[2022] UKPC 57
Privy Council Appeal No 0047 of 2021

JUDGMENT

Dr Ramraj Deonarine and 4 others (Respondents) *v* Lauralee Ramcharan (Appellant) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lord Lloyd-Jones
Lord Briggs
Lord Kitchin
Lord Burrows
Lord Stephens

JUDGMENT GIVEN ON
29 December 2022

Heard on 31 October 2022

Appellant
Seenath Jairam SC
Rowan Pennington-Benton
Shantal Jairam
Saira Lakhan
K.V. Jairam
(Instructed by Jihan Hosein Victoria Chambers (Trinidad))

Respondents
Hendrickson Seunath SC
Khristendath Neebar
Haresh Ramnath
(Instructed by Duke Street Chambers (Trinidad))

Respondents:

(1) Dr Ramraj Deonarine
(2) Laura Seejattan
(3) Terance Seejattan / Terrance Seejattan
(4) Gina Marie Seejattan
(5) Lisa Marie Cascarano

LORD BRIGGS AND LORD STEPHENS (with whom Lord Lloyd-Jones, Lord Kitchin and Lord Burrows agree):

1. Seeram Seejattan ("Peter" to his friends) died in Trinidad on 21st March 2008. Four days earlier he had made a will ("the Will") by which he appointed his friend Dr Ramraj Deonarine as executor, directed that his entire estate should be sold and, after payment of debts and expenses, the proceeds distributed in specified unequal shares among his four children, Terance, Laura, Gina, and Lisa (collectively "the Children").

2. Peter had spent most of his working life in Florida, where he had established businesses and acquired property. But he spent the last six months of his life living in Trinidad, where he had also acquired further properties. While Peter was living and working in Florida the Appellant, Lauralee Ramcharan ("Lauralee"), cohabited with him until September 2007 when he left for Trinidad. But Peter made no provision for Lauralee in his Will.

3. Dr Deonarine applied for a grant of probate of the Will in May 2009, following which Lauralee intimated claims against Peter's estate, initially in correspondence with Dr Deonarine's lawyer, which she later sought to protect by lodging caveats against a grant of probate. After Dr Deonarine issued a warning in July 2011 Lauralee entered an appearance, claiming to be entitled to part of the estate, as Peter's common law wife with rights under the Succession Act and having contributed to the acquisition of his properties.

4. It is common ground that meanwhile there ensued negotiations between Lauralee and the Children, three of whom also lived in Florida and one in Ohio, with a view to the distribution of the estate, both in Trinidad and in Florida, between them without the need for recourse to litigation. Lauralee claims that these negotiations culminated in the making of three documents ("the Compromise Documents") signed by her and by or on behalf of each of the Children, two in January 2012 and the third in June 2012. It will be necessary to describe them in more detail in due course but, in outline, their combined effect was to provide as follows:

(a) Lauralee was to receive specific properties in Trinidad, and in return to make available from her own resources US$66,670 for payment of real estate taxes owing on properties owned by Peter in Florida,

(b) Specified properties in Florida were to be transferred (or sold and the proceeds transferred) to Lauralee and specified Children,

(c) The rest of Peter's estate was to be divided equally between Lauralee and each of the Children, ie in 20% shares.

(d) Lauralee was to be appointed as the personal representative of Peter in Florida.

5. The Compromise Documents were expressed to be governed by the laws of Trinidad and Tobago. The first two comprised an Agreement of Arrangement, Settlement and Compromise ("the Agreement") and a Deed of Arrangement, Settlement and Compromise ("the Deed") in substantially the same terms. The third was described as a Deed of Rectification ("the Deed of Rectification"). Various documents had inadvertently been omitted from the Deed and the purpose of the Deed of Rectification was to amend the Deed by adding those documents to it. All three of the Compromise Documents were or purported to be witnessed by the same person, one Krishna D Harry. They were all registered in Trinidad and Tobago, as required for documents executed abroad. Copies of the Agreement and of the Deed were also sent to Dr Deonarine's lawyer on 21 May 2012. The terms enshrined in the Compromise Documents will be referred to as "the Compromise".

6. In April 2013 Lauralee issued proceedings in the High Court of Trinidad and Tobago against Dr Deonarine and the Children, seeking to enforce the terms of the Compromise. She claimed in the body of her Statement of Case to have been a cohabitant with Peter. Her pleading also asserted as part of its narrative that she had acquired beneficial interests in Peter's properties in Trinidad under a common intention trust but made no specific claim to alternative relief on that basis. Finally, she claimed (also as part of the narrative to her claim to enforce the Compromise) to have been given a specific property in Trinidad, known as Laura's Valley, as a donatio mortis causa. But again, no claim was made in the prayer for any specific relief on that ground.

7. The prayer for relief sought a declaration that the Will be not admitted to probate, a declaration that the Compromise Documents had the immediate effect of varying the provisions of the Will, an order that Lauralee be appointed as Peter's personal representative in place of Dr Deonarine for the purpose of administering the estate in accordance with the Compromise, and an order for the dismissal of the contentious probate proceedings by which Dr Deonarine was seeking to prove the Will. The prayer ended with conventional pleas for all appropriate orders, accounts and enquiries, and for "Further and/or other relief as to the Court shall seem just". The Statement of Case had attached to it, inter alia, copies of the Compromise Documents.

8. Dr Deonarine defended Lauralee's claim with a denial of many of the facts on which it was based, but an admission of the Compromise Documents coupled with a non-admission as to their alleged effect.

