

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**Claim No CV2015-00011**

**BETWEEN**

**KALOUTIE RATTANSINGH**

First Claimant

**PROVEEN PRIA RATTANSINGH-NAGEE**

Second Claimant

**ORNELLA RATTANSINGH**

Third Claimant

**AND**

**VISHAL RATTANSINGH**

**(The Legal Representative of CARLTON RATTANSINGH, Deceased)**

First Defendant

**VISHAL RATTANSINGH TYRE SERVICE LIMITED**

Second Defendant

**VISHAL RATTANSINGH**

Third Defendant

**MICHELLE RATTANSINGH**

Fourth Defendant

**Before the Honourable Mr. Justice Robin N. Mohammed**

**Date of Delivery:** 4 April 2019

**Appearances:**

Mr. Samuel Saunders for the Claimants

Mr. Vashist Maharaj instructed by Ms. Mickela Panday/Mr. Kissoonlal Sinanan for the Defendants

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**JUDGMENT**

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## **I. Background**

[1] Carlton Rattansingh, the Deceased, died on 16 January 2012 but left a will executed on 2 November 2011. In this will, the Deceased named his son, Vishal Rattansingh (the First/Third Defendant herein) as his executor. The Deceased named as beneficiaries in his will: his wife, Kaloutie Rattansingh (the First Claimant herein), the Third Defendant and his two daughters, Proveen Pria Rattansingh-Nagee and Ornella Rattansingh (the Second and Third Claimants herein, respectively).

[2] In the will, the Deceased bequeathed all monies in six accounts in Scotiabank Trinidad and Tobago Limited, Main Road Chaguanas Branch, and devised and bequeathed all his real and personal property and the residue, after the payment of debts, funeral and testamentary expenses, to his son, his wife and his two daughters in the following manner:

- (i) 25% to Kaloutie;
- (ii) 50% to Vishal;
- (iii) 12 ½% to Proveen; and
- (iv) 12 ½% to Ornella.

[3] Vishal obtained the Grant of Probate of the Will of the Deceased on 2 August 2013. However, the Claimants have pleaded that since obtaining the Grant of Probate, Vishal has been very secretive about the monies he collected on behalf of the estate of the Deceased and has refused to give the Claimants an account of same.

[4] On the Claimants' pleadings it was averred that, at the date of the death of the Deceased, the Deceased ran and operated a tyre business at the Corner of Main Road and Constance Street, Montrose, Chaguanas, known as Joseph Rattansingh Tyre Service. The Claimants pleaded that after the death of the Deceased, Vishal took control of the assets of the said tyre shop. It is the Claimant's case that Vishal ran and operated the said tyre shop as his own to the exclusion of the Claimants without providing them with any accounts in respect of the same and without giving them any share and/or interest in same.

[5] The Claimants pleaded that in or around January 2012, Vishal changed the name of the said tyre shop to Vishal Rattansingh Tyre Service. Vishal ran the said tyre shop under this name until Vishal Rattansingh Tyre Service Limited was incorporated and all the assets of the said tyre shop were transferred to Vishal Rattansingh Tyre Service Limited.

Vishal and his wife, Michelle, continue to run and operate Vishal Rattansingh Tyre Service Limited to the exclusion of the Claimants and have refused to furnish the Claimants with any accounts or to transfer the shares to them in accordance with the Will of the Deceased.

[6] In their pleadings, the Claimants proceeded to set out the oral agreement between themselves and Vishal. They pleaded that in or around November 2013, they agreed as follows:

- (a) that Vishal would execute a Deed of Assent in accordance with the Will of the Deceased in favour of Vishal and the Claimants in respect of the premises described in the Schedule to Deed of Assent dated 14 June 2011 and registered as No DE201101571957 as follows:
  - (i) one half share to Vishal;
  - (ii) one quarter share to Kaloutie;
  - (iii) one eighth share to Proveen;
  - (iv) one eighth share to Ornella.
- (b) After execution of the Deed of Assent, the Claimants and Vishal would partition and divide the above premises as follows:
  - (i) the premises known as Lot No 44 Constance Street and Lot No 41 Hugh Street would be conveyed to Vishal;
  - (ii) the premises known as Lot No 101 Chaguanas Main Road would be conveyed to Kaloutie;
  - (iii) the premises known as Lot No 102 Algernon Street would be conveyed to Proveen and Ornella.

[7] The Claimants have pleaded that the Deed of Assent and Deed of Partition were prepared by their attorney-at-law for execution by Vishal. However, Vishal has refused and/or failed to execute the Deeds. In view of that, the Claimants' attorney-at-law sent a letter dated 13

June 2014 to Vishal with respect to the execution of the Deeds and to provide accounts of the estate of the Deceased as well as the tyre business operated by the Deceased. Vishal has failed to respond to the above letter.

[8] The Claimants pleaded that by letter dated 8 August 2014, the Claimants' attorney-at-law received a Deed of Assent and Deed of Partition to revise from Vishal. It is the Claimants' case that the Claimants' attorney-at-law replied by letter dated 4 November 2014 indicating that they were no longer interested in partitioning since Vishal has refused to give the requested documents.

[9] Accordingly, the Claimants claim the following reliefs:

- i) an order that the First Defendant distribute the estate of the Deceased in accordance with the will of the Deceased;
- ii) a declaration that the Third Defendant and Fourth Defendant hold the shares in the Second Defendant on trust for themselves and the Claimants;
- iii) an order that the First Defendant provide an account of all monies collected by him and expended by him on behalf of the estate of the Deceased;
- iv) an order that the First Defendant and Fourth Defendant provide a statement of account in respect of the tyre business operated by the Deceased from the date of his death until the incorporation of the Second Defendant;
- v) an order that the Second Defendant, the Third Defendant and the Fourth Defendant give a statement of account in respect of the assets, income and expenses of the Second Defendant.
- vi) Interest on all sums due to the Claimants pursuant to the Will of the Deceased.
- vii) Further and/or other relief.
- viii) Costs.

