecution of FBH and/or the confiscation of the funds, for he could not have had the *mens rea* for such purpose.

Proceeds from NWP (Count 2)

608) It is the case of the Prosecution that CSG received the cheque of $1 Million, proceeds of the NWP transaction on behalf of QH, either knowing, or having a reasonable suspicion that they were proceeds of criminal activity by FBH. The Prosecution has led evidence that CSG who had done no work on the NWP transaction, received the cheque of $1M said to be proceeds of the sale of property, for the benefit of Quinton Hall (QH). On receipt of the cheque, CSG, paid it into an account at TCI Bank opened for Stanfield Greene Attorneys with funds belonging to FBH, on 22 February 2006.

FBH had instructed him to move the sum of $56,975 (which was the balance of the $77,000 which opened the John Doezer ledger at Stanfield Greene Attorneys), to

open that account which according to CSG, was another account for his law firm albeit opened with FBH funds, with a different bank, and in that respect, the opening transaction would have been a ledger for FBH.

609) The Prosecution led evidence that Stanfield Greene Attorneys had an account at Scotiabank, opened just before that law firm commenced its work. When CSG acquired an accounting software (PC Law), it was linked to this Scotiabank account which recorded both the office and client trust account transactions. The account at TCI Bank was however, not linked to Stanfield Greene Attorney's PC Law accounting system which recorded financial transactions at the law firm.

610) When CSG received the cheque of $1M for QH being proceeds of the NWP transaction, there were some transactions on the TCI Bank account, bringing it to a balance of $18, 891.81.

611) Several disbursements were then made from that account which received the $1M. Of relevance were the disbursals that benefited FBH: $15,000 withdrawal, $20,000 to pay off his credit card and contribute towards his interest in GBL Holdings, a company he jointly owned with CSG and another. A year later, $300,000 was paid to his wife Lisa Hall. There is a disputed payment: $150,000 which was paid for Harbour House: the Prosecution alleges that the $150,000 was paid to Johnston International for the benefit of FBH. FBH is adamant that the said payment was for the benefit of QH. There were also two disbursals to persons close to FBH: a loan of $200,000 to Harold Charles his friend and business partner (which was promptly returned) and $150,000 to Michael Misick the Chief Minister, his colleague.

612) While certain payments were also made to, or by QH or for his benefit, it is the case of the Prosecution that FBH had the 'lion's share'. They allege that this was so because he was the owner of the said funds, earned through criminal enterprise in the NWP transaction.

613) The Prosecution therefore invites this court to draw the inference that it is part of the chain of evidence that shows that QH was fronting for FBH in the NWP transaction that yielded the $1M. They assert that the $1M were proceeds of crime

committed by FBH, and that CSG concealed them in an account not linked to his regular bank, in order to prevent the prosecution of FBH for it, or an order of confiscation of the funds.

614) It is the evidence of CSG, that he knew nothing of the NWP transaction which produced the $1Million, but that he received them on the instructions of his younger cousin QH, who was at the time a student in Long Island, USA. The instructions received telephonically, included some background information, that CSG had been involved in a deal which was going to yield a profit. CSG recounted that the cheque with its narration that it was from the sale of property, was sent to him at the office, although he did not quite recollect whether it was FBH or MAW (the conveyancing attorney therein), who delivered the cheque to him. But he did speak with MAW on telephone, and MAW confirmed that it was a cheque for QH.

615) CSG's evidence is that he had no knowledge or reasonable grounds to suspect that the cheque for $1M represented proceeds of crime for these reasons: the cheque came from Temple Securities, a trusted company in the islands which was unlikely to deal with tainted funds; the money was already in the islands having passed through two banks, and he could rely on their having performed due diligence; MAW the attorney who was involved, raised no red flags for him; it was not a strange phenomenon at the time to find persons without means applying for Crown land in the hope of finding a developer, or of flipping it in order to carry out a business with the proceeds, and QH who was a Belonger, was not excluded from this speculating activity.

616) He testified that on receipt of the cheque, he advised QH that because of the high interest rate of the TCI Bank, he would be better served if the money was lodged there. He also advised him to put $500,000 on a certificate of deposit. Thereafter, there were withdrawals, some on the instructions of QH directly delivered by telephone, and some on the instruction of FBH. CSG said during police his interview, that he was not worried that FBH was using up his brother's money, because FBH was not "raping the account." He also knew that FBH had been a benefactor to QH on several occasions and they had the kind of relationship

that would permit FBH to deal with QH's funds, besides which for such FBH transactions, he always checked with QH for authorisation and received it.

617) He also stated that there was nothing nefarious about the opening and use of the TCI Bank which became his second client account (albeit not linked to the PC Law system), for that account although opened with funds from FBH was his firm's account, opened in response to pressure from the country's first local bank which was aggressively seeking customers. That account was used for five of his clients, and he kept his accounting in order using the stubs of the cheques drawn on it.

618) At the close of the evidence, I have found that whatever suspicion may be attached to a bank that was apparently off-record (although in use by five different clients of Stanfield Greene Attorneys), the Prosecution failed to establish that the $1Million paid into it were proceeds of crime of FBH from the NWP transaction.

