[2022] UKPC 34
Privy Council Appeal No 0015 of 2020

JUDGMENT

Emlyn Quashie (Administratrix Pendente Lite of the Estate of the Deceased Beresford Solomon) (Appellant) *v* Ayana Solomon (Respondent) (Trinidad and Tobago)

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

before

Lord Hodge
Lord Hamblen
Lord Burrows
Lord Stephens
Lady Rose

JUDGMENT GIVEN ON
30 September 2022

Heard on 16 June 2022

Appellant
Anand Beharrylal KC
Siân McGibbon
(Instructed by Yaseen Ahmed & Associates (Trinidad))

Respondent
Anthony Manwah
(Instructed by Ronald Dowlath Attorneys (Trinidad))

LADY ROSE:

1. The appellant, Ms Quashie, brings this appeal on behalf of the estate of her former partner Mr Beresford Solomon. She challenges the refusal of the Court of Appeal of Trinidad and Tobago to set aside a deed signed on 4 February 2011 by the Registrar of the Supreme Court of Judicature of the Republic of Trinidad and Tobago ("the 2011 Deed"). The 2011 Deed records that it is made between Mr Solomon on the one part and his daughter Ayana Solomon on the other part and that it conveys a one half share and beneficial interest in a parcel of land identified in a schedule to the Deed: "TO HOLD the same unto and to the use of the Daughter in fee simple to the intent that [Mr Solomon] and Daughter together hold the parcel of land as tenants in common." The recitals to the 2011 Deed record that the Registrar is conveying the interest in the land to Ayana Solomon pursuant to a consent order of the Court of Appeal dated 7 December 1988 ("the Consent Order") made in matrimonial proceedings between Mr Solomon and Ricarda Solomon who was his former wife and the mother of Ayana. The recitals record further that the Consent Order ordered Mr Solomon to convey to Ricarda Solomon a half share in the property; that Ricarda died without Mr Solomon having conveyed that half share to her and that he had failed or refused to convey the half share to Ayana who has called on him to do so.

2. In 2011, Mr Solomon issued a claim in the High Court against Ayana Solomon seeking to set aside the 2011 Deed once he became aware of it. Following a trial, Rahim J dismissed the claim on 5 November 2013. That judgment was upheld by the Court of Appeal (Jamadar, Bereaux and Pemberton JJA) in the judgment handed down on 31 May 2019 and now under appeal before the Board.

The Facts

3. It is important to examine the facts in some detail since in the Board's view the resolution of some of the issues in this appeal turns on the proper construction of the Consent Order and hence on what the Registrar was entitled to do to implement it.

4. Beresford and Ricarda Solomon were married in July 1978 and their daughter Ayana was born on 18 February 1980. The property at the centre of this dispute is a parcel of land on Miller Street in Buccoo Village in the parish of St Patrick on the island of Tobago. It was conveyed in fee simple to Mr Solomon in 1980 by his grandmother. Unfortunately, the marriage broke down and Ricarda and Ayana moved out of the matrimonial home. In 1982 Ricarda petitioned for divorce and was

granted a decree nisi on 26 July 1982. She was granted custody of Ayana. She applied for a settlement of property order. There was a hearing before Permanand J at which both parties were legally represented. Judgment was handed down on 17 February 1986.

5. The main issue at the trial was the resolution of a factual dispute as to the extent of the parties' respective contributions to the money used to buy, renovate and maintain the matrimonial home and other substantial assets. The judge referred to evidence from an estate agent and valuer, valuing the matrimonial home at about $30,000. Permanand J said:

> "It is not in dispute that the land on which the matrimonial home stands has been conveyed to the husband by his grandmother – what is now in issue is whether the renovation and addition carried out to the matrimonial home were done by both the respondent and the applicant or by the respondent alone or the applicant alone and if the Court finds that the wife expended moneys, whether the same entitles her to a share in the matrimonial home."

