

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2018-01661

IN THE MATTER OF THE WILLS AND PROBATE ACT CHAP 9:03

AND

IN THE MATTER OF PART 71 OF THE CIVIL PROCEEDINGS RULES 1998 (AS AMENDED)

AND

**IN THE MATTER OF THE ESTATE OF SONIA ROOKMIN HARRYPERSAUD OTHERWISE SONIA
ROOKMIN HARRYPERSAD BOHAL OTHERWISE SONIA ROOKMIN HARRYPERSAUD-BOHAL
OTHERWISE SONIA HARRYPERSAUD BOHAL OTHERWISE SONIA ROOKMIN BOHAL
(DECEASED)**

BETWEEN

INDRA HARRYPERSAD

ALSO CALLED INDRANI HARRYPERSAUD-MAHARAJ

Claimant

AND

BENSON HARRIPERSAD

**(in his personal capacity and as executor of the estate of Sonia Rookmin Harrypersaud
otherwise Sonia Rookmin Harrypersad Bohal otherwise Sonia Rookmin Harrypersaud-
Bohal otherwise Sonia Harrypersaud Bohal otherwise Sonia Rookmin Bohal (deceased)**

Defendant

Before the Honourable Madame Justice Margaret Y Mohammed

Date of Delivery February 18, 2021

APPEARANCES

Mr. Shastri Roberts instructed by Mr. Allison Roberts Attorneys at law for the Claimant.

Mr. David Mark Kidney Attorney at law for the Defendant.

JUDGMENT

Background

1. The Claimant and the Defendant are siblings who do not share a cordial relationship. The deterioration of their relationship was accelerated after the passing away of their mother, Sonia Rookmin Harrypersaud otherwise Sonia Rookmin Harrypersad Bohal otherwise Sonia Rookmin Harrypersaud-Bohal otherwise Sonia Harrypersaud Bohal otherwise Sonia Rookmin Bohal (“the Deceased”) who died on 3 June 2016. The Deceased also had other children, namely Andy Harrypersad (“Andy”) (who joined as an interested party in these proceedings), Kennedy Harrypersad, Milton Harrypersad, Fidel Harrypersaud and Roy Harrypersad.

2. The Deceased died testate leaving a Will dated 18 October 2013 (“the Will”), wherein she appointed the Defendant as the executor of her estate; and she gave the one real property she owned, a property situate at No 4 St Michael Road, Tacariagua (“the property”) to the Claimant, Andy and Mark Harripersad, a son of the Defendant and who has not formally joined the proceedings but who attended the hearings. The residue of the estate was given to the Defendant.

3. At the time the instant action was instituted the Claimant sought the following orders:
 - (a) A determination of the entitlement of the Claimant as to her share of and in the estate of the Deceased.
 - (b) An order requiring the Defendant to distribute the assets of the estate of the Deceased in accordance with the terms of the Will.
 - (c) An order requiring the Defendant to furnish and verify the accounts relating to the estate of the deceased including all properties and/or business entities from which income is derived and accounts standing to the credit of deceased in commercial banks and other financial institutions.
 - (d) An injunction restraining the Defendant whether by himself, his servants and/or agents from selling and/or mortgaging and/or in anywise dealing with premises situate at and known as No. 4 St. Michael Road, Tacarigua,.
 - (e) Costs.

(f) Such further and/or other relief as the nature of the case may require.

4. In support of her Claim, the Claimant filed an affidavit¹ (“the Claimant’s Affidavit”), a supplemental affidavit² and an affidavit in reply³ (“the Claimant’s Affidavit in Reply”). The Defendant filed an affidavit in response⁴ (“the Defendant’s Affidavit”).
5. At the first hearing the parties agreed that the property would not be sold pending the determination of the matter unless there was full agreement by all the parties. On 21 September 2018, the Court ordered the Defendant to file and serve the account for the estate of the Deceased and that the said account be falsified and surcharged by the Registrar of the Supreme Court before 30 November 2018. The Defendant filed the Statement of Estate Accounts (“the Statement of Estate Account”) in proper form on 7 February 2019. Thereafter, the Claimant filed her objections⁵ (“the Claimant’s Objections”) and the Defendant filed his response⁶ (“the Defendant’s Response”). On 20 February 2020, the parties entered a consent order with respect to certain items⁷ before the Registrar and they agreed that the remaining unresolved items and costs would be determined by this Court.

The Statement of Estate Account

6. The Statement of Estate Account was divided into six categories. The first subheading was “Disbursements of Executor” which consisted of items 1 to 24. The second category was “Income and Expenses due from Indrani Harrypersaud-Maharaj” which were items 25 to 33. The third category was “Administration Expenses” which were items 34 to 45. Under the fourth category of “Income of Estate” there were items 46 to 52. Items 53 to 59 were in the fifth category under a heading “Value of items removed by Indrani Harrypersaud-Maharaj to be repaid” and the last heading was “Real Estate” which was the Tacarigua property.

