

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE  
(Sub-Registry, Tobago)**

**CLAIM NO: CV2019-02077**

**IN THE MATTER OF THE WILLS AND PROBATE ORDINANCE CHAP. 9:03  
IN THE MATTER OF THE ESTATE OF LENNARD QUACCOO  
also called LEONARD QUACCOO  
also called LENARD QUACCOO SENIOR (the Deceased)**

**KERN QUACCOO**

Claimant

**AND**

**ALEXANDER LENARD QUACCOO CHAPMAN  
also called LENARD QUACCOO ALEXANDER CHAPMAN  
formerly known as LENARD QUACCOO JR**

Defendant

**Before the Honourable Madame Justice Quinlan-Williams**

**Date of Delivery:** 29<sup>th</sup> January 2021

**Appearances:** Ms. Samantha S. Lawson for the Claimant  
Mr. Christo Gift for the Defendant

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**JUDGMENT**

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## **Preliminary**

1. The claimant and defendant are brothers, two of six children born of the same mother and father. Their parents are deceased. The family property and home has caused this conundrum. Who owns the property is the subject of this claim.
  
2. The claimant by Fixed Date Claim Form and Statement of Case filed on the 16<sup>th</sup> May 2019 commenced the instant proceedings against his brother, the defendant wherein he claimed:
  - A. AN ORDER that the Deed of Conveyance made on the 19<sup>th</sup> March, 2013 and registered as No. DE201301952528 (“The Deed of Conveyance”) of All and Singular that certain piece or parcel of land situate at Canaan in the Parish of St. Patrick in the Island Ward of Tobago comprising Eight Hundred and Eighty Eight Point Eight Square Metres (888.8m<sup>2</sup>) bounded on the North by lands of Fitzroy Taylor on the South partly by Milford Road and partly by lands of Simeon Roberts on the East by lands of Franklyn Roberts and lands of Christiana Gift and on the West by lands of Simeon Roberts and lands of Marjorie Roach purportedly made between Lenard Quaccoo, Deceased and Lenard Quaccoo Alexander Chapman, the Defendant be declared void and of no effect (hereinafter referred to as the said property)
  - B. AN ORDER that the Deed of Conveyance be set aside on the ground that it was obtained by undue influence;
  - C. AN ORDER that the Deed of Conveyance be expunged from the records held by the Registrar General Department;
  - D. ALTERNATIVELY A DECLARATION that the Claimant is entitled to an equitable interest in the said property;
  - E. Damages for trespass to goods;

- F. AN ORDER restraining the Defendant and/or his agents from harassing, threatening, abusing or in any way interfering with the Claimant and/or his agents in any way preventing the Claimant from the peaceful enjoyment of the said property;
  - G. AN INJUNCTION restraining the Defendant his servants and/or agents from further entering the said property or in any way dealing with or interfering therewith;
  - H. Costs;
  - I. Such further and/or other reliefs as to this Honourable Court may deem just.
3. On the 3<sup>rd</sup> June 2019 the defendant filed an appearance stating his intention to defend the claim. Notwithstanding this indication, the defendant failed to file a defence or any witness statements in support of his case.
  4. Since the reliefs sought by the claimant included declaratory reliefs, the court proceeded with its case management powers and scheduled an undefended trial.
  5. The trial took place on the 3<sup>rd</sup> and 4<sup>th</sup> September 2020. The defendant appeared and was represented by an attorney at law of his choice at the trial.
  6. Two witnesses, Kern Quaccoo and Elizabeth Quaccoo, testified in support of the claimant's case. The claimant by witness summons<sup>1</sup> called the Medical Chief Executive Officer of the Scarborough General Hospital, Dr Victor Wheeler to produce medical records of Lenard Quaccoo Senior for

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<sup>1</sup> Filed on the 7<sup>th</sup> August 2020

the period 2010 to 5<sup>th</sup> November 2014 to assist the court as it related to the medical condition of Lenard Quacoo.

7. The claimant filed a Hearsay Notice on the 2<sup>nd</sup> March 2020 regarding evidence in certain documents, namely:
  - A. WASA receipt;
  - B. Medical reports;
  - C. Divorce Petition;
  - D. Letter from Mr. Martin George dated the 14<sup>th</sup> May 2014;
  - E. Assimiboine Psychological Group dated the 18<sup>th</sup> August 2010;
  - F. Affidavit of Alexander Chapman; and
  - G. Letter from Iris Quacoo dated 21<sup>st</sup> July, 2010
  
8. The defendant did not file any Counter Notice regarding any item listed in the Hearsay Notice.
  
9. At the conclusion of the viva voce evidence, by order dated the 22<sup>nd</sup> September 2020 the parties were directed to file and serve its Closing Submissions on or before the 30<sup>th</sup> November 2020. The claimant filed its Closing Submissions on the 15<sup>th</sup> December 2020. The defendant on the other hand has not filed closing submissions.

### **The Claimant's Case**

10. The claimant and the defendant are two of the six children born to the deceased, Lenard Quacoo and Iris Quacoo. Lenard Quacoo and Iris Quacoo were married on the 29<sup>th</sup> June 1968 and since then, lived in a dwelling house on the said property. The claimant asserts that his parents were the joint owners of the dwelling house comprising two storeys and including six bedrooms.

11. Lenard Quaccoo (herein after called the deceased) died on the 5<sup>th</sup> day of November 2014 and Iris Quaccoo died on the 1<sup>st</sup> April 2016.
12. Sarah Walters was the mother of Lenard Quaccoo. She owned the said property by Deed of conveyance registered as DE201301952528. Sarah Walters died on the 17<sup>th</sup> April 1976. Her two daughters were granted Letters of Administration in respect of the estate, but they died without fully administering estate. As a result, the deceased was granted Letters of Administration de Bonis Non in the estate Sarah Walters dated the 15<sup>th</sup> March 2013.
13. Although Iris Quaccoo and the deceased did not have legal title to the said property, they continued to live in their dwelling house erected thereupon. The claimant avers that his parents possessed the said property with the intent of exercising control and ownership without the owner's consent or permission. Such was the case as Iris Quaccoo at the time of her death, was in the process of applying to have the said property registered according to the Real Property Ordinance.
14. The defendant migrated to Canada in or about 1980 at the age of fourteen (14). During his visits to Tobago, the defendant did not stay at the said property. The defendant lived on the said property as a child, however, the claimant asserts that since the defendant's migration in or about 1980, he has not been in occupation, possession or control of the said property.
15. The claimant at the time of filing was forty-three (43) years of age. On the other hand, he has been in occupation of the dwelling house and said property since birth, save for a few short periods when he was in Trinidad and out of the jurisdiction for employment. His other siblings all reside outside of Tobago.

