Hilary Term
[2025] UKPC 11
Privy Council Appeal No 0008 of 2023

JUDGMENT

Nirmal Mahadeo (Appellant) *v* Candice Mahadeo (Respondent) (Trinidad and Tobago)

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

before

Lord Lloyd-Jones
Lord Leggatt
Lord Stephens
Lady Simler
Sir Andrew Moylan

JUDGMENT GIVEN ON
10 March 2025

Heard on 22 January 2025

Appellant
Anthony V Manwah
(Instructed by Anthony V Manwah (Trinidad))

Respondent
Zeik Ashraph (did not appear)
(Instructed by Ashraph & Ashraph Attorneys at Law (Trinidad))

SIR ANDREW MOYLAN:

Introduction

1. The parties to this appeal are siblings. The appellant is Nirmal Mahadeo (also called Nimal Mahadeo) and the respondent is Candice Mahadeo. The third sibling, who was not served with the proceedings and has taken no active part, is Geshia Mahadeo.

2. The appellant was represented at the hearing by Mr Anthony Manwah. The respondent's counsel, Mr Zeik Ashraph had provided written submissions but, unfortunately, at the very last moment he was unable to attend the hearing.

3. The parties' father died on 25 January 2008. Under his will, dated 18 April 2005, he left his Property known as 194 Eastern Main Road, Barataria, Trinidad and Tobago ("the Property") to his three children as joint tenants. Probate was granted in respect of the will on 3 October 2008 and, by a Deed of Assent executed by the sole executor dated 14 July 2009, the legal title to the Property was vested in the names of the three children.

4. At the time of the father's death, the appellant was living at the Property with his father. He has remained living there since then. The respondent lives elsewhere in Trinidad and Tobago in rented accommodation. The third sibling lives in the USA.

5. The respondent has been seeking to realise her share of the Property since at least April 2009. There was a prolonged period of unsuccessful negotiations between the parties before the respondent commenced proceedings on 15 March 2016. By her claim, the respondent sought orders for the Property to be partitioned or to be sold in lieu of partition with the proceeds distributed and for an account of the rents received by the appellant. The proceedings were defended by the appellant who, in so far as relevant to this appeal, relied on an alleged agreement by which he said the respondent had agreed to sell him her interest in the Property for $500,000. The trial judge, Margaret Mohammed J, found that there was "no agreement" between the respondent and the appellant for the sale of her interest and that, accordingly, the appellant had no defence to the respondent's claim. On appeal, the Court of Appeal dismissed the appellant's challenge to the judge's finding that there was no such agreement.

6. As can be seen from this brief summary, this is a second appeal which raises the application of the principle set out in *Devi v Roy* [1946] AC 508, namely that save in exceptional circumstances the Board will not review concurrent findings of fact. This issue was raised in the respondent's written case but had not been addressed by the appellant. The Board drew this to Mr Manwah's attention at the outset of the hearing and invited him to identify what might justify the Board taking an exceptional course in this

case. As explained below, the Board was not persuaded by Mr Manwah's submissions that there was any defect or error which would justify departing from its settled practice and indicated to him that the substantive appeal would be dismissed.

7. This left the question of the appropriate remedy which, as explained further below, also formed part of the appeal with Mr Manwah submitting that there should be an order for the sale of the Property. The Board indicated that, in particular because of the absence of Mr Ashraph, this issue would be addressed by way of written submissions as directed after the hearing. Directions were duly given requiring the parties to address the question of whether there should be a sale of the Property and, if so, the form of such an order. The Board's provisional view, as set out in the directions, was that there should be an order for sale in the form provided. The parties were required to state whether they agreed the terms of the proposed order and, if not, to set out the order which they submitted should be made. In response, the parties agreed both that there should be an order for sale and to the proposed form of the order apart from two minor amendments suggested by Mr Manwah.

Factual Background

8. The Board will briefly refer to further aspects of the background. Quotations are largely from the trial judge's judgment.

