

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**CV 2007-02370**

**BETWEEN**

**HASSIM MOHAMMED**

**Claimant**

**And**

**SAFFERAN BALKARANSINGH**

**Defendant**

**Before Hon. Madame Justice J. Charles**

**Appearances:**

**For the Plaintiff: Mr. Sagar**

**For the Defendant: Mr. Blaize**

Date of Delivery: 22 March 2010

**JUDGMENT**

**History:**

1. In High Court Action Number 1273 of 2001 filed on the 9<sup>th</sup> May 2001, the Defendant (the Plaintiff in those proceedings) brought an action against the Claimant (the Defendant in those proceedings) for trespass to property situated at Dunlop Drive, Cocorite, injunctive relief, and an order that the Defendant (now Claimant) pull down and remove a fence built around the Plaintiff's land (now Defendant). A Defence and Counterclaim was filed and a Defence to the Counterclaim was also filed.
2. A separate action was brought against the State by the Claimant in these proceedings in HCA 2026 of 2001, claiming adverse possession to the property situated at Dunlop Drive (hereinafter referred to as the "said property"), since the State is the owner of the parcel of land in dispute which the Defendant was claiming she was entitled to by virtue of a twenty five year lease granted to her by the State. Madam Justice Tiwary-Reddy consolidated the two matters for the proceedings to be heard together.

3. The proceedings subsequently came before Mr. Justice Zainool Hosein in September 2006 and the parties began discussions for settlement via their respect attorneys.

4. On the 11<sup>th</sup> December 2006 at a hearing of the matter before Justice Hosein the parties entered into a consent order (hereinafter referred to as the 'First Consent Order') in the following terms:

1. That the Plaintiff do sell the leasehold interest in that portion of land situate at Dunlop Drive, Cocorite, in the City of Port of Spain, in the Island of Trinidad, comprising FOUR HUNDRED AND SIXTY TWO POINT EIGHT SQUARE METRES (462.8 m<sup>2</sup>) more or less, and bounded on the North partly by a ravine and partly by lands now or formerly of Cabral and partly by lands of the State, on the East partly by a Road reserve 7.62 metres wide and partly by lands of the State and on the West [partly by a ravine and partly by lands of R. Mohammed and partly by lands now or formerly of Joseph Charles, which said land is delineated and coloured pink on the marked "A" and attached to Deed No. 15245 of 1999 at market value price to the Defendant.
2. That the said market value be determined by a valuer to be agreed between the parties and the parties agree to be bound by the valuation.
3. That immediately upon the payment of the above sums, the Plaintiff do assign the said parcel of land to the Defendant or to whomever he shall nominate and in default, the Registrar of the Supreme Court do sign the Deed in place of the Plaintiff.

4. That the Cost of the Valuation and the Deed of Assignments and expenses in registering same shall be borne by the Defendant.
  5. That costs to be paid by the Defendant to the Plaintiff to be agreed upon.
5. The matter was adjourned to the 12<sup>th</sup> January 2007. Both parties agreed to use Mr. Linden Scott as the Valuator to carry out the valuation of the property.
  6. Thereafter there was a series of correspondence between the parties' attorneys. By letter dated 4<sup>th</sup> January 2007 the Defendant's attorney, Mr. Colvin Blaize, wrote to the Claimant's attorney, Mr. Yaseen Ahmed, advising that Mr. Scott inquired about the use of the land. Mr. Blaize indicated that they intended to inform him that the land was being used for commercial purposes and was intended to be amalgamated with the front portion of land presently being used as a hardware by Mr. Hassim Mohammed. Mr. Blaize asked Mr. Ahmed to indicate whether he had any objections with respect to their intended instructions to the valuator. By letter dated the 5<sup>th</sup> January 2007 Mr. Ahmed responded indicating that they totally disagreed that the use of the lands must be deemed commercial. They were of the view that the use of the said property contemplated under the Lease by the State should be that considered by Mr. Scott.
  7. On the 12<sup>th</sup> January 2007 at a hearing of the matter before Justice Hosein the parties, after discussions between their respective attorneys, entered into another consent order (hereinafter referred to as the 'Second Consent Order') made under the following terms:
    1. That the Defendant do pay the Plaintiff 90% of the value of the subject property based on the present use of the land as commercial property by the Defendant.

