

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2013-05039

BETWEEN

SINDRA BALGOBIN

**(The Legal Personal Representative of the Estate of Balgobin
Thackoorsad¹, Deceased)**

Claimant

AND

MOLLY PERSAD

Defendant

Before The Honourable Mr. Justice Robin N. Mohammed

Appearances:

**Ms. Lana Chunilal holding for Mr. Gerard Raphael instructed by Ms. Neeta Jaglal for the
Claimant**

Mr. Ravi Mungalsingh instructed by Ms. Tara Bhairosingh for the Defendant

JUDGMENT

¹ I note that the Claimant and the Defendant spelt this name differently in their respective documents, namely, "**Thankoorsad**". However, it appears that the Certificate of Title attached to the Claimant's Statement of Case spells it as "**Thackoorsad**", as does the document from the Registrar granting letters of administration de bonis non to the Claimant.

BACKGROUND

1. The action brought by the Claimant is for injunctions and damages for trespass against the Defendant relating to a parcel of land situate at Ramai Trace, Debe, referred to as Lot 1B. The Claimant and the Defendant are siblings. On the 9th December, 2013 the Claimant filed her Claim Form and Statement of Case seeking the following forms of relief:
 - (i) An injunction restraining the Defendant whether by herself, her servants and/or agents from entering and/or remaining (on) Lot 1B²;
 - (ii) An injunction restraining the Defendant whether by herself, her servants and/or agents from constructing any building and/or continuing to erect any building on Lot 1B;
 - (iii) An injunction restraining the Defendant whether by herself, her servants and/or agents from preventing (the) Claimant, her servants and/or agents from entering and/or remaining on Lot 1B;
 - (iv) Damages for trespass;
 - (v) Costs; and
 - (vi) Further and/or other relief.
2. An Appearance was entered by the Defendant on the 11th December, 2013. On the 19th December, 2013, the Claimant filed a Notice of Application seeking injunctive relief and damages for trespass, costs and for further and other relief. In support of same, an affidavit was filed by one Rose Samoondar.
3. On the 7th January, 2014 the Defendant filed her Defence and Counterclaim. In the said Counterclaim, the Defendant seeks the following forms of relief:
 - (i) A Declaration that the Defendant is the beneficial owner of Lot 1A and Lot 1B;
 - (ii) In the alternative, a Declaration that the Claimant's title to Lot 1A and Lot 1B has been extinguished and the Defendant is entitled to sole possession of Lot 1A and Lot 1B;
 - (iii) An Order compelling the Claimant to transfer the paper title of Lot 1A and Lot 1B to the Defendant within three months from the date of the Order;
 - (iv) A Declaration that the Memorandum of Assent registered on the 10th October 2013 in Volume 5523 Folio 159 is invalid on the grounds that it is erroneous and that the Conveyancer who prepared the transaction was either misled or misinformed in completing the transaction;

² Lot 1B is more particularly described in the Statement of Case at para 1 of the relief sought

- (v) An Order setting aside the aforementioned Memorandum of Assent registered on the 10th October, 2013 in Volume 5523 Folio 159;
 - (vi) An Order compelling the Claimant to give an account to the Defendant of the distribution of the estate of Balgobin Thackoorpersad, deceased;
 - (vii) An Order compelling the Claimant to transfer three fiftieth (3/50) of the estate of Balgobin Thackoorpersad, deceased, to the Defendant;
 - (viii) In the alternative, an Order compelling the Claimant to pay to the Defendant three fiftieth (3/50) of the value of the estate of Balgobin Thackoorpersad, deceased;
 - (ix) An injunction restraining the Claimant whether by herself and/or her servants and/or agents from entering and/or remaining on Lot 1B;
 - (x) Interest; and
 - (xi) Costs.
4. Notice of Application filed on the 19th December, 2013 seeking injunctive relief came up for hearing on the 30th January, 2014 whereupon the Defendant entered an undertaking, whether by herself, servants and/or agents, to refrain from entering and/or remaining on Lot 1B, to refrain from constructing or continuing to erect any building on Lot 1B and to refrain from preventing the Claimant, her servants and/or agents from entering and/or remaining on Lot 1B. It was further ordered by consent that the costs of the application be costs in the cause. The Court also gave directions for the convening of an All-Parties Conference for the purpose of exploring all possibilities of an amicable resolution without a trial with consequent directions for the management of the case in the event that the settlement negotiations bore no fruit.
5. Settlement discussions having broken down, pursuant to the order of the 30th January, 2014 the Claimant filed a Reply to the Defence and Defence to Counterclaim on the 21st February, 2014. On the 13th June, 2014 the witness statements of the Claimant, Parbatee Bharat and Ramharack Balgobin were filed in support of the Claimant's case. The witness statement of Paul Anthony Williams, a land surveyor and photogrammetric engineer, was filed on the 16th June, 2014. Also filed on that date were the witness statements of the Defendant, Lionel Persad and Ramdaye Harripersad, in support of the Defendant's case. Both parties filed evidential objections on the 22nd September, 2014 but agreed at trial to withdraw same and leave any such issues to the Court. A trial bundle was filed by the Claimant on the 30th October, 2014.
6. The trial of this matter took place on the 19th November, 2014. At the close of the trial, Attorney for the Defendant withdrew the relief sought by the Defendant (on the Counterclaim) in relation to Lot 1B save and except relief 9 which seeks injunctive relief in relation to Lot 1B. Attorney for the Defendant also withdrew in its entirety the relief sought at paragraphs [4] and [5] of the Counterclaim, that is, the relief challenging the

validity of the Memorandum of Assent and seeking to have same set aside. On the 20th February, 2015 closing submissions were filed by the Defendant. At the time of writing this judgment, no closing submissions had been filed on behalf of the Claimant. However, on the 29th August, 2016, just one day before the date fixed for the delivery of this judgment, closing written submissions were filed on behalf of the Claimant.