16. Nevertheless, the claimant avers that all of the children, with the exception of the defendant, contributed their finances, time and energy towards the construction of the downstairs portion and the refurbishment of the dwelling house. The downstairs portion contained three bedrooms, one toilet and bath, a kitchen and a porch. The renovation and construction included but are not limited to:

- i. Plastering of the partition walls of the downstairs portion
- ii. Painting of the partition walls of the downstairs portion
- iii. Construction and plastering of the ceiling of the downstairs portion
- iv. Installation of toilet and shower set in the downstairs portion
- v. Construction of door frames and electrical work in the downstairs portion
- vi. Installation of windows in the downstairs portion
- vii. Furnishing of the downstairs portion – fridge, kitchen and bathroom sink, air condition units (2), sofa set, television set
- viii. Constructed the kitchen sink counter
- ix. Plumbing work for the kitchen and toilet and bath area
- x. Masonry work
- xi. Repairs of cesspit tanks
- xii. Retaining walls to prevent water from entering the downstairs portion
- xiii. Repairs to the room of the dwelling house
- xiv. Gardening of the said lands – pumpkin
- xv. Landscaping – maintenance of the lawn and trees (mango, breadfruit, soursop, plum)

17. In addition, the claimant also expended monies toward the payment of utility bills.

18. By a Will dated the 29<sup>th</sup> April 2005 (“the 2005 Will”), the deceased bequeathed the dwelling house to Iris Quaccoo for life and the remainder to their six children, including the claimant and defendant.
19. Following Lenard Quaccoo’s death, by letter dated the 14<sup>th</sup> November 2014, Samantha Lawson & Associates made a request to the legal representatives, Gift & Company for a copy of any testamentary documents in their possession relevant to his estate. In response, Gift & Company revealed a subsequent Will purportedly made by the deceased, dated the 3<sup>rd</sup> May 2010 (“the 2010 Will”), bestowing the dwelling house to Iris Quaccoo for life and the remainder to the defendant only. There were no testamentary provisions for the other five of the deceased’s children.
20. The claimant asserts that when the 2010 Will was executed, the deceased lacked the capacity to do so and the defendant had great influence over the whereabouts and affairs of the deceased. Accordingly, the claimant refutes the validity of the 2010 Will.
21. Days after Iris Quaccoo passed, the defendant was informed by letter dated the 27<sup>th</sup> April 2016, that he did not have the legal authority to dispose of or to treat with the estates of his parents as he pleased.
22. Nevertheless, on the 21<sup>st</sup> March 2018 the defendant served a Notice to Quit on the claimant indicating that his license to occupy the dwelling house erected upon the said property was terminated. In response, the claimant’s attorneys-at-law wrote to the defendant on the 29<sup>th</sup> March 2018 informing that the Notice to Quit was illegal and invalid because the defendant was not the owner of nor beneficially entitled to the dwelling house and the said property.

23. On the 3<sup>rd</sup> July 2018, in the matter TGODV2018-03221 between the claimant and the defendant, an interim order was issued against the defendant ordering him not to verbally or physically abuse or threaten the claimant. However, on the 15<sup>th</sup> July 2018 the defendant breached the said order and a report was made to the Crown Point Police Station. Because of the breach and the defendant's insistence that the dwelling house and the said property belonged to him, the Magistrate ordered the defendant to produce any title documents in his possession.
24. The defendant produced a copy of the Deed of Conveyance No. DE201301952528 dated the 19<sup>th</sup> March 2013 ("the 2013 Deed") in which the deceased purported to transfer the said property to the defendant. The claimant asserts that he, his mother and his other siblings were unaware of this Deed of Conveyance, which transferred the deceased's single matrimonial asset he developed with his wife Iris Quaccoo, solely to the defendant.
25. At the time of the Deed of Conveyance, the deceased was 75 years old and was by reason of old age and infirmity, unable to walk without assistance. He got around with a scooter. Lenard Quaccoo was admitted to various health institutions from 2002 until his demise in 2014. The deceased had eye surgery and had suffered from subdural hematoma due to a number of strokes. The deceased also suffered from intermittent memory loss after the strokes.
26. Therefore, the claimant contends that the deceased was not in a condition of the mind, to make him able to execute the Deed of Conveyance with his own free will, knowledge and approval.



27. In or about the 29<sup>th</sup> July 2018, the defendant entered the said property with his agents and demolished the dwelling house thereon. In the process, all of the items and documentation belonging to the claimant, his mother and his siblings stored at the property were consequently destroyed.

28. The claimant as a result of the defendant's demolition, has been left homeless and is dependent on the lodging and hospitality of family and friends.

### **The Issues**

29. The issues for the court's determination are whether:

- A. The 2010 Will is the valid Will of the deceased in so far as:
  - i. He knew and approved of the contents of the 2010 Will
  - ii. He was of a sound mind to execute the 2010 Will;
- B. Deed of Conveyance dated the 19<sup>th</sup> March 2013 was executed under undue influence;
- C. The claimant has an equitable interest in the dwelling house and the said property;
- D. The defendant's conduct on the 29<sup>th</sup> July 2018 constitutes a trespass to goods; and
- E. The claimant is entitled to damages.

30. I will now proceed to state the law, examine the evidence and find the facts in relation to each of the aforementioned issues.

- A. **Whether the deceased was of sound mind and knew and approved of the contents of the 2010 Will**

31. In the case of *Banks v Goodfellow*<sup>2</sup> Cockburn LJ opined that essential to the power of disposing property, the testator ought to understand the nature of the act and its effects; understand the extent of the property of which he is disposing; be able to comprehend and appreciate the claims to which he ought to give effect; and that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of his natural faculties and bring about a disposal of which, if the mind had been sound, would not have been made.

32. The learned Justice Margaret Mohammed in *Gemma Attale v Michelle Pauline Russell Lwised*<sup>3</sup> outlined the law on knowledge and approval of a will as follows:

“17. Williams on Wills under the rubric of “Knowledge and approval” states:

“Before a paper is entitled to probate, the court must be satisfied that the testator knew and approved of the contents at the time he signed it. It has been said that this rule is evidential rather than substantive and that in the ordinary case, proof of testamentary capacity and due execution suffices to establish knowledge and approval but in certain circumstances the court requires further affirmative evidence.”

18. Therefore where there is doubt or suspicion cast on the circumstances under which the Will was prepared and executed, affirmative evidence is required to remove such doubt.

19. Halsbury’s Laws of England at paragraph 907 describes the approach as:

“Whenever the circumstances under which a will is prepared raises a well-grounded suspicion that it does not express the testator’s mind, the court ought not to pronounce in favour of it unless the suspicion is removed. Thus where a person propounds a will prepared by himself or on his instructions under which he benefits, the onus is on him to prove the righteousness of the transaction and

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<sup>2</sup> (1870) L.R. 5 Q.B. 549 at page 565

<sup>3</sup> CV2016-03339

that the testator knew and approved of it. A similar onus is raised where there is some weaknesses in the testator which, although it does not amount to incapacity, renders him liable to be made the instrument around him; or where the testator is of extreme age; or where knowledge of the contents of the will is not brought home to him; or where the will was prepared on verbal instructions only, or was made by interrogatories; or where there was any concealment or misrepresentations; or where the will is at variance with the testator's known affections or previous declarations or dispositions in former wills or a general sense of propriety." (Emphasis added)."

33. It is trite law that the party putting forward a document as the will of a testator, must establish the fact that the testator was competent to make a will when he executed it. For if there is no competency - no testable capacity, there can be no will<sup>4</sup>. Halsbury's Laws of England<sup>5</sup> describes the duty of a person propounding a will:

"...However it is the duty of the executors or any other person setting up a will to show that it is an act of a competent testator, his testamentary capacity must be established and proved affirmatively. The issue of capacity is one of fact. The burden of proof of sanity is considerably increased when it appears that the testator had been subject to previous unsoundness of mind. The justice or injustice of the disposition may throw some light upon the question of the testator's capacity."