9. The Property comprises two single-storey structures. At the front is a building which has been rented by the appellant "to the operators of a bar and he has collected rent for his sole use and benefit". The building at the back is "being used as his residence". Since the death of their father, the appellant has "remained in exclusive occupation of the disputed property and he has refused to allow the [respondent] access or entry upon it". In the post-hearing communications with the Board, Mr Manwah stated that there are two tenants who pay rent of $4,500 per month and $3,000 per month.

10. In April and June 2009, letters were written by the lawyer acting for the respondent offering to purchase the appellant's share of the Property. These referred to the fact that the appellant had been occupying the Property "for several years … to the exclusion of your sisters" and that a valuation needed to be obtained. It was also said that if the appellant continued to fail to respond, proceedings would be commenced. In response, the lawyer then acting for the appellant wrote in July 2009 offering to purchase the respondent's and the other sister's interests in the Property and agreeing to a valuation.

11. There is then a gap in the correspondence until February 2011 when the lawyer acting for the respondent wrote directly to the appellant saying: "we commissioned the services of a valuator after agreement with your then attorney" (it would appear in 2009) but "I was instructed by the valuator that you obstructed the process". The appellant then

instructed another lawyer who wrote in December 2011 that the appellant was willing to purchase the respondent's interest in the Property "at a price to be agreed". Subsequently, by letter dated 27 January 2012, the appellant offered to buy the respondent's interest for $300,000 although it subsequently emerged that the appellant had obtained a valuation in May 2011 which valued the Property at significantly more than this ($1.5m).

12. Following the disclosure of the valuation, the respondent's lawyer wrote in May 2012 saying that the valuation needed to be updated. They wrote again in 2013 saying that there was "absolutely no question" of accepting the May 2011 valuation as it was, by then, "more than 2 years old".

13. The trial judge's assessment was that the respondent had "entered into negotiations with the [appellant] to receive the monetary equivalent of her share in the disputed property [but] the [appellant] refused to carry on the negotiations in good faith or to pay to the [respondent] her share of the true market value. In an effort to have the matter resolved amicably, by letter dated 26 November 2015, the [respondent] offered her share of the disputed property to the [appellant] for [$500,000 to be paid on or before 31 December 2015]. However, she received no response". This was followed, as referred to above, by the respondent commencing proceedings on 15 March 2016.

Proceedings

14. In her Statement of Case, which contains a Certificate of Truth signed by her, the respondent set out a summary of the history. She sought orders that the Property "be partitioned in 3 equal shares"; that the Property "be sold in lieu of partition and the proceeds distributed among the joint owners"; a one-third "share of all rents received from" the Property; costs; and "Any such further or other relief as the Court deems fit".

15. In his Defence and Counterclaim, the appellant alleged, in paragraph 5, that:

> "[the appellant] agreed to purchase and the [respondent] agreed to sell her share in the property for $500,000, which sale is to be completed 9 months from 29th April 2016. This was confirmed by the [respondent] by her letter to the [appellant] dated 29th April 2016. To date, the [respondent] has refused to complete the said agreement".

The appellant sought specific performance of "the agreement dated 29th April 2016". The appellant also advanced a proprietary estoppel claim but that does not form part of this appeal to the Board so it is not necessary to deal with it further.

16. The appellant relied on a further valuation which he had obtained. This was dated 2 May 2016 and valued the Property at $2.4m, namely 60% more than it had been valued by the same valuer in 2011.

17. In the Reply and Defence to Counterclaim, "Paragraph 5 of the Defence [was] denied". It was alleged that the appellant and the respondent had had a conversation "on or around 28th April 2016" in which the respondent agreed, at the appellant's request, to "allow [him] a period of nine months within which time to obtain the money to purchase her 1/3 share". It was also alleged that the "value of that share had not been discussed between them" and it was denied that the respondent had agreed to accept the sum of $500,000.

