

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

Claim No: CV2017-00289

Between

**ANGELA ANDERSON also called ANGELA ROBERTS-ANDERSON (Lawful Attorney  
of LLOYD ROBERTS and Administrator of the Estate of GILLAN ROBERTS also  
called GILLAN MAXIM ROBERTS)**

Claimant

And

**IRA ROBERTS-ECTOR also called IRA V. ROBERTS-ECTOR also called  
IRA VALENTINE ROBERTS ECTOR**

First defendant

**JESSE HENDERSON COMPANY LIMITED**

Second defendant

**Before the Honourable Mr. Justice R. Rahim**

Date of Delivery: April 18, 2019

Appearances:

Claimant: Mr. S. Marcus SC instructed by Ms. D. James

First defendant: Mr. R. Bain

Second defendant: Mr. B. Camejo

## JUDGMENT

1. This claim is one for possession of property situate at Lot No. 9 Finland Street comprised of a dwelling house and a parcel of land measuring forty-five feet on the northern boundary line, forty-three feet on the southern boundary line and eight-seven feet on both the eastern and western boundary lines and bounded on the north by Finland Street and on the south, east and west by other lands of the second defendant (“the subject land”).
2. The claimant and the first defendant are sisters. Gillan Roberts (“Gillan”) and Muriel Roberts (“Muriel”) were their father and mother respectively. The claimant initiated this claim in her personal capacity and in her capacity as the lawful attorney of Lloyd Roberts who is the sole executor of the estate of Gillan.
3. On July 4, 1952 the second defendant executed a lease in favour of Gillan and Muriel in respect of the subject land for a term of twenty-five years from June 1, 1952. Gillan and Muriel entered into possession of a wooden house on the subject land. Gillan subsequently constructed a concrete house.
4. On June 24, 1977 the second defendant executed a second lease in favour of Gillan and Muriel for a further term of twenty-five years in respect of the subject land. The claimant urges the court to draw the inference that Gillan and Muriel held the lease as joint tenants. In 1981, by virtue of the Land Tenants (Security of Tenure) Act, Ch. 59:54 (“the Act”), the second lease was converted into a thirty year Statutory Lease (“the Statutory Lease”), which expired on May 31, 2011.

5. By Deed dated February 25, 1992 and registered as No. 8461 of 1992 (“the 1992 deed”) Muriel purportedly conveyed to the first defendant all her respective right, title, share, estate and interest in the subject land together with the building and appurtenances belonging thereto for the sum of \$50,000.00. The claimant avers that as the 1992 deed was fraudulently made by the first defendant, it is null, void and of no effect.
6. Accordingly it is the claimant’s case that Muriel died on June 10, 1992 without having severed the joint tenancy. The claimant avers that consequent upon the death of Muriel, Gillan remained the only person who had a right and/or interest and/or entitlement to the unexpired term of years of the lease as well as the dwelling house. As such, the claimant urges the court to draw the inference that Gillan acquired the interest of Muriel by virtue of the right of survivorship.
7. Gillan died on June 19, 2003. By his last Will and testament dated April 26, 1993 he devised and bequeathed all his property both real (inclusive of the dwelling house) and personal to his children namely; the claimant, Lyris Roberts-Dainton, Mona Roberts-Clifton, Lennox Roberts, Lloyd Roberts and Michael Roberts. The claimant claims that it was Gillan’s wish to exclude the first defendant from having a share, interest, right or entitlement to the dwelling house. On October 12, 2007 the claimant as lawful attorney for Lloyd was granted letters of administration with Will annexed for the estate of Gillan.
8. Further or in the alternative, the claimant claims that the beneficiaries and heirs of the estate of Gillan are the owners of the subject land by virtue of adverse possession.

9. By Deed of Conveyance dated December 21, 2015 and registered as No. DE201601794565D001 (“the 2016 deed”) the second defendant conveyed the subject land to the first defendant for the sum of \$34,345.00. According to the claimant, by the execution of the 2016 deed, the second defendant has wrongly and unlawfully extinguished her right to call upon it to convey to her and to the heirs and beneficiaries of the estate of Gillan the freehold or other interest pursuant to Section 9(1) of the Act.
  
10. Further or in the alternative, the claimant claims that the second defendant was negligent in conveying the subject land to the first defendant to the exclusion of the heirs and beneficiaries of the estate of Gillan.
  
11. Consequently, the claimants claims inter alia the following relief;
  - i. A declaration that the 1992 deed between Muriel and the first defendant is a forgery, null, void and of no effect;
  - ii. An order for the delivery up and the setting aside of the 1992 deed;
  - iii. A declaration that the 2016 deed is null, void and of no effect;
  - iv. An order for the delivery up and the setting aside of the 2016 deed;
  - v. A declaration that the beneficiaries of the estate of Gillan are the owners of the subject property;
  - vi. A declaration that the second defendant has wrongly and unlawfully extinguished the right of the claimant to call upon it to convey to her and to the heirs and beneficiaries of the estate of Gillan the freehold or other interest pursuant to Section 9(1) of the Act;
  - vii. A declaration that the second defendant was negligent in conveying the subject land to the first defendant to the exclusion of the heirs and beneficiaries of the estate of Gillan.

## **THE AMENDED DEFENCE AND COUNTERCLAIM OF THE FIRST DEFENDANT**

12. The first defendant admits that Gillan and Muriel were tenants of the subject land. She claims that if the leasehold interest on the subject land was held by Gillan and Muriel as joint tenants, the right of survivorship did not operate upon the death of Muriel as she (the first defendant) had adversely possessed the dwelling house and the subject land on which it stands by her exclusive possession of same from 1968 to 1992.
13. In the alternative, the first defendant avers that the 1992 deed had the effect of severing the joint tenancy. The first defendant denies that the 1992 deed was fraudulently executed. The first defendant further avers that if the leasehold interest was held as tenants in common, the interest, title, and estate of Muriel would not have passed to Gillan upon her death but to her estate in which case not only Gillan but all her children would have had a share therein. Moreover, the first defendant avers that having regard to the 1992 deed, Gillan's Will could not have had the effect of passing any interest he had in the subject land and dwelling house to the claimant and her siblings named therein as Gillan was not possessed of any such interest at the date of the execution of his Will.
14. The first defendant also denies that the beneficiaries of Gillan are the owners of the subject land by virtue of adverse possession.
15. Consequently, the first defendant counterclaims for the following;
- i. A declaration that Gillan's share and interest in the subject land and dwelling house was extinguished by Muriel's adverse possession of same;
  - ii. A declaration that the 1992 deed is valid in all respects;

- iii. A declaration that by virtue of the 1992 , the entirety of the share and interest of Muriel in the subject land passed to the first defendant;
- iv. A declaration that by virtue of the 2016 deed, the first defendant is the legal and beneficial owner and entitled to possession of the subject land;
- v. A declaration that the claimant has not acquired title to the subject land under the doctrine of adverse possession;
- vi. An order granting possession of the subject land and the dwelling house to the first defendant.

#### **THE DEFENCE OF THE SECOND DEFENDANT**

16. The second defendant admits that Gillan and Muriel were tenants of the subject land. The second defendant further admits that by the 1992 deed the right, title, estate and interest of Muriel in the dwelling house was assigned to the first defendant. However, the second defendant avers that it has no knowledge of any alleged fraud concerning the 1992 deed and that it had no way of knowing anything whatsoever of such alleged fraud nor was it complicit in any such alleged fraud.

17. The second defendant admits that by the 2016 deed, it conveyed the subject land to the first defendant. However, the second defendant denies that it wrongly and unlawfully extinguished any rights of the claimant as alleged and/or that it was negligent in conveying the subject land to the first defendant.

18. The second defendant avers it acted in accordance with and in compliance with the Act and sold the subject land to a bona fide tenant of the land

according to its records. The second defendant further avers that it had no prior notice of any competing interest and/or entitlement to the land and that it acted properly in treating with and selling the subject land to a bona fide and existing tenant of the land according to its records.

19. Moreover, the second defendant avers that it is now divested of all and/or any interest in the subject land having sold same to a tenant who acquired title to an interest in the dwelling house standing on the land from a former tenant of the land according to its records and without having prior notice of any fraud associated with the acquisition of ownership of the interest in the dwelling and/or any competing claims or interests of any other persons claiming any derivative title or interest in the subject land.

20. In the event that other persons have legitimate claims to the subject land derived from any right title or interest of a former statutory tenant and have given notice of renewal of the statutory lease pursuant to Section 4(3) of the Act, the second defendant will be prepared to abide by and comply with any order made in favour of such statutory tenant(s) by the court and convey the subject land to such legitimate persons entitled thereto in accordance with the provisions of the Act and/or any order of the court.

## **ISSUES**

21. The issues for determination by this court are as follows;

- i. Whether the claimant's claim that the 1992 deed was fraudulently obtained is statute barred;
- ii. Whether Muriel possessed the mental capacity and/or competence to execute the 1992 deed;

- iii. If Muriel possessed the mental capacity and/or competence to execute the 1992 deed, whether the 1992 deed was duly executed by Muriel in accordance with the provisions of the Conveyancing and Law of Property Act Chapter 56:01;
- iv. Whether Gillan and Muriel were joint tenants of the leasehold interest in the subject land;
- v. Whether the tenancy originally held by Gillan and Muriel was severed and/or extinguished;
- vi. Whether the claimant has been in possession and/or exercised such control for the requisite period of time to extinguish any title of any of the defendants in the subject property;
- vii. Whether the second defendant was negligent in consenting to the absolute assignment from Muriel to the first defendant of the remainder of the unexpired term of years of the statutory lease;
- viii. Whether the second defendant was negligent in agreeing to sell to the first defendant the freehold interest in the subject land with knowledge or presumed knowledge that Gillan had an interest therein as a statutory tenant;
- ix. Whether the second defendant were negligent in failing to ascertain who were the heirs and successors in title of Gillan and Muriel before conveying the entirety of the freehold interest in the land to the first defendant; and
- x. Whether the 2016 deed conveying the entirety of the freehold interest in the land to the first defendant is valid.



## THE CASE FOR THE CLAIMANT

22. The claimant gave evidence and called two witnesses, Lennox Roberts and Dr. Lennox Pierre.

### The evidence of the claimant

23. Gillan and Muriel were married on December 6, 1941.<sup>1</sup> The union of Gillan and Muriel produced seven children, namely, Lloyd Roberts (“Lloyd”), Lyris Roberts-Dainton (“Lyris”), Mona Roberts-Clifton (“Mona”), Lennox Roberts (“Lennox”), Michael Roberts (“Michael”), the first defendant and the claimant.

24. At all material times, Gillan and Muriel were the tenants of the second defendant. On July 4, 1952 the second defendant executed a Deed of lease in favour of Gillan and Muriel for the term of twenty-five years from June 1, 1952 with respect to *“All that parcel of land situate at St James in the City of Port of Spain in the Island of Trinidad known as Lot No 9 Finland Street measuring 45 feet on the Northern boundary line, 43 feet on the Southern boundary line and 87 feet on both the Eastern and Western boundary lines and bounded on the North by Finland Street and on the South, East and West by other lands of the Lessor”* (“the subject land”).<sup>2</sup>

25. Gillan and Muriel entered into possession of a wooden house on the subject land together with the tenancy rights thereto. Gillan subsequently constructed a concrete house containing two bedrooms, a drawing room, a kitchen, a dining room, and a toilet and bath (“the house”). The house was erected out of hollow clay blocks and covered with galvanized iron

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<sup>1</sup> A copy of their marriage certificate was annexed to the claimant’s witness statement at “A.A.1”.

<sup>2</sup> A copy of the Deed of Lease was annexed to the claimant’s witness statement at “A.A.2”.

sheets. The house and the land would be collectively referred to as the subject property.

26. In or around the period 1953 and 1954, the claimant witnessed Gillan build the house on a daily basis every afternoon after his regular job. Her siblings and she assisted Gillan by carrying stones to construct the front steps. The entire family moved into the house in or around the year 1954.

27. Gillan migrated to New York in or around 1965 to seek job opportunities. Muriel remained in Trinidad to take care of the claimant and her siblings as they were still attending school. Gillan sponsored the claimant's siblings, namely, Lennox, Lloyd, Mona and Michael, who obtained their Green Cards. Gillan later sponsored the first defendant when she obtained her Green Card and joined him in New York in or around 1971. Gillan made arrangements for Muriel to travel to New York to join him. She stayed with him for approximately one year but could not withstand the cold weather and so returned to Trinidad.

28. The claimant testified that although Gillan did not live in Trinidad, he maintained control of and took decisions relative to the subject property which included finding tenants who were willing to rent the house.

29. On June 24, 1977, the second defendant executed a second lease registered as No. 20008 of 1977, in favour of Gillan and Muriel for a further term of twenty-five years in respect of the subject land.<sup>3</sup> Land rent was paid by Gillan and Muriel to the second defendant for which they received receipts in their names.<sup>4</sup>

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<sup>3</sup> A copy of the Deed of Lease was annexed to the claimant's witness statement at "A.A.3".