[10] The Defendants have pleaded that Vishal has not been secretive about the amount of monies that he collected on behalf of the estate of the Deceased and that he has not refused to give the Claimants an account of same.

[11] The Defendants pleaded that the estate of the Deceased comprised of two pieces of real property in the Ward of Chaguanas. It is the Defendants' case that the Claimants wrote to the Bank of Nova Scotia indicating that they had agreed to the partitioning of the real property of the estate of the Deceased. Pursuant to the agreement in the letter to the Bank, Vishal instructed his attorney-at-law to prepare a Deed of Assent which was presented to the Claimants for execution. However, they refused to do so. The Defendants pleaded that the Claimants desired that the land devolved in accordance with the Will of the Deceased. Accordingly, Vishal caused a new Deed of Assent to be prepared. However, the Claimants again refused to execute same and instructed that the Deed of Assent be prepared as to the agreement contained in the letter to the Bank.

[12] The Defendants also denied that all of the Claimants were involved with the operation of the tyre shop of the Deceased and that they were excluded from the operation of any business of the Deceased.

[13] The First Defendant further denied that he has not administered the estate of the Deceased in a secretive way nor has he refused to communicate with the Claimants or to answer any legitimate questions that they may have addressed to him.

[14] The Claimants filed their witness statements in support of their case. Vishal filed his own witness statement in support and that of Mayawatie Jaggernauth, however, she was not called at the trial.

[15] The matter came up for pre-trial review on the 1 March 2016 whereupon the Court extended the time limit for the Defendants to file and serve their witness statements. The Court further ordered the Claimant's attorney-at-law to file the Trial Bundle and confirmed the trial dates for 12 and 13 April, 2016. The trial was completed on the 13 April 2016 and directions were given for the filing of closing written submissions.

[16] The Court ordered that (i) written closing submissions to be filed and served by the Defendants on or before 27 May 2016; (ii) response written submissions by the Claimants

on or before 18 July 2016; and (iii) reply submissions on authorities only on or before 5 August 2016.

[17] The Defendants' attorney failed to comply with the Court's directions and so the Claimants' attorney was unable to file response submissions as ordered. The Defendants, through another attorney-at-law filed a Notice of Application dated 28 November 2016 requesting (i) that the time for the Defendants to file and serve their written submissions be extended to 31 January 2017; (ii) the time for filing reply submissions on authorities only be extended to 17 March 2017; and (iii) relief from sanctions for failing to comply with the order of the Court. The Defendants also informed the Court of their retention of a new attorney-at-law, Mr. Kissoonlal Sinanan, and that a Notice of Change of Attorney was filed on 21 November 2016. The Court subsequently granted the extension of time to the Defendants.

[18] In obedience to the order for extension of time, the Defendants filed their written closings submissions on 31 January 2017. Attorney at law for the Claimants, Mr. Saunders, thereafter requested, via e-mail, an extension of time to 17 August 2017 to file and serve the Claimants' response submissions. The Court granted the request on 31 July 2017 and also ordered that time for the Defendants to file and serve reply submissions, if necessary, was extended to 22 September 2017.

[19] The Claimants filed their response submissions on 17 August 2017 and the Defendants filed reply submissions on 21 September 2017.

## **II. Submissions**

[20] Mr Sinanan, on behalf of the Defendants, submitted that the duty of Vishal as Executor of the estate is to administer the estate according to law and his only duty in that regard is one of due diligence. He added that it would be unreasonable that the Personal Representative capitulate his responsibility in order to fulfil the demands and/or follow the dictates of the residuary legatee.

It was further submitted that Vishal, as Personal Representative, has a duty to pay the debts of the estate and that the Personal Representative is at liberty as between himself and the persons interested in the residue to have recourse to any funds he pleases in order to pay the debts and legacies.

[21] Mr Sinanan submitted that all the elements of a legally binding agreement existed between Vishal and the Claimants regarding the distribution of the real property of the estate. It is the Defendant's case that the Claimants wrote to the Bank of Nova Scotia, Chaguanas advising the Bank of the agreement. However, there was a dispute as to who should prepare the respective Deeds. It was advanced that Vishal was reluctant to execute the Deeds as prepared by the Claimants' attorneys-at-law.

Mr Sinanan highlighted that the Claimants did not dispute the submission at trial by the Defendants' attorney-at-law that the respective Deeds should be prepared by Vishal's attorney-at-law. It was submitted that when the said Deeds were prepared in accordance with this practice, the Claimants refused to execute the said Deeds.

Mr Sinanan contended that there were no conditions attached to the agreement and that the Claimants were not exactly forthright in their request for an account of the estate as a condition to their execution of the respective Deeds.

[22] Mr Sinanan submitted that during the period subsequent to the Grant of Probate, the actions of Vishal were neither concealed nor secretive as it related to the administration of the estate. It is the Defendant's case that the Claimants benefitted, knew and/or were given notice of most of the said actions. Counsel highlighted that according to the evidence of Ornella, Vishal did keep the Claimants informed on his administration of the estate.

Mr Sinanan further contended that any delay in the distribution of the assets of the estate cannot be grounds for holding that Vishal is secretive in his administration of the estate.

It is the Defendants' case that Vishal never hid the fact that the monies collected on behalf of the estate were being applied to pay the debts of the estate. It was further stated that the Claimants' only claim under the will are as legatees for a share in the residue of the estate and that is the duty of Vishal to firstly ascertain what is the residue of the Estate.