8. The Plaintiff's attorney sent a letter to the valuer on the 16<sup>th</sup> January 2007, in which he stated:

“As you may be aware the subject parcel of land has been amalgamated with the front portion of land owned by Hassim Mohammed and is being used for the purpose of running a hardware by the said Hassim Mohammed.”

9. A meeting was held thereafter between Mr. Ken Sagar, Mr. Balize, Mr. Yaseen Ahmed and Mr. Linden Scott to discuss the approach that Mr. Scott was to take with respect to the valuation of the said property.

10. Mr. Linden Scott, having been provided with the two consent orders, wrote to the attorneys for both parties on the 22<sup>nd</sup> January 2007, and informed them that the valuation would be determined on certain assumptions arrived at based on his interpretation of the Consent Orders. He explained the matter as stated herein under:

- a. “That the subject property be treated as part and parcel of the front portion of land known as No.194 Western Main Road and owned in whole or in part by Hassim Mohammed. This is in essence a reasonable valuation approach to deal with the problem of having to quantify the additional bid that Hassim Mohammed would most likely pay as he is in the position of a special purchaser.”
- b. “That the value of the property be based on the existing de facto use as a commercial property. You will note that this existing use is in breach of the user covenant in the lease and therefore it is incumbent on Safferan Balkersingh to provide a waiver of the user covenant to permit the existing use.”

11. Mr. Scott requested that the parties indicate their consent by signing the attached copy. Both Mr. Yaseen Ahmed and Mr. Colvin Blaize signed the letter.
12. On the 6<sup>th</sup> February 2007 the matter was listed for hearing and was adjourned.
13. On the 12<sup>th</sup> February 2007 Mr. Yaseen Ahmed wrote to Mr. Linden Scott indicating that upon the advice of counsel he was signing the Terms of reference for valuation dated 22<sup>nd</sup> January 2007 but that “we reserve the right to challenge the portion ‘that the subject property be treated as part and parcel of the front portion of land known as No. 194 Western Main Road’.”
14. Having received signed letters from both parties’ attorneys, Mr. Linden Scott then proceeded to carry out the valuation. In his report dated 12<sup>th</sup> February 2007 he assessed the subject property to be worth Seven hundred and fifty thousand dollars (\$750,000.00).
15. On the 27<sup>th</sup> February 2007 the learned trial Judge made a final order as follows:

UPON HEARING Attorneys at Law for the Plaintiff and Attorneys at Law for the Defendant and UPON READING the Valuation Report carried out by Messers. Linden Scott and Associates and dated 12<sup>th</sup> February, 2007.

1. Whereby the valuation dated 12<sup>th</sup> day of February, 2007 carried out by Messers. Linden Scott and Associates in respect of the subject property comprising 462.8 meters, a copy whereof has been submitted to the Court.
2. Whereas by Order of the Court dated 11<sup>th</sup> December, 2006 the parties agreed to be bound by such valuation and whereas it was agreed by the parties by consent on 12<sup>th</sup> January, 2007 that the defendant shall pay the Plaintiff 90 % of the value of the subject property.

IT IS HEREBY ORDERED that:

1. Effect be given to the said valuation and that payment be made pursuant to the said order of the 12<sup>th</sup> day of January, 2007 within 42 days thereof.
  2. Liberty to apply.
  3. Leave to the Plaintiff to write up this order.
16. An appeal was filed by the Defendant (the Claimant herein) on the 4<sup>th</sup> April 2007 against the final order of the judge and is still pending.
17. The Defendant filed his defence on the 15<sup>th</sup> October 2007.
18. The Claimant in this matter sought by his Statement of Case filed on the 6<sup>th</sup> July 2009 an order for the setting aside of the Second Consent Order made in HCA No. 1273 of 2001 and an order that two reputed valuers be appointed by the Court to value the said property. The Claimant also sought an order that the Claimant do pay 90% of the average value between the two valuation reports and upon payment the Deed of Lease for the said property be assigned and/or transferred to the Claimant at his expense.

**Evidence**

19. At the trial, Mr. Sagar relied on the evidence of Mr. Deryck De Gannes, a chartered surveyor at GA Farrell and Associates, Mr. Yaseen Ahmed, attorney at law who represented Mr. Mohammed in the original matter, Mr. Afra Raymond, a chartered valuation surveyor and Mr. Hassim Mohammed. Mr. Blaize relied only on the evidence of Ms. Balkaransingh. Mr. Lindon Scott, the valuator selected to conduct the valuation was not called before the Court.
20. In the course of his evidence to the Court, Mr. De Gannes valued the property at \$150.00 to \$250.00 per sq. foot. In cross-examination, Mr. De Gannes

stated he had not seen the consent order or the basis upon which the parties had agreed to conduct the valuation.