THE CLAIMANT’S CASE

7. According to the Claimant, her father Balgobin, also called Balgobin Thackoorsad (hereinafter referred to as “the Deceased”) became the owner of certain lands at Ramai Trace. He died intestate on the 26th January, 1988. Surviving him were his lawful wife and eleven children, two of whom are the Claimant and Defendant in this matter. Letters of Administration of his Estate were granted by the High Court to his lawful widow Sonwah Balgobin on the 22nd July, 1988.
8. Sonwah Balgobin died on the 11th April, 1992 without fully administering the Estate of the Deceased. By her last Will and Testament dated the 15th September, 1989, the said Sonwah Balgobin gave, devised and bequeathed her share, title, estate and interest in the said parcel of land to the Claimant. On the 31st December, 1993 probate of the said will of Sonwah Balgobin was granted to the Claimant.
9. On the 11th July, 2008, **Letters of Administration *de bonis non*** of all the unadministered Estate of the Deceased were granted by the Court to the Claimant, the Legal Personal Representative of the said Sonwah Balgobin.
10. By Power of Attorney dated the 29th May, 2013 the Claimant purported to appoint her sister, Rose Samoondar, to do all such acts and things as may be necessary or expedient in connection with the property she held as legal personal representative of the Estate of the said Deceased. Pursuant thereto, Rose Samoondar purported by Memorandum of Assent registered on the 10th October, 2013 to assent a portion of the said property comprising 0.1720 hectares to two of her siblings, namely, Parbatee Bharat and Ramdoolarie Bhagwhandeen.
11. According to the Claimant, the said property should have been properly assented to all the children of the Deceased. However, the said Assent was done in the manner aforesaid because the parents of the deceased³ (*sic*) had always expressed their desire that their

³ It appears clear that the claimant meant to say “**parents of the parties to this action**” rather than the “**parents of the deceased**”?

daughter (the said Parbatee Bharat) should be the one to inherit the said parcel of land. Further, Parbatee indicated that she wanted to share the said parcel of land with her sister (the said Ramdoolarie Bhagwandeem). This was the reason why the Memorandum of Assent was made in the names of Parbatee Bharat and Ramdoolarie Bhagwandeem.

12. The Claimant says that the said parcel of land left by the Deceased is shown as Lot 1A and Lot 1B on the plan dated the 29th June, 1992 approved by the Acting Director of Surveys, Frank Charles.
13. According to the Claimant, sometime during the year 1988, the Deceased had given Lot 1A to the Defendant. At the same time, he had indicated that he wanted Lot 1B to go to the said Parbatee Bharat. The Deceased and his wife, Sonwah Balgobin, and all their children knew and accepted that the Defendant would own Lot 1A and the said Parbatee Bharat would own Lot 1B. Pursuant to the said arrangement, sometime in 1988 the Defendant proceeded to construct her dwelling house on Lot 1A.
14. The Claimant contends that sometime in August, 2011 the Defendant wrongfully entered Lot 1B and erected a chain link wire fence along the southern boundary of Lot 1A. The Claimant further contends, that sometime in the month of July, 2013 the Defendant again entered Lot 1B and backfilled it and thereafter deposited sand and gravel thereon.
15. The Claimant says that by letter dated the 7th September, 2012, Messrs. Samuel Saunders and Co. wrote to the Defendant requesting her to cease and desist from any activity on the land and to remove the sand and gravel deposited thereon within 21 days. The Defendant however failed and/or refused to respond to the said letter. Subsequently, the Defendant made efforts to cultivate Lot 1B in corn and by letter dated the 28th January, 2013 the Claimant had her attorney write to the Defendant requesting her to stop her cultivation of Lot 1B. The Defendant never responded to the said letter.
16. According to the Claimant, on the 22nd November, 2013 the Defendant purchased and stored building materials on Lot 1A and indicated that she intends to erect a building on Lot 1B. The Claimant alleges that the Defendant has dug a trench to the front of the land with a view to erecting a concrete wall thereon. She has also placed a load of gravel on the land. The Claimant further contends that the Defendant has placed concrete blocks, cement and sand on Lot 1A with a view to building on Lot 1B. The Claimant says that, unless restrained, the Defendant intends to continue with her unlawful acts on Lot 1B.

THE DEFENDANT'S CASE

17. According to the Defendant, Balgobin Thackoorpersad (“the Deceased”) became the paper title owner only of Lot 1A and Lot 1B. The Defendant, however, does not accept that the aforementioned lands are two parcels of land and maintains that same was purchased and always remained one parcel of land.
18. The Defendant says that in or around 1970, Mr. Sewjattan Ramaie, the predecessor of Lot 1A and Lot 1B, approached the Defendant’s husband, Mr. Lionel Persad, and stated his interest in selling Lot 1A and Lot 1B. The Defendant’s husband informed the Defendant of the lands for sale and the Defendant decided to purchase the said Lot 1A and Lot 1B.
19. According to the Defendant, the purchase price of the lands was \$1600. The Defendant was only able to accumulate \$1000 of the purchase price and requested of her father, the Deceased, a loan of \$600. The Deceased indicated to the Defendant that he was willing and able to loan the Defendant the said sum of \$600. However, he further stated that the lands now referred to as Lot 1A and Lot 1B would have to be purchased in his name as security for the loan. The Defendant alleges that the Deceased promised the Defendant that upon repaying the loan, the title to Lot 1A and lot 1B would be transferred to the Defendant.
20. The Defendant says that the said Lot 1A and Lot 1B were subsequently bought in the name of the Deceased, but for the benefit of the Defendant. The Defendant contends that the Deceased held the lands amounting to Lot 1A and Lot 1B on trust for her. She contends that a repayment method was never discussed between herself and her father, the Deceased. When he died on the 26th January, 1988, the Defendant says that she had not yet repaid the loan to her father. According to the Defendant, she fully repaid the loan of \$600 in or around 1989 to her mother, Sonwah Balgobin, the Legal Personal Representative of the Estate of the Deceased. The Defendant contends that it was always the intention of the Deceased to have the entire parcel of lands, being Lot 1A and Lot 1B, transferred to the Defendant.
21. According to the Defendant, she migrated to the United States of America together with her family in or around 1981/1982. She says that she has never communicated with her siblings with regard to the Estate of their father, the Deceased, and their late mother. The Defendant maintains that if the Deceased died intestate as averred by the Claimant, the Defendant is entitled to a 3/50 share in the Estate of the said Deceased. She says that to-date, she has not received a 3/50 share in the Estate of the said Deceased. Accordingly,

she calls upon the Claimant, who is the Legal Personal Representative of the Estate of the Deceased, to give an account to her of the distribution of the said Estate.