619) As aforesaid, the character of the funds in question: that they are the proceeds of crime, is a necessary fact to the commission of the crime with which CSG is charged. Thus, in the absence of such finding, funds relating to the NWP transaction cannot form the basis of the money laundering charge against CSG. This is because FBH has been found to be not guilty of the charge. It stands to reason that CSG who received the cheque for QH, could not have known or have had reasonable grounds to suspect that they were the proceeds of FBH's criminal activity, and could therefore not have formed the intent to or embark on the enterprise of concealing or disguising the funds in order to prevent the prosecution of FBH and/or the confiscation of the funds.

620) The Prosecution failed to prove that CSG knowing or having reasonable grounds to suspect that they were proceeds of FBH's criminal activity, dealt with the $1M in a manner as would conceal or disguise its nature, to the intent that it would prevent the prosecution of FBH, or the confiscation of the money.

Proceeds from West Caicos Loan (Count 4)

621) It is the case of the Prosecution that FBH conspired with two of his Cabinet colleagues: Michael Misick, McAllister Hanchell, and his friend and business

partner Harold Charles, to defraud the Crown/TCIG and/or Belongers in the manner they arranged the sale of land at West Caicos to three companies connected to FBH and Harold Charles.

622) A summary of that transaction is that the Cabinet of the Turks and Caicos Islands having tasked the Attorney General to amend an agreement between the Government and a company carrying out development (Logwood), succeeded in obtaining land for the participation of Belongers in commercial development at West Caicos. Three companies connected to FBH, applied for land in West Caicos and received approval, first for a Conditional Commercial Purchase Lease (CCPL), and then for the freehold titles to the land.

623) To purchase the land, the three companies applied for, and received loans from the Belize bank, a total of $19.4 Million. To access the loan, Harold Charles in accordance with the preference of financial institutions for private valuations, applied for the valuation of the land to be purchased, by two different valuation companies. The price at which the land was sold to the companies was a total of $7,420,000. The price was fixed by the TCIG's Chief Valuation Officer Mr. Hoza. The valuation conducted by Rosie Nicholls of BCQS and Tim Naylor of CASL produced much higher values.

624) The Prosecution alleges that FBH knew of the higher valuations, but failed to disclose them to Cabinet, and that it was part of a pattern of dishonesty through non-disclosure in that while he recused himself from Cabinet discussions on the grant of freehold titles to the companies, citing his sister's involvement, there is no record that he informed them of his own interest. The Prosecution alleges that the failure of FBH to disclose the higher values, led to economic loss to the Crown/TCIG and/or Belongers in the sale of the land at West Caicos.

625) The Prosecution asserts that the land was therefore sold in a manner that made "free money" available from the gargantuan loan of $19.4 Million which was given to FBH and Harold Charles. The money remaining out of the loan after the land purchased was disbursed to persons said to be friends and family. Evidence has also been led that $200,000 of the loan money was sent by FBH to CSG who placed it on the John Doezer ledger for disbursals.

626) At the close of the case, the court has held that on the totality of the evidence, the Prosecution failed to prove the charge of Conspiracy to Defraud contained in Count 4 against FBH. The funds connected to the West Caicos purchase have therefore not been found to be proceeds of criminal activity.

In the circumstance, CSG could not have known or had reasonable cause to suspect that they were such. He could therefore not have had a purpose to conceal or disguise them for the purpose of protecting FBH from prosecution, or the funds from confiscation.

622) The Prosecution failed to prove that CSG knowing or having reasonable grounds to suspect that they were proceeds of FBH's criminal activity, dealt with the $200,000 sent to him as proceeds of the West Caicos Crown land purchase, in a manner as would conceal or disguise its nature, to the intent that it would prevent the prosecution of FBH, or the confiscation of the money.

Whale Watchers Ltd and Harbour House

627) The Prosecution gave extensive evidence regarding allegedly questionable transactions relating to the purchase of a building called Harbour House by a company known as Whale Watchers Ltd. Harbour House was acquired for commercial rental. It was owned at the time of the purchase, by FBH and his two friends: Delroy Howell and Francesco Morello, although FBH's involvement was hidden, his interest being held by Taino Nominees, a nominee company owned by CSG.

628) While Harbour House was not named in any count charged, it was tied to the funds from the NWP transaction, the RP bribe, and FBH's questionable financial dealings with Delroy Howell which placed the latter in charge of a TCI national health insurance project that resulted in loss to TCI.

629) The money for the purchase, was contributed by the three shareholders, with Delroy Howell loaning the company $1.4 M, and contributing $65,000, Francesco Morello contributed $176,480.48, and FBH contributed $100,000 through Taino Nominees.

At some point, Francesco Morello pulled out of the company and was paid his share. FBH (through Taino) and Delroy Howell continued as partners. At some point, it is not clear when that was, from the evidence), FBH allegedly pulled out also, giving his share to his brother Quinton Hall who allegedly became part-owner and was employed as the manager of the Property.

630) It was FBH's evidence that financial considerations compelled him to do so. The circumstances were that money was needed for the building, and it became necessary to source a loan from the First Caribbean Bank. FBH alleges that he had already encumbered himself with the payment of a mortgage for his family home and could not be guarantor of another loan with the First Caribbean Bank where the loan was to be contracted. Because QH was 'clear and free' to guarantee a loan, he turned over his share, which was represented by a contribution of $100,000 to him.