[23] Mr Sinanan contended that any question of the management of the assets of the estate by Vishal must be analysed in relation to his responsibilities as the Executor of the estate, which requires him to take certain actions in administering the estate. In this regard, it was submitted, Vishal acted with the required due diligence since he began administering the estate before the required year. However, his duties with respect to the administration of the estate were influenced by his assessment of the liabilities of the estate and the actions of the Claimants. It was also advanced that it was not only impractical but also unnecessary for Vishal to inform the Claimants of every detail of the estate and that he is not under an obligation to inform the Claimants of the gifts he is entitled to under the Will.

It is the Defendants' case that at no time was there any blatant refusal by Vishal to produce an account of the estate of the Deceased as a schedule of the expenses was submitted to Vishal's attorney-at-law for transmission to the Claimants on or about 13 May 2014 and a second statement was submitted by Vishal on or about 24 June 2015.

[24] Mr Sinanan advanced that the Claimants' action in bringing this claim against the Defendants effectively hindered Vishal in his duty to ascertain the residue of the Estate and therefore, curtailed his ability to distribute and/or settle same. He contended that the Deceased, in his will at paragraphs 8 and 9, included all his real and personal property in the residuary estate and that the Deceased, at paragraph 8 of the Will, instructed that certain payments must be made prior to the distribution of the residuary estate.

Thus, it is the Defendants' case that Vishal is acting in accordance with his duty as Personal Representative of the estate of the Deceased whereby he is not distributing the



estate of the Deceased until all the requisite debts and testamentary expenses and costs are settled.

[25] Mr Sinanan contended that the Deceased did not own the tyre shop, “Joseph Rattansingh Tyre Service”, nor the land upon which it was located. It was submitted that the tyre shop was owned by Joseph Rattansingh and the Deceased operated the tyre shop in the name of Joseph Rattansingh. It was advanced that the Deceased, therefore, could not have intended to dispose of something in his will that he did not own.

It was further submitted that during the lifetime of the Deceased, he promised to leave the running and operating of the tyre shop to Vishal. As such, everything associated with the tyre shop passed with it to Vishal. Mr Sinanan argued that Vishal’s interest in the Tyre Shop is premised on the doctrine of proprietary estoppel.

[26] Mr Sinanan also submitted that based on the evidence given at trial, Michelle should not be a party to this action due to the mere fact that her name appears as one of the Directors in the tyre shop business, Vishal Rattansingh Tyre Service Limited. It was stated that this is a probate matter which is not materially linked to any breach of her duties as a director of the company or any liabilities resulting therefrom.

[27] Mr Saunders, in response, submitted that the Defendants never pleaded any contract of the nature outlined in their submissions. The Defendants only made a reference to an agreement to partition in Paragraph 5 of their Defence. It was advanced that the Claimants specifically referred to an agreement that they had with Vishal with respect to the execution of a Deed of Assent and a Deed of Partition relating to the properties of the Deceased in paragraph 6 of their Statement of Case. Mr Saunders highlighted that the Defendants denied this agreement and referred to the inventory of the estate of the Deceased.

[28] Mr Saunders pointed out that all the Claimants in their Witness Statements gave evidence on the failure of Vishal to furnish them with any information regarding the accounts of

the estate. It was contended that Vishal's witness statement failed to show that he was frank and open with the Claimants about his administration of the estate of the Deceased. Counsel stressed that there was no evidence in his witness statement which showed that he disclosed information as to how much money he collected and how much debts he paid on behalf of the estate.

[29] Mr Saunders submitted that during cross-examination of Vishal, the evidence revealed that he was being secretive about the affairs of the estate of the Deceased because his dealings with the Claimants were characterised by concealment of information. It is the Claimants' case that Vishal failed to disclose all the assets of the Deceased in the Inventory, to disclose how much money he collected on behalf of the estate, to disclose that he had taken legal action in respect of the death of the Deceased or whether he had collected money in that regard.

[30] In response to the Defendants' submission that there was no blatant refusal on the part of Vishal to produce an account of the estate of the Deceased, Mr Saunders submitted that the evidence in the case showed that to be untrue. He contended that Vishal, during cross-examination, revealed that he had no reason for not responding to the letter of the Claimants' attorney-at-law and had no reason for not furnishing them with the accounts.

[31] Mr Saunders highlighted that the pleadings and evidence of Vishal do not support the contention in the Defendants' submissions that Vishal distributed the estate in accordance with the Will of the Deceased. It was submitted that Vishal did not give evidence in his witness statement of any distribution of the estate or any part of it to the Claimants. Vishal was completely silent as to the distribution of the estate of the Deceased.

Mr Saunders contended that the Claimants are beneficiaries under the Will of the Deceased and are together entitled to one half share of the estate of the Deceased. Mr Saunders highlighted that the cross-examination of Vishal revealed that he knew about a number of items which fell into the residue of the estate such as the tyre shop, Joseph Rattansingh Tyre Service, which was run by the Deceased, the lands belonging to his

grandfather which his father occupied (located at the back of the tyre shop), the recapping business, the wheel alignment business, the debts collected from the Deceased's debtors and the outstanding claim in respect of the death of the Deceased.

[32] Mr Saunders agreed with the Defendants' submissions that the debts of the estate must be paid. However, he contended that Vishal had not produced any supporting documents to support his assertion that he had paid the debts of the estate.

[33] On the issue of the tyre shop, Joseph Rattansingh Tyre Service, counsel submitted that Vishal never pleaded reliance on the principle of proprietary estoppel. He advanced that the Defendants failed to traverse the Claimants' allegations about the tyre shop in the Statement of Case and, as a consequence, they are deemed to have admitted them.