22. The Defendant says that she was not aware of the transaction where the Claimant purported to appoint her sister Rosie Samoondar as her lawful Attorney. She contends that the Memorandum of Assent registered on the 10th October, 2013 is erroneous and that the Conveyancer who prepared the transaction was either misled or misinformed in completing the transaction.
23. According to the Defendant, if the Deceased died intestate in 1988, the assets to which he had a beneficial title should be assented to or distributed as follows:
 - (i) **33.33% (or 1/3) to the Estate of Sonwah Balgobin , deceased;**
 - (ii) **66.67% (or 2/3) to the children of the Deceased,** namely, Parbatee Bharat, Ramdoolarie Bhagwhandeen, Leela Maraj, Sumitra Singh, Rose Samoondar, Ramdial Balgobin, Rampersad Balgobin, Ramharack Balgobin, Ramnarace Balgobin, Sindra Balgobin and the Defendant.
 - (iii) Further, the Defendant says that in the event that the Court holds that the Claimant is entitled to the piece of lands referred to as Lot 1B, the lands so to referred should be assented to as described above (at (ii) of this paragraph).
24. The Defendant maintains that she is the beneficial owner of Lot 1A and 1B and that the said Deceased held the entire lands on trust for her. Further, the Defendant contends that should the Court hold that the Claimant is entitled to the piece of land referred to as Lot 1B, the said lands should be assented to as described at paragraph [23] above and thereafter to the said Parbatee Bharat and Ramdoolarie Bhagwandeem. She claims that the Memorandum of Assent in its present form is void.
25. According to the Defendant, she has been in continuous, undisturbed possession of Lot 1A and Lot 1B since in or around 1970 and has extinguished any title the estate of the said Deceased may have had. Further, she says that she has been in continuous and undisturbed possession of Lot 1A and Lot 1B since the 29th June, 1992- the date of the alleged survey.
26. The Defendant alleges that she is the beneficial owner of Lot 1A and Lot 1B since in or around 1971. She says around 1971/1972, she constructed a dwelling house on the portion of lands referred to by the Claimant as Lot 1A. She says that she went to the Bank of Nova Scotia, High Street San Fernando and applied for a loan in or around 1971/1972. An officer of the said bank informed her that the house plan the Defendant had in her possession was drawn on her name but the Deed of Conveyance was in the name of the

Deceased. The Deceased co-signed for the loan but the Defendant says that she took full responsibility for repaying same.

27. According to the Defendant, she fenced the entire portion of lands referred to in the Claimant's Statement of Case as Lot 1A and Lot 1B in or around 1970 and has been in continuous, undisturbed possession of same. The Defendant contends that she has paid the Land and Building Taxes for Lot 1A and Lot 1B from 1972 until 2009. She also claims to have paid the water rates for both Lots from 1972 until the 28th February, 2014 and the electricity rates for both since 1972 to December 2013.
28. The Defendant says that she previously fenced the Northern, Eastern and Southern boundaries of the entire portion of lands and in August 2011, she re-fenced same with different materials. The Western boundary was fenced with concrete bricks and an iron gate. The Defendant says that around September, 2011, an agent/servant of the Claimant wrongfully removed the Defendant's chain link fence and post on the Southern boundary of the lands which the Claimant referred to as Lot 1B. Further, she contends that the Claimant conducted a survey of the Defendant's lands (which reflects the Defendant's lands as Lot 1A and Lot 1B) without having the authority of the Defendant.
29. The Defendant admits to backfilling her lands in July 2012 and depositing sand and gravel onto it, as a portion of the lands referred to as Lot 1B was lagoon land and the water was seeping from the land and undermining her dwelling house. While she denies intending to erect a building on Lot 1B, the Defendant says that she intends to re-fence the front (Western boundary) of her property. While she admits to receiving the legal letters of the 7th September, 2012 and the 28th January, 2013, the Defendant maintains that she is the beneficial owner of the entire portion of the said lands and she was thus entitled to enter upon them. She says that she is unaware of any unlawful acts performed by her on Lot 1B.

ISSUES

30. From the evidence, the main issues which fall to be determined are as follows:
 - (i) **Whether the Claimant was entitled to bring the Claim as she did?**
 - (ii) **If not, whether the Claim brought by the Claimant ought to be dismissed?**
 - (iii) **Whether the sub-division of the lands was valid?**
 - (iv) **Whether the Defendant is the beneficial owner of Lot 1A?**
 - (v) **Alternatively, whether the Claimant's Title to Lot 1A has been extinguished and the Defendant is entitled to sole possession of Lot 1A?**

- (vi) **Whether the Claimant should be compelled to transfer the paper title of Lot 1A to the Defendant?**
- (vii) **Whether the Claimant ought to give an account to the Defendant of the distribution of the Estate of Balgobin Thackoorpersad, deceased?**
- (viii) **Whether the Defendant is entitled to an injunction restraining the Claimant whether by herself and/or her servants and/or agents from entering and/or remaining on Lot 1B?**
- (ix) **Whether the Defendant is entitled to have the Claimant transfer to her 3/50 of the Estate of Balgobin Thackoorpersad, deceased?**
- (x) **Whether alternatively, the Defendant is entitled to have the Claimant pay to her 3/50 of the value of the Estate of Balgobin Thackoorpersad, deceased?**

LAW AND ANALYSIS

(i) Whether the Claimant was entitled to bring the Claim as she did?

31. The Claimant has brought her action against the Defendant purportedly in her capacity as the Legal Personal Representative (“LPR”) of the Estate of Balgobin Thackoorpersad, deceased, as her Claim Form and Statement of Case clearly demonstrate. In her Statement of Case, the Claimant states that by Power of Attorney dated the 29th May, 2013 registered as No. DE2013013541431D001 she purported to appoint her sister Rose Samoondar to do all such acts and things as may be necessary or expedient in connection with the property she held as the LPR of the Estate of the Deceased. Pursuant thereto, the said Rose Samoondar purported by Memorandum of Assent registered on the 10th October, 2013 in Volume 5523 Folio 159 to assent a portion of the said property comprising 0.1720 hectares to two of her siblings, namely Parbatee Bharat and Ramdoolarie Bhagwandeem.
32. Though initially seeking to have the Memorandum of Assent declared invalid and to have same set aside, the Defendant abandoned such relief at trial and from closing submissions filed on her behalf on the 20th February, 2015, appears to have accepted the validity of the Memorandum of Assent. In the said submissions, Attorney for the Defendant submitted that at the time of filing these proceedings, the Claimant, as the LPR of the Deceased, had no *locus standi* to bring this Claim, the disputed portion of land having already been transferred to two of the parties’ siblings.
33. The Claim Form and Statement of Case were filed on the 9th December, 2013. The validity of the Memorandum of Assent no longer being challenged, this Court applies the presumption of regularity and accepts that the disputed land (referred to by the Claimant

as Lot B) was properly transferred by the said Memorandum of Assent to Parbatee and Ramdoolarie which was registered on the 10th October, 2013.

34. Accordingly, at the time of filing the Claim Form and Statement of Case, the property in question was no longer vested in the Claimant (as the LPR of the Deceased), but rather with Parbatee and Ramdoolarie, neither of whom has sued the Defendant in relation to the said portion of land. Having no interest in the said land at the time of filing, the Claimant therefore had no *locus standi* and was not entitled to bring the Claim against the Defendant as she did.

(ii) Having regard to (i) above, should the Claimant's Claim be dismissed?

