

**THE REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE COURT OF APPEAL  
(CHAMBER COURT)**

**Civil Appeal No. P022 of 2022  
Claim No. CV2019-00318**

**BETWEEN**

**SANAHIE'S HOLDING LIMITED**

**Appellant/Defendant**

**AND**

**ANDRE RAMIREZ**

**(appointed administrator ad litem of the estate of Evelyn Ayers)**

**Respondent/Claimant**

**BEFORE THE HONOURABLE JUSTICE VASHEIST KOKARAM, J.A.**

**Appearances:**

**Mr. Frederick A. Gilkes instructed by Mr. André Rudder for the Appellant.**

**Ms. Luna Lezama instructed by Ms. Karen E. Piper for the Respondent.**

**Date of Decision: Tuesday 3 May, 2022**

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**REASONS**

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1. On 13<sup>th</sup> April 2022 I granted a conditional stay of execution of the trial judge's order made on a claim and counter claim in relation to an alleged transfer of property from the deceased, Evelyn Ayers ("Evelyn"), to the Appellant, Sanahie's Holding Limited ("SHL"). I have now reduced in writing my reasons for so doing.
2. SHL, is seeking a stay of execution pending its appeal of the order of the trial

judge which among other things set aside a Memorandum of Transfer of lease<sup>1</sup> (“Memorandum of Transfer”) made between Evelyn Ayers as Legal Personal Representative (“LPR”) of Paula Ayers<sup>2</sup> (“Paula”), deceased, and SHL. That Memorandum of Transfer is in relation to a property in Trincity<sup>3</sup> (“the subject property”) which the Respondent claimed in the court below was obtained by SHL through fraud, undue influence, misrepresentation or trickery of the deceased Evelyn.

3. The trial judge further declared that Andre Ramirez, the Respondent, be appointed the LPR of the estate of Evelyn Ayers by virtue of a grant of letters of administration dated October 2011 and the sole beneficiary of her estate and he was declared the lawful proprietor of the subject property and that all records and memorials should reflect his entitlement. Counsel for the Respondent has admitted to her credit that this order at the very least was unnecessary and in my view, it was arguably beyond the parameters of the pleaded case and the trial judge’s remit. SHL was ordered to pay the prescribed costs of the claim and while the trial judge made an order of nominal damages on SHL’s counterclaim, she strangely proceeded to dismiss the counterclaim with costs to be paid by SHL. No reasons have been advanced by the trial judge as to her rationale for on the one hand dismissing a counter claim yet awarding nominal damages on that claim. SHL was ordered to pay the Claimant’s costs of the action on the prescribed scale on a value of \$700,000.00 and on the counterclaim on the value of \$540,000.00.

4. The net effect of the trial judge’s order is that the Registrar General must

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<sup>1</sup> Memorandum of Transfer of Lease No. 11 entered in Volume 5831 Folio 77 registered on 4<sup>th</sup> February 2015

<sup>2</sup> Evelyn’s daughter. See page 35 of the Affidavit of Karen Ramsanahie in support of the application, “K.R.1” Statement of Case.

<sup>3</sup> No.9 First Street East, Beaulieu Avenue, Trincity, in the Ward of Tacarigua, in the Island of Trinidad, in the Republic of Trinidad and Tobago comprising four thousand five hundred square feet.

cancel the Memorandum of Transfer; SHL will be restrained from entering the subject property; Mr. Ramirez will be treated as the owner of the subject property (which is inconsistent with the bequests in Evelyn's will), the Registrar will have to reflect his ownership of the subject property (again despite the bequests in the will); the Respondent being the successful claimant is to be paid prescribed costs based on a stipulated value of the claim which is inconsistent with the general rule that the value of the claim is to be treated at \$50,000.00<sup>4</sup>.

5. Leaving for the moment the question of the prospects of success of the appeal with respect to setting aside the Memorandum of Transfer and injunctive relief, at the very least with respect to the trial judge's other declaratory and costs orders, it cannot be contended with any degree of assurance that the trial judge was not plainly wrong in making those orders. A matter to which I shall return.
6. Conversely, the effect of any stay of the trial judge's orders will result in the Memorandum of Transfer continuing to reflect SHL as the owner of the subject property; in SHL being able to enter into the subject property and to defer any payment of the costs orders until the determination of this appeal. Practically, however, SHL has signalled that any stay of the trial judge's order would be accompanied by its voluntary undertaking not to dispose of the subject property and not to interfere with the occupation by Mr. Ramirez and Ms. Cynthia Ramirez. In such a case, SHL is in fact seeking not an unconditional stay but a conditional stay of the orders of the trial judge. Importantly, both parties have accepted that if a stay is being granted in this case, SHL will undertake not to use the premises nor transfer or otherwise deal with the subject property. I take that to mean that the status quo of the property as it was at

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<sup>4</sup> See rule 67.5(2) (c) of the Civil Proceeding Rules 1998 ("CPR")

trial will continue to be preserved until the determination of this appeal.