[34] Counsel submitted that Michelle, the Fourth Defendant herein, is correctly joined as a party to this Claim as she is a Director and Secretary of Vishal Rattansingh Tyre Service Limited, a limited liability company which can only act through its agents.

It was further submitted that the annual return of Vishal Rattansingh Tyre Service Limited disclosed that Vishal and Michelle each own 1000 shares in the company. It is the Claimants' case that Vishal and Michelle hold the shares of the company on trust for themselves and the Claimants; therefore, Michelle is legally and appropriately joined as a party to the claim.

[35] In response to the issue of Michelle being a correct party in this matter, counsel for the Defendants submitted that a director need not be joined as a party to a matter only because the company is party to the said matter or at all since a company has the capacity, rights, powers and privileges of an individual.

### **III. Issues for determination**

[36] Having considered the pleadings, evidence and submissions, the Court views that the following are the live issues for determination:

1. **Is the Fourth Defendant correctly joined as a party to this Claim?**
2. **Was the First Defendant being secretive about the monies that he collected on behalf of the estate of the Deceased by failing to provide an account of the administration of the estate of the Deceased?**
3. **Does the tyre shop Vishal Rattansingh Tyre Service Limited formerly known as Joseph Rattansingh Tyre Service form part of the estate of the Deceased to be distributed in accordance with the Will?**
4. **Is the First Defendant liable for damages for waste and *devastavit* in the misappropriation and maladministration of assets belonging to the Estate of the Deceased?**

## **V. Law and Analysis**

### **Issue 1: Is the Fourth Defendant correctly joined as a party to this Claim?**

[37] **Section 21(1) of the Companies Act, Chapter 81:01** reads as follows:

*“A company has the capacity, and, subject to this Act and any other law, the rights, powers and privileges of an individual including, without prejudice to the foregoing, the power to hold lands in any part of Trinidad and Tobago or elsewhere.”*

By virtue of this section, a company has its own legal personality with rights, powers, privileges and obligations of its own. A company is bestowed with legal capacity and its shareholders are not subject to liability.

Accordingly, in a claim before the Court, which involves a company, it is not appropriate to name any of the shareholders or directors, unless such person is being sued in his/her personal capacity.

[38] The submission by the Claimants that Michelle is correctly joined as a party since she is a Director and an agent of Vishal Rattansingh Tyre Service Limited, which is a limited liability company, and can only act through its agent is stoutly rejected by the Court.

[39] Michelle is a named Director and the Secretary of Vishal Rattansingh Tyre Service Limited, the Second Defendant herein. Michelle also possesses 1000 ordinary shares in Vishal Rattansingh Tyre Service Limited. The Claimants in this matter are seeking relief from the Court against Vishal Rattansingh Tyre Service Limited in that it be directed to give a Statement of Account in respect of the assets, income and expenses of itself from its incorporation until present. In view of that, naming Vishal Rattansingh Tyre Service Limited alone for this reason as a party to this action will be sufficient.

[40] However, the Claimants are also seeking relief against Michelle. Michelle's connection to this matter is not as a director of Vishal Rattansingh Tyre Service Limited but as a shareholder of Vishal Rattansingh Tyre Service Limited.

It is the Claimants' case that shares in the tyre shop, Vishal Rattansingh Tyre Service Limited, formerly known as Joseph Rattansingh Tyre Service form part of the estate of the Deceased to which they are entitled as beneficiaries. The Claimants are alleging that Michelle, in conjunction with Vishal, hold the shares in Vishal Rattansingh Tyre Service Limited on trust for the Claimants as the shares were not transferred to them.

However, whether the tyre shop forms part of the estate of the Deceased is a corollary issue to be determined by the Court later on this judgment.

[41] The Court, therefore, finds that it is necessary to add Michelle to these proceedings as she is connected to one of the issues in this matter, that is, whether she and Vishal hold the shares in Vishal Rattansingh Tyre Service Limited on trust for the Claimants.

**Issue 2: Was the First Defendant being secretive about the monies that he collected on behalf of the estate of the Deceased by failing to provide an account of the administration of the estate of the Deceased?**

[42] Vishal was appointed the sole Executor by the Will of the Deceased. By this appointment, Vishal is under a duty to collect and get in the Deceased's personal and real estate and

administer it according to law. As the Executor, Vishal must carry into effect the provisions of the Will of the Deceased.

[43] Thomas J in **Re Hayes Will Trust**<sup>1</sup> opined that-

*“It is well established that the estate being administered by a personal representative is the personal representative's property. Of course he has fiduciary duties with regard to it and their performance will be secured by the court; and he may be made liable for breaches of his fiduciary duties. But no legatee, devisee or next-of-kin has any beneficial interests in the assets being administered. His position is quite different from that of a trustee, who holds property for beneficiaries and has a duty to hold the balance evenly between the beneficiaries to whom the property belongs and for whom the trustee holds it. It does not necessarily follow that the duty of an executor in the course of administering the estate is subject to the trustee's duty of holding the balance evenly between the beneficiaries. Whether he has such a duty has to be independently considered in the light of his own different fiduciary functions and obligations: see Comr of Stamp Duties v Livingston ([1964] 3 All ER 692 at 696, 697; [1965] AC 694 at 707, 708). Those functions are to get in the testator's estate, preserve its properties, discharge its liabilities and distribute the resulting net assets. The legal personal representatives would in due course be concerned to obtain a proper discharge for the net assets and thus to ascertain who were entitled to them and to ensure that the assets were distributed to those entitled.”*

