

IN THE COURT OF APPEAL OF BELIZE, AD 2022

CIVIL APPEAL NO 17 OF 2019

BETWEEN

ANDRÉ VEGA

APPELLANT

AND

THE ATTORNEY GENERAL OF BELIZE

RESPONDENT

BEFORE:

THE HON MADAM JUSTICE WOODSTOCK-RILEY	JUSTICE OF APPEAL
THE HON MADAM JUSTICE MINOTT-PHILLIPS	JUSTICE OF APPEAL
THE HON MR JUSTICE FOSTER	JUSTICE OF APPEAL

E Perera for the appellant.

S M Tucker for the respondent.

11 October 2021 and 7 April 2022

JUDGMENT

WOODSTOCK-RILEY, JA

[1] I have read the draft judgment of Minott-Phillips JA. I concur.

WOODSTOCK-RILEY, JA

MINOTT-PHILLIPS, JA

[2] This is an appeal from a decision of the Honourable Mr Justice Courtney A Abel delivered on 19 July 2019 in favour of the Government of Belize (GOB) against André Vega (VEGA) declaring void their 3 September 2015 settlement agreement that, *inter alia*, granted the parties mutual releases from liability and extinguished any claim each may have against the other. The settlement agreement also provided for VEGA to surrender or convey to the GOB his claim to ownership of an acre of land subject of Minister's Fiat Grant 182 of 2013 in exchange for \$400,000.

[3] The learned trial judge declared that the settlement agreement was made by mistake or in error and pronounced it contrary to public policy and void. The GOB's contention that the settlement agreement was contrary to public policy, though initially founded on an allegation of collusion, ultimately rested solely upon an alleged failure by VEGA to extend his investigation of title conducted prior to purchase beyond the apparent root of title derived from Minister's Fiat Grant 182 of 2013.

[4] VEGA did not purchase the land directly from the GOB. He purchased it from Hilmar Alamilla (ALAMILLA) who had purchased it directly from the GOB. ALAMILLA was originally joined as the 2nd Defendant to the action brought by the GOB against VEGA seeking to have the settlement agreement declared void. ALAMILLA was not a party to the settlement agreement and the claim was struck out against him some 2 years prior to the commencement of the trial.

[5] Prior to the events giving rise to this litigation, the GOB, by Minister's Fiat Grant No 76 of 1988 issued on 2 June 1988, sold 2.28 acres of land near the mouth of the Belize River to Carlton Russell who, in turn, sold that land to Miguel Valencia for \$50,000. The GOB subsequently discovered the acre of land comprised in Minister's Fiat Grant 182 of 2013 dated 7 May 2013 that it sold to ALAMILLA was, in fact, part of that 2.28 acres it sold to Carlton Russell pursuant to Minister's Fiat Grant No 76 of 1988 25 years previously. However, before that discovery was made, ALAMILLA, on 30

[10] Section 19 of the National Lands Act makes it clear that a Minister's fiat may or may not be accompanied by a plan. The absence of a plan could not, therefore, negate a fiat or its entry by the relevant Registrar and subsequent filing in the fiat book.

[11] Section 6 of the National Lands Rules of Belize stipulates that **"In the Minister's fiat set out in the fourth Schedule to the National Lands Act the word grantee shall be deemed to include and be applicable to the grantee as well as...the allowed assigns of such grantee as fully to all intents and purposes as if they had...been specially mentioned."**

[12] Apparently, the mistake came to light when the original owner of the land, Miguel Valencia, wrote to the GOB requesting the Minister's Fiat 182 of 2013 granted to ALAMILLA be voided as the land it covered was owned by Valencia. The GOB sought to remedy the situation and correct its mistake in issuing the fiat (that it referred to as a "duplication of tenure" in its offer letter of 27 July 2015 to VEGA) by procuring from VEGA a surrender by him to the GOB of his land claim embodied in that fiat in exchange for the GOB compensating him with a payment of \$400,000 for his loss of his freehold interest.

[13] In his letter of 29 July 2015 responding to the GOB, VEGA accepted its offer of \$400,000 as full and final compensation for the said property. He then asked the GOB to inform him of the intended payment plan and procedure and promised to return the land certificate to the GOB.