631) There appears to be a discrepancy in the evidence of both FBH and CSG regarding when this alleged transfer was done, for although both CSG and FBH suggest that it was in or about the time the $1M was proceeds of the NWP transaction was paid to QH in May 2006, the FCIB loan which was the apparent reason for his actions, was in 2008. There also does not appear to be a record of FBH handing over his contribution to QH. There is however a file note of CSG in which he recorded: "Floyd is out" and set out a new shareholding which CSG said was produced in 2006. The precise dating is further compounded by a 'loan' of $200,000 which FBH requested from RP, allegedly on QH's behalf for use in Harbour House in July 2007. The sum of $150,000 out of the NWP $1M was also paid to Johnston International for work of Harbour House, allegedly for the benefit of QH's interest in that property turned over to him by FBH.

632) The Prosecution alleges that despite FBH's alleged pull-out regarding which there is so much uncertainty, he continued to be involved in that company as a shareholder, putting in funds for the purchase, maintenance and repair of Harbour House, and that two sets of such money: $150,000 from the $1Million for the NWP transaction and the $200,000 'loan' from RP to FBH for Harbour House were all injections made by FBH himself, and not his brother QH to whom he

purported to have handed over his shares in an informal manner, and who was used to contract a loan for Harbour House when things began to go awry for the project.

633) FBH's contribution of $100,000 for the purchase of Harbour House which was allegedly imputed to QH, QH's role as property manager with a low salary of $2000 which he sometimes took in advance, the funds attributed to him in the company's accounting, and FBH's apparent continued dealings with the company (he kept its books into 2009) were all strands of evidence led by the Prosecution to make a case, QH was only a front for FBH.

634) In the absence of a finding of FBH's guilt in the NWP transaction, the issue of Harbour House in relation to CSG became limited to the $100,000 FBH contributed to its purchase through Taino Nominees. Regarding the use of Taino Nominees in the acquisition, CSG's explanation was that he had done so to conceal FBH's participation for the sole reason that as a politician in Grand Turk, if he was known to be an owner, would-be tenants would not apply themselves to paying rent.

635) But despite the Prosecution's allegations, and copious documentary evidence led in respect of Harbour House, and much cross-examination, there was no proof that FBH's initial contribution of $100,000 from a source unknown, were linked to criminal activity. Such evidence, in the circumstance that Harbour House was not included in the charges against FBH or CSG, would have provided background evidence regarding CSG's course of conduct, revealing an intent to conceal or disguise the proceeds of FBH's criminal activity. As aforesaid, CSG gave evidence that the use of Taino Nominees was to conceal FBH's involvement, to safeguard his wealth from scavenging voters who would take advantage of his political ambitions, not for the purpose of avoiding prosecution.

Proceeds from Bribery: Count 3

636) Regarding the transactions relevant to the charge against CSG, as aforesaid, the $267,850 paid to FBH by Aulden Smith has not been found to be proceeds of crime linked to FBH. The $1M cheque in the name of Quinton Hall, out of which disbursements were made by FBH, has also not been found to be proceeds of

FBH's criminal activity. The only transactions that are traceable as funds from the criminal conduct of FBH are: were the sums of $77,000 which was part of the $375,000 paid by RP to FBH through his company Paradigm Corporate Services Ltd, and $200,000 which was stated to be a loan from RP to FBH, for the benefit of QH for Whale Watchers Ltd. Those payments are the subject of Count 3 of which FBH has been found to be guilty.

637) The summary of the Prosecution's case in Count 3, is that CSG received funds which were given to FBH as bribes, and that knowing, or having reasonable grounds to be suspicious about them, he handled them in a manner that concealed or disguised them, his purpose being to shield FBH from prosecution, and the funds, from confiscation.

638) The first ingredient of the charge: that the funds the subject of the charge in Count 5 are proceeds of crime, has been proven. The Prosecution has proved the charge of Bribery against FBH, beyond a reasonable doubt. Thus, the starting point of this discussion, is that the funds connected to, or emanating from the Bribery charged in Count 3 of the Information, are the proceeds of crime.

The Funds

639) The monies that were handled by CSG for FBH, tied to Count 3, were deposited in the John Doezer, and the Delroy Howel/Purchase of Harbour House ledgers at Stanfield Greene Attorneys, and the TCI Bank. They were the following:

a. $77,000 was received from FBH on 21 February 2006 which was placed by CSG in a ledger under the fictitious name of John Doezer, a pseudonym for FBH.

   The $77,000 was transferred from the account of a company of which FBH was the beneficial owner: Paradigm Management and Consultancy Services, (Paradigm). It was part of a larger sum of $375,000 paid into that account from Ocean Point Development Ltd (OPDL) in two tranches which has been found to be a bribe from Richard Padgett (RP), a businessman and developer to secure favours from FBH.

After two disbursals, a third disbursal emptied the John Doezer account, the money ($56,975) being placed in an off-record account at TCI Bank opened with the said funds.

b. $200,000 (199,965 at the bank after transfer charges) was sent from the Bank of Scotland account of Mr. R. and Mrs. T. Padgett to Stanfield Greene Attorneys for the benefit of Whale Watchers Ltd. Stanfield Greene Attorneys received the money on 17 August 2007. It has been found to be related to a favour (remission of stamp duty) he was seeking from the Government through FBH.

On receipt of the funds, CSG described the $199,965 as 'Client Funds' and recorded it in a ledger in the name of Delroy Howell which was connected to the Purchase of Harbour House.

