H. M. Jawhary of the City if Monrovia, Liberia APPELLANT VERSUS The **Intestate Estate of the late Rebecca Watts-Pierre**, by and thru its Administrator de bonis non, Counsellor James E. Pierre, of the City of Monrovia, Liberia APPELLEE

APPEAL

HEARD: APRIL 21, 2008DDECIDED: JANUARY 30, 2009.

MR. JUSTICE KORKPOR, SR. DELIVERED THE OPINION OF THE COURT

On August 9, 2004, the appellee/petitioner, the intestate estate of the late Rebecca Watts-Pierre, by and thru its administrator de bonis non, Samuel B. Stubblefield, filed a bill in equity at the Civil Law Court, Sixth Judicial Circuit, Montserrado County. The appellee/petitioner prayed the court for the cancellation of an instrument said to be an addendum to a lease agreement executed on July 25, 1975, between the late Rosetta Watts Johnson as lessor, and the appellant/respondent, H. M. Jawhary, as lessee.

The appellee/petitioner maintained that the late Rosetta Watts Johnson never signed an addendum with the appellant/respondent; that the only agreement signed between the late Rosetta Watts Johnson and the appellant/respondent was the lease agreement dated January 22, 1973, under which she leased her property containing half lot of land located on Carey Street, Monrovia, to the appellant/respondent for a single period of thirty (30) years, commencing from March 1, 1973 up to and including February 28, 2008; that the document in the possession of the appellant/respondent purporting to be an addendum to the lease agreement between the late Rosetta Watts Johnson and the appellant/respondent is a fraudulent instrument manufactured by the appellant/respondent with the intent to prevent the leased property from reverting to the appellee/petitioner after the expiration of the thirty-year lease agreement; and that what appears to be the signature of the late Rosetta Watts Johnson on the document was forged.

To support its claim that the late Rosetta Watts Johnson did not sign an addendum with the appellant/respondent, the appellant/respondent drew the court's attention to the following:

"1. [That] in all of his numerous prior communications and pleadings, not once did the appellant make any reference to the existence of the purported addendum. Quite

to the contrary, the appellant repeatedly and consistently confirmed the existence only of the January 22, 1973 lease agreement. Copies of these were exhibited, testified to and subsequently admitted into evidence."

"2. [That] at no time during the entire 30 years period of the lease did the appellant make any reference to the existence of the alleged addendum. The first time appellee became aware of its existence was in April 2004 — after the expiration of the 1973 agreement — when the appellant exhibited the document."

"3. [That] although the addendum purports to have amended Article II of the 1973 lease agreement by increasing the annual rental from the original $1,200.00, yet strangely throughout the entire 30 years period of the lease, the appellant continued to pay the annual rental of $1,200.00 specified in the 1973 agreement."

"4. [That] there is an obvious contradiction in respect of the tenure of the addendum. Although the alleged addendum provides for a lease of a total of 40 years — an initial 20 years certain period and two (2) optional 10 year periods — however count 1(c) of the appellant's petition for declaratory judgment filed with the trial court in January 2003, states that the tenure of the lease is for a single 20 year period."

"5. [That] although the alleged addendum states that it commenced on March 1, 1976, yet in the same petition for declaratory judgment, the appellant states that the addendum was not to commence until February 28, 2003 — after the expiration of the 1973 agreement."

" 6. [That] although the appellant claims the alleged addendum was registered on July 25, 1975 in volume 310-75 at pages 153-155, the Ministry of Foreign Affairs issued a certificate that there is no volume 310-75 listed in its archives."

The appellant/respondent filed returns on August 19, 2004, which he withdrew and amended. In his amended returns, the appellant/respondent denied the allegations made in the appellee/petitioner's petition and maintained that the addendum to the lease agreement between the late Rosetta Watts Johnson and himself was genuine and regularly executed; that it was the late Rosetta Watts Johnson who wrote the addendum, thus if there be any error in said document, the appellant/respondent should not take the blame; that he paid the difference between the rent set forth in the 1973 lease agreement in advance to the original lessor, the late Rosetta Watts-Johnson, prior to her death; and that the entire petition should be dismissed because there is another action, a petition for declaratory judgment, pending before

the Supreme Court of Liberia between appellant/petitioner and appellant/respondent touching on the same subject property. Concerning the registration of the addendum in question at the Ministry of Foreign Affairs and the certificate issued by that Ministry to the effect that volume 310-75 is not listed in the archives of the Ministry, the appellant/respondent contended that on August 17, 2004, his lawyer wrote to the Legal Counsel of the Ministry of Foreign Affairs, Cllr. Jenkins K.Z. B. Scott, who replied that the Ministry of Foreign Affairs was in no position to deny the existence or authenticity of the addendum due to the massive looting of records during the civil war.