[14] The GOB, having no doubt considered what was the appropriate procedure, prepared the agreement between it and VEGA dated 3 September 2015 ("the settlement agreement") in the form of a "sale" by VEGA to the GOB (through its Ministry of Natural Resources and Agriculture) of the property comprised in Minister's Fiat Grant No 182 of 2013 dated 7 May 2013 for a purchase price of \$400,000. It contained a payment plan with an initial down payment of \$100,000 followed by monthly installments of \$50,000 with interest at the rate of 6% per annum from the date of signing the

agreement. It also contained a clause that full payment of the total sum payable under the agreement (which occurred) triggered mutual releases of each party by the other from *“any and all rights of action, liability, claims, actions, etc. whatsoever relating to the subject matter of this dispute and acknowledge that this agreement shall constitute evidence of the extinguishment of any such claim and as a bar to any such right of action...”*¹

[15] After the settlement agreement was implemented and the impugned Fiat surrendered by VEGA in exchange for the payment of \$400,000, the GOB, in December 2016, brought this action against VEGA and ALAMILLA seeking to recover from VEGA the \$400,000 compensation it paid him on its assertion that the settlement agreement was contrary to public policy, illegal and void. Given the release quoted above, it could only successfully do so if the Settlement Agreement it prepared, proposed and executed was declared by the court to be void.

[16] In its Statement of Claim the GOB alleged that VEGA was not a *bona fide* purchaser for value without notice of the land comprised in the 2013 Minister’s Fiat and that he and ALAMILLA had a relationship whereby ALAMILLA would purchase parcels of land from the GOB and then, within short order, transfer them to members of VEGA’s family. The inference from the pleaded facts is that the subterfuge and collusion was necessary because VEGA is the son of the Minister of Natural Resources (whose office issued the Fiats). A pleaded assertion by the AG on behalf of the GOB is that VEGA and ALAMILLA

“did not act in good faith in treating with the GOB and ...with wanton disregard for whether or not the land was the property of the GOB, colluded to obtain, at a reduced purchase price, title for land which did not belong to the GOB.”

¹ See clause (4) under “Purchase Price” of the Settlement Agreement.

[17] In the course of the trial counsel for the Attorney General informed the court that she was withdrawing all pleadings suggesting participation or collusion by VEGA in a scheme against the GOB.

[18] Counsel for the Attorney General in response to an inquiry from the trial court accepted that her “*whole case on bad faith or lack of good faith turns on lack of due diligence*”². Her contention was that VEGA’s status as a *bona fide* purchaser for value without notice was undermined by him “*not having conducted the proper due diligence*”³ and, on that account, he should return the \$400,000.

[19] VEGA’s vigorous defence of the claim notwithstanding, the court below found for the Attorney General and, on 19 July 2019, ordered that:

- a. The agreement entered into by the Defendant and the Claimant on the 3rd of September 2015 was made by mistake or in error and is therefore contrary to public policy and void.
- b. The Claimant is to recover the sum of \$400,000 Belize Dollars which the Defendant received in error or by mistake as compensation from the Claimant to the Defendant.
- c. An order for disgorgement of the sum of \$400,000 Belize dollars which the Defendant by mistake or error received as compensation from the Claimant.
- d. Alternatively, that the agreement to pay the sum of \$400,000 Belize dollars as compensation by the Claimant was paid by mistake or in error and contrary to public policy.
- e. No order as to costs.

² Page 104 of the transcript

³ Ibid

[20] It is from that order that VEGA appeals to this court.

[21] The several grounds of appeal can be distilled into the following issues:

- a. Was the settlement agreement between the Appellant and the GOB contrary to public policy?
- b. Was there a pleaded and proved case of mistake in relation to the settlement agreement?
- c. Was the appellant unjustly enriched?
- d. Was there a failure by the Appellant to conduct reasonable searches at the Lands and Surveys Department which operated to undermine his status as a *bona fide* purchaser of the land for value from ALAMILLA without notice?

[22] As previously pointed out, it is not in dispute that the GOB through the Ministry of Natural Resources executed a Minister's Fiat Grant No 182 of 2013 containing just over 1 acre of land in favour of ALAMILLA⁴. The learned trial Judge was correct when, in relation to this uncontested issue, he stated, "*This clearly suggests that this grant was sanctioned by the Minister of Natural Resources and, possibly, thereby, the Government of Belize*"⁵. The only fault I find with that statement is his inclusion of the words "*possibly, thereby*", as, even if at first it existed on the pleaded Statement of Claim in its original form, it emerged during the trial that there was no room for doubt on the issue of the grant being sanctioned by the GOB after the withdrawal by the GOB of certain averments in its pleading.