<sup>4</sup> Copies of receipts dated January 22, 1991, No. 14721 for the sum of \$45.00 and June 18, 1991, No. 15436 for the sum of \$45.00 were annexed to the claimant's witness statement at "A.A.4"

30. As at June 1, 1981, the tenancy continued to exist and the dwelling house which Gillan constructed as aforesaid remained standing thereon on.
31. The subject land may be described as flat and consisted of dirt. Muriel planted a garden to the front of the house. She planted plants such as morning glory, palms and thyme. Two pillars were located at the front walkway, that is, a pillar on each side. To the rear of the house, pomerac, guava, lime, cane and chatigne trees were planted.
32. The first defendant lived in the United States from around 1971 to 1983. However, upon her return to Trinidad in 1983, she moved into and was living at the house. A dispute arose among Gillan, Muriel and the first defendant which led to Gillan and Muriel commencing High Court proceedings, namely, H.C.A. No. 3807 of 1984, against the first defendant.
33. Pursuant to the High Court proceedings, Gillan and Muriel obtained an Order by consent dated September 27, 1984 for possession of the house against the first defendant. Further, a writ of possession dated March 9, 1992 was issued and directed to the Marshal of the High Court to give possession of the house to Gillan and Muriel.<sup>5</sup> The first defendant moved out of the house on March 14, 1992. Gillan and Lloyd who were in Trinidad at that time stayed at the house.
34. In July of the year 1990, Muriel was hospitalized at the Port-of-Spain General Hospital after having suffered a stroke. In the year 1991, she broke her hip and was admitted to the Community Hospital of Seventh Day Adventists ("Community Hospital"). On September 2, 1991, the first defendant signed an authorization form for medical and/or surgical

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<sup>5</sup> Copies of the Order of Possession as well as the Writ of Possession were annexed to the claimant's witness statement at "A.A.7".

treatment on Muriel's behalf, authorizing one Dr. Toby and whomever he may have designated as his assistants to administer such treatment as was necessary and to perform an operation on Muriel's left hip.<sup>6</sup>

35. While at Community Hospital, Muriel underwent surgery for her broken hip. She was discharged on September 10, 1991, but unfortunately she was unable to walk and as a consequence was bed-ridden which ultimately led to her developing bed sores. As a consequence of her being bed-ridden, she could no longer take care of herself. A caregiver was hired to take care of her. The caregiver's responsibilities were to sponge or tidy Muriel, cook, take care of the laundry, clean the house and generally assist Muriel in any way necessary. The claimant paid the caregiver a monthly salary of \$600.00 which was paid out of a Republic Bank account. Muriel's inability to walk continued until her death on June 10, 1992.

36. During the period July 13, 1990 to February 21, 1992, the claimant made contemporaneous notes on the pages of an old diary, listing inter alia, the various tasks and/or things she did on Muriel's behalf, as well as general information in relation to her circumstances.<sup>7</sup> The notes provided as follows;

*"Muriel fell July 13/90 – P.O.S Gen (Fri)*

*Coupe July 27/90*

*To travel July 28/90*

*Left Aug 12/90*

*Concrete APR/May 91*

*Birthday (Muriel) June 23/91*

*Fell again – Comm. Hosp – Sept 02/91*

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<sup>6</sup> A copy of the authorization form was annexed to the claimant's witness statement at "A.A.5".

<sup>7</sup> Copies of the pages of the diary was annexed to the claimant's witness statement at a "A.A.6".

*POS Gen/Hospice – INCOHERENT – NOV. 05/91 – Dec 13 or 20/ 91*

<i>DEC 15/91 US\$</i>	<i>\$857.00</i>
<i>PENSION TT\$ DEC. 30</i>	<i>\$315.00</i>
<i>Daddy US\$ 100</i>	<i>\$427.00</i>
	<i>\$1,599.00</i>
<i>½ MTH CHERYL</i>	<i>&lt; 300.00 &gt;</i>
	<i>\$1,299.00”</i>
<i>WASA 4TH QTR '91</i>	<i>&lt; 272.00&gt;</i>
	<i>\$1,027.00</i>
<i>PAMPERS 2WKS</i>	<i>&lt; 200.00&gt;</i>
	<i>827.00</i>
<i>DR SHYROO ALI</i>	<i>&lt;60.00&gt;</i>
<i>IRA</i>	<i>\$767.00</i>
<i>JAN 31/92 TT\$</i>	<i>\$315.00</i>
<i>TOILETRIES</i>	<i>15.00</i>
	<i>\$300.00</i>
<i>SHYROO ALI (DR) FEB 21/92</i>	<i>&lt; 60.00&gt;</i>
	<i>\$240.00</i>
<i>PAMPERS</i>	<i>&lt;85.00&gt;</i>
	<i>\$155.00</i>
<i>COMPLAN/LUCOZADE</i>	<i>&lt;55.00&gt;</i>
<i>MEDICATION/TOILETRIES</i>	<i>\$100.00</i>
<i>July Friday 13/90 – Muriel feel P.O.S Gen</i>	

*COUPE JULY 27/90*

*TO TRAVEL JULY 28/90*

*Left Aug 12/90*

*Monday Sept 02/91 – Muriel fell Commi Hosp*

*Tues Nov 05/91 – Ge/ Hospice – Dec 13 or 20/91”*

37. In light of Muriel’s lack of mobility, the claimant took on the responsibility of paying her bills, collecting her pension, purchasing groceries, pampers, toiletries and all other items which were necessary for her comfort.

38. In the month of January, 1992 the claimant’s brother, Lennox who resides in the United States of America had a conversation with her via telephone. Based on that conversation, the claimant formed the view that the first defendant communicated with Lennox via telephone about Muriel’s health. The claimant also formed the opinion based on that conversation that the first defendant suggested that Lennox visit Muriel as she was low at that time. The claimant understood low to mean that Muriel was extremely ill to the point of impending death. As a consequence, Lennox and his son, Sean Roberts (“Sean”) hurriedly made travel arrangements and arrived in Trinidad on January 18 and 28, 1992 respectively. Gillan as well as the claimant’s other siblings came to Trinidad shortly thereafter. Lennox returned to the United States around the first week of February, 1992.

39. In order to ensure that Muriel had constant supervision, she was removed from the house on March 21, 1992 and moved to the claimant’s home at Freeport. Muriel departed this life on June 10, 1992.<sup>8</sup>

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<sup>8</sup> A copy of her death certificate was annexed to the claimant’s witness statement at “A.A.8”.

40. Gillan executed his last Will and Testament on April 26, 1993. He departed this life on June 19, 2003. In the year 2006, the claimant applied for and obtained a grant of Letters of Administration with will annexed dated October 12, 2007 (“the Grant”).<sup>9</sup>

41. Gillan devised and bequeathed all his property, both real (inclusive of the house) and personal to his children, namely, Lyris, Mona, Lennox, Lloyd, Michael and the claimant, save and except the first defendant. Therefore, Lloyd, Lyris, Mona, Lennox, Michael and the claimant are the heirs and beneficiaries of the estate of Gillan.

42. The claimant testified that Gillan’s wish to exclude the first defendant from having a share, interest, right or entitlement to the house was supported both by his Will as well as by a letter he wrote to the first defendant dated February 20, 1991.<sup>10</sup> In his Will, the following was stated;

*“...I DEVISE AND BEQUEATH in equal shares to all my children save and except IRA ROBERTS-ECTOR all the property of which I am possessed.*

*I do not wish to leave anything for my daughter IRA ROBERTS-ECTOR because she ill-treated her mother during her last days and has always tried to obtain by deceitful and fraudulent means money from her mother and I...”*

43. According to the claimant, the first defendant did things and/or made decisions regarding the subject property that Gillan was not in favour of. In or around the month of April, 1991 the claimant visited the property and saw that the yard was paved. The first defendant told the claimant that

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<sup>9</sup> Copies of the Will as well as the Grant of Letters of Administration were annexed to the claimant’s witness statement at “A.A.9”.

<sup>10</sup> A copy of the letter was annexed to the claimant’s witness statement at “A.A.10”.

she wanted to pave the yard to stage fetes to make money. The first defendant staged one party at the property.

44. Consequent upon a conversation with Gillan, the claimant formed the view that he did not give the first defendant permission to pave the yard. The first defendant showed the claimant a letter (dated May or June 1991) which Gillan wrote to her. Upon the claimant's reading of the letter, she formed the view that Gillan disapproved of the paving of the yard and instructed the first defendant to refrain from so doing. On that occasion the first defendant told the claimant that Gillan had no business telling her what to do as he was in Trinidad. The claimant has looked through her documents and personal effects for a copy of the said letter but was unable to find it.

45. Approximately three weeks after Lennox's departure from Trinidad, the 1992 deed was purportedly executed by Muriel, via a thumb print, assigning unto the first defendant, all her right, title, estate and interest in the subject property for the sum of \$50,000.00.<sup>11</sup>

46. According to the claimant, at the time of the execution of the 1992 deed as well as at the date of Muriel's death, there had been no improvement to Muriel's medical condition. Muriel was still incapacitated and/or bed-ridden.

47. Prior to Muriel's death in 1992, the claimant visited her every other weekend. The claimant testified that during the times of her visits in the months of January and February of that year, she observed that Muriel seemed to be trying to speak but she (the claimant) could not figure out what Muriel was trying to say. The claimant also recalled that in February

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<sup>11</sup> A copy of the 1992 Deed was annexed to the claimant's witness statement at "A.A.11".



of 1992, Muriel laid on her bed facing the wall. The claimant tried talking to Muriel but she only groaned and at times said “Ahhhhhh”.

48. The claimant testified that Muriel never received any monies whatsoever from the first defendant pursuant to any sale of the subject property. In the year 1991 (that is, the earlier period of that year), the claimant visited Muriel every other week and at that time Muriel never indicated that she received any money from the first defendant. All the monies which came to Muriel were passed to the claimant as the claimant took care of all her financial and/or day to day needs. All cheques and/or money orders which Muriel received from Gillan on a monthly basis were passed to the claimant and she deposited same into an account at the Bank of Commerce (now Republic Bank). The claimant’s siblings also sent monies to Muriel via cheques and/or money orders on a regular basis, which the claimant also deposited into the said account. The claimant testified that she paid all utility and other bills with respect to the house from the said account.

49. Subsequent to the claimant’s learning of the 1992 deed, she obtained legal advice from an Attorney-at-law, Ms. Denise Gouveia (“Ms. Gouveia”). Consequent upon that advice, she approached Dr. Shyroon Ali (now deceased), Muriel’s regular physician for a medical report of Muriel’s condition prior to her death. Muriel was Dr. Ali’s patient even before her illness which led to her hospitalization at the Port-of-Spain General Hospital in 1990.

50. The claimant testified that the medical report stated that Dr. Ali attended to and/or examined Muriel during the period March 9, 1992 to May 2, 1992 (March 9, 1992 being some thirteen days subsequent to the

execution of the 1992 Deed) and found that during the said period, Muriel was suffering from bed sores and her mental condition was incoherent.<sup>12</sup>

51. According to the claimant, the second defendant's consent to the absolute assignment of the unexpired term of years of the statutory lease with respect to Muriel's share, title and interest in the subject land was done without reference to Gillan's existing interest and without his knowledge.

52. In pursuance of an agreement for sale dated October 2, 1992 the first defendant contracted and agreed with the second defendant to purchase the subject land for the price of \$34,345.00. In consideration of the said agreement, the second defendant purported to convey to the first defendant by the 2016 deed all its interest and/or title in the subject land to hold the same unto and to the use of the first defendant in fee simple to the intent that the residue of the term arising under and by virtue of the said Statutory Lease was merged and extinguished in the freehold reversion expectant on the determination thereof.<sup>13</sup>

53. According to the claimant, the second defendant knew or ought to have known that Gillan and Muriel were tenants of the subject land since the year 1952 and failed to ascertain who were the heirs and/or successors in title of Gillan's interest therein but conveyed the entirety of the freehold interest to the first defendant.

54. Having regard to Muriel's ill health in or around 1991, the claimant commenced the payment of the land rent. During the said period, the claimant attended the premises of the second defendant situate at No. 7 Western Main Road, St. James, and paid the land rent by way of cash. On

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<sup>12</sup> A copy of the medical report was annexed to the claimant's witness statement at "A.A.12".

<sup>13</sup> A copy of the 2015 deed was annexed to the claimant's witness statement at "A.A.13",

January 22, 1991 and June 18, 1991, the claimant paid the land rent and received receipts in the names of Gillan and Muriel.<sup>14</sup>

55. The claimant also paid the land rent by cheque in the name of the second defendant. The said cheques were drawn against an account at the Bank of Commerce, which said account was in the claimant and Muriel's name.

56. Subsequent to the execution of the 1992 Deed, the claimant continued to pay land rent. She paid land rent on February 26 1993, May 19 1993, January 20 1994, March 22 1995, February 9 1996, February 24 1997 and February 27, 1998 but received receipts in the names of Gillan and the first defendant.<sup>15</sup>

57. According to the claimant from August 16, 1999, land rent could not have been paid to the second defendant on Gillan's behalf because the second defendant refused to accept it. By letter dated August 16, 1999 and addressed to Republic Bank Limited, the second defendant stated that the land rent was not due to it as the subject land was sold.<sup>16</sup>

58. The second defendant's refusal to accept the land rent resulted in the return of cheque dated July 28, 1999, which was issued by the claimant's bankers and drawn against her account.<sup>17</sup>

59. Consequently, no land rent was paid to the second defendant during the periods August 16, 1999 to August 16, 2000, August 16, 2000 to August 16, 2016 and August 16, 2016 to the present time. The house was rented to

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<sup>14</sup> Copies of the receipts were annexed to the claimant's witness statement at "A.A.4"

<sup>15</sup> Copies of the receipts were annexed to the claimant's witness statement at "A.A.14".

<sup>16</sup> A copy of the letter was annexed to the claimant's witness statement at "A.A.15".

<sup>17</sup> A copy of the cheque was annexed to the claimant's witness statement "A.A.16".

various tenants during the periods of time notwithstanding the fact that no land rent was paid to the second defendant.

60. According to the claimant, improvements to the house were effected by Gillan in 1989 or 1990. He caused improvements to be made to the bathroom, in that, ceramic tiles, a new face basin or vanity set and a toilet bowl set were installed. With respect to the kitchen, new cupboards were installed, a new counter top (with arborite) including a sink was installed, the water-marked celotex was removed and replaced with new celotex. The wall between the gallery and the living room was removed creating a larger living room and a sliding glass door at the side of the living room was installed. All the widows of the house were removed and new up-ward sliding windows were installed. The entire house was also re-painted.

61. The improvements to the house were done by John Garcia ("John"), Gillan's uncle. The first defendant informed the claimant that she received monies from Gillan via cheques from the United States for the purchase of materials and the payment of labour costs to John. The said cheques were sent to the first defendant at her home at Bombay Street St. James.

62. The claimant testified that the first defendant did no improvements to the house. That the first defendant only installed three overlays in the living room of the house. One overlay was installed over the front door and the other two were installed over the two windows, that is, one overlay per window. The overlays consisted of plywood, foam and fabric, the cost of which was approximately \$300.00. The first defendant removed the said overlays when she moved out of the house in or around March 14, 1992 pursuant to the order of Court.