[44] **Halsbury's Laws of England, 5th Edition, Volume 103 at paragraph 1053** stated as follows:

*“The ultimate object of the administration of an estate is to place the beneficiaries in possession of their interest and accordingly, subject to the terms of the will if any, the personal representative owes the beneficiaries a duty to pay the debts and to ascertain the residuary estate with due diligence.*

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<sup>1</sup> [1971] 2 All ER 341

*The residuary legatee is not entitled to any particular asset of the testator's estate; his right is to have the clear residue ascertained and to have his share of it paid over. However, subject to the terms of the will, if any, the actual residue should be conveyed to the beneficiaries in its unconverted state unless conversion is necessary in the course of administration or special circumstances apply.”*

[45] It can be seen, therefore, from the above-quoted authorities, that the law places a duty on the personal representative, in this case, Vishal, to furnish and verify the accounts of the estate of the Deceased. It is a mandatory requirement on the part of the personal representative even if there was no application calling upon him to do so.

**Section 74(1) of Wills and Probate Act, Chap 9:03** provides as follows:

*“74. (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.”*

[46] Justice Peter Rajkumar (as he then was) in his judgment dated 5 July 2013 in the case **In the Estate of Freda Mary Cape**<sup>2</sup> found that it was common ground for the Legal Personal Representative to furnish and verify the accounts of his stewardship of the Estate; he does not need to wait for the Court to order him to do so. It was held that such an account is required even if his administration had not been questioned. However, once his administration is questioned, it is mandatory that the Legal Personal Representative provide a proper account.

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<sup>2</sup> Also called Freda Mary Cooper also called Freda Morgan also called Freda Cape, who died on the 21st day of October, 2003 and Paul Morgan and Clare Williams (By their lawfully appointed attorney by virtue of the powers of attorney deed No DE201001831985D001 and Deed No DE201001832138D001 dated 12th January, 2010 v Norris Cape (As Legal Personal Representative in the Estate of Freda Mary Cape also called Freda Mary Cooper also called Freda Morgan also called Freda Cape, deceased) CV2011-00999

[47] From the evidence of all witnesses in this matter, Vishal obtained the Grant of Probate of the Will of Deceased on 2 August 2013, almost 1 year and 7 months after the death of the Deceased.

[48] Kaloutie, Ornella and Proveen all testified that Vishal failed to sign the Deeds prepared by attorney-at-law, Mr Saunders. As a result, they instructed Mr. Saunders to write to Vishal on his failure to sign the Deeds as well as to provide them with accounts in respect of the estate of the Deceased and the tyre shop, which was operated by the Deceased. When Vishal failed to respond to that letter, another letter was sent to him requesting that he provide them with the accounts; he also failed to respond to that letter.

Kaloutie stated that she was unaware of how much money Vishal collected on behalf of the estate of the Deceased or what debts he paid relating to the estate of the Deceased. However, both Ornella and Proveen testified that Vishal told them that he had obtained \$1,000,000.00 from TATIL in respect of a life insurance policy on behalf of the estate of the Deceased. They further stated that Vishal had told them that he was going to use this money to pay the debts of the Deceased. Ornella, however, added that no documents were shown to them to verify this.

[49] During cross-examination, Ornella indicated that they would have regular family meetings with Vishal and he would inform them about what was taking place with the estate of the Deceased. However, Vishal was not providing them with any documentary proof. She accepted that Vishal was keeping them abreast of what was taking place. The Court noted that Mr Maharaj, for some reason, failed to probe Kaloutie and Proveen on the issue of why they said Vishal was being secretive about the monies that he collected on behalf of the estate of the Deceased.

[50] The cross-examination of Vishal, however, revealed that he was keeping his mother and his sisters informed about his administration of the estate. Vishal stated that he did inform Kaloutie, Ornella and Proveen about the \$1,000,000.00 that he received from TATIL and that he used it to pay the debts of the Deceased. However, Vishal accepted that Kaloutie,



Ornella and Proveen were asking him for over a period of a year to produce evidence that he paid the debts of the Deceased and he failed to do so.

Vishal asserted that his mother and sisters knew of the debts of the Deceased; that on 3 separate occasions, they spoke about it. He added that his mother and sisters saw a file with all the debts of the Deceased and that they are supposed to have copies of the debts of the Deceased.

[51] Mr Saunders asked Vishal why he did not give his mother and his sisters copies of the cheques that he received as payment on behalf of the estate and Vishal responded as follows:

*“A: Every time that I go to speak to them there was always a hostile way with my mother. The embarrassment number one, and how could you speak to someone who always embarrass you or have something out of the way to tell you. On many times I went to do that. We were not suppose to be here today.”<sup>3</sup>*

Vishal further stated that he did not tell his mother and sisters about the sum total that he collected on behalf of the estate of the Deceased. However, he then declared that one of the Claimants knew the amount of money that he collected; this was Proveen.

[52] Under cross-examination, Vishal revealed that around October 2014, he had finished paying off the debts of estate of the Deceased and had recovered monies due to the estate of the Deceased. He indicated that at that time, he was in a position to furnish a complete account but did not provide a reason as to why he did not do so. Vishal accepted that as Executor, he owed a duty to his mother and sisters to account for how he spent the monies from the estate and that he needed to account for whatever monies that he received. On further probing by Mr Saunders on his failure to account for how he spent the monies of the estate of the Deceased and how much monies he received on behalf of the estate of the Deceased, Vishal responded as follows:

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<sup>3</sup> NOE 12th April, 2016 at page 79, lines 38-43

*“A: The reason why is because, again I would say, the Claimant had known, one of them, and she relate to her mother and the other Claimant, as time goes by.”<sup>4</sup>*

[53] From the evidence, it is clear that Vishal was in fact informing some of the Claimants about some aspects of his administration of the estate of the Deceased. He notified both Ornella and Proveen about the monies that he collected from TATIL and his intended use for same. They were also notified that the debts of the Deceased were being paid. This much was admitted by Ornella and Proveen, however, they wanted documentary evidence to support this assertion which they insisted that Vishal failed to provide.