On 30 August 2007, CSG transferred the money to the John Doezer account which had been overdrawn for about a year.

After eleven days, it was returned to the Delroy Howell/Purchase of Harbour House ledger, described as a loan from John Doezer account.

The John Doezer Account

640) The John Doezer account was created on 21 February 2006, when CSG received into Stanfield Greene Attorneys' account, an amount of $77,000 from FBH, which he described as: 'proceeds of loan'. The amount was disbursed in this manner: two payments were made out of the $77,000 that same day 21 February 2006: one was the transfer of a sum of $10,025 to an internal ledger (tk 2073) in the name of one Kanchan Tolani in respect of a start-up jewellery business with FBH and his wife Lisa Hall (LH); the second was the sum of $10,000 to FBH himself. The next day: 22 March 2006, upon the instructions of FBH, CSG transferred the sum of $56,975 to the TCI Bank to open a new account for Stanfield Greene Attorneys.

The said transactions brought the newly opened ledger for John Doezer, to a zero balance.

641) On 10 March 2006, in a transaction described as a Debit Memo, the John Doezer account went into a negative balance when the sum of $20,000 was debited from it. For seventeen days, the account carried the negative balance. On 28 March 2006, the eighteenth day, replacement funds of $20,000 (from four cheques) were credited to the account, bringing it to a zero balance once again.

642) There was no further activity on the account until 19 April 2006 when the account was credited with $267,850. The said sum was transferred onto it from another client ledger in the name of Aulden Smith (AP 2067), which had been opened that day at Stanfield Greene Attorneys, to receive the sum of $1,247,211.50 being the balance of proceeds from the sale of land.

643) From this sum of $267,850, a series of withdrawals were made from the date of receipt to 17 October 2006. The withdrawals ranged from payment of individuals: $25,000 to 'Jeff' (JCH, the second defendant herein); payment for work done (Everette Greene), a loan to CSG $24,000; three transfers of monies $11,168.29, $21,876.83, and another 21,876.83 (repeated error payment) to Kanchan Tolani; $50,000 to a Royal Robinson for the purchase of land, $99,000 to Misick & Stanbrook for the purchase of land, and $4,662, being the reimbursement of CSG for detailed planning permission in respect of GBL Holdings.

644) On 26 October 2006, the remaining balance of $5,731.30 was further depleted by a debit transaction for $60,981.06 in favour of Kanchan Tolani. The John Doezer account went into debit from 26 October 2006 until 30 August 2007, when the sum of $199,965.00 was transferred from another ledger at Stanfield Greene Attorneys in the name of Delroy Howell but recited to be for the purchase of Harbour House to the John Doezer account.

645) The $199,965, in the John Doezer ledger, was returned on 11 September 2007, to the Delroy Howell/Purchase of Harbour House account, described as "loan to finance Harbour House". That money having been returned to the Delroy Howell ledger, the John Doezer account continued to have a negative balance until 9 November 2007 when loan proceeds from Belize Bank, the sum of $200,000 left it in funds.

It continued in funds all the way to 30 October 2008 when transactions ceased.

646) Explaining how an account in the fictitious name of John Doezer came to be, CSG testified that it was his attempt to protect FBH his cousin who was a politician, from possible gossip by a youthful and inexperienced employee: Ainscia Bain a school leaver whom he employed mid-August 2005. The objective he said was to hide the identity of FBH from the young lady who he was afraid, might reveal to others that FBH had money. The fear was rooted in the culture of persons demanding money from politicians.

647) The background to this was this: that when after twelve years working with Misick & Stanbrook, he opened his own practice in July 2005, he had very little money to operate his office. Thus, for the provision of reception and secretarial services, he could only afford to employ Ainscia Bain, his cousin, who was fresh out of school and had no work experience. It was his evidence that it was because he was not sure of the tasks Ainscia would have to undertake, being the sole employee, that he decided not to take the chance of her seeing the PC Law ledger with FBH's name and his transactions on it.

648) Without informing FBH of his course of action, he decided to use an alias for him in his ledger, choosing that name John Doezer, the well-known alias with a suffix: "zer". This is the name he used in place of FBH on his ledger. Onto this ledger, he recorded the transactions relating to FBH, until October 2007, when he employed a very experienced office manager, known to him from his days at Misick & Stanbrook Elizabeth Fletcher.

649) Liz, as she was known was not only experienced, but was also trustworthy and had worked with him for many years. For this reason, he felt more confident that FBH's money affairs would not be leaked to designing persons. Thus, he started recording transactions in the names of 'FBH' and 'Floyd Hall'.

650) It was his evidence that although the PC Law had the name-change capacity, it did not occur to him to change the name on the ledger and so it continued. He alleged that because there was nothing sinister about the ledger so named, that he brought it to the attention of the police officers who went to see him during their investigations.

The TCI Bank Account

651) The TCI Bank account was created on 22 February 2006 when on the instructions of FBH (who had the day before deposited a cheque of $77,000 with him), CSG deposited the sum of $56.965, the balance of the $77,000. The said funds were used to open an account for Stanfield Greene Attorneys and as CSG explained in his police interview, would have been a ledger for FBH. Because ordinarily, Stanfield Greene Attorneys' client account was kept at Scotiabank, the firm's legal accounting system PC Law was linked to the Scotiabank account, and not to the TCI Bank account. The result was that the TCI Bank operated as an off-record account for Stanfield Greene Attorneys. Into this was the $1 Million from the NWP transaction for QH deposited. Apart from FBH and QH, the account was also used for three other persons.