⁴ See paragraph 5 of the Statement of Claim and paragraph 4 of the joint Defence of the 1st and 2nd Defendants.

⁵ Numbered paragraph 15 of the written reasons of the LTJ.

[23] That grant by the GOB of the later Fiat not being in issue, it is to the law that one looks to determine the legal effect of that fiat. According to the law of Belize, that Minister's Fiat operated as a land certificate or conveyance effectual to pass an estate in fee simple to the grantee, ALAMILLA, which was capable of devolving (and in this case did devolve) to his allowable assign, VEGA. That legal state of affairs represented by the Fiat, in all likelihood, is what informed the description by the GOB of the interest held by VEGA in the land subject of Fiat Grant 182 of 2013 as "*the freehold interest/land held by him.*" It may even have informed the settlement agreement with VEGA that was prepared by the GOB taking the form of a conveyance of the land subject of Minister's Fiat 182 of 2013 for the consideration of \$400,000. It is the GOB, after all, that, in the Settlement Agreement it prepared with the assistance of its counsel, set out:

- a. VEGA's root of title as being the Deed of Conveyance dated the 9 January 2014 as can be seen on instrument: LTU-201400041 (presumably the conveyance between ALAMILLA & VEGA); and
- b. The description of the property to be conveyed to the GOB by VEGA as the land described as shown on plan 182 of 2013 attached to Minister's Fiat Grant No 182 of 2013 dated the 7th day of May 2013...

[24] The effect of the Minister's Fiat being a matter of statute law set out in the National Lands Act, even if the learned trial Judge's determination (in numbered paragraph 56 of his written reasons) that, as a matter of law, the Minister's Fiat Grant No 182 "*could not create or pass a valid title...*" is correct, that is exactly what it purported to do. In fact it was precisely because the GOB realized that its Minister's Fiat No 182 of 2013, under statute law, operated to pass an estate in fee simple over the land to the grantee and his allowed assign, VEGA, that it sought to rectify its mistake in issuing it. The learned trial Judge sought to draw what, in my view, is a

somewhat strained distinction between a duplicate grant (which he was prepared to say was possible) and a duplicate title (which he found was not possible).

[25] Given the provisions of the National Lands Act and Rules, there appears to be no distinction in law between a duplication (or overlap) of grant and a duplication (or overlap) of title. The statutorily prescribed effect of a Minister's Fiat Grant meant that the duplication of grant in fact created a duplication of title. This was the dilemma faced by the GOB from which it sought to extricate itself by coming to an arrangement with the holder of the second Minister's Fiat, VEGA. In drawing a distinction between "*grant*" and "*title*", and in consequentially determining the Fiat Grant 182 of 2013 to be ineffectual and a nullity⁶, the learned trial judge erred. In my view his related finding that there was no privity of estate between the GOB and VEGA⁷ was a consequential error derived from that strained distinction between grant and title. The issue of a Minister's Fiat gives rise to privity of estate between the GOB and the ultimate lawful holder of the fiat. This is the only possible interpretation of section 6 of the National Lands Rules of Belize⁸.

[26] In my view, the form the Settlement Agreement took (be it a conveyance or a surrender of title) was immaterial if it sufficed to achieve the parties' objective, which was the provision of compensation to the holder of the wrongly issued fiat in exchange for his return/sale/surrender of it to the issuer- which objective was achieved. The GOB's preoccupation with the form of the Settlement Agreement it generated is misplaced.

[27] That preoccupation is based primarily on the GOB's newly emerged claim made in this action that what it previously considered in:

⁶ At paragraphs 12, 56 and 105 of his written reasons.

⁷ At numbered paragraph 110 of his written reasons.

⁸ Quoted earlier in this judgment.

- c. its letter (issued on its behalf by the Commissioner of Lands and Surveys) of 27 July 2015; and
- d. the settlement agreement of 3 September 2015 that it prepared, issued and executed,

to be VEGA's freehold, fee simple absolute, interest in land (which was the basis of its dealings with VEGA) was never an interest in land and, therefore, never gave rise to any basis for a contractual relationship between him and the GOB.