21. Mr. Ahmed in his witness statement filed on the 22<sup>nd</sup> October 2009 stated that a meeting was arranged between the attorneys of both parties to discuss the amalgamation of Mr. Mohammed's property with the said property. Upon cross-examination, Mr. Ahmed admitted to the Court that the agreed valuator was Mr. Lindon Scott, who was proposed by Mr. Ahmed himself. Mr. Ahmed also agreed that he signed a letter confirming the terms of the valuation, which also reserved his right to "*challenge certain parts of the terms*". Counsel further admitted to the Court that Mr. De Gannes valuation was conducted prior to the second consent order of the Court. Mr. De Gannes conducted his valuation on the 3<sup>rd</sup> November 2006.
22. Mr. Afra Raymond testified under cross examination by Mr. Blaize that at the time he was retained by the Claimant, he was unaware of any order of the Court which required that a valuation be done. He stated that Mr. Hassim Mohammed did not inform him of any agreement he had with the Defendant in respect to having a valuation done. He was also not informed by Mr. Mohammed of any of the terms of the agreement with respect to how the valuation was supposed to have been carried out.
23. Mr. Raymond also stated that he would value properties that bound the Western main Road in 2007 at around \$250 per square foot but that this would depend on three factors. The first factor would be that the figure would depend on the size and the shape of the parcel of land, and the other two factors were the comparable sales of the lands. By his report dated 14<sup>th</sup> March 2007, he valued the freehold interest in the subject property in the sum of Two hundred thousand dollars (\$200,000.00)
24. Upon cross-examination by Mr. Blaize, Mr. Raymond asserted that the property was not treated as part and parcel of the other portion of land known as 194 Western Main Road. He also testified that he was not told that it was agreed that the value of the property was to be based on the existing de facto

use of it as a commercial property. Mr. Raymond also agreed with Counsel for the Defendant that valuations may vary depending on the assumptions upon which a valuation is based. He confirmed that he did not value the property as being part of a commercial property because it wasn't part of his instructions. He was ordered to value that parcel of land only.

25. Mr. Hassim Mohammed under cross-examination by Mr. Blaize confirmed that he used the said property as a stockpile for storing material such as gravel. He confirmed that he was using the said property as part and parcel of his hardware. Mr. Mohammed also stated under cross-examination that he never instructed his attorneys to agree to any amalgamation of the said property.

26. Mr. Mohammed also gave that he:

- (i) was aware that the valuator had written to his lawyers requesting confirmation of his interpretation of the consent orders; and
- (ii) was aware that his lawyers had signed the valuator's letter confirming the basis upon which the valuation was to be done.

27. Mr. Mohammed confirmed under cross-examination that in relation to the agreement by the parties to be bound by the valuation that he had left everything in his lawyers hands. He also confirmed that the valuation done by Mr. Linden Scott on the said property was seven hundred and fifty thousand dollars.

28. Ms. Safferan Balkersingh who was 80 years old was cross-examined by Mr. Sagar. She confirmed that she agreed to and signed the consent order. She further said that she understood the meaning of the word 'amalgamated' to mean 'join together'.

29. Ms. Balkersingh said that she went to the said property with Mr. Scott and showed him the said parcel. She also confirmed Mr. Mohammed's presence there, saying that he was right at the back of the land. She said that she saw

Mr. Mohammed and Mr. Scott speak. She said that Mr. Scott did not speak to her other than to ask her to identify the said parcel of land.

30. In response to the question as to who is a special purchaser she said that she understood that person to be a person who buys anything they want. They could even buy a store.
31. She also said that she did not discuss amalgamation of the land with anyone when she entered into the consent order. She only discussed matters with her lawyers.

### **Submissions**

32. Mr. Sagar in his written submissions filed on the 1<sup>st</sup> February 2010 on behalf of the Claimant stated the parties were not ad idem on the terms of the Second Consent Order. He further argued that the Defendant had unilaterally changed the terms of the Second Consent Order.
33. He submitted that the valuation figure arrived at by Messers. Linden Scott and Associates was inordinately high and in total disparity with other Valuation Reports obtained by Hassim Mohammed.
34. Mr. Sagar contended that Mr. Blaize introduced the new concept of “special purchaser” after the Consent Order was entered into by both parties, which increased the price of the land substantially.
35. He submitted that there was indeed a mistake of fact, as Mr. Mohammed’s Attorney was under the impression that the valuation would be based on the said property described in the Deed of Lease, as opposed to being considered part and parcel of Hassim Mohammed’s other parcel of land .