The appellee/petitioner filed an amended reply to the amended returns. A motion to dismiss the action filed by the appellant/respondent was heard and denied, after which law issues were disposed of, and the case ruled to trial on its merits.

At the trial, which took place during the September, A.D. 2007 term of the Civil Law Court, Sixth Judicial Circuit, Montserrado County, the appellee/petitioner produced a total of six witnesses, four regular witnesses and two rebuttal witnesses, who testified and identified several species of documentary evidence which were admitted into evidence.

The first person to take the witness stand for the appellee/petitioner was Cllr. James E. Pierre. Cllr. Pierre confirmed the allegations contained in the appellee/petitioner's petition. The witness maintained that it was impossible that his aged grandmother, the late Rosetta Watts-Johnson would have signed the purported addendum without him being aware of it because he had been the family lawyer from 1974 when he returned home from law school. He also stated in his testimony that if the addendum was genuine, one of the family members would have witnessed his grandmother's signature, as was done with the 1973 lease agreement when his late father, James A. A. Pierre, former Chief Justice of Liberia witnessed his grandmother's signature. He further testified that it was impossible that his grandmother would have used one of the appellants/respondents' employees, Martha Hayes, to witness her signature rather than one of her own immediate relatives and that his grandmother would not have negotiated and executed the lease agreement without reference to one of her immediate family members, either her daughter, the late Rebecca Watts-Pierre, her son-in-law, former Chief Justice James A. A. Pierre, or himself.

The second person who testified for the appellee/petitioner was Theophilus Lartey, a former employee of the appellant/respondent. He testified that he started working with the appellant/respondent in 1985 and towards the end of 2001, while he was

still an employee of the appellant/respondent, the appellant/respondent asked him to witness his signature on the addendum, subject of these proceedings. He further testified that the appellant/respondent signed the addendum in his presence and he witnessed the appellant/respondent's signature.

The third witness for the appellee/petitioner was Samuel Bornor who was also an employee of appellant/respondent. This witness testified that he was present in 2001 when the appellant/respondent asked one Samuel Brown to practice the signature of the late Rosetta Watts-Johnson so that it could be placed on the addendum which the appellant/respondent had prepared. The witness also testified that in his presence, Mr. Brown repeatedly practiced the signature of the late Rosetta Watts-Johnson until the appellant/respondent and Mr. Brown were satisfied with the result and that Mr. Brown then wrote it on the addendum. He further said that Mr. Brown also practiced the signature of the late Martha Hayes and signed her name as a witness on the addendum.

The appellee/petitioner's fourth witness was Jackson Purser, director of the archives of the Ministry of Foreign Affairs. Mr. Purser, who was served with writs of subpoena duces tecum and ad testificandum, appeared and produced volume 310 of the Montserrado Archives and Foreign Ministry official inventory recordings. He testified that there was no volume 310-75 listed in the Montserrado Archives; that there was a volume 310-78, but this contained recordings for the year 1978 and that pages 153 — 155 of volume 310-78 were recordings of other instruments and not of the addendum. He confirmed the contents of the certificate of non discovery he had previously issued and the certificate was admitted into evidence.

When the appellee/petitioner rested with the production of both oral and documentary evidence, the appellant/respondent filed a motion for judgment to be made in his favor during trial. The motion was heard and denied.

The appellant/respondent then took the witness stand and produced three witnesses in support of his side of the case. The appellant/respondent, H. M. Jawhary himself, was the witness who first took the stand. He testified that the addendum was prepared by his lawyer, Cllr. Philip Brumskine and executed on July 25, 1975, at Holiday Inn Hotel; that the addendum did not take effect March 1, 1976, the date stated in the addendum, but rather 2003, after the expiration of the 1973 lease agreement; and that Cllr. James E. Pierre was never informed of the addendum because he was always hostile to the appellant/respondent. He confirmed that Mr. Theophilus Lartey witnessed his signature on the addendum but said that Mr. Lartey

commenced working with him in 1973 and not in 1985.

The second witness for the appellant/respondent was Mr. Sam Brown who testified that he worked with the appellant/respondent from 1986 as personnel manager and labor consultant until the war broke out, and that after the war, he resumed work with the appellant/respondent until 1998. He concluded by saying that he had no personal knowledge of the addendum.

The third and last witness for appellant/respondent was Anthony Robertson, who testified that he tried unsuccessfully to mediate in the matter between the appellant/respondent and Counsellor James E. Pierre; he confirmed instruments to which the appellant/respondent had testified.

When the appellant/respondent rested with the production of evidence, the appellee/petitioner produced two rebuttal witnesses, in person of Mr. Theophilus Lartey and Mr. Sam Bornor who had earlier testified for the appellee/petitioner.

