

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2017-01500

BETWEEN

SYLVIA BASDEO

Claimant

AND

JAYANT BASDEO

Defendant

Before the Honourable Madame Justice Margaret Y Mohammed

Dated the May 31, 2019

APPEARANCES:

Mr. Brent Hallpike instructed by Ms. Kamini Persaud Maraj Attorneys at law for the Claimant.

Ms. Kathyanne Campaine Attorney at Law for the Defendant

JUDGMENT

1. Unconditional love and trust are the ties, which bind a mother and her children. Any suggestion of a breach of such ties can poison this family relationship forever. The instant action concerns such allegations. The Claimant is the mother of the Defendant and two other children. The Claimant is seeking orders to set aside certain deeds and for the Defendant to account for monies in the Claimant's Scotiabank Account and her Unit Trust Account. The details of the orders which the Claimant seeks are:

- (a) To set aside the Deeds dated 30 September, 2016 and registered as DE201602365974, DE201602365732 and DE201602365853 (“the 2016 Deeds”) and for the properties conveyed therein to be re-vested in the Claimant absolutely;
- (b) To direct the Registrar General of Trinidad and Tobago to expunge the 2016 Deeds and to make such corrections and alterations as are required to give effect to such order;
- (c) An interim injunction restraining the Defendant from interfering/transferring/selling/disposing of or parting with the properties described in the 2016 Deeds until the determination of the Claim;
- (d) An account for the funds belonging to the Claimant and contained in her Scotiabank Limited Savings Account number 132013 (“the Scotiabank Account”) and her Unit Trust Account number 0463070-5 (“the Unit Trust Account”).
- (e) A declaration that the Defendant is a constructive trustee for the sums withdrawn from the Scotiabank Account and the Unit Trust Account without the Claimant’s knowledge and consent;
- (f) To direct the Defendant, repay to the Claimant the sums found withdrawn from the Scotiabank Account and the Unit Trust Account forthwith;
- (g) To return all the Claimant’s personal clothes, jewellery and apparel kept by the Defendant his servants and/or agents;
- (h) Damages for trespass to the person;
- (i) Interest and costs.

THE CLAIMANT’S ALLEGATIONS

2. The Claimant has made three allegations against the Defendant. The first allegation concerned the transfer of certain property, which belonged to the Claimant. The Claimant contends that on 22 October, 1970 she and her Deceased husband (“the Deceased”) became seised and possessed in fee simple of several parcels of land described in Deed registered as DE197012792088 (“the said lands”)¹. After the Deceased died in May 2015 the Claimant became the sole owner of the said lands.

¹ THE FIRST THEREOF comprising SEVEN ACRES TWO ROODS AND THIRTY-EIGHT PERCHES more or less (being portion of a larger parcel of land comprising 16 acres firstly described in deed registered as Number 1361 of 1944 known as “New Brunswick” and bounded on the North by lands of Smart Cooper on the South by lands of the heirs of William Hamilton on the East by lands of the heirs of William Hamilton on the East lands now or formerly of Thomas Allen and on the West by lands of the heirs of William Hamilton) delineated and coloured pink on the plan attached to the Deed DE197012792088 and bounded on the North by lands of Basdeo Lutchman Dipnarine and Sylvia Basdeo and by lands of the heirs of Samuel Hamilton on the South and East by Sixth Company Circular Road and on the West by lands of Basdeo Lutchman Dipnarine and Sylvia Basdeo.

THE SECOND THEREOF comprising THREE ACRES AND THIRTY-TWO PERCHES more or less delineated and coloured pink on the plan marked “B” to the Deed DE197012792088 and bounded on the North by lands of heirs of Samuel Hamilton on the South by lands of Frank Cooper now lands of Basdeo Lutchman Dipnarine and Sylvia Basdeo on the East by lands of heir of Samuel and on the West by lands formerly of John Hamilton but now of Marie Eugenia Anet and Maria Ana Anette.

THE THIRD THEREOF comprising NINE ACRES ONE ROOD AND SIXTEEN PERCHES more or less delineated and coloured pink on the plan annexed to Deed DE197012792088 and bounded on the North by lands of John Hamilton on the South by lands of the heirs of Fortune Cooper and by 6th Company Circular Road on the East by lands of Frank Cooper now lands of Basdeo Lutchman Dipnarine and Sylvia Basdeo and on the West by lands of Joseph Hamilton now lands of Massiah Hamilton and intersected by Hamilton Road 50 links wide which said parcel of land is secondly described as comprising 9a 3r 39 perches in deed registered as No. 1361 of 1944 and bounded on the North by Lot Number 30 of Section “A” of the American Settlement on the South Lot Number 9 of Section “B” of the American Settlement on the East by Lot 21 and on the West by Lot Number 31 of Section “A” of the American Settlement, which said three parcels of land form portion of a larger parcel of land described on the Assessment Rolls ZB-110 as comprising 29 acres 0 roods 32 perches and bounded on the North by lands of Sam Cooper on the South by lands of J. Hamilton on the East by lands of H. Jaikson and C. Bruno and on the West by lands of W. Hamilton.

3. In February, 2015 the Claimant suffered a stroke. She suffered with paralysis; inability to walk and carry out personal functions without assistance; inability to write or use her hands and difficulty walking without assistance. During this time the Claimant relied on the Defendant to care for her.

4. Sometime after 2016, the Claimant together with her daughter, Ingrid Basdeo (“Ingrid”) discovered that during the period of her illness, the Defendant without the Claimant’s knowledge or consent caused the properties contained in the 2016 Deeds to be transferred to him. The particulars of fraud which the Claimant has alleged against the Defendant with respect to the 2016 Deeds are:
 - (a) The signatures affixed to the 2016 Deeds are not the signature of the Claimant;
 - (b) The Claimant was unable to sign and could only assign her thumb print at the material time of the purported execution of the 2016 Deeds; and
 - (c) The Claimant received no consideration for the 2016 Deeds.