The Delroy Howell/Purchase of Harbour House Account

652) Three friends: FBH, Delroy Howell, and Francesco Morello formed a company: Whale Watchers Ltd. The company purchased a piece of commercial real estate: Harbour House at Grand Turk. FBH's share in the company was held by a nominee company: Taino Nominees owned by CSG. It was the evidence of CSG that the reason for using the nominee company for FBH was to give him anonymity in the transaction, by concealing his participation in the company. The objective, he said was to prevent persons renting commercial space from exploiting his position as a politician seeking votes, by refusing to pay rent.

653) CSG who was a director of the company, and also its attorney, opened a ledger for the purchase of Harbour House in his law firm. The ledger was in the name of Delroy Howell, with the description, Purchase of Harbour House. The transactions related to the purchase, maintenance and repair of Harbour House, including the contributions of the partners (FBH's being in the sum of $100,000 contributed by Taino Nominees), were recorded on this ledger.

654) Regarding the proven charge of Bribery, the transaction that was tied to it, was the sum of $199, 965 which was an amount of $200,000 (less bank charges) which was sent to CSG by RP, CSG having been informed that it was a loan sourced by FBH for his brother QH for use in Harbour House.

Discussion

655) CSG has denied the charge of money laundering and has given evidence regarding the circumstances under which he received and handled the funds.

656) In considering whether CSG knew or had reasonable grounds to suspect that the funds were proceeds from the criminal conduct of FBH, this court must have regard to some factors. The first of these is whether CSG must be treated as a witness worthy of some credit. In this regard, I shall first have recourse to the behaviour of CSG from the time he got involved with the investigation, through being charged, to trial. The evidence is that he kept volunteering information to assist in police investigations. Secondly, I shall have regard to the good character evidence given on his behalf by witnesses for the Prosecution.

657) Much has been said on behalf of CSG, that while the police mistreated him, even to the point of lying to him about being investigated, and later, about being charged with the commission of crimes, he always cooperated with the police.

658) The evidence adduced by the Prosecution painted this picture of CSG, attorney and principal at Stanfield Greene Attorneys: He was a well-respected man. At various times, he was entrusted with high office: he is the former President of the Bar Council, former Deputy Magistrate, former Chairman of TCInvest, former Member of the NHIP Appeals Tribunal, trusted member of Chambers by the family of Clive Stanbrook QC, former Speaker of the House of Assembly, and elected leader of the PNP at the time of his arrest in 2012.

The Plurality of Good Character Witnesses

659) In ***R v. Vye***[49], the court gave two circumstances in which good character will be helpful in the evaluation of evidence:

Limb 1: the Credibility of a defendant regarding his testimony, and Limb 2: the propensity of the defendant to commit crime; In ***R v. Hunter,***[50]**,** the Court of Appeal explained further that: *"the first credibility limb of good character is a positive feature which should be taken into account. The second propensity means*

[49][1993] 1 WLR 471
[50] [2015] 1 WLR 5367

that the good character may make it less likely that the defendant acted as alleged…"

660) As many as fourteen persons have given positive testimony as to his good character. These persons who all gave their evidence as witnesses for the Prosecution, include: Ariek Misick KC, his former employer and mentor who had known him for about forty years, Carlos Simons J (as he then was), Clayton Been formerly of TCInvest, Christian Papachristou, a fellow legal practitioner, Paul Dempsey another legal practitioner, Arthur Robinson a former member of the House of Assembly over which CSG presided as Speaker, among others.

661) Among the different positive character traits, they attributed to CSG, one running theme in all the evidence was that he was a man of integrity. That should have on the application of the good character direction, sufficed for the court's assessment of his credibility, as well as how it may view the likelihood that FBH may be disposed to the commission of crime, see: ***Wye.*** But there was the admitted lie by CSG:

The Lie

662) On 14 February 2008, CSG wrote a letter to the Chief Executive Officer certifying the salary receipts of QH. In this letter written to support QH's application for a loan at TCInvest, CSG stated that QH was employed for upwards of six months at Harbour House as property manager earing $3,500 per month. The truth, however, was that QH was paid a salary of $2,000. CSG admitted that he told a lie and explained that the figure he supplied would indeed have been QH's salary in a matter of months because of arrangements put in place for such to happen, but that he jumped ahead of himself.

663) The question is: whether this admitted lie should affect the good character direction which this court should give to itself in the light of the testimony of so many Prosecution witnesses in assessing the credibility of CSG and/or his propensity to commit the crime charged.

664) Despite the lie, which raises issues of what CSG might do for sentiment if not for money, the credibility of CSG will be assessed in the light of the integrity asserted by the Prosecution witnesses who testified to his good character.

665) The evidence in total, will also be assessed in the light of such background matters as the legal regime at the time.

The Legal Regime

666) The *1998 POCO* the relevant anti-money laundering statute, called for compliance with anti-money laundering measures in its regulations. Missing from these were: a prohibition on the use of fictitious names. That provision was introduced into the law in 2010 [51]The related matter of the treatment of Politically Exposed Persons (PEPs) also did not become the law in TCI until 2012. To date, there is no requirement in the Legal Profession Ordinance for an attorney to open a ledger for his clients.