34. Moreover, in *Gemma Attale* [supra] Justice Margaret Mohammed highlighted the law in *Re Simpson, Schaaniel v Simpson*<sup>6</sup> that where a testator is elderly and infirmed, his will should be witnessed and approved by a medical practitioner.

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<sup>4</sup> *Cleare v Cleare* (1869) LR 1 P&D 655

<sup>5</sup> 5<sup>th</sup> ed Vol 103 at paragraph 899

<sup>6</sup> (1977) 121 Sol Jo 244

35. The law demonstrates that evidence is required to prove that the testator was of the age and soundness of mind to understand and approve of the testamentary dispositions made in his will. In these proceedings, the defendant failed to file a defence to the claim. Neither has he adduced any evidence to discharge his burden that the 2010 Will is authentic and was made with the full knowledge and approval of the deceased. Therefore, the court must determine the validity the 2010 Will solely on the claimant's evidence.

36. The claimant on the other hand, contests the validity of the 2010 Will because the deceased was weak and feeble and as such, did not exercise his independent will. Lenard Quaccoo lacked full knowledge and approval of what he was doing at the time of its execution.

37. The claimant's evidence was that from 2002 and thereafter, the deceased was diagnosed with a subdural hematoma after he experienced a number of strokes. The claimant further stated that he and his family noticed that the deceased experienced intermittent memory loss and that the deceased complained of severe headaches, all occurring after the strokes. The deceased also had surgery done to his eyes, and in or about 2010 he was unable to write unassisted.

38. In support of his evidence, the claimant attached some medical records to his witness statement. However, the claimant avers that medical records pertaining to the deceased were destroyed when the defendant demolished the dwelling house in 2018. The claimant then made a request to obtain copies of the medical records from the Scarborough General Hospital, but the request was denied due to confidentiality concerns about the deceased. Nevertheless, Dr Victor Wheeler was able to produce medical records of Lenard Quaccoo Senior, for the period 5<sup>th</sup> November

2014 to 2010, to assist the court as it relates to the medical condition of Lenard Quaccoo.

39. On the 15<sup>th</sup> November 2002<sup>7</sup> when the deceased was 65 years he presented with a day history of aphasia and was diagnosed with a stroke and atrial fibrillation. The deceased was discharged four days later by which time he was no longer aphasic.

40. On the 15<sup>th</sup> July 2009<sup>8</sup> an examination of his spine revealed that the deceased had lumbar kyphoscoliosis with degenerative disc disease and abdominal aortic calcification was also present.

41. The medical record adduced by Dr Victor Wheeler indicated that Lenard Quaccoo had a history of atrial fibrillation, renal insufficiency and drainage of pleural effusion in 2002.<sup>9</sup> In addition, in 2006 the deceased had a stroke and a bronchial washing where no malignant cells were seen. Seizures, thyroid disease, kidney disease, hypertension and other ailments were also recorded which appeared to have occurred in or around 2006.<sup>10</sup>

42. In 2009, Lenard Quaccoo was diagnosed with a disease that affected the curvature of and degraded his spine due to the effects of aging and, it was also discovered that he had abdominal aortic calcification, a strong indicator of cardiovascular events and possibly even death.

43. In or about 2010 the deceased also had surgery done to his eyes and was unable to write unassisted.

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<sup>7</sup> Trial Bundle page 173

<sup>8</sup> Trial Bundle page 174

<sup>9</sup> Medical Records submitted by Dr Victor Wheeler page 30

<sup>10</sup> Medical Records submitted by Dr Victor Wheeler page 247

44. From the evidence, one can clearly deduce that Lenard Quaccoo was experiencing a plethora of ailments since 2002.
45. The claimant did not seek the court's permission to adduce expert evidence to describe and explain the consequences of the ailments afflicting the deceased. However, the sheer number of ailments, together with the deceased's age reinforced the burden that the defendant was required to meet. The defendant has failed in his responsibility.
46. The defendant in propounding the 2010 Will failed to present any evidence to prove its authenticity and the fact that the deceased knew and approved of it. Based on the evidence that was available to the court, it can be gleaned that the testator Lenard Quaccoo at the time he made the 2010 Will, would have been approaching 73 years of age<sup>11</sup>. While not of extreme age, the deceased had some age. The age of the testator is the first factor to raise this court's suspicion as to Lenard Quaccoo's competence to make the 2010 Will.
47. Secondly, the court's suspicion was aroused by his medical history at the time the 2010 Will was made. The medical history was detailed in paragraphs 38 to 42 above.
48. Thirdly, the next factor which aroused the court's suspicion was the testamentary dispositions in the 2010 Will. The deceased made no provision for five of his six children, nor did he provide any explanation in his Will for the decision to leave his estate for the defendant only.

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<sup>11</sup> The deceased was born on the 15th July 1937 - Medical Report dated the 20<sup>th</sup> May 2014 – page 174 of the Trial Bundle

49. The suspicion is further aroused when considering that there was a 2005 Will where the deceased left his estate for his wife (for the remainder of her life) and the revision to all his children equally.
50. The 2005 Will nominated the deceased's son Edison Quaccoo as the sole executor of that Will. Lenard Quaccoo declared that he was the fee simple owner of the dwelling house situate at Milford Road, which he inherited from his mother Sarah Walters. In that will, he devised a life interest in the dwelling house to his wife Iris Chapman-Quaccoo and the remainder to his six children in equal shares. Unless there are circumstances to suggest the contrary, this disposition seems to be the natural will of a testator.
51. Contrary to the 2005 Will, the 2010 Will designates Lenard Quaccoo Junior (a.k.a Alexander Chapman) as the sole executor of the will. The said dwelling house was again devised to his wife Iris Chapman-Quaccoo for life, but the remainder upon her death was instead bequeathed to Lenard Quaccoo Junior (a.k.a. Alexander Chapman), the name executor and one of his six children, for his own use and benefit absolutely.
52. The claimant's evidence was that Lenard Quaccoo whenever he was well enough to attend court, expressed that he did not wish to be in conflict with his wife and children and that the dwelling house belonged to them. Additionally, Elizabeth Quaccoo one of deceased's six children, gave evidence that throughout the years her father slowly renovated the house to accommodate his six children, with each of them having access to a bedroom in the property. She further stated that the deceased always wanted to ensure that all his children benefitted from his inheritance and never favoured one child over the other. Indeed, these sentiments were reflected in the 2005 Will, which are completely at odds with the 2010 Will.