9. The Children took a much more trenchant line in their joint Defence and Counterclaim. They said that Lauralee had never cohabited with Peter, and had been no more than a baby-sitter for Gina and Lisa, before marrying Terance in 1995. They denied that Lauralee had made any contribution to the properties purchased by Peter. More to the point they denied having signed the Compromise Documents, averring that they had signed a different, shorter document, consistent with a different oral compromise. In their counterclaim they alleged that the Compromise Documents were a fraud. In their particulars of fraud they pleaded:

> "Substituting and/or replacing all but the last page of a document executed by the Co-Defendants and fraudulently alleging and/or purporting same to be the Co-Defendants' document."

10. They also alleged as particulars of fraud that they, and Terance in particular, had been coerced and forced to accede to Lauralee's demands by the threat of lengthy legal proceedings.

11. Pleadings were followed by witness statements, and the claim and counterclaim about the validity of the Compromise was fought out in full at a trial before Dean-Armorer J, in which Lauralee, Terance and Gina were all cross-examined at length, and two statutory declarations by Krishna D Harry in 2012, verifying having witnessed the signatures on the Deed and Deed of Rectification, were admitted in evidence. It will be necessary to describe the evidence and the course of the trial in some detail in due course, but it is sufficient for present purposes to say that the issue as to whether the Compromise Documents were genuine or a fraud was litigated with all the close attention to detail which such a serious allegation deserved, evidently on the shared assumption by both sides that the issue would finally be determined by the judge in her judgment.

12. In her detailed reserved judgment, handed down on 3 November 2017, the judge recognised, as an issue of fact which she had to decide, whether the Compromise Documents were in fact documents signed by the parties: (para 39). It is plain that she correctly recognised that issue as one turning upon an allegation of fraud. The judge also regarded it as incumbent upon her to decide, in addition to the main issue about the validity of the Compromise, the questions whether there had

been a donatio mortis causa in relation to Laura's Valley, or a common intention trust of a number of Peter's properties, and also whether Lauralee had a claim for financial provision as a cohabitant under the Succession Act.

13. She found that Lauralee had cohabited with Peter, but that she failed to qualify under the Succession Act because cohabitation had ended before Peter's death, when he left Florida for Trinidad under a deportation order. She also ruled against the donatio mortis causa. But she found that a common intention trust had been established by the evidence, although only in relation to Laura's Valley.

14. On the all-important issue about the validity of the Compromise she held that, in principle, there was no reason why the beneficiaries could not together agree to vary the dispositions effected in a will, in accordance with the principle in *Saunders v Vautier* (1841) 4 Beav 115 as applied in *Crowden v Aldridge* [1993] 1 WLR 433, but not so as to replace an executor named in the Will. Nor could any claim to enforce such an agreed variation be entertained prior to the grant of probate, so that Lauralee's claim to do so was premature.

15. Nonetheless when reviewing the Counterclaim the judge observed that Krishna D Harry's statutory declaration verifying the Children's signatures on the Compromise Documents "completely destroys any possibility of fraud": (para 80). She also regarded the coercion part of the fraud claim as lacking in merit because the evidence demonstrated the availability to the Children of independent advice. Nonetheless she held that, once probate had been obtained, both Lauralee would be at liberty to pursue the enforcement of the Compromise, and the Children free to mount a full attack on its validity: (paras 77 and 81). So she decided that the issues canvassed by the Counterclaim should only be determined after probate, and therefore dismissed both the claim and the counterclaim in relation to the Compromise.

16. The Children appealed and Lauralee cross-appealed. On 4 September 2020 the Court of Appeal (Archie CJ, Jones and Pemberton JAA) dismissed Lauralee's cross-appeal and allowed the Children's appeal in part. They held that the judge was right to dismiss Lauralee's claim to enforce the Compromise ahead of a grant of probate, both because the main relief sought, the replacement of Dr Deonarine by Lauralee as personal representative and the administration of the estate in accordance with the Compromise, was relief which could only be sought in contentious probate proceedings and because the claim was premature ahead of a grant of probate. They upheld the judge's decision not to decide the issue as to the validity of the Compromise, and held that they could not do so either, since the judge had not made the necessary findings of fact about that issue. The Court of Appeal upheld the appeal against the finding of a common intention trust in relation to Laura's Valley because no

such claim had been pleaded, the claim seeking relief solely by way of enforcement of the Compromise.

17. Nonetheless the Court of Appeal recognised that, in principle, the Compromise was, if valid, capable of governing the administration of the estate by way of variation of the dispositive provisions of the Will. Accordingly, the court's order provided for Dr Deonarine to be able to obtain probate, by the removal of Lauralee's caveats, and for the validity of the Compromise to be determined after probate. On Lauralee's application for a stay pending appeal to the Board the Court of Appeal ordered a partial stay, permitting Dr Deonarine to obtain probate, get in the assets and pay certain specified debts and expenses, but not to make any distribution of the net estate pursuant to the Will.

18. That was in November 2020. Lamentably the Board was told that, two years later there had still been no grant of probate, so that the estate remains completely unadministered, with no date in sight upon which, on the analysis of the courts below, the issue as to the validity of the Compromise can be decided. A number of explanations for the continuing absence of probate were proffered by Mr Seunath SC counsel for Dr Deonarine and the Children, including the effect of the COVID pandemic upon the operation of the Probate Registry. The Board did not find any of them convincing but is unable to reach its own view as to the reason for the continuing delay.