It is the Court’s view that Vishal’s reason for not providing his mother and sisters with copies of the payments he received on behalf of the estate is unacceptable. Though, his mother was being hostile towards him and embarrassed him, it would have been reasonable for him to send the copies of the payments to his sisters or even through the mailing system or furthermore, deliver same to the attorney-at-law.

[54] The Court, therefore, finds that Vishal was not being secretive about the monies that he collected on behalf of the Estate of the Deceased. In fact, both Ornella and Proveen admitted that they were made aware of the monies that Vishal had collected and that he was paying the debts of the Deceased. However, it is the Court’s view that Vishal ought to have furnished and verified the accounts of his administration of the estate to the Claimants since his administration was being doubted.

**Issue 3: Does the tyre shop Vishal Rattansingh Tyre Service Limited formerly known as Joseph Rattansingh Tyre Service form part of the estate of the Deceased to be distributed in accordance with the Will?**

[55] The Claimants in their witness statements all testified that at the date of the death of the Deceased, he was running and operating a tyre shop under the name Joseph Rattansingh

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<sup>4</sup> Ibid, page 88, lines 28-31

Tyre Service. Ornella testified that she, Proveen and Vishal were all employed by the Deceased in the tyre shop. During cross-examination of both Kaloutie and Vishal, it was revealed that Joseph Rattansingh (deceased) was the father of the Deceased.

Mr. Maharaj, the then attorney-at-law for the Defendants, probed Kaloutie during cross-examination about the ownership of the tyre shop, Joseph Rattansingh Tyre Service. She accepted that Joseph Rattansingh Tyre Service was owned by Joseph Rattansingh when he was alive. Kaloutie further accepted that the Deceased did not refer to Joseph Rattansingh Tyre Service as one of his properties in his will and that it was not being operated on neither of the properties that the Deceased owned. Mr Maharaj, however, for some reason, did not cross-examine Ornella and Proveen on the issue of ownership of the tyre shop.

[56] Mr. Saunders also sought to cross-examine Vishal on the ownership of Joseph Rattansingh Tyre Service. Throughout his cross-examination, Vishal maintained that his father owned 60% of the tyre shop and that he owned 40%; this was by way of an oral agreement between him and his father. He testified that the 60% that his father owned included shares and stocks. However, he did not include his father's interest in the tyre shop, that is, Joseph Rattansingh Tyre Service, in the inventory. When pressed for answers about the exclusion of Joseph Rattansingh Tyre Service from the inventory, Vishal justified the exclusion as follows:

*"A: well the tyre shop was, let me put it this way, yes it was operated by both of us right, we had the say, I had the major say there although he just look after me in the sense that I would tell him, he would call me,... how much to do this, what to do, right..."*

*A: I ran the show there for him.*

*A: The tyre shop, the tyre shop, although he ran there, that is what I trying to say, although he was looking after the operations of the business, the tyre shop, the said tyre shop in question is I ran the show there.*

*Q: Yes but he owned it, your father owned it?*

*A: No sir the tyre shop was owned by Joseph Rattansingh.”<sup>5</sup>*

From Vishal’s response, it can be gleaned that the reason why Joseph Rattansingh Tyre Service was omitted from the inventory was that the Deceased, in actuality, did not own Joseph Rattansingh Tyre Service.

[57] It is clear from the cross-examination of Vishal that after Joseph Rattansingh died, the Deceased continued to run and operate the tyre shop on behalf of his father. When asked whether the Deceased did in fact own the tyre shop, Vishal insisted that his father ran and operated the tyre shop; he did not own the tyre shop. His answers were as follows:

*“Q: And he still own the tyre shop?*

*A: He my father, the deceased, operated the tyre shop, after he deceased, after my grandfather died.*

*Q: So he operated a dead man tyre shop?*

*A: Yes, sir, he ran the show.*

*Q: So your father didn’t own the tyre shop?*

*A: He ran that tyre shop?*

*Q: He didn’t own the tyre shop?*

*A: If you look at the name of the tyre shop, it’s still Joseph Rattansingh Tyre Service.*

*Q: So your father didn’t own the tyre shop?*

*A: No sir, he operated.”<sup>6</sup>*

Vishal was asked what was meant when he said that his father owned 60% and he owned 40%. He replied that *“it come like the day to day running of the business.”<sup>7</sup>*

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<sup>5</sup> NOE 12th April, 2016 at page 64, lines 13-35

<sup>6</sup> NOE 12th April, 2016 at page 64, lines 43-47 & page 65 lines 1-13

<sup>7</sup> Ibid, page 65, lines 16-17

[58] The *viva voce* evidence before the Court points to the fact that Joseph Rattansingh Tyre Service was run and operated by the Deceased. The Deceased did not own Joseph Rattansingh Tyre Service; the Deceased's father (Joseph Rattansingh) did.

[59] It is the Claimants' case that Joseph Rattansingh Tyre Service forms part of the estate of the Deceased and they are entitled to the shares in Vishal Rattansingh Tyre Service Limited as Vishal first changed the name of the tyre shop and then incorporated this new company using the premises of Joseph Rattansingh Tyre Service. Accordingly, the Claimants have the burden of proving that Joseph Rattansingh Tyre Service did in fact form part of the Estate of the Deceased.