¹ 7 May 2018

² 1 June 2018

³ 10 September 2018

⁴ 3 September 2018

⁵ Page 421 of the Trial Bundle

⁶ Page 426 of the Trial Bundle

⁷ Items 34, 39, 40 and 45 (2 invoices agreed, 2 invoices not agreed)

Disbursements of Executor

7. It was submitted on behalf of the Claimant that items 1 to 9, concerned the money which was spent on caring for the Deceased during the period 4 June 2015 to 24 December 2015 and that these items are not to be paid from the Estate, as the Defendant had access to a joint account (“the joint account”). The joint account was held in the name of the Defendant and the Deceased, and at that time it would have had adequate funds to pay for those expenses. Counsel also submitted that the sum of \$6000.00 from the National Insurance Scheme (“NIS”) and Pension, due to the Deceased, were deposited in the joint account on a monthly basis and at the time of her passing, the Deceased had over \$300,000.00 from which payment for her medicals should have been made. Counsel asserted that the Defendant had admitted in the Defendant’s Affidavit that his name was placed on the joint account to “assist her in handling her finances”.

8. Counsel for the Defendant submitted that the sums set out in items 1 to 9 were paid by the Defendant from his personal funds and as such he is entitled to be reimbursed for the said sums from the estate of the Deceased. It was also argued on behalf of the Defendant that the money in the joint account was intended by the Deceased to be a gift for the Defendant, as he is not a beneficiary of the Estate of the Deceased.

9. In my opinion, the sums which the Defendant has stated at items 1 to 9 as Disbursements of Executor, are not to be paid by the Estate of the Deceased for the following reasons. At paragraphs 8 and 10 of the Defendant’s Affidavit⁸ he stated that:

“8. In or around 2013, my mother replaced the Claimant as a signatory on her bank account with Republic Bank with me. My mother told me at the time and I verily believe that was because she had concerns of how the funds in her account were being spent... .

10. I also managed and provided the financing for the care and managed the property on my mother’s behalf”.

⁸ Page 94 of the Trial Bundle

10. The Defendant did not refer to the application⁹ he made under the Mental Health Act to be appointed Committee of the Deceased who was at that time the patient ("the Defendant's Mental Health Application"). The Claimant's Affidavit in Reply referred to the Defendant's Mental Health Application, which was filed two months before the Deceased passed away and stated grounds b), c) and d)¹⁰ that:

"b) The Applicant, before the Patient's illnesses managed her finances and is a co-signatory of her account.

c) The Applicant, requires access to the Patient's premises located at No. 4 St. Michael Road, Tacarigua, for the purposes of generating further income, as well as access to her bank accounts to assist the Applicant in paying the increasing medical costs and daily expenses incurred by the Applicant in caring for the Patient.

d) The Applicant is one of the next of kin of the Patient and is willing and capable of administering and managing the property of the Patient for the benefit of the Patient in meeting the costs of her daily care and upkeep, nursing and medical expenses."

11. The Defendant swore an affidavit¹¹ ("the Defendant's MHA Affidavit") in support of the Mental Health Application. At paragraph 15 of the Defendant's MHA Affidavit¹² he stated:

"15. My only concern is for the welfare and care of the Patient. Once I am appointed receiver/Committee of her property I will use the income to benefit her in the payment of her daily expenses, nursing and medical care which she requires so that she is not neglected or wanting for anything. I have my own expenses and it is financially burdensome for I alone to carry the responsibility

⁹ CV 2016-01236

¹⁰ Page 456 of the Trial Bundle

¹¹ Filed on 16 April 2016.

¹² Page 463 of the Trial Bundle

indefinitely, when there is an available source of income from the rental of the Patient's property which can be used to benefit her.”

12. Therefore, at the time the sums were spent by the Defendant in items 1 to 9, the Deceased was alive. The Defendant was a co-signatory of the joint account and the purpose for him seeking the order under the Mental Health Application, was to have access to the funds in the joint account in order to care for the Deceased. The Defendant has not disputed in the Defendant's Affidavit that the joint account did not have adequate funds to pay for the expenses which were incurred. Indeed the Bank Statements of the joint account, at pages 477 to 526 of the Trial Bundle, which were furnished based on an order of this Court, supported the Claimant's assertion that the sum of \$6,000.00 was deposited into the joint account each month as NIS and Pension for the Deceased. These statements also supported the Claimant's assertion that on 4 July 2016, which was shortly after the Deceased passed away, the balance in the joint account was \$341,178.06¹³. The Defendant has also not stated that at the time the expenses were incurred, he did not have access to the joint account. In my opinion, the joint account had adequate funds and the Defendant had access to same in order to pay the expenses incurred at items 1 to 9, as such there was no basis for him to spend his personal funds on those expenses.
13. In any event, the funds in the joint account were not a gift as submitted by Counsel for the Defendant, as this was not the Defendant's evidence. The Defendant's evidence in the Defendant's MHA Affidavit, was that he wanted access to the money in the joint account in order to care for the Deceased. He did not state that the money in the joint account was a gift from the Deceased to him.
14. Counsel for the Claimant argued that items 10, 11 and 12 of the Statement of Estate Account, are not a part of the expenses of the Estate of the Deceased as the application made by the Defendant under the Mental Health Act, was made during the lifetime of the Deceased and those items should have been paid from the joint

¹³ Page 521 of the Trial Bundle.

account which the Defendant had access to; the said application was unnecessary; and the Defendant did not consult with the siblings before he made the application.