63. Virginia Moniquette (“Moniquette”), a former tenant of the house installed a Fame water heater in the bathroom which the claimant recently replaced subsequent to Moniquette vacating the house. Further, the painting of the house (both the exterior and interior) was effected by Gillan after the completion of the improvements referred to above. The house was never painted again until Enid Pilgrim (a former tenant) moved out. The claimant then repainted the entire house in preparation for Moniquette to move in.<sup>18</sup>

64. Shortly after Muriel was removed from the house, Gillan agreed to rent the house to Shirma and Alloy Coutou for the monthly sum of \$800.00.<sup>19</sup> Shirma and Alloy Coutou rented the house from April 1992, to May 1993. They moved out due to the frustration they experienced as a consequence of the first defendant going to the house with police officers to have them evicted. That created confusion, frustration and distress for the tenants and as a consequence they moved out. The first defendant previously harassed Shirma and Alloy Coutou during their time of their tenancy, by serving on them a notice to quit dated March 30, 1993.

65. Subsequent to Shirma and Alloy Coutou moving out, Gillan agreed to rent the house to Harry Pilgrim (“Harry”) for the sum of \$800.00 per month, the commencement of which began from the month of May, 1993. The claimant issued receipts in the names of Harry and alternatively, Harry’s wife, Enid Pilgrim on Gillan’s behalf.<sup>20</sup> Harry continued to rent the premises until the year 2006, when he died. Enid subsequently moved out of the house in that year.

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<sup>18</sup> Receipts from Bhagwansingh’s Hardware and the Diego Martin Colour Shop for items purchased were annexed to the claimant’s witness statement at “A.A.17”.

<sup>19</sup> A copy of the rental agreement dated April 22, 1992 was annexed to the claimant’s witness statement at “A.A.18”.

<sup>20</sup> Copies of the receipts were annexed to the claimant’s witness statement at “A.A.19”.

66. Subsequent to Gillan's death and up to the present time, the claimant has acted as the Lawful Attorney of Lloyd, who is the sole Executor of Gillan's Estate. It is in that capacity that she has been taking care of the house and in addition, ensuring over the years that it is let for the benefit of all the beneficiaries of Gillan's Estate. As a consequence, the house was rented to Moniquette from the year 2006 to the month of March, 2017.<sup>21</sup>

67. The first defendant caused a notice of survey dated October 28, 2015 to be served on Moniquette. On that occasion, an argument erupted and members of the Police Service intervened. Further, the first defendant caused to be served on Moniquette's daughter in law, a notice of eviction dated September 22, 2016 which was signed by the first defendant as Landlord. Moniquette was not at any time a tenant of the first defendant. The first defendant also commenced ejectment proceedings at the Port-of-Spain Magistrates' Court against the Moniquette, by way of a summons.<sup>22</sup>

68. The claimant received a notice to quit or notice of intent to vacate dated March 11 2017, signed by Moniquette wherein she gave notice to vacate the house on April 1, 2017.<sup>23</sup> The claimant visited the house on April 1, 2017, to collect the keys and observed that Moniquette had already moved out. Moniquette made the decision to find alternative accommodation.

69. Moniquette was forced to appear in Court on at least three occasions, January 19, 2017, January 26, 2017 and February 15, 2017. The first defendant appeared in Court on January 19, 2017, but failed to appear on

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<sup>21</sup> Copies of rental agreements and receipts for the period 2006 to 2017 were annexed to the claimant's witness statement at "A.A.20".

<sup>22</sup> Copies of the notice of survey, the notice of eviction, the notice to quit and the summons were annexed to the claimant's witness statement at "A.A. 21".

<sup>23</sup> A copy of the notice to quit was annexed to the claimant's witness statement at "A.A.22".

the adjourned date, that is, on January 26, 2017. Ms. Debra W.C. James, Attorney-at-law for Moniquette sought the Leave of the Court to have the matter dismissed for the first defendant's non-appearance, but the Learned Magistrate refused to do so and the matter was adjourned to 15, 2017. On February 15, 2017, Moniquette again appeared in Court but the first defendant did not appear and the Learned Magistrate dismissed the matter.<sup>24</sup>

70. During the period August 16, 1999, to August 16, 2016, the first defendant has neither resided at nor exercised any control of the subject property.

#### The cross-examination of the claimant

71. The claimant was referred to the contemporaneous notes she entered in the old diary. She testified that those notes were made based on what she had at that time and that there may have been prior expenses that may not have been recorded.

72. The claimant learnt of the 1992 deed late in the year of 1992. The first defendant had presented the 1992 deed to the claimant's cousin, Shirma. The claimant was given a copy of the 1992 by Ms. Gouveia.

73. When the claimant approached Dr. Ali for the medical report in relation to Muriel, Muriel had already passed away. The claimant was referred to the medical report which provided as follows;

*"This is to certify that Mrs. Muriel Roberts has been treated by me from 9.3.92 to 2.5.92 as she was suffering from bedsores on... both*

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<sup>24</sup> A copy of an extract of Magistrate's Case Book for the month of February, 2017 was annexed to the claimant's witness statement at "A.A.23".

*hips...buttocks...left elbows...both ankles... her medical condition is incoherent.”*

74. The medical report was neither dated nor stamped. Although the medical report was executed on a Port of Spain, Adventist Hospital letter head, the claimant testified that she visited Dr. Ali's private offices.

75. When Muriel went to New York to join Gillan, she stayed by him for approximately six months. Thereafter she went to stay with the claimant's sister in Cambria Heights until she was ready to return to Trinidad. Gillan never returned to permanently reside in Trinidad. He traveled back and forth.

76. The claimant was referred to letter dated April 7, 1993 which was sent to Gillan by Ms. Sebastien, Attorney-at-law for the first defendant. The claimant testified that that was the first time she saw that letter. In that letter, Gillan was advised that by the 1992 deed the first defendant became the owner of an undivided half share of the subject property. As such, the claimant agreed that by April 7, 1993 Gillan would have known of the first defendant's interest in the subject property. Shortly thereafter, Gillan executed his Will dated April 26, 1993.

77. The claimant testified that prior to Gillan's death, she had no involvement with the rental of the house. She was then referred to a rental agreement dated April 22, 1992. That agreement was executed between Gillan, the claimant and Shirma and Alloy Coutou. The claimant signed that agreement as landlord. She then testified that Gillan authorized her to rent the house as he was not in Trinidad at that time. She further testified that it was after Gillan's death she began renting the house without anyone's approval or consent.



78. The claimant did not have a power of attorney for either Muriel or Gillan. She also did not have Muriel's consent to enter into any legal document on her behalf.
79. The claimant did not notify the second defendant of Gillan's death. She further did not notify the second defendant that she had applied for and obtained the Letters of Administration with Will annexed for Gillan's estate. Moreover, the second defendant was not notified of the eviction proceedings that were taken against the first defendant by Muriel and Gillan.
80. When the claimant saw the 1992 deed, she did not go to the offices of the second defendant to make any enquiries or to notify the second defendant of same. Further, when the claimant found out about the sale of the land to the first defendant, she did not go to the offices of the second defendant to make any protests or enquiries about same.
81. The claimant was referred to the deed dated July 4, 1952 and registered as 5624 of 1952. The claimant was not aware of the covenant in the deed which stated that Muriel and Gillan were not allowed to assign, underlet or part with possession of the property without written consent from the second defendant.

#### The evidence of Lennox Roberts

82. Some of Lennox's evidence was the same as the claimant's and so there was no need to repeat that evidence. Lennox left Trinidad and Tobago for the United States approximately forty-nine years ago. Gillan sponsored him and so he is a permanent resident of the United States.

83. Over the years, he came to Trinidad to visit Muriel from time to time, including but not limited to carnival time. Lennox called Muriel regularly via the telephone and they spoke.
84. Lennox testified that approximately one year prior to Muriel's death she was not speaking and so he would speak to the claimant and the first defendant by telephone to be kept up-to-date about Muriel's condition.
85. Lennox was aware that Muriel was in and out of hospital as she was not enjoying the best of health. Muriel suffered a stroke and she fell on two occasions, the second of which resulted in a broken hip. Muriel never walked again after the second fall and therefore she became bed-ridden and unable to take care of herself. Gillan ensured that a Caregiver was hired to take care of Muriel and her duties.
86. Lennox had a telephone conversation with the first defendant in the month of January of 1992. During that conversation, the first defendant told Lennox that "*Muriel is pretty low*". Lennox understood the first defendant to be saying that Muriel could have died at any time. Consequently, Lennox took the decision to come to Trinidad immediately. He called his son, Sean and they had a conversation.
87. At that time, Sean, who was a member of the United States Air Force, sought and obtained leave from his superiors to travel to Trinidad and Tobago to see Muriel. Lennox hurriedly made travel arrangements and they arrived in Trinidad. Gillan as well as Lennox's other siblings came to Trinidad shortly thereafter.
88. Lennox initially stayed at the house when he arrived in Trinidad and so he was able to monitor and/or observe Muriel on a daily basis. Upon his arrival, he approached the bed to greet Muriel. He spoke to her and her

response was a sustained 'Ahhhhh'; as it sounded to him that she could not communicate. Muriel did not call his name or speak. As such, Lennox formed the view that she did not recognize him.

89. Lennox observed that Muriel was suffering from bed sores and also that the Caregiver cleaned the bedsores on a daily basis. Muriel was made to sleep at the bottom level of a double-decker bed and the son of the first defendant, Barry, slept at the top level. Lennox stayed at the house for a few days but left and went to the claimant's home at Freeport due to an unpleasant incident which occurred between the first defendant, Barry and he.

90. Lennox travelled back and forth from Freeport to St James every day to see Muriel and observed no change in her condition. On each and every occasion when he went to see her, she was not responding to him when he spoke to her.

91. He left Trinidad and Tobago around the first week of February, 1992 and up to that time there was no change in Muriel's condition and she was not speaking but only making the noises as referred to above.

#### The cross-examination of Lennox

92. Lennox stayed at the house for approximately two days prior to going to the claimant's home in Freeport. When he went to stay at Freeport, he would leave Freeport around lunchtime or sometimes earlier to go to visit Muriel. He would arrive in St. James between 2:00 pm and 3:00 pm and stayed at the house with Muriel until between 8:30 pm and 9:00 pm. He sometimes left the house to go out. He did the aforementioned on a daily basis before leaving to go back to the States.

93. Lennox did not know the working hours of Muriel's caretaker. Lennox had conversations with the caretaker pertaining to Muriel's wellbeing. Lennox called the caretaker Jemma.

94. The unpleasant incident which occurred during the time of Lennox's stay at the house has caused the first defendant and him to not be on speaking terms up to today.

#### The evidence of Dr. Lennox Pierre

95. Dr. Pierre has been a medical doctor for forty-four years. At present, he is a Private Medical Practitioner who specializes in Internal Medicine and Neurology. His practice is located at No. 3 King Street, Arima.

96. Dr. Pierre's qualifications as a medical doctor are as follows;

- i. Bachelor of Medicine and Bachelor of Surgery (MBBS) Degrees which he obtained from the University the West Indies, St. Augustine in the year 1973.
- ii. Specialist in Internal Medicine by virtue of a Diploma from the American Board of Internal Medicine (S.ABIM) in the year 1979 and a Fellowship of the Royal College of Physician, Canada (FRCPC) 1979.

97. Dr. Pierre was previously employed in the position of Hospital Medical Director at the Sangre Grande District Hospital during the period of June 1990 to July 2006. He is a Medical Consultant to the Cardea Health Insurance Brokers.

98. During the period of 1997 to 1999, he pursued a course of study leading to a Bachelor of Laws. He subsequently completed two years of study at the Sir Hugh Wooding Law School during the period of 2000 to 2002, where he obtained a Legal Education Certificate. Further, in November of 2002, he was entered onto the roll of Attorneys in Trinidad and Tobago. He is a well known and well qualified practitioner.

99. Dr. Pierre certified the following;

- i. That he understands his duty to the court as set out in Rules 33.1 and 33.2 of the Civil Proceedings Rules, 1998;
- ii. That he has complied with that duty as aforesaid;
- iii. That his evidence includes all matters within his knowledge and area of expertise relevant to the issues on which his expert evidence is given;
- iv. That no other instructions than those disclosed have been received by him from the party instructing him or from the party's Attorney or from any person acting on behalf of the party.

100. Around January 2017, Dr. Pierre was requested by Ms. Debra W.C. James ("Ms. James"), Attorney-at-law for the claimant, to consider a medical report of Dr. Ali and provide a professional opinion on whether Dr. Ali's patient, Muriel would have been expected to have had the mental capacity to execute the 1992 deed having regard to Muriel's physical state and mental condition of incoherence during the period March 9, 1992 to May 2, 1992, that is, some thirteen days after Muriel executed the 1992 Deed.

101. Ms. James provided Dr. Pierre with oral instructions as well as with copies of the said medical report, Muriel's death certificate and a copy of the 1992 deed.
102. Dr. Pierre read the said medical report and observed that Dr. Ali's findings were that Muriel suffered from bed sores on both legs, buttocks, left elbow and both ankles. According to Dr. Pierre, Muriel's medical condition was clearly grave as she was found to have bed sores on both hips, buttocks, left elbow and ankles.
103. Dr. Pierre explained that bedsores develop when there is unrelieved pressure on various areas of the body, especially bony prominences and where the individual is incapable of making the normal adjustments in position and posture to relieve such pressure or being unable to adjust their position independently and did not have the requisite nursing or other support for regular turning. He further explained that poor nutrition, poor bladder control, poor circulation and increased friction also contribute to the development of bedsores. According to Dr. Pierre, it was unlikely that Muriel would have been ambulatory or in reasonably good physical condition or continence. Dr. Pierre testified that it was evident that Muriel's condition had significantly immobilized her and would reasonably be considered grave, especially in the context of her having been assessed as incoherent.
104. According to Dr. Pierre, Muriel's immobility and incoherence noted in Dr. Ali's medical report was also to be viewed against Muriel's past history, that is, the fact that she suffered a stroke in 1989, which could have contributed to her cognitive deficit. Further, she had been admitted to the Adventist Hospital for a fracture of her hip on September 29, 1991

and had a surgical procedure which would have credibly contributed to the subsequent compromise of her mobility.