667) CSG gave sworn testimony, denying wrongdoing and providing an explanation for the creation and use of the John Doezer account for the transactions. He explained, with respect to the $77,000, that FBH arrived at his office with a cheque for the sum, drawn on Belize Bank, and told him that he was *en route* to some place and would later advise CSG on what to do with the funds. He testified that he trusted FBH implicitly, and believed what he told him: that the $77,000 were proceeds of a loan. He also had no cause to think otherwise, as the money came in the form of a bank cheque which in his experience, was the way bank loans were sometimes provided by banks to their clients. To keep record of the funds, he opened a ledger for FBH, called it John Doezer for the reasons of anonymity he wished to give his politician cousin in a culture where politicians were exploited for votes, and recorded the receipt of the funds there as the proceeds of a loan. It was into this John Doezer ledger also, that he transferred the $199,965 received from RP from the ledger standing in the name of Delroy Howell. He did this he said, because the money which was meant for Whale Watchers had gone straight into the Delroy Howell account used to record the transactions on the Harbour House purchase, and there was no indication that it was connected to FBH. He wanted to make that connection to FBH, which he would not have done if his intention had been to conceal the funds. He alleged that it was therefore his desire to make that connection to show the link that it was money borrowed by FBH from

[51] POCO 2007, and Anti-Money Laundering & Prevention of Terrorist Financing Regulations 2010, R16(2).

Richard Padgett (RP). He had received the funds, having been informed by FBH that they were borrowed for QH, to be used for Harbour House.

668) Regarding the placement of the funds in the off-record TCI Bank, it was his evidence both sworn and at interview, that he used FBH's money from the $77,000 to open an account for his law firm, and that it was used for five clients including FBH and QH on behalf of whom he received the $1 Million from the NWP transaction.

669) It is also worth noting that there was not then or even now, a requirement for attorneys to keep ledgers for their clients. Therefore, while keeping an account which was not linked to the established record-keeping practice of the law firm was questionable, it certainly was not unlawful.

670) I have had regard to both limbs of the good character direction. The Prosecution has led evidence regarding the use of the John Doezer account, commencing with the $77,000 that opened it. The said sum formed part of the money that was paid to FBH from Richard Padgett's (RP) Ocean Point Development Ltd (OPDL) upon a fictitious invoice which has been found to be a bribe linked to the performance of FBH's function as a public officer. CSG has given an explanation for the receipt of the $77,000 which he placed in the Doezer account.

671) The $77,000 did not come with documentation, and he asked no questions, believing it to be the loan that FBH said it was. CSG has denied knowing that they were proceeds of criminal conduct. In considering whether he had reasonable grounds to suspect that they were proceeds of crime, I remind myself of the law as espoused in ***Sally,*** that the court should use the objective standard of what would constitute reasonable grounds for suspicion, rather than actual suspicion.

672) The evidence led by both the Prosecution and the defence, provided this context: it was a time when the absence of legislation on political financing led to the receipt by politicians of donations from developers, business owners and other donors. It was a permissive atmosphere that allowed a politician in receipt of political donations to mix it with his personal funds (FBH). FBH was a politician and the Treasurer of the ruling government of PNP, and a public officer as Deputy

Premier. He was also known to CSG to be astute as an accountant. Anti-money laundering laws were in place in the year 2006, but there was little continuing legal education. Indeed, per Hugh O'Neill, giving evidence for the Prosecution, lawyers thought money launderers were hoods who would arrive with bags of cash. It was said that legal practitioners were not alert to the subtleties and nuances of money laundering activity as it has evolved to become at this time.

673) Yet there is evidence that due diligence was carried out by attorneys in relation to clients. Simons J (as he then was) testified that a law firm could receive monies from a prospective client but would not deal with them until due diligence was performed. CSG was an attorney with over a decade's experience garnered from working with a reputable firm before he struck out on his own.

674) In the light of these, the objective standard raises the following questions:

a. was it reasonable behaviour for an attorney of good training and reputation, who had done no transactional work for FBH to accept without documentation that the $77,000 was a loan?
b. If not, was it reasonable that he would not request documentation or even details beyond the receipt of the physical bank cheque?
c. If not, would that be evidence of the "wilful blindness ", expounded by Lord Steyn in ***Saik***?

675) It is worth noting that the $77,000 which was paid into the John Doezer account, was not related to any transaction between FBH and CSG. It was the evidence of CSG that FBH simply informed him that it was a loan. CSG was dealing with a person well known to him: his cousin, and friend who he said he trusted implicitly. Even so, it was surprising that no details were requested, if only to inform the attorney to whom the cheque had been entrusted of its terms and purpose, if not the source. Perhaps CSG did not have the opportunity to do due diligence because that same day, FBH got him to perform two disbursals: one was $10,000 to FBH and the other was $10,025 to Kanchan Tolani, a business expenditure as it related to a jewellery business in which FBH's wife and Kanchan Tolani were involved. But the next day, the rest of the money left the account as it

was used to open a new account not linked to Stanfield Greene Attorneys' accounting system.

676) CSG asserts that he had no reason to be suspicious of the origin of the $77,000, as the money came through a cheque drawn on a bank. That, and the fact that he believed FBH implicitly, are the reasons he gives.