[28] I have already set out the reasons why, based on the provisions of the National Lands Act, in my view the GOB's new interpretation of the law is incorrect and its prior interpretation as reflected in the content of its letter of 27 July 2015 and the Settlement Agreement it prepared, is to be preferred. Ministers' Fiat Grants constitute notice to the world (including VEGA) that the holder owns the estate in fee simple covered by the grant. The public is entitled to rely (and in this case VEGA did rely) on the representation of the GOB set out in Minister's Fiat Grant 182 of 2013.

[29] Even if (as obtained here) it subsequently transpired that the GOB ought not to have issued Minister's Fiat 182 of 2013, it nevertheless did issue it and ALAMILLA and VEGA were entitled to, and did, rely on the representations made by the GOB in that fiat and their legal effect. As it turns out ALAMILLA suffered no loss because he sold the land subject of Fiat 182 of 2013 to VEGA for value received.

[30] VEGA only did what the law of the land entitled him to do, namely, rely on the representation to the world contained in the Minister's Fiat Grant 182 of 2013. This, no doubt, informed his counterclaim for damages in the sum of \$400,000 suffered by him arising from Ministry of Natural Resources and Agriculture's duplication of title in the event the court found the settlement agreement to be of no effect⁹. One of the

⁹ See relief no 5 claimed in VEGA's Counterclaim.

many odd features of this case, noted at this point, is that the GOB did not file a defence to the Counterclaim¹⁰.

[31] The evidence adduced in this case establishes that the relationship between the parties to the settlement agreement was, on these facts, one of sufficient proximity to give rise to a duty of care owed by the GOB to VEGA which the GOB would have breached if it turned out that it negligently misstated to the public (including VEGA) the facts set out in its Minister's Fiat 182 of 2013¹¹. Therefore even if there was no privity of estate VEGA would still have an actionable cause against the GOB for damage sustained from the latter's negligent misrepresentation of the state of affairs set out in Minister's Fiat 182 of 2013. That actionable cause was equally capable of being the subject of a contractual settlement agreement between the parties.

[32] The point is, whether one arrives there *via* the route of:

- a. compensation for the surrender by VEGA of his freehold estate to the GOB; or
- b. compensation for the misrepresentation by the GOB to VEGA that its Minister's Fiat 182 of 2013 granted a freehold estate to ALAMILLA and his allowed assign, VEGA;

all roads lead to the same destination – redress to VEGA for a wrong caused by the GOB.

[33] Where the court below fell into error was:

- a. in absolving the GOB from blame for the consequences of its wrong in issuing the Minister's Fiat Grant 182 of 2013; and

¹⁰ See numbered paragraph 43 of the written reasons of the learned trial judge.

¹¹ *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465.

- b. in transferring the blame for the consequences of that wrong to the Defendant, VEGA, instead of laying it squarely at the feet of the GOB where it truly belonged (even on the GOB's own case).

[34] Together with the blame the learned trial judge also transferred the burden of proving the Claimant's case to the Defendant when he made his determinations¹² culminating in him being "*unable to say that VEGA acted in good faith in relation to the transaction of purchasing the land from ALAMILLA.*"¹³ It was for the Claimant, the GOB, to establish on the pleadings and evidence that it had a basis to repudiate the settlement agreement into which it had voluntarily entered. In my view it fell well short of that mark.

[35] The evidence showed:

- a. It was the GOB that created a "*duplication of tenure*" of the land by issuing Minister's Fiat Grant 182 of 2013;
- b. It is the GOB that sought to eliminate that duplication;
- c. It is the GOB that approached VEGA and offered to pay him compensation if he surrendered his claim over the land to it.
- d. It is the GOB that offered fair compensation of \$400,000 to VEGA in full and final settlement of his freehold interest in the land.
- e. VEGA accepted the offer of the GOB leaving it to them to determine the payment plan and procedure to effect the settlement agreement.
- f. It was the GOB that prepared the settlement agreement with the assistance of its attorneys.

¹² At numbered paragraphs 67-79 of his written reasons.

¹³ At numbered paragraph 79 of his written reasons.