6. Ricarda testified that over the period of three years of the marriage, she spent a total sum of $122,000 for the renovation and completion of the house and the purchase of three boats and two cars. Judge Permanand recited the evidence provided by Ricarda which described how she had paid the rent on the premises where the couple lived after their marriage and how she had then contributed substantial sums to the completion of the house in which Mr Solomon had been living with his grandmother and where Mr Solomon and Ricarda then lived. The judgment goes in detail through the source of the many sums of money which Ricarda said she had contributed, for example, for the acquisition of a boat, the *Zion Train*, bought for deep sea fishing.

7. Mr Solomon's evidence before Judge Permanand was that the matrimonial home was his grandmother's house and it had been completed and renovated with money which he had saved up. More generally he contested Ricarda's account of paying for boats, cars and other items.

8. The judge accepted Ricarda's evidence that she had expended the sums claimed by her to repair and extend the matrimonial home. After citation of authority Judge Permanand went on:

> "From the facts before this Court I find that the applicant expended moneys in the conveyance of the matrimonial home to the respondent, on renovations and extensions and furnishing of the matrimonial home. It would be inequitable for the respondent to be entitled to the whole matrimonial home when the applicant expended considerable sums of money as I have found. …
>
> I therefore hold that the applicant is entitled to a share in the house and land. The question is what share, bearing in mind that the applicant and respondent were married on July 25, 1978, and the petition filed on August 26, 1981, and that there is one child of the family. Also the evidence reveals that the applicant has since purchased a parcel of land in order to construct a home."

9. Judge Permanand held that Ricarda was entitled to one half share in the matrimonial home and in the lot of land on which the house stood and that Mr Solomon should convey to Ricarda one half share in the said house and land within six months, failing which the Registrar would be empowered to convey the half share in the house and land to Ricarda. She held also that Ricarda was entitled to a half share in various boats including the *Zion Train*. This was recorded in the order she made on 17 February 1986 ("the Permanand Order").

10. Mr Solomon was dissatisfied with the order made by Judge Permanand and lodged an appeal. The Board has not been provided with much information about the discussions or interparty correspondence that ensued but the appeal was settled by the Consent Order made on 7 December 1988 by the Court of Appeal (Bernard CJ, and Sharma and Edoo JJA) following a hearing at which both parties were represented by attorneys. The Consent Order provided that the order made by Judge Permanand:

> "be varied in:-
>
> (1) That [Mr Solomon] do convey to [Ricarda] in trust for the child of the family AYANA SOLOMON who was born on the 18th day of February 1980 a one half share and interest in the matrimonial property situate at Miller Street, Buccoo Point, more particularly described in Deed number 22640 of 1980 together with the building and appurtenances

standing thereon within twenty-one (21) days hereof and in default that the Registrar is empowered to do so."

11. The Consent Order also required Mr Solomon to pay Ricarda $7,000 being the value of a boat "in full and final satisfaction of all [Ricarda's] share and interest in the said boat".

12. It is common ground that Mr Solomon did not comply with the Consent Order and that Ricarda Solomon did not take any steps to enforce it by approaching the Registrar to make the conveyance. The dispute over why Ricarda did not enforce the order during her lifetime forms the basis for the promissory and proprietary estoppel claims by Mr Solomon.

13. Ricarda died on 25 November 2000. In 2009 Ayana discovered the Consent Order amongst her mother's effects. She took legal advice and approached the Registrar who made the 2011 Deed as described earlier. On discovering the existence of the 2011 Deed, Mr Solomon launched these proceedings seeking a declaration that the 2011 Deed is null and void and of no effect and a declaration that Mr Solomon is the owner of the whole of the disputed property in Buccoo Village.