15. It was submitted on behalf of the Defendant that he is entitled to be reimbursed by the Estate of the Deceased for the sums set out at items 10 and 12, as the application under the Mental Health Act was necessary because the joint account was an account which both parties had to sign to access the funds. Counsel for the Defendant submitted further that the Claimant and his siblings had been advised and consulted with before the said application was made. With respect to item 11, the Defendant's position was that he purchased the items described therein, as the Deceased resided with him at that time.
16. According to paragraph 4 of the Defendant's MHA Affidavit¹⁴ he had obtained the consent of his brothers Fidel Harrypersaud and Andy which he exhibited. In my opinion, even if the Defendant had consulted with his siblings this is not relevant, as the purpose for the Defendant making the Mental Health Application was to obtain an order of the Court, which he did, in order to access the joint account to care for the Deceased. The Defendant having been appointed Committee for the then patient, the Deceased, was supposed to use the funds in the joint account to pay the costs incurred for the Mental Health Application and as such he is not entitled to be reimbursed from the Estate for the sums claimed at items 10, and 12. Similarly, the Defendant is also not entitled to be reimbursed from the sum claimed in item 11, as the Deceased was alive at that time and he had access to the joint account from which those sums ought to have been paid.
17. Items 13 to 24 concerned the monies spent on the funeral expenses of the Deceased. It was submitted on behalf of the Claimant that this ought to have been paid out of the funeral grant obtained by the Defendant and if it was not, it should have been paid from the joint account.

¹⁴ Page 460 of the Trial Bundle

18. Although the Defendant's Affidavit is silent on these items, he stated in the Defendant's Response that he had received a funeral grant in the sum of \$7,500.00 and that the total funeral expenses exceeded this sum.
19. I agree with the Claimant that the funeral grant which was received was to be used for the payment of the expenses associated with the funeral of the Deceased. The total sum of items 13 to 24 is \$15,250.90. Therefore, the costs associated with the funeral was in excess of the funeral grant by \$7750.90. However, I do not agree that this balance ought to have been paid from the joint account. In my opinion, upon the death of the Deceased, her ownership of the funds in the said account ceased and the Defendant was solely entitled to the use of the funds as the legal and beneficial owner. For these reasons, the costs associated with the funeral are to be paid by the Estate of the Deceased. Therefore, the balance of \$7750.90 is to be paid to the Defendant from the said estate.

Income and Expenses due from Indrani Harrypersud-Maharaj

20. It was submitted on behalf of the Claimant that the sums claimed by the Defendant at items 25 to 33 of the Statement of the Estate Account, should not be allowed by the Court. In support of this assertion, Counsel stated that the Defendant had without lawful authority, wrongfully evicted the Claimant from the property and the sums claimed therein should be borne by him personally.
21. Counsel for the Defendant submitted that the sums claimed at items 25 to 33 of the Statement of the Estate Account, were incurred due to the actions of the Claimant, as her changing of the locks on the property interfered with his fiduciary duty. He contended that the Claimant did not live on the property and by changing the locks on the property she had interfered with his fiduciary duty as the executor of the Estate of the Deceased, to secure, maintain and care for the property and was required access to same. It was further argued that the Claimant had no entitlement to the property until the Deed of Assent.

22. At paragraph 5 of the Claimant's Affidavit, she referred to two emails dated 3 and 4 January 2017,¹⁵ which were written by her Attorney at law to the Defendant's Attorney at law wherein she stated that she had been living on the property for "the last 10-12 years and she is currently living there". In the letter dated 3 January 2017, the Claimant indicated that she did not feel comfortable giving the Defendant the keys to the property because of his past behaviour and threats to her. In the said letter, the Claimant had also indicated that the Defendant has been a bailiff/ process server for several years and had attempted to use his knowledge of Court personnel and the police to intimidate her. The Claimant also indicated that she was continuing her possession of the property. In the letter by the Claimant's Attorney at law dated 4 January 2017, it stated that a letter dated 21 December 2016 which was written by the Defendant's Attorney at law was addressed to the Claimant at the same address of the property and that the Defendant's son and daughter-in-law, who are not beneficiaries of the Estate of the Deceased have been living on the property for the past 8 years and continue to do so. The Claimant also deposed at paragraph 5 of the same affidavit that in the Defendant's MHA Affidavit, he had stated that she was living at the property.
23. The Defendant's Affidavit stated that the Deceased passed away on 3 June 2016 and he obtained the Grant for the Deceased's Estate on 30 December 2016. He also stated that while the Deceased was alive the Claimant resided on the property. However, sometime at the end of 2015, he indicated to the Claimant who was no longer living on the property of his intention to rent the top floor of the property to gather funds to care for the Deceased. The Claimant had initially agreed but a few days later she informed him that she had changed her mind.
24. At paragraph 15 of the Defendant's Affidavit he stated that he had to access the property on three occasions. The first occasion was on 31 March 2016, when he accessed the property with the intention of preparing it to be leased, in order to obtain money to assist with the Deceased's care. On that occasion he had the locks changed