7. It is well settled that the onus lies on SHL as the applicant to demonstrate that a stay of execution pending appeal ought to be granted. In doing so it must demonstrate principally that there is a good prospect of success of its appeal and that there is a greater risk of injustice to it rather than the Respondent if the stay is refused.
8. In my view having considered the application, the evidence and the parties' submissions, the greater risk of injustice lies in refusing the grant of a conditional stay. The appeal cannot be said to be lacking in merit. The prospect of the Registrar General being tasked to cancel the Memorandum of Transfer will render a successful appeal nugatory with the risk of the subject property being transferred to third parties pending the appeal. Even the prospect of a re-transfer of the subject property back to SHL in the event of a successful appeal makes the grant of a conditional stay more practical in light of the undertakings offered by SHL. There is no evidence that either party is being prejudiced by reason only of the title of the subject property being in the name of SHL subject to conditions, during the pendency of these proceedings. SHL quite candidly has volunteered the undertaking not to deal with the subject property in any way to prejudice the rights of the Respondent. With respect to the question of costs, at minimum, it is more than arguable that the Respondent may only be entitled to prescribed costs of \$14,000.00 for its claim. However, bearing in mind that the main challenge of SHL is against findings of fact of the trial judge, I see no reason why a portion of these costs ought not to be paid to the Respondent.
9. For the reasons set out in this judgment I made the following orders staying the judgment of the trial judge on conditions pending the hearing and determination of the appeal:

- i. That there be a stay of execution pending the hearing and determination of the appeal of the judgment and orders of the Honourable Madame Justice Gobin made on 22<sup>nd</sup> December 2021 on the following conditions:
  - (a) that the sum of \$10,500.00 representing 75% of the costs of \$14,000.00 on the claim be paid by the Appellant/Defendant to the Respondent/Claimant on or before 13<sup>th</sup> May 2022 with the undertaking by the Respondent to repay the said sums to the Appellant if the Appeal is successful.
  - (b) that the Appellant/Defendant do not use, dispose of or transfer or otherwise deal with the property situated at No.9 First Street East, Beaulieu Avenue, Trincity, in the Ward of Tacarigua, in the Island of Trinidad, in the Republic of Trinidad and Tobago comprising four thousand five hundred square feet.
  - (c) the Appellant/Defendant do not interfere with the peaceful and quiet possession and occupation of the subject property by the Respondent/Claimant Andre Ramirez and Cynthia Ramirez.
  - (d) the Respondent/Claimant shall preserve the subject property pending the hearing and determination of the appeal.
- ii. Costs of this application be the Appellant's costs in the cause.

**Brief Facts**

10. The claim was instituted by Evelyn prior to her death to set aside the Memorandum of Transfer and seeking a number of declarations that the certificate of title to SHL was endorsed as a consequence of fraudulent misrepresentation; that SHL forged the handwriting of Evelyn or manipulated her either through undue influence, misrepresentation or mistake into signing

the Memorandum of Transfer.

11. Evelyn had become the sole proprietor of the subject property in 1998 after the death of her daughter, Paula. She was a “longtime” friend of Mr. Chaitlal Ramsanahie and father of Karen Ramsanahie and Vanessa Shivanna Ramsanahie, the directors of SHL. Mr. Chaitlal is also the father of Ted Ramsanahie, the attorney who prepared the Memorandum of Transfer transferring the property to SHL.
12. In September 2010, Evelyn claimed that Ms. Karen Ramsanahie visited her requesting that she signed a document purporting to be a will. Evelyn expressed reservations about signing the document since there were no witnesses present but due to the persistence of Karen, she signed what she believed was a will.
13. After a confrontation with Mr. Chaitlal on 7<sup>th</sup> March 2018, a title search was conducted on the subject property on 11<sup>th</sup> June 2018. Evelyn discovered that the subject property was transferred to SHL without her authorization, knowledge or consent in consideration of the sum of \$400,000.00. Evelyn contended that she never consented to nor authorized the transfer of the subject property, she did not receive any advice from an attorney and she did not receive the sum of \$400,000.00 from SHL. She pleaded certain particulars of fraud and undue influence by SHL. She contended that she was unaware of the value of the subject property which is estimated to be valued over \$400,000.00 since the median price of properties in her neighbourhood stands at \$1,300,000.00.
14. SHL conversely contended that the transfer was made in consideration of SHL’s payment of Evelyn’s indebtedness in relation to the subject property. They contended that there was a mortgage on the subject property held by Trinidad and Tobago Mortgage Finance Company Limited. Evelyn’s nephew,