- g. The procedure utilized by the GOB for effecting the settlement agreement took the form of a conveyance of the land subject of Minister's Fiat Grant 182 of 2013 for a purchase price of \$400,000 and included a mutual release of each party from claims by the other together with the extinguishment of any such claims.
- h. Following the due execution of the settlement agreement by the parties VEGA surrendered his Minister's Fiat Grant 182 of 2013 to the GOB and, in exchange, the GOB paid him the \$400,000 stipulated in the settlement agreement.

[36] Scrutiny of the reliefs claimed by the GOB shows, remarkably, that it seeks to hold VEGA accountable for what it describes as a deliberate breach by the Minister of Natural Resources (its representative) of his (and thereby its) fiduciary duty to the state and people of Belize.

[37] As regards the GOB's claim for damages against VEGA for unjust enrichment as a consequence of breach of trust (the only breach of trust referenced being the breach of duty owed by its Minister of Natural Resources to the state and people of Belize), that must fail. The learned Trial Judge erred in his determination/conclusion that VEGA is not entitled to the \$400,000 and ought to return it¹⁴. This conclusion is tantamount to finding that VEGA has unjustly enriched himself at the expense of the GOB. The material before the court below does not support such a conclusion as there was an acceptance by counsel for the GOB at trial that the amount of \$400,000 was reasonable in the circumstances because it was the documented offer of the GOB made to VEGA¹⁵ for the surrender of his claim to ownership of the land¹⁶.

[38] The bringing of this action by the GOB aimed at unraveling the settlement agreement it proffered to VEGA by claiming that it was contrary to public policy and

¹⁴ At numbered paragraph 123 of his written reasons.

¹⁵ On page 88 of the transcript.

¹⁶ As set out in the letter of 27 July 2015 from the Commissioner of Lands to VEGA.

resulted in the unjust enrichment of VEGA, is bold for being a complete *volte face* of its prior approach to, and dealings with, him. If the GOB was going to take the position that VEGA did not acquire an interest in land from ALAMILLA, then it should have done so from the outset of its interactions with him and not treated with VEGA throughout and up to the conclusion and execution of the settlement agreement on the basis that he had a freehold interest in the land. Not that such an approach would have availed the GOB in any event as the facts revealed an actionable claim by VEGA to damages caused to him by the GOB's negligent misrepresentation set out in its Fiat Grant 182 of 2013.

[39] If not originally bold, given its original averment in its Statement of Claim of collusion and scheming by the Defendants, the action certainly became so following the withdrawal by the GOB:

- a. of its allegations of collusion or the existence a scheme between VEGA, ALAMILLA and the Minister of Natural Resources aimed at securing VEGA's unjust enrichment¹⁷; and
- b. of its assertion that the settlement agreement was illegal¹⁸.

[40] Being contrary to public policy is a specie of illegality, so it is difficult to understand how even that part of the GOB's claim survived its withdrawal at trial of its assertion that the settlement agreement was illegal.

[41] The GOB, at the end of the day, rested its case for undoing the settlement agreement as being against public policy on the sole (and in my view unsustainable) basis of its allegation that VEGA did not conduct a proper due diligence before he purchased the subject land¹⁹.

¹⁷ This withdrawal is recorded by the court below in pages 92-98 of the transcript and in numbered paragraph 35 of the written reasons of the LTJ.

¹⁸ At page 117 of the transcript of the trial proceedings.

¹⁹ See page 117 of the transcript, the submissions of the AG at numbered paragraph 65 of the LTJ's written reasons and his determination at numbered paragraph 73-79 of his written reasons.

[42] To her credit and in response to questions posed by this Court, counsel for the Attorney-General, in her oral submissions, accepted that:

- a. Mistake in the Settlement Agreement did not arise as an issue in the pleadings;
- b. There was, as a matter of substance, no mistake in the settlement agreement, it having been meant to secure a surrender by VEGA of Fiat Grant 182 of 2013 in exchange for a payment to him of \$400,000; and
- c. The Attorney General's position at trial was that the compensation of \$400,000 (offered by the GOB and accepted by VEGA) was reasonable in the circumstances.²⁰

[43] She also accepted, again with commendable candor, that, ordinarily, there would be no need for a prospective purchaser of land to go behind the Fiat Grant in establishing root of title. In other words, the Fiat Grant is, itself, good root of title. I accept that is indeed the practice in Belize in relation to establishing root of title to land that was originally national land.