14. In the Re-Amended Statement of Claim, Mr Solomon's pleaded case was that, after the making of the Consent Order, Mr Solomon had resumed friendly relations with Ricarda and that two months later "it was agreed verbally that the Claimant would pay the monies as ordered by the Court but that the stipulation requiring the transfer of the ½ share and interest would not be enforced". He had relied on this promise by paying Ricarda the $7,000 and had continued to live in sole possession of the property. Further, after an earthquake in 1997 which badly damaged the house, he built a new house on the parcel of land next to the property at a cost of about $320,000 and neither Ricarda nor Ayana had objected to that. Mr Solomon had then rented out the upper floor of the house and lived on the ground floor. He then spent a substantial sum building a second house which was built half on the land he owned and half on his grandmother's remaining land "in furtherance of the agreement and/or promise". This agreement "and the resulting actions by the Claimant" amounted, he alleged, to a promissory estoppel as a result of which he had suffered detriment by being put to expense.

15. Mr Solomon also asserted that the Consent Order was no longer effective as it was more than 22 years old and was "in excess of the twelve (12) year time period for validity of Court Judgments". At para 18a, which was inserted by way of amendment, he pleaded in the alternative that on 4 February 2011 (being the date of

the 2011 Deed), Ayana was barred by section 3 and/or section 16 and/or section 22 of the Real Property Limitation Act from making an entry and/or bringing an action to recover land or taking steps to obtain ownership or possession of the half share in the property.

16. At para 20a he pleaded that the 2011 Deed was null and void because, following his construction of the two houses on the lot, the subject matter of the Consent Order "was no longer in existence" at the time of that Deed.

17. In her Re-Amended Defence and Counterclaim, Ayana Solomon responded to the allegations on which the promissory estoppel was based broadly by putting Mr Solomon to proof of matters of which she had no knowledge and by alleging that any such promise or agreement would have been contrary to public policy. On the limitation period point, she pleaded simply that the provisions relied on by Mr Solomon were not applicable in her case. She also pleaded a counterclaim in which she sought an order for partition of the land, alternatively an order for sale in lieu of partition and an equal division of the proceeds of sale between them.

18. The hearing of Mr Solomon's claim to set aside the 2011 Deed took place before Rahim J in September 2013. Mr Solomon's witness statement which stood as his evidence in chief was almost entirely taken up with describing the work he had carried out on the houses on the property over the years. However, during cross-examination, Mr Solomon explained how it came about that the original order of Permanand J was varied by the Consent Order. It was put to Mr Solomon that at the High Court the judge ordered one half of the property to be transferred to Ricarda and that he was unhappy with that and appealed. Mr Solomon agreed:

> "I remember attending the Court of Appeal. On the 7th December 1988 we came to an agreement as to what would happen with the property. The agreement was to convey one half of the matrimonial home and property to Ayana Solomon. I agreed to that at the time. I went along with it. I didn't prefer anything. I was supposed to sign over a half share to Ayana and I didn't do it because I speak to my wife and we start back seeing each other and going out with each other. There was a lot of conversation that took place with both of us."

19. Later in his cross-examination, the evidence returned to this topic:

> "I understood the half share to be for the benefit of Ayana. I know that Ricarda made the agreement to give back to me the half share although it was for Ayana. I was legally represented at my divorce and at the Court of Appeal.
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> ...
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> Put: From the Court of Appeal order, Ayana had a half interest in the lot of land in Buccoo.
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> A: Well there was a court order after '88 that Ayana be given half the matrimonial home and property."

20. Rahim J handed down judgment on 5 November 2013. He recorded at the outset of his judgment that Ayana's attorney conceded before the hearing that the Permanand Order and the Consent Order had been based on an error in that the matrimonial home was not in fact built on the plot of land that Mr Solomon had acquired from his grandmother. He said "At the heart of the matter, however remains the dispute as to [Ricarda's] share in the land": para 11.

21. Rahim J dealt first with the limitation period submissions. He appears to have approached the limitation period issue as arising in relation to Ayana's counterclaim to partition the land rather than in relation to the enforcement of the Consent Order. He therefore addressed the question whether Ayana's entitlement to bring her counterclaim to partition the land was based on an interest derived from the Consent Order and hence whether it might be out of time. He held that the instrument which created the interest on which Ayana based her partition counterclaim was the 2011 Deed and the limitation period of 16 years which applied in respect of enforcing the 2011 Deed had not expired by the time the counterclaim was brought. He rejected the limitation period submissions on that basis.