18. The respondent further asserted that on 29 April 2019 a friend of the appellant's "attended [her] workplace while she was on duty and asked that she sign a letter for the [appellant] based on their discussions the day before. The [respondent] signed the said letter without reading it". When she later read "the contents of the said letter, [she] immediately called [the friend] and indicated that she had never agreed to terms relating to the value of her interest and did not intend to be bound by same".

19. In June 2016, a draft sale agreement was sent by the appellant's lawyer to the respondent providing for the sale of the latter's interest in the Property to the former for $500,000. The respondent did not sign it. This was followed by a strong letter of complaint from the respondent's lawyer saying that this step should not have been taken "without recourse to us".

20. The appellant and the respondent both filed witness statements. For reasons that are not clear, some parts of the respondent's statement were struck out. This included her account of what she and the appellant had discussed and agreed on 28 April 2016. The following paragraph, 18, stated:

> "Not being satisfied with my oral agreement to allow him the nine months to pay me, [the appellant] sent his friend with an already drafted letter for me to sign as to what we had agreed upon the day before."

21. In his witness statement, the appellant stated that he had "never stopped or prevented any of my sisters from coming to the property". His account of what happened in April 2016 was as follows:

> "On the 28th April, 2016 at about 2:00pm at Nari's Sport Bar on 6th Avenue, Barataria I had a meeting with [the respondent]

> about my purchasing the property. This meeting was arranged by … , a close friend of the family. Also at that meeting were [the friend] and his friend …. At that meeting [the respondent] agreed to sell me her share of the property for $500,000.00 and agreed to sign a document stating so. We also agreed that she would sign the document the next day and that [the friend] would collect it from her. The next day at about 5:00pm [the friend] came and gave me a document which stated that she was selling me her share of the property to me for $500,000.00."

The "document", a letter dated 29 April 2016, was exhibited to the statement. It is headed: "Re: Property to be used for Collateral". The text is as follows:

> "Dear Nimal,
>
> This is to advise that I have given you authorization to use the property located at 194 Eastern Main Road, Barataria as collateral for obtaining a loan in the amount of $1,200,000.00.
>
> Based on our agreement you would have 9 months effective from today's date April 29, 2016 in which to pay me the amount of $500,000.00 which represents my share of the property located at 194 Eastern Main Road, Barataria.
>
> Yours truly"

It is then signed in the respondent's name.

22. There were no witness statements from anyone else. At the hearing, the trial judge heard oral evidence from the appellant and the respondent.

First Instance Judgment

23. The judgment summarised the background and the pleadings. The judge set out the issues to be determined as being:

> "(a) Did the [respondent] agree to sell the disputed property to the [appellant] in the Agreement and if so, is it enforceable?

> (b) Has the [appellant] acquired an additional interest in the disputed property and if so what is the value of the additional interest?
>
> (c) Is the [respondent] entitled to one third of the rent received from the disputed property since the Deed of Assent?"

As the judge then said, in the absence of any evidence from any other witness, "It therefore came down to the credibility of each party's evidence and which party's case was more plausible".

24. There is a note of the oral evidence of the parties. The respondent gave very limited oral evidence. She confirmed that the contents of her witness statement were true and was briefly cross-examined. She was asked no questions, and not cross-examined, about what had been agreed in April 2016 or the letter dated 29 April 2016.

25. The appellant was extensively cross-examined. In answer to a question that he had never been serious about paying his sister, he replied:

> "Because I never got a written agreement to carry to the bank."

There was then the following exchange:

> "Question: Is that the reason why you never paid any such money?
>
> Answer: How could I pay something that I don't know how to payor how much to pay (sic)."

The appellant also denied that he had prepared the letter dated 29 April 2016 and said that he did not know who had drafted it. Later, when again asked why he had not paid anything, the appellant replied: "Never had an agreement".