- Clyde Richards, assisted her with expenses relating to the subject property on the condition that she would transfer the subject property to him or sell the property and use the proceeds to reimburse him.
15. SHL contended that in June 2012, Evelyn and Mr. Chaitlal entered an oral agreement to transfer the subject property to Mr. Chaitlal on the condition that she be allowed to remain in occupation of the subject property for her remaining years. This was in consideration of Mr. Chaitlal, on behalf of Evelyn, paying Mr. Richards the sum of \$292,000.00 and Evelyn using the proceeds from her life insurance policy to satisfy her remaining indebtedness to Mr. Richards.
  16. In order to give effect to this agreement, SHL contended that Evelyn executed a will dated 4<sup>th</sup> June 2012 whereby she devised and bequeathed the subject property to Mr. Chaitlal.
  17. In 2012 and 2013 Mr. Chaitlal learnt that Evelyn was unable to meet her various financial obligations. Due to this, Evelyn granted a power of attorney to Mr. Chaitlal. Mr. Chaitlal then approached SHL and requested assistance with meeting Evelyn's various financial obligations.
  18. Between 2013-2015 at the request of Mr. Chaitlal, Ms. Karen Ramsanahie, the corporate secretary of SHL negotiated with Mr. Richards to accept the sum of \$400,000.00 in full and final settlement of the debt owed to him by Evelyn. The said sum was paid to Mr. Richards who subsequently executed a release and discharge agreement dated 11<sup>th</sup> March 2015.
  19. SHL contends that Evelyn had actual knowledge that SHL was negotiating on her behalf and by letter dated 11<sup>th</sup> March 2015 she requested that SHL make the payment of \$400,000.00 to Mr. Richards. Further, she had actual knowledge that the subject property was transferred to SHL as consideration for SHL paying her various expenses. She provided oral instructions to Mr. Ted

Ramsahanie to prepare the Memorandum of Transfer.

20. These were the rivalling contentions and the trial judge had to make finding of fact based on her assessment of the credibility of the witnesses at the trial. A debilitating factor was that the main witness who made the accusation of fraud, Evelyn, had unfortunately passed away prior to the trial.

### **The Judgment and Appeal**

21. The trial judge made the following findings:

- (i) The parties confirmed that there was no endorsement of Paula's death nor was there an endorsement of the transmission of her estate to Evelyn as LPR of her estate on the certificate of title. Section 44 of the Real Property Act states that "No instrument, until registered in manner herein provided, shall be effectual to pass any estate or interest in any land under the provisions of this Act or to render such land liable to any mortgage charge or encumbrance..." An instrument includes will, probate, letters of administration. Therefore, the purported transfer of Evelyn to the Appellant was null, void and of no effect.
- (ii) The transaction on its face raised questions and required credible explanations. This was an outright transfer by an elderly lady of her home to a company and not to members of her family. The Appellant produced no evidence no evidence to support the agreement between Evelyn and her nephew Mr. Richards regarding the sale of the property and his reimbursement from the proceeds of the sale of the property. There was no pleading nor any evidence that Evelyn had agreed to a purchase price, a fundamental term of any sale.
- (iii) There was evidence of a special relationship between Evelyn and the



Sanahies. This was enough to discharge the burden of proof on Evelyn and to give rise to the inference of undue influence. The evidential burden then shifted to the defendant. Ted Ramsahanie's claim that he read the Memorandum of Transfer to Evelyn and she was happy with it falls short of what is required to discharge the burden. "What would typically suffice is the advice of an outside solicitor or advisor. TR was too closely connected to the persons who were associated with SHL, his father and sister with whom he still shares an office, although in name only, and he was the godson of Mrs Ayers. On the evidence, it is clear to me that Mrs Ayers had no independent advice."<sup>5</sup>

- (iv) At the time of preparing the will, it would have been unlikely that Evelyn would appoint Mr. Chaitlal as executor and trustee and left the subject property to him as on the Defendant's case, at that time, Mr. Chaitlal ignored the pleas for financial assistance from Evelyn.
- (v) The absence of written instructions for three important transactions, the will, the power of attorney and the Memorandum of Transfer, which Evelyn allegedly entered into with two Ramsanahie attorneys, persuaded the trial judge that these instruments were not the products of Evelyn's informed and voluntary actions.
- (vi) The trial judge did not believe that Evelyn gave instructions for the power of attorney. No record of instructions was produced. The business of the Power of Attorney was not explained to her. It was just another part of the scheme to take control of Evelyn's property, to take advantage of her financial hardship and her vulnerability.
- (vii) There was no evidence of how the sum of TT\$400,000.00 was arrived at as an alleged settlement figure after Mr. Richards had paid

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<sup>5</sup> Paragraph 47 of the trial judge's decision.

TT\$292,000.00 to settle the mortgage debt. There was no credible evidence on the Defendant's account that it paid the sum of \$400,000.00 to Mr. Richards.