36. Mr. Blaize in his written submissions filed on the 21<sup>st</sup> January 2010 on behalf of the Defendant stated that it was clear from the evidence that at the date of the Second Consent Order there was no mistake by any of the parties as to the terms of the Consent Order.
37. Mr. Blaize submitted that the Claimant failed to show evidence of a mistake, or misunderstanding between the parties at the time the Second Consent Order was entered into. Mr. Blaize submitted that the Claimant through his attorney confirmed to the Mr. Linden Scott the accuracy of the assumptions that the valuator had made in his interpretation of the two Consent Orders and that the Claimant had not put forward any evidence to suggest that the parties' minds were not ad idem.
38. Counsel for the Defendant also argued that the Claimant cannot now attempt to set aside the Second Consent Order on the ground that his attorneys-at-law acted contrary to his instructions. He argued that the Claimant in his witness statement gave evidence that he did not instruct his attorney-at-law to agree to "the amalgamation" of the disputed parcel with his own.
39. Mr. Blaize in his written submissions argued that the fact that the parties were not ad idem as to what the particular value of the land might be is precisely why the task of determining the value was entrusted to a valuator. He submitted further that the provision in the First Consent Order that the parties "agree to be bound by the valuation" is a provision that contemplates that the valuation report may not meet the expectation of one or the other or both of the parties to the agreement.
40. Counsel for the Defendant also submitted that Mr. Scott's interpretation of the consent orders as stated in his letter of the 22<sup>nd</sup> January 2007, was consistent with the evidence concerning the use of the land by the Claimant.

41. Mr. Blaize further argued that the issue of mistake or misunderstanding must involve the facts and issues between the parties at the time the Second Consent Order was entered into and cannot relate to the actions of third parties to the agreement.
42. Mr. Blaize submitted that a consent order does not require that there is a meeting of minds with third parties. He argued that a consent order is analogous to a contract between the parties to the order, and that a contract between two parties cannot be breached by a third party who is not a party to the contract. He further submitted that if the Claimant believed that the valuator had acted outside of the scope of his instructions or has misinterpreted his instructions, his remedy maybe an appeal and not an application to set aside the consent order.
43. Mr. Blaize also argued in his written submissions that the Claimant's attorneys-at-law were themselves attempting to vary the terms of the First Consent Order, when in confirming the valuator's interpretation of the consent orders reserved the right to challenge the valuation after the valuation was submitted. The First Consent Order provided that the parties "would be bound by the valuation".
44. Mr. Blaize submitted that even if the Claimant succeeds in having the Second Consent Order set aside he would still not be entitled to the reliefs claimed by him because the First Consent Order would still have its full force and effect. He submitted that the First Consent Order provided for the sale of land, the appointment of a valuator and the provision that the parties were to be bound by the valuation. He also submitted that the Second Consent Order provided that the Claimant pay 90% of the value of the land to the Defendant, and that the value be based on the commercial use of the land by the Claimant.
45. Counsel for the Defendant further argued that the Claimant would be unable to be granted any part of the first relief that relates to the appointment of any valuator, in that the Second Consent Order did not make any provisions for the

appointment of a valuator. He submitted that the wording of the first relief claimed by the Claimant and the deliberate omission of reference to the commercial value of the land, clearly demonstrates that what the Claimant was attempting to do was use the processes of the court to vary the previously agreed terms of the second consent order. He submitted that the Claimant was attempting to escape the outcome of a legitimate and enforceable contract between himself and the Defendant. He submitted that even if the Second Consent Order was set aside that the First Consent Order would still be in place.

46. Additionally, Mr. Blaize submitted that the Claimant failed to establish that the Second Consent Order was obtained by fraud; or misrepresentation; or non-disclosure of a material fact. He went on further to argue that the Claimant needed to establish that the Second Consent Order was obtained by duress; or was concluded under a mutual mistake of fact; or entered into without authority. As such he argued that the Claimant's claim dated the 6<sup>th</sup> July 2008 should be dismissed with costs to be paid by the Claimant to the Defendant.