35. As found in (i) above, this Court is of the view that the Claimant had no *locus standi* to bring the Claim which she did. Accordingly, there is no basis to sustain the Claim and the Court shall order that the Claim be dismissed. Consequently, the Claimant having no title to Lot 1B is not entitled to any injunctive relief against the Defendant and therefore the undertaking given by the Defendant upon application by the Claimant for injunctive relief cannot be sustained and must be discharged. It follows also that the Notice of Application filed by the Claimant on the 19th December, 2013 must be dismissed. The Court shall so order.

THE DEFENDANT'S COUNTERCLAIM

36. **Part 18** of the **CPR** concerns counterclaims, ancillary claims and other similar claims. **Rule 18.1(1)(a)** states that an "ancillary claim" includes a counterclaim by a defendant against a claimant or against the claimant and some other person. **Rule 18.6(b)** provides that the defendant may continue a counterclaim even if the claim is stayed, discontinued or dismissed. Accordingly, despite the Court's dismissal of the Claimant's Claim, the Defendant's Counterclaim survives and as such, it is to issues relevant to the Counterclaim that this Court now turns.

(iii) Whether the sub-division of the lands was valid?

37. In her Witness Statement, the Claimant alleges that the said parcel of land comprised four lots and sometime in the year 1984 (prior to the death of Balgobin), Balgobin Thackoorpersad retained the services of Ali, Deonanan and Associates Land Surveyors to partition the said parcel of land as it was always his intention that the Defendant would

have Lot 1A and her sister Parbatee Bharat would have Lot 1B as she was a single parent with five children. Messrs. Ali, Deonanan and Associates made an application for subdivision of the said parcel of land in 1984. A copy of this application was exhibited by the Claimant as “**S.B.5**”. According to the Claimant, the said survey was completed by the said Ali, Deonanan and Associates in the year 1992 and is shown as Lot 1A and Lot 1B on the plan dated the 29th June, 1992 prepared by Anwar Ali, Licensed Land Surveyor and approved by Acting Director of Surveys, Frank Charles. The Claimant also exhibited copies of the said survey plans as “**S.B.6**”.

38. The Defendant states that she in no way accepts that the lands referred to by the Claimant as Lot 1A and Lot 1B are two parcels of land and maintains that same was purchased and always remained one parcel of land. The Defendant claims that the Claimant conducted a survey of her lands without having or obtaining her (the Defendant’s) authority. This survey reflects the Defendant’s lands as the aforementioned Lot 1A and Lot 1B.
39. With respect to the Claimant’s allegations concerning the subdivision of the lands in question, some parts of the evidence, and lack thereof in relation to other parts, have caused me concern. I note that the document at “**S.B.5**” which is the application to the Ministry of Finance and Planning for permission to sub-divide lands, does not contain any information in the slot requiring information regarding the interest of the applicant in the land. The applicant is stated as Balgobin Thackoorpersad. Of even greater concern is the fact that the application goes on to state the location of the site as “**Mahadeo Tr. Debe**”. The lands in question are situate at **Ramai Trace**. Attorney for the Defendant, Mr. Mungalsingh, cross-questioned the Claimant on this issue. She admitted that her father had “*two parcels of land, one in Ramai and Mahadeo Trace*”. She admitted that the said document did not support her statement for a sub-division of Ramai Trace. Thus, the exhibited document (as confirmed by the Claimant) not corroborating her claim that Ali, Deonanan and Associates applied for subdivision of the land at *Ramai Trace*, all that the Court has before it is her bald assertion in that regard. When asked whether what she stated (that the application was for permission to subdivide lands at Ramai Trace) was not true according to the document, the Claimant alleged that it “*could be an error*”.
40. Under cross-examination, the Claimant went on to agree that prior to 1992, there was only one parcel of land- until the production of the survey plan. She also agreed that both of her parents died before the survey plan was produced and further, admitted to having produced no evidence reflecting Messrs. Ali, Deonanan and Associates’ authority to conduct a survey. She claimed that before her father died, he had gone to them. Her sister, Parbatee also admitted under cross-examination that she had no document

reflecting that her father had instructed Ali, Deonanan and Associates to do any survey of the lands in question.

41. The Claimant admitted that Messrs. Ali, Deonanan and Associates are still in existence and that Mr. Anwar Ali, the surveyor is still alive. Despite this knowledge, neither he nor anyone else from the firm was called by the Claimant to give evidence supporting her claim that the Deceased authorized them to conduct a survey. The Claimant further admitted to producing no evidence that her mother, the Deceased's LPR, as of 1988, authorized the said firm to do any survey on the lands. In 2008, the Claimant became the LPR of her father's estate but by then the survey had already been completed and so, she could not have instructed the said survey to be carried out.
42. Attorney for the Defendant put it to the Claimant that the said survey was conducted without any legal authority to which she responded that she did not know. As was pointed out above, the Claimant's evidence as it relates to the alleged sub-division and survey is riddled with inconsistencies and gaps leaving much doubt in my mind as to whether the survey and sub-division were carried out on the lands at Ramai Trace with the requisite legal authority, despite same bearing the signature of approval of the Director of Surveys. However, having reached this conclusion the question arises as to whether the Court is bound to set aside the sub-division. I note that the Memorandum of Assent has already been executed in relation to Lot 1B and the Defendant no longer challenges its validity. Moreover, the Defendant never went so far as to seek to have the subdivision set aside. Accordingly, while the Court finds on a balance of probabilities that the sub-division was not valid, no order is made with regard to setting aside the said sub-division.

(iv) **Whether the Defendant is the beneficial owner of Lot 1A?**

Trust

43. I wish firstly to deal with the Defendant's assertion in her Defence that her father was the paper title owner only of the lands in question. The Defendant claims that after being informed by her husband that the lands (Lot 1A and 1B) were available for sale, she decided to purchase them. She says that the purchase price was \$1,600 but she was only able to accumulate \$1,000 and requested of her father a loan of the remaining \$600. She said that her father stated that he was willing and able to lend her the \$600 on condition that the lands referred to as Lot 1A and Lot 1B were purchased in his name as security for the loan. She says that he promised to have the title to the said lands transferred to her (the Defendant) upon repayment of the loan. According to the Defendant, the said lands were subsequently purchased in the name of her father, Balgobin Thackoorpersad, but for

the benefit of the Defendant. She claims that he held the lands (Lot 1A and 1B) on trust for her.