5. The second allegation which the Claimant has made against the Defendant concerned money from the Scotiabank Account and the Unit Trust Account. The Claimant alleged that prior to falling ill, she and the Deceased operated and managed a business out of their matrimonial home situated in Princes Town. She earned an income from the business and subsequently when she became a pensioner she received the sum of \$3500.00 per month as pension. Her earnings and pension were deposited in the Scotiabank Account and the Unit Trust Account. The Defendant was the Claimant’s only child who was residing with the Claimant and the Deceased. She gave the Defendant access to the Scotiabank Account and

the Unit Trust Account. The Claimant contends that the Defendant without her knowledge and consent withdrew monies from the Scotiabank Account and the Unit Trust Account.

6. The last allegation is that the Defendant ill-treated the Claimant after she became ill with the stroke. She contends that she relied on the Defendant to care for her but she was neglected and ill-treated by the Defendant and his wife, Nancy Basdeo (“Nancy”).

THE RESPONSE TO THE ALLEGATIONS

7. The Defendant admits that the properties described in the 2016 Deeds were transferred to him but he denied any fraud or that he exercised undue influence over the Claimant. He contends that the Claimant was able to and executed the 2016 Deeds.
8. The Defendant contends on 3 June 2011 that the Deceased instructed Attorneys at Law Messrs R.G. Bunsee & Associates to transfer to the Defendant four parcels of land but the said law firm misplaced the title deeds and were unable to complete the transaction. In 2011 the Deceased transferred to the Defendant with a life interest to the Claimant the lands described in deed registered as DE201101280792 (“the 2011 Deed”). This deed was for the property at 178 St Antoine Junction, Matilda, Princes Town where the Defendant and his family lived with the Claimant. On the 30 September 2016 the Claimant gave instructions to the said attorneys to prepare and register the transfer of the properties in two of the 2016 Deeds.
9. The Defendant contends that the conveyances in the 2016 Deeds represented gifts from the Claimant to him therefore there was no need

for consideration and the Claimant was able to sign, and affixed her signature on the 2016 Deeds when she visited the office of the said attorneys.

10. The Defendant's response to the allegation with respect to the Scotiabank Account and the Unit Trust Account was that the withdrawals from the Claimant's account was done at her request and to purchase medication and pay for medical expenses.
11. The Defendant denied that the Claimant was neglected and ill-treated. He also denied that the Claimant suffered a stroke. He contends that Dr Keith Silochan saw the Claimant from 1998 to 2016. He denied that the Claimant was completely incapable of performing personal functions herself; that her family was prevented from visiting her since they visited her two times per week and he also gave her a cell phone; that the Claimant needed physiotherapy. He said that the Claimant administered her medication as she was capable of doing so herself.

THE CLAIMANT'S REPLY

12. The Claimant denied that she visited Dr Silochan for the stroke. She stated that her medical problems during the time she lived with the Defendant and his wife included cancer, stroke, eye problems and physical disability, all of which the Defendant was aware of. She denied that she was capable of executing or appending her signature on 30 September 2016 and that she was only capable of using her thumb print as shown on her National Identification Card ("the ID Card") renewed in June 2016.

THE ISSUES

13. In order for the Claimant to obtain the orders the following must be determined in her favour:
- (a) Did the Claimant execute the 2016 Deeds?
 - (b) Did the Defendant and his family withdraw funds from the Scotiabank Account and Unit Trust Account without the Claimant's consent?
 - (c) Was the Claimant mistreated by the Defendant?
 - (d) Is the Defendant in possession of the Claimant's clothes, jewellery and apparel?

DID THE CLAIMANT EXECUTE THE 2016 DEEDS?

14. The Claimant's case was that the signature on the 2016 Deeds were not hers since subsequent to her falling ill with a stroke in February 2015 she executed documents by placing her thumbprint. In order to prove this allegation, the Claimant relied on the evidence of Mr Glenn Parmassar, handwriting expert, her daughter Ingrid and her sister Phulmattee Colley Rattan ("Ms Rattan").
15. The plea of non est factum was described by Lord Denning in **Gallie v Lee and Another**² as:
- "The case thus raises the important question: What is the effect in law when a man signs a deed, or a contract, or other legal document without reading it; and afterwards it turns out to be an entirely different transaction from what he thought it was? He says that he was induced to sign the document by the fraud of another, or, at any rate, that he was under a fundamental mistake about it. So he comes to the court and claims that he is not bound by it. In such a case, the legal

² [1969] 1 All ER 1062

effect is one of two: Either the deed is not his deed at all (non est factum): Or it is his deed, but it was induced by fraud or mistake (fraud or mistake). There is a great difference between the two. **If the deed was not his deed at all, (non est factum) he is not bound by his signature any more than he is bound by a forgery. The document is a nullity just as if a rogue had forged his signature. No one can claim title under it, not even an innocent purchaser who bought on the faith of it, nor an innocent lender who lent his money on the faith of it.**" (Emphasis added)