26. After a detailed consideration of the evidence, the judge found that the respondent was "a witness of truth and her evidence was credible". Her evidence was "consistent" and:

> "In my opinion there was no plausible explanation why the [respondent] would dramatically change the position which she adopted from since April 2009 which was the shares of all the owners of the disputed property was to be determined based on the market value and accept a price which was significantly less than the sum it was valued for."

27. In contrast, the judge found that the appellant's evidence lacked "consistency … credibility and … plausibility". The judge also considered that she was entitled to draw an adverse inference from the fact that the appellant had not called the friend (who he said was at the meeting with the respondent on 28 April 2016 and who had visited the respondent the next day) to corroborate his evidence. She referred to the appellant's oral evidence that "he never paid anything to the [respondent] because he never had an agreement". This was "not consistent with his evidence … that at the meeting on the 28th April 2016 the [respondent] agreed to sell her share … for $500,000 and on the next day [the friend] gave the [appellant] a document containing such terms". She also found that:

> "If the [appellant's] evidence was credible and he had acted in good faith he would have paid the [respondent] the sum of $500,000.00 since according to him the Agreement was valid. In my opinion the reasons the [appellant] did not pay the [respondent] anything based on the First Agreement was because he knew that the [respondent] did not agree to sell her share for $500,000.00 and he knew that the manner in which the [respondent] signed the document was suspicious."

28. The judge concluded that "there was no agreement between the [appellant] and the [respondent] whereby she agreed to sell her one-third interest in the disputed property to the [appellant] for $500,000". She, accordingly, dismissed the appellant's counterclaim for specific performance of the alleged agreement.

29. The judge made an order, as then sought by the respondent, that the appellant purchase her interest in the property for $800,000 and a further order that the appellant pay the respondent one-third of the rents he had received from the date of the Deed of Assent. An account was ordered in respect of the latter provision.

Appeal to Court of Appeal

30. The appellant appealed to the Court of Appeal. The Grounds of Appeal were: (a) the decision of the judge "cannot be supported by the evidence"; (b) the decision of the judge "is against the weight of the evidence"; and (c) the decision of the judge "is contrary to the law".

31. The appellant's case on appeal was, in summary, that the trial judge "took into account extraneous facts and facts which were not before her in evidence" because, on a proper analysis, the only finding open to the trial judge had been that there was an enforceable agreement for the sale of the respondent's interest in the Property to the appellant for $500,000.

32. The analysis relied on by the appellant was, in summary, as follows. The appellant had "pleaded the agreement at paragraph 5 of the Defence". In the Reply and Defence to Counterclaim "the agreement was admitted by" the respondent. The respondent further admitted that she had signed the letter dated 29 April 2016. There was, therefore, "no dispute that the [respondent] signed the agreement". The only defence to the agreement relied on by the respondent in her pleadings was that "she did not read it" before she signed it. However, the respondent gave "no evidence whatsoever that [she] signed it without reading it". Her only evidence was in her witness statement which referred to her "oral agreement to allow him nine months to pay me" and to the "already drafted letter for me to sign as to what we had agreed upon the day before". In the absence of proof that the respondent did not read it, "that agreement stands". The respondent had, accordingly, "failed to prove that the agreement of 29th April 2016 is not binding". There was "no evidence" on which the trial judge could have found that the agreement was not valid and she "took into consideration extraneous matters and evidence and her analysis of this issue and her conclusion were plainly wrong".

33. During the course of the hearing before the Court of Appeal, Mr Manwah accepted that the "crux of the matter" was whether there was an agreement between the parties for the sale of the respondent's interest in the Property to the appellant for $500,000. He also accepted that the trial judge had correctly identified the *first* issue which she had to determine, namely "Did the [respondent] agree to sell the disputed property to the [appellant] in the Agreement and if so, is it enforceable?". When asked whether this required the judge to make a finding as to what had been agreed on 28 April 2016, Mr Manwah responded that it was "clear that there was an agreement, an oral agreement the previous day" and the letter "confirmed the previous day's agreement" – "That's [the respondent's] own evidence". Further, and importantly, Mr Manwah also accepted towards the end of his submissions that the letter of 29 April 2016 was "a memorandum of the agreement".