105. Dr. Pierre testified that it was unlikely that Muriel would have been coherent at the time of execution of the 1992 deed by way of her thumb print on February 25 1992. Dr. Ali's report however treated with the period March 9, 1992 to May 2, 1992. It was his testimony that should the Muriel have been coherent on the February 25, 1992 but then becomes incoherent from the 9<sup>th</sup> March 1992, it would have meant that there had occurred a major medical event after February 25, 1992 that would have led to her mental state as it was found to be by Dr. Ali. Further, that if this was the case, the Dr. Ali would have administered very aggressive medical management including hospitalization but there is no evidence of that in this case. He surmised therefore that the mental condition of Muriel was not of recent vintage.

106. Muriel died on June 10, 1992 from heart failure as well as severe cerebrovascular disease, that is to say, extensive generalized circulatory blood vessel disease of the brain. According to Dr. Pierre, that may be understood as blockage of blood vessels to many areas of the brain which reflects a development of long standing and which was consistent with Muriel's incoherence and would not have been of recent vintage.

107. Consequently, the relevant considerations to Dr. Pierre were as follows;

- i. Muriel was significantly immobilized and did not have either the required mental or physical capacity to independently make the necessary changes in position to obviate the development of bedsores;

- ii. Muriel was assessed by her doctor to be incoherent thirteen days after the execution of the 1992 deed which was effected by the use of her thumbprint;
- iii. Muriel's past history was instructive in that she had a stroke which raises the possibility of contributing to her incoherence/reduction in cognition;
- iv. There was no evidence to suggest some intervening event between the date of execution by thumbprint of the 1992 Deed and the period of incoherence as documented by Dr. Ali for which medical intervention was required;
- v. The cause of death was also instructive, in that, she was noted to have died from cerebrovascular disease which would have been a development of long standing and which also supports Dr. Ali's findings;
- vi. Muriel's heart failure was also consistent with chronic vascular disease and could credibly have contributed to her very poor generalized condition;
- vii. Other indicators of Muriel's poor medical condition were as follows;
  - a) Immobility – which was associated with a previous fracture of her hip;
  - b) Extensive bedsores;
  - c) Inability to write;
  - d) Heart failure which contributed to her death.

108. As such, it was Dr. Pierre's professional opinion that it was highly unlikely that Muriel could reasonably be deemed to have had the requisite mental capacity to make credible and reliable decisions in her own interest on the date when she was alleged to have executed the 1992 deed.



### The cross-examination of Dr. Pierre

109. Dr. Pierre never examined Muriel. In giving his professional opinion, Dr. Pierre assumed that the medical certificate which he reviewed was that of Dr. Ali. He further assumed that the information that was contained in the medical certificate was accurate. Dr. Pierre agreed that he was operating under some sort of speculation but he testified that it was a speculation within a set of views which could be considered to be reasonable or not by the court.
110. According to Dr. Pierre, it is possible for a person to have a stroke and not have a cognitive deficiency. Further, it is possible for the effects of a stroke to affect individuals differently.

### **THE CASE FOR THE FIRST DEFENDANT**

111. The first defendant gave evidence for herself.
112. According to the first defendant, Gillan left for the United States around 1965. When he left, Muriel was about fifty-nine years old and the first defendant was nineteen years old. The first defendant had already graduated from Providence Girls and was at home sewing and doing hairdressing. She began doing hairdressing since she was fourteen years old.
113. When Gillan left for the State, Muriel was a housewife. As such, after Gillan left, Muriel and the first defendant would always discuss how to pay the house bills. The first defendant used her income from her sewing and hairdressing to assist with household bills. She did that because

Muriel informed her that Gillan was not sending any money from the States to help her take care of the house.

114. As such, it was the first defendant's evidence that she helped maintain the house with her money. The first defendant was working in the house, and when she finished in the evening, she would give Muriel money. The first defendant took care of all Muriel's needs, for example the first defendant bought fabric and made clothes for her. If they had to go out, the first defendant would buy Muriel's shoes. The first defendant was also Muriel's hairdresser. The first defendant sometimes paid the land rent for Muriel out of her money because Muriel had told her that she did not have the money to pay it.

115. The first defendant married on January 1, 1969. When she married, Muriel and she were the only members of their immediate family still living in Trinidad. All of the first defendant's siblings had already left home. The first defendant's eldest sister, Lyris, had left for Canada. Angela left to go to the States within months of Gillan's departure. Mona left to go to the States sometime prior to the first defendant's marriage and Lennox, Lloyd and Michael also moved to New York prior to the first defendant's marriage.

116. Angela and Gillan returned to Trinidad in late 1968 to attend the first defendant's wedding.

117. When the first defendant and her husband returned to Trinidad from their Honeymoon, they moved in with his aunt on Eligon Ave., Diego Martin. His aunt rented them a part of her house. While living there, the first defendant visited Muriel often because the first defendant knew that Muriel was at home alone. As such, it was the first defendant's testimony

that she was at the house a lot at that time because she was then four months pregnant with her first son.

118. The first defendant and her husband later got an apartment on 64 Panka Street, St. James. They had moved there because it was closer to Muriel's house and so the first defendant could be there if Muriel needed her. They lived there for about two years. In 1971, the first defendant began having problems in her marriage and so she moved in with Muriel at the house.

119. Muriel left for the States soon after the first defendant moved in with her. Muriel informed the first defendant that she was going to join Gillan in New York. Before she left, Muriel told the first defendant that she had told Gillan that she was coming to the States and that she was leaving the first defendant in the house. Muriel told the first defendant that Gillan's response was that *"Ira could do wha de hell she want wid de house"*.

120. By late 1971, as the first defendant was the only one in Trinidad, she went back to New York to stay by Gillan in his apartment. By the time she left for the States, she had opened an account with CIBC. The first defendant used that account as a Savings Account into which she put her money from her sewing and hairdressing.

121. When she left for the States, the first defendant left her son, Edsel in Trinidad to live with his grandmother, her husband's mother, in Eligon Avenue, Diego Martin. Gillan had not sponsored the first defendant. Consequently, she went on a Multiple Indefinite U.S. Visa. At the time, her husband was employed with Bee Wee and so he got her a ticket to travel

to the States. She testified that she later got her Green Card and her U.S. Citizenship through her own efforts.

122. When she got to Gillan's apartment, Muriel was living there along with Gillan and Gillan's sister, Mahalia. One weekend when Muriel came home to the apartment, all of her clothes were on her bed. Not too long thereafter, when the first defendant came home from work, she saw Muriel very upset and crying. Muriel told her that she was crying because Gillan had told her that he wanted her to leave because he did not invite her to come to New York and that he did not want her there. That night Mona and her husband picked up Muriel and left. That happened in 1972, approximately one year after Muriel went to New York.

123. Muriel went to live with Mona, who at the time was living in Cambria Heights, Queens. One day when Muriel and the first defendant were talking, she told her that because of how Gillan had put her out and the situation at Mona's house, she was planning on returning to Trinidad. Muriel told the first defendant that she was going back to their house on No. 9 Finland Street.

124. Muriel eventually left New York for Trinidad in 1974. When Gillan put out Muriel, the first defendant knew that she would not be staying at Gillan's apartment for much longer because of how Gillan had treated Muriel. In early 1974, the first defendant moved to Brooklyn. Her second son Barry was born on July 19, 1975.

125. The first defendant visited Gillan several times after Muriel returned to Trinidad, the first defendant. After Muriel returned to Trinidad, she told the first defendant that she was lonely. The first defendant told Muriel to get Edsel from by her husband's mother in Diego

Martin and to keep him. About one year after Barry was born, the first defendant sent him to live with Muriel in Trinidad. The first defendant paid Muriel to keep her two sons.

126. Every year after Muriel returned to Trinidad, the first defendant would either travel to Trinidad to be with her and the three boys or pay for them to travel to the States. When Muriel went to New York to visit, she did not stay with Gillan at his apartment. She stayed either with the first defendant, Angela or Mona.

127. After Muriel returned to Trinidad in 1974 she and the first defendant were on the phone almost every day. Muriel also wrote to the first defendant frequently. In those letters, Muriel would tell the first defendant about the children and also thanked her for money that she used to send.

128. Around the year 1978 or 1979, the first defendant added Muriel's name to the CIBC Savings account. The first defendant used to send money for Muriel via checks and told Muriel to deposit same into that account. The first defendant told Muriel that if she ever needed anything, to take it out of the CIBC account. The first defendant also had an account in the States so she allowed Muriel to use the CIBC account.

129. Even Gillan benefitted from that account. In or around the year 1980, Gillan told the first defendant that his common-law wife in Trinidad, Mary Richards had died. Gillan asked the first defendant to assist him with the burying of Mary. The first defendant contacted Muriel and told her to give Gillan the pass book for their CIBC account to assist him with burying Mary. Mary had had two sons with Gillan, Shurland and Ronald Roberts both of whom were a little younger than the first defendant and were by

that time also living in the States. Gillan travelled to Trinidad and Muriel told the first defendant that she gave him the pass book. Gillan later told the first defendant that he used the money from the CIBC account to bury Mary. In one of her letters dated May 29, 1981 Muriel asked the first defendant to tell Gillan to return the pass book (“pass port”) for the bank.

130. In about late 1982 or early 1983, the first defendant sent Muriel a washing machine to help her with the washing of her clothes and the children’s clothes. Muriel called the first defendant and told her that when she went on the docks to clear the machine she had two bladder accidents. Muriel also told the first defendant that she needed her to come back home. When Muriel told the first defendant about the bladder accidents, it was then that the first defendant realized how serious Muriel’s situation was.

131. In one of her letters and during several of their phone conversations, Muriel told the first defendant that it was time for her to come to Trinidad, that the children needed her and that she was not feeling too well. After Muriel asked the first defendant to return home, she began making preparations to do so. Muriel and the first defendant decided that the house at No. 9 Finland Street needed to be repaired and extended so that the first defendant could live there with her children and do her sewing.

132. In mid-1983, the first defendant applied for a loan at Colonial Life so that she could repair and extend the house to accommodate Muriel, herself, her two sons and her nephew, Sean.<sup>25</sup> As Muriel was in Trinidad, she was in constant contact with the first defendant’s friend, Kathleen De

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<sup>25</sup> A copy of the Colonial Life Application for First Mortgage was annexed to the first defendant’s witness statement at Exhibit 5

Silva, who was working at Colonial Life at that time. Muriel would tell the first defendant all the necessary information which Kathleen told her.

133. When the first defendant filled out the application for the loan, she had Muriel and Gillan sign the application because the first defendant thought they were the owners of the house. The first defendant then submitted the loan application.

134. Sometime after applying for the loan, the first defendant resigned from her job at Amtrak, a job which she had for nine years, and returned to Trinidad. She came back to Trinidad in September, 1983 and moved in to the house at No. 9 Finland Street.

135. As soon as she came back in 1983, she resumed her sewing career from the house. She used the money she made to pay the bills of the house and to maintain her children. She also gave Muriel money as often as she could and also bought her clothes and shoes.

136. Around that time, Muriel mentioned to the first defendant that Mr. Smith would be doing some of the work on the house and that he would get help. Muriel showed the first defendant an estimate for the works she had asked Mr. Smith to do.<sup>26</sup> However, the repairs were not done on the house as the first defendant did not get the loan.

137. That December, the first defendant began upgrading the house. She testified that the house needed a lot of work as it was in bad shape. The first defendant used her own money to buy the paint to paint the

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<sup>26</sup> A copy of the Cost Estimate for Repairs was annexed to the first defendant's witness statement at Exhibit 6

house and other materials to replace the carpet.<sup>27</sup> She testified that Gillan did not give her any money to help with the aforementioned. Edsel and Sean helped her to paint the house. Some boys from Living Waters Halfway House on Henry Street at the time also helped them to do the painting. That was done in December.

138. The first defendant also took care of Muriel by taking her to her family doctor, Dr. Ali. Since 1968 or 1969 the first defendant had been taking Muriel to see Dr. Ali. As such, when the first defendant came back to Trinidad, she took Muriel back to Dr. Ali.

139. In early 1984, Mona and the first defendant got into a very heated argument at the house. Mona had earlier returned to Trinidad and was living in Freeport. Due to the threats Mona made during the argument, the first defendant made a report to the police.

140. After the argument, Muriel moved in with Mona for a short while. It was during the time Muriel was living at Mona that the first defendant was served with a Notice to Quit which was signed by Muriel. At that time, the first defendant was living at the house with her two sons and Sean. The notice was served around Carnival time when Lloyd was visiting Trinidad. It was Lloyd who carried the Notice to Quit to the first defendant. The first defendant was completely surprised by the Notice. Up until then, as far as she knew, her relationship with Muriel was as good as it was when she first came back to live with her.

141. Shortly after she got the Notice to Quit, she was served with papers for a case in High Court. The first defendant immediately went to Legal Aid

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<sup>27</sup> Copies of the receipts for the purchase of paint and paint materials were annexed to the first defendant's witness statement at Exhibit 7.



and got a lawyer. Around September 1984, the first defendant decided to move out of the house so that she could put an end to the confusion.

142. The first defendant moved out of the house at No. 9 Finland Street around October 7, 1984. While living in Cocorite, the first defendant met Anthony Lira who later became her husband. When the first defendant moved out, Muriel moved back into the house and she alone remained living there. Anthony Lira and the first defendant later moved from Cocorite to a house in Bombay Street which was closer to Muriel's house. They moved into the house on Bombay Street in about the year 1985.

143. For the first year after the case, the first defendant did not go by Muriel's house. After the year, the first defendant went to the States and shopped for Muriel. When she came back, she went to Muriel's house and gave her the things she had bought for her. After that, the first defendant would visit Muriel often and Muriel would visit her often also.

144. One year, on the first defendant's birthday, February 15 of 1985 or 1986, Muriel went to visit the first defendant at her home in Bombay Street. While at her house, Muriel baked the first defendant a birthday cake. Muriel then left the first defendant to go to the bathroom. The first defendant found that Muriel was taking long and when she went to check on her, she saw her holding onto the entertainment center and trying to reach the first defendant. Muriel's face was twisted and her speech was very slurred.

145. The first defendant put Muriel on a recliner and called a neighbour, Nancy, who came with her son, Ronnie. Ronnie took Muriel and the first defendant to Dr. Carmichael's Office on Tragarete Road. Dr. Carmichael confirmed with the first defendant that Muriel had suffered a stroke and

advised that it would be better for Muriel to go back home with the first defendant than to go to the Port-of-Spain General Hospital.