16. The Claimant did not give any evidence in this case. Although a witness summary was filed on her behalf, on the day of the trial, a medical was presented which indicated that the Claimant was unable to attend the trial since she was seeking medical treatment in the Netherlands and due the type of medical treatment she was unable to travel. I have not drawn any negative inference for the failure by the Claimant to give evidence at the trial to support her case since I was satisfied from the contents of the medical which was presented on her behalf that her unavailability was due to a valid reason which was out of her control.
17. Ingrid testified that in 2015 the Claimant suffered a stroke which caused her right side to be partially paralysed. The Claimant was unable to hold a pen to sign her name after the stroke. The Claimant was taken by Carmen Lall to visit Dr Ramdath and Dr Chen. In 2016 the Claimant was able to communicate and talk with great ease. In October, 2016 she spoke to the Claimant who told her she was at a Home and she begged her to take her out of it. The Defendant eventually took the Claimant out of the Home. The Claimant later told Ingrid that she was mistreated by the Defendant and his wife. Ingrid together with her aunt Ms Rattan, her husband and the

police removed the Claimant from the house where she lived with the Defendant and his family. From the Claimant's ID Card issued on the 24 June 2016 the Claimant's thumbprint was on the ID Card. Ingrid and Ms Rattan took the Claimant to the Medical Associates Central Hospital Limited for an examination.

18. In order to support her statements of the Claimant's medical condition since 2015, Ingrid attached as "A" to her witness summary, three medical reports which were part of the agreed bundle of documents. The relevant medical reports are the medical report dated 15 November 2016 from St Luke's Medical Clinic ("the Dr Chen Medical Report") and the medical report dated 22 December 2016 from Dr Enal Maharaj, psychiatrist ("the Dr Maharaj Medical Report"). The Dr Chen Medical Report indicated that the Claimant had suffered a stroke in mid-2015. He first saw the Claimant on 1 April 2015 when she was paralysed, drifting and unable to speak. He indicated that the Claimant had shown some improvement but she was incapable of making a will at that time. In November 2016 the Claimant was diagnosed as being forgetful and unable to declare the extent of her possession. She was assessed as being unfit to make her will and not of sound mind.
19. The Dr Maharaj Medical Report found that by the end of December 2016 the Claimant was of sound mind and did not lack testamentary capacity. Dr Maharaj indicated that the Claimant suffered from hypertension and impaired mobility due to a cerebro-vascular accident in February 2015.
20. Ingrid testified in cross-examination that she is 51 years old and since she was 17 years old she has lived in the Netherlands and that at present the

Claimant lives with her. She returned to Trinidad on 18 December, 2015 and she stayed at her mother's home at St Antoine Junction, Matilda Princes Town, where the Defendant and his family also lived. She also visited Trinidad in 2016 and left in January 2017. She stated that the Claimant told her that she did not sign the 2016 Deeds. She testified that in November, 2016 when she collected her mother from the Defendant, the former informed her of the issues she had while living with the Defendant. The Claimant also indicated to her that she did not visit the office of Mr Bunsee, attorney at law. She stated that for 2015 and 2016 the Claimant was unable to write.

21. Although Ingrid did not live with the Claimant, the Dr Chen Medical Report and the Dr Maharaj Medical Report supported the Claimant's case that since February 2015 she was ill with a stroke; the resulting effects of the stroke was impaired mobility and hypertension.
22. Ms Rattan is the Claimant's sister. She testified that after the Deceased passed away the Defendant and his family lived with the Claimant and she visited the Claimant. She stated that when the Claimant fell ill in 2015/2016 the Defendant prevented her from contacting the Claimant via telephone but she was able to visit her.
23. In cross-examination Ms Rattan confirmed that she visited the Claimant after she became ill in 2015. On these visits, most of the times the Claimant was in her bed. She went with Ingrid and the police to remove the Claimant from her home and she accompanied Ingrid and the Claimant for visits to the doctors.

24. Ms Rattan's evidence supported the Claimant's case that since February 2015 the Claimant has been ill to the extent that when Ms Rattan visited her after February 2015 she was in her bed.
25. Based on the evidence from the witnesses for the Claimant, sometime in 2015 the Claimant suffered a stroke which caused paralysis. Although by December 2016 the Claimant was of sound mind and had testamentary capacity she still had impaired mobility due to the stroke.
26. The Defendant testified that he and the Claimant visited the law office of Messrs R.G. Bunsee and Associates where the Claimant executed the 2016 Deeds. He stated that he took the Claimant for regular medical check-ups by Dr Silochan who also visited the Claimant at home. According to the Defendant, due to the Claimant suffering with osteoporosis, his wife, a private nurse and later personal caregiver helped her to shower and change her clothes. He said that the Claimant lived with him until 2 November, 2016 when his sister Ingrid with the assistance of two police officers took the Claimant away and that the Claimant was of sound mind and body up until she was taken away.
27. In cross-examination the Defendant denied that the Claimant suffered from a stroke. He said the Claimant could have written until she was taken away from them. He denied that the Claimant was incapacitated and that was the reason she required assistance from his wife and a nurse to shower. He stated that the Claimant used her hands but she walked slowly.
28. The Defendant indicated that he was not aware of the Dr Chen Medical Report and the Dr Maharaj Medical Report. He was referred to the Dr Chen Medical Report. He denied that the Claimant was paralysed and drifting

and unable to walk as stated in the Dr Chen Medical Report. He also denied that the Claimant was incapable of making a will since according to him, the Claimant was of sound mind and body during the time she lived with him.

29. He was also referred to the Dr Maharaj Medical Report. He denied that the Claimant had hypertension and he stated that the Claimant walked slowly. He stated that the Claimant knew what she was doing when she executed the 2016 Deeds. He denied his mother had cancer and other medical conditions.
30. The Defendant accepted in cross-examination that at paragraph 9 of his witness statement where he said that he and his mother visited Mr Bunsee, the attorney at law's office, he did not state that the Claimant executed the 2016 Deeds. However, he stated that he also signed the 2016 Deeds.
31. The Defendant was referred to paragraph 15 of the Defence where he alleged that in 2011, the Deceased transferred the property at 178 St Antoine Junction, Matilda, Princes Town to the him with a life interest to the Claimant. Counsel for the Claimant pointed out to the Defendant that the 2011 Deed did not mention a life interest. The Defendant indicated that he did not know about this because it was the Claimant who had made out the 2011 Deed. He said the Claimant did a Deed of Gift to him for the property at 178 St Antoine Junction, Matilda, Princes Town.
32. The Defendant admitted that although the 2016 Deeds stated that the Claimant is the Vendor and the Defendant the purchaser, he did not pay any consideration to the Claimant.