53. What is even more dubious about the 2010 Will is that Lenard Quaccoo's initial choice appointed to be the executor of the estate Edison Quaccoo, was thereafter replaced by the defendant.
54. While the claimant has done more than enough to raise in the court's view, the spectra of suspicion, the defendant has done nothing to discharge his burden. The claimant denied all suggestions put to him in cross-examination of an alternative position to that pleaded and proved in the claimant's case and evidence.
55. The claimant's evidence was that the 2005 Will was the true and last will of the deceased. The court believes the claimant that he and his family honestly held this view because the medical records for the 22<sup>nd</sup> March 2014 at 4:50am<sup>12</sup>, indicated that when the original marriage certificate of Iris and Leonard Quaccoo was provided, the 2005 Will and not the 2010 Will was noted as being seen by the doctors.
56. After Lenard Quaccoo died, a request was made to Gift & Co. by letter dated the 14<sup>th</sup> November 2014 from Samantha Lawson & Associates requesting a copy of any testamentary documents in their possession.<sup>13</sup> It was at this juncture that the 2010 Will revealed, approximately four years after it was made.
57. The claimant adduced evidence to illustrate the defendant's character. In or about 1993 the defendant was sentenced to two-years imprisonment for arson, uttering threats and theft.

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<sup>12</sup> Medical Records submitted by Dr Victor Wheeler page 187

<sup>13</sup> Trial Bundle page 151



58. The claimant also stated in his witness statement that in November 1993, the National Parole Board of Canada described the defendant as having deeply rooted psychological problems of jealousy, power, control and a propensity toward violence. Interestingly, contained in the medical records of Lenard Quaccoo submitted by Dr Victor Wheeler, was a page<sup>14</sup> referring to the defendant reflecting these sentiments about him.<sup>15</sup> The document further stated:

“On the 18<sup>th</sup> August 2010 Alex Chapman was officially diagnosed by Clinical Psychologist Vivienne C. Rowan, Ph.D., C. Psych of Assiniboine Psychological Group in Winnipeg, Canada with the Mental Disorder of “Adjustment Disorder with Mixed Disturbance of Emotions and conduct” which he “experienced over past several years.”

59. This correlates with the claimant’s assertions in his witness statement and he even adduced the letter into evidence confirming this diagnosis.<sup>16</sup> Highlighted in the said document adduced by Dr Victor Wheeler about the defendant, was:

“Over the past years, his mental health condition have impacted negatively on both his parents and other siblings subjecting them to extreme verbal, emotional, physical and financially abuse.”

60. Therefore, based on the evidence before this court, it is safe to conclude that at the time the 2010 Will was made, the defendant had sufficient control, power or influence over the testator that he caused the will to be changed and the executor to be changed to himself. This belief is compounded by the claimant’s evidence that the deceased had eye surgery around this time.

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<sup>14</sup> It is a document containing 32 pages but only “Page 1 of 32” was in the Medical Records

<sup>15</sup> Medical Records submitted by Dr Victor Wheeler page 267

<sup>16</sup> Trial Bundle page 186

61. It seems to this court that given the age and the level of infirmity experienced by the deceased, and the proposed testamentary intentions, it was imperative that the deceased be examined by a medical practitioner before the 2010 Will was executed.
62. It is hard to conceive that the deceased would make a Will excluding five of his six children, which he had always provided for. The court believes the evidence of the claimant that the deceased would willingly abide by the demands of the defendant out of fear. On a balance of probabilities, it appears that this was one of those such instances.
63. In the circumstances, the court finds that the 2010 Will is not a valid will made by the deceased and ought not to be propounded.
64. Since the Iris Quaccoo is now deceased, it seem that a fair outcome would be for the estate of the deceased to devolve in keeping with the laws of intestacy of Trinidad and Tobago.

**B. Whether the Deed of Conveyance dated the 19<sup>th</sup> March 2013  
was executed under undue influence**

65. The Court of Appeal in the case of *Sumatee Enal v Shakuntala Singh and others*<sup>17</sup> highlighted the law as it relates to undue influence as follows:

“73. Undue influence is one of the grounds developed by the courts of equity as a court of conscience. The objective is to ensure that the influence one person has over another is not abused (see *Royal Bank of Scotland pc v Etridge (No. 2)* [2002] 2 AC 773, 794-795). As it was put in *National Commercial Bank (Jamaica) Limited v Hew and Others* [2003] UKPC 51at paragraph 29, undue influence “arises whenever one party has acted unconscionably by exploiting

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<sup>17</sup> Civil Appeal No: S-197 of 2013

the influence to direct the conduct of another which he has obtained from the relationship between them.”

74. Undue influence is of two kinds. One is actual undue influence where there is evidence of actual overt acts of undue influence. The other is where, in certain circumstances, undue influence is presumed, that is to say, where the party relies on the presumption of undue influence. This case relates to the latter. Where undue influence has been established, the transaction of which the complaint is made will be set aside.

75. In the case of presumed undue influence, what has to be established is a pre-existing relationship between the parties in which the alleged wrong doer has acquired influence or an ascendancy over the other and that the transaction complained of is one which calls for an explanation. The burden to establish these two matters is on the claimant i.e. the person alleging undue influence. Where these matters have been established the burden shifts to the defendant to provide a satisfactory explanation from which the court may conclude the transaction is not procured by undue influence. In *Etridge*, (supra), it was put this way (at para 14):

“On proof of these two matters the stage is set for the court to infer that, in the absence of a satisfactory explanation, the transaction can only have been procured by undue influence. In other words, proof of these two facts is prima facie evidence that the defendant abused the influence he acquired in the parties’ relationship. He preferred his own interests. He did not behave fairly to the other. So the evidential burden then shifts to him. It is for him to produce evidence to counter the inference which otherwise should be drawn.”

66. The Court of Appeal further opined in *Sumatee Enal* [supra]<sup>18</sup> that in the case of a parent and child scenario, the law does not presume that a child has influence over its parent. Therefore, it must be established that the relationship between them was such that the child had acquired influence over the parent.

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<sup>18</sup> At paragraph 77

67. The claimant asserts that the Deed of Conveyance No. DE201301952528 dated the 19<sup>th</sup> March 2013 which purported to transfer the said property to the defendant excluding his mother and siblings was not executed with the deceased's independent free will, knowledge and approval. The decision to convey the said property and the execution of the deed was obtained by the undue influence of the defendant.
68. The claimant has not presented any evidence around the circumstances in which the deed was made to show that the defendant actually exercised undue influence over the deceased. This case is one of presumed influence. There is no dispute that the defendant is the son of the deceased. The claimant bears the evidential burden to prove that the defendant abused the influence over the deceased.
69. The claimant averred that prior to 2010, the Quaccoco family had not been engaged in any legal or contentious matters, which required the police or court intervention. In 2010 to 2014, the claimant says that the defendant initiated a number of baseless actions on behalf of the deceased against his mother and siblings to convince the deceased to relocate to the downstairs portion of the dwelling house. When the deceased protested to the move, the defendant threatened to take away the scooter that he had purchased for the deceased.
70. The claimant stated that control was further evident when the defendant without consent, used his father's money to arrange caregivers to attend to the deceased. The claimant assert the deceased experienced extreme displeasure when he became aware of this arrangement. The claimant avers that these acts of the defendant was his concerted attempts to isolate the deceased from his family.

71. On numerous occasions, the defendant claimed to have been granted a Power of Attorney in respect of the deceased. The claimant asserted that the deceased willingly abided by the defendant's demands out of fear. The deceased's demeanor was lively and happy around his other family members, but when the defendant was present, he became withdrawn and quiet.

