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**MEMORANDUM**

**Our Ref:** ALB/mir

(please quote in all replies)

**To:** Khamisi M. Tokunbo, Director  
**From:** Anthony L. Blackman, Crown Counsel  
**Date:** 8<sup>th</sup> August, 2001  
**Re:** Allegation of Fraud by Complainant, Mr. John Nathaniel Darrell

In furtherance of your request for advice on the captioned, a précis of the facts is in order. The facts fall within a compass in my submission.

The virtual complainant Mr. John Nathaniel Darrell resides at Sleepy Hollow Drive, Hamilton Parish, Bermuda. The virtual complainant's great grandfather Daniel Davis Darrell owned four (4) portions of real estate in Southampton parish. On his death in 1888 the complainant's grandfather Emilius Darrell inherited the aforementioned four (4) properties. In 1947 Emilius died and he left the property he owned (i.e. the property he inherited from Daniel Darrell) for George Wellington Darrell - the complainant's father. There is unquestionable proof of this as notices for Land Tax payments were made up to 1971. It should be noted however, that the description of the property on the Land Tax request forms was the "Estate of Emilius" because one E.T. Richards who was the lawyer of the complainant's father, did not convey the property into the name of the complainant's father in 1950. In my submission this act commenced the legal problems which followed.

Ownership of the properties belonging to the complainant's father is further provided by a 1956 deed, which makes reference to the estate of Emilius Darrell.

The Last Will and Testament of George Wellington Darrell (the complainant's father) dated 29<sup>th</sup> January 1987 and duly admitted to probate on the 27<sup>th</sup>

September 1999, showed a devise of all Real Estate which was inherited from his father Emelius Darrell to his son John Nathaniel Darrell. On the 6<sup>th</sup> March 1987 a voluntary conveyance was executed between George Wellington Darrell and the complainant. The conveyance confirmed that there is no Benjamin Darrell ownership and no Horace Cooper as recorded in a 1924 deed and Government plans. A deed of confirmation dated 11<sup>th</sup> September 1991 prepared by Appleby Spurling & Kempe indicated that the complainant's father owned 75% of the property formerly owned by the complainant's grandfather. The virtual complainant alleges that a 20 foot piece of property at the Northern end which increased to 60 feet in width at the Southern end was misused to form the Rivera Estate Road to the West of his property. He further alleges that another section to the South was also misused to form Lots 48-54 of Sunnyside Park.

A plan submitted by Robert H. Clarke which appears to have been traced from a plan of 1932 prepared by Jim Dale shows that Benjamin Darrell (who does not exist) owns property 20 feet further to the East. This was not recognised in earlier plans. What this plan did in effect was to move the property over to the East, which facilitated the Riviera Estate Road to the West. Another legal problem now created by this plan. The original 1932 plan prepared by Mr. Dale has never been produced. It is believed that this plan will show that Emilius Darrell is the owner of property to the North boundary of Lot 47 Sunny Side Park and to West boundary of Lots 40 to 47 of the Sunnyside Park.

In 1953 a plan of Sunnyside Park prepared by Wycliffe Stovell shows land owned by Mr. Darrell as being that of the Colonial Government. It also shows that land to the West of Lots 40 to 47 of Sunnyside Park is owned by George Arnold Williams. This is not correct. A further legal problem is now created.

'In 1974 the Bermuda Government instituted Court proceedings to assert their claim to the virtual complainant's land. An area map was produced by the Government but no supporting deeds. The case went against the complainant. The effect was incorrect recognition of Sunnyside Park Lots 48-54, an'

incorrect recognition of the Riviera Estate Road. This decision apparently forms the basis of the virtual complainant's concern as it exists today.

In 1977 the complainant knocked down some fencing which was erected by the Government and had separated his land. A Court case ensued and the then Magistrate Mr Nadarajah ruled in favour of the complainant. The Magistrate ruled that the Government did not produce the appropriate documents to support ownership of the land. This ruling was contrary to that of 1974.