146. Muriel spent approximately four weeks with the first defendant. During that time, Gillan visited Trinidad for his usual one week. He did not stay at the house at 9 Finland Street because it was locked up as she Muriel was with the first defendant. Gillan recommended a lady named Ena to assist the first defendant with Muriel. Ena came in the morning at around 9:00 a.m. and would leave at around 2:30 p.m. She would stay with Muriel while the first defendant was sewing in her sewing room. Gillan promised to pay Ena's wages but never did. As such, the first defendant paid Ena's salary.

147. After four weeks, Muriel told the first defendant that she was ready to go home. She moved back into the house at No. 9 Finland Street shortly thereafter. After Muriel moved back into her home at No. 9 Finland Street, the first defendant visited her often as she was living there alone. While visiting Muriel, the first defendant saw that parts of the property began to fall apart because it was in a bad state.

148. The front wall of the house had fallen down in or about 1986. The first defendant and her then husband, Anthony Lira, put up a new wall that same year. Sometime after they had fixed the wall, around 1989 or 1990, Gillan had sent money for the first defendant to pay John to put burglar-proofing on the windows. As the first defendant found that John was wasting time, she did not give him all of the money. When Gillan later returned to Trinidad on vacation, the first defendant gave him the remaining money.

149. Before Muriel suffered from the stroke and before the first defendant built the wall, Muriel went to the first defendant's house at Bombay Street one day and apologized to her for the court case that made her (the first defendant) move out of the house at No. 9 Finland Street in 1984. The first defendant testified that Muriel fell on her knees and apologized for the case. The first defendant's two sons were present at that time. The first defendant did not blame Muriel for what had happened. She blamed her sister, Mona who the first defendant believed influenced Muriel to try to get her out of the house.

150. The first defendant later moved from Bombay Street to a house at No. 4A Vidale Street, St. James in order to be even closer to Muriel. When she was at Vidale Street, she was four houses away from Muriel's house. The first defendant lived at 4A Vidale Street for about two years. Whilst living at No. 4A Vidale Street, Muriel would visit the first defendant.

151. Muriel suffered a second stroke in 1990. After the second stroke, the first defendant tried to move to live closer to Muriel because she was living at home alone and the first defendant was concerned about her health. For those reasons, the first defendant moved from No. 4A Vidale Street to No. 5 Finland Street in June 1990, which was two houses away.

152. The first defendant did not return to the house at No. 9 Finland Street at that time because she was still afraid to go back because of her family and the court case they had started against her. The first defendant spent about four to five months at No. 5 Finland Street. During that time Cheryl was hired to stay at the house with Muriel. The first defendant does not know who hired Cheryl.

153. Whilst living at No. 5 Finland Street, Muriel informed the first defendant that it would be better if she came back to the house since she was living that close. Muriel told the first defendant that it was looking bad on her behalf because the first defendant was paying rent and she was living there alone. It was an awkward situation.
154. The first defendant made the decision to go back to live in the house with Muriel after her television was stolen. One night, while Muriel was sleeping alone at No. 9 Finland Street, her television was stolen. Muriel told the first defendant that when her neighbour Nancy came over early one morning to give her coffee, Nancy noticed that the television was gone and the front door was ajar. Muriel told the first defendant that when she went to bed that night the television was there and that she did not give it away to anyone.
155. After the theft, the first defendant moved back to No. 9 Finland Street. This was either in late 1990 or early 1991. The reason she moved back was because Muriel was living in the house alone and the first defendant felt it was her duty to provide the help Muriel needed. At that point, the first defendant's concerns for Muriel's health and safety were more important than her concerns about any family confusion.
156. When the first defendant moved back to the house, no improvements were made to the bathroom in that ceramic tiles, a new face basin or vanity set and a new toilet bowl were not installed. There were also no new cupboards installed in the kitchen and no new arborite counter top and sink. Further, there was no new celotex and the wall between the gallery and the living room was still there. No new sliding door had been installed in the living room nor was new up-down sliding windows installed.

157. When the first defendant moved back to the house, Cheryl was still the care giver. Muriel told the first defendant that Cheryl would come from 10:00 a.m. to 1:00 p.m. The first defendant took over Cheryl's responsibilities with Muriel's body because one day, when the first defendant turned Muriel over, her skin was breaking. It was beginning to open. At that time, Muriel could not walk properly so when they went to church, the first defendant had to put Muriel in her wheelchair to take her.

158. After the first defendant moved back to the house, she helped Muriel with her bills and the upkeep of the house. Muriel had some outstanding phone bills and so the first defendant paid that off.<sup>28</sup>

159. In 1991, the first defendant fixed a depression in the back yard. She paid approximately \$40, 000.00 to do those repairs. The first defendant did the back yard so that she could access her neighbours in the back yard. The back yard was done between May and June, 1991 because Muriel's birthday was in June and they celebrated it on the new backyard.

160. The first defendant hired Jeff to do the backyard. Jeff went with a crew of his workers and they did the back yard. The first defendant paid them in cash. She purchased and paid for the materials to fix the back yard.<sup>29</sup> The cost to fix the backyard also included labour and loads of sand and gravel. Before cementing the yard, the yard had to be graded. There was also a big step which had first to be demolished to level the yard.

161. Right after the first defendant did the yard, she upgraded the living room furniture and did overlays for all the windows and doors in matching fabric with the furniture. The first defendant bought the fabric from

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<sup>28</sup> See Exhibits 10 and 11

<sup>29</sup> See Exhibit 12

different stores in Port-of-Spain.<sup>30</sup> Forbes Furniture on Laventille Main Road did over the furniture.

162. One day, Muriel tripped on the rug in the living room and fell. Ronnie, her neighbor, and the first defendant took her to the Port-of-Spain General Hospital. Muriel fell again after that on August 31, 1991. Muriel had gotten up about 2:00 am that morning. She could have walked at that time. The first defendant heard Muriel cry out and she jumped up out of her sleep. She then saw Muriel on the floor between the bedroom and the lobby. The first defendant asked Muriel *“what happen? What yuh doing out of your bed?”* Muriel told her that she did not want to wake her up that early so she tried to go to the bathroom on her own.

163. The first defendant then called Barry, who helped her to get Muriel back in the bed. Muriel was in pain. They had to wait until morning for the ambulance to arrive. Muriel eventually agreed to go to the Port-of-Spain Adventist hospital. The first defendant paid some of the bills and Muriel later reimbursed her some of the monies, but not all of it.<sup>31</sup>

164. At Port-of-Spain Adventist hospital, the first defendant was told by the doctor that Muriel had chipped the ball and socket joint in the hip so it had fragments to be removed. The first defendant was further told by the doctor that surgery had to be done to remove the chip bone.

165. Muriel and the first defendant spoke every day. They talked about the family, the news and anything Muriel wanted to talk about. The first defendant took care of Muriel. The first defendant testified that she was

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<sup>30</sup> See Exhibit 13

<sup>31</sup> See Exhibit 14

the friend that Muriel did not have. That Muriel could have told her anything that was going on in her life.

166. In February 1992, the first defendant received a letter from Gillan dated February 20, 1992.<sup>32</sup> The first defendant read the letter wherein Gillan threatened to bring police to throw her out of the house at No. 9 Finland Street. One morning, shortly after the first defendant had received the letter from Gillan, she was cleaning Muriel at about 9:00 a.m. in her bedroom. They were talking and the topic came up about the house and what Gillan had said in the letter. It was then that Muriel told the first defendant *“by the way, I want to see a lawyer”*. The first defendant asked Muriel *“what yuh want to do”* and she responded by saying *“I need to talk to a lawyer”*. The first defendant told her that she was going to go to see if she could find one for her.

167. When the first defendant was finished cleaning Muriel that day, she left the house and took a taxi to NIPDEC House and met a group of people outside talking. The first defendant approached and asked them if any one among them was a lawyer and a woman answered by saying *“I am”*. The first defendant then told the woman that Muriel would like to see a lawyer, if possible today. The woman told the first defendant that her name was Mrs. Janette James-Sebastien and to give her five minutes and she will take the first defendant to her office in her car. Mrs. James-Sebastien finished her conversation with the people she was talking to and took the first defendant in her car to Edward Street next door to BWIA Sunjet house where her office was located. Mrs. James-Sebastien left the first defendant in the car and went upstairs and came back with her secretary whom she introduced as Valerie Perry (*“Valerie”*).

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<sup>32</sup> See Exhibit 15

168. They then went back to the house at No. 9 Finland Street. When they got there, the first defendant invited them in and she (the first defendant) went in and told Muriel that she found a lawyer and that lawyer was there. She asked Muriel whether she could bring Mrs. James-Sebastien into her bedroom and she said yes. The first defendant then helped Muriel to get into her wheelchair. The first defendant then invited Mrs. James-Sebastien and Valerie in and introduced them to Muriel and then went back outside.

169. After about fifteen to twenty minutes, the first defendant was told to return to the bedroom as Muriel wanted to see her. Upon returning to the bedroom, Mrs. James-Sebastien explained to the first defendant that Muriel wanted to transfer the house to her. Muriel then told the first defendant that she wanted her to buy the land. Muriel told her that she had asked all of her siblings and Gillan about buying the land and that they all said that they had no money to do so. Mrs. James-Sebastien and Valerie left thereafter.

170. Ms. James-Sebastien and Valerie returned a second time. The first defendant could not recall how long after the first visit they had returned. They came with some papers and went in to see Muriel again. After about five minutes, they called the first defendant in. They told the first defendant that Muriel wanted her to sign some papers. They explained to the first defendant what she was signing. They told her that it was a deed. The first defendant then signed the papers. After she signed the Deed, they left. Sometime thereafter, the first defendant received a Certified Copy of the 1992 Deed.

171. Around early March that same year, Gillan, Lennox's wife and Angela visited the house at No. 9 Finland Street late one night. Barry,



Muriel and the first defendant were in the house. The first defendant saw Gillan, Lennox's wife and Angela go into Muriel's bedroom. They came out about forty-five minutes thereafter and left. When Gillan left that night, he did not return to stay at the house with Muriel.

172. After they left that night, the first defendant told her son that they needed to leave the house as soon as possible. The next day, while her son was at school, the first defendant went looking for a place to live and found a place at No. 27 Finland Street.

173. Around March 5, 1992 the first defendant and her son moved out of the house at No. 9 Finland Street into a house at No. 27 Finland Street. The reason why the first defendant left was because she was fearful of Gillan in light of the letter which he wrote to her on February 20, 1992. The first defendant thought Gillan had come to put her out of the house and she did not want any confusion.

174. After the first defendant left, she still tried to stay close as she had made Muriel a promise that she would never leave her. While at No. 27 Finland Street, the first defendant visited Muriel often and supervised her helper, Cheryl.

175. The first defendant was never directly told by any of her siblings that Muriel had died. The first defendant received that information from her God-brother. He called Living Waters who in turn contacted the first defendant. After Muriel died, the first defendant entered into an agreement with the second defendant to purchase the subject land.

176. Soon after Muriel was moved out of the house at No. 9 Finland Street, two tenants were moved in. In 1993, the first defendant sent those tenants, Shirma and Ahloy Coutou, a Notice to Quit dated March 30, 1993.

Shirma was Gillan's first cousin. Gillan had lived with the Coutou's before he moved in with Muriel.

177. According to the first defendant, at the date of execution of his Will, Gillan had been made aware of the fact that Muriel had given the first defendant her interest in the house. Mrs. James-Sebastien had written and told him so in a letter dated April 7, 1993. Gillan's then lawyer, Ms. Gouveia, responded to Mrs. James-Sebastien's letter by letter dated May 26, 1993.

178. After those tenants moved out, another set of tenants were allowed to move in. The first defendant also sent those new tenants, Mr. and Mrs. Pilgrim, a Notice to Quit dated July 19, 1993.

179. The first defendant moved back to the States around September, 1993. She came to Trinidad every year after that and would call Angela to find out if the house was empty because she wanted to go in the house. Every time she called Angela, Angela would not tell her what the situation with the house was.

180. The first defendant used to go by the house but the tenants would not let her in. The first defendant identified herself as the owner of the house but the tenants still did not allow her onto the land.

181. In 2005, the first defendant's siblings continued harassing her about the house. The first defendant received a letter about a family reunion to discuss the house. At that time, she was in the States. The first defendant did not go to the family reunion as she had just had major surgery one week earlier.

182. In 2013, the first defendant received yet another letter, this time from an attorney, warning her to give up any share she might have in #9 Finland, Street.

183. The land was later transferred to the first defendant after she paid off the purchase price. After the first defendant got the 2016 deed, she served a Notice of Eviction on the then tenant, Montiquette.

184. From the time Gillan left Trinidad in 1965 until Muriel died in 1992, he never came back to Trinidad to live at No. 9 Finland Street or anywhere else. Further, after Muriel's death in 1992 and until he died in 2003, Gillan never returned to live permanently in Trinidad.

#### The cross-examination of the first defendant

185. After her stroke, it was initially difficult for Muriel to speak. However after treatment, Muriel's speech improved considerably. When Muriel executed the 1992 deed, she was able to speak. The first defendant denied that Muriel was mentally incoherent.

186. When Muriel died, the first defendant paid the land rent to the second defendant. When the first defendant paid the land rent, she requested the second defendant to put her name on the receipts.

187. The first defendant knew that in 1992, Gillan did not want her at the subject property. She was referred to letter dated February 20, 1992 which was written to her by Gillan. That letter stated as follows;

*"Hello Ira*

*When I was home last February 1991 I told you to save your money through 1991 and get out, I want to buy new furniture for my house and you are preventing me because I want no body here but my wife and I.*

*I want you to get out of the house now, you had a court order to get out the premises before and you work your way back without permission because your mother was helpless and no body was around, I want you to get out of my house now by 23 February 1992 you are giving your mother too much complication you are pushing her to her death leave now in peace I don't want to bring any police to put you out and keep out and leave us in peace..."*

188. Gillan visited Trinidad in 1991. He was also in Trinidad in 1992.

189. The first defendant did not inform Lennox that Muriel was "low". She testified that her siblings do not speak to her. That they do not speak to her because they wanted to put Muriel in a home and she did not want that.