72. On the 26<sup>th</sup> June 2010, soon after the 2010 Will was made, the defendant took the deceased to Canada for about six months, without the knowledge of the other family members. In response, Iris Quaccoo made a report to the Crown Point Police Station the following day when the deceased did not return home. It was only on the 20<sup>th</sup> July 2010 when Iris Quaccoo attended court in relation to the protection order TGODV2010-02605 against the defendant that she was informed by his Attorney at Law that the defendant had taken the deceased to Canada.

73. On the 17<sup>th</sup> June 2014 the deceased filed a petition for divorce and an Answer and Cross Petition was made by Iris Quaccoo on the 2<sup>nd</sup> September 2014. However, the divorce proceedings were never finalized. The claimant asserts that the divorce proceedings were initiated at the insistence of the defendant primarily based on scandalous and baseless allegations of Iris Quaccoo's infidelity that purportedly occurred forty years prior.

74. Moreover, the claimant contends that the extent of the defendant's control continued even after his father's death. The defendant took the deceased's body from the Scarborough Mortuary and placed it at the Belgrove's Funeral Home without the permission of and consultation with his mother Iris Quaccoo or any of the other siblings. Additionally, when the

defendant buried his father on the 13<sup>th</sup> November 2014 he failed to include his mother, the claimant and his other siblings in the arrangements for the said funeral.

75. The claimant's evidence was that at the time the 2013 Deed was made, Lenard Quaccoo was 75 years of age and by reason of old age and infirmity, was unable to walk. He got around with a scooter and was unable to leave his home unaided until his death.

76. There is also the thorough medical history of Lenard Quaccoo as detailed earlier in this judgment. Up to 2011, the deceased was diagnosed with bronchopneumonia at the SGH due to difficulty breathing, fever, runny nose and bronchial cough.<sup>19</sup> Accordingly, there is no doubt that at the time the 2013 Deed was executed the deceased was vulnerable.

77. The court was also cognizant of evidence about the personal circumstances and personality traits of the defendant.

78. Because the deceased was so old and ailing, it is safe to assume that he was no match to the influence of the defendant. It is also safe to say that the deceased may have acted out of fear the defendant. The court finds that the defendant used his influence to separate the deceased from the rest of the family. When the deceased protested to moving downstairs, the defendant threatened him.

79. The defendant also brought numerous court actions on behalf of the deceased against his family, including the deceased's divorce petition, all occurring while the deceased was old and feeble.

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<sup>19</sup> Medical Records submitted by Dr Victor Wheeler page 4

80. On the 22<sup>nd</sup> February 2014 Lenard Quaccoo suffered a chronic subdural hemorrhage due to a fall.<sup>20</sup> On the 23<sup>rd</sup> February the deceased was admitted to the POSGH where a craniotomy was performed<sup>21</sup>. On the 19<sup>th</sup> March 2014, the deceased returned to SGH with recurrent subdural hematoma.<sup>22</sup> The progress notes for the 20<sup>th</sup> March 2014 at 4:35am<sup>23</sup> stated:

“Pt found in apt. altered mental status described as coming in + out of awareness of person/event. Police was called to extricate patient from apt and was brought via ambulance to the A+E. At the time of discovery, Pt was able to verbalize that he was not happy and that he had no f/u visits to Doctor after craniotomy 3 wks ago. 3wks ago Pt was brought to hospital c̄ Hemorrhage (extraparenchymal), was flown to Trinidad for Neurosurgical decompression and was D/C prematurely (according to son) by relatives. Son admits father is being physically abused @ home c̄ visitor restriction including son. Pt confirmed to son that wife is physically abusive, he believes Pt developed friginal hemorrhage 2<sup>o</sup> to Abuse. On 19/3/14 Police became involved because wife was denying Pt healthcare.”

81. It was then noted that the patient lives in an apartment downstairs from wife; according to son wife is abusive with a history of violence, who is deceiving in appearance. Her history of violence includes attacking a taxi driver, homecare giver; patient is unhappy and expressed to son his wish not to be discharged to home but to a nursing home if possible.

82. The progress notes for the 21<sup>st</sup> March 2014 at 10:30am<sup>24</sup> stated that the son of Mr. Quaccoo is Alex Chapman who had a photocopied document dated 2010 claiming that he has a Power of Attorney and Dr. Madoo had

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<sup>20</sup> Medical Records submitted by Dr Victor Wheeler page 236-240; 247

<sup>21</sup> Medical Records submitted by Dr Victor Wheeler page 218

<sup>22</sup> Medical Records submitted by Dr Victor Wheeler page 174

<sup>23</sup> Medical Records submitted by Dr Victor Wheeler page 178 -179

<sup>24</sup> Medical Records submitted by Dr Victor Wheeler page 186

stated that the wife is the next of kin. The progress note further indicated that:

“The patient is alert and oriented in person. Able to identify his son and wife. Not oriented in time or place. Stated he wants to go to NS Home. Nil physical evidence of abuse.”

83. At 11:10am<sup>25</sup> there was a note to the doctor from the Hospital Social Worker Janelle Guy-Sampson<sup>26</sup> which read:

“Dear Doctor,  
the next of kin makes decisions only in the event that the patient is unable to do so himself. In this instance, Mr. Quaccoo is coherent and as such can speak on his own behalf. I have spoken to his son who is extremely concerned about his well being and as such I must conduct further assessment before Mr. Quaccoo can be discharged. I have had telephone conversations with “Redman”, Mr. Quaccoo’s driver as well as nurse Arnason of Canada and they both confirm abuse that they would have witnessed. I respectfully request that Mr. Quaccoo is allowed to stay on the ward until I can make an informed decision about placement post discharge.”

84. On the 22<sup>nd</sup> March 2014<sup>27</sup> the deceased was urgently transferred to the POSGH for the revision of the craniotomy and on the 8<sup>th</sup> April 2014 he was transferred to the SGH on the 8<sup>th</sup> April 2014 awaiting discharge. However, his relatives were battling over his custody in relation to his home situation.<sup>28</sup>

85. On the 16<sup>th</sup> April 2014 Lenard Quaccoo on behalf of Lenard Quaccoo Snr applied for a protection order TGODV2014-02589 against Iris Quaccoo on the grounds that from 2010 to present at Milford Road, Canaan she

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<sup>25</sup> Medical Records submitted by Dr Victor Wheeler page 186-187

<sup>26</sup> Medical Records submitted by Dr Victor Wheeler page 48: see note for 8/4/14 at 7:30am which states that Miss Guy is the Hospital Social Worker

<sup>27</sup> Medical Records submitted by Dr Victor Wheeler page 187 and 209

<sup>28</sup> Medical Records submitted by Dr Victor Wheeler page 37-39



persistently abused the applicant emotionally, physically and verbally. She also prevented him from getting the medical care he needs.<sup>29</sup> Consequently, on the 22<sup>nd</sup> April 2014 the an interim order was granted against Iris Quaccoo from the date of the order to the 13<sup>th</sup> May 2014.<sup>30</sup>

86. While there are records indicating that Lenard Quaccoo confirmed that his wife was physically abusive, denied him of medical care, was unhappy and wanted to go to a nursing home, the claimant's evidence demonstrated that he went along with the demands of the defendant out of fear. The medical records illustrate the defendant's weighty input in tainting his mother's character. He was the one alleging that Iris Quaccoo had an abusive history of violence and mistreated her husband. Some of these allegations were supported by the Hospital Social Worker's telephone conversations.