19. On her appeal to the Board Lauralee does not pursue a claim that the Compromise enables her to oppose probate of the Will, or to seek the immediate removal of Dr Deonarine as executor. She accepts therefore that the Compromise cannot immediately be enforced, but submits that there was at the time of trial, and still is, no good reason why the issue as to the validity of the Compromise should not be decided in advance of a grant of probate. She asks the Board to decide that issue now or, in the alternative, to remit it to the High Court for decision without awaiting probate, on the basis that it be determined by the judge, or by some other High Court judge, on the pleadings and witness statements as they stand, but if necessary with further cross-examination. Further she takes issue with the Court of Appeal's finding that her case about a common intention trust of Laura's Valley had not been pleaded. Thus, the issues before the Board are:

(a) Was the judge right to decide that the issue as to the validity of the Compromise should await the grant of probate and was the Court of Appeal right to affirm her decision?

(b) If not, should the Board now determine or remit that issue?

(c) If the Board should determine the issue, then what is the appropriate determination?

(d) Was the claim in relation to Laura's Valley pleaded?

Issue (A): Was the judge right to decide that the issue as to the validity of the Compromise should await the grant of probate and was the Court of Appeal right to affirm her decision?

20. As to this issue, the Board is in no doubt that the judge should not have deferred the determination of the issue as to the validity of the Compromise, let alone required it to be litigated afresh in new proceedings, after the grant of probate. Our reasons follow.

21. First, this was an issue of fundamental rather than merely academic importance to the parties. As both the judge and the Court of Appeal acknowledged, the Compromise would in due course, if valid, come to have an important effect upon the administration of Peter's estate. It was made between Lauralee, a claimant against the estate, and all the beneficiaries named in the Will, providing for the distribution of the net estate in a manner different from that directed by the Will. Subject to the prior rights of creditors (including tax authorities), and the payment of administration expenses, it was competent to the beneficiaries named in the will to agree upon a different distribution of the net estate than that provided for in the Will, not just as between themselves, but also in favour of anyone else, such as Lauralee, whom they wished to benefit. Family arrangements of this kind are commonplace in common law countries, which include both England and Wales and Trinidad and Tobago, and their efficacy for that purpose has never been doubted.

22. Mr Seunath SC for the Respondents was not disposed to accept that the principle in *Saunders v Vautier*, by which the beneficiaries under a trust may, acting together, direct the trustees as to the disposal of the trust property, could be applied directly to the assets of an unadministered estate. To a limited extent he is correct. Beneficiaries named in a will do not thereby have beneficial interests in the unadministered estate. Their right is to have the estate duly administered in accordance with the law and the provisions of the will: *see Commissioner of Stamp Duties (Queensland) v Livingston* [1965] AC 694, 707. But it has never been doubted that they do have the power, acting together, to vary the terms of a will, so far as

concerns the net estate after payment of debts and expenses. This was trenchantly affirmed by Mr Jonathan Sumption QC in *Crowden v Aldridge* [1993] 1 WLR 433, 439, although that was not challenged in that case. The fact that counsel could point to no more authority on the point is probably because it has never been doubted.

23. But Mr Seunath protested that, even so, a family arrangement of this kind could not be enforced in advance of probate, (which Lauralee no longer asserts) and might never be enforceable strictly in accordance with its terms. A family arrangement might, he said, require a valuable property to be transferred to a particular beneficiary, whereas it needed to be sold in order to pay debts of the estate. In the present case the Compromise provides for almost all Peter's real property to be distributed in that way.

24. The Board would accept that practical problems of this kind may affect the enforcement of a family arrangement. In the present case however the Compromise makes specific provision for the contribution of funds by Lauralee to meet tax liabilities of the estate in Florida, while the estate inventory prepared by Dr Deonarine discloses significant further liquid assets available to meet other debts and expenses. No attempt has been made to show that a shortfall is at all likely. In any event difficulties of this kind may affect the implementation of the dispositive provisions in a will, so as for example to require the abatement of legacies. But it has never been suggested that this is a reason to defer the determination of an issue as to the validity of a will, in relation to an apparently solvent estate.

25. Lauralee has abandoned, for the time being, an attempt to have the court direct the immediate enforcement of the Compromise, pending the grant of probate. But she still seeks, as she has always done once it was challenged, a determination that the Compromise is valid. This was an important issue distinctly raised by the pleadings.

26. The second reason why it was wrong for the judge not to decide that issue was that it had already been fully litigated before her, no doubt at considerable effort and expense. Witness statements had been deployed and, more to the point, the issue had been tested in cross-examination, which the judge had the unique benefit of having heard live in court before her.

27. The avoidance of multiplicity of suit about the same issue is a fundamental principle of civil procedure, in Trinidad as much as in other common law jurisdictions. It lies at the heart of the rules about issue estoppel and abuse of process, and is enshrined in section 20 of the Supreme Court of Judicature Act. The ever-increasing cost of civil litigation only makes adherence to that principle all the more important.

This was, in the view of the Board, an issue which cried out to be determined rather than be put off to an uncertain date in the future.

28. Part of the reasoning of the Court of Appeal for upholding the judge on this point was that the part of the relief being sought by reference to the Compromise should have been sought in contentious probate proceedings, rather than in an ordinary action. That may be so, for example in relation to the claim that Dr Deonarine should be replaced as executor, and that the Will be not admitted to probate. But this objection did not apply to the claim to have declared the validity of the Compromise. The Compromise amounted to a contract between the parties (other than Dr Deonarine) and the resolution of a dispute about its validity was in the Board's view plainly within the remit of a High Court judge in an ordinary action.