34. The Court of Appeal dismissed the appeal with a short ex tempore judgment given by Pemberton JA. She first referred to the approach taken by an appellate court to challenges to findings of fact as set out in, among other cases, *Beacon Insurance Co Ltd v Maharaj Bookstore Ltd* [2014] UKPC 21. Although not quoted by Pemberton JA, it is apposite to quote what Lord Hodge said, in giving the judgment of the Board in that case, at para 12:

> "It has often been said that the appeal court must be satisfied that the judge at first instance has gone 'plainly wrong'. See, for example, Lord Macmillan in *Thomas v Thomas* [1947] 1 All ER 582 at 590, [1947] AC 484 at 491 and Lord Hope of Craighead in *Thomson v Kvaerner Govan Ltd* [2003] UKHL 45, 2004 SC (HL) 1 (at [16]–[19]). This phrase does not address the degree of certainty of the appellate judges that they would have reached a different conclusion on the facts: *Piggott Brothers & Co Ltd v Jackson* [1991] IRLR 309 at 312, [1992] ICR 85 at 92 (Lord Donaldson of Lymington MR). Rather it directs the appellate court to consider whether it was permissible for the judge at first instance to make the findings of fact which he did in the face of the evidence as a whole. That is a judgment that the appellate court has to make in the knowledge that it has only the printed record of the evidence. The court is required to identify a mistake in the judge's evaluation of the evidence that is sufficiently material to undermine his conclusions."

35. Pemberton JA set out that the "crux" of the case was whether the respondent had agreed to sell her interest in the Property to the appellant and, if so, whether that agreement was enforceable. In answering those questions, "the Trial Judge embarked on a lengthy and in-depth analysis of the evidence". She had considered "the consistency of the evidence presented by the parties … [and] the pleadings, the witness statements, and cross-examination" and "[a]nother tool of assessment used by the Trial Judge was the credibility of the witnesses". The judge had "made critical findings" in that she had found that the respondent was "a witness of truth and her evidence credible" while the appellant lacked "consistency … credibility and … plausibility".

36. The Court of Appeal specifically addressed the points which Mr Manwah considered were "pivotal to his arguments", namely that the judge's conclusions were flawed because her "findings were not substantiated by the evidence" and because she "had considered material that she ought not to have considered, for example, a pleading, whether the [respondent] read the agreement before signing". Contrary to the appellant's submissions the Court of Appeal did not consider that the case "revolve[d] around only whether the [respondent] read the document before signing". The Court of Appeal also rejected the argument that the trial judge had taken into account "extraneous evidence" or had misconstrued the evidence. In essence, the appellant had failed to demonstrate that the trial judge had "based her decision on evidence that either was not there or that she had misconstrued the evidence that was presented to her". The trial judge had been "entitled to come to her conclusions based on a holistic view of the evidence".

Appeal to the Board

37. There are two Grounds of Appeal: that the "Court of Appeal wrongly found that the Trial Judge was correct in finding: (a) that the agreement of 29th April 2016 was not valid; and (b) that [the appellant] is legally bound to purchase [the respondent's] share in the subject lands (sic) at the valued price".

38. As referred to above, the Court of Appeal's dismissal of the challenge to the trial judge's findings, in particular her finding that there was "no agreement" between the parties for the sale of the respondent's interest in the Property to the appellant, gives rise to concurrent findings of fact. It is well established that the Board will not review concurrent findings of fact of two lower courts save in exceptional circumstances.