¹⁵ Pages 23 to 29 of the Trial Bundle.

and hired a private security guard. The second occasion was on or around 19 December 2016, when he had learnt that the Claimants were removing items from the property namely, an air condition unit, two chests of drawers and a bed, and in response to same he hired a private security firm to secure the property. The third and final occasion was on 9 March 2018, when he entered the property for the purpose of cleaning and having an inspection done by Messrs. Linden Scott & Associates, in order to have a valuation report prepared.

25. In the Claimant's Affidavit in Reply, she deposed at paragraph 11 that on 31 March 2016, while she was at work, her son left the property and upon his return he was prevented from entering it, as the gate had been locked and the Defendant was inside. As a result of this, she made a report to the police station and instructed her Attorney at law to write to the Defendant urging him to refrain from interfering with them.
26. Items 25 to 33 were costs incurred by the Defendant on 31 March 2016, 1 September 2016, 5 July 2017, 22 August 2017, 20 December 2017, 17 March 2018, 21 April 2018 and 25 May 2018.
27. Section 10(1) and (2) of the **Administration of Estate Act**¹⁶, states:
 10. (1) Where any real estate is vested for any term or estate beyond his life in any person without a right in any other person to take by survivorship, it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his executor or executors or the administrator or administrators of his estate (who and each of whom are included in the term "representative") as if it were a chattel real vesting in them or him. And if such estate is held upon any trust or by way of mortgage, it shall likewise legally devolve on the representative of any person deceased in whom it has been vested during his lifetime.

¹⁶ Chapter 9:01

(2) This section shall apply to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.

28. In **Tolley's Administration of Estates**,¹⁷ legal personal representatives are described as having very wide powers of dealing with property. These powers are not only exercisable for the purposes of administration, but also during a minority of any beneficiary, or the subsistence of any life interest, or until the period of distribution arrives.

29. In **Halsbury's Laws of England**,¹⁸ paragraph 634 states that:

“An executor may generally do before probate all things which pertain to the executorial office. He may pay or release debts, get in and receive the testator's estate, assent to a legacy, and generally intermeddle with the testator's goods. He may distrain for rent, demise, grant a next presentation or release an action.”

30. Additionally, **Halsbury's Laws of England**¹⁹, at paragraph 922 states that:

"The property which devolves on the personal representative is held by him in right of the deceased and not in his own right. The entire ownership of the property comprised in the estate of a deceased person, both legal and equitable, which remains unadministered is in the deceased's legal personal representative for the purposes of administration. He has full control of all the items making up the estate and can give a good title to them. The beneficiaries have no specific interest in any of the property comprising the residue until the residue has been ascertained in due course of administration, but they do have a general title to residue, and this general title constitutes a transmissible interest which is not affected by the completion of the administration, so that their interests remain the same before and after the administration is complete. A beneficiary in possession is not a trespasser, but has no answer to the personal representative's claim for possession for the purposes of the administration; he must give

¹⁷ Tolley's Administration of Estates, Issue 56 (October 2020), Part G1.26

¹⁸ Halsbury's Laws of England, Volume 103 (2016), Paragraph 634.

¹⁹ Halsbury's Laws of England, Volume 103 (2016), Paragraph 922.

possession on receipt of a notice to quit, but is not liable for mesne profits until after the notice has expired."

31. The Defendant's responsibility as the executor of the Estate of the Deceased arose upon the death of the Deceased on 3 June 2016, therefore, any expenses he incurred prior to that such as item 25 is not properly incurred by the Estate of the Deceased.
32. With respect the expenses incurred at items 26 to 33, the reasonableness of the conduct of the Claimant and the Defendant as executor, in the instant case, is material. The expenses cover the period 1 September 2016 to 25 May 2018. According to paragraphs 3 to 15 of the Claimant's Affidavit, the first time the Claimant became aware of the Will was by a letter dated 1 November 2016. From that date to March 2018, the Claimant's Attorney at law sent several correspondence to various Attorneys at law who were representing the Defendant concerning matters related to the property and a statement of account for the Estate of the Deceased. In those letters, the Claimant's Attorney at law also indicated that they were willing to meet to resolve any contentious issues. In particular, exhibit "C" of the Claimant's Affidavit was a letter dated 21 December 2016, from the then Attorney at law for the Defendant wherein it was asserted that the Claimant, who did not live on the property was denying him access to it which prevented him from complying with his duty to secure and preserve the property which was part of the Estate of the Deceased. The Claimant's response was that she lived on the property and that due to the Defendant's conduct she did not feel comfortable giving him keys to access the property and that they were willing to meet the Defendant and his Attorney at law to resolve any issues.
33. In my opinion, although the Claimant is one of the beneficiaries of the property and she was living on the property with the approval of the Deceased and the knowledge of the Defendant, the latter was entitled to have access to the property as the executor of the Estate of the Deceased. He was also entitled to take steps to preserve the property as he was accountable to all three beneficiaries of the property. For these

reasons the expense which he incurred at items 26 to 33 are to be paid to him from the Estate of the Deceased.