### **The Issues**

The issues that fall to be determined by the Court are:

47. Whether the Court can set aside the second consent order.
48. Whether the Defendant unilaterally changed the terms of the Second Consent Order.
49. Whether the valuator's interpretation of the Second Consent Order introduced a new term into the consent order.
50. Whether the parties were ad idem as to the terms of the Second Consent Order.

## The Law

51. Part 43.2 of the **CIVIL PROCEDURE RULES 1998 (CPR1998)** provides as follows:

*A party is bound by the terms of the order or judgment whether or not the judgment or order is served where -*

- (a) he is present whether in person or by attorney when the judgment given or order was made; or*
- (b) he is notified of the terms of the judgment or order by facsimile transmission, or otherwise<sup>1</sup>.*

52. Part 43.7 of the **CPR1998** provides that:

*(6) Where this rule applies the order must be -*

- (a) drawn in the terms agreed; and*
- (b) expressed as being 'By Consent'; and*
- (c) signed by the attorney acting for each of the parties to whom the order relates; and*
- (d) filed at the court office for sealing and rule 43.5 (drawing and filing of judgments and orders) will apply as it applies to all other orders.<sup>2</sup>*

53. The Court is vested with the power to set aside orders in Part 44.5 of the **CPR 1998**. Part 44.5 CPR provides that:

- (1) The general rule is that, if the court sets aside a judgment or order, any order made for the purpose of enforcing it ceases to have effect.*
- (2) The court may, however, direct that it shall not cease to have effect.*

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<sup>1</sup> Civil Procedure Rules 1998. Part 43.2

<sup>2</sup> Civil Procedure Rules 1998. Part 43.7(6)

Part 44.5 however, does not expand upon the requirements necessary for an order to be set aside.

54. Halsbury's Laws of England Volume 3(1), 4th edition, paragraph 521, states that "*a consent order or compromise may be set aside on a ground which would invalidate any other agreement between the parties including mistake, illegality, duress or misrepresentation*"<sup>3</sup>.

55. Further, paragraph 562 provides that compromises between parties have been set aside when there was the existence of an illegality against public policy, fraud or misrepresentation, mutual mistake of fact, ignorance of a material fact or done without authority.<sup>4</sup> Paragraph 562 of Halsbury's also states that the court may refuse to set aside a compromise when the party seeking to set it aside is guilty of delay in questioning it.<sup>5</sup>

56. In Ramdeo Sookhai et al v. Ramdial Sookhai et al<sup>6</sup> the Honourable Madam Justice of Appeal Warner opined that the Court must use a "reasonable person" standard when examining the words used in an agreement<sup>7</sup>.

57. Both parties referred to the case of Huddersfield Banking Co. Ltd. v. Henry Lister and Son Co. Ltd.<sup>8</sup>. In Huddersfield it was held that the Court has jurisdiction to set aside a consent order upon any ground which would invalidate an agreement between the parties. A consent order which had been completed and acted upon, but without affecting interests of third parties, can be set aside upon the ground of common mistake.

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<sup>3</sup> Halsbury's Laws of England. Volume 3(1), 521, 4<sup>th</sup> Edition.

<sup>4</sup> Halsbury's Laws of England. Volume 26, 562, 4<sup>th</sup> Edition.

<sup>5</sup> Watt v. Assets Co, Bain v Assets Co [1995] AC 317,HL.

<sup>6</sup> Ramdeo Sookhai et al v. Ramdial Sookai et al. Cv.A. 105 of 2006. pg 10.

<sup>7</sup> Ibid.

<sup>8</sup> Huddersfield Banking Co. Ltd. v. Henry Lister and Son Co. Ltd. [1895] 2 Ch 273.

58. The concept of mutuality is explained in *Chitty on Contracts*<sup>9</sup> where the authors state that the last requisite to the agreement of the parties is that the assent should be mutual. This would mean that the parties must agree on the same thing in the same sense; in other words, that there is a concurrence of wills as to the same object or a *consensus ad idem*. The authors opine that if this does not exist then there is no contract, and the consent of the parties is unreal.<sup>10</sup>

59. In *Matthews v Munster*<sup>11</sup> it was held that the settlement by the defendant's counsel was a matter which was within the apparent general authority of counsel and was binding on the defendant.