29. The third reason why the judge should have decided rather than deferred the validity issue was that it is tolerably plain that she had by the time she came to write her judgment already formed a clear view about the merit (or rather complete lack of merit) in the fraud counterclaim, which was (as is explained in more detail below) the only real challenge to the validity of the Compromise. This was not a case in which delay might place the court in any better position to decide that issue than she already was.

30. The fourth and final reason why the judge's decision was wrong was that there were no compensating advantages to be derived from deferring the validity issue to be re-litigated from scratch in fresh proceedings after the grant of probate. The recollection of relevant witnesses could only decline over time, and the documentary material could not, to put it at its lowest, gain in probative value over time. Furthermore the validity issue was entirely separate from any practical issues which might arise after the grant of probate about the enforcement of the Compromise, if valid.

31. Subject to one point, the Board recognises that the question when to determine an issue raised in proceedings is essentially a case management decision, in respect of which the exercise of discretion by an experienced judge should not lightly be overturned, all the more so by the Board after it has been affirmed by the Court of Appeal. But the judge did not just defer or adjourn that issue, to be determined at a later stage in the same proceedings. She refused all the relevant relief sought by Lauralee and dismissed the Children's counterclaim without deciding the fraud issue, in a final order bringing the proceedings to a close, subject only to a merely formal liberty to apply. The Board does not regard the outright refusal to determine an issue properly before the court in pending proceedings as in substance or form a matter of

case management. If it is an important issue which ought to have been decided in the proceedings, a refusal to do so amounts to a denial of justice.

32. But even if the judge's decision not to determine the validity issue might be regarded as a matter of case management, the Board is entitled to reverse it if it is a decision which no judge could reasonably make, viewed in context as at the time when it was made. In the Board's respectful view, the judge's decision not to determine the validity issue falls into that category, for the reasons already given.

Issue (B): Should the Board now determine or remit the issue as to the validity of the Compromise; and Issue (C): if the Board should determine the issue, then what is the appropriate determination?

33. The Board will consider these issues together in this part of the judgment.

(i) The Board's general approach to the question as to whether to determine or remit a factual issue

34. It is in comparatively rare cases that where, as here, the lower courts have made no factual findings in relation to an issue, that the Board will determine that issue rather than remitting it to a further hearing. Mr Jairam SC, on behalf of Lauralee, asserts that this is one of those rare cases because, without the need for too much analysis and examination, it is plain and obvious, not merely that the allegation of fraud is weak, but also that there is no chance of it succeeding. Accordingly, Mr Jairam states that it is appropriate for the issue to be determined by the Board to obviate the necessity for a further hearing with attendant expense and delay.

35. To determine whether this is one of those rare cases, it is appropriate to define the issue which has been raised as to the validity of the Compromise, and then to consider in some further detail the Compromise Documents, the statutory declarations of Krishna D Harry, the pleadings, the factual background, the witness statements, and the evidence at the trial.

(ii) The outcome if the Board considers it appropriate to determine the issue as to the validity of the Compromise

36. If it is plain and obvious that the allegation of fraud in relation to the Compromise cannot succeed if remitted, then the consequence is that a declaration as to the validity of the Compromise should be made in favour of Lauralee.

(iii) The issue raised as to the validity of the Compromise

37. The issue raised by the Children as to the validity of the Compromise is one of fraud. The Children accept that there were discussions with Lauralee leading to an oral agreement as to how Peter's estate should be distributed in a manner inconsistent with the Will. They assert that the oral agreement which they entered into with Lauralee was for a more limited redistribution of Peter's estate than the redistribution contained in the Compromise Documents. Under the more limited redistribution, Lauralee would only obtain one property in Florida and 20% of the sale from the Trinidad properties. In their Defence served on 20 September 2013, the Children allege, at para 17(c), that:

> "within a few weeks of the making of the oral agreement … [Lauralee] brought a few copies of a document each consisting of a few pages which Terance, [Gina and Lisa] signed as same was consistent with the said oral agreement."

They further allege, at para 17(d), that:

> "the agreement they signed did not contain anything to the effect that: (i) [Lauralee] resided with the deceased in a common law relationship or words to that effect, (ii) [Lauralee] be appointed as Legal Personal Representative of the deceased estate, (iii) that Dr Deonarine be removed as Applicant for the probate of the deceased will, and (iv) that any of the Trinidad properties or any part thereof be transferred or conveyed unto [Lauralee]."

The Defence, however, admitted at para 15 that "the signatures at the foot of each [of the Compromise Documents] appear to be their respective signatures." However, the Children allege, also at para 15, that "the remaining pages of the [Compromise

Documents] were never a part of the agreement they signed" and in their Counterclaim, at para 24, they allege that a fraud was committed by:

> "substituting and/or replacing all but the last page of the document executed by the [Children] and fraudulently alleging and/or purporting same to be the [Children's] document."

However, the Counterclaim does not expressly identify whom it is alleged substituted and/or replaced all but the last page of the document. The Counterclaim then seeks a declaration that the Compromise Documents are null and void, and of no effect.

38. Another allegation contained in the Children's Defence, at para 17(e), is that they "specifically deny signing any agreement or document or paper in the presence of Krishna D. Harry and deny ever having seen or met or heard of any Krishna D. Harry." Furthermore, Terance, in his witness statement, asserts that:

> "My sisters and I did not sign any agreement in the presence of Krishna D. Harry. I do not know him, never met or seen him."