- (viii) The failure of SHL to call Mr. Richards as a witness or seek the issuance of a witness summons increased the Court's suspicions and doubts as to the alleged payment to him.
- (ix) The Court did not believe that Ted Ramsahanie was instructed by Evelyn. "The fact that the execution of the document was witnessed once again by KR's husband makes it more likely than not that KR made all the arrangements, including procuring Mrs Ayers' signature, and as was her practice, involved her husband as her ready witness."<sup>6</sup>

22. The trial judge granted the following relief to the Respondent:

- i. The Memorandum of Transfer of Lease No 11 entered in Volume 5831 Folio 77 registered on 4<sup>th</sup> February 2016 made between Evelyn Ayers as Legal Personal Representative of Paula Ayers, deceased and Sanahie's Holding Limited in relation to a property situated at No. 9 First Street East Beaulieu Avenue Trincity is null, void and of no effect.
- ii. The Appellant caused Evelyn Ayers to sign the Memorandum of Transfer through fraud, undue influence, trickery and or misrepresentation.
- iii. The Registrar General is to require the Appellant to deliver up the said fraudulent Memorandum of Transfer for the purpose of it being cancelled and declared null, void and of no effect and accordingly set aside.

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<sup>6</sup> Paragraph 62 of the trial judge's decision.

- iv. The Registrar General do cancel pursuant to section 147 of the Real Property Act Chap 56:02 any other Certificate of Title or instrument or any entry or memorial in the Registrar Book in the name of the Appellant relating to the said property or to make such other entry as the circumstances of the case may require to expunge the fraudulent instrument.
- v. It is declared that the Respondent/Claimant be appointed the Legal Personal Representative of the Estate of Evelyn Ayers by virtue of a Grant of Letters of Administration No. L1095 of 2009 dated 21<sup>st</sup> October 2011 and the sole beneficiary to her estate and that the Respondent be declared the lawful proprietor of the said property and that all associated records and memorials reflect same;
- vi. An injunction restraining the Appellant, its servants and/or agents from entering the said property;
- vii. The Appellant do pay the Respondent costs of the action on the prescribed scale on the value of \$700,000.00 being the adjudged value by the Board of Inland Revenue of the said property;
- viii. The Appellant counterclaim be dismissed save that the Respondent is to pay nominal damages in the sum of \$10,000.00;
- ix. The Appellant is to pay prescribed costs of the counterclaim calculated on the value of \$540,000.00.

23. The trial judge granted a stay of 28 days which has long expired.

**Stay of Execution**

24. The applicable principles that govern this application are not controversial. SHL's appeal itself does not operate as a stay of execution of the orders of the

trial judge. The Respondent should not generally be deprived of the fruits of his litigation pending appeal unless there is a good reason for this course. See rule 64.16 of the Civil Proceedings Rules 1998 (“CPR”). The onus, therefore, is firmly put on SHL to make out its case for a stay, that in all the circumstances there is a risk of injustice to it if a stay is not imposed.

25. To do so SHL must demonstrate:

- That the appeal has good prospects of success.
- That there are any special circumstances which would justify exceptionally the grant of a stay.
- That there is a risk of injustice if the stay is granted or refused.: would it be ruined or the appeal stifled? With a money judgment is there any reasonable prospect of its repayment in the event of a successful appeal? What are the risks that the respondent will be unable to enforce the judgment if the stay is granted and the appeal fails? If a stay is refused and the appeal succeeds, and the judgment is enforced in the meantime, what are the risks to the applicant?

**See National Stadium (Grenada) Ltd v NH International (Caribbean) Limited And Others** Civ App No 48 of 2011, **Andre Baptiste v Investment Managers Ltd** Civil Appeal No 181 of 2012, **Robert Gormandy and Shaun Sammy v The Trinidad and Tobago Housing Development Corporation** Civ. Appeal No. S375 of 2018 and **Water and Sewerage Authority of Trinidad and Tobago v Trinidad and Tobago Security Services Limited** Civil Appeal No. P029 of 2020. **Hammond Suddard Solicitors v Agrichem International Holdings Ltd** [2001] All ER (D) 258 (Dec) and **Rodrigues Architects Limited v New Building Society Limited** [2018] CCJ 09 (AJ).

26. Where the answer to the question of whether there is a good chance or good

prospect of success is not immediately obvious, or where the subject matter of the dispute may be rendered nugatory if the stay is not granted such as in some cases involving land ownership, the Court should examine all the circumstances in the round. Such an approach was adopted in **Robert Gormandy and Shaun Sammy v Trinidad and Tobago Housing Development Corporation** Civ App Nos. 375/2018, 376/2018, Mendonça J.A. held, in granting interim relief, that where there is a risk that an appeal would be rendered nugatory, that is not something the Court could turn a blind eye too and an appeal being rendered nugatory creates a serious risk of injustice.