**Conclusion:**

60. The Court examined the submissions and evidence placed before it by both parties on the issue of the Courts' power to set aside a consent order when there is the existence of a mistake at the time of consent. It is clear from the wording of the consent order that the amalgamation of the property and the treatment of Mr. Mohammed as a "special purchaser" were not included therein. It is the opinion of the Court that these details were left to be resolved following upon the consent order. Mr. Mohammed agreed to the terms of the consent order. From the evidence it is clear that both parties agreed to and understood the terms of the consent order. Mr. Mohammed was also aware of the terms of the valuator's letter dated the 22<sup>nd</sup> January 2007.

61. It is clear that the wording of the two consent orders remained unchanged. Mr. Scott conducted the valuation of the subject premises after he received consent from attorneys for both Claimants and Defendants to his assumptions upon which the valuation was to be based according to his understanding of the two

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<sup>9</sup> 'Mutuality' in *Chitty on Contracts: General principles*, Vol. 1 21<sup>st</sup> edition, pgs 35,36.

<sup>10</sup> *Raffles v Wichelhaus* (1864) 2 H & C 906.

<sup>11</sup> *Matthews v Munster* (1888) 20 QBD 141.

consent orders The court therefore will not interfere with the terms of the two consent orders as agreed to by both the Claimant and Defendant and their respective attorneys. There was no illegality on the part of the parties, no fraud or misrepresentation, no mutual mistake of fact, no ignorance of a material fact or lack of authority.

62. The Court holds further that the Defendant did not unilaterally change the terms of the Second Consent Order. There is no evidence upon which I can come to this conclusion and accordingly I decline to do so.

63. Likewise this court does not consider that the valuator's interpretation of the Second Consent Order amounts to the introduction of a new term into the said Order as it complies with the wording of the Second Consent Order and was in fact agreed to by both parties and their attorneys.

64. Mr. Sagar attempted to show that Mr. Mohammed had a right to challenge the consent order based on written correspondence between the attorneys of both parties. The evidence shows that several items of correspondence were sent to Mr. Ahmed including the "Letter of Clarification" from Mr. Scott of the 22<sup>nd</sup> January 2007, which specifically laid out the interpretation of the instructions given to Mr. Scott. Mr. Ahmed signed this letter but reserved rights to challenge the section which stated, "*the subject property to be treated as part and parcel of the portion of land known as No. 194 Western Main Road.*" This reservation on the part of the Claimant's attorney cannot be construed as a right to challenge the consent order. Mr. Ahmed reserved the right to challenge the amalgamation of the parcels of land in circumstances where Mr. Mohammed's use of both parcels were commercial and under the terms of the second consent order the valuation of the said property was agreed to be based on its present use as commercial property.

65. The Court notes that although Mr. Ahmed was informed of the method of valuation, he chose not to disagree to the terms, but to sign his approval and wait to challenge it at a later date. Mr. Mohammed testified that he never agreed to, nor did he ever authorize Mr. Ahmed to agree to the amalgamation

of the properties. The Court is of the view that Mr. Mohammed and Mr. Ahmed, or Mr. Ahmed on his own, was hoping for a lower valuation price. However, once this did not materialize, Mr. Ahmed raised this objection. It should also be mentioned that the Court noted that Mr. Mohammed and Mr. Ahmed agreed to be bound by the findings of the valuation. Mr. Ahmed's opportunity to object to the method of valuation was prior to the submission of the valuation conducted by Mr. Scott. As stated previously, the right to object was reserved against the method of the valuation, not the terms of the consent order.

66. Mr. Sagar cited the case of Huddersfield arguing that the Court has the power to set aside a consent order even after it has been sealed and acted upon. In this matter however, although no third party would be affected by the setting aside of the consent order, there is no existence of mutual mistake. Both Mr. Mohammed and Ms. Balkaransingh testified that they agreed to and signed the consent order. Mr. Mohammed then left the details to be worked out by Mr. Ahmed. As there was no evidence presented by Mr. Sagar of mutual mistake, the Court cannot set aside an agreement which has been reached between two consenting parties to end a dispute. The issue of contention is not over the terms of the consent order but over the valuation.

67. Both parties agreed to the terms of the consent order and both parties agreed to the interpretation of the two consent orders by Mr. Linden Scott. Both the Claimant and the Defendant were therefore *ad idem* to the terms of the Second Consent Order.

68. In the circumstances, the Claimant's claim is dismissed. Claimant to pay to the Defendant prescribed costs in the sum of Fifty thousand dollars (\$50,000.00)

Joan Charles  
High Court Judge