

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. No. 2494 of 2003

BETWEEN

SANJAY SAGAR

Appellant/Plaintiff

AND

BISSOONDAI MUNGROO

RAJESH SAGAR

NITO SAGAR

RAJESH SAGAR

(AS THE ADMINISTRATOR OF THE ESTATE OF THE DECEASED, LALAN SAGAR)

Respondents/Defendants

Before the Honourable Mr Justice Frank Seepersad

Date: July 27, 2020

Appearances:

1. Mr Yaseen Ahmed instructed by Ms Tara Lutchman Attorneys-at-law for the Appellant/Plaintiff.
2. Ms Leslie-Ann Lucky Samaroo instructed by Ms Sasha Nath, Attorneys-at-law for the Respondents/Defendants.

DECISION:

1. Subsequent to this Court's ruling on 23rd January 2020 it was determined that there was one outstanding aspect of the amended notice filed on the 27 November 2018, which the Court had not addressed. That particular aspect of the notice of application dealt with the justifiable allowances for the maintenance of Pioneer Plaza in the sum of \$61,693.44. The relevant paragraph of the learned Deputy Registrar's judgment which was delivered on 28 November 2018 said as follows:

"I will allow the expenses exhibited and the claim by the Second Defendant as justifiable allowances with respect to the expenses towards maintenance and general upkeep of Pioneer Plaza. I will also allow the sum of \$32,000.00 per annum towards the maintenance and general upkeep of Pioneer Plaza."

2. The Court addressed its mind to the decision of the Board in **Beacon Insurance Company Ltd v Maharaj Bookstore Ltd [2014] UKPC 21** and remained acutely aware that it ought not to substitute its own view on the evidence as the primary fact finding exercise was engaged by the Deputy Registrar. In rare circumstances, a substitution may be effected where the review court comes to a conclusion that 1) there was either no evidence to support the position arrived at; or 2) where there was a misunderstanding of the evidence or; 3) where the circumstance is such that no reasonable judge could have reached that position.
3. This Court specifically addressed its mind to paragraph 27 of the Deputy Registrar's decision. The Deputy Registrar stated as follows:

"The Second Defendant having been engaged in litigation in this matter since 2003 should have made his duty to ensure that proper records for Pioneer Plaza with respect to expense should have been recorded in his capacity as manager. He was unable to properly assist the court with proper accounts."

4. The Deputy Registrar accepted in the body of her judgment and in particular at paragraph 22 of the decision that the beneficiary carried the burden of proving surcharges and that the accounting party carried the burden of providing this discharge. The accounting party must therefore be able to justify and support each item of expenditure. Accordingly, an adverse inference may be made if he has not kept proper records or he has destroyed the records.
5. At paragraph 25 the Deputy Registrar further stated that: "The evidence of the Second Defendant was that the receipts exhibited were from materials for Pioneer Plaza for work done to rectify flooding and there were weak lines in the building. These had to be replaced to upgrade the electricity and general maintenance."
6. At paragraph 26 the Court went on to say, "The plaintiff's case is that the materials purchased was for the Second Defendant's roti shop and jewellery shop as the receipts were produced at a time when the roti shop and jewellery store were being worked on."
7. The Plaintiff in cross examination stated that he did not provide any evidence to support his statement that the materials were used for the Second Defendant's roti shop and jewellery shop and he accepted that he did not provide photographs to support his statement. He testified that he walked the corridors once a week and he would see the building from the road. He also accepted that arrangements had been made for the building to be cleaned and bulbs had to be changed in the common areas, steps and toilets.
8. In the course of the cross examination before the Deputy Registrar the then plaintiff also frontally indicated that the jewellery shop and roti shop were off the main corridor area which he said he traversed. He also accepted that he would have avoided the Second Defendant. Accordingly, his evidence was speculative and had to be treated with a measure of caution.

9. The Deputy Registrar's decision as recorded at paragraph 28 of the decision appears to be unclear and somewhat contradictory. It is unclear insofar as the Deputy Registrar said that she was prepared to allow expenses for maintenance and general upkeep and then the Court went on to say "I will also allow the sum of \$32,000.00". The use of the language lends itself to several interpretations. One is that the court allowed the general maintenance expenses as well as the sum of \$32,000.00. Another interpretation is that the quantification for the general maintenance was allowed in the annual sum of \$32,000.00.
10. The specific sum claimed of \$61,693.44 was not addressed. At paragraph 27 of the judgment the Deputy Registrar however outlined the duty of the Second Defendant and recognised that there was a duty to ensure proper records and the court went on to say that he did not properly assist the court with the provision of proper accounts.
11. It is this Court's view that having accepted that there was a lack of proper documentation, the Second Defendant did not establish that the sum of \$61,693.44 was a justifiable expense and there was no proper accounting or correlation between the bills produced and actual maintenance work on the plaza accordingly it would not be reasonable to allow same. The statement recorded at paragraph 28 to allow for the expenses for the general upkeep and maintenance cost therefore only provided for the annual sum of \$32,000.00.
12. The Deputy Registrar held the view that an annual maintenance cost of \$32,000.00 was reasonable. This Court previously ruled in January that the said quantification should stand. However, the Court holds the view that having regard to the Deputy Registrar's assessment of the evidence and the finding of the inability to discharge the obligations with respect to the provision of the accounting information, the court did not and could not have concluded at paragraph 28 that the sum of \$61,693.44 was allowed. Any such finding would be inconsistent evidence and with the fact finding which was recorded at

paragraph 27 of the judgment. The Deputy Registrar found that there was insufficient documentary evidence or that there was no discharge of the responsibility to produce the requisite documents and accounts.

13. Accordingly, it is the view of this Court that the reasonable intent of the decision as recorded in paragraph 28 could not have been to provide for the sum of \$61,693.44. In any event that is not a sum which could have reasonably been allowed as there was insufficient evidence before the Court to support the award of same.

14. Accordingly, and for the reasons which have been outlined that aspect of the Appellant's appeal is upheld in so far as the Court holds that the sum of \$61,693.44 was not allowed and did not form part of the Deputy Registrar's decision and if it did, the grant of same did not accord with the evidence. The Court also rules that there shall be no order as to costs.

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FRANK SEEPERSAD

JUDGE