In 1978 another Court case was instituted against the complainant. A claim was made to the entire parcel of property. Success for the Government would have signalled goodbye to the complainant's property. It is to be noted that the Judge who determined the case Mr. Walter Robinson, was the Attorney for Sunnyside Park owners in 1953 and the Attorney for the complainant's father in 1963. He in the role of Attorney in 1964 prepared a deed in favour of the complainant. However, in adjudicating the case, he decided in favour of the Government. The act of determination by the Judge in my submission was a clear violation of the principles of Natural Justice and obvious bias. It is also worthy to note that the Judge ruled that the house in which the complainant resided (according to the plan of 1930 by J.H. Dole) belonged to the non-existent Benjamin Darrell. Further legal confusion.

In 1979 Robert H. Clarke surveyed the land. His survey showed that the portion of land allegedly owned by Benjamin Darrell, Horace Cooper and the Government was actually owned by the complainant. It further showed that the Riviera Estate Road had in fact been cut through a portion of the complainant's property.

In 1982, the complainant found two plans at the Department of Planning. Both plans confirmed Government's ownership to the property. These plans were in conflict with all the deeds and plans which were in existence. More legal confusion.

In 1983 the complainant bulldozed his personal property. Another court case followed.

In 1987 the complainant blocked the Riviera Estate Road directly outside his residence. Another court case followed. Judge Hull heard the matter and ruled in favour of the Government. His ruling was buttressed on the 1953 Sunnyside Park sub-division which was prepared by Wyliff Stovell.

During the period 1988 to present the complainant's health has deteriorated. His finances has also dwindled. He still wants to fight the Government. He is still of the opinion that he has been cheated out of his land. He now alleges fraud.

*Issue whether or not there is evidence of the criminal offence of fraud and if so by whom.*

### Discussion

To defraud is to deprive by deceit. It denotes impropriety and the obtaining of property by unlawful means. The mental element of Mens Rea must be satisfied.

Having read the documents submitted, there is nothing in my opinion to substantiate fraudulent conduct by any party. What is obvious to me is professional negligence and a blatant breach of the Rules of Natural Justice.

Professional Negligence in my opinion occurred from 1950 when E.T.Richards who was the Attorney for the complainant's father, did not convey the property to the father of the complainant. Further, evidence can be seen in the following:-

- A plan of 1932 submitted by Robert Clarke which showed one Benjamin Darrell (who did not exist) as owning property.
- The 1953 plan of Sunnyside Park prepared by Wycliffe Stovell which showed the land owned by the Darrells as being owned by the Colonial Government and the land to the West of Lots 40 to 47 of Sunnyside Park to be owned by George Arnold Williams.

- The two plans produced in 1982 which were in conflict with all plans and surveys produced up to that point, including those relied on by the Court in 1974.
- In my submission a clear breach of Natural Justice occurred in 1978 when Mr. Water Robinson, the presiding Judge, a former attorney for Sunnyside Park owners and the attorney for the complainant's father in 1963, did not remove himself from the trial. He eventually ruled against the virtual complainant.

### CONCLUSION:

There is evidence of shoddy work by the professional surveyors and some attorneys. There is no doubt in my mind that the virtual complainant has been unfairly dispossessed of his land. From the documents submitted, I am of the opinion that the Riviera Estate Road does in fact pass through the complainant's property. The documents produced and indeed the legal representation which the complainant received in the early proceedings must also be questioned. It so happened that the Crown was better able to prove its case and it did so based on the documentary evidence that was available.

I am of the opinion that there has been no direct or fraudulent conduct on the part of the Crown. The problem was inconsistent and misleading documents (plans). This is indeed a civil matter. Considering the amount of litigation that has already taken place and the financial status of the complainant, I am afraid that unless he receives some gratuitous payment/compensation, his efforts to keep what appears to be his (the property) were all in vain, indeed a sad situation when one considers the quest by the Darrells to own their share of "the littlerock" and the offending individuals have all passed.

Respectfully submitted,  
*Anthony L. Blackman*  
Anthony L. Blackman  
Crown Counsel