27. Importantly, where the question of making an order for a stay arises, the Court must also consider what terms or conditions are appropriate which are also just in the circumstances. In this exercise, both the merits of these appeals and relative risks of injustice are to be balanced together with the relative advantages and disadvantages to the parties if conditions are to be imposed on the grant of a stay. See **Estate Management and Business Development Company Limited v Junior Sammy Contractors Limited** Civil Appeal S020 of 2020 and Civil Appeal S021 of 2020:

“95. Pursuant to Rule 26.1(2) and (3) CPR<sup>7</sup> the court can impose conditions. While no formal orders were requested by either party for the imposition of conditions pursuant to Rule 26.1(3)CPR, the Court can exercise its wide case management powers to do so and indeed neither party would be caught by surprise by the issue of whether conditions ought to be imposed

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<sup>7</sup> Rule 26. (2) and (3) CPR provides: “(2) When the court makes an order or gives a direction, it may make the order or direction subject to conditions.

(3)The conditions which the court may impose include—

(a) a condition requiring a party to give security;

(b) a condition requiring a party to give an undertaking;

(c) a condition requiring the payment of money into court or as the court may direct.

(d) a condition requiring a party to pay all or part of the costs of the proceedings; and

(e) a condition that a party shall permit entry to property owned or occupied by him to another party or someone acting on behalf of another party

as they both made alternative submissions on the imposition of conditions if the stay is being contemplated.

96. Conditional orders are appropriate for cases in the “grey area” between granting judgment and dismissing the application and is appropriate where the prospects of success on a defence are remote. **See Blackstone’s Civil Practice paragraph 34.34.**

97. In imposing conditions, the Court must also have in mind equally whether the conditions will stifle the appeal or render it nugatory, whether the appellant has the resources to fulfil the conditions and the extent to which the judgment creditor would derive an acceptable advantage in the imposition of the conditions.

98. The imposition of a condition is indeed a practical approach that accords with keeping parties on an equal footing pending this appeal, adopting a course which is economical adjudged against the parties’ resources and is proportionate. The proportionality of the measure is indeed reflected in the court’s assessment of the merits of the appeal.”

28. The discretion on these applications ultimately must always be exercised mindful of the “tripartite” pillars of the overriding objective: economy, equality, and proportionality.

#### **Good Prospect of Success**

29. The “prospect of success” of an appeal is a preliminary assessment of the merits of the appeal, it is by no means determinative except in the very clear cases. It is a principle developed in our case law to emphasise that if the appeal is without merit no question of a stay should be entertained or at the other extreme, if there is a very strong appeal the question of a stay ought to be axiomatic. This is illustrated in the cases of **National Stadium** and **A&A**

**Mechanical Contractors.** The term “good prospect of success” was used interchangeably with “good arguable appeal” in **Rodrigues** and “an appeal with merit” in **National Stadium. Andre Baptiste** and **A&A Mechanical Contractors** demonstrates how the Court deals with cases where the appellant’s case falls on the extreme end of the spectrum of demonstrating no good prospect of success. In **WASA Mendonca** J.A. noted:

“8. As to whether the appeal has a good prospect of success, it must be borne in mind that an application for a stay of execution is an interlocutory application. It is expected that the hearing of the application will not be protracted but will be relatively quick. The court in hearing that application is not embarking upon the hearing of the appeal and cannot be expected to come to a determination of the merits of the appeal or the likely outcome of the appeal, except perhaps in the simplest of cases. In **Rodrigues Architects Ltd (supra)** the Caribbean Court of Justice (CCJ) likened an appeal with a good prospect of success to a good arguable appeal. I believe, with respect, that is correct. In other words, the task of the court is to determine whether the appeal is one with substance.”

30. For money judgments this question of “good prospect of success” is treated as a threshold question. This however, save for the costs orders, is not a money judgment.

31. SHL contends that they have a good prospect of success on the appeal for the reasons set out in its grounds of appeal. In my view at this stage, I see those grounds of appeal being arguable with respect to the following findings of the trial judge:

(a) That no title could have been passed by Evelyn to SHL by virtue of a construction of sections 44 and 108 of the Real Property Act Chap. 56:02 (“RPA”) (the preliminary issue).

- (b) That there was fraud or misrepresentation on the part of the SHL for the purpose of section 141 of the RPA.
- (c) That there was a basis to make a declaration appointing Mr. Ramirez as LPR and sole beneficiary and;
- (d) That the costs order were properly made.

I deal with each briefly.

### **The Preliminary Issue**

32. SHL contends in this appeal that the trial judge erred in finding that the Memorandum of Transfer was null, void and of no effect and that no title passed from Evelyn to SHL on the basis that:

- (a) There was no endorsement on the Certificate of Title for the subject property of the transmission of the estate of Paula Ayers to Evelyn Ayers when Evelyn obtained grant of letters of administration of the Paula in 2011.
- (b) Section 108 of the RPA required that such an endorsement be made on the Certificate of Title.
- (c) The absence of such an endorsement meant that Evelyn had no title which she could lawfully transfer to the Appellant on 4<sup>th</sup> February 2016.
- (d) This issue was never raised on the pleadings.