44. The Defendant says that a repayment method was never discussed between herself and her father, the Deceased, and when he died in 1988, she says that she had not yet repaid the loan to him. She claims that she fully repaid the loan of \$600 in or around 1989 to her mother, the LPR of the Estate of her father. She contends that it was always the intention of her father to have the entire parcel of land being Lots 1A and 1B transferred to her (the Defendant).
45. With regard to the Defendant's aforementioned claims, I find supporting evidence to be markedly lacking. There is no documentary evidence that any such arrangement as contended was in fact agreed to by the Deceased. From the Defendant's evidence, it may well be that a verbal agreement existed. That being said, I note that though a witness statement was filed on behalf of her husband, Lionel Persad, who corroborates her version of events, he was not called as a witness. In fact, neither he nor the Defendant were presented for cross-examination and so the Court was not able to test the strength of their claims. This in and of itself is not determinative of the issue, but rather all of the evidence, or lack thereof, before the Court must be viewed as a whole. In her Defence, the Defendant indicated that she and her father never discussed repayment of the loan. While it may be true that formalities may absent themselves from arrangements between family members, and so the expectation of documentary evidence may be lower than instances involving unrelated persons, it is passing strange that if indeed it was agreed that her father would loan her the remaining monies for the purchase of the land and have his name put on the Deed with the promise to place the lands in her name once repayment was completed, that the parties would never have discussed a repayment method.
46. Moreover, the Defendant claims that her father died before she repaid the loan to him and claims to have repaid same to her mother (his LPR), now deceased. Again, there is no documentary evidence to corroborate this assertion. In his witness statement, her husband, Lionel, supports this assertion but like the Defendant, he too was not called as a witness and subjected to cross-examination. In circumstances where there is absolutely no documentary evidence to support crucial aspects of the Defendant's claim that the land was held on trust for her and where there is no person other than herself and her husband who attest to same, the need to test the veracity of their statements was, in my view, all the more important. However, this opportunity was not afforded to the Court. Accordingly, as was previously stated, this Court has nothing before it other than the bare assertions of the Defendant and her husband, with such assertions remaining untested by cross-examination.

47. Taking into account all of the aforementioned circumstances, this Court is of the view that the Defendant has not managed to satisfy this Court, on a balance of probabilities, that she ever contributed any money towards the purchase price of the lands and that by virtue of such contributions, same were being held by the Deceased on trust for her. The Defendant has not convinced this Court that she has acquired any beneficial interest in the property by that means.
48. Accordingly, it must be determined whether the Defendant has acquired an equitable interest in Lot 1A by any other means, namely, by proprietary estoppel.

Proprietary Estoppel

49. Proprietary estoppel is addressed in **the Encyclopaedia of Forms and Precedents Vol. 17(2) at 6.1**. There, it is stated as follows:

“The fundamental principle that equity is concerned to prevent unconscionable conduct permeates all elements of the doctrine. The principle in its broadest form is that where one person (A) has acted to his detriment on the faith of a belief which was known to and encouraged by another person (B) that he either has or is going to be given a right in or over B’s property, B cannot insist on his legal rights if to do so would be inconsistent with A’s belief. There must be a sufficient link between the promise relied upon and the conduct which constitutes the detriment...”
(Emphasis mine).

50. The question thus to be resolved is whether the Defendant acted to her detriment on the belief that she had or was going to be given a right over the Deceased’s property (Lot 1A), and that this belief was known or encouraged by the Deceased.
51. The Claimant herself has stated in her Statement of Case that *“sometime during the year 1988 the said Balgobin Thackoorpersad had given Lot 1A to the Defendant... **the said Balgobin Thackoorpersad and his wife Sonwah Balgobin and all their children knew and accepted that the Defendant would own Lot 1A... pursuant to the said arrangement sometime in 1988 the Defendant proceeded to construct her dwelling house on Lot 1A**”* [Emphasis mine].
52. In her Defence, the Defendant denied the Claimant’s claim in that regard, saying that she is the beneficial owner of Lot 1A and Lot 1B and claimed to have constructed a house on the lands referred to by the Claimant as Lot 1A around 1971/1972. It is worth bearing in mind that the Defendant withdrew all reliefs sought in relation to Lot 1B save for the

injunctive relief claimed at relief [9] of the Counterclaim. She now seeks to be declared the beneficial owner only in relation to Lot 1A. During cross examination, the Claimant accepted that the Defendant has been on Lot 1A since 1972. Similarly, their sibling, Ramharack Balgobin, stated during cross-examination that the Defendant has been occupying Lot 1A where she has a house since 1972, without interference. He further admitted that that is land which their parents agreed to give to her and that all of the siblings knew and agreed to that. Their sister Parbatee also stated that Molly built a wall when she built her house on Lot 1A when she went to live there around 1972.

53. Taking into account all of the evidence as a whole, while I do not think that the Defendant acquired a beneficial interest in Lot 1A from the Deceased's holding the land on trust for her, I am of the view that she has acquired an equitable interest in Lot 1A by way of proprietary estoppel. I accept the evidence of her siblings which was to the effect that the Deceased agreed to give Lot 1A to her and that on that basis she constructed her home on that land, thereby expending money and acting to her detriment. I accept that her father made that promise before the time at which the Defendant would have constructed her house in 1972. I also accept, that the Deceased, who died in 1988, would have known of and encouraged her construction of a house on the land as there is nothing in the evidence to suggest that either the Deceased before his death, took any steps to prevent same.

54. In the circumstances, it would be unconscionable for the LPR of the Deceased to insist upon her legal rights to Lot 1A since doing so would be inconsistent with the Defendant's belief that she was the owner of/or to be the owner of same.

(v) **Alternatively, whether the Claimant's Title to Lot 1A has been extinguished and the Defendant is entitled to sole possession of Lot 1A?**

55. Having concluded that the Defendant is the beneficial owner of Lot 1A by operation of the doctrine of proprietary estoppel, it is unnecessary for the Court to embark upon a consideration of this alternative ground of relief sought.

(vi) **Whether the Claimant should be compelled to transfer the paper title of Lot 1A to the Defendant?**

56. The Defendant seeks an Order from this Court compelling the Claimant to transfer the paper title of Lot 1A to her within three months from the date of the Order. The question thus is whether this relief sought ought to be granted.

57. In the English Court of Appeal case of **Gillett v. Holt [2001] Ch 210** at 235 Walker L.J. considered the issue of “*satisfying the equity*”. The learned judge noted that since the Claimant had established his claim to equitable relief, it was for the Court to decide the most appropriate form the relief should take. Walker LJ noted that-

*“The aim is, as Sir Arthur Hobhouse said in **Plimmer v. Wellington Corporation (1884) 9 App Cas 699, 714**, to “look at the circumstances in each case to decide in what way equity can be satisfied”. The court approaches this task in a cautious way, in order to achieve what Scarman LJ, in **Crabb v. Arun District Council [1976] Ch 179,198**, called “the minimum equity to do justice to the plaintiff”.*

58. Bearing the aforementioned in mind, this Court notes that it has found that the Claimant is the beneficial owner of Lot 1A. In so doing, it has accepted the evidence of the Claimant, and the other siblings of the Defendant- Parbatee and Ramharack, that the Deceased had given Lot 1A to the Defendant and that the other siblings knew and accepted same. Confirming this evidence in the Court’s mind is the fact that since 1972, the Claimant has exclusively occupied Lot 1A and built a house thereon, with there being no complaint or action brought against her in relation to that said Lot by either of her parents during their lifetime or any of her siblings upon their deaths.