Gina, in her witness statement, asserts that:

> "… I signed the agreement … not in the presence of Krishna D. Harry …. I do not know Krishna D. Harry, never met or seen him."

Lisa, in her witness statement, asserts that:

> "A week or two later Lauralee brought a written agreement consisting of a few pages (and also a few copies of it) which we, Terrance, Gina and I, signed and gave to Lauralee. …. No other person was present when we signed."

39. In relation to the issue as to whether the signatures at the foot of each of the Compromise Documents were Terance's signatures, he stated in his witness statement that "I agree that the signatures that appears as mine's are in fact mine's". Gina, in her witness statement also accepts, in identical wording, that "that the signatures that

appears as mine's are in fact mine's". Lisa's witness statement also used the same identical wording in accepting that the signatures at the foot of each of the Compromise Documents were her signatures. Accordingly, it is common ground, not only on the basis of the Children's Defence (see para 37 above) but also on the basis of Terance, Gina and Lisa's witness statements, that the signatures at the end of each of the Compromise Documents are their signatures.

40. At trial an issue arose as to the independence and reliability of the evidence contained in Terance, Gina, and Lisa's witness statements because of their use of identical wording. Both Lisa and Terance, who were the only siblings to give evidence at the trial, explained that Terance, Lisa and Gina came up with that wording when they prepared their statements "together" when they wrote the statements together "at the store." The evidence as to Terance, Gina and Lisa collaborating together in drafting their witness statements is a factor that the Board takes into account in determining whether it is plain and obvious that there is no chance of the allegation of fraud succeeding if remitted.

(iv) Points which can be made in relation to the pleaded case of fraud and the failure to put that case in cross-examination to Lauralee

41. There are several points which can be made in relation to the pleaded case of fraud, particularly in the context that any charge of fraud must be pleaded with the utmost particularity.

42. First, the allegation in the Defence at para 17(c) is that "within a few weeks of the making of the oral agreement … [Lauralee] brought a few copies of *a document* each consisting of a few pages which Terance, [Gina and Lisa] signed …" (Emphasis added). Furthermore, at para 24 of the Counterclaim it is alleged that a fraud was committed by substituting "all but the last page of *a document* executed by the children" (Emphasis added). Accordingly, as italicised, the allegation is that there was only one document consisting of a few pages that the Children signed.

43. Second, at para 24 of the Counterclaim, it is alleged that a fraud was committed by substituting "all but *the last page* of a document executed by the children" (Emphasis added). Accordingly, the alleged fraud is that all the pages of one document were removed and the signature page of that one document, which was the "last page" was then attached to the end of each of the three Compromise Documents.

44. Third, there is no express allegation as to who committed the fraud. Whilst the Board considers it inappropriate to leave the identity of those whom it is alleged have committed a fraud to an inference, it will proceed on the basis that (a) the fraud is alleged to have been committed by Lauralee, and (b) that the fraud was facilitated by Harry D Krishna in that he allegedly falsely witnessed the signatures of Terance, Gina, and Lisa. However, whilst the Board is prepared to proceed on that basis it was fundamental that these allegations of fraud, both of which involved Lauralee, should have been put to her in cross-examination. In the event, there was a failure to put either of these allegations of fraud to Lauralee in cross-examination, and the key question of whether there was an agreement to distribute the estate in the terms Lauralee asserted, was expressly withdrawn. The relevant exchange came at the end of Mr Seunath's cross-examination of Lauralee and was preceded by confusion as to the question being asked by Mr Seunath. The exchange was as follows:

> "Mr Seunath: I am saying that these Defendants, children of the Deceased are saying that there is and was never any agreement with you to abandon the Will and to share this estate you want too. Correct?
>
> Answer: There is no agreement to abandon the Will and ...
>
> Mr. Seunath: Will and to divide the estate as you saying in this case you to divide it.
>
> Answer: I still don't follow you.
>
> Mr. Seunath: It's correct? You still don't understand?
>
> Answer: No I don't.
>
> Mr. Seunath: I will leave it there mam.
>
> Answer: There is a problem with that question.
>
> Mr. Seunath: I will leave it there mam .... l will withdraw the question.

Judge: You will withdraw it?

Mr. Seunath: I withdraw the question."

The first two questions in that exchange suggested to Lauralee that there "was never any agreement with you to abandon the Will and to share this estate …" "as you saying in this case." The culmination of the exchange was that this question as to how Lauralee said the estate was to be divided was withdrawn. Accordingly, it was not put to Lauralee in cross-examination that the division contained in the Compromise Documents had not been agreed. Furthermore, the exchange and the entire cross-examination of Lauralee also illustrates that it was not put to her that she took the last page of the agreement that was signed by Terance, Gina, and Lisa and fraudulently attached it to the Compromise Documents. Furthermore, at no stage during the cross-examination of Lauralee was it suggested to her that she conspired with Harry D Krishna so that he would give false evidence that he had witnessed the signatures of Terance, Gina, and Lisa on the Compromise Documents. The allegation, if it was to be persisted in, ought to have been put.

45. If there is any equivocation as to whether it is appropriate to remit or to determine the issue as to the validity of the Compromise, the Board considers that the failure to plead properly the allegation of fraud and the fact that the central allegations were not put to Lauralee during cross-examination, would be factors in favour of determining the issue as opposed to remitting it. Otherwise, the Children would be given an undeserved opportunity to amend their hand at any re-trial.