22. Turning to promissory estoppel, Rahim J considered Mr Solomon's evidence as to what had happened between him and Ricarda, noting that Ayana Solomon could not give cogent evidence as to those events as she had been a child at the time: para 39. He found that Mr Solomon was an unimpressive witness. The court had to approach evidence of this nature with much scrutiny as it could easily be fabricated and so must be plausible, reasonable in the circumstances and accord with common sense. Given that the Consent Order must have reflected the fact that Ayana's interest had been at the forefront of Ricarda's mind, it did not accord with common

sense or appear reasonable to accept that Ricarda would surrender her interest in the property in exchange for the payment of the $7,000 to which she was already entitled under the Consent Order in respect of the less valuable boat. Rahim J dismissed the claim.

23. Mr Solomon appealed the decision. He died in December 2017 while the judgment of the Court of Appeal was pending. In October 2018 Ms Quashie was appointed Administratrix Pendente Lite for the estate for the purpose of this litigation. The Court of Appeal judgment was handed down at the end of May 2019. Pemberton JA gave the judgment with which Jamadar and Bereaux JJA agreed. The judgment dealt first with the promissory estoppel claim. The court rejected the submission that the judge had not properly assessed the evidence about Ricarda's promise not to enforce the Consent Order. At para 31, the court held that the judge could not be faulted in approaching the case on the basis that he must test Mr Solomon's evidence against what is plausible, reasonable and in accord with common sense. Pemberton JA analysed in detail Rahim J's findings and the submissions of Mr Beharrylal who appeared in the Court of Appeal for Mr Solomon. She agreed with the judge's conclusions that it was implausible that Ricarda, having pursued her claim to a share in the property, would then simply waive those rights in return for $7,000. She declined to draw any inference from the fact that Mr Solomon had rebuilt the house after the earthquake; since Mr Solomon undoubtedly owned half the house, his activities on the property "were consistent with activities of a ½ share owner who had no other place to call home": para 34. The other matters on which Mr Solomon relied in his witness statement had arisen after Ricarda's death so could not provide evidence of any promise having been made by her or any reliance by him on such a promise. She concluded that Mr Solomon had not proved to the court that the trial judge was plainly wrong to dismiss his estoppel claim.

24. Pemberton JA then dealt with the limitation defence. Like Rahim J she approached this by considering whether Ayana Solomon's counterclaim for partition was statute barred on the basis that the right she was asserting as entitling her to ask for a partition or sale derived from the Consent Order and hence might be time barred: para 38. She agreed with Rahim J's conclusion that any right that Ayana had to bring an action would have accrued only in 2011 when the 2011 Deed was executed and so was not time barred: para 39.

25. Pemberton JA then considered an additional issue as to whether the terms of the Consent Order had created a constructive trust in favour of Ayana, so that it was that Order which created the right on which Ayana was now relying. She held that the effect of the Consent Order was to make both Mr Solomon and Ricarda constructive trustees of the property for the benefit of their daughter: para 44. She

also held that it would be inequitable to allow their failure to implement that Order to defeat Ricarda's interest. But there was no time limit on the recognition of the creation of a constructive trust save if laches is raised and that had not been argued.

26. Having dealt with some further points raised by Mr Beharrylal, Pemberton JA summarised the court's conclusions as follows (para 58):

> "(1) there was no evidence of a promise made to sustain a plea of promissory estoppel;
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> (2) [Ayana Solomon's] counterclaim or sale in lieu of partition is not statute barred;
>
> (3) by the terms of the consent order, [Mr Solomon] was a constructive trustee of Ricarda's ½ share and interest in the matrimonial property; and
>
> (4) that the deed executed by the Registrar, vesting in [Ayana Solomon] a ½ share and interest in the matrimonial property, in fee simple, absolutely, was valid to effect such a conveyance."