677) On the objective standard, would an attorney of CSG's stature and reputation who received funds of the size of $77,000 without documentation from a politician and public official, have had reasonable grounds to suspect that they were likely to be criminal proceeds? (a bribe?) It seems to me that he would.

678) It seems to me that having regard also to the instructions FBH gave him which appeared to be random and inconsistent with a purposeful loan, and within a day, resulted in the obliteration of a trace of the funds from the law firm's accounting records, made it even more so.

679) CSG's evidence as to how the money was received and handled by him would fall short of what would be expected of an attorney with CSG's reputation for soundness and integrity. However, CSG had no burden to prove his innocence, and in fact, could have kept his silence. The court will therefore consider whether on the evidence it was demonstrated that CSG had reasonable grounds to suspect that the funds were criminal funds.

680) The first question would be: Was it reasonable for CSG to initially accept the story that it was a loan because it was a bank cheque? It seems to me that it was. This must be considered (using the objective standard), in the light of their familial relationship – that the power of sentiment could not be discountenanced in their dealings so that CSG was 'used' by FBH. Also, that the lack of documentation when the money arrived was not by itself a suspicious circumstance, for this was not the delivery of a bag of cash with no trace of its source; it was a cheque drawn on a bank which CSG said gave him the assurance that it was indeed a bank loan.

681) However, when FBH asked him to perform three transactions, the last of which obliterated any trace of the money from the PC Law accounting system of that law firm (Stanfield Greene Attorneys), that CSG did not at that point seek

further details from FBH was not behaviour one would expect from one so well trained and who had such sterling reputation as a person of integrity. This should have been the case, unless the very circumstances of a cheque for so much money without documentation and which upon FBH's instructions, left no trace the very next day, gave him reasonable grounds to be suspicious of the source of the funds, but that he did not wish to have further details, the circumstance that would constitute the 'wilful blindness', described in ***Saik.***

682) On the objective standard, would an attorney of CSG's stature and reputation who received funds of the size of $77,000 without documentation from a politician and public official (even if he was his dear cousin and friend), have had reasonable grounds to suspect that they were likely to be proceeds of criminal conduct, including a bribe? It seems to me that he would. Apart from these, the nature of the instructions on the disbursals which appeared to be random and inconsistent with a purposeful loan, and that within a day, they resulted in the obliteration of the trace of the funds from the law firm's record, were circumstances that would constitute reasonable grounds for suspicion, and should have raised red flags for him.

683) In the light of these matters, while the use of a pseudonym in his records (a not unlawful course at the time) may on its own not lead to a conclusion that it was meant to conceal the funds, yet, as was described in the matter of the three corded rope by CB Pollock in ***Exall***,[52] these circumstances, taken together with the other matters, that is, the way the funds were brought to him without a disclosure of source, the way he was instructed to disburse them, so that by the next day, there was no trace in the books of the law firm, would be the circumstantial evidence that would lead me to the conclusion that CSG had reasonable grounds to suspect that the funds which FBH had brought to him when he could have taken them to a bank, were proceeds of criminal activity, including a bribe.

684) Thus, I am sure from the evidence, that CSG's resort to the use of the pseudonym was to conceal FBH's identity, not for the purpose he alleged, which was, to avoid the consequences of a possibly unguarded tongue of an inexperienced

[52] [supra]

employee, but to protect FBH from prosecution or the confiscation of the funds should FBH's possible criminal activity come to light.

685) The opening of the TCI bank account also, with part of the money, was recorded to be on the instructions of the client. While CSG was at pains to assert that the account at TCI Bank was also an account for Stanfield Greene Attorneys, and only a ledger for FBH (if a system of accounting had been created), it was difficult to reconcile with legal practice. This is because it would mean that FBH as a client had directed that the law firm create a new trust account just to hold his funds, which were not even related to any legal work done by CSG for FBH and had been brought just the previous day.

686) The advantage FBH as a client would have received from placing his funds in an account at a bank different from where the law firm kept its client trust accounts (and which recorded financial transactions in its accounting system), would seem to have one purpose, being that after the next day (22 February 2006), the $77,000 would be untraceable in the records of CSG's law firm where he had sent it the previous day.

687) That CSG complied with that direction, knowing that the placing of the funds in a new bank unconnected with his financial record-keeping the next day, would lead to the obliteration of the existence of the money from the records of the law firm, would indicate that he had reasonable grounds for a suspicion regarding the likely criminal provenance of the funds. This is what informed, his purpose in opening the TCI Bank account with the balance of the $77,000 to conceal what was left of the funds that had been handed to him the previous day.

688) Thus, the evidence led by the Prosecution, strongly made the case that in receiving the $77,000 (the balance of the payment of $375,000 from RP to FBH), CSG, having reasonable grounds to suspect that it was the proceeds of crime including bribery. He recorded it on his firm's accounting ledger as a loan under the false name of John Doezer, and then removed the balance of $ 56, 965 just the next day from the law firm's accounting record, to open a bank account which while standing in the name of Stanfield Greene Attorneys, was off its record. By

these (John Doezer and TCI Bank), he concealed the $77,000 for the purpose of preventing the prosecution of FBH or the confiscation of the funds.