39. In *Devi v Roy* itself, Lord Thankerton set out, at p 521, a number of propositions which included:

> "(4) That, in order to obviate the practice, there must be some miscarriage of justice or violation of some principle of law or procedure. That miscarriage of justice means such a departure from the rules which permeate all judicial procedure as to make that which happened not in the proper sense of the word judicial procedure at all. That the violation of some principle of law or procedure must be such an erroneous proposition of law that if that proposition be corrected the finding cannot stand; or it may be the neglect of some principle of law or procedure, whose application will have the same effect. The question whether there is evidence on which the courts could arrive at their finding is such a question of law."

40. In the respondent's submissions in response to this appeal, the Board was referred to *Water and Sewerage Authority of Trinidad and Tobago v Sahadath* [2022] UKPC 56. In the course of the Board's judgment, Lord Leggatt said:

> "15. The second issue raised is whether the trial judge 'had sufficient evidence before him' to conclude that the Authority's leaking pipeline caused the damage to the claimants' home. To succeed on this issue the Authority would need to persuade the Board to depart from its settled practice of declining to review concurrent findings of fact made by two lower courts, unless there are some special circumstances which would justify a departure from the practice.
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> 16. This practice, which can be traced back to 1849, was authoritatively stated in *Devi v Roy* [1946] AC 508, 521, and

> has been reaffirmed in many subsequent cases. As this consistent line of authority also makes clear, as a general rule the Board will depart from the practice only where the concurrent findings have been vitiated by an error of law or where there has been such a defective procedure 'as to make that which happened not in the proper sense of the word judicial procedure at all': see *Devi v Roy* at p 521, point (4). Recent cases in which the practice has been reiterated and followed include: *TLM Co Ltd v Bedasie* [2014] UKPC 25, paras 5, 13; *Bromfield v Bromfield* [2015] UKPC 19, para 10; *Central Broadcasting Services Ltd v Attorney General of Trinidad and Tobago* [2018] UKPC 6, paras 16-17; *Al Sadiq v Investcorp Bank BSC* [2018] UKPC 15, paras 42-44; *Dean v Bhim* [2019] UKPC 10, paras 6-8; *Smart v Director of Personnel Administration* [2019] UKPC 35, para 30; *Lares v Lares* [2020] UKPC 19, paras 9-10; *Dass v Marchand* [2021] UKPC 2; [2021] 1 WLR 1788, paras 15-17; *Ma Wai Fong v Wong Kie Yik* [2022] UKPC 14, paras 86-90; and *Sancus Financial Holdings Ltd v Holm* [2022] UKPC 41; [2022] 1 WLR 5181, paras 2-8.
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> 17. In its written case the Authority did not even refer to this settled practice of the Board, let alone attempt to argue that there are special circumstances which would justify departing from it in this case. An appellant whose appeal depends upon a challenge to concurrent findings of fact and who fails to identify properly arguable grounds for such a challenge in their written case must expect that their appeal will be dismissed without a hearing. That did not happen in this case, but at the outset of the hearing the Board followed the course adopted in *Sancus Financial Holdings Ltd v Holm* (see para 42 of the judgment) of inviting the appellant to explain, in brief oral submissions, why the appeal should be entertained."

41. As referred to above, the appellant's written submissions did not address the issue that his substantive appeal is from concurrent findings of fact. They essentially repeated the submissions made to the Court of Appeal, in particular that, because the respondent had given "no evidence that she signed the letter without reading it", there was no basis for dismissing the appellant's counterclaim for specific performance of the "agreement". The Board, accordingly, invited Mr Manwah to identify the circumstances in this case which would justify the Board departing from its settled practice.

42. Mr Manwah advanced his submissions forcefully. It would, however, not be unfair to him to say that they reflected, if not repeated, the arguments set out in his written

submissions. At the start of his submissions he identified the "core issue" as being whether the court should have determined that the "agreement" in the letter of 29 April 2016 was a "valid agreement" because "we pleaded the agreement" and the only pleaded "defence" was that the respondent had not read it before she signed it but she gave no evidence to this effect. There was, he submitted, "nothing else before the court". He went on to submit that the trial judge's finding that there was no agreement was "totally inconsistent with the evidence" and was not a finding open to her having regard, in particular, to the respondent's evidence in paragraph 18 of her witness statement (as set out in paragraph 20 above). That evidence created a "prima facie assumption" that the letter contained what had been agreed on 28 April 2016.