27. The Court of Appeal therefore affirmed Rahim J's order in part, directing that the property be valued by a valuator, that Mr Solomon's estate be given the option to bid for the purchase of the property, failing which the property be sold on the open market and the proceeds divided equally between Mr Solomon's estate and Ayana.

The appeal before the Board

28. The Notice of Appeal raised a number of overlapping grounds which were helpfully grouped together by Mr Beharrylal, appearing for Ms Quashie, as raising four issues: (i) whether the Court of Appeal had erred in failing to overturn the judge's findings on the promissory estoppel and proprietary estoppel claims; (ii) whether Ayana's purported enforcement of the Consent Order and her counterclaim for partition or sale was statute barred; (iii) whether the Court of Appeal erred in holding that there was a constructive trust of Ricarda's half share created or declared

by the Permanand Order or the Consent Order; (iv) whether the 2011 Deed executed by the Registrar was valid and effective.

(a) The estoppel claims

29. The Board can dispose of the grounds of appeal challenging the Court of Appeal's conclusion on the estoppel claims briefly since the Board considers that the findings of the judge and the reasoning of the Court of Appeal in upholding those findings are unimpeachable. Mr Beharrylal fairly accepted in his submissions that the Board will rarely overturn concurrent findings of fact by the lower courts: see *Betaudier v Attorney General of Trinidad and Tobago* [2021] UKPC 7, para 14 referring to the principle to that effect established in *Devi v Roy* [1946] AC 508, 521. Mr Beharrylal sought to rely on the distinction drawn by Lord Lloyd-Jones in para 16 of the *Betaudier* judgment between findings of primary fact which will not generally be reviewed by the Board and the results of an evaluative exercise which do not fall within that principle. He argued that in the present case Rahim J was carrying out an evaluation of the evidence as to whether Ricarda had promised not to enforce the Consent Order so that the Board was entitled to carry out its own assessment of that evidence.

30. The Board rejects that submission. The evaluative exercise carried out in *Betaudier* was an assessment of whether an arresting police officer had reasonable cause to suspect that a person has committed an arrestable offence. It was necessary for the Board in that case to consider the different matters that the officer had had in mind at the time of the arrest and then consider whether those matters provided reasonable grounds for suspicion in relation to the particular offence for which the person was arrested. That question was a mixed question of primary fact and objective evaluation which, as the Board said in that case, does not fall within the *Devi v Roy* principle.

31. The present appeal is different. The issue before Rahim J was one of primary fact, namely whether Ricarda had in fact promised not to enforce the Consent Order during discussions with Mr Solomon shortly after the Order was made. The Board considers that Rahim J was right to treat Mr Solomon's evidence with caution given that Ricarda had died by the time of the hearing and Ayana was not able to give any relevant evidence on the point. He was entitled to decide whether to accept Mr Solomon's evidence by considering whether it was plausible that Ricarda would give up her daughter's entitlement in exchange for a small sum of money which Mr Solomon was already obliged to pay her under a different provision of the Consent Order.

32. The Court of Appeal at paras 26 to 37 of their judgment carried out a careful and detailed analysis of Rahim J's reasoning and of the objections raised by Ms Quashie. The Board sees no basis on which to interfere with that analysis.

(b) The limitation period

33. As described earlier, the trial judge and the Court of Appeal primarily addressed their minds to the issue whether Ayana's counterclaim seeking the partition or sale of the land was statute barred. They held that it was not, since her counterclaim was founded on title derived not from the Consent Order but from the 2011 Deed as the document which conveyed to Ayana the interest in the property which she sought to enforce in her counterclaim. Before the Board, Mr Beharrylal focused his submissions on different points, namely whether (i) Ayana's actions in requesting the Registrar to convey the property to her amounted to conduct which was statute barred and/or (ii) whether the Registrar's action in signing the 2011 Deed was conduct which was barred by the operation of a statutory limitation period.