59. On the one hand, it may be said that the Court may grant the Defendant monetary compensation rather than transferring the paper title to her. However, this Court notes that, as has been admitted by the Claimant and her siblings Ramharack and Parbatee, the Defendant has occupied Lot 1A and constructed a house thereon since 1972. The said Lot 1A has been in her possession without interference for over forty years. To my mind, monetary compensation in those circumstances would not achieve justice and I am of the view that the transfer to the Defendant by the Claimant, as LPR of the Deceased’s Estate, of the legal title to Lot 1A is what is required to achieve the minimum equity to do justice to the Defendant in light of the facts of this case.

(vii) **Whether the Claimant ought to give an account to the Defendant of the distribution of the Estate of Balgobin Thackoorpersad, deceased?**

60. **Section 74 of the Wills and Probate Act Chap. 9:03** concerns the duty of the Legal Personal Representative to file accounts. **Section 74(1)** and **74(2)** provide as follows:

“(1) 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.

(2) If any representative shall neglect or omit to file the account in this section provided for it shall be lawful for the Administrator General or any person alleging himself to be interested in the estate of the deceased, to call upon such representative by summons entitled "In the matter of the estate of A. B. deceased and the Wills and Probate Act", to show cause why he should not file such account; and upon the return of such summons, it shall be lawful for the Court to direct that such account be filed within such time as the Court may direct, and in case of default such representative shall be liable to attachment."

61. Attorney for the Defendant stated in his written submissions that the Claimant admitted that up until that date (the date of trial being the 19th November, 2014) she had not produced any accounts and therefore had not given same to his client, a beneficiary of the estate. The duty of the representative according to **section 74(1)** of the **Wills and Probate Act** is to file with the Registrar an account showing his receipts and disbursements relating to the administration 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. If such an account is not filed in accordance with section 74(1) then the Administrator or any person interested in the estate may approach the Court in accordance with section 74(2) for the LPR to be directed to file such account.
62. The said Act requires the giving of an account by filing with the *Registrar*, not presenting an account directly to the beneficiaries. However, it appears appropriate and indeed desirable that the beneficiaries be privy to the account filed so as to be in a position to surcharge and falsify the said account. The filing of an account is one significant way to ensure that the LPR is administering the estate appropriately and in the best interests of the beneficiaries: see the case of **Kumar Persad v Vishnu Persad H.C.A. No. 607 of 2002** where Jamadar J (as he then was) ordered the defendant, pursuant to **section 74 (1) and (2) of the Wills and Probate Ordinance Ch. 8. No. 2**, to file an account of the administration of the estate of the testator within 42 days of the date of the order with leave to the plaintiff to surcharge and falsify the account within 32 days thereafter.
63. Thus, what was required in the instant case was that the Claimant, as LPR, file an account with the Registrar. The Claimant responded that she had not produced accounts, but this was in relation to having been asked whether she produced same to the beneficiaries,

which by law, is not what is required. It remains unclear whether she has in fact filed the requisite accounts with the Registrar. That being said, out of an abundance of caution, in the event that an account was not filed, this Court orders that the necessary accounts be filed by the Claimant, as LPR of the Estate of the Deceased, within 3 months of the date of this Order. The Court also orders that a copy of the filed accounts be made available to the Defendant with leave to the Defendant to surcharge and falsify such accounts within 3 months thereafter.

(viii) Whether the Defendant is entitled to an injunction restraining the Claimant whether by herself and/or her servants and/or agents from entering and/or remaining on Lot 1B

64. At trial, the Defendant abandoned all of her relief sought on the Counterclaim in relation to Lot 1B save for relief [9] which seeks an injunction restraining the Claimant and/or her servant and/or agents from entering and/or remaining on Lot 1B.
65. Attorney for the Defendant submits that injunctive relief may be granted in order to protect some right or property in the person seeking the grant of the injunction. He contends that the Defendant has been in possession of Lot 1B, according to the Claimant's evidence, since August 2010. He says further that it has been acknowledged by the Claimant that no other person has been in possession of Lot 1B. He submits that all material times (being the commencement of this claim on the 9th December, 2013 and the 19th December, 2013 when a notice of application for injunctive relief was filed by the Claimant), the Defendant was in fact the person in possession of both Lots 1A and 1B and according to the Claimant, she had been in exclusive possession of Lot 1B since 2010. Attorney for the Defendant submits that the Defendant's possession was to the exclusion of all persons including the paper title owner.
66. Attorney for the Defendant says that the Claimant has stated in her evidence that the Defendant has been the only person in possession of Lot 1A from 1972 and Lot 1B from August, 2010. He says that the Claimant stated in her own evidence that she had entered onto Lot 1B and removed the chain fence placed by the Defendant around Lot 1B. He submits that the Claimant's actions on or about the 31st May, 2013 substantiates an order for injunctive relief.
67. Accordingly, Attorney for the Defendant submits that the Defendant is entitled to injunctive relief as against the Claimant, her servants and/or agents who have not been in possession of Lot 1B and who can claim no better title to Lot 1B than the Defendant.

68. Injunctive relief cannot be sought in a vacuum. He who seeks such relief must first establish on his pleadings that he has a cause of action giving rise to a right to seek such relief.

69. The Claimant herself eventually agreed during cross-examination that the Defendant was the only person ever in occupation of Lot 1A (since 1972) and Lot 1B (since 2010). Thus, she admits that it is only the Defendant who has occupied Lot 1B since 2010. She agreed with the Attorney for Defendant that since 2010, the Defendant has fenced the land, backfilled, dropped “stuff” out on it and planted crops on it. This, she says, the Defendant did from 2010 up until she, the Claimant, filed these proceedings. The Claimant agreed with Attorney for the Defendant that the Defendant has exclusively occupied Lot 1B since 2010. The parties’ sibling, Parbatee Bharat, who was called as a witness for the Claimant, stated under cross-examination that the Defendant was in occupation, albeit wrongfully in her view, of Lot 1B and confirmed that letters were sent from lawyers on her and the Claimant’s behalf calling upon the Defendant to cease and desist her wrongful occupation of the land. Parbatee also admitted that since 2010 the Defendant had erected a chain link fence on Lot 1B which she and the Claimant removed. She admitted that the Defendant however continued to plant crops, only ceasing when the interim injunction was issued. Under further questioning Parbatee stated:

“she remove the wire and start to backfill the land and then we became aware that she’s now like she is going to occupy the land and take own the land.”