(v) The compromise documents, the statutory declarations of Krishna D Harry and the certificates of the Notary Public

46. It is appropriate to describe in some further detail the three Compromise Documents.

47. The Agreement, dated 27 January 2012, is a detailed typewritten document drafted by Mr Jairam. It is 19 pages long with sequential numbering at the bottom of each page. There are 36 recitals set out between pages 2 and 9. In the Agreement, Lauralee is described as "the common law wife". In recital 3 it is stated that the common law wife and the deceased lived together as husband and wife and/or cohabitants in a bona fide domestic relationship. Recital 27 states that Gina and Lisa have consulted and obtained the advice of independent attorneys, Messrs Jacobi & Jacobi. On pages 18 and 19, the Agreement was signed by Lauralee and by Terance,

Gina, and Lisa. Terance also signed on behalf of Laura as her attorney. Krishna D Harry signed opposite each of the signatures of Lauralee, Terance, Gina, and Lisa signifying that the signatures were made in his presence. The Agreement was registered on 13 March 2012 in the Registrar General's Office, in Trinidad and Tobago under the Registration of Deeds Act Chapter 19:06.

48. The Deed, dated 27 January 2012, is also a detailed typewritten document drafted by Mr Jairam. It is 18 pages long with sequential numbering at the bottom of each page. There are 34 recitals set out between pages 2 and 9. The operative part of the Deed is in the same terms as the Agreement. On pages 17 and 18, the Deed was signed by the appellant and by Terance, Gina, and Lisa. Terance also signed on behalf of Laura as her lawful attorney. Krishna D Harry signed opposite each of the signatures of Lauralee, Terance, Gina, and Lisa signifying that the signatures were made in his presence. The Deed was registered on 19 March 2012 in the Registrar General's Office, in Trinidad and Tobago under the Registration of Deeds Act Chapter 19:06.

49. On 27 January 2012, Krishna D Harry made a statutory declaration before a Notary Public, Norma V Le Mignot, that on that date he did see the appellant, Terance as Laura's attorney, Terance in his own right, Gina, and Lisa sign the Deed, that their signatures were their true and proper handwritings, and that he witnessed the due execution of the Deed by each of them under his own signature. In turn, on 27 January 2012, Norma V Le Mignot certified that Krishna D Harry personally came and appeared before her and made the statutory declaration.

50. The Deed of Rectification, dated 7 June 2012, is a shorter typewritten document drafted by Mr Jairam. It is three pages long with sequential numbering at the bottom of each page. The Deed of Rectification was signed on page 3 by the appellant and by Terance, Gina, and Lisa. Terance also signed on behalf of Laura as her lawful attorney. Krishna D Harry signed opposite each of the signatures of Lauralee, Terance, Gina, and Lisa signifying that the signatures were made in his presence. The Deed of Rectification was registered on 18 September 2012 in the Registrar General's Office, in Trinidad and Tobago under the Registration of Deeds Act Chapter 19:06.

51. On 7 June 2012, Krishna D Harry made a statutory declaration before a Notary Public, Norma V Le Mignot, that on that date he did see the appellant, Terance as Laura's attorney, Terance in his own right, Gina, and Lisa sign the Deed of Rectification, that their signatures were their true and proper handwritings, and that he witnessed the due execution of the agreement by each of them under his own signature. In turn, on 7 June 2012, Norma V Le Mignot certified that Krishna D Harry personally came and appeared before her and made the statutory declaration.

(vi) Points which can be made about the Compromise Documents

52. There are several points that can be made about the Compromise Documents.

53. First, Terance, Lisa, and Gina accept that their signatures appear on the signature pages of each of the Compromise Documents.

54. Second, Terance unequivocally accepted at trial that he had a valid power of attorney dated 25 January 2012 enabling him to sign the Compromise Documents on behalf of Laura. The evidence of there being a valid power of attorney was in any event overwhelming. The power of attorney was signed by Laura in the presence of her husband, Sean McBride. On 5 March 2012, Sean McBride made a statutory declaration before a notary public, Lorie A Clark, that he was personally present on 25 January 2012 and did see Laura signing the power of attorney. In turn, on 5 March 2012, Lorie A Clark certified that Sean McBride personally came and appeared before her and made the statutory declaration. The power of attorney, the statutory declaration, and the certificate have all been registered in the Registrar General's office in Trinidad and Tobago.

55. In her statement of case in these proceedings, Lauralee alleged that by the power of attorney dated 25 January 2012, Laura appointed Terance as her lawful attorney to act on her behalf in respect of her share, rights, entitlement, or interest as a beneficiary under Peter's estate. Dr Deonarine's Defence dated 12 July 2013 admitted that Terance was Laura's lawful attorney. Laura and Terance in the Defence of the four children dated 20 September 2013 did not respond to the allegation that Terance was the lawful attorney of Laura. However, Gina and Lisa made no admissions regarding the Deed dated 25 January 2012. In evidence at trial, Terance stated that the signatures on the power of attorney appeared to be those of Laura and of her husband Sean McBride. He also accepted that the power of attorney was valid.