33. The Defendant stated that he was familiar with cursive writing. He stated that the Claimant's signature in block letters on the 2016 Deeds was her signature, and that she signed in block letters on her bank card but he did not present it as evidence in this trial. He accepted that in the attachment "JB7" to his witness statement, which was a copy of the Claimant's passport, the Claimant's signature in 2005 was not like that in the 2016 Deed.
34. The Defendant was referred to the signatures on the 2016 Deeds and then referred to the signature of the Claimant in his attachment "JB7" which was the Claimant's Application for a Free Birth Certificate. He stated that the signatures did not look different.
35. The Defendant was referred to a copy of the Claimant's ID Card issued on the 24 June 2016 which had her thumbprint. He said his wife applied for the new ID Card for the Claimant and he agreed that when the Claimant made the application on the aforesaid date, her thumbprint was used. Yet he maintained that the Claimant signed in September 2016.
36. In my opinion, the Defendant's evidence that the Claimant was still able to sign her name and thereby execute the 2016 Deeds in September 2016 was entirely discredited by his admission in cross-examination that he knew the Claimant used her thumbprint to sign her ID Card which was issued in June 2016. Further, even if the Defendant was unaware that the Claimant had suffered a stroke in February 2015, by his own admission he knew that her mobility was impaired and that she needed assistance. Therefore, it was more plausible that the Defendant was aware that the Claimant had an illness, which impaired her mobility.

37. Nancy is the Defendant's wife. She testified that the Claimant lived with the Defendant and her family until she was removed by Ingrid in November 2016. She stated that the Claimant suffered with osteoporosis and a nurse was hired to assist her in moving around and another personal care giver was later hired after the nurse died.
38. In cross-examination, Nancy stated that she did not know the Claimant had cancer but knew the doctors said she had a stroke. She said the Claimant needed assistance doing certain things but that she could write. She was aware of the 2016 Deeds transferring property to the Defendant. She was shown "JB7", the Claimant's Application for a Free Birth Certificate and passport and she recognised her signature on both documents.
39. She stated that the signatures of the Claimant in the 2016 Deeds and the 2011 Deed did not look the same. She recalled that Dr Silochan visited their house. She was not present at the attorney at law's office and so could not state with certainty that it was the Claimant's signature on the 2016 Deeds.
40. In my opinion, Nancy was unable to provide any cogent evidence on if the Claimant signed the 2016 Deeds at the attorney at law's office in September 2016 since by her own admissions she was not present. However, her evidence corroborated the evidence from the Claimant's witnesses and supported the Claimant's case that by September 2016 the Claimant had suffered a stroke and that she needed assistance to do things. I have placed little weight on Nancy's evidence in cross-examination that the Claimant could still write in 2016 since she failed to state the extent of this writing; if the Claimant could sign her name; whether the Claimant's writing was legible; and if her writing was similar or different from before the Claimant suffered the stroke.

41. Mr Ramnarine Dipchan-Lall (“Ramnarine”) testified that he is the husband of the Claimant’s younger sister, Carmen Lall. He stated that his wife lives less than 3 miles away from the Claimant and together with his wife he visited the Claimant once every week. When he last visited the Claimant in October 2016 the Claimant appeared to be happy and she did not make any complaints. The purpose of the Defendant calling Ramnarine as a witness was to support the Defendant’s case that the Claimant was not ill in 2016 and that she was contented.

42. However, the credibility of Ramnarine’s evidence in chief was discredited entirely in cross-examination. He admitted that although he never broke up with his wife he has another family at Rochard Douglas Road Barrackpore and that he lives at both the Barrackpore residence and with his wife who lives at #9 Bromage Road Princes Town. He admitted that both addresses were about 6 miles apart. He said that he started his second family between 2000 -2002 and at that time his second family lived about 4 houses away from his first family. He said that he operated his business as a farmer from the Princes Town address. He changed his evidence to state that he visited the Claimant twice a month and not once per week. He said that he visited the Claimant in her living room and he never visited her with his second wife. He denied that the Claimant had a stroke. According to Ramnarine the Claimant walked normal and she did not walk slowly and she did not need assistance.

43. In my opinion, it was more plausible that after Ramnarine became involved with his second family he did not visit the Claimant as often as he claimed since he lived about 6 miles away from her even if he continued to operate his business in Princes Town. It is also highly probable that if Ramnarine

visited the Claimant even twice a month after 2015, he would have noticed that she walked slowly and needed assistance which was the evidence of the Defendant and his wife Nancy.

44. Mr Ravi Bunsee is the attorney at law who prepared and witnessed the execution of the 2016 Deeds. He was summoned to Court to give evidence and he was questioned by Counsel for both parties. Mr Bunsee testified that he knew both parties as clients. He recalled preparing 4 Deeds for the parties but 3 Deeds were registered. According to Mr Bunsee, the first Deed he prepared was destroyed and the 3 subsequent Deeds he prepared were registered which were the 2016 Deeds. Mr Bunsee stated that originally there was 1 Deed which contained the 3 parcels of land which are in the 2016 Deeds but subsequently he was instructed that the parties wanted 3 separate Deeds. Mr Bunsee stated that he took the Claimant's instructions to prepare the 2016 Deeds and that the Claimant signed the instructions.