Attorney for the Defendant then asked:

“and since then she backfill, she plant it up, she put sand and gravel and she put back the fence, correct?”

To which Parbatee responded “yes”.

70. Taking into account all of the aforementioned evidence, I accept that the Defendant has had sole possession of Lot 1B since at least 2010. The Defendant occupied the land, erected a fence thereon, planted crops and backfilled same, all of which are clearly demonstrative of an intention to possess same.

71. As was said before, to claim injunctive relief, the Defendant must have a cause of action in relation to Lot 1B. The Court must look to see whether the Defendant’s facts as pleaded are sufficient to give rise to a cause of action in trespass which in turn lends itself to the remedy sought of an injunction.

72. I quote with approval the statement of the law of trespass by Dean-Armorer J., in **Martin Phillip Revenales v. Eric Charles CV2006-03842**. Therein, Dean-Armorer J., stated that:

“Trespass is in essence a tortious injury to a possessory right, and therefore the proper claimant in a claim of trespass is the person who was, or is, deemed to have been in possession at the time of the trespass. A person in possession can sue although he neither is the owner nor derives title from the owner, and may even be in possession adverse to the defendant.. A claimant who can show that he is or was in fact in possession or entitled to possession at the time of the trespass would be entitled to maintain an action in trespass against the wrongdoer”.

73. In the instant matter, the Defendant did not specifically seek damages for trespass. She has, however, pleaded that the Claimant wrongfully removed her chain link fence on Lot 1B and seeks injunctive relief preventing her and/or her servant or agents from entering Lot 1B. The Claimant removed the chain link fence in or around September, 2011 and, as said before, I am satisfied that the Defendant was in possession of Lot 1B since at least 2010. Thus, at the time of the Claimant’s alleged trespass (entry onto Lot 1B and removal of the Defendant’s fence), the Defendant was in possession of Lot 1B and accordingly she would have a cause of action in trespass. Though damages for trespass were not claimed, I am of the view that the Defendant would nonetheless be entitled to the injunctive relief sought against the Claimant and/or her servants and/or agents in relation to the trespass to Lot 1B which occurred.

- (ix) **Whether the Defendant is entitled to have the Claimant transfer to her 3/50 share of the Estate of Balgobin Thackoorpersad, deceased? or**
- (x) **Whether alternatively, the Defendant is entitled to have the Claimant pay to her the value of 3/50 share of the Estate of Balgobin Thackoorpersad, deceased?**

74. It is convenient to deal with these two alternative issues together. The Defendant in her Counterclaim has sought an order to compel the Claimant, as LPR, to transfer three fiftieth (3/50) share of the Estate of Balgobin Thackoorpersad, deceased, or in the alternative, an order compelling the Claimant to pay to her the value of 3/50 share of the said Estate.

75. The Deceased died intestate on the 26th January, 1988 leaving him surviving his lawful wife and eleven children. Letters of Administration were granted to his wife Sonwah

Balgobin on the 22nd July, 1988. Sonwah Balgobin died testate on the 11th April, 1992 without fully administering the Estate of the Deceased. By her last Will and Testament dated the 15th September, 1989, the said Sonwah Balgobin appointed the Claimant the sole Executrix of her Will, probate of which was granted to the Claimant on the 31st December, 1993. *Letters of Administration de bonis non* were granted to the Claimant on the 11th July, 2008 thus making the Claimant the LPR of all the unadministered Estate of the Deceased.

76. The Deceased, having died intestate in 1988, leaving a lawful wife and eleven (11) children, his Estate ought to be distributed in accordance with **section 24 of the Administration of Estates Ordinance Ch. 8. No. 1** and not in accordance with **section 24 of the Administration of Estates Act Chap. 9:01** as suggested in the Defendant's closing written submissions⁴, since the amending legislation, namely, the **Distribution of Estates Act, Act 28 of 2000**, which amended the Ordinance, had not yet come into force. Section 24 of the Administration of Estates Ordinance stipulates as follows:

24. The widow or surviving husband of an intestate person dying after the commencement of this Ordinance shall be beneficially entitled as follows:-

(a) If there is no lawful issue of the deceased, to the whole of the estate;

(b) If there is lawful issue of the deceased, to one-third thereof.

77. It follows from the above that where there is a lawful wife and lawful children, the wife will be entitled to one-third (1/3) share of the estate of the deceased and the children will be entitled to the remaining two-thirds (2/3) thereof, equally. Since in this case there are eleven (11) children, the 2/3 must be divided equally among them which calculates as follows:

$2/3 \div 11 = 0.06$ which is the same as two-thirty-third (2/33) or three-fiftieth (3/50)

78. Accordingly, pursuant to **section 24 of the Administration of Estates Ordinance Ch. 8. No. 1** the Defendant is entitled to **0.06 or 3/50 share** of the Estate of Balgobin Thackoorpersad, deceased. It is clear from a totality of the evidence that the Claimant has not fully administered the Estate of the Deceased nor has she filed with the Registrar of the Supreme Court an account in accordance with **section 74 of the Wills and Probate Act Chap. 9:03**. The question now arises as to whether the Claimant, as LPR of the Estate of the Deceased, ought to be ordered to distribute to the Defendant her entitlement

⁴ Paragraph 75 of the Defendant's closing written submissions filed on 20th February, 2015

to the Estate of the Deceased or whether the Court should order her to pay to the Defendant the value of her entitlement thereof. From all the surrounding circumstances of this case this Court finds that it will be more appropriate for the Claimant to distribute to the Defendant her share of the Estate of the Deceased as calculated in paragraph 77 of this judgment. I shall so order.