87. In the instant proceedings the defendant failed to submit any evidence in support of his case. The Honourable Justice Des Vignes (as he then was) in the case of *Angela Graham v Coobear Ramnath*<sup>31</sup> referenced the Court of Appeal decision of *Behnam Ltd v Kythira Investments Ltd and another*<sup>32</sup> which provided the relevant test to be applied in circumstances where the Defendant has elected not to call any evidence:

"30. The point is worth making too even in those cases where the defendant elects to call no evidence. True, as Mance LJ made plain in *Miller* (see para. 20 above), the only issue then is whether the claimant has established his claim on a balance of probabilities. But it must be recognised that he may have done so by establishing no more than a weak prima facie case which has then been strengthened to the necessary standard of proof by the adverse inferences to be drawn from the defendant's election. Such

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<sup>29</sup> Medical Records submitted by Dr Victor Wheeler page 44

<sup>30</sup> Medical Records submitted by Dr Victor Wheeler page 45

<sup>31</sup> CV2006-03369 at paragraph 15

<sup>32</sup> (2003) EWCA Civ 1794

adverse inferences can in other words tip the balance of probabilities in the claimant's favour.”

88. Accordingly, in such circumstances the court only has to be satisfied that the claimant proved his case on a balance of probabilities which requires no more than a weak prima facie case. The defendant's failure to provide a satisfactory explanation in response to the claimant's evidence strengthens the claimant's case and is therefore detrimental to the defendant's case.

89. The court is satisfied that the claimant has established his case on a balance of probabilities. While there may be truth to some of the defendant's allegations contained in the medical records, this court will never know as the defendant failed to provide his version of what took place. Moreover, the court must beg the question that if Iris Quaccoo was really abusing the deceased and the defendant was so concerned about his father's welfare, then why did he not have the deceased removed from her care?

90. In the circumstances, the court is satisfied that the claimant had proved its case on a balance of probabilities that the defendant exercised undue influence over his ailing father when the 2013 Deed was executed. The defendant has failed to provide any explanation to rebut the presumption of undue influence. As such, the court finds that the 2013 Deed was not validly executed and as such ought to be declared null and void and expunged for the records of the Registrar General.

**C. Whether the claimant has an equitable interest in the dwelling house and the said property**

91. Justice Margaret Mohammed in the case of *Prakash Thackoor v Sarah Ramdeen*<sup>33</sup> reference the seventh edition (2008) of *The Law of Real Property* which summarises “the essential elements of proprietary estoppel”, as follows:

(i) An equity arises where:

(a) the owner of land (O) induces, encourages or allows the claimant (C) to believe that he has or will enjoy some right or benefit over O’s property;

(b) in reliance upon this belief, C acts to his detriment to the knowledge of O; and

(c) O then seeks to take unconscionable advantage of C by denying him the right or benefit which he expected to receive.

(ii) This equity gives C the right to go to court to seek relief, C’s claim is an equitable one and subject to the normal principles governing equitable remedies.

(iii) The court has a wide discretion to the manner in which it will satisfy the equity in order to avoid an unconscionable result, having regard to all the circumstances of the case and in particular to both the expectations and conduct of the parties.

92. The Court of Appeal in *Ester Mills v Lloyd Roberts*<sup>34</sup> stated that unlike promissory estoppel, the law of proprietary estoppel does not require a finding of any clear or unequivocal promise or of any intentionality to establish the estoppel. The focus is now whether the party claiming the benefit of the estoppel had a reasonable expectation induced, created or encouraged by another, and in those circumstances acted detrimentally to the knowledge of the other. For proprietary estoppel to operate the inducement, encouragement and detriment must be both real and

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<sup>33</sup> CV2017-01900

<sup>34</sup> Civil Appeal No. T 243 of 2012 at paragraphs 19 to 22

substantial. The detriment need not be the expenditure of money or other quantifiable detriment, so long as it is substantial. Ultimately, the court must adopt a cautious approach and act to avoid objectively unconscionable outcomes.

93. The claimant's evidence was that the deceased's mother, Sarah Walters was the joint owner of the said property i.e. the lands only upon which the dwelling house was erected, along with Charlotte Gift. Sarah Walters died on the 17<sup>th</sup> April 1976 without having made a will. Her two daughters Margaret Maycock and Mercy Walters were subsequently granted Letters of Administration. However, they died before having fully administered their mother's estate.

94. Charlotte Gift survived Sarah Walters. By Deed of Conveyance dated the 18<sup>th</sup> July 1977 Charlotte Gift transferred a portion of the larger parcel to Franklyn Roberts.

95. On the 15<sup>th</sup> March 2013 Letters of Administration de Bonis Non in the estate of Sarah Walters was granted to her son, Lenard Quaccoo. The remainder of her estate comprised the said property. This is the property the defendant purported to transfer to himself via the 2013 Deed.

96. There is no evidence that Sarah Walters had any other children. Therefore, although Lenard Quaccoo was the Administrator of her estate, through the laws of intestacy, he was also entitled to the said property. Since the 2013 Deed transferring the said property to the defendant has been declared null and void, the said property now forms part of the deceased's estate.

97. The claimant further gave evidence that his parents were the joint owners of the dwelling house comprising two storeys and containing six bedrooms

since their marriage on the 29<sup>th</sup> June 1968. Under cross examination, the claimant admitted that when his parents married they lived at Gaskin Bay Road, the address of Iris Quaccoo's mother, for a short period of time before they moved to the dwelling house on the said property.

98. The claimant also stated under cross-examination that the dwelling house on the said property was part wood and part concrete. He was not aware that the defendant and the deceased added on a kitchen because he was not yet born. The steps leading to the house was built by the deceased with the help of the defendant and a carpenter. The claimant also testified that the entrance of the house was made out of stone from the beach that had to be filled due to water; a venture to which he was involved. In addition, the claimant stated that over time the deceased constructed the downstairs, partially.

99. The law on proprietary estoppel is clear that to establish an equitable interest in the property what is required is some inducement or encouragement by the owner that the claimant will have the benefit of some right over that property. A clear unequivocal promise is not required.

100. The court is certain that the deceased's express and implied intention was that his estate would go to his wife and his children. After all, this sentiment was expressed to his children in the 2005 Will when he left the dwelling house to his six children after the passing of his wife. Moreover, the claimant's evidence was that his father at court hearings would express that the dwelling house belonged to his wife and children. The claimant's evidence was further bolstered by that of his sister Elizabeth Quaccoo who stated that her father slowly extended the house to accommodate his six children and that he always wanted to ensure that all his children benefitted from his inheritance.

101. As aforementioned, the claimant in his evidence and pleadings particularised the works that were done and contributions made by him and his siblings over the years towards the construction of the downstairs portion and the refurbishment of the dwelling house. The claimant stated that he and his sibling expended their energy, time and expenses towards the development of the dwelling house. He also contributed to the household by the payment of utility bills.

102. Furthermore, the claimant averred that he has been in occupation of the dwelling house since birth save for a few short periods where he was in Trinidad and out of the jurisdiction for employment.

103. The law of equity provides the court with a wide discretion in which to avoid an unconscionable result. In the instant proceedings, the claimant and his siblings were led to believe by their father that the dwelling house would be theirs after his death and their mother's death.