190. On the day of the execution of the 1992 deed, Muriel's caretaker Cheryl was not present. The first defendant did not tell Cheryl to take the day off. Cheryl was very inconsistent in attending work and so that was why the first defendant returned home.

191. The first defendant was referred to the 1992 deed which provided as follows;

*"AND WHEREAS the Vendor has contracted and agreed with the Purchaser for the sale to her of all her respective right title share estate and interest of an in the said leasehold premises together with the building and*

*appurtenances belonging thereto at and for the price or sum of FIFTY THOUSAND DOLLARS free from encumbrances.*

*AND WHEREAS the Lessor has given its consent to the said assignment as shown on paperwriting hereto attached and marked "A".*

*NOW THIS DEED WITNESSTH that in pursuance of the said agreement and in consideration of the sum of FIFTY THOUSAND DOLLARS paid by the Purchaser to the Vendor on or before the execution of these present (the receipt of which sum the Vendor here acknowledges).."*

192. The first defendant paid Muriel \$45,000.00 in cash. That \$45,000.00 was given to Muriel in the event she had another emergency. The first defendant then testified that she told Muriel that she could use that money to take care of the yard of the house and that she could deduct it as part payment for the land.

193. The first defendant testified that she was supposed to harass the tenants of the house because Muriel wanted to leave the house to her. She then testified that she did not harass the tenants but simply went to the house once to give them the notice to quit. The first defendant did follow up with the court proceedings she initiated against Moniquette. When she went to the Magistrates' court, the Magistrate informed her that there were proceedings in the High Court which superseded the Magistrates' court's proceeding and that the matter would have to be dismissed.

194. The first defendant never informed the second defendant that there were disputes among her family concerning the subject property. When the first defendant went to purchase the land, she showed the second defendant the 1992 deed. She also informed the second defendant that the land was tenanted by Muriel and Gillan. The first defendant did not inform Gillan that she was going to purchase the land.

## **THE CASE FOR THE SECOND DEFENDANT**

195. The second defendant called one witness, its Office Manager, Cindy Chan ("Chan"). She has been the Office Manager for the past six years.
196. By Deed of Lease made on July 4 1952, and registered as No. 5624 of 1952 the second defendant demised unto Gillan and Muriel the subject land. On June 24, 1977 the second defendant demised unto Gillan and Muriel the subject land for the further term of twenty-five years from June 1, 1977 at an annual rent of \$90.00 payable in advance by monthly payments of \$7.50 on the first day of each and every month in each and every year. The second defendant issued official receipts to Gillan and Muriel for all rental payments made pursuant to the said lease(s) above. The latter Deed of Lease is registered as No. 20008 of 1977.
197. In or about February 1992, the second defendant received a request from Mrs. James-Sebastien, Attorney at law to give its consent in writing to the absolute assignment by way of sale from Muriel to the first defendant of the unexpired term of years of the Statutory Lease in respect of Muriel's share, title and interest in the subject land granted by Deed of Lease registered as No. 5624 of 1952. The second defendant gave its consent in writing in that regard on February 14, 1992. Thereafter by the 1992 deed, Muriel assigned unto the first defendant all her right, title, estate and interest of and in the subject property for all the unexpired residue of the term of thirty years granted by the said Statutory Lease subject to the payment of the rent reserved by and to the performance and observance of the covenants conditions and stipulations contained in the said Lease. The second defendant then commenced issuing receipts for land rent in the names of Gillan and the first defendant based on the said

registered Deed by which Muriel divested and/or assigned her interest in the property to the first defendant.<sup>33</sup>

198. According to Chan, the second defendant was neither privy to nor had notice of any court proceedings between any interested parties or family members touching and/or concerning the subject property and none was ever brought to the attention of the second defendant by any family member or next of kin of either Gillan or Muriel at any time whatsoever.

199. Following service upon the second defendant by the first defendant of Notice to purchase the freehold reversion in the subject land, the second defendant on October 2, 1992 entered into an Agreement in writing with the first defendant pursuant to Section 5(5) of the Land Tenants (Security of Tenure) Act 1981 (“the Act”) to sell the subject land to her as the recognized and registered tenant thereof according to the second defendant’s records. By the terms of the said agreement in writing, the second defendant sold the land to the first defendant for the sum of \$34,344.00.<sup>34</sup> By reason of the terms of payment that is, by way of monthly instalments over a ten year period as contained in the said agreement the payment for the land was completed and the land was conveyed by the second defendant to the first defendant in 2016 by way of the 2016 deed.

200. Over the said period of twenty-four years and indeed prior thereto the second defendant received no notice of any competing claims, interest or entitlement to the land and duly completed the said sale of same to the

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<sup>33</sup> Copies of the said Deed registered as No. 8461 of 1992 together with copies of the receipts issued by the second defendant for the period 1993 to 1998 were annexed to Chan’s witness statement at “A”.

<sup>34</sup> A copy of the Agreement was annexed to Chan’s witness statement at “B”

first defendant as the bona fide and recognized tenant thereof according to its records.

201. The second defendant was not and never aware of any competing claims by any next of kin, family members or others to the subject land and no such claims were ever brought to its notice or attention. The second defendant therefore treated with the person who acquired a right, title and estate in the subject land and an interest in the dwelling house standing on the said land from one of the original recognized tenants without notice of any fraud associated with the acquisition of ownership of a share in the dwelling house or leasehold interest in the subject land or any competing claims of any other persons claiming any derivative title or interest otherwise in the subject property.

202. The second defendant was not at any time privy to, nor had it any knowledge of any court order against the first defendant nor was same ever brought to the second defendant's attention and/or notice and the second defendant was not and never a party to or complicit in any alleged fraudulent activity in connection with the sale of the subject land the first defendant.

203. The second defendant is and has been unaware at all material times prior to the filing of the instant proceedings of any family dispute involving the subject land and acted as Landlord in accordance with the Act in selling the land to a properly registered and recognized tenant according to its records and having regard to the documentation in its possession. The second defendant therefore categorically denied that it was negligent in its sale of the freehold reversion in the land and/or in treating with this matter as alleged or at all.



204. In the event that there are other legitimate and bona fide claimants or family members of the original tenants who may be deemed entitled by this court as statutory tenants of the land and may have been entitled to purchase same and have given Notice of Renewal of the statutory lease pursuant to Section 4(3) of the Act, the second defendant is prepared to abide by any order or direction of this court in the above regard and accede to the revocation and/or any order declaring that the 2016 deed be set aside if deemed appropriate and execute a new Deed in favour of the persons deemed by the court as entitled to the subject property or have same vested in them.

205. Save as aforesaid the second defendant stated and maintained that it treated with this matter properly and sold the freehold reversion in the subject land to a bona fide and recognized statutory tenant according to its records and to the information available to it at the material time.

#### The cross-examination of Chan

206. Chan would not have been the person who dealt with the first defendant. Chan testified that the person who most likely dealt with the first defendant was the second defendant's then Director, Joseph Herrera who is now deceased.

207. When an agreement is already in place and a person makes the final payment on the land, once the second defendant's attorney is being used to do the conveyance, the person's file will be given to the second defendant's attorney. The final decision to conclude the transaction by way of deed lies with the second defendant's attorney. Chan would usually

be the person to give the second defendant's attorney the file and instruct the attorney that the person has completed their payment.

**Issue 1** – *whether the claimant's claim that the 1992 deed was fraudulently obtained is statute barred*

The submissions of the defendant

208. The first defendant relied on **Section 21 of the Real Property Limitation Act Ch. 56:03** which provides as follows;

*"In every case of a concealed fraud, the right of any person to bring a suit in equity for the recovery of any land or rent of which he, or any person through whom he claims, may have been deprived by such fraud, shall be deemed to have first accrued at and not before the time at which such fraud shall, or with reasonable diligence might, have been first known or discovered..."*

209. The first defendant further relied on the case of **Jody Goberdhan-Watts (Formerly Jody Goberdhan-Baccus) v Ganness Boodoo and Angela Boodoo**,<sup>35</sup> wherein Justice Donaldson-Honeywell addressed the issue of how fraud is to be proven. Her Ladyship stated as follows at paragraph 34;

*"34. What now falls to be considered is whether fraud has been proven. According to the common law principles outlined in Derry v. Peek<sup>7</sup>, "fraud is proved when it is shown that a false representation has been made: (1) knowingly; or (2) without belief in its truth; or (3) recklessly, careless whether it be true or false" (see also Chitty on Contracts 29th edn para 6-*

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<sup>35</sup> Claim No. CV 2014-04701

043). In the present case, it is apparent that the Claimant's mother represented to the Defendants' parents that she was the Legal Personal Representative of the estate of the Claimant's father and had the power to transfer the entire property. As a Deed of Assent had already been registered vesting title in herself and her two children equally, she either knew that she was no longer the Legal Personal Representative or was careless whether or not it was the truth. Therefore her actions in transferring the entirety of the property can be considered to be fraudulent within the section capable of extending the limitation period to when the fraud was discovered or when it could have first been discovered with reasonable diligence."

210. The first defendant also relied on **Halsbury's Laws of England Volume 68 (2016), paragraph 1223** which provides as follows;

*"...In order to prove that a person might have discovered a fraud, deliberate concealment or mistake with reasonable diligence at a particular time, it is not, it seems, sufficient to show that he might have discovered the fraud by pursuing an inquiry in some collateral matter; it must be shown that there has been something to put him on inquiry in respect of the matter itself and that if inquiry had been made it would have led to the discovery of the real facts. If, however, a considerable interval of time has elapsed between the alleged fraud, concealment or mistake and its discovery, that of itself may be a reason for inferring that it might with reasonable diligence have been discovered much earlier."*

211. The first defendant submitted that it must therefore be determined whether there had been anything that occurred to put the claimant on inquiry in respect of her father's estate and the 1991

transaction and/or whether the time elapsed had been so long so as to infer that the claimant had not been reasonably diligent.

212. According to the first defendant, the claimant gave no evidence in her witness statement as to when either Gillan or she discovered the fraud as alleged in the instant action. The first defendant submitted that by letter dated April 7, 1993 Attorney-at-law, Mrs. James-Sebastien informed Gillan of the 1992 deed as well as of the fact that the first defendant had purchased the subject land on which the house stands. As such, the first defendant submitted that the letter put Gillan on inquiry as to the issue of fraud relative to the subject property. That despite having been informed of the first defendant's interests in the subject property, Gillan failed to initiate any legal action for fraud against the first defendant.

213. The first defendant submitted that according to the claimant's witness statement, she sought the Medical Report from Dr. Ali after receiving a copy of the 1992 deed and having been advised by Mrs. Gouveia. According to the first defendant, the logical inference to be drawn from that evidence is that Mrs. Gouveia's' advice was something which put the claimant on inquiry in respect of the transaction relative to the 1992 Deed.

214. The claimant testified during cross-examination that she received the medical report in late 1992. The findings contained in the purported medical report form the basis of the claimant's allegations of fraud in the instant case. The first defendant submitted that given the claimant's evidence of having been in receipt of the medical report in or about late 1992, it can logically be inferred that she discovered the fraud on receiving same. That it can further be logically inferred that the claimant was motivated to obtain a medical certificate from Dr. Ali because she had

either discovered the fraud or, at the very least, been put on inquiry that an alleged fraud had been committed by the first defendant.

215. According to the claimant's evidence during cross-examination, she received a copy of the 1992 deed from Gillan's then Attorney-at-law, Mrs. Gouveia. As such, the first defendant submitted that Gillan could have therefore be deemed to have been further put on inquiry relative to the 1992 deed. That there was still no evidence that the Gillan or his estate ever filed any action for fraud against the first defendant within sixteen years of Gillan having been put on inquiry.

216. Consequently, the first defendant submitted that in applying the provisions of the Real Property Limitation Act, the claimant's instant action for fraud filed on behalf of the Estate of Gillan is statute barred. That given that it has been at least twenty-four years between the claimant having been put on inquiry and the commencement of the instant action, the time elapsed has been so long so as to infer that the claimant had not been reasonably diligent.

#### The submissions of the claimant

217. The claimant submitted that it is not competent for the first defendant at this stage to raise the issue of statutory limitation. That a perusal of the amended and re-amended Defence and Counterclaim does not reveal a plea of limitation, that is, that the claim of the claimant based on fraud is statute-barred.

218. The claimant relied on the House of Lords decision in *Ketteman v Hansel Properties Ltd*<sup>36</sup> and the pronouncements of Lord Griffiths therein. In *Ketteman* the trial lasted for two weeks and the issues were fought out on their merits. During the closing speech of Counsel for the plaintiff, an application was made by him to amend the defence to plead that the claim was statute-barred. In upholding the refusal of the lower courts to refuse the application, the following pronouncements were made by Lord Griffiths;

*“The choice lies with the Defendant and if he wishes to avail himself of the statutory defence it must be pleaded...”*<sup>37</sup>

*If a defendant decides not to plead a limitation defence and to fight the case on the merits he should not be permitted to fall back on a plea of limitation as a second line of defence at the end of the trial when it is apparent that he is likely to lose on the merits...”*<sup>38</sup>

*There is a clear difference between allowing amendments to clarify the issues in dispute and those that permit a distinct defence to be raised for the first time...”*<sup>39</sup>

219. Consequently, the claimant submitted that it makes no difference that an application to amend is not being sought in the instant case. That the principle deprecating the lateness in raising the plea of limitation applies equally. As such, the claimant submitted that in light of the foregoing, the issue of statutory limitation as raised by the first defendant ought not to be considered and should be summarily rejected. That Section 21 of the Real Property Limitation Act was not pleaded.

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<sup>36</sup> [1988] 1 All ER 38

<sup>37</sup> [1988] 1 All ER 38 at 61

<sup>38</sup> [1988] 1 All ER 38 at 61

<sup>39</sup> [1988] 1 All ER 38 at 62

## Findings

220. The necessity to plead a defence of limitation is well established. In the Court of Appeal case of ***First Citizens Bank Limited v. Shepboys Ltd. & another***,<sup>40</sup> Mendonça JA (following the decision in Kennett v Brown [1988] 2 ALL ER 600) had the following to say at paragraph 26;

*“If the limitation issue is not raised by the defendant, it is not appropriate for the Court to determine whether the action is statute barred...”*

221. Consequently, guided by aforementioned dicta, the court finds that first defendant having failed to raise the issue as to limitation in its Defence, cannot now do so. The court further finds that as the first defendant failed to avail itself of the defence of limitation, the issue of limitation is not one that falls for determination before this court.