ENTITLEMENT TO COSTS:

79. The general rule is that the court must order the unsuccessful party to pay the costs of the successful party: **CPR Part 66.6(1)**. However, under the CPR, this general rule that costs follow the event is just a starting point since CPR Part 66.6(2) gives the court the discretion to order the successful party to pay all or part of the costs of the unsuccessful party: [see **A.E.I. Rediffusion Music Ltd v Phonographic Performance Ltd [1999] 1 W.L.R. 1507**, CA, per Lord Woolf and **Multiplex Constructions (UK) Ltd v Cleveland Bridge UK Ltd [2008] EWHC 2280 (TCC)** per Jackson J.]
80. The new approach which is the issue-based approach, requires the court to consider issue by issue to ascertain where costs should fall, particularly in cases which are not “money claims” which more accurately reflect the level of success achieved: [see the cases of: (1) **Summit Property Ltd v Pitmans [2001] EWCA Civ. 2020**; (2) **Secretary of State v Frontline [2004] EWHC 1563**; (3) **Fulham Leisure Holdings v Nicholson Graham [2006] EWHC 2428, Ch, per Mann J.**; and **A.E.I. Rediffusion** (supra).
81. In exercising its discretion as to who should pay costs the court is mandated to consider all the circumstances of the case including, but not limited to: (a) the conduct of the parties (both before and during proceedings); (b) whether the party has succeeded on particular issues even if not wholly successful; (c) the manner and reasonableness in which a party pursued the proceedings, a particular allegation or issue; and all other factors provided for in **CPR Part 66.6 (5) and (6)**: [see **Firle v Data Point International Ltd [2001] EWCA Civ. 1106, CA**, and **Islam v Ali [2003] EWCA Civ. 612**].
82. The question as to who is the successful party was considered in the case of **BCCI v Ali (No. 4), The Times March 2, 2000** which was approved in **Day v Day [2006] EWCA Civ. 415** in which it was stated that the court must treat “*success*” not as a technical term but “*a result in real life*” to be determined with the “*exercise of commonsense*”. In **CPR Part 66.6(3)** the court is given the power in particular to order a person to pay-

(a) only a specified proportion of another person’s costs;

(b) costs from or up to a certain date only; or

(c) costs relating only to a certain distinct part of the proceeding.

83. It has long been settled that a Claim and a Counterclaim must be treated as distinct and separate actions and so for the purposes of entitlement and quantification of costs separate orders must be made. In light of the new regime to the entitlement of costs under the CPR, it appears to me that in relation to the **Claim** there is no question that the Defendant is the fully successful party and therefore the general rule that costs follow the event ought to be applied. This is also agreed by the Claimant's Attorney-at-law in his brief submissions filed on the 29th August, 2016. In this regard, since the Claim is a non-monetary claim and one which must be calculated on the prescribed scale, the said Claim is to be treated as one for \$50,000.00 pursuant to CPR 1998 Part 67.5(2)(c). Consequently, in accordance with the scale of costs in CPR Part 67 Appendix B, the Defendant will be entitled to the sum of \$14,000.00 on the Claim.

84. In relation to the **Counterclaim**, it also cannot be disputed that the Defendant has been the overall winner having been substantially successful on all major issues raised in the Counterclaim. However, I take in consideration that having regard to the evidence led at the trial and the Reply and Defence to Counterclaim, the Defendant withdrew and/or abandoned several issues in relation to Lot 1B save and except the injunctive relief sought. I also take into account that there has been much overlap in defending the Claim and the issues raised in the Counterclaim. Taking all the circumstances into account I am of the view that the Defendant is entitled to her costs on the Counterclaim but that such costs should be **reduced by 35%**. The Counterclaim being also a non-monetary claim and no value of the claim having been determined, in accordance with **CPR 1998 Part 67.5(2)(c)** the Counterclaim is to be treated as one for **\$50,000.00** the prescribed costs for which is **\$14,000.00** as aforesaid. However, since the Defendant's costs on the Counterclaim are to be reduced by 35%, the prescribed costs are to be quantified as **\$14,000.00 - \$4,900.00 = \$9,100.00**.

85. In relation to the Notice of Application filed by the Claimant on the 19th December, 2013 pursuant to which the Defendant had entered an undertaking in lieu of an injunction being granted, and on which costs were ordered to be costs in the cause, the said Application having now been dismissed, the Defendant is entitled to her costs to be assessed in accordance with **CPR Part 67.12**, in default of agreement.

86. In light of all the foregoing analyses the order of this Court is as follows:

ORDER:

IN RELATION TO THE CLAIMANT'S CLAIM:

- (1) The Claimant's Claim be and is hereby dismissed.
- (2) Consequently, the undertaking given by the Defendant on the 30th January, 2014 pending the determination of this Claim be and is hereby discharged.
- (3) The Notice of Application filed by the Claimant on the 19th December, 2013 be and is hereby also dismissed.
- (4) Costs of the Claim to be paid by the Claimant to the Defendant quantified on the prescribed scale in the sum of \$14,000.00 in accordance with CPR 1998 Part 67.5(2)(c).
- (5) Costs of the Notice of Application of the 19th December, 2013 to be paid by the Claimant to the Defendant to be assessed in accordance with CPR 1998 Part 67.12(2), in default of agreement.

IN RELATION TO THE DEFENDANT'S COUNTERCLAIM:

- (6) A declaration be and is hereby granted declaring that the Defendant is the beneficial owner of Lot 1A by operation of the doctrine of proprietary estoppel.
- (7) The Claimant, as Legal Personal Representative of the Estate of Balgobin Thackoorperasd, deceased, shall execute the appropriate instrument of transfer to convey the legal title of Lot 1A to the Defendant within 90 days from the date of this order.
- (8) The said instrument of transfer to be prepared by the Defendant's Attorneys-at-law and presented to the Claimant through her Attorneys-at-law for execution. The costs of this exercise to be borne by the Defendant.
- (9) In default of the Claimant executing the said instrument of transfer, as ordered herein, the Registrar of the Supreme Court or her designate shall be and is hereby empowered to execute same on behalf of the Claimant, in which case the Defendant shall be at liberty to recover the costs thrown away as a result of such default.

- (10) The Claimant shall, in accordance with section 74(1) and (2) of the Wills and Probate Act Chap. 9:03, file with the Registrar of the Supreme Court at the Probate Registry, an account in relation to the administration of the Estate of Balgobin Thackoorpersad, deceased, within 90 days from the date of this order.
- (11) Upon filing the said account as ordered in clause 6 of this order, the Claimant shall also serve a copy of the said account on the Defendant. Permission is granted to the Defendant to surcharge and falsify the said account within 90 days from the date of service thereof.
- (12) It is declared that the Defendant is beneficially entitled to 0.06 or 3/50 share of the Estate of Balgobin Thackoorpersad, deceased. In this regard, the Claimant shall distribute to the Defendant her entitlement to the said Estate within 90 days from the date of this order.
- (13) An injunction be and is hereby granted restraining the Claimant whether by herself, her servants and/or agents or howsoever otherwise from entering and/or remaining on Lot 1B, unless specifically permitted by the Defendant.
- (14) Costs of the Counterclaim to be paid by the Claimant to the Defendant quantified in the sum of \$9,100.00 being 65% of the prescribed costs in accordance with CPR 1998 Part 67.5(2)(c).

Dated this 30th day of August, 2016

Robin N Mohammed
Judge