104. Accordingly, the court in its exercise of its discretion having regard to all the circumstances, finds that the claimant does have an equitable interest in the dwelling house and the said property.

**D. Whether the defendant's conduct on the 29<sup>th</sup> July 2018 constitutes a trespass to goods**

105. The action of trespass to goods has always been concerned with the direct, immediate interference with the Claimant's possession of a chattel.<sup>35</sup> In *Pooran Sookdeo and Superior Doors Limited v Wayne Lum*

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<sup>35</sup> Clerk & Lindsell on Torts, 22nd Edition at paragraph 17-130

*Young and Elvis Lum Rampersad J* quoted Halsbury's Laws of England<sup>36</sup> to describe the tort of trespass to goods as:

"Trespass to goods is an unlawful disturbance of the possession of goods by seizure or removal, or by a direct act causing damage to the goods. The subject matter of trespass to goods must be a personal chattel which is the subject of lawful possession. Defences available in an action for trespass to goods include claim of right, jus tertii, and that the act complained of was done by the leave and licence of the claimant or in the exercise of a legal right."

106. Apart from the requirement that the interference must be of a direct nature, there must be some blameworthy state of mind in the trespasser. An accidental interference of a non-negligent nature is not a trespass. On the other hand, to be liable the defendant need not appreciate that his interference is wrongful.<sup>37</sup>

107. The claimant's case is that on or about the 29<sup>th</sup> July 2018 the defendant entered the said property with his agents and demolished the dwelling house thereon. In the process, the defendant destroyed all the items and documentation belonging to the claimant and his family that were stored there at the time. The claimant produced a table identifying the items, quantity and approximate cost of the items that were destroyed:

<b>Item</b>	<b>Quantity</b>	<b>Approximate Cost</b>
32" Westinghouse LCD HD Television and Remote	1	\$1,995.00
14" Television and remote @ \$1,400.00	2	\$2,800.00

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<sup>36</sup> Halsbury's Laws of England/TORT (VOLUME 97 (2010) 5TH EDITION)/3. TORTS TO SPECIFIC INTERESTS/ (4) WRONGFUL INTERFERENCE WITH GOODS/602.

<sup>37</sup> Clerk & Lindsell on Torts, 22nd Edition at paragraph 17-132

FM/AM Cassette and CD Home System Audio Player	1	\$ 595.00
5 Speakers Surround Sound Home Theatre Audio System	1	\$2,200.00
MBOX Android and Remote RII Keyboard WiFi Adpt	1	\$1,200.00
Digisplay Internet Box	1	*****
4pcs Flouren Security CCTV Recording System	1	\$3,000.00
3pcs Yard Motion Detectors	1	\$ 295.00
Wall Clock @\$95.00	2	\$ 190.00
Standing Fan @ \$295.00	3	\$ 885.00
Frigidaire Window Air Conditioner Unit @ \$1,190.00	2	\$2,380.00
Floor Rugs @\$250.00	3	\$ 750.00
All Curtains, Curtain Rods, Bed Spread, Pillows, Sofa Cushion, Blinders, Bed Liners, Table Cloth		\$5,000.00
Family Photos, Table Top Monument and Flower Decorations		\$3,000.00
Kitchen Aid Bread and Cake Mixer	1	\$ 449.00
Blender @295.00	2	\$ 590.00
Bread Toaster	1	\$ 250.00
Toaster Oven	1	\$ 599.00
Electric Kettle @\$250.00	2	\$ 500.00
Steam Iron @\$300.00	4	\$1,200.00
Ironing Board @\$249.00	2	\$ 498.00
Floor Carpet and Vinyl		\$2,000.00



Microwave Oven @\$1,999.00	2	\$3,998.00
32 Cu Ft Refrigerator	1	\$1,200.00
GE Turbo Plus Refrigerator	1	\$2,850.00
2pcs Living Room Lamp		\$1,000.00
Double Deck Bed	1	\$1,000.00
Beds Full 54" x 75" @\$1,037.00	6	\$9,333.00
King Size Bed @\$1,500.00 and \$2000.00	2	\$3,500.00
Spintub Washing Machine @\$2,000.00	2	\$4,000.00
Water Tanks @\$1,300.00	2	\$2,600.00
Water Pump	1	\$1,400.00
4pcs Living Room Set	1	\$6,000.00
3pcs Living Room Set	1	\$2,500.00
Water Heater	1	\$1,200.00
Deep Freezer	1	\$2,000.00
All Household Wares		*****
All Clothing		*****
Baby Pram	1	\$ 450.00
Educational Books and Important Documents		*****
Dell Desktop Computer	1	\$3,500.00
6pcs Dining Room Table	1	\$3,200.00
4pcs Dining Room Table	1	\$1,600.00

108. Although he was in possession of the 2013 Deed, the court has determined that this was not a legally made deed. The court is satisfied that the defendant did not believe that he was the owner of the said property and the dwelling house. The court is satisfied that the defendant must have known that his interference was wrongful.

109. Therefore, consequent to the invalidity of the 2013 Deed, the defendant had no legal entitlement to the property, to the exclusion of the claimant or his siblings. Nor did he have permission from his siblings to demolish the dwelling house on the property.

110. The unlawful disturbance was done by a direct act of the defendant and his agents causing damage to the dwelling house and the contents contained therein. The direct act was the demolition of the dwelling house on the said property which caused the destruction of the goods and chattels of the claimant, Iris Quaccoo and the other children.

111. Accordingly, the court finds that the defendant's conduct on the 29<sup>th</sup> July 2018 when he and his agents caused the dwelling house to be demolished and the contents stored therein to be destroyed amounts to a trespass to goods.

#### **E. The claimant's entitlement to damages**

112. The claimant in its fixed date claim form requested damages for trespass to goods. There was no claim for general damages. The distinction between special and general damages was recently stated by Kangaloo JA in *Mario's Pizzeria Ltd v Hardeo Ramjit*<sup>38</sup>:

“the general rule is that general damages are such as the law will presume to be the direct natural or probable consequences of the action complained of while special damages are such as the law will not infer from the nature of the act. They do not follow in the ordinary course. They are exceptional in their character and therefore, they must be claimed specially and proved strictly.”

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<sup>38</sup> CA 146 of 2003

113. This approach was stated by Lord Goddard CJ in *Bonham Carter v Hyde Park Hotel*<sup>39</sup> that parties:

“must understand that if they bring actions for damages, it is for them to prove their damage; It is not enough to write down the particulars, so to speak, throw them at the head of the court saying ‘this is what I have lost; I ask you to give me these damages.’ They have to prove it.”

114. However, there is a measure of flexibility in the degree of proof required for special damages, dependent on the particular circumstances of the case. The courts are realistic and accept that the particularity must be tailor to the facts.<sup>40</sup> Archie JA as he then was in the case of *Anand Rampersad v Willies Ice Cream*<sup>41</sup> opined:

“the character of the acts themselves which produce the damage, and the circumstances under which these acts are done, must regulate the degree of certainty and particularity with which the damage done ought to be stated and proved. As much certainty and particularity must be insisted on in proof of damage as is reasonable, having regard to the circumstances and to the nature of the acts themselves by which the damage is done. To insist upon less would be to relax old and intelligible principles. To insist upon more would be the vainest pedantry.”