43. With all due respect to Mr Manwah, it was clear to the Board at the conclusion of his oral submissions that there was no basis for departing from the Board's settled practice as set out in *Devi v Roy*. His submissions did not establish any error of law which vitiated the finding that there was no agreement for the sale of the respondent's interest in the Property. Indeed, it was clear that the trial judge had plainly been entitled to conclude that there was no such agreement as explained in her judgment.

44. There are a number of flaws in the appellant's case as advanced below and as advanced in his submissions to the Board. First, although Mr Manwah suggested that the "core issue" was whether the agreement *in* the letter dated 29 April 2016 was a valid agreement, as he had accepted in the Court of Appeal and as he accepted during the course of the hearing before the Board, the letter was, at most, evidence of or a memorandum of an agreement. Indeed, paragraph 5 of the Defence and Counterclaim did not assert that the letter was an agreement. It asserted that there was an agreement which "was confirmed" by the letter. Accordingly, the appellant had to prove that, and the first issue that the court had to decide was whether, there was such an agreement.

45. Secondly, and contrary to Mr Manwah's submissions, the judge's finding was not excluded by the pleadings. The respondent did not admit that there was an agreement in her Reply and Defence to Counterclaim. Rather, she expressly denied paragraph 5 of the Defence and Counterclaim. She went on to assert that she had signed the letter without reading it but this did not mean, as submitted by Mr Manwah, that this was her "only defence" to the agreement. She had denied that there was any agreement at all.

46. Thirdly, and again contrary to Mr Manwah's submissions, the judge's finding was not "inconsistent with the evidence". Mr Manwah's submissions focused on the respondent's evidence which, he suggested, required the court to find that there was an agreement as alleged by the appellant. Even taking the respondent's evidence by itself, it did not establish the existence of this agreement. The respondent's witness statement did not state that there was such an agreement nor did it state that the letter of 29 April 2016 set out what had been agreed on 28 April 2016. Ultimately, Mr Manwah submitted that the letter raised "a prima facie assumption" as to what had been agreed. Even if that

submission was open to him, it does not establish that the judge's finding was inconsistent with the evidence because that finding was based on an assessment of *all* the evidence.

47. Mr Manwah's submissions did not address that wider evidential picture including, in particular, the appellant's evidence. The judge rejected the appellant's evidence as to the agreement including because, in the course of his oral evidence, he "testified that he never paid anything to the [respondent] because he never had an agreement" which the trial judge understandably considered "not consistent with his evidence" that there had been an oral agreement on 28 April 2016 as he had alleged.

48. In summary, therefore, not only did the appellant fail to persuade the trial judge that there was an agreement as he alleged, she found that there was no agreement. This was clearly a finding which was open to her and was soundly based on her assessment of all the evidence. There was nothing in the pleadings or in the respondent's evidence or any other factor which precluded her from making this finding. As the Court of Appeal said in upholding her finding, the trial judge reached this conclusion after a careful analysis of all the evidence and there was no flaw or error which entitled the Court of Appeal to interfere with her decision.

Conclusion

49. In conclusion, there has been no error in the proceedings below let alone one which would surmount the high hurdle required to justify departing from the Board's settled practice. The trial judge was entitled to find that there was no agreement and the Court of Appeal was right to dismiss the appeal. In those circumstances, this further appeal must also be dismissed.

50. As to the form of the order, in light of the parties' agreement, the Board heard no submissions on, and it is not necessary to consider the questions raised about, the appropriate remedy including whether the court had power to order the appellant to purchase the respondent's interest. There will be an order for the sale of the Property consistent with the proposed terms provided to the parties following the hearing.