Administration expenses

34. It was submitted on behalf of the Claimant that the sums claimed by the Defendant at items 35 to 38 are not relevant to the Estate of the Deceased; they are unnecessary; and the Defendant voluntarily incurred these expenses. As it related to items 41 to 44, Counsel submitted that those expenses are not applicable to the Estate of the Deceased and the sum reflected in item 45 for 2015, should not be allowed as the Deceased was alive and the Deceased had money in her joint account that could have been used to pay the insurance.

35. The Defendant's position with respect to items 35 to 38 was the same as items 25 to 33. Items 41 to 43 were the sums paid as internet service to FLOW for June, July and September 2018 and item 44 was with respect to the costs for a valuation of the property. The Defendant contended that the expenses were necessary, as internet access was required to operate the security cameras which were installed on the property and that as the executor of the Deceased's Estate he had a fiduciary duty to maintain and care for the property. With respect to item 45, the Defendant argued that he paid the insurance for the property in 2015 from his personal funds and he ought to be repaid for the said sum from the Estate of the Deceased.

36. **Tolley's Administration of Estates**²⁰ states the following on the costs recoverable from an estate as it relates to expenses incurred during its administration:

"The general principle was settled in **Sharp v Lush**,²¹ where it was held that the estate must bear the expenses 'incidental to the proper performance of the duties of personal representatives as personal representatives'. However, this did not extend to expenses incurred during the execution of trusts arising after administration. The principle applies equally to testate and intestate administrations.

²⁰ Tolley's Administration of Estates, Issue 56 (October 2020), Part D9.17

²¹ (1879) 10 Ch D 468

The above definition is not particularly helpful but obviously covers obtaining the grant, collecting in or preserving the assets, the costs of an administration claim or other proper proceedings, discharging debts and liabilities (including the section 27 notice for creditors) and distributing the estate. This will include incurring usual professional fees such as those of solicitors, accountants and valuers and generally such other fees, costs and expenses as are reasonably incurred by the personal representatives in order to carry out the proper administration of the estate."

37. Similarly, **Halsbury's Laws of England**, paragraph 1016 and 1017 states:

1016. It is often important to decide whether costs and expenses incurred by a personal representative are properly payable out of the estate as testamentary and administration expenses or should be borne by the legatees or devisees or persons entitled on intestacy out of their respective interests. The general principle is that the estate must bear the expenses incident to the proper performance of the duties of the personal representative as personal representative but not the expenses involved in the execution of trusts which arise after the estate has been administered or an assent given, or the expenses of clearing the property comprised in a gift so as to make it available by way of assent in favour of the donee.

1017. The general costs of administering the estate are testamentary expenses, for this term is not confined to expenses connected with the will, and indeed it applies to an intestacy. The estate must therefore bear the cost of obtaining the grant, collecting and preserving the assets, discharging the debts and distributing the balance. The insurance premium for a missing beneficiary policy can be a proper testamentary expense. It seems that the cost of moving and storing objects specifically bequeathed before and after the executor assents to the bequest is borne by the legatee.

38. The sum claimed by the Defendant at item 45 with respect to the payment of insurance for the property in 2015, is not recoverable from the Estate of the

Defendant, as the Deceased was still alive at that time and the Deceased had funds in the joint account to pay the said sum.

39. In my opinion, the sums incurred at items 35 for the installation of security cameras and the payment of internet at items 41 to 43 were necessary, as the Defendant had a duty as the executor of the Estate of the Deceased to secure and preserve the property. Although the Claimant was living on the property at the time, she was only one of the beneficiaries of the property according to the Will and the Defendant had a duty to secure it to ensure that it was preserved for the benefit of the two other beneficiaries. Further, according to the evidence there were other persons who were not beneficiaries of the property who were also living on the property. Therefore, the Defendant as the executor of the Estate also had a duty to secure the property.
40. However, the sum claimed by the Defendant at item 44 with respect to the payment for the valuation of the property is not recoverable from the Estate of the Deceased as it was not necessary. The Defendant ought to have had a value of the property when he included it in the inventory for the application to obtain the grant of probate. Further, it was premature as the Defendant had not provided an account for the administration to the beneficiaries, in order to demonstrate that a sale of the property was necessary to cover the expenses associated with the lawful administration of the Estate of the Deceased.

Income of Estate

41. The Claimant's position was that item 46 was covered by the funeral grant which the Defendant admitted he received. With respect to items 47 to 52 Counsel for the Claimant submitted that there was no legal basis for the Defendant to claim the sums on behalf of the Estate. Counsel also submitted that the sums claimed in items 51 and 52 are scandalous, as the Defendant purports to claim \$171,000.00 from the Claimant for a 'loss of income' for 'obstruction with respect to top floor of property' from November 2015, some 7 months before the Deceased passed away and that in any event, the Court should disregard these claims as there was no counterclaim by the Defendant in the instant action.

42. In the Defendant's submissions in reply he referred the Court to the Defendant's Response to the Claimant's Objections to the Statement of Estate Account²². However, there was no explanation set out by the Defendant for the sums claimed in items 46 to 52, rather the Defendant simply attached copies of documents and for item 52 he did not even attach any document.
43. At paragraph 7 of the Claimant's Affidavit in Reply, she deposed that in the Defendant's MHA Affidavit, he swore that the Deceased permitted the Claimant and her son to live on the property rent free and he accepted that they later moved to the upper floor to assist the Deceased as was required.
44. In my opinion, the sums claimed at items 47 to 50 and part of item 51 for the period November 2015 to June 2016 of the Statement of Estate Account are not recoverable from the Estate of the Deceased, as this was during a period when the Deceased was alive.
45. I accept that the Defendant has a duty as the executor of the Estate of the Deceased, to take steps to preserve the Estate of the Deceased, until the final distribution and this includes the property. However, in my opinion the sums claimed at items 51 from July 2016 to March 2018 and item 52 are not recoverable as income for the Estate as in the Defendant's MHA Affidavit, he admitted that he knew that with the Deceased's permission the Claimant and her son lived on the property prior to the Deceased's death and that they continued to live there after. He also accepted that they later moved to the upper floor to assist the Deceased as was required.
46. Further, the Defendant did not provide any evidence to support his claim that the loss of income for the top floor of the property was \$5000.00 per month or \$1500.00 per month, which he claimed at items 51 and 52 respectively. In the absence of this evidence even the sums claimed appeared to be arbitrary.

²² Page 426 of the Trial Bundle, in particular pages 441 to 442.

Value of items removed by Indrani Harrypersaud-Maharaj to be repaid

47. Counsel for the Claimant argued that the sums which the Defendant claimed at items 53 to 59, do not form part of the Estate of the Deceased as they were purchased by the Claimant; the Defendant has failed to prove that they form part of the Estate of the Deceased and the Defendant has not filed any counterclaim in the instant action.
48. Counsel for the Defendant readily admitted that there was no counterclaim filed by the Defendant. He submitted that with respect to items 53 to 56, the Claimant has not adduced any evidence that she purchased the items and with respect to items 57 to 59, the Defendant submitted that the Claimant's evidence was that those items were sent by a brother of the parties for the Deceased.
49. Exhibit "B.H. 13' of the Defendant's Affidavit²³ set out the household items which the Defendant asserted were present on the property on 9 March 2018, of which he took possession and which are to be liquidated by him in his capacity as executor.
50. At paragraph 3 of the Claimant's Affidavit in Reply, she deposed that the following items are her personal property: Brother sewing machine; 1 three piece Sharp speakers; 1 wooden 7 piece dining room set; 3 metal bar stools; 1 whirlpool 3 door fridge; 1 whirlpool 3 burner gas cooker; one 2 door fridge; 1 standing fan; 1 single metal frame bed with mattress; 1 small desk; 1 Weider Pro weightlifting machine; 1 8" aluminium ladder; 1 Werner double 8" extension aluminium ladder; and 1 Bike Inn blue bicycle.
51. At page 37 of the Trial Bundle there is a letter from Roy Harrypersad which stated that he purchased for the Claimant the Andorra Bedroom furniture, Whirlpool stove, Vizio Smart TV and Whirlpool refrigerator. He also attached receipts²⁴. This was prima facie proof that the Claimant is the owner of the stove, the refrigerator, the bed frame and mattress. With respect to the other items neither party provided any proof of ownership. In the instant case, as the Defendant had stated in the Defendant's MHA

²³ See page 163 of the Trial Bundle

²⁴ Pages 38 to 42 of the Trial Bundle.

Affidavit that the Claimant lived on the property, it was equally probable that those items belonged to either the Deceased or the Claimant. Therefore, the onus was on the Defendant to prove that items 53 to 59 of the Statement of Estate Account belonged to the Deceased, in order to satisfy the Court that they formed part of the Estate. However, in the absence of this evidence, it is reasonable to conclude that they were owned by the Claimant.

Who should pay the costs of the action?

52. Both parties argued that based on the conduct of the other, subsequent to the death of the Deceased and prior to the institution of the instant action, the other should pay the costs of the instant action.
53. Counsel for the Claimant also submitted that the costs of the instant action ought not to be paid from the Estate, as it would be highly prejudicial and oppressive for any other party other than the Defendant to personally pay the entire costs of the proceedings. Counsel argued that the whole exercise was induced by the unreasonable conduct of the Defendant and outside his duties as an Executor.
54. Paragraph 1200 of **Halsbury's Laws of England**, deals with the circumstances under which the costs of an action is to be paid out of the Estate. It provides:

"In the case of proceedings begun under the alternative procedure for the determination of questions arising in the administration of the estate, the costs of all parties are allowed out of the estate where the application is made by the personal representative, or by a beneficiary or creditor where there is some difficulty which would have justified an application by the personal representative . If, however, a beneficiary applies to the court without real justification or takes advantage of the alternative procedure to have a question determined which, but for the procedure, should have been commenced using the normal procedure or is otherwise properly described as hostile litigation, the court may apply the rule that the unsuccessful party should pay the costs of the successful party."