115. In the case of *Uris Grant v Mootilal Moonan Ltd*<sup>42</sup> is a case where a motor truck crashed into the appellant’s house damaging the house, household furniture and other articles beyond compare. The Court of Appeal stated that the production in evidence of the list of chattels destroyed together with the cost of replacement was sufficient to establish a prima facie case of both the fact of loss of these articles and the cost of replacement at the time.

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<sup>39</sup> [1948] 64 TLR at page 178 as applied by The Learned Chief Justice C Bernard in *Uris Grant v Motilal Moonan Limited and Frank Rampersad* CVA No 162 of 1985

<sup>40</sup> McGregor on Damages 14th edition, para 1528, p 1020

<sup>41</sup> CA 20 of 2002

<sup>42</sup> Civ App No 162 of 1985 per Bernard CJ

116. The claimant relied on the case of *Mungroo v T&TEC*<sup>43</sup> where Mendonca J (as he then was), in dealing with the assessment of damages for a house and its contents that were destroyed by fire, accepted the valuation provided of the house at the time of fire in the estimated sum of \$125,000.00. He stated that the defendant did not provide any evidence as to the value of the house so had accepted the value and extent of the loss to be as stated in the valuation. The court in that case adopted a practical approach and discounted the estimated value of the items by 1/3 to take account of the value as at destruction and the higher replacement value.

117. In the instant proceedings, the defendant demolished the dwelling house where the claimant resided. All his documents and chattels were destroyed. However, he submitted a list of the items and the average cost of replacement as seen above. The items totalled the value of \$74,011.00 and the claimant in its closing submissions submitted that \$54,305.00 was a suitable sum was appropriate taking into account a one-third deduction pursuant to *Mungroo* [supra]. The court is of the opinion that the prices quoted were reasonable for each of the items claimed.

118. Having regard to the circumstances of this case, the court finds that the list produced in support of its special damages was sufficient to establish a prima facie case of both the fact of loss of these articles and the cost of replacement at the time.

119. As it relates to the dwelling house that was demolished, the claimant failed to adduce any evidence as to its value at the time that it was demolished. Accordingly, in its closing submissions, the claimant

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<sup>43</sup> HCA S-1255 of 1988

requested permission to obtain a valuation report. While the court is satisfied that defendant's behaviour was unconscionable and he had a laissez faire approach towards the claim, the court will not grant the claimant permission to obtain a valuation in support of its claim. This is a matter, which the claimant ought to have pleaded and proved.

120. However, based on the circumstances of this case, the unconscionable behaviour of the defendant in demolishing the home and destroying the contents, the court will make an award of exemplary damages.

121. In making that decision, the court considered the judgment of 184. In *Aron Torres v Point Lisas Industrial Port Development Limited* Civ. App. No. 84 of 2005, Mendonca JA at paragraph 17 described the object of the award in the following terms:

“[...] An award of exemplary damages is therefore directed at the conduct of the wrongdoer. It is conduct that has been described in a variety of ways such as harsh, vindictive, reprehensible, malicious, wanton, willful, arrogant, cynical, oppressive, as being in contempt of the plaintiff's rights, contumelious, as offending the ordinary standards of morality or decent conduct in the community and outrageous.”

186. Additionally, Mendonca JA recognised that:

“(47) It has been said that the theory is only one “possible moral conception among a sea of many competing moral conceptions” (see Andrew Phang and Pey-Woan Lee, *Restitutionary and Exemplary Damages* (2003) 19 *Journal of Contract Law* 1, 27). If it comes to a choice between the doctrine of efficient breach and the “moral conception of promise keeping” I prefer the latter. I see nothing in the doctrine of efficient breach that would persuade me that the courts should not award exemplary damages in the appropriate contract case. (48) In tort, cases do arise where

compensatory damages are inadequate to achieve a just result between the parties. The defendant's conduct demands a further response from the courts in the form of exemplary damages. So too in contract, cases can arise from time to time where by reason of the defendant's outrageous conduct the normal measure of damages may be perceived to be an inadequate response to achieve justice between the parties. In such cases the courts should be in a position to grant an award of exemplary damages. One such example is *Nantel v Parisien* (1981), 18 C.C.L.T. 79, a case out of Ontario, Canada. Exemplary damages were awarded for breach of a lease when the defendants were found to have acted in a "high handed and shockingly contemptuous manner" and used their superior power to steam roll the plaintiff to acquiesce and surrender her legal rights to the lease. In that case the defendants broke the lease by breaking into the plaintiff's premises, removing her belongings and then demolishing the building even when the plaintiff attempted to occupy the premises as she was legally entitled to do. Galligan J. noted that on the facts of that case compensatory damages would be an inadequate response. He stated:

"If this Court were to sanction the conduct of the defendants by awarding the plaintiff for actual monetary loss plus nominal damages, then in my opinion the law would say to the rich and powerful, "Do what you like, you will only have to make good the plaintiff's actual financial loss, which compared to your budget is negligible." The law would say to such person as the defendants "Trample on the smaller person's rights, the sanction of that trampling will only be a relatively minor part of the cost of doing business."

122. In deciding on the quantum the court considered the awards made in a number of cases including:

- a) CV2016-02608 *Thema Yakaena Williams v Trinidad and Tobago Gymnastic Federation and others* – an award of \$150,000.00;

- b) CV2015-04245 *Tri-Star Caribbean Inc. v Republic Bank Limited*  
– an award of \$500,000.00 and
- c) CV2015– 03030 *A.M. Marketing Company Limited v The Port Authority of Trinidad and Tobago* – an award of \$100,000.00.

## **Disposition**

123. Based on the court’s findings, it is hereby ordered that:
- I. The Will purportedly made by Lenard Quaccoo Senoir on the 3rd day of May 2010 is hereby declared to be null and void;
  - II. The estate of the deceased of Lenard Quaccoo Senoir who died on the 5th day of November 2014, be distributed according to the law of intestacy of Trinidad and Tobago;
  - III. The deed of conveyance made on the 19th day of March 2013 and registered as No. DE20130195252 be and is hereby declared void and of no effect;
  - IV. The deed of conveyance registered as No. DE20130195252 be set aside on the ground that it was obtained by undue influence;
  - V. The deed of conveyance registered as No. DE20130195252 be expunged from the records held by the registrar general department;
  - VI. An order restraining the defendant and/or his agents from harassing, threatening, abusing or in any way interfering with the claimant and/or his agents in any way preventing the claimant from the peaceful enjoyment of the said property;

- VII. An injunction restraining the defendant his servants and/or agents from further entering the said property or in any way dealing with or interfering therewith;
- VIII. The defendant shall pay the claimant damages for trespass to goods in the sum of \$54,305.00 interest at the rate of 1.5% from the 29th day of July to date of judgment, the 29th January 2021;
- IX. Award of exemplary damages in the sum of \$75,000.00 from the date the claim was served to the date of judgment;
- X. The defendant shall pay the claimant's Costs in the sum of \$14,000.00; and
- XI. There shall be a stay of execution 21 days.

.....  
Justice Avason Quinlan-William

JRC: Romela Ramberran