**Issue 2 & 3** – *whether Muriel possessed the mental capacity and/or competence to execute the 1992 deed and if so, whether the 1992 deed was duly executed by Muriel in accordance with the provisions of the Conveyancing and Law of Property Act Chapter 56:01.*

## Law

222. The burden of proving that Muriel lacked the mental capacity and/or competence to execute the 1992 deed lay with the claimant.<sup>41</sup>

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<sup>40</sup> Civil Appeal No. P 231 of 2011

<sup>41</sup> See Ramnarine Ramjeawan v Deolal Peraid and another CV2012-04337, per Mohammed J at paragraph 17

223. Halsbury's Laws of England, Volume 75 (2013), paragraph 617

provides as follows;

*"...Under case law the test of capacity to execute a deed is whether the person is capable of understanding what he does by executing the deed in question when its nature and effect are explained to him. A valid deed might be executed during a lucid interval or before mental incapacity supervened. However, the degree or extent of understanding required in respect of any instrument is relative to the particular transaction which it is to effect; if the subject matter and value of a gift are trivial in relation to the donor's other assets a low degree of understanding will suffice; but if its effect is to dispose of the donor's only asset of value and thus for practical purposes to pre-empt the devolution of his estate, then the degree of understanding is as high as that required for a will.*

*A deed executed by a mentally incapacitated person was void in law. However, in deciding whether to set aside such a deed, courts of equity took into consideration the circumstances of the case: rescission would be granted unless it was inequitable to do so. Thus, although a voluntary disposition might be set aside even against subsequent purchasers for value without notice, rescission might be refused where there had been delay, or where the transaction was prudent and rescission would be inequitable. These cases were all decided before the modern law as to the general effect of contracts made by mentally incapacitated persons became clear. There may be a distinction between dispositions made by deed but for valuable consideration and voluntary dispositions however made..."*



224. In *Singh and Singh v. Singh and Tai Chew*,<sup>42</sup> Narine J (as he then was) stated the following in relation to fraud;

*“The burden of proving fraud lies on the person who alleges it. It must be distinctly alleged and distinctly proved. The standard of proof is on a balance of probabilities. However, the standard is flexible, and requires a degree of probability commensurate with the seriousness of the occasion. The more serious the allegation the more cogent is the evidence required to overcome the likelihood of what is alleged. The very gravity of an allegation of fraud is a circumstance which has to be weighed in the scale in deciding as to the balance of probabilities. See: Smith New Court Securities Ltd. vs. Scrimgeour Vickers (Asset Management) Ltd. (1996) 4 AER 769; Re Dellow’s Will Trusts, Lloyds Bank Ltd. vs. Institute of Cancer Research (1964) 1 AER 771; Hornal vs Neuberger Products Ltd. (1956) 3 AER 970.”*

#### Analysis and findings

225. According to the claimant, on the date of the execution of the 1992 deed, Muriel did not possess the mental capacity and/or competence to execute same. In addition to her evidence of Muriel’s ill health, the claimant relied on the evidence of her brother Lennox, a medical report from Dr. Ali who was Muriel’s physician and an opinion from Dr. Pierre derived on the contents of Dr. Ali’s report to prove that Muriel lacked the mental capacity and/or competence to execute the 1992 deed on the said date. In order to determine whether the claimant adduced evidence to

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<sup>42</sup> HCA 530 of 1991, page 24, paragraph 2

raise sufficient doubt from which incapacity can be inferred, this court considered all the above evidence and the evidence of the first defendant.

226. The first defendant raised numerous arguments opposing the authenticity of the medical report of Dr. Ali. The first defendant submitted that due to the absence of the following, the claimant has failed to establish the authenticity of the medical report;

- i. a date;
- ii. any evidence of authentication of the signature;
- iii. any evidence of whether Dr. Ali worked at the Seventh Day Adventist Hospital at the material time; and
- iv. any explanation for the disparity between the claimant's oral evidence and written evidence and the contents of the medical report,

227. The medical report from Dr. Ali was undated. In her witness statement, the claimant testified that subsequent to learning of the 1992 deed, she obtained legal advice from Ms. Gouveia and consequent upon that advice, she approached Dr. Ali, Muriel's regular physician for a medical report of Muriel's condition prior to her death. During cross-examination, the claimant testified that she learnt of the 1992 deed late in the year of 1992 and as a consequence when she would have approached Dr. Ali for the medical report in relation to Muriel, Muriel would have already passed away.

228. The court finds that the claimant's evidence in relation to the time period she would have approached Dr. Ali for the medical report was not inconsistent. The first defendant interpreted the evidence of the claimant in her witness statement to mean that she approached Dr. Ali for a report

of Muriel's condition prior to the death of Muriel. However, the court finds that it is clear that the claimant was stating in her witness statement that she approached Dr. Ali for a medical report on the condition of Muriel before she passed away not that she approached Dr. Ali prior to Muriel's death for the medical report. Consequently, the claimant's evidence during cross-examination that when she approached Dr. Ali for the medical report, Muriel had already passed away was not inconsistent with the evidence contained in the claimant's witness statement.

229. The first defendant further submitted that the claimant's evidence as to when she would have received the medical report was inconsistent with the statement in the medical report that Muriel's "*mental condition is incoherent*". According to the first defendant, the logical inference to be drawn from the use of the verb "is" in the medical report is that Muriel was alive at the time when the medical report was purportedly prepared. The court finds that to infer from the use of the word "is" in the medical report that Muriel was alive at the time, would be to indulge in a gymnastic exercise of speculation involving an attempt to decipher what existed in the mind of Dr. Ali at that time. It is clear that the logical inference is simply that Dr. Ali used "is" instead of "was" either by error or by habit, neither of which is either objectionable or proof that Muriel was alive at the time.

230. Moreover, the first defendant submitted that the claimant's evidence as to when she went to Dr. Ali was contradicted by letter dated April 7, 1993. According to the first defendant, Mrs. Gouveia was informed of the first defendant's interest in the subject property by letter dated April 7, 1993. As such, the first defendant submitted that given the claimant's testimony that she learned of the 1992 Deed from Mrs. Gouveia, the logical inference to be drawn, in the absence of contrary evidence, was that the claimant learned of the 1992 Deed after April 7, 1993. That the

April 7, 1993 date contradicted the claimant's evidence that she learned of the 1992 Deed, and, by extension, received the medical report, in late 1992. Additionally, the claimant gave no evidence as to when Shirma Coutou told her of the 1992 Deed.

231. Upon analyzing letter dated April 7, 1993 the court noted that same was addressed to Gillan. The first defendant gave no evidence that same was received by the claimant. When this letter was shown to the claimant during cross-examination, the claimant testified that that was the first time she had seen the letter. Therefore, without any evidence that the claimant had received this letter, the court cannot infer that it was only after this letter was issued, the claimant would have learnt of the 1992 deed. The court therefore finds that this letter did not contradict the claimant's evidence as to when she would have obtained the medical report from Dr. Ali.

232. The first defendant submitted that the treatment period as included in the medical report was inconsistent with the claimant's oral and written evidence. According to the report, Muriel was treated by Dr. Ali from March 9, 1992 to May 2, 1992. In her witness statement, the claimant stated that in order to ensure that Muriel had constant supervision, she was removed from the house on March 21, 1992 and moved to the claimant's home at Freeport. During cross-examination, the claimant testified that Dr. Ali did not treat Muriel after she was moved to Freeport. As such, the first defendant submitted that there was no evidence that, after March 21, 1992 Muriel was moved from the claimant's home in Freeport to anywhere other than Freeport. That in the absence of evidence to the contrary, the logical inference to be drawn from the claimant's oral and written evidence is that Dr. Ali did not treat Muriel after March 21, 1992.

233. The medical report equally does not state that Muriel was treated by Dr. Ali prior to March 9, 1992. Further, as correctly pointed out by the first defendant the medical report did not include the dates of house visits as per the contemporaneous notes made by the claimant. According to the contemporaneous notes made by the claimant, Dr. Ali treated Muriel on or about January 31, 1992 and on February 21 1992. February 21, 1992 was four days prior to the date upon which Muriel executed the 1992 Deed. Additionally, the first defendant accepted that Dr. Ali was Muriel's doctor. The first defendant in fact testified that since 1968 or 1969, she had been taking Muriel to see Dr. Ali. Consequently, the court finds that the weight of the evidence lies in favour of acceptance of the contents of the medical. It is clear that Muriel has been the attending doctor for decades and had so treated her even though the medical did not say so. It is equally clear that the medical report would have only dealt with the short relevant period.

234. Additionally, the first defendant submitted that the medical report contained no professional stamp from Dr. Ali. That there was no evidence authenticating the signature on the medical report as being that of Dr. Ali. The first defendant further submitted that the purported medical report was written on the letterhead of the Seventh Day Adventist Hospital but the claimant provided no evidence that Dr. Ali worked at the said hospital at the material time or ever worked at the Seventh Day Adventist Hospital at all.

235. The court finds that the fact that there was no professional stamp would ordinarily be cause for concern but in this case the first defendant has accepted that Dr. Ali was Muriel's doctor. Further, although there was no evidence authenticating that the signature on the report was that of Dr.

Ali, the first defendant did not provide any evidence that the signature was not that of Dr. Ali.

236. Moreover, the evidence of the first defendant that when she returned to house in late 1990 or early 1991, Muriel's skin was breaking supported the contents of the report of Dr. Ali that Muriel was suffering from bed sores. Consequently, the court accepts that the medical report was issued by Dr. Ali, that Dr. Ali would have seen Muriel between March 9, 1992 to May 2, 1992 and found that Muriel was suffering from bedsores and that her mental condition was incoherent.

237. Dr. Pierre testified that it was unlikely that Muriel would have been coherent at the time of execution of the 1992 deed by way of her thumb print on February 25 1992. Dr. Ali's report however treated with the period March 9, 1992 to May 2, 1992. It was Dr. Pierre's testimony that should Muriel have been coherent on the February 25, 1992 but then become incoherent from March 9 1992, it would have meant that there had occurred a major medical event after February 25, 1992 that would have led to her mental state as it was found to be by Dr. Ali. Further, that if that was the case, then Dr. Ali would have administered very aggressive medical management including hospitalization but there was no evidence of that in this case.

238. The court finds that as Dr. Pierre did not examine Muriel, this evidence by itself was speculative. Consequently, the court had to determine whether there was any evidence which would have lent support Dr. Pierre's findings.

239. Lennox, the brother of the claimant and the first defendant testified that approximately one year prior to Muriel's death she was not

speaking. Lennox was aware that Muriel was in and out of hospital as she was not enjoying the best of health. He testified that Muriel suffered a stroke and she fell on two occasions, the second of which resulted in a broken hip. Muriel never walked again after the second fall and therefore she became bed-ridden and unable to take care of herself.

240. According to Lennox, he had a telephone conversation with the first defendant in the month of January of 1992. During that conversation, the first defendant told him that “Muriel is pretty low”. Lennox understood the first defendant to be saying that Muriel could have died at any time. Consequently, Lennox took the decision to come to Trinidad immediately. He testified that he initially stayed at the house when he arrived in Trinidad and so was able to monitor and/or observe Muriel on a daily basis. Upon his arrival, he approached the bed to greet Muriel. He spoke to her and her response was a sustained ‘*Ahhhhhh*’, as it sounded to him that she could not communicate. Muriel did not call his name or speak. As such, Lennox formed the view that she did not recognize him.

241. Lennox also observed that Muriel was suffering from bed sores. He testified that he left Trinidad around the first week of February, 1992 and up to that time there was no change in Muriel’s condition and she was not speaking but only making the noises as referred to above.

242. The court finds that the evidence of Lennox corroborates the evidence of Dr. Pierre that it was unlikely that Muriel would have been coherent at the time of execution of the 1992 deed by way of her thumb print on February 25 1992. Further, the court finds that the execution of the 1992 deed by Muriel by way of thumb print was highly suspicious in light of the fact that she executed both deeds of lease with the second defendant by way of signature. The first defendant provided no evidence

as to why Muriel executed the 1992 deed by way of thumb print as opposed to her usual pattern of signing. The use of the thumbprint in those circumstances is at the very least odd, but in the absence of an explanation it throws much suspicion on the ability of Muriel to enter into sale arrangements for land by way of deed.

243. This court has therefore found that the claimant has discharged the legal burden of proof which laid upon her to establish, on the balance of probabilities, that Muriel lacked the mental capacity and/or competence to execute the 1992 deed. That the evidence adduced by the claimant has raised sufficient doubt as to capacity of Muriel so as to shift the evidential burden to the first defendant.

244. Further, the court finds that the first defendant has failed to discharge the legal burden of proof that Muriel did have the capacity to execute the 1992 deed. The first defendant failed to call any witness who could have testified to Muriel's execution of the 1992 deed in the face of the challenge to it. Mrs. James-Sebastien has however passed away so that she was unavailable.

245. The first defendant in her testimony placed herself outside of the bedroom in which she alleged the execution took place and the witness to the execution, Valerie, was not called as a witness. Further, on the day of the execution of the 1992 deed, Muriel's caretaker Cheryl was not present. The first defendant did not tell Cheryl to take the day off. She testified that Cheryl was very inconsistent in attending work and so that was why she (the first defendant) returned home. The court finds that the absence of the caretaker on the day of execution was highly suspicious and may have been more than a coincidence when all of the circumstances are considered.



246. Further, the court finds that the first defendant's story as to how a deed came to be executed does not appear to be plausible having regard to that which is normally to be expected in the circumstances of this case. The first defendant's evidence that she went far and beyond to get a lawyer for Muriel although she did not know why Muriel needed a lawyer simply made no sense. Certainly, she would not have gone out of her way to source a lawyer from outside of the court and take that lawyer to her Muriel unless she knew that same may have had some benefit to her. The court does not believe her evidence on this issue at all.

247. Additionally, the court finds that the evidence of the first defendant, at least by implication, that Muriel moved ordinarily when visited by the Attorney-at-Law and her Secretary was irreconcilable with the evidence of Dr. Pierre and Lennox in that regard.