(Emphasis added)

55. **Halsbury** states further at paragraphs 1203 and 1205, that:

1203. Where administration proceedings are rendered necessary by the personal representative's gross and indefensible neglect to furnish accounts, he will be ordered to pay all the costs, including the costs of taking and vouching the accounts. So, too, a representative who unnecessarily institutes administration proceedings will be ordered to pay the costs. In a claim against a personal representative, where the court, after hearing the facts, makes an order for administration without any reservation of costs, it is not in accordance with the practice to entertain an application on further consideration that the representative should be ordered to pay costs down to the judgment; but this practice does not extend to a case where the order is made without evidence on both sides, or full discussion, either for the sake of convenience or to save expense, or otherwise in circumstances in which the court has not a sufficient knowledge of the facts.

1205. Mere delay in rendering accounts is not of itself sufficient ground for visiting a personal representative with the payment of costs, or even for depriving him of his costs; nor is the fact that he has made a mistake, or has endeavoured to charge in his accounts items which he is not legally entitled to charge, provided his claims are not dishonest claims, nor such as no reasonable man could say ought to have been put forward.

56. In a case where proceedings for administration are rendered necessary by the gross and indefensible neglect of trustees to deliver accounts, the defaulting trustees may be ordered to pay all the costs, including the costs of taking and vouching the accounts.²⁵ In Re Skinner v Skinner (1904) 1 Ch. 289, the testator died on 31 March 1899. Despite the repeated applications made by the beneficiaries of the deceased's estate over the period of approximately 3 years, for a proper account, no accounts had been rendered by the executors to any of the beneficiaries. The Court ordered

²⁵ Re Skinner v Skinner (1904) 1 Ch. 289

that the executors should bear the costs associated with the application and the costs of taking the account. It stated as follows:

"The gist of the complaint against the defendants E. Skinner and Neve is that they would not, and did not, render any proper accounts, though repeatedly requested to do so by the plaintiff and by W. H. Skinner, their co-executor. Now it is clear that in the case of a small estate like this it is very hard that the plaintiff should be obliged to have recourse to proceedings of this nature in order to get an account. I am always very unwilling to make trustees pay costs; but, on the other hand, beneficiaries have a right to expect the performance of their duty by executors, and not the less when one of them has power to make professional charges. In my opinion the conduct of these two defendants amounts to a gross neglect to account.

In *Heugh v. Scard* (1) Sir George Jessel laid down the rule thus: "It is a matter of some importance that executors and trustees should understand my rule on the subject of costs. The question of costs being discretionary, it is impossible to lay down a rule binding on any other branch of the Court. But it is, nevertheless, well that executors and trustees should understand what I think to be the proper rule. In certain cases of mere neglect or refusal to furnish accounts, when the neglect is very gross or the refusal wholly indefensible, I reserve to myself the right of making the executor or trustee pay the costs of litigation caused by his neglect or refusal."

Now this present case does appear to me to be one where the neglect was very gross and the refusal wholly indefensible. The judge before whom the matter originally came reserved the costs down to and including the hearing to be dealt with on further consideration, and on that reservation I now have no hesitation in saying that they ought to be paid by the defendants."

57. Similarly, in the more recent case of **Royal National Lifeboat Institution v Headley**,²⁶ the executors of a will, who had failed to provide accounts over many years was ordered to pay the costs of the beneficiaries and refused an indemnity on the basis that the costs of the application were not 'properly incurred'. In that case the Court stated that:

"... notwithstanding the lack of participation or explanation on behalf of the Defendants, it is clear that the Second Defendant in failing to account to the Claimants over so many years acted for a benefit other than that of the estate, and in failing to take part in these proceedings at all acted unreasonably. I have no hesitation in saying that any costs incurred by the Second Defendant in the context of these proceedings, including the costs which I have ordered him to pay to the Claimants, were not 'properly incurred' within s 31(1) and CPR rule PD46 para 1.1, and hence he is not entitled to be reimbursed out of the trust fund in respect of them."²⁷

58. Section 74 (1) of the Wills and Probate Act²⁸ makes it mandatory for a legal personal representative to file with the Registrar within 12 months of obtaining the Grant, a Statement of Account of the receipts and expenses. It provides that:

“Every representative shall, within twelve months from the date of granting of probate or administration, as the case may be, file with the Registrar an account showing his receipts and disbursements of the estate of the testator or intestate, and that all sums due in respect of the said estate for estate duty have been duly paid, and showing also the debts of the deceased and the extent to which the same have been paid by such representative.”

59. In my opinion, the Claimant is entitled to recover her costs as she has been the more successful party. The said costs is to be paid by the Defendant in his personal capacity and not from the Estate of the Deceased for the following reasons.