Mr. Theophilus Lartey, the appellees/petitioners' first rebuttal witness maintained that he did not know the appellant/respondent in 1973; that he commenced working with the appellant/respondent in 1985 and not in 1973 as was stated by the appellant/respondent. He further stated that from 1968 to 1983, he was employed with Jos Hansen, and exhibited a letter of recommendation written by the management of Jos Hansen in 1983 which confirmed that he was indeed employed with Jos Hansen from 1968 to 1983. The letter was admitted into evidence.

The second rebuttal witness for the appellee/petitioner, Sam Bornor informed court that two different Sam Browns were employed by the appellee/petitioner at different periods of time. He testified that the Sam Brown who had testified as appellant/respondent second witness, worked with the appellant/respondent until 1998 when he was dismissed for misappropriating nine-two thousand Liberian dollars (L$92,000). Thereafter, according to the witness, the appellant/respondent employed another person called Sam Brown in 2000. He said this was the Sam Brown who forged the signature of the late Rosetta Watts-Johnson and Martha Hayes on the addendum in question.

At the conclusion of the trial, the judge handed down a final judgment on November 30, 2007 canceling the purported addendum said to have been executed between the appellant/respondent, H. M. Jawhary and the late Rosetta Watts-Johnson on July 25, 1975. The trial court held that the purported addendum was obtained by fraud. This

case is before us on appeal to review the ruling of the trial judge canceling the purported addendum.

The lone issue we shall decide in this case is, whether or not the document purporting to be an addendum to the lease agreement between the late Rosetta Watts Johnson and the appellant/ respondent, H.M. Jawhary, was obtained by fraud? In other words, are there sufficient and convincing evidence to conclude that the purported addendum is indeed a product of fraud?

We see from the records before us, and it is not in dispute, that the appellant/respondent and the late Rosetta Watts Johnson entered a lease agreement on January 22, 1973 under which lease agreement the late Rosetta Watts Johnson leased one half lot of land lying and situated on Carey Street, Monrovia, Liberia, to the appellant/respondent for a single term of thirty (30) years, commencing on March 1, 1973 to February 28, 2003. The annual rental for the entire thirty (30) year period of the lease was fixed at $ 1,200.00 (one thousand two hundred) per annum. The appellant/respondent subsequently constructed the Holiday Inn Hotel on the leased premises. When Rosetta Watts Johnson died in 1979, she willed the property to her daughter, Rebecca Watts Pierre, who also passed away. Samuel B. Stubblefield who was appointed administrator de bonis non of the estate of the late Rebecca Watts Pierre died in December, 2005, and was substituted by James E. Pierre as administrator de bonis non of the late Rebecca Watts Pierre.

Controversy arose when the appellant/ respondent claimed that on July 25, 1975, he and the late Rosetta Watts Johnson executed an addendum to the January 22, 1973 lease agreement; that under the addendum, the single thirty (30) year period of the 1973 lease agreement was changed and replaced with new provisions providing for an initial period of twenty (20) years, commencing on March 1, 1976, and two (2) additional ten (10) year optional periods — a total of forty (40) years.

The appellant/respondent claimed, also, that the addendum changed and replaced the fixed annual rental of $ 1,200.00 (one thousand two hundred dollars) provided for under the original year lease agreement to $ 2,400.00 (two thousand four hundred dollars) per annum for the first twenty years; $ 3,600.00 (three thousand six hundred dollars) per year for the ten (10) years of the first optional period; and $ 4,500.00 per year for the ten (10) years of the second optional period.

A careful analysis of the evidence produced at the lower court, shows that the appellee/petitioner established a prima facie case to make the reasonable mind form a

conclusion that the addendum in question was obtained by fraud. This Court has defined a prima facie case as "... one which is established by sufficient evidence and can be overthrown only by rebutting evidence adduced by the defense." *R.L. v. Eid et al.,* 37 LLR, 761 (1995).

When the first witness for the appellee/petitioner, Cllr. James E. Pierre, took the witness stand he informed the lower court that he returned home from law school abroad in 1974and became the family lawyer, and so his late grandmother would not have negotiated the addendum in question without referring the matter to him. He also said that at least one member of his family would have witnessed his grandmother's signature if the document was genuine, as was done with the 1973 lease agreement, when his late father, former Chief Justice James A.A. Pierre witnessed his grandmother's signature; and that his grandmother would not have instead, chosen to have the appellant/respondent's employee Martha Hayes, witness her signature. A reasonable mind would easily accept this testimony, unless otherwise rebutted.

Then, there was the testimony of the former employee of the appellant/respondent, Theophilus Lartey, who testified for the appellee/petitioner. He informed the court below that he started to work for the appellant/respondent in 1985 and that he witnessed the appellant/respondent's signature on the addendum during the latter part of 2001. The question is, if Mr. Lartey was not in the employ of the appellant/respondent in 1975, and did not know the appellant/respondent at that time, how is possible that he would have witnessed the addendum which is said to have been executed in 1975? A reasonable mind will not accept this, unless where a satisfactory explanation is provided. The testimony of Mr. Lartey lends support to the contention of the appellee/petitioner that the addendum was actually prepared by the appellant/respondent in 2001.