34. Mr Solomon's pleaded case relied on two different statutory provisions. The first is section 3(2) of the Limitation of Certain Actions Act (Chap 7:09) (Act 36 of 1997) ("the LCAA"). This provides:

> "(2) An action shall not be brought upon any judgment after the expiry of twelve years from the final judgment and no arrears of interest in respect of any judgment debt, shall be recovered after the expiry of twelve years from the date of the final judgment."

35. Mr Beharrylal submitted that the time for enforcing the Consent Order therefore expired in 2000, 12 years after the order was made or, at the latest, in 2002 if the 12 years allowed by section 3(2) is extended by the four years in accordance with section 11 of the LCCA. Section 11 extends the period if the person to whom the right of action accrues was under a disability, as Ayana was until she attained the age of 18 in 1998.

36. During the course of the hearing before the Board, several problems arose in respect of Mr Beharrylal's reliance on the LCAA. First, it was pointed out that section 2(1) of the LCAA defined "action" as meaning any civil proceedings in a court of law other than those relating to real property. It is therefore unclear whether either

Ayana Solomon's request to the Registrar or the Registrar's making of the 2011 Deed could possibly amount to the bringing of an "action" on a judgment for the purposes of section 3(2) since it seems unlikely that either constitutes civil proceedings in a court of law and because, in any event, the request related to real property, namely the land in dispute. Secondly, and more fundamentally, Mr Manwah, appearing for Ayana Solomon, submitted that the Consent Order predated the enactment of the LCAA in 1997. He pointed out that section 20(1) of the LCAA provides that the Act does not apply "to any action brought upon a right of action which accrued before the commencement of this Act." The predecessor statute, the Ordinance relating to the Limitation of Personal and Mixed Actions (1845 Chap 5 No 6), was produced to the Board and Mr Beharrylal provided further written submissions on that Ordinance after the hearing before the Board. In those submissions, Mr Beharrylal very fairly accepted that the savings provision in section 20(1) on its face appeared to mean that the LCAA did not apply. However, he submitted that the 1845 Ordinance also did not apply because it was worded to apply only to money and chattels, not to actions for enforcing a judgment for the transfer of land. The applicable statute was therefore his second candidate, namely the Real Property Limitation Act Chap 56:03 ("the RPLA") which dates back to 1846. Section 3 of the RPLA provides that no person shall bring an action to recover any land after 16 years after the time at which the right to bring such action shall have first accrued to the person making or bringing the same. Section 4 deals with when the right of action first accrues in various situations:

> "4. The right to make an entry or distress, or bring an action to recover any land or rent, shall be deemed to have first accrued at such time as is hereinafter mentioned, that is to say-
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> …
>
> (c) when the person claiming such land or rent shall claim in respect of an estate or interest in possession, granted, appointed, or otherwise assured by any instrument (other than a Will) to him, or some person through whom he claims, by a person being in respect of the same estate or interest in the possession or receipt of the profit of the land, or in the receipt of the rent, and no person entitled under such instrument shall have been in such possession or receipt, then such right shall be deemed to have first accrued at the time at which the person claiming as aforesaid, or the person through whom he claims, became

entitled to such possession or receipt by virtue of such instrument;"

37. Section 16 of the RPLA provides that if at the time at which the right of any person to bring an action to recover land accrues, such person was an infant, then such person may, notwithstanding that the period of 16 years has expired, bring an action to recover such land at any time within eight years after the time at which the person ceases to be under any such disability.

38. Rahim J rejected the appellant's reliance on this provision in part on the ground that since the Consent Order was not an "instrument" within the scope of section 4(c), it did not grant Ayana a cause of action to recover the land so that any limitation period did not begin to run from the date of that order: see para 25 of Rahim J's judgment. He went on, "It therefore follows that the Defendant's request that the Registrar convey her half share interest to her, does not amount in law to 'bringing an action to recover land', but is the enforcement of the consent order in the terms provided for by the said order": para 28.

39. Mr Beharrylal argued that the word "action" in section 3 of the RPLA was not defined and was a broad term to cover any action and not limited to merely issuing a claim form. He also referred to section 22 of the RPLA which provides that on the expiry of the limitation period, the right and title to the land which could have been the subject of the time barred suit "shall be extinguished". He contended on the basis of these provisions in the RPLA that the conduct of Ayana in instigating the making of the 2011 Deed and the conduct of the Registrar in agreeing to do so was barred by these provisions. That bar arose either in 2004 which is 16 years after the making of the Consent Order (that being an instrument granting an estate to Ricarda and/or Ayana claiming through her for the purposes of section 4(c)) or at the latest in 2006, if the effect of section 16 was to add eight years to the limitation period for Ayana's benefit.

40. The Board does not consider that the limitation period in section 3 of the RPLA operates to render the 2011 Deed invalid. The Consent Order remained a valid court order pursuant to which Mr Solomon was obliged to transfer the land. There was no time limit imposed on that obligation in the Order itself and he remained obliged to convey the land until either he or the Registrar, once empowered, had done so. He could have decided to comply with that Order at any time and if he had done so, the transfer would not have been regarded as a gift but as made pursuant to the court's order. In the absence of Mr Solomon's compliance, it was open to Ayana to ask the Registrar to transfer the land in Mr Solomon's stead in the manner envisaged by the

Consent Order. What action, if any, Ayana could have taken to force Mr Solomon or the Registrar to make the transfer if the latter had refused is not an issue which arises in this appeal. The High Court and the Court of Appeal addressed a slightly different point, as explained above, and do not appear to have considered that the RPLA presented an obstacle to Ayana's request to the Registrar or to have undermined the Registrar's power (discussed below) to comply with the apparently extant Consent Order. In the Board's view, neither Ayana nor the Registrar has brought any action to enforce the Consent Order or to recover any interest in land. There is nothing in the limitation provisions that were presented to the Board that precludes or invalidates the voluntary compliance with a court order, however old that order is, and that is in effect what has happened here.

(c) The constructive trust and the scope of the Registrar's powers

41. Mr Beharrylal argued that the Registrar exceeded her powers. Those powers flow from section 24 of the Supreme Court of Judicature Act (Chap 4:01). That provides that, where a person neglects or refuses to comply with an order directing him to execute a conveyance, the High Court may order that the conveyance be executed by such person as the High Court shall nominate and a conveyance so executed "shall operate and be for all purposes available as if it had been executed or endorsed by the person originally directed to execute or endorse it".

42. Mr Beharrylal submitted that the Registrar is empowered by section 24 only to convey the land in strict compliance with the High Court's order and is not generally empowered to effect any transfer of property she might think would be just or convenient. The Registrar therefore had no power to convey the half share in the property directly to Ayana Solomon because, according to the Consent Order, the half share was supposed to be conveyed to Ricarda Solomon so that Ricarda would thereafter hold that half share on trust for Ayana. The Registrar was wrong, Mr Beharrylal submits, to "short circuit" the Consent Order by purporting to convey the half share directly from Mr Solomon's estate to Ayana Solomon rather than first to Ricarda's estate and then to Ayana Solomon. The Court of Appeal was also wrong, he submitted, to dismiss this objection on the basis that although "it may have been tidier" for the Registrar to convey the title to Ricarda's estate first, there was nothing to prevent her from conveying it directly to Ayana: see para 54 of the Court of Appeal's judgment. Mr Beharrylal contended that the Court of Appeal erred in purporting to get round this problem by finding a constructive trust whereby both Mr Solomon and Ricarda were constructive trustees of the property for the benefit of Ayana. Having regard to the terms of the Consent Order and the Registrar's statutory powers, the 2011 Deed was ultra vires the Registrar's powers and hence invalid.