248. Over even more astounding purport, the 1992 deed sets out consideration in the sum of \$50,000.00. In her Defence, the first defendant pleaded that the \$50,000.00 was paid to Muriel partly in cash and partly by way of meeting all expenses associated with effecting improvements to the subject property.

249. During cross-examination, the first defendant testified that she would have given Muriel \$45,000.00 in cash. She further testified that the \$45,000.00 was given to Muriel for use in case Muriel had another medical emergency. The first defendant then testified that she told Muriel if she did not use the \$45,000.00 then she (Muriel) could use same for the land and deduct it as part payment for the land. Counsel for the claimant then asked the first defendant whether the \$45,000.00 was paid to Muriel for the land and the first defendant stated that the said sum was given to Muriel for the land or for whatever she needed the money to do. The first

defendant gave no evidence as to when this alleged sum was paid to Muriel. The court therefore finds that it is more likely than not that no money was given to Muriel whatsoever for her interest in the property. The several material inconsistencies in the court's view, lead to the inescapable conclusion that not only was Muriel not paid as stated in the deed but having regard to her mental capacity at the time, she would have been unaware of the transfer of her interest to anyone at all.

250. Consequently, the court finds that it has not been proven that Muriel possessed the mental capacity and/or competence to execute the 1992 deed and that the 1992 deed was duly executed by Muriel in accordance with the provisions of the Conveyancing and Law of Property Act Chapter 56:01. As such, the 1992 will be set aside.

Issue 4 - *whether Gillan and Muriel were joint tenants of the leasehold interest in the subject land*

#### Analysis and Findings

251. In their respective submissions, the parties have agreed that the tenancy was held by Gillan and Muriel jointly. The first defendant however submitted that at the date of Muriel's death in 1992, Gillan's undivided half share had already been extinguished as much more than sixteen years of sole, exclusive possession had elapsed. That Gillan's right to the legal title under the doctrine of survivorship ceased to exist. Consequently, the first defendant submitted that Gillan's legal interest in the second lease was extinguished by Muriel in 1981 or, alternatively, in 1988. In so submitting, the first defendant relied on the case of **Sandra Briggs and**

**Sandra Briggs (as Legal Personal Representative of the estate of LENORE BRIGGS deceased) v. John Briggs<sup>43</sup>**

252. The court agrees with the submission of the claimant that there was no evidence that Gillan and Muriel ceased being husband and wife, nor was there any evidence from which such an inference could be reasonably drawn. That the evidence was that Gillan returned annually to Trinidad and stayed at the matrimonial home. There was also no evidence that Gillan ceased regarding Muriel as his wife and vice versa. The court further agrees that Gillan's letter of February 20, 1992 can be construed as expressing concern to the first defendant for Muriel's welfare.

253. The law on adverse possession is well established. As such, for Muriel's claim in adverse possession to be made out, it must be proved that she had both factual possession and an intention to possess the subject property. This factual possession should be exclusive and ought not to have been by force, hidden or with the paper owner's permission. She must also show an intention to take possession on her own behalf and for her own benefit to the exclusion of all other persons including the owner with the paper title so far as is reasonably practicable.<sup>44</sup>

254. The court finds that there was no evidence that Muriel had factual possession of the subject property to the exclusion of Gillan. There was also no evidence that Muriel had requisite the animus possidendi to dispossess Gillan of his interest in the subject property. Consequently, the court finds that Muriel's occupation of the subject property was not adverse to Gillan's interest in same.

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<sup>43</sup> CV2014-00545

<sup>44</sup> See JA Pye (Oxford) Ltd v Graham [2002] UKHL 30

255. The court further finds that there was no evidence from which an inference could be reasonably drawn that Gillan discontinued his possession of the house. The court agrees with the submission of the claimant that one person may be in possession through another and that Muriel's possession, in the absence of evidence to the contrary, was on behalf of herself and Gillan.

256. According to the evidence of the claimant, improvements to the house were effected by Gillan in 1989 or 1990. He caused improvements to be made to the bathroom, in that, ceramic tiles, a new face basin or vanity set and a toilet bowl set were installed. With respect to the kitchen, new cupboards were installed, a new counter top (with arborite) including a sink was installed, the water-marked celotex was removed and replaced with new celotex. The wall between the gallery and the living room was removed creating a larger living room and a sliding glass door at the side of the living room was installed. All the windows of the house were removed and new up-ward sliding windows were installed. The entire house was also re-painted. The improvements to the house were done by John, Gillan's uncle. The claimant testified that the first defendant informed her that she received monies from Gillan via cheques from the United States for the purchase of materials and the payment of labour costs to John.

257. The first defendant denied that Gillan caused the above mentioned improvements to be made to the house. However, she testified that sometime in or around 1989 or 1990, Gillan had sent money for her to pay John to put burglar-proofing on the windows. As such, it was clear to this court that Gillan was the one who paid John and more likely than not was in control of the repairs to his house. It is therefore pellucid and the court finds that Gillan did not discontinue his possession of the subject property.

258. Further, Gillan and Muriel commenced High Court proceedings against the first defendant for possession of the house. Pursuant to those proceedings, Gillan and Muriel obtained an Order by consent dated September 27, 1984 for possession of the house against the first defendant. Further, a writ of possession dated March 9, 1992 was issued and directed to the Marshal of the High Court to take and deliver possession of the house to Gillan and Muriel. The first defendant moved out of the house on March 14, 1992. Gillan and Lloyd who were in Trinidad at that time stayed at the house. The court finds that it was instructive in that regard that the action for possession and the writ of possession were in the names of both Gillan and Muriel.

259. Further, Gillan by letter of February 20, 1992 called upon the first defendant to leave the house and the first defendant did so fearing that his presence in Trinidad in that year was to expel her. These matters support the finding of the court on the evidence that Gillan did not part with possession of the subject property upon his migration to the States.

260. The court agrees with the submissions of the claimant that the case of *Sandra Briggs* supra is distinguishable from the instant case and ought not to be followed or applied herein for the following reasons;

- i. The facts in Briggs are so materially different. Firstly, unlike Gillan, John Briggs did not return to Trinidad for twenty-eight years. It cannot be said that by the time of Muriel's death that Gillan's interest in house and land had been extinguished.
- ii. Gillan Roberts made arrangements for Muriel to join him in the United States of America which she did and they lived together for six months before she left and ultimately returned to Trinidad. Gillan travelled back and forth and stayed at No. 9 Finland Street when in Trinidad.

- iii. There was no evidence that Gillan abandoned Muriel and the matrimonial home as were found as facts in Briggs.
- iv. The evidence did not establish that Gillan and Muriel lived separate and apart from the time he left Trinidad for the United States of America in 1965. The claimant submitted that it is stretching the evidence to contend that Gillan abandoned his marriage to Muriel and his home when he departed for the United States in 1965. The claimant further submitted that when she stated that Gillan “*made arrangements for his wife to join him,*” it was reasonable to infer that he sponsored her for obtaining a Green Card as he did for the rest of the family. That there was no evidence or suggestion that she made independent arrangements to obtain her Green Card and it was highly unlikely that if she did so herself it would not have been common knowledge within the family.
- v. There was direct evidence, and evidence from which the inference may be drawn, that Gillan sent money to Muriel. The direct evidence is the note “*Daddy US 100*” in the claimant’s notes. There was further direct evidence from the claimant in her witness statement when she stated that “*All cheques and/or money orders which Mom received from Daddy on a monthly basis were placed by me into account 0271-67 at the said Bank of Commerce.*”

**Issue 5** – *whether the tenancy originally held by Gillan and Muriel was severed and/or extinguished*

**Law**

- 261. A joint-tenancy may be severed in the following three ways;

- i. An act of any one of the persons interested operating upon his own share may create a severance as to that share. The right of each joint-tenant is a right by survivorship only in the event of no severance having taken place of the share which is claimed under the jus accrescendi. Each one is at liberty to dispose of his own interest in such manner as to sever it from the joint fund—losing, of course, at the same time, his own right of survivorship.
- ii. By mutual agreement between the parties.
- iii. By any course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common. When the severance depends on an inference of this kind without any express act of severance, it will not suffice to rely on an intention, with respect to the particular share, declared only behind the backs of the other persons interested. You must find in this class of cases a course of dealing by which the shares of all the parties to the contest have been effected.<sup>45</sup>

262. The court having found that the 1992 deed is null, void and of no effect, it could not have and did not operate in law to sever the tenancy held by Gillan and Muriel jointly. Consequently, based on the principle of survivorship, Muriel's interest in the subject property passed onto Gillan at the time of her death.

**Issue 6** - *whether the claimant has been in possession and/or exercised such control for the requisite period of time to extinguish any title of any of the defendants in the subject property*

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<sup>45</sup> See *Williams v Hensman* (1861) 70 E.R. 862 approved in *Sookraj v Sookraj* HCA No. 550 of 2000

263. This claim was made in the alternative that the 1992 deed was found to be validly executed. The court having found that the 1992 deed is null, void and of no effect, the determination of this issue is no longer necessary.

**Issues 7, 8, 9, 10**

264. The second defendant accepted that it owed a duty to the claimant and the heirs and the beneficiaries of the Estate of Gillan to take care in the sale of the freehold interest in Lot No. 9 Finland Street, St. James. The second defendant further accepted that by not demonstrating that it made proper enquiries or investigations regarding Gillan, his heirs and/or beneficiaries, when it agreed sell the subject lot of land to the first defendant only, it failed to attain the standard of care required given the fact that the subject lot of land was at all material times leased to both Gillan and Muriel.

265. Moreover, the second defendant accepted that the claimant and the heirs and the beneficiaries thereby suffered loss in that they lost the right to call upon the second defendant to convey an undivided share or interest in the freehold or an interest in the freehold of the said land in their favour.

266. As such, the second defendant submitted as follows;

- i. That in the event the court finds that the 1992 deed registered was a forgery, the same will as a consequence of such finding be ineffective in conveying the title therein contained to the first defendant and the subsequent 2016 deed would likewise be ineffective.



- ii. The second defendant though entitled to treat the first defendant as a lawful tenant in common of the subject property having regard to the 1992 deed and thereby being properly entitled to sell an undivided share in the freehold in the said property to the first defendant failed to take into account or consider the entitlement and interest of the other tenant in common Gillan, his heirs or beneficiaries and exhibited a lack of care in purporting to sell the freehold in the said land to the first named defendant only.
- iii. Should the Court find however that the 1992 Deed is a forgery and/or the same is declared invalid, it is open to it to order that the same be set aside and expunged and that the second defendant sell the subject land to the claimant and the heirs and beneficiaries of Gillan.
- iv. The second defendant by its Defence stated that in the event that other persons (in spite of the 2016 Deed) have legitimate claims to the said land derived from any right, title or interest of Gillan therein and have given the statutorily prescribed Notice of Renewal of the Statutory lease, the second defendant would be prepared to abide by and comply with any order made by the Court in favour of such Statutory tenant and convey the said land to such legitimate persons entitled thereto in accordance with the provisions of the Land Tenants (Security of Tenure) Act and/or any order of the court in this regard.

### **DISPOSITION**

267. The judgment of the court is therefore as follows;

- A. Judgment for the claimant on her claim as follows;
- i. It is declared that the Deed of Assignment dated February 25, 1992 and registered as No. 8461 of 1992 between Muriel Roberts as Vendor of the One Part and the first defendant as Purchaser of the Other Part in respect of All and Singular that certain dwelling house containing two (2) bedrooms, drawing room, kitchen, dining room, toilet and bath erected out of hollow clay blocks and covered with galvanized iron sheets together with all out buildings used and enjoyed therewith standing on lands of the second defendant known and assessed as No. 9 Finland Street, St. James, Port of Spain, in the Island of Trinidad together with the tenancy rights thereto (hereinafter called "the said dwelling house") is null and void and of no effect.
  - ii. The said Deed of Assignment dated February 25, 1992 and registered as No. 8461 of 1992 is hereby set aside. The Registrar General is directed to cancel and expunge the said deed from the registry of deeds
  - iii. It is declared that the Deed of Conveyance dated the 21st December, 2015 and registered as No. DE 201601794565D001 made between the second defendant as Vendor of the One part and the first defendant as Purchaser of the Other part in respect of All that parcel of land situate at St. James in the City of Port of Spain, in the Island of Trinidad known as Lot No. 9 Finland Street more particularly described in the schedule to the said Deed ("the subject parcel of land") is null, void and of no effect.
  - iv. The said Deed of Conveyance dated the 21st December, 2015 and registered as No. DE 201601794565D001 is hereby set

aside. The Registrar General is directed to cancel and expunge the said deed from the registry of deeds.

- v. It is declared that the second defendant has wrongly and unlawfully extinguished the right of the claimant to call upon the second defendant to convey the Freehold or other interest to the claimant and/or the heirs and/or beneficiaries of the Estate of Gillan Roberts also called Gillan Maxim Roberts pursuant to Section 9 (1) of the Land Tenants (Security of Tenure) Act Chap 59:54 (as amended).
- vi. It is declared that the second defendant was negligent in conveying the subject parcel of land to the first defendant to the exclusion of the heirs and beneficiaries of the estate of Gillan Roberts.
- vii. It is declared that the heirs and beneficiaries of the Estate of Gillan Roberts also called Gillan Maxim Roberts namely Lloyd Roberts, Lyris Roberts-Dainton, Mona Roberts-Clifton, Lennox Roberts, Michael Roberts and Angela Anderson also called Angela Roberts-Anderson are the owners of the subject parcel of land, they having been named as beneficiaries of the estate of Gillan deceased by way of his last Will and testament, the claimant having obtained a grant of letters of administration with the Will annexed in relation to the said estate.
- viii. The first defendant is restrained whether by herself, her servants and/or agents or otherwise howsoever from selling mortgaging, transferring, sub-leasing assigning or otherwise disposing of any portion of the subject premises or any interest therein.
- ix. The first defendant is restrained from holding herself out as landlord of the subject parcel of land.

x. The first and second defendants shall pay to the claimant the prescribed costs of the claim based on the value of the claim being one for \$50,000.00.

B. The Counterclaim of the first defendant is dismissed.

i. The first defendant shall pay to the claimant the prescribed costs of the counterclaim based on the value of the counterclaim being one for \$50,000.00.

Judge

Ricky Rahim