Sam Bornor, another former employee of the appellant/respondent, testifying for the appellee/petitioner, said that he was present in the latter part of 2001 when the appellant/respondent asked one Sam Brown to practice the signatures of the late Rosetta Watts Johnson and also of the late Martha Hayes so that these signatures could be placed on the addendum, showing Rosetta Watts Johnson as having signed the addendum, and Martha Hayes as having witnessed the addendum which the appellant/respondent had prepared. The witness said that after Sam Brown and the appellant/respondent were satisfied with the result of the practice, Brown wrote the names on the addendum. The appellant/respondent did nothing to rebut this important testimony and shift the burden of proof back to the appellee/petitioner.

The appellant/respondent had maintained that the addendum was recorded in volume 310-75, but when the Director of the archives of the Ministry of Foreign Affairs, Jackson K. Purser, testified for the appellee/petitioner, he said that there was no volume 310-75 in the Montserrado County Archives and produced both volume 310 and the official inventory of recordings to show that volume 310 contains only recordings for the year 1978, and not 1975.

The appellant/respondent relied on a letter from the then Legal Counsel of the Ministry of Foreign Affairs, Counsellor Jenkins K.Z.B. Scott, to counter and rebut the testimony of the Director of the Archives. The letter simply said that the Ministry of Foreign Affairs was in no position to deny the existence or authenticity of the addendum due to the massive looting of records during the civil war. We agree with the judge of the lower court that the letter did not negate the basic point made by the testimony of the Director of the Archives when he stated that the volume in which the addendum is said to have been registered was actually for a different year, and that the pages on which the addendum is alleged to have been recorded contained records of different instruments.

The appellant/respondent stated that he paid the difference between the rent set forth in the 1973 lease agreement in advance to the original lessor, the late Rosetta Watts-Johnson prior to her death, but there is no receipt to substantiate this contention.

In count 8 of his amended returns to the cancellation proceedings, the appellant/respondent stated that it was the petitioner/appellee who wrote the addendum, but in his testimony given at the 43rd day jury session Tuesday, November 6, 2007, he said that the addendum was written by his lawyer, Counselor Philip Brumskine.

We further observed the following contradictions: a)The appellant/respondent admitted that the date the addendum commenced was not the same date specified in the said addendum, in other words, while the appellant/respondent denied that the addendum was manufactured by him, yet he was unable to reconcile specifically the variance between the period of tenure on the addendum and his averment made in court; b) the addendum is said to have amended articles I and II of the 1973 lease agreement, yet the respondent admitted that the addendum has nothing to do with the 1973 agreement of lease entered into by the parties; c) the addendum provides for a total period of forty years - an initial period of twenty years and two ten- year

optional periods notwithstanding, respondent's testimony on November 12, 2007, sheet # 4, 5th day's session made mention of a twenty -year period and d) the addendum provides a rental payment of two thousand four hundred dollars ($2,400.00) for the first twenty years, three thousand six hundred dollars ($3,600.00) for the first ten years optional period and four thousand five hundred dollars ($4,500.00) for the last ten years optional period, yet respondent continued to pay one thousand two hundred dollars ($1,200.00) as specified in the 1973 lease agreement.

In cancellation proceedings, the burden in the first instance is on the party seeking the cancellation of the instrument, but when he has made out a prima facie case, the burden of proof shifts to the adverse party to establish facts sufficient to rebut the prima facie case and thereby sustain the instrument. *13 Am JUR 2d Cancellation of Instrument Section 63.*

We hold that the appellee/petitioner in this case established, to the satisfaction of this Court, a prima facie case that the addendum under review was obtained through fraud. The appellant/respondent, on the other hand, failed to rebut the prima facie case and thereby sustain the instrument.

This Court has held that "Fraud may be established not only directly, but by inconclusive circumstances which by their weight jointly considered, may constitute sufficient proof." Sirleaf v. Azar, 21LLR 221 (1972), text at 225.

It is a settled principle of law that a court will order the cancellation of a lease agreement where it is shown and established that the lease was obtained by fraud, misrepresentation or misinformation. Doe v. Mitchell, 35 LLR 647 (1988).

WHEREFORE, the ruling of the Sixth Judicial Circuit Court, Montserrado County, cancelling the purported addendum to the lease agreement executed between the appellee/petitioner and appellant/respondent is confirmed and affirmed.

The Clerk of this Court is hereby ordered to send a mandate to the court below to resume jurisdiction and give effect to this judgment. IT IS SO ORDERED.

COUNSELLOR THOMPSON JARGBA APPEARED FOR THE APPELLANT. COUNSELLORS SCHEAPLOR R. DUNBