

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV2010-00831

BETWEEN

KAMRAJ GOBINSINGH

Claimant

AND

RAMESAR GOBINSINGH

Defendant

Before the Honourable Mr. Justice Robin N. Mohammed

Appearances:

Mr Ken Sagar instructed by Mr Arthur Douglas for the Claimant
Mr Anthony V Manwah for the Defendant

JUDGMENT

I. Background

[1] This matter involves a dispute between two brothers over an agreement with respect to the development and construction of a dwelling house on a parcel of land situate in El Dorado (collectively the “property”). The parcel of land had originally been owned by their mother, who then gifted the property to the parties by way of Memorandum of Transfer.

[2] Upon the transfer, the parties entered into an agreement whereby the Defendant would construct a dwelling house and develop the land in accordance with specifications shown on the approved building plan registered as RS-001. It was an express term of the attached agreement that the Claimant would construct the rear downstairs area of the dwelling house in accordance with the specifications. Most notably, the agreement stipulated that any additional work not detailed in the specifications could only be executed upon written consent of both parties.

[3] On the Claimant's pleading, it was he alone who supplied all the steel frames, foot bolts, welding rods, a welding plant and steel cutting tools at a cost of \$35,000.00 in addition to expending labour on the dwelling house. In return, his brother, the Defendant, merely supplied the concrete and steel for the floor and was responsible for painting the downstairs.

The genesis of this dispute arose when the Defendant allegedly caused the Trinidad & Tobago Electricity Commission (T&TEC) to discontinue the electricity supply to the Claimant's house which was located to the rear of the dwelling house and further, blocked the Claimant's rear access to the house. In doing so, the Defendant was able to prevent the Claimant from collecting any rents and profits from the property.

Thus, the Claim was for: (i) an Order that the parcel of land be sold; (ii) that the proceeds of sale be divided equally between the parties; and (iii) that the Defendant pay the costs.

[4] The Defendant's Defence amounted, in a large part, to a series of bare denials to the allegations in the Claim.

Firstly, it was denied that the Claimant had any share or interest in the buildings on the parcel of land that was transferred to the parties by their mother.

Ramesar, the Defendant, also baldly denied that the Claimant ever supplied the materials which were pleaded in the Statement of Case. No other explanation for this denial was given aside from the fact that it is not true. He, however, averred in the following paragraph that he supplied all the materials and labour for the construction of the buildings. Another bare denial was given to the allegation that he caused the electricity to be disconnected and obstructed the Claimant's access to the dwelling house so as to

preclude him from collecting any of the rents and profits. Instead, the Defendant opted to particularize the receipts evidencing his allegation that he alone purchased all materials and supplied all labour for the construction of the buildings.

It was however noteworthy that the Defendant failed to expressly deny the reliefs sought by the Claimant in its Claim.

- [5] At the time of the first Case Management Conference, this matter had been assigned to my sister, Justice Gobin. She had given leave for the Claimant to file a Reply if necessary along with directions for disclosure. In particular, directions were given for the parties to *“file a List and Bundle of documents not yet filed that they intend to rely upon at trial”*.
- [6] No Reply was filed, however, the parties filed extensive Lists of documents. At the following hearing, Justice Gobin gave directions for the filing of witness statements and a trial date was fixed.
- [7] On the 17th February, 2014, the Defendant’s attorney, filed a hearsay notice seeking to admit a large quantity of documents contained in his List of Documents inclusive of various receipts, an application from the Ministry of Planning, a Notice of Grant of permission to develop lands, among others, on the grounds that the makers of these documents would not have any recollection of same at trial.
- [8] The Claimant, by way of a counter-notice filed on the 28th February, 2014, objected to several of the documents contained in the Defendant’s hearsay notice. Thus, an unagreed bundle of documents was filed by the Claimant on the 5th March, 2014.
- [9] The parties then proceeded to file their witness statements. The Defendant only filed his own witness statement whereas the Claimant filed witness statements of himself, a Mr Patrick Caesar, property development manager, and Mr Neville Adams, a police officer.
- [10] It was only after the filing and exchange of witness statements that this matter was assigned to me on the 14th April, 2014. The trial occurred on the 13th October, 2015. It was during the trial that the parties made their submissions with respect to the hearsay notice and counter-notice. The Court ruled that the documents referred to in the hearsay

notice would be admitted into evidence and that the Court shall attach such weight to them as may be deemed appropriate.¹

[11] After trial, the parties filed an exchanged written submissions on the 17th December, 2015. Submissions in reply came in from the Defendant on the 21st December, 2015.

II. Issues

[12] Both parties agreed in their respective Statements of Issue that the following are the issues for determination in this matter:

- (i) **Which of the two parties carried out the land improvement works and constructed the dwelling house on the subject lands?**
- (ii) **Which party paid for the works for the construction?**
- (iii) **What is the present value of the works and the dwelling house?**

III. Law & Analysis

The payment for and the labour involved in the land development and the construction of the dwelling house:

[13] The Claimant's pleaded case on this issue was not clear-cut. He stated that in 1995, he purchased materials at a cost of \$35,000.00 and "*expended his labour on the building valuating (sic) the construction materials to be ceased (sic) and laying out the work for workmen.*" He averred that the Defendant only "*supplied the concrete and steel for the floor and was responsible for painting the downstairs*".

Thus, the Claimant alleges that the extent of the Defendant's involvement in the construction of the dwelling house and the land improvement works was limited to supplying some materials for the floor of the dwelling house and painting the downstairs portion of the house. Thus, the Claimant's case seems to suggest that he played a bigger role in constructing the dwelling house as opposed to the Defendant.

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However, the extent of his involvement in terms of the actual building of the dwelling house is not clear. In fact, his pleadings fail to state any facts as to who built the dwelling house. His stated role of “valuating the construction materials” and “laying out the work for workmen” betrays, to my mind, any suggestion of his substantial involvement in the construction works.

[14] In his witness statement, many new facts were introduced that were not pleaded. Further, the witness’s evidence as to the extent of his involvement in the construction of the dwelling house was similarly, not always clear and at some points, even appeared to contradict. Below are the relevant excerpts from Kamraj’s written evidence concerning the works completed by him and his brother on the property:

- (i) That Kamraj provided steel beams in 1988 and the Defendant assisted in cleaning the pieces of steel beams along with Rajkumar, his other brother.
- (ii) That Kamraj assembled the pieces of steel to form columns and beams for a structure measuring 24 x 60 feet.
- (iii) That he and the Defendant along with one Paw- the Defendant’s friend and Rajkumar, all excavated and cast the new foundation layout for the dwelling house.
- (iv) That the parties signed an agreement in 1994 whereby he would construct the ground floor and the Defendant would construct the top floor².
- (v) That the agreement was executed in August, 1995 whereby “*the Defendant would build ... the dwelling house and develop the said parcel of land in accordance with specifications ...*” and Kamraj would “*construct and build the rear downstairs area of the said dwelling house measuring 26 x 24 feet together with an area 10 x 10 feet in accordance with the specifications...*”
- (vi) That in 1995 he, Kamraj, supplied materials in the sum of \$35,000.00 and expended his labour “*on the building valuating the constructions materials to be ceased and laying out the work for the workmen.*”

² Para 3 of Kamraj’s witness statement

- (vii) That he assisted Patrick Caesar with the site measurements.
- (viii) That in 1995, Kamraj, Rajkumar and the Defendant spent days cleaning the steel beams that had become rusted.
- (ix) That the Defendant purchased paint to prime the steel beams and both Rajkumar and the Claimant “*completed the exercise*”.
- (x) That he “*purchased oxygen gas again to cut off excesses of the steel column heads and in February 1996, we erected the steel structure.*”

[15] In essence, in addition to what he pleaded, Kamraj’s evidence as to his involvement, whether financial or through his labour, in the construction of the dwelling house, is as follows: (i) that he supplied steel beams and assisted his brothers in cleaning them; (ii) that he assembled pieces of steel to form column beams; (iii) that he assisted his brothers and a friend in excavating and casting the new foundation layout for the dwelling house; (iv) that he assisted his brothers in cleaning the steel beams; (v) that he purchased oxygen gas and cut off the excesses of the steel column heads.

[16] The immediate question that this Court must answer is whether the facts surrounding this new evidence was sufficiently pleaded by the Claimant. In other words, does the allegation that he, Kamraj, “*expended his labour on the building valuating the constructions materials to be ceased and laying out the work for workmen*” amount as a sufficient pleading in support of this evidence.

In this light, I am reminded of, first, the provision in **Part 8.6(1) of the CPR**, which requires the Claimant to include in his Claim a statement of all the facts on which he relies, and second, the dicta of Lord Woolf MR in **McPhilemy v Times Newspapers Ltd [1999] 3 All ER 775 at page 792J** as cited in **Bernard v Seebalack [2010] UKPC 15 at para 15**, as follows:

“The need for extensive pleadings including particulars should be reduced by the requirement that witness statements are now exchanged. In the majority of proceedings identification of the documents upon which a party relies, together with copies of that party’s witness statements, will

*make the detail of the nature of the case the other side has to meet obvious. This reduces the need for particulars in order to avoid being taken by surprise. **This does not mean that pleadings are now superfluous. Pleadings are still required to mark out the parameters of the case that is being advanced by each party. In particular they are still critical to identify the issues and the extent of the dispute between the parties. What is important is that the pleadings should make clear the general nature of the case of the pleader...** No more than a concise statement of those facts is required.”*

In my opinion, the highlighted averment in the Claimant’s Statement of Case is not at all clear. It seems to suggest that the extent of his labour in the construction of the dwelling house was limited to valuing the construction materials and laying out the work for workmen. Laying out work does not, to my mind, involve the actual doing of work. Thus, all these activities he now states that he did in his witness statement were not supported in his pleaded case. Had the Defendant filed evidential objections, I would likely have been persuaded to strike out much of his evidence. In any event, although his evidence is admitted, it resides within my discretion as to what weight ought to be placed on it. Given my analysis above, it is my decision that ascribing little or no weight to it appears to be appropriate in all the circumstances.

[17] In addition to Kamraj’s failure to properly plead the extent of his labour in constructing the dwelling house or developing the land, there is no reference in his pleadings to any works done on the property prior to 1994. Therefore, Kamraj is now giving evidence for the first time that the construction originally began in 1988 and that when he became unemployed in 1989, all works ceased until 1995 after the agreement was executed in August, one month after his mother transferred the property to the parties. It is at this point that a material contradiction in his evidence occurs.

Kamraj states at paragraph 3 that ***“we signed in 1994 for me to construct the ground floor and he (Ramesar) would construct the top floor”***. One can only assume this means that the parties entered into an agreement in 1994. But this must be reconciled with

paragraph 5, which states that “*by an agreement in writing dated the 30th day of August, 1995 and made between...*” the parties.

It is arguable that Kamraj is stating that the agreement, although signed since 1994, was only dated in 1995. Though highly unusual, it is not at all impossible. Nonetheless, it needed to be clarified in his pleadings. However, the terms of the agreement appear to differ. In 1994, it is simply stated in his evidence-in-chief that Kamraj would build the ground floor while his brother builds the top floor. In the 1995-dated agreement, it is stated that “*the Defendant would build and construct the dwelling house and develop the said parcel of land...*” Thus, Kamraj’s responsibility was now relegated to constructing and building *a rear downstairs area* of the said dwelling house. This is not the same as having to construct the entire ground floor.

Further, not only are the terms of the two agreements different on his evidence, but they also contradict his pleaded case. In the Statement of case, Kamraj pleads as follows: “*the Defendant would build and construct dwelling house and develop the said parcel of land in accordance...at his own expense and the Defendant would construct and build the rear downstairs area of the said dwelling house...with an area 10 feet by 10 feet...*”

Thus, Kamraj’s pleaded case alleges that his brother, Ramesar, the Defendant, is responsible for constructing the entire dwelling house by himself.

The only logical assumption to make from these contradicting facts is that the pleaded case is in error. If so, it is certainly a grave error for the Claimant to make considering its importance to the resolution of the material issue of the extent of each party’s involvement in the construction of the dwelling house and the development of the land.

That notwithstanding, the contradiction can be resolved by an examination of the attached agreement. This agreement coincides with Kamraj’s witness statement and says that Ramesar, as the “Builder” would be responsible for constructing the entire dwelling house and developing the land while Kamraj would construct a downstairs area to the rear of the ground floor.

Kamraj also purported to adduce the written evidence of two supporting witnesses, Mr Neville Adams and Mr Patrick Caesar. Neither witness added, in any significant way, to

Kamraj's case nor was their evidence of much assistance to the material issues for determination. In any event, neither witness gave evidence at trial and thus, little weight, if any, will be placed on their evidence.

[18] It follows that from an analysis of Kamraj's pleaded case with his evidence-in-chief, not only am I of the opinion that the parties agreed that it would be the Defendant who would be responsible for developing the land and constructing the dwelling while Kamraj would merely build a downstairs area to the rear, but I also believe that Kamraj's involvement in terms of labour was minimal. I am not convinced that he did all the tasks he claimed he did in his witness statement for the reasons outlined above.

[19] At trial, Kamraj maintained that he contributed to the construction of the dwelling house by providing "*labour and building materials.*" When asked by Mr Manwah to elaborate, he stated that in terms of building materials, he contributed the steel stanchions. He described the steel stanchions as the "*I beams for the column fittings, the hold down bolts and the cross members for the super structure.*" No evidence, however, was given detailing the extent of Kamraj's labour.

With respect to his brother, Kamraj stated that Ramesar provided the concrete for the dwelling house. He stated however that it was he, Kamraj, who provided the electrical for the dwelling house that was "*taken out from the family dwelling house to construct.*" The issue of who supplied electrical fitting for the dwelling house did not form any part of Kamraj's pleaded case. Nevertheless, no objections to this line of questioning was raised. In any event, Kamraj contradicted himself by stating that it was not him but his brother, Ramesar, who installed the wiring for the electricity in the dwelling house.

He then stated that Ramesar "*bought the reinforcement for the first floor slabs, which is round bars*" but maintained that it was he, Kamraj, who bought the 'I' beams. However, Kamraj was unable to produce any receipts to prove his purchase of the 'I' beams.

In terms of labour, his evidence was that the extent of his involvement was that he assisted his brother and his friends in constructing the steel frame.

[20] Kamraj's testimony then became confusing as he opted to use a lot of construction jargon when giving evidence about what parts of the dwelling house was completed by certain

dates. He stated that by 1989, a steel structure had been completed but “*lying on the ground*”. When asked to clarify, he said that “*members of the steel structure lying on the ground sir*”. The size of the structure was 24 x 60 feet. However, it was not until 1995 that the “super structure” was erected.

Mr Manwah upon reading paragraph 3 of Kamraj’s witness statement, which stated that Ramesar’s friend “Paw” fabricated the steel structure in 1989, put to Kamraj that no such structure was there in 1989, to which Kamraj maintained there was.

[21] Mr Manwah then delved into the contents of the agreement between the parties. On this line of questioning, Kamraj’s evidence was as follows:

Kamraj stated that as per the agreement, Ramesar was to build the dwelling house and develop the land, which meant “*to fill it up etc.*” at his own expense. However, although not expressly stated in the agreement, Ramesar was only supposed to pay for casting the first floor in accordance with the “*drawing number*”. Kamraj however, admitted that he did not adduce that “drawing number” into evidence and that the specifications of the architect’s drawing plan are not before the Court.

Kamraj stated that he was to do his part under the agreement during the construction i.e. after the super structure was erected, which is the columns and beams. However, most notably, his evidence was that he was not able to complete his part of the agreement. His exact words were as follows:

Q: I see, you ever did your part in the agreement here?

A: I wasn’t able to do it sir.

Thus, in its current state, the dwelling house is basically a one floor structure at the ground level where his brother, the Defendant, currently lives. This meant, as he admitted, that he failed to construct the part of that downstairs area where his brother now lives as per the agreement.