However, their evidence clearly shows that the Deceased only ran and operated Joseph Rattansingh Tyre Service; Joseph Rattansingh owned the tyre shop. The Court noted that the Claimants have failed to provide any documentary evidence to prove that the Deceased did in fact have any interest or shares in Joseph Rattansingh Tyre Service.

From the evidence of Vishal, it is also evident that the Deceased did not own Joseph Rattansingh Tyre Service. He only ran and operated the tyre shop on behalf of Joseph Rattansingh.

[60] In these circumstances, the Court finds that Vishal Rattansingh Tyre Service Limited formerly known as Joseph Rattansingh Tyre Service does not form part of the estate of the Deceased. There is no evidence before the Court as to whether the tyre shop passed to the Deceased. The Claimants have not produced the following to the Court: (i) the will of Joseph Rattansingh; (ii) the application for Grant of Letters of Administration with Will Annexed done by the Deceased, Carlton Rattansingh as the Legal Personal Representative – this would have included an inventory of the estate; and (iii) the Grant issued to the Deceased in relation to the estate of Joseph Rattansingh.

[61] In that light and having regard to the evidence of the Claimants and Vishal that the tyre shop was owned by Joseph Rattansingh, the Claimants have failed to prove that the tyre shop was owned by the Deceased.

[62] Since the tyre shop, now called Vishal Rattansingh Tyre Service Limited, does not form part of the estate of the Deceased, it cannot be said that Vishal and Michelle hold the shares in the company on trust for the Claimants. Accordingly, the Court will not grant the Claimants the relief sought at 2, 4 and 5 of their Claim Form.

[63] However, the Court finds that Vishal would have to give an account of all the monies that he collected, in his capacity as Legal Personal Representative, on behalf of the estate of the Deceased which he used to invest in and run the tyre shop. The Court also finds that whatever money was used by Vishal from the estate of the Deceased to invest in and/or to run the tyre shop, would have to be paid back to the account of the estate of the Deceased for distribution in accordance with the Deceased's will.

**Issue 4: Is the First Defendant liable for damages for waste and devastavit of assets belonging to the Estate of the Deceased?**

[64] **Halsbury's Laws of England**<sup>8</sup> describes the nature of a *devastavit* as follows:

*“1542. Nature of a devastavit. A personal representative in accepting the office accepts the duties of the office, and becomes a trustee in the sense that he is personally liable in equity for all breaches of the ordinary trusts, which in courts of equity are considered to arise from his office. The violation of his duties of administration is termed a devastavit; this term is applicable not only to a misuse by the representative of the deceased's effects, as by spending or converting them to his own use, but also to acts of maladministration or negligence.”*

[65] In determining whether Vishal violated his duties of administration by misusing the Deceased's assets by spending or converting them to his own use or performed acts of maladministration or negligence, the Court must examine Vishal's conduct *after* he obtained the Grant, since it is at that point in time he would have been legally appointed and would have become the trustee of the Deceased's Estate.

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<sup>8</sup> 5th Edition, Volume 103 at paragraph 1246

[66] From Kaloutie's witness statement, Vishal was giving her some monies. She stated that after the death of the Deceased, Vishal provided her with money on a monthly basis from February 2012 to October 2013 totalling \$136,000. She testified that Vishal allowed her to collect the monthly rent of \$2,300 from the premises, namely, Graphics 2000, from November 2013 to May 2015. She said that in January 2014, Vishal began paying her a weekly allowance of \$1,000 until March 2014. Vishal also paid the telephone and cable bills for her home after the death of the Deceased until January 2013 and May 2013 respectively. Vishal paid Kaloutie's dental bill in 2012 in the amount of \$14,550 and medical bills on two occasions amounting to \$1,900.

From Ornella's witness statement, Vishal was also giving her some monies. For the period January 2012 to March 2013, Vishal paid her \$500 a week. She said that Vishal continued to give a sum of \$2,000 every month until March 2014. She stated that from the period April 2013 to March 2014, Vishal paid her \$24,000. She indicated that Vishal also paid a dental bill in the amount of \$750 and purchased a return ticket from New York to Trinidad in the sum of \$2,125 in 2012.

However, there is no evidence before the Court whether Vishal paid these monies from his own personal account or from the estate of the Deceased.

[67] According to Vishal's evidence-in-chief, no interest in any of the real estate of the Deceased has been transferred to the beneficiaries as yet. The Claimants were not involved in the operation of any tyre shop of the Deceased. In fact, Vishal asserted that the Deceased never listed a tyre shop amongst his assets and none was listed in the inventory which accompanied the application for Grant of Probate. The cash held in the accounts at the time of the death of the Deceased was used to pay his debts.

The Court, however, notes that there is an inconsistency in Vishal's evidence as to what was used to satisfy the debts of the estate of the Deceased. From his witness statement, he stated that the cash in the accounts of the Deceased was used to pay the debts. However, during cross-examination, Vishal said that he used part of the money that he got from

TATIL in respect of a life insurance policy on the Deceased's life and some from the bank accounts to pay the debts of the estate of the Deceased.

[68] From his cross-examination on 12 April 2016, he recalled the total debts of the estate of the Deceased to be \$1.9 million. Vishal indicated that the invoices disclosed to the Court would amount to the total debts of the estate of the Deceased. Mr Saunders attempted to go through the invoices from the different creditors of the Deceased which included Tyre Services Limited, Tyre Dealers Ltd, AM Marketing Company Limited, S. Singh, J. Ramrattan, ZTI Tires Inc. and Taray International. He indicated that he paid some of the debts by cheques and some were paid in cash. It was revealed that he received receipts for these payments but he did not disclose them to the Court. However, he did disclose them to the Claimants.