45. According to Mr Bunsee, a first Deed was prepared on the 12 November 2015 for the 3 parcels of land in the 2016 Deeds and the consideration in the 2015 Deed was for \$600,000.00 but in the subsequent 3 Deeds i.e. the 2016 Deeds, the respective consideration was \$300,000.00, \$200,000.00 and \$200,000.00 which was the Claimant's instructions. This was in contradiction to paragraph 16 of the Defence which pleaded that the Claimant gave instructions to prepare 2 of the 2016 Deeds in September 2016. He said that although the 2016 Deeds were for consideration, he did not receive a cheque and he did not see a cheque being necessary since it was a transaction between a mother and her son and the Claimant told him that she and her son had an arrangement for the consideration, so he did not know if consideration passed. He accepted that he did not prepare

any agreement for sale and he did not have any search on title conducted. He accepted that the Claimant never told him the transfer of lands was a gift.

46. Mr Bunsee also stated that he is aware of the 2011 Deed. He was referred to the 2011 Deed and the Claimant's signature. He was then referred to the signature on his instructions and he said they are different but not completely different. He said he received a copy of the Claimant's ID Card from his father, Mr Rattanlal Gool Bunsee's file but he did not personally retrieve it and he did not get an updated ID Card for the transactions for the 2016 Deeds. He agreed that the signature on the copy of the ID card which he had was different from the signature on the 2016 Deeds. He confirmed that he did not verify whether the Claimant's signature in September 2016 was consistent with her signature in November 2015. Despite the discrepancies in signature, he believed he did his due diligence on the Claimant. He agreed with the finding in the Glenn Parmassar Report that a person maintains the same handwriting save for certain exceptions.
47. Mr Bunsee stated that he was unaware that the Claimant had suffered a stroke in 2015 but he agreed that she was physically unwell. He was referred to the Dr Chen Medical Report where it stated the Claimant was found to be paralysed and drifting and unable to talk. When asked how she appeared to him he said "nothing jumped out" at him. He said she was of sound mind and body when she came to him to have the 2016 Deeds done. He did not know how the Claimant came into his office on May 2015 but she had to be assisted by her son.
48. In my opinion Mr Bunsee did not conduct a proper due diligence on the Claimant since based on the evidence of the Claimant's witnesses, the

Defendant, and Nancy, by 2016 the Claimant had difficulty with mobility. Therefore, it is highly probable that if he had observed the Claimant he would have noticed this physical change in the Claimant. In any event Mr Bunsee did not check for any updated identification information from the Claimant. If he did he would have discovered that the Claimant's ID Card had expired in May 2015; the Claimant had obtained a new ID Card issued on the 24 June 2016; and the Claimant had used her thumbprint to sign on the new ID Card. For these reasons I find that Mr Bunsee's evidence that the Claimant signed the 2016 Deeds in September 2016 to not be credible.

49. Mr Glenn Parmassar was appointed as an expert to the Court. He is a Forensic Document Examiner and Certified Accounting Specialist with over 30 years in the field. He stated that he examined the signatures of the Claimant on the 2016 Deeds together with a number of specimen signatures and writing. The specimen signatures of the Claimant which he examined were from a handwritten letter dated 20 November 2011 relating to a cheque for \$5,000.00 bearing specimen writing and signature; handwritten letter dated 20 November 2011 relating to a transfer for \$3,000.00 bearing specimen writing and signature; typed letter dated 29 December 2013 bearing a specimen signature; undated withdrawal form from People United Bank bearing a specimen signature; and a two page handwritten letter dated June 2007 bearing specimen signature.
50. Mr Parmassar concluded that it was highly probable that the signature "Sylvia Basdeo" on the 2016 Deeds were not executed by the same person who executed the specimen signatures.
51. Mr Parmassar was questioned by Counsel for both the Claimant and the Defendant. He confirmed his finding that the signature on the 2016 Deeds

were not executed by the Claimant. He stated that he had a limitation since he did not have additional specimen signatures and this limitation prevented him from coming to a fully conclusive finding. He accepted that none of the documents with the specimen signatures which he examined were official. However, he stated that they were contemporaneous and the most recent specimen was 29 December 2013. Mr Parmassar explained that there are variations in handwriting over time since it evolves. He did not agree that the signatures on the 5 documents with the specimen signatures were different. He explained that variation in a signature is normal but in the instant case the difference between the specimen signatures and the 2016 Deeds was authorship. He stated that examiners never see the person whose signature is being examined, signing in front of them.

52. Counsel for the Defendant submitted that Mr Parmassar's evidence is not reliable since the specimen signatures of the Claimant which he used to conduct his examination were not from official documents. Counsel relied on the ratio decidendi of Boodoosingh J in **Savitri Poodan v Prakash Ramnarine**³ where the Court expressed its distrust in relying on the sample signatures which were considered by the expert in that case.
53. In my opinion, the position taken in **Savitri Poodan** can be distinguished from the facts in the instant case. In **Savitri Poodan** there was a signature sheet containing 20 specimen signatures of the claimant/witness without proper certification that these were done by the claimant in front of her Attorney or the expert. In the instant case, the specimens sent to the expert included copious letters and other documents under the Claimant's hand.

³ CV 2014-00669

54. Further, the purpose of the expert evidence in **Savitri Poodan** was for corroboration while the purpose of Mr Parmassar's Report was for an independent examination of the Claimant's signature on the 2016 Deeds.
55. In my opinion a more appropriate approach which the Court is to take in assessing Mr Parmassar's findings is that stated by Des Vignes J (as he then was) in **Winston Woods v Lionel Woods an anor**⁴ at paragraphs 6, pages 2-3 where he stated:

"However, forgery is a serious allegation and in considering whether or not the burden of proof has been discharged, it is necessary and important not to rely solely on the demeanour of the witnesses at the trial but also to compare their viva voce evidence with (a) contemporary documents, if available; (b) the pleaded cases; and (c) to weigh up the inherent probability or improbability of something as serious as forgery having been procured

7. I have also borne in mind that the evidence of the expert witness, Ms. Koppenhaver, is not determinative of the issue in this matter. Her evidence is an expression of her opinion based on her comparison of the questioned signature on the deed with many sample signatures supplied to her by the parties. The Court is required to consider the grounds on which her opinion is based as well as such other evidence as may have any bearing on the issue and come to its own conclusion, based on its own careful visual examination of the questioned

⁴ CV 2012-00120

signature, as to whether the Claimant has proved that the questioned signature was forged.”

56. I have attached much weight to the findings by Mr Parmessar since it was not discredited in cross-examination and it was consistent with the medical evidence that after February 2015 the Claimant having suffered a stroke had impaired mobility.
57. In my opinion, the weight of the evidence supports a finding that in 2015 the Claimant suffered with an ailment which was most probably a stroke. The effects of the stroke impacted on the Claimant’s physical mobility and her ability to sign her name. By June 2016 the Claimant was signing documents using her thumbprint and not her signature as demonstrated by her new ID Card issued in June 2016. It was highly probable that the Defendant was aware that the Claimant was executing documents using her thumbprint since his own evidence was that his wife Nancy took the Claimant to renew the ID Card. Further, the unchallenged evidence of Mr Pamassar was that the signature on the 2016 Deeds was most probably not that of the Claimant. In any event, the Defendant’s admission that the 2016 Deeds were a gift to him demonstrated that there was no consideration paid to the Claimant for her transferring the properties in the 2016 Deeds to the Defendant. For these reasons, I have concluded that the Claimant did not execute the 2016 Deeds and they are to be set aside.

DID THE DEFENDANT AND HIS FAMILY WITHDRAW FUNDS FROM THE SCOTIABANK ACCOUNT AND UNIT TRUST ACCOUNT WITHOUT THE CLAIMANT’S CONSENT?

58. It was not in dispute that the Claimant had the Scotiabank Account and the Unit Trust Account; she lived in the same house with the Defendant and

his family and that they cared for her after she became ill with the stroke in the period February 2015 until she was removed by Ingrid in October/November 2016.

59. The evidence with respect to the withdrawal of funds from the Scotiabank Account and the Unit Trust Account were from Ingrid, the Defendant and Nancy.
60. Ingrid testified that the Claimant co-owned the bar with her husband. The Claimant is a pensioner who receives \$3500.00 a month and she has the Scotiabank Account and the Unit Trust Account. In late 2016 the Claimant told her that if she wanted to make a withdrawal from the Scotiabank Account she attended at the bank with her pass book. She never used the ATM card and she never gave consent to anyone to use any bankcard for her accounts. She always visited the bank by taxi because the Defendant and his wife refused to take her with her passbook when she wanted to withdraw money.
61. According to Ingrid after she removed the Claimant from the Defendant's care, she and Ms Rattan took the Claimant to the Medical Associates Central Hospital Limited. She also took the Claimant to Dr Chen for a check-up. The Claimant wanted to pay but when she went to Scotiabank, she was told that she did not have enough funds in the Scotiabank Account to cover the amount requested. The Claimant then requested a print out for the history of the Scotiabank Account. According to Ingrid whilst the Claimant was going through the statement she pointed out transactions to her amounting to almost \$20,000.00 conducted on her account which she said she did not know about. Ingrid said that the Claimant told her that she never authorized anyone to conduct any transactions on her behalf and

she never gave the ATM Card for the Scotiabank Account to anyone to use. Based on the Claimant's request, Ingrid and Ms Rattan reported the activity in the Scotiabank Account to the Fraud Squad on the Claimant's behalf.

62. Ingrid referred in her witness statement to the copy of the printout for the Scotiabank Account for the period 27 April 2016 to 3 October 2016; the account ledger for the Unit Trust Account for the period 9 May 2005 to 3 November 2016 and the receipt of the report from the Fraud Squad Were Numbers 13, 20 and 19 respectively in the Agreed Bundle of Documents.
63. In cross-examination, Ingrid stated that she went through the Claimant's statements for the Scotiabank Account and the Unit Trust account with the Claimant and she was aware of the costs of taking care of the Claimant.
64. The Defendant gave no evidence in his witness statement about the Scotiabank Account and the Unit Trust Account. In cross-examination the Defendant testified that he owns a bar and he drinks alcohol occasionally. He stated that he does not gamble and he has no gambling debt. He denied that he or his wife, Nancy spent the money from the Scotiabank Account and the Unit Trust Account. He is aware of the Unit Trust Account and he did not know about the Scotiabank Account belonging to the Claimant at Princes Town Branch but knew only of the account at another Scotiabank Branch in Bromage where the pension was credited to. He said he was aware that the Claimant had a nominee card but not an ATM Card.
65. The Defendant also testified in cross-examination that he never took out money from the Scotiabank Account but his wife Nancy withdrew money from it if the Claimant wanted money. He was shown the print out of the

Scotiabank Account. He explained that the monies were withdrawn by the Claimant for purchasing clothes and other supplies for herself as he took care of her otherwise. He said that the Claimant liked to shop a lot. He insisted that despite there being large withdrawals it was always the Claimant doing the withdrawals alone or with his wife.