56. Third, the Board agrees with the observation of the judge at para 80 of her judgment, that Krishna D Harry's statutory declarations verifying the Children's signatures on the Compromise Documents "completely destroys any possibility of fraud": see para 15 above. The statutory declarations were admitted in evidence at trial. The Board considers that, in the circumstances of this case where the declarations were admitted in evidence and the allegation of fraud involving Krishna D Harry was not put to Lauralee in cross-examination, that those declarations provided overwhelming evidence undermining the allegation that Terance, Gina, and Lisa had never met Krishna D Harry and they clearly supported the Compromise Documents having been correctly executed in his presence.

57. Fourth, the Children have not relied at any stage of these proceedings on any feature of the three Compromise Documents indicating that they have been manipulated. For instance, there was no handwriting or expert evidence supporting the case of fraud. Rather, the typeface is the same throughout each of the Compromise Documents and the page numbering is consistent.

58. Fifth, all the signature pages are different so there was not a "last page" of another document that was attached to each of the Compromise Documents, as alleged in para 24 of the Counterclaim, see para 37 above. If there had been a "last page" then all the signature pages of the Compromise Documents would have been identical.

59. Sixth, the allegation of a "last page" of another document being attached to each of the Compromise Documents is inconsistent with the signatures being on two pages in the Agreement and the Deed.

60. Seventh, in respect of the Agreement, the signatures commence towards the bottom of page 18 whilst the top of that page contains clause (6). However, in respect of the Deed the signatures commence on page 17, but clause (6) ends at the bottom of the preceding page. This, again, is inconsistent with the allegation that there was a uniform "last page" that was attached to each of the Compromise Documents.

61. Eighth, a simple examination of the Compromise Documents shows that the writing and signatures on each of the signature pages differs. This, again, is inconsistent with the allegation that there was a uniform "last page" that was attached to each of the Compromise Documents.

62. The Board considers that these points are powerful indicators that it is plain and obvious that there is no chance of the allegation of fraud succeeding if the matter was remitted. The Board is confirmed in that view by several further matters.

(vii) The role of Lauralee's attorney in Trinidad

63. Lauralee retained Mr Jairam as her attorney in Trinidad. It is common ground that all the Compromise Documents were drafted by Mr Jairam who sent them to Florida to be executed and that on their return they were registered by him in Trinidad. Mr Seunath, on behalf of the Children, informed the Board that it was not suggested that Mr Jairam participated in or facilitated or knew of the fraud that the Children allege was perpetrated by Lauralee. The Board considers that it is highly

improbable that Mr Jairam would not have known of any fraud (if there was one) given that he drafted the Compromise Documents, he sent those documents to Florida, they were returned from Florida, and he then registered those documents in Trinidad. The Board considers that this is a further indication supporting the conclusion that there is no chance of the allegation of fraud succeeding if it was remitted.

(viii) Delay in making any allegation of fraud

64. By letter dated 21 May 2012, the appellant's attorney, Mr Jairam, sent copies of the Agreement and of the Deed to Mr Neebar, the attorney for Dr Deonarine. The letter was also copied to Dr Deonarine. There was no reply to that letter. Given Dr Deonarine's position as the putative executor of the Will and given that the Compromise Documents distributed Peter's estate in a way inconsistent with the Will to the disadvantage of the Children, the Board considers it highly probable that Dr Deonarine would have sent the Agreement and the Deed to the Children or at the very least have informed them of their contents. In that context the Board considers it surprising that no allegation of fraud was made in relation to the Compromise Documents until some one year and four months later when it first emerged in the Children's Defence served on 20 September 2013.

65. Also, the Board considers that it is probable that the Children executed the Deed of Rectification on 7 June 2012 at a time after they had been provided with copies of the Agreement and the Deed or after they had been informed as to the terms of those documents.

66. The Board considers that these are further indications supporting the conclusion that it is plain and obvious there would be no chance of the allegation of fraud succeeding if the issue as to the validity of the Compromise were remitted.

(ix) The evidence on behalf of the Children at trial

67. Lisa did not give evidence at trial so that the bald assertion in her witness statement, that the Compromise Documents were "not the same agreement that we signed and it consist of too many pages", was not subject to scrutiny under oath during cross-examination. Furthermore, it is significant that in her witness statement Lisa makes no mention of having read the document which she agrees she signed and the only reason why she states that it was a different document than the Compromise Documents is that it consists of "too many pages." However, she does not state the number or approximate number of pages in the document which she did sign. In such

circumstances, and also in the context of the statutory declarations of Krishna D Harry, which were admitted in evidence and were not challenged during the cross-examination of Lauralee, the Board considers that no weight should be given to Lisa's witness statement in determining whether it is plain and obvious that there is no chance of the allegation of fraud succeeding if remitted.

68. Gina gave evidence at trial and was cross-examined on the Compromise Documents. She accepted it was her signature on those documents. She was then asked a series of questions as follows:

> "Question: Now you have accepted Gina that this is your signature on this document. Am I right?
>
> Answer: That's my signature but the [Inaudible] that was before I never read it.
>
> Question: You never read it?
>
> Answer: No.
>
> Question: Okay. And but you chose not to read it?
>
> Answer: No I never saw it.
>
> Question: You never saw it?
>
> Answer: No.
>
> Question: Didn't you ask what you were signing? Didn't you inquire about what it is I am signing?
>
> Answer: Yes but I was presented with this paper that I signed, I was presented with this one and ....
>
> Question: You were presented with this paper and what?

> Answer: Yea I wasn't presented with a packet like that. There is a lot of papers there. I didn't .... I just skimmed through the first couple of them and I don't remember those papers."