33. Section 44 of the RPA states:

“No instrument, until registered in manner herein provided, shall be effectual to pass any estate or interest in any land under the provisions of



this Act or to render such land liable to any mortgage charge or encumbrance; but upon the registration of any instrument in manner herein provided, the estate or interest specified in such instrument shall pass or, as the case may be, the land shall become liable, in manner and subject to the covenants, conditions, and contingencies set forth and specified in such instrument or by this Act declared to be implied in instruments of a like nature, and should two or more instruments executed by the same proprietor, and purporting to transfer or encumber the same estate or interest in any land, be at the same time presented to the Registrar General for registration and endorsement, he may either register and endorse that instrument which is presented by the person producing the grant or certificate of title, or may refuse to register either instrument until an order determining the relative rights of the several claimants shall have been made by the Court or a Judge.”

34. Section 108 of the RPA states:

“108. (1) Where land is vested in a proprietor for any term or estate beyond his life without a right in any other person to take by survivorship or in remainder or reversion, it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives as if it were a chattel real vesting in them, and such personal representatives shall alone be recognised by the Registrar General as having any right in respect of the land, and any registered disposition by them shall have the same effect as if they were the proprietors of the land.

(2) This section shall apply to any land over which a person executes by Will a general power of appointment as if it were land vested in him.

(3) Personal representatives may be registered as proprietors of such land

as aforesaid on payment of the prescribed fee and on furnishing the Registrar General with a request in writing setting forth the registered number of the probate of the Will or the Letters of Administration of the estate of such deceased proprietor together with such further evidence as the Registrar General may require.”

35. It is arguable that the trial judge fell into error in ruling that the failure to endorse the death of Paula deprived her LPR, in this case Evelyn, from validly disposing of the estate. Section 108(1) appears to vest the subject property to Evelyn on Paula’s death and the ability to makes a registered disposition of it. In any event, the Claimant never pleaded that this disposition was void on this basis.
36. The parties were only asked to address the court on this matter after the case was closed and the court had reserved judgment. In my view it is arguable that the trial judge was wrong to have seized such an issue which was neither pleaded nor the subject of the main dispute.

### **The Finding of Fraud**

37. SHL contends in this appeal that:
- (i) The trial judge erred in finding that the Appellant caused Evelyn to sign the Memorandum of Transfer through fraud, trickery and misrepresentation when there wasn’t sufficient evidentiary basis to so find. The Respondent did not adduce credible evidence that the signature on the Memorandum of Transfer did not belong to Evelyn.
  - (ii) The trial judge erred in finding that mere assertions of fraud and assertions that Evelyn had denied transferring the subject property to the Appellant were sufficient to discharge the burden of proof on the Respondent.

- (iii) The trial judge erred in failing to draw any adverse inference that the Respondent's mother, Ms. Cynthia Ramirez, Evelyn's goddaughter and caregiver and the person whom she spent the majority of her time was never called to corroborate any aspect of the Respondent's claim.
- (iv) The trial judge erred in conflating the legal principles governing presumed undue influence and fraud and in failing to appreciate that only the proof of fraud would suffice to set aside the Memorandum of Transfer, fraud being the only ground prescribed in section 141 of the RPA.
- (v) The trial judge failed to appreciate that the Respondent's case was not predicated on any assertion that a presumption of undue influence arose on the facts of the case; even if such a presumption did arise, independent legal advice was not the only way in which such presumption could be rebutted; the evidence relating to the circumstances in which the Memorandum of Transfer was executed was sufficient to establish that Evelyn acted freely when executing the document; a presumption of undue influence does not amount to proof of fraud.
- (vi) Various findings of fact which the trial judge based her finding that a presumption of undue influence arose and that the Appellant committed fraud were not supported by evidence.

38. Many of these grounds are in facts challenges to findings of fact. Challenges to findings of fact on an appeal are not easily made out on an appeal. See **The Attorney General v Anino Garcia** Civil Appeal No.86 Of 2011:

"[14] Appellate courts are slow to reverse first instance findings of fact. This is based on the recognition that the judge generally enjoys an advantage over the appellate court of having seen and heard the witnesses

and forming impressions of their truthfulness and credibility. The appellate court on the other hand has only the printed evidence. Intonation of voice, manner of delivery, reactions to questions, hesitations, eye contact, attitude and other courtroom dynamics are all lost in transcription so to speak.

[15] The recent decision of the Judicial Committee of the Privy Council in **Beacon Insurance Company Limited v. Maharaj Bookstore Ltd. [2014] UKPC 21** (delivered by Lord Hodge) provides clear guidance on the basis upon which an appellate court may reverse findings of fact made by a judge at first instance. The Board, restated well known principles and drew from several well known decisions. The Board noted that it is only in a rare case that an appellate court will interfere with a trial judge's findings of primary fact. Such a case would include:

- (a) one in which there is no evidence to support the findings
- (b) a decision which is based on a misunderstanding of the evidence
- (c) a decision, which no reasonable judge could have reached

Per Lord Neuberger in re **B (A child) (Care Proceedings: Threshold Criteria)** [2013] 1 WLR 1911.”