66. Nancy also did not address the issue of the Scotiabank Account and the Unit Trust Account in her witness statement. In cross-examination, she stated that in 2016 she used to gamble, with her husband, approximately \$3000.00 a week sometimes. She never went to Scotiabank with the Claimant to withdraw money. She said that the Claimant had an ATM card for the Scotiabank Account and not a nominee card. She said she did not take any of the Claimant's money to gamble; she did not spend any money on herself but she sometimes took money from the Scotiabank Account to buy things for persons living in the house. She stated that the Claimant never took out money by herself at the bank, rather she did it for her.
67. She confirmed that the Scotiabank Account is at the Princes Town Branch and that there is no account at Bromage. She was referred to the Scotiabank Account history. She said the Claimant did not shop a lot and she did not need to withdraw large quantities of money. She admitted that she may have withdrawn some of the monies from the Scotiabank Account as shown in the account history. She said sometimes they paid but sometimes the Claimant paid for groceries and other things. She said she never used the ATM card without the Claimant's permission.
68. There were several material inconsistencies between the evidence of the Defendant and his wife Nancy on the Scotiabank Account. She said that she and her husband only stopped gambling in 2016 which was inconsistent

with his evidence that he was not a gambler. She admitted that they had access to the ATM card for the Scotiabank Account but the Defendant denied this. Nancy also admitted that the funds from the Scotiabank Account was used to purchase items at Pricesmart for the benefit of the family and that the Claimant did not shop for clothes a lot which was in contradiction to the Defendant's evidence that he did not use her money but that the Claimant liked to shop. Nancy also stated that she took out money from the Scotiabank Account with the Claimant's authority but the Defendant stated that Nancy did not use the Claimant's money.

69. In my opinion, these inconsistencies demonstrated that they were not witnesses of truth when they denied that they did not spend the Claimant's money from the Scotiabank Account. In my opinion, since Nancy had access to the Scotiabank Account via the ATM Card and it is highly probable that she withdrew money which she did not use to meet the Claimant's needs but she spent it on herself and her family.
70. However, there was no evidence from the Claimant's witnesses that the Defendant or his family had access to the Unit Trust Account with an ATM Card or otherwise. According to the Statement for the Unit Trust Account for the period 9 May 2005 to 3 November 2016 only the Claimant's name was on the account. There were withdrawals before the Claimant became ill in February 2015 but after that date until September 2016 there was no activity where the balance was \$8.49. For this reason, I am unable to conclude that the Defendant used the funds in the Unit Trust Account without the Claimant's permission.

WAS THE CLAIMANT MISTREATED BY THE DEFENDANT?

71. One of the relief which the Claimant seeks is an order for damages for trespass to the person.
72. The Claimant alleged that after she suffered the stroke in February 2015, she was mistreated by the Defendant and his family. To prove this allegation, she relied on the evidence of Ingrid, Ms Rattan and the medical report from Medical Associates dated the 7 November 2016 (“The Medical Associates Medical Report”).
73. Ingrid testified that in late 2016 the Claimant told her that in 2015 she pleaded for medical help but was left on the cold floor for an hour and she was neglected and starved by the Defendant. The Defendant never took her to a doctor when she suffered the stroke. She went with Carmen Lall by a hired car to Dr Ramdath and Dr Chen. In October 2016 she spoke to the Claimant who told her she was at a Home and she begged her to come get her. The Defendant eventually took her out of the Home. The Claimant later told Ingrid that she was mistreated by the Defendant and his wife. She together with her aunt Ms Rattan, her husband and the police went to the Claimant’s residence to get her. She and Ms Rattan took the Claimant to the Medical Associates Central Hospital Limited where the Claimant was examined and she obtained the Medical Associates Medical Report.
74. The Medical Associates Medical Report stated that when the Claimant was examined she had bruises and swelling on both knees and that she suffered with hypertension.
75. In cross-examination, Ingrid confirmed that the Claimant told her of the living conditions with the Defendant over the phone. She said that she

spoke with the Claimant over the telephone when the Claimant was staying at the Heavenly Home.

76. In my opinion, the findings in the Medical Associates Medical Report supported a conclusion that the bruises and swelling on the Claimant's knees were as a result of neglect or mistreatment by the Defendant and his family since she lived with them before she was examined and found to have such injuries.
77. The evidence of Ms Rattan was that after the Claimant became ill with the stroke she was able to visit the Claimant but not speak with her on the telephone. She also said that she was aware that the Defendant had placed the Claimant in a Home. Ms Rattan testified that she never saw a nurse or maid. Nancy cared for the Claimant and the house. She said the Claimant decided she wanted to leave the house she lived in with the Defendant in 2016. She was able to visit the Claimant when she wanted and most times she would see her in her bed or wherever she was at the time downstairs but she did not have access to the house itself.
78. There was no evidence from Ms Rattan that she observed any bruises or swelling on the Claimant when she visited her. It was highly plausible that since the Claimant was in bed when Ms Rattan visited her she could not have noticed any injuries to the Claimant.
79. The Defendant testified that he, his wife, a private nurse and later a personal caregiver took care of the Claimant. He said that he took the Claimant for regular medical check-ups by Dr Silochan who also visited the home to give her medical attention. The Claimant lived with him until 2 November 2016 when his sister Ingrid with the assistance of two police

officers took the Claimant away. In cross-examination the Defendant denied he kept the Claimant away from the family and he denied her use of the phone. He was also referred to the Medical Associates Medical Report and he denied the Claimant had bruises on both knees and swelling of knees and hypertension when she left his home.