In that exchange she did not make the case that she had read the document which she had signed so that she could positively state the Compromise Documents were different from the document that she signed. In effect, her evidence was similar to Lisa's witness statement evidence in that the only reason why she could say that the document she signed was different from the Compromise Documents was that there were a lot of papers in the Compromise Documents compared to the Document that she signed. In the context of the statutory declarations of Krishna D Harry, which were admitted in evidence and were not challenged during the cross-examination of Lauralee, the Board considers that no weight should be given to Gina's evidence as to execution of the Compromise Documents in determining whether it is plain and obvious that there is no chance of the allegation of fraud succeeding if remitted.

69. Terance gave evidence at trial and was cross-examined on the Compromise Documents. He accepted it was his signature on those documents and that he had signed each of the documents twice. Once on his own behalf and once as Laura's attorney. It was put to him that his signature was witnessed by Krishna D Harry, and that the Notary Public gave a certificate confirming that Krishna D Harry came before her and declared "on the penalty of law" that he was present when the Children signed. In response, Terance denied ever meeting or seeing Krishna D Harry. However, in the context of the statutory declarations of Krishna D Harry, which were admitted in evidence and were not challenged during the cross-examination of Lauralee, the Board considers that no weight should be given to Terance's evidence as to execution of the Compromise Documents in determining whether it is plain and obvious that there is no chance of the allegation of fraud succeeding if remitted.

(x) Independent legal advice

70. It was tentatively submitted by Mr Seunath, on behalf of the Children, that the issue as to the validity of Compromise ought to be remitted to the High Court as there had been no determination as to whether the Compromise was invalid on the basis that, prior to executing the Compromise Documents, the Children had not received independent legal advice. However, the Children were all adults in 2012 and Mr Seunath was unable to provide any satisfactory explanation as to why, if they chose not to obtain legal advice, the Compromise should in law be considered invalid. Furthermore, there was clear evidence that Gina and Lisa had in fact obtained advice from Messrs Jacobi & Jacobi, and in clause 13 of the Agreement and in clause 13 of the

Deed, the Children acknowledged that they had been recommended to take independent advice.

71. The Board considers that there is no substance in the submission on behalf of the Children that independent legal advice was a pre-requisite to the validity of the Compromise. In addition, the Board considers that it is plain and obvious that Gina and Lisa did obtain independent advice and that Terance and Laura had been advised to do so. Accordingly, there is no requirement to remit to the High Court any issue as to the validity of the Compromise based on any of these adult children not having had the benefit of independent legal advice prior to executing the Compromise Documents.

(xi) Conclusion in relation to issues (c) and (d)

72. The Board concludes that it is appropriate to determine the issue as to the validity of the Compromise rather than remitting that issue to the High Court, as it is plain and obvious that there is no chance of either of the Children's allegations succeeding, namely (a) the allegation of fraud and (b) the allegation of invalidity of the Compromise based on the Children lacking independent legal advice prior to execution of the Compromise Documents.

73. The Board arrives at that conclusion for the reasons which have been given.

74. In relation to the allegation of fraud the primary reasons can be briefly summarised. First, the allegation that Terance, Gina, and Lisa signed one document as opposed to three Compromise Documents and that the "last page" of the document which they signed was then attached to the end of each of the three Compromise Documents does not withstand physical examination of the Compromise Documents. The signature pages of each of the three Compromise Documents are not uniform, which would have been the case if a fraud had been committed in the way alleged by the Children. Second, the Board, in agreement with the observation of the judge, considers that Krishna D Harry's statutory declarations, verifying the signatures on the Compromise Documents, provided overwhelming evidence undermining the allegation of fraud, particularly given that the declarations were admitted in evidence and an allegation of fraud involving Krishna D Harry was not put to Lauralee in cross-examination.

75. In relation to the allegation that the Compromise was invalid on the basis that the Children lacked independent legal advice prior to execution of the Compromise Documents, Mr Seunath was unable to provide any satisfactory explanation as to why,

if the Children chose not to obtain legal advice, that the Compromise should in law be considered invalid.

76. Accordingly, the Board will grant a declaration, in terms to be agreed between the parties and settled by the Board, that Lauralee and the Children validly executed the Agreement, the Deed, and the Rectification Deed.

Issue (D): Was the claim in relation to Laura's Valley pleaded?

77. Lauralee's primary claim was to establish the validity of the Compromise. It was only if the Compromise was invalid that she sought to rely on an alternative claim that she had contributed to the acquisition of Laura's Valley pursuant to an express or implied agreement with Peter so as to be entitled to a beneficial interest. The Court of Appeal, at para 19 of its judgment, stated that:

> "In truth and in fact the case posited by [Lauralee] in her statement of case, … was simply to enforce the written agreement. [Lauralee], by the action, never sought relief based on her … contributions to the acquisition of the assets of the deceased."

The Court of Appeal held that the judge was in error in making any award in relation to Laura's Valley as the alternative claim had not been pleaded.

78. The Board tends to the view, in agreement with the Court of Appeal, that the alternative claim was not adequately pleaded as a claim as opposed to the background facts which gave rise to the motivation for Lauralee and the Children to enter into the Compromise. However, the alternative case no longer needs to be decided as the Board has determined the issue in relation to the Compromise in favour of Lauralee.

Conclusion

79. The Board allows Lauralee's appeal and grants a declaration, in terms to be agreed between the parties and settled by the Board, that Lauralee and the Children validly executed the Agreement, the Deed, and the Rectification Deed.