During cross-examination, it was revealed that he received monies on behalf his father's estate and he received payments from the Banks in respect of the accounts by cheques. He stated that he collected approximately \$400,000 or less on behalf of the estate, this excluded the \$1,000,000 collected from TATIL. He stated that he collected approximately \$1.1 million from the accounts of his father. Accordingly, in total, he received approximately \$2.5 million dollars on behalf of the estate of the Deceased.

After paying the debts of the Deceased, he had a surplus of almost \$600,000. When asked what he did with this money, he said, "*I pumped money back unto the am tyre shop to continue the work on the the the tyre business.*"<sup>9</sup> Vishal accepted that he has at least \$600,000 from the estate of his father invested into Vishal Rattansingh Tyre Service Limited.

[69] Vishal's cross-examination continued on 13 April 2016. On this date, Mr Saunders sought to further probe Vishal on the debts of the estate of the Deceased. It was revealed that the invoices disclosed were in the name of Joseph Rattansingh Tyre Service and that the Deceased had no personal debts.

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<sup>9</sup> NOE 12th April, 2016 page 83, line 31-32



At this juncture, the Court notes that Joseph Rattansingh Tyre Service did not form part of the estate of the Deceased based on the evidence before the Court. Accordingly, the Court finds that Vishal was not permitted to pay the debts of Joseph Rattansingh Tyre Service from the estate of the Deceased.

[70] Mr Saunders went over with Vishal the monies that he collected on behalf of the estate of the Deceased and the debts paid. Vishal accepted that he received approximately \$400,000 due to his father as a result of running the business. He agreed that it was about \$2.1 million in the bank accounts at the date of his father's death. Thus, in addition to the \$1million from TATIL, he agreed that the sum total of monies of the Estate was about \$3.5million. He then said that the sum total of debts that he paid in respect of the Deceased's estate was \$2.1million. He indicated that he used money from the accounts and part of the money from the insurance policy. Accordingly, there was a surplus of \$1.4million, which he invested back into the business.

The Court notes that this is inconsistent with what was said on 12 April 2016 at paragraph [68] above. As a result of this inconsistency, it is necessary that an account of Vishal's administration be filed into the Court.

[71] Vishal accepted that he gave his mother \$136,000. He indicated that he gave Proveen about \$320,000 in the WITCO shares. He indicated that he transferred his father's shares in WITCO to himself, his mother and his sisters in accordance with his father's will.

[72] Vishal stated that by mid-October 2014, he had collected all the monies on behalf of the estate of the Deceased and had paid all debts. However, he indicated that he would not be in a position to pay his mother and sisters the monies owed to them in accordance with the Deceased's will.

[73] Based on the evidence, it is clear that Vishal is not quite certain about the total debts of the estate of the Deceased and the total amount of monies that he received on behalf of the estate. His evidence on these amounts are inconsistent and there is no account from

Vishal setting out the total debts of the Deceased, from what monies they were paid, the total monies he received on behalf of the estate and the remaining monies.

In my opinion, the Court will only be able to make a finding on the issue of waste and *devastavit* in the maladministration and misuse of the assets belonging to the estate of the Deceased after a true and proper account of the estate has been taken.

**V. DISPOSITION**

[74] Given the reasoning, analyses and findings above, the order of the Court is as follows:

**ORDER:**

- 1. It is declared that Joseph Rattansingh Tyre Service does not form part of the Estate of Carlton Rattansingh, the Deceased.**
- 2. It is declared that the Third and Fourth Defendants do not hold the shares in the Second Defendant on trust for the Claimants.**
- 3. The First Defendant be and is hereby ordered to file into the Court the accounts including all receipts and expenditure in relation to the Estate of Carlton Rattansingh, the Deceased, within ninety (90) days of the date of this order.**
- 4. The First Defendant shall verify the said accounts by an affidavit of verification exhibiting the said accounts and shall serve a copy of the said accounts on all other parties in accordance with Part 42.3 of the CPR.**
- 5. The said accounts are to be surcharged and falsified by a Registrar of the Supreme Court on a date to be fixed by the Registrar.**

6. If there are any omissions or the Claimants challenge any item in the said accounts, the Claimants shall give notice to the First Defendant within thirty (30) days of receiving the said accounts.
7. The Registrar is at liberty to give any other appropriate directions for the just, economical and expeditious disposal of the taking of the accounts, as ordered herein.
8. After the said accounts have been surcharged and falsified by a Registrar, the First Defendant is to repay the Deceased's Estate, any monies and/or other property of the Estate of the Deceased which has been misappropriated from the said Estate.
9. Thereafter, the First Defendant be and is hereby ordered to distribute the Estate of Carlton Rattansingh, the Deceased, in accordance with his Will dated 2nd November, 2011.
10. Liberty to apply with respect to any damages for waste and *devastavit* in the misappropriation and maladministration of assets belonging to the Estate of the Deceased, if any, to be assessed by the Court after the said accounts have been surcharged and falsified by a Registrar.
11. I will hear the parties on the entitlement and quantification of costs.

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**Robin N. Mohammed**

**Judge**

**Post Script:**

Having delivered the Judgment and having invited both parties to address the Court on the question of costs, both sides requested the opportunity to file and exchange written submissions. Accordingly, the Court made the following additional order:

**Order:**

- i. On the question of the entitlement and quantification of costs of this Claim, both parties to file and exchange submissions with authorities on or before 1<sup>st</sup> May 2019.
- ii. By consent, the Court shall determine the question of costs and give its decision without a hearing.

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**Robin N Mohammed**

**Judge**