80. Nancy testified that she took care of the Defendant until 2 November 2016. She employed a part time housekeeper who worked 3 times a week. The Defendant started to suffer with osteoporosis and a nurse was hired to assist her in moving around. Another personal care giver was later hired after the nurse died. She prepared all meals in the house and the Defendant always ate with them. In cross-examination she accepted that the Claimant needed assistance.
81. Mr Lall testified that he visited the Claimant once a week. He last visited her in October 2016 when she seemed happy and she did not make any complaints. In cross-examination he stated that when he visited the Claimant she was usually in the living room. He said that the last time he was by the Claimant is sometime at the end of October 2016. He spoke to her and she was jolly.
82. Based on the totality of the evidence, it was more probable that the Claimant was neglected or mistreated by the Defendant while she was in his care and this is when she suffered the swelling and bruises to her knees. I have decided to award the Claimant the sum of \$ 20,000.00 as damages for trespass to her person since apart from the injuries, there was no evidence of the resulting effects of the said injuries.

IS THE DEFENDANT IN POSSESSION OF THE CLAIMANT'S CLOTHES, JEWELLERY AND APPAREL?

83. Although the Claimant pleaded that she sought an order for the return of all personal clothes, jewellery and apparels kept by the Defendant his servants and/or agents, this issue was not addressed by Counsel for the Claimant in the closing submissions.
84. In any event, there was no evidence from the Claimant's witnesses of the nature and extent of the personal items which they sought to be returned. In particular, there was no evidence on the type of jewellery which the Claimant alleged she had which she left at the Defendant's home and which she wanted returned. In my opinion, in the absence of such details I am not able to make any order as requested by the Claimant.

COSTS

85. There are two issues of costs to be dealt with. The costs of the action and the costs for the Glenn Parmassar's Report.
86. The Claimant having succeeded in the action I have no exceptional reason to depart from the general rule that costs is to follow the event. I order the Defendant to pay the Claimant's costs in the sum of \$14,000.00.
87. On the 11 January 2019 I granted permission to appoint Mr Parmassar as an expert and I deferred the issue of the cost of the application and for his services in the preparation of the report and his attendance in Court. I am satisfied that Mr Parmassar's expertise was essential in determining one of the issues in the action and as such I have decided to order the Defendant to pay the Claimant the costs of the application filed 1 November 2018, the costs for Mr Parmassar's preparation of the Report and his attendance in Court at the trial. These costs are to be assessed by the Registrar in default of agreement.

CONCLUSION

88. I have found that the weight of the credible, cogent evidence supports a finding that in 2015 the Claimant suffered with an ailment which was most probably a stroke. The effects of the stroke impacted on the Claimant's physical mobility and her ability to sign her name. By June 2016 the Claimant was signing documents using her thumbprint and not her signature as demonstrated by her new ID Card issued in June 2016. It was highly probable that the Defendant was aware that the Claimant was executing documents using her thumbprint since his own evidence was that his wife Nancy took the Claimant to renew the ID Card. Further, the unchallenged evidence of Mr Pamassar was that the signature on the 2016 Deeds was most probably not that of the Claimant. In any event, the Defendant's admission that the 2016 Deeds were a gift to him demonstrated that there was no consideration paid to the Claimant for her transferring the properties in the 2016 Deeds to the Defendant. For these reasons, I have concluded that the Claimant did not execute the 2016 Deeds and they are to be set aside.
89. Based on numerous inconsistencies in the evidence of the Defendant and Nancy I have found that they were not witnesses of truth when they denied that they did not spend the Claimant's money from the Scotiabank Account. There was however no evidence of withdrawals from the Unit Trust Account after February 2015 when the Claimant suffered the stroke. I therefore declare that the Defendant is a constructive trustee for any sums withdrawn from the Scotiabank Account without the consent of the Claimant. The Defendant is to file an account for the funds belonging to the Claimant and contained in her Scotiabank Account within 28 days of this order. After the Scotiabank Account has been surcharged and falsified,

the Defendant is directed to repay to the Claimant the sums found withdrawn from the said account forthwith.

90. Based on the totality of the evidence, it was more probable that the Claimant was neglected or mistreated by the Defendant while she was in his care and this is when she suffered the swelling and bruises to her knees. This is supported by the findings in the Medical Associates Medical Report in which she was examined immediately after being removed from the Defendant's care and found to have such injuries. I have therefore ordered that the Defendant pay to the Claimant the sum of \$20,000.00 as damages for trespass to her person.
91. I have found that there was no evidence from the Claimant's witnesses of the nature and extent of the personal items which they sought to be returned. For this reason, no order is made to return such personal items.

ORDER

92. The Deeds dated 30 September, 2016 and registered as DE201602365974, DE201602365732 and DE201602365853 are set aside.
93. The Registrar General of Trinidad and Tobago is directed to expunge the Deeds DE201602365974, DE201602365732 and DE201602365853 and to make such corrections and alterations as are required to give effect to this order.
94. It is declared that the Defendant is a constructive trustee for any sums withdrawn from the Scotiabank Account without the consent of the Claimant.

95. The Defendant is to file an account for the funds belonging to the Claimant and contained in her Scotiabank Limited Savings Account number 132013 within 28 days of this order.
96. After the Scotiabank Account has been surcharged and falsified, the Defendant is directed to repay to the Claimant the sums found withdrawn from the said account forthwith.
97. The Defendant to pay the Claimant the sum of \$ 20,000.00 damages as trespass to her person.
98. The Defendant to pay the Claimant's costs of the action in the sum of \$14,000.00.
99. The Defendant to pay the Claimant the costs of the application filed 1 November 2018; the costs for Mr Parmassar's preparation of the Report and his attendance in Court at the trial. These costs are to be assessed by the Registrar in default of agreement.

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Margaret Y Mohammed
Judge