43. In the Board's view, certain points emerge clearly from Judge Permanand's judgment. The main factual dispute before the judge at that stage was whether Ricarda's financial contribution had earned her a share in the beneficial interest in the property in which Mr Solomon undoubtedly held the whole legal title. The judge held that it had, so that the Permanand Order recognised that, as at the end of the marriage, the legal interest held by Mr Solomon was held as to half for himself and as to half on trust for Ricarda.

44. Mr Manwah submitted that the proper construction of the Consent Order should reflect the fact that the compromise agreement reached between Mr Solomon and Ricarda was that Mr Solomon would hold the legal title as to half on trust for Ayana rather than for Ricarda. He submitted that the Consent Order did not acknowledge or create or envisage a sub-trust of Ricarda's beneficial half interest in the property so that Ricarda would thereafter hold her own beneficial half interest in the property for the benefit of Ayana. The intention was rather that the implementation of the Consent Order would split the legal title which Mr Solomon held so that it was held jointly between him and Ricarda. If Mr Solomon had complied with the order, instead of him owning the whole legal title on behalf of himself and Ayana in equal shares, he and Ricarda would jointly hold the legal title, with the beneficial interest being held by them both, half for the benefit of Mr Solomon and half for the benefit of Ayana.

45. According to Mr Manwah's analysis, Mr Solomon's failure to comply with the order to transfer the legal title to Ricarda as he was supposed to did not, therefore, leave Mr Solomon still holding the legal title on behalf of himself and Ricarda in equal shares but left him holding the legal title on trust for himself and Ayana in equal shares. Ayana, having now attained her majority, was entitled to call for the transfer to herself of half the legal title to reflect her beneficial interest. That, Mr Manwah submitted, is what the Registrar achieved by the 2011 Deed.

46. The Board agrees that this is the more likely construction of the Consent Order. Mr Solomon's evidence quoted at paras 18. and 19. above was that he was unhappy with Judge Permanand's order because he did not want Ricarda to have any ongoing beneficial interest in the property; he preferred half the property to go from him to Ayana. Ricarda was clearly prepared to give up her half share to be taken instead by her daughter as the means by which provision would be made in the divorce settlement for Ayana's future. That is what Mr Solomon thought he had agreed to. The Board can see no reason why the parties would have created a sub-trust whereby Ricarda would hold the beneficial half interest that she had earned from her contributions over the course of the marriage for the benefit of Ayana, rather than arriving at an agreement whereby she in effect gave over her share to

Ayana. Ricarda's role in the arrangement set out in the Consent Order is more readily explicable by the fact of Ayana's minority and the parties' desire to split the legal interest to safeguard Ayana's beneficial interest in the property going forward.

47. The Board was not provided with any information about how the matter was presented to the Registrar in 2011, what explanation she was given about the background to the Consent Order and who was involved in the discussions with the Registrar at that stage. If the Registrar had been satisfied that the effect of the Consent Order was that the legal title was held by Mr Solomon as to half for the benefit of Ayana, that would have provided an indisputable basis for her decision to sign the 2011 Deed. The preambles to that Deed are certainly consistent with that having been her understanding. Those preambles do not mention any sub-trust but explain the transfer of the half share of the fee simple legal estate directly to Ayana rather than to Ricarda on the basis that Ayana was no longer a child and was entitled therefore to call on Mr Solomon to convey a one half share and interest to her absolutely.

48. The Board concludes that Mr Beharrylal's criticism of the Registrar as having acted beyond her powers by collapsing a sub-trust rather than transferring the half share first to Ricarda's estate and thence to Ayana is misconceived; there was no sub-trust to collapse. Similarly, his submission that the only course available to Ayana had been to bring an action for breach of trust against Ricarda's estate for having failed to perform her own duties as trustee of the sub-trust in favour of Ayana is also misconceived. In the light of that conclusion there is no need to consider the creation of a constructive trust as discussed by the Court of Appeal.

49. The Board therefore holds that the 2011 Deed is valid and effective although the reasons for reaching that conclusion are slightly different from those relied on by the Court of Appeal.

Conclusion

50. For the reasons set out above, the Board dismisses the appeal.