689) Regarding the $200,000) 'loan' from RP, allegedly sourced by FBH for the benefit of QH to be used for Harbour House, which arrived at Stanfield Greene Attorneys in the sum of $199,965 (after bank charges), the evidence is that it was received by CSG into his law firm (having allegedly been informed by FBH that it was a loan for Harbour House for the benefit of QH) for the account of Whale Watchers on 17 August 2006, having been transferred to it from the Bank of Scotland account in the name of Mr. R and Mrs. T Padgett.

690) There is no evidence that any documentation accompanied it, and there is no evidence that CSG asked for any documents. This is despite the fact that on 2 July 2007, Stanfield Greene Attorneys had been written to by Scotia Bank regarding its "Know your Client" responsibilities and should therefore have been apprised of such due diligence requirements. CSG described himself as attorney for Whale Watchers, and a director, yet he did not appear to have asked questions regarding the terms of repayment of the alleged loan.

691) CSG recorded the transaction it in the PC Law accounting system, in an account under the name of Delroy Howell, relating to the purchase of Harbour House. He described the money as "Client Funds". There was no mention of Richard Padgett as the source of it, nor was it recorded as the loan it was alleged to be. Thirteen days later, CSG transferred the funds to the John Doezer, from where it was returned to the Howell ledger eleven days later, described as a loan from John Doezer to finance Harbour House.

692) CSG explains that because the money related to the purchase of Harbour House, he placed it in the ledger dedicated to transactions for Harbour House. It was his thinking, that there was nothing to show its link to FBH and so he decided to transfer it to John Doezer and returned the money a few days later to the Delroy Howell/Purchase of Harbour House account. He alleged that he would not have done so if his intention was to conceal it. perhaps it should be recalled that FBH's account was itself in a false name, and a transfer of monies to that account John Doezer was not likely to be a link to FBH except to the searching eye.

693) As aforesaid, the Prosecution having established that these were proceeds of a crime, emanating from the bribery of FBH by RP to influence FBH's performance of his duty as Deputy Premier and member of Cabinet, what is left is for the court to determine, having regard to all the evidence, whether CSG knew or had reasonable grounds to suspect that they were proceeds of crime. The court must also determine whether CSG concealed or disguised the funds, and that it was for the purpose of preventing the prosecution of FBH, or the confiscation of the funds.

694) CSG's explanation does not deny that he knew the source of funds: RP, a developer who was dealing with the Government. It is reasonable to expect that even in the apparently permissive environment of the day, in which political activities were funded by businesses and developers, a loan from a developer to the Deputy Premier and member of Cabinet, should have raised an alert for any person, and especially for an attorney of reputed integrity. It is apparent that the said circumstance alone provided reasonable grounds for suspicion that the $200,000, even if it was a loan, would place FBH, a Public Official in a position to be influenced in the discharge of his duties by RP.

695) While there is no evidence that CSG actually knew the circumstances of the payment of that money, the mere fact that RP as a developer dealing with Government had provided money to FBH a public official who could be influenced in the performance of his duty by the payer of the money, even as a lender of it, provided reasonable grounds for suspicion that they were proceeds of criminal activity by FBH, including a bribe.

696) The Prosecution has led evidence that FBH informed CSG that such funds would be coming to him for Whale Watchers for the benefit of QH. CSG accepted the funds which were sent by RP from the Bank of Scotland account of Mr. R and Mrs. T. Padgett, knowing that RP was a developer working with the Government. He placed them on Delroy Howell's ledger for the purchase of Harbour House, described cryptically as 'Client Funds'. There was no mention of its nature as a loan, or its source as RP. He then moved it to the John Doezer account for eleven

days and returned it with a different description as a loan from that account to finance Harbour House.

Section 30(3) of the 1998 POCO defines the expression *"concealing or disguising"* in these terms:

"(3) In subsections (1) and (2), the references to concealing or disguising any property include references to concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect to it."

697) CSG's dealings with the $200,000 sent by RP to Whale Watchers on the direction of FBH, appeared to be very much an activity aimed at concealing or disguising the origin of the funds.

698) CSG explains that it was his way of linking the funds to FBH and was not intended to conceal or disguise the funds which he knew came from RP.

As I have already indicated, CSG had no burden to prove his innocence, see: ***Woolmington v. DPP***[53].

699) It is the duty of the court to consider the evidence to determine whether the Prosecution has discharged its burden of proving beyond a reasonable doubt, what has been charged against CSG in Count 5.

700) I am sure that the Prosecution has proved that CSG who received the funds, knowing that RP a developer giving money (whether or not be accepted that it was a loan) to FBH, the Deputy Premier and a public official who could perform favours for RP, dealt with the funds in a manner as would disguise its origin. The purpose was to prevent the prosecution of FBH or the confiscation of the funds.

701) On the totality of the evidence, I am sure that the Prosecution has proven beyond a reasonable doubt that with regard to the $77,000 that opened the John Doezer account, part of which was transferred to the off-record TCI Bank account, CSG having reasonable grounds to suspect that they were proceeds of FBH's criminal conduct (being bribery), concealed or disguised them, and that with regard to the $200,000 transferred by Richard Padgett to Stanfield Greene Attorneys, CSG, having reasonable grounds to suspect that they were proceeds of FBH's criminal conduct (being bribery), concealed or disguised them in order to prevent

[53] supra

the prosecution of FBH his cousin and good friend and the funds from an order of confiscation.

702) I therefore find him guilty of the money laundering charge contained in Count 5, and convict him accordingly.

M.M. Agyemang

Chief Justice