Despite the above and his concession that he was not able to complete his part of the agreement, Kamraj stated that his contribution to the current structure of the dwelling

house was “*the steel and labour, together with all the consumables that goes towards fabricating the steel.*”

[22] In summary, Kamraj’s evidence suggests that most of his involvement in the construction of the dwelling house came by way of his purchase and supply of materials. In terms of his labour, his involvement seemed minimal based on (i) the failure to properly plead much of his evidence about the extent of his labour coupled with (ii) his admission that he was unable to complete his part of the agreement, which was to construct the two areas of the ground floor measuring 24 x 60 feet and 10 x 10 feet.

This admission in his viva voce evidence starkly contradicted his written evidence where he stated that after purchasing the oxygen gas in February, 1996, *we* erected the structure. Thus, given his viva voce evidence and his pleaded case, I do not find Kamraj to be a very credible witness on this issue.

[23] In opposition, Ramesar’s case was far more explicit and consistent.

He agreed in his Defence that it was Kamraj who was supposed to construct the downstairs rear area of the dwelling house under the agreement. However, where the parties’ differ is at paragraph 4, where Ramesar pleaded that he alone supplied all the materials and labour for the construction of the dwelling house on the parcel of land. In support of this allegation, he particularised several receipts and documents in his pleaded case. Thus, despite his failure to expressly deny the reliefs sought by the Claimant, Ramesar’s case was clear— that it was he alone who supplied the materials and labour for the dwelling house.

[24] Ramesar’s witness statement also sought to introduce some new, “unpleaded” facts. He stated that he filled the land in 1987 and built a wooden house for the family including the Claimant to live. He mentioned the agreement in 1995 and stated that under its terms, he was to build the dwelling house and after completion, Kamraj was merely to enclose the downstairs area for him to live.

He then discussed how he had the plans drawn up and obtained the necessary planning approvals. The approvals required Ramesar to cover the drain and demolish the wooden

house. He also had to build retaining walls with his own money. Some of these facts were not part of his Defence.

He stated that the construction for the dwelling house began in October, 1995 and, in similar fashion to his pleaded case, gave evidence that he alone bought all materials and supplied all labour for same. He however admitted to adding two extensions on the East and West on the ground floor.

Thus, it was Ramesar's written evidence that his brother contributed neither money, material nor labour to the construction. This fact was consistent with his pleaded case.

[25] At trial, Ramesar's evidence was not as solid at some parts. He stated that he had read the agreement before signing it but that the specifications to which he was required to construct the dwelling house in the plan RS001 did not exist. Ramesar, however, admitted that he never put this fact in his pleadings or evidence-in-chief.

He admitted that at present, the dwelling house is incomplete as it is currently an unfurnished structure and there is no upstairs portion of the house.

In terms of the rental income, he stated that one of his tenants is New India Assurance Company who has been renting for about 5 years. Presently, he stated that New India pays \$7,000.00 per month. He states that he had never accounted to his brother for those rents because the building belongs to him only.

In terms of the Claimant's involvement in the construction, Ramesar denied that Kamraj ever accumulated steel beams from his position in Emile Elias Company in 1988 and stored them at the property as Kamraj pleaded. He denied having any knowledge of any person by the name of James Calliste aka "Paw". He denied ever preventing his brother from fulfilling his contractual duty to construct the downstairs portion of the property.

Further, his evidence is that his mother only transferred the land to the parties as there were no buildings at the time of transfer. He stated that the reason for his brother's failure to complete the downstairs of the dwelling house was because Kamraj now planned to use his money to build another house in "La Paille" in Caroni. This new evidence, he admitted, was not part of his earlier case.

In Ramesar's point of view, it was never the intention that his brother would have an interest in the dwelling house. This is because he was already building the structure and therefore, Kamraj merely gave him permission to continue with the construction. His exact words were:

"Because remember I am already building so all it would really come like he giving me permissions now to go ahead and build to continue the structure. So there was never there, that thought or anything, it was never discussed, it was never part of anything. It was exclusively on me."

Thus, Ramesar's evidence was that the only interest his brother had in the property was merely in the land. In terms of its value, Ramesar stated that he would leave it for the Court's determination but that his case is that Kamraj is entitled to half the land only.

[26] In this Court's opinion, Ramesar was a far more credible witness than the Claimant. Notwithstanding that he too sought to give evidence on facts that were not pleaded, his case—that he alone supplied all materials and constructed the dwelling house, remained consistent and was clearly stated at the outset. More than that, it was supported by documentary evidence. Given that it is Kamraj who has brought these proceedings and therefore, carries the burden of proof, it was his duty to prove his case on a balance of probabilities, i.e. that his version was more probable than the Defendant's. Given the analysis above, he has failed to discharge this burden.

[27] In the circumstances, I find in favour of the Defendant and conclude that he constructed the dwelling house in its present condition and developed the land with little to no assistance from his brother, the Claimant. I also find that Kamraj has failed to convince me of the probability of his contention that he paid for and/or supplied the materials for the construction works.

The Parties' interests/rights in the Property:

[28] This issue was not raised by the parties but it appeared from the trial evidence that this issue needed to be resolved. For if it is shown that the parties' mother intended to transfer the property to the brothers in equal shares, the fact that the Defendant alone constructed the dwelling house and developed the land may not obviate that intention.

[29] In both copies of the Certificate of Title attached to Kamraj's witness statement and contained in the List of Documents, the terms under which the property was transferred to the brothers are not apparent. It appears that part of the page has been omitted or cut off. For instance in the attached documents, the last paragraph reads:

“IN CONSIDERATION of the NATURAL LOVE AND AFFECTION which I hath bear for KAMRAJ GOBINSINGH of No 290 ... and RAMESAR GOBINSINGH all my estate and interest in the said...”

[30] In the agreement, however, the parties are described as the Co-owners of Lot No 20 Eastern Main Road, El Dorado. This however, only points to the brothers' interest in the parcel of land. As to the dwelling house, the agreement is clear that it is the Defendant as Builder who is to construct the dwelling house and develop the land. It then says:

“The Occupants will construct and build the rear downstairs area of the said dwelling house measuring 26 feet by 24 feet together with an area 10 feet by 10 feet in accordance...”

It is noteworthy that the word “***Occupant(s)***” was used at **Clause 2 (2) of the agreement** and not simply “***Occupant***”, which was defined to mean the Claimant in the **Recitals**. Neither party made any submissions on whether the plural use of the word was an error nor whether it was intended to mean that both parties would be involved in the construction of the rear downstairs area.

[31] More importantly, the agreement does not at all comment on what the parties' interest in the dwelling house would be. In fact, the mere fact **that Clause 2 (3) of the agreement** states that the Claimant cannot sell, rent or lease the downstairs except to members of the family suggests that any interest he would have had in the dwelling house would be limited to the downstairs portion only. Given that he admittedly failed to build it, his interest in the dwelling house is not at all apparent.

[32] Thus, while I may accept that Kamraj is entitled to a 50% share in the parcel of land, I am not convinced he has any share in the dwelling house.

The Value of Works and the Dwelling House:

[33] In the attached valuation report, **Messrs Raymond & Pierre** valued the freehold property inclusive of the land and constructions thereon in the sum of **\$1.69 million TT dollars**. Further, the Defendant adduced into evidence a Quantity Surveyor’s Report from **QS Services Limited** where the replacement cost estimate of the property as at 2013 was in the sum of **\$988,031.00**. This means that the value of the land alone would be approximately **\$701,969.00**. Neither of these reports were challenged and thus, the Court accepts the estimates therein.

The Reliefs sought:

[34] The Claimant essentially seeks an Order that the property be sold pursuant to **Section 3 of the Partition Ordinance No. 9 of 1914** and that the proceeds be divided equally.

Section 3 of the Partition Ordinance states:

*“In suit for partition, where, if this ordinance had not been passed, a decree or partition might have been made, **then if it appears to the court by reasons of the nature of the property to which this suit relates, or of the number of the parties interested or presumptively interested therein or of the absence of disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial to the parties interested than a division of the property between or among them, the court may, if it thinks fit, on the request of any of the parties interested and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly and may give all necessary or proper consequential directions.**”*

Thus, under this provision, the granting of the Order is completely discretionary on this Court. The Court is only required to assess whether, given the circumstances, a sale of the property would be more beneficial to the parties than a partition, if indeed a sale or partition should be made at all. The Claimant, strangely, has submitted no case law to persuade this Court to apply the provisions of **section 3** above. Nevertheless, some guidance can be gleaned from the provision in **Section 4 of the Ordinance**, which reads:

“In a suit for partition, where, if this Ordinance had not been passed, a decree for partition might have been made, then if the party or parties interested, individually or collectively to the extent of one moiety or upwards in the property to which the suit relates, request the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the court shall, unless it sees good reason to the contrary, direct a sale of the property accordingly, and give all necessary or proper consequential directions.”

Two important differences are noted between these sections. For one, **Section 4** permits the Court to Order a sale of the property when a party has *one moiety or upwards* in the property. This means that **Section 4 of the Ordinance** applies only when either party has one half or more interest/share in the property. Secondly, **Section 3** places absolute discretion in the Court to order the sale *“if it thinks fit”* whereas **Section 4** provides that once either party has a moiety, then the Court **should order** the sale *unless there is good reason to the contrary*. The distinction is important.

Firstly, from my analysis above, while I am inclined to agree that the Claimant has a one half share in the land, the documents do not state what his interest in the dwelling house is to be especially considering his failure to complete his part of the agreement. Secondly, the Claim sought an Order under **Section 3**, which, given that no moiety is required, there is no obligation on the Court to order the sale. In other words, had this Claim been brought under **Section 4**, then given the one half share in the land vested in the Claimant, the onus would lay on the Defendant to show a good reason to prevent the Order for the sale.

[35] Nevertheless, as stated earlier the Defendant has not denied any of the reliefs sought in the Claim. Thus, the question for the Court is not so much as to whether a sale of the property should be ordered, but the terms under which such order should be made. To my mind, given the analysis above, the Claimant has proven his entitlement to half the value of the land only. Based on the valuation and quantity surveyor’s reports, the value of the land would equate to the sum of **\$1.69 million**, being the value of the entire freehold property, less **\$988,031.00** being the value of the construction works on the dwelling

house. This calculates to the sum of **\$701,969.00** as the value of the parcel of land. Thus, upon sale of the property, the Claimant would only be entitled to **\$350,984.50** from the proceeds of sale if the property is sold for the amount stated on the valuation reports **or** the equivalent percentage in accordance with his share in the land if the property is sold for more than the figure stated in the valuation reports.

Costs:

[36] Although the Court has granted the Order for Sale requested by the Claimant, the Claimant has lost on all of the issues to be resolved in this matter. Further, the terms of the Order vary from what was requested by the Claimant. Thus, the Defendant was justified in its decision to defend this matter. In the circumstances, I find that the Defendant be deemed the winner of this Claim and accordingly be award his costs.

IV. Disposition

[37] Accordingly, in light of the foregoing analyses and findings, the order of the Court is follows:

ORDER:

1. That that certain piece or parcel of land situate in the Ward of Tacarigua in the Island of Trinidad comprising FIVE THOUSAND SIX HUNDRED AND SEVEN SUPERFICIAL FEET be the same more or less delineated and coloured pink in the plan registered in Volume 1962 Folio 91 being portion of the lands described in the Crown Grant in Volume 100 Folio 201 and also described in the Certificate of title in Volume 303 Folio 351 and shown as Lot 260 in the General Plan filed in Volume 1602 Folio 235 and bounded on the North by Eastern Main Road on the South by Lot 270 on the East by Lot 259 and on the West by Lot 261 and by a Watercourse and intersected by a watercourse together with the buildings thereon and the appurtenances thereto belonging and now described in Volume 1962 Folio 93 (hereinafter

called 'the said premises') shall be and sold pursuant to section 3 of the 1914 Partition Ordinance Chapter 27 No. 14.

2. That the Claimant be entitled to one half the value of the land only from the proceeds of sale.
3. That the parties through their attorneys-at-law to apply to this Court for directions for the conduct of the sale either by private treaty or public auction within 42 days from the date of this order.
4. That the Claimant pay the Defendant's costs in the matter to be quantified on the prescribed scale of costs.
5. Both parties shall make submissions on the basis for quantification of costs.

Dated this 2nd day of May, 2018

Robin N. Mohammed
Judge