39. However, there are some arguable grounds for the Appellant. First, a material cause for concern which would legitimately engage the court will be the interpretation of section 141 of the RPA<sup>8</sup>. A transfer can only be set aside on

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<sup>8</sup> Section 141 of the RPA states:

“141. Except in the case of fraud, no person contracting or dealing with or taking or proposing to take a transfer from the proprietor of any estate or interest shall be required or in any manner concerned to enquire or ascertain the circumstances under, or the consideration for which, such proprietor or any previous proprietor of the estate or interest in question is or was registered, or to see to the application of the purchase money or of any part thereof, or shall be affected by notice, direct or constructive, of any trust or unregistered interest, any rule of law or equity to the contrary notwithstanding,

the ground of fraud. Absent any finding of fraud, SHL's contention is that the transaction should remain unimpeached. The court will have to determine whether the trial judge's findings did not contain any finding of actual fraud as pleaded by the Respondent but in fact presumed fraud or undue influence. As a matter of law, it is a question to be determined whether proof of undue influence is enough for the purposes of section 141 of the RPA.

40. Second, SHL has demonstrated at this preliminary stage that it is arguable that the court made the wrong inferences and failed to consider the available evidence not the least the fact that Evelyn gave no account on how these transactions were made fraudulently.

### **The Declaration**

41. The Respondent has admitted that the declaration was unnecessary. In my view, it is arguably wrongly made. It makes Mr. Ramirez the sole beneficiary of the subject property when in fact the will dated 4<sup>th</sup> June 2012 has bequeathed the subject property to Mr. Chaitlal while the will dated 8<sup>th</sup> November 2018<sup>9</sup> bequeathed the subject property to both Cynthia Ramirez and Mr. Ramirez. While during the proceedings an application for Mr. Ramirez to be appointed administrator ad litem of Evelyn's estate was granted by the trial judge, it is arguable that this declaration was erroneously made for the reason that (a) there was no notice of this issue made on the pleadings (b) that this was not contentious probate proceedings and no claim to prove the validity of any will (c) it ignores the various bequests of any of the wills of the deceased<sup>10</sup> (d) the order in effect devises the subject property to Mr. Ramirez

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and the knowledge that any such trust or unregistered interest is in existence shall not of itself be imputed as fraud."

<sup>9</sup> Page 499 of Record of Appeal Vol 2, exhibit "A.R.19".

<sup>10</sup> See page 63 of the Record of Appeal Vol 1, the will of Evelyn Ayers dated 4<sup>th</sup> June 2012:

"I give devise and bequeath my house and land situated at 1<sup>st</sup> Street East Bolieau #9 Trincity to my long standing friend CHAITLAL RAMSANAHIE subject to the payment of the

when it was bequeathed to both himself and Cynthia as joint tenants by virtue of the provisions of the 2018 will.

### Costs

42. With respect to a determination of costs on the claim the trial judge arguably fell into error. Rule 67.5 (1) CPR provides the general rule for the entitlement of the Claimant to prescribed costs of the proceedings. The value of the claim to determine the amount of prescribed costs will be based on the amount ordered to be paid or agreed to by the parties. See rule 67.5(2)(a) CPR. There

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debt of TWO HUNDRED AND NINETY FOUR THOUSAND TRINIDAD AND TOBAGO DOLLARS (TT\$294,000.00) owed to my nephew CLYDE RICHARDS also called CLYDE ROBINSON. I give devise and bequeath all my property both real and personal whatsoever and wheresoever situate hereinafter called (my Residuary Estate) to St. Mary's Anglican Church in Tacarigua, the Holy Saviour Church in Curepe, Majorie St. John of Maloney and Cynthia Bishop of St. James, Port of Spain equally."

See page 499 of Record of Appeal Vol 2, the will of Evelyn Ayers dated 8th November 2018:

"1. I hereby bequeath the following monetary gifts which are to be taken from any of my existing bank accounts or holdings to fund these gifts. If the money in any of my existing bank accounts or holdings at the time of my death, are unable to cover the sum total of the monetary gifts below, I instruct my Executor, Andre Ramirez to sell any of my movable assets inclusive of furniture and personal effects to effect the disbursement of the monetary gifts to the names recipients in the amounts as follows:

- To SAINT MARY'S ANGLICAN CHURCH, TACARIGUA, the sum of ten thousand dollars (\$10,000.00)
- To HOLY SAVIOUR ANGLICAN CHURCH, CUREPE, the sum of five thousand dollars (\$5000.00).
- To SAINT THOMAS ANGLICAN CHURCH, CHAGUANAS, the sum of five thousand dollars (\$5000.00)

2. I hereby give devise and bequeath my real property ALL and SINGULAR that certain parcel of land situate at Lot "963" 9 First Street East Beaulieu Avenue Trincity in the Ward of Tacarigua in the Island of Trinidad together with the building standing thereon to be shared equally between my Goddaughter CYNTHIA RAMIREZ and ANDRE RAMIREZ for their absolute use and benefit.....

3. I hereby will devise, bequeath and give all the rest and remainder of my property and estate of every kind and character, including but not limited to, real and personal property in which I may have an interest, at the date of my death and which is not otherwise effectively disposed of, in equal shares to my Goddaughter CYNTHIA RAMIREZ and ANDRE RAMIREZ subject to the successful distribution of the aforementioned monetary gifts to the above named recipients."

is no such sum ordered in this case for the Respondent/Claimant nor any sum agreed. The claim was in effect a claim for declaratory relief and exemplary damages with no award being made for exemplary damages. Accordingly, the value of the claim in those circumstances arguably should have been \$50,000. See rule 67.5 (2) (c). It is open to the Respondent to show how the trial judge could have used an alternative route to award costs, however, unfortunately there are no reasons by the trial judge for making this exceptional order.

43. Further the Court dismissed the counter claim yet awarded nominal damages in favour of the counter claiming Defendant. There is an arguable basis to contend that the trial judge was wrong to have dismissed the counterclaim if indeed nominal damages should be awarded in the absence of any reason why such an exceptional order should have been made. Further the costs order on the counter claim arguably penalises the Defendant/Appellant when it was partially successful on its counter claim in obtaining nominal damages. In fact arguably, the Defendant/Appellant would be entitled to prescribed costs based on the value of the amount of damages ordered to be paid. This of course is subject to the court's exercise of its discretion acting pursuant to rule 66.6 CPR to penalize the Defendant in costs.

44. While the Court has a wide discretion to be exercised on the question of costs there should be rational reasons expressed by the Court to depart from general rules. The appeal on this issue is therefore arguable.

45. I therefore do not agree with the Respondent that SHL has failed to identify any bases to demonstrate that the trial judge's findings at first instance were unjustifiable.

#### **Appeal Rendered Nugatory**

46. I agree with SHL that the appeal would be rendered nugatory if a stay is not granted because SHL would be obliged to deliver up the certificate of title for

the subject property for the purpose of it and/or the Memorandum of Transfer being cancelled. The Respondent having been declared and appointed LPR of the estate of Evelyn Ayers and sole beneficiary of her estate would be entitled to dispose of the subject property inconsistently with the bequests in either will. Even if the subject property is not transferred to a 3<sup>rd</sup> party, the prospects of re-transferring it to SHL in the event of a successful appeal simply makes the grant of a conditional stay a practical measure.

### **Risk of Injustice**

47. There is a greater risk of injustice to SHL if the stay is not granted. SHL could suffer irremediable harm and irreparable damage if the appeal is rendered nugatory and damages would not be an adequate remedy.
48. It is also noted that an effort to maintain the status quo, SHL is prepared to give an undertaking that it “will not deal with or dispose of the said property pending the hearing and determination of its appeal”.<sup>11</sup>

### **The Respondent’s Ability to Repay the Debt if the Appeal is Successful**

49. There is no real risk of the Respondent’s inability to repay the costs order if the appeal is successful. Nor is there any evidence that the appeal will be stifled if the cost order is paid. In **Rodrigues** the CCJ noted that it is critical for the applicant in an application to stay the execution of money judgments to point to the financial weakness of the judgment creditor to make good on the submission that there is real risk that it would not be able to repay the money in the event the appeal is successful.
50. SHL has not provided any evidence of its inability to pay a costs order even in a modified form, nor that its appeal will be stifled if ordered to do so, or that there is any risk of its inability to recover those costs from the Respondent if

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<sup>11</sup> Paragraph 32 of the Affidavit of Karen Ramsanahie in support of the application.



the appeal is successful and the costs order is paid.

51. I agree with the Respondent that SHL has not put forward any evidence that they are not in a financial position to satisfy the money order or that if they did, they would be ruined and their appeal stifled. I have already pointed out some aspects of the costs orders which will be subject to a successful appeal. Recognising that there is some merit in the appeal yet the considerable challenges in reversing a finding of fact, I have made a stay of the money judgment for the cost order on the claim and the counterclaim.

#### **Exceptional Features and Risks of Enforcement**

52. An exceptional feature in this case is that the trial progressed with the ownership of the subject property in the name of SHL and an undertaking by it to preserve the status quo. There was no evidence then and now of any hardship or prejudice to the Respondent when that approach was adopted. Further, it appears from the submissions of Counsel for the Respondent that they were prepared to accept the status quo to continue with suitable undertakings or injunctions placed on SHL.

#### **Conclusion**

53. The appeal has good prospect of the success in that there is an arguable appeal not devoid of any merit and there is a material risk of injustice to the Appellant if the conditional stay is not granted.

54. I have previously set out above the appropriate orders for a stay with conditions to be made on this application.

**Vasheist Kokaram  
Justice of Appeal**