²⁶ [2016] EWHC 1948 (Ch)

²⁷ [2016] EWHC 1948 (Ch), paragraph 40.

²⁸ Chapter 9:03

60. First, the Defendant inordinately delayed in filing the Statement of Estate Account which the Claimant, as a beneficiary was entitled to receive. The Defendant obtained the Grant of Probate in December 2016. The Claimant called upon the Defendant to provide the said account shortly thereafter, but it was only filed in its proper form on 7 February 2019. It seems to me that if the Claimant did not institute the instant action, the Executor had no intention to comply with his duty of providing an account.
61. Second, the Defendant made unreasonable claims in the Statement of Estate Account. In the Statement of Estate Account, the Defendant included many items which he claimed were due to be paid to him from the Estate, to which I have found he was not entitled to. In particular, he made claims from the Estate during the lifetime of the Deceased which were alarming.
62. Third, the Defendant's conduct prior to the institution of the action with respect to the sale of the property, the only asset of the Estate was unreasonable. According to the Will, the property was given to the Claimant, Andy and Mark Harripersad. This was the intentions of the Deceased. However, the position adopted by the Defendant as executor was not to take steps to give effect to the Deceased's intentions but instead he took the position since August 2017 to sell the property²⁹. Despite the objection from the Claimant, one of the beneficiaries of the property, he maintained his position until an undertaking was given not to sell the property before this Court in the instant action. It is reasonable to conclude that if the instant action was not commenced by the Claimant, the Defendant would have sold the property, leaving the beneficiaries without the gift intended for them by the Deceased.

Order

63. The total sum from the Statement of Estate Account to be paid to the Defendant in his personal capacity from the Estate of the Deceased is \$28,861.57. This sum does not include the sums in the Order entered before the Registrar on the 20 February 2020. The following is a breakdown is the sums allowed in this order:

²⁹ Letter dated 30 August 2017 at page 55 of the Trial Bundle.

ITEM NO.	ITEM	AMOUNT
13	Priya's Creation, Pennywise and Intimate Secrets of Grand Bazaar on 7/6/16 for dressing of body for Funeral.	\$506.90
14	Padarath Sankar of Dinsley, Tacarigua, on 5/6/16 for death announcement.	\$500.00
15	Registrar General Department on 6/6/16 for death certificates.	\$100.00
16	Tunapuna Regional Corporation on 6/6/16 for death registration.	\$200.00
17	Indian Store, Curepe on 7/6/16 for prayer supplies.	\$534.79
18	Bhagwansingh, Piarco on 8/6/16 for funeral supplies.	\$98.51
19	Black's Rentals of Five Rivers on 10/6/16 for tents, tables and chairs for deceased's functions.	\$2,800.00
20	Dass Funeral Home, Chaguanas on 14/6/16 for handling, storage and cremation of body.	\$8,025.00
21	Puja Store, Curepe on 14 th and 15 th June 2016 for prayer supplies.	\$683.70
22	To Pundit Deodath Maharaj on 16/6/16 for funeral services.	\$1,000.00
23	Indian store, Methai, Curepe on 5/5/17 and 14/6/16 for prayer supplies after one year.	\$402.00
24	Pundit Deodath Maharaj on 16/5/17 for prayer services.	\$400.00
TOTAL DISBURSEMENTS OF EXECUTOR		\$15,250.90
FUNERAL GRANT		(\$7,500.00)
BALANCE OWED		<u>\$7,750.90</u>

ITEM NO.	ITEM	AMOUNT
<i>Income and Expenses due from Indrani Harrypersaud Maharaj</i>		
26	Cost of letter written by K.R. Lalla & Co. to the Commissioner of Police on 1/9/16.	\$2,812.50
27	Cost of accessing property.	\$1,078.65
28	Fees paid to J.D. Sellier & Co on 5/7/17 re Executor to access property.	\$5,738.77
29	Fees paid to Robin Otway & Associates on 22/8/17 re Executor to access property.	\$6,500.00
30	Fees paid to Terrance Dick & Associates on 20/12/17 re Executor to access property.	\$750.00
31	Cost of cleanup of property on 16 th and 17 th March 2018 (labour and materials).	\$2,209.84

32	Cost of repositioning of two security lights, replacing of water tap and further cleanup of surroundings on 21/4/18 (labour and materials).	\$620.00
33	Cost of printed photos on 25/5/18.	\$60.00
<i>Administration Expenses</i>		
35	Paid to Barry Ifill on 7/3/2018 for installation of 1 Camera and cost of 1 VGA cable.	\$395.00
41	Paid FLOW for internet service 7/6/2018.	\$346.47
42	Paid FLOW bill 8/7/2018	\$207.56
43	Paid FLOW bill 22/9/2018	\$391.88
TOTAL		<u>\$21,110.67</u>

64. The Defendant is to pay the Claimant the costs of the instant action personally. The said costs to be assessed on a party and party basis by a Registrar in default of agreement.

/S/Margaret Y. Mohammed

Judge