[44] I consequently find myself unable to agree with the learned trial judge that *“VEGA is somehow significantly implicated in or otherwise contributed to or compounded that mistake, by his unsatisfactory search. In other words, VEGA is not wholly innocent, but in fact is likely complicit in the mistake which is at the centre of the present claim...”*²¹ I cannot see the basis for that conclusion. The Minister's Fiat Grant 182 of 2013 is sufficient root of title so Vega's search establishing that root was, perforce, satisfactory. The case is devoid of any evidence whatsoever that VEGA in any way participated in, or was responsible for, the GOB issuing Minister's Fiat Grant 182 of 2013.

²⁰ See page 88 of the transcript.

²¹ At numbered paragraph 107 of is written reasons.

[45] I am, therefore, unable to discern the basis for the learned Trial Judge's determination²² *"as a matter of fact or inference that VEGA more likely than not, or ought to have, found out about the earlier pre-existing Minister's Fiat Grant in relation to the Lands if he had done a proper search in relation to the Subject Land."* With this determination the learned trial judge completely absolved the GOB of any accountability for issuing a Minister's Fiat Grant of land that misrepresented the accuracy of its content, and placed upon VEGA the blame and responsibility for the consequences of his reliance on that instrument. In so doing he erred. There was no evidence before the court that VEGA, prior to his purchase of the land from ALAMILLA, knew of Minister's Fiat Grant No 76 of 1988²³. It follows from that fact that there was nothing on the evidence in this case that would trigger a need for an extraordinary search by VEGA requiring him to go beyond establishing ALAMILLA's root of title deriving from Fiat Grant 182 of 2013. Surely members of the public are entitled to rely on a Minister's Fiat Grant as being an accurate representation of the facts stated in it.

[46] Courts encourage parties to enter into settlement agreements as a means of putting an end to or avoiding litigation²⁴. The learned trial judge accepted, correctly in my view, that the GOB can enter into settlement agreements with parties when a situation of duplicate title is created by error with the Ministry of Natural Resources; and that to do so would save costs and valuable court time²⁵. Having so stated the learned trial judge went on to conclude that the settlement agreement made in this case, *"insofar as it is a release and waiver agreement, is not valid and subsisting as it is based on an error or mistake, and is therefore void."* I find that, in so concluding, he erred by seemingly regarding the mistake made by the GOB in issuing Minister's Fiat Grant 182 of 2013 as a mistake within the settlement agreement itself that, if established, could result in it being nullified. The Supreme Court of Belize is a court of record that requires a claimant to set out in his pleadings a statement of all the facts on

²² At numbered paragraph 108 of his written reasons.

²³ See numbered paragraph 20 of the written reasons of the LTJ.

²⁴ *Rush & Tomkins Ltd v Greater London Council & Anr.* [1989] AC 1280.

²⁵ See numbered paragraph 113 of his written reasons.

which he relies²⁶. The learned trial judge's acceptance that the GOB did not plead mistake or error or even that there was an error in the settlement agreement²⁷ ought, without more, to have prevented him from declaring that the settlement agreement was made by mistake or in error.²⁸ That was not the basis upon which the GOB asked the court to find that the settlement agreement was contrary to public policy²⁹.

[47] In counterclaiming for the GOB (acting through the Commissioner of Lands and Ms Sharon Ramclam) to be bound by the settlement agreement of 3 September 2015 with which both parties have complied, or to be alternatively liable to him in negligence, VEGA was on good ground.

[48] For those reasons I would order and declare as follows:

- a. This appeal is allowed;
- b. The Judgment and Order of the Honourable Justice Courtney A Able made on the 19 July 2019 and entered/perfected on the 24th September 2019 is set aside;
- c. The agreement dated 3 September 2015 subsists and is binding on its parties, André Vega and the Government of Belize³⁰.

²⁶ CPR 8.7(1).

²⁷ At numbered paragraph 112 of his written reasons.

²⁸ At numbered paragraph 128 of his written reasons and in paragraph 1 of the Formal Order.

²⁹ The basis is as set out in the second paragraph of this opinion.

³⁰ In keeping with declaration number 3 sought in VEGA's Counterclaim.

- d. The costs of this appeal and of the proceedings below are awarded to Appellant.

MINOTT-PHILLIPS, JA

FOSTER, JA

[49] I have had to opportunity to read the judgement of learned Justice of Appeal Minott-Phillips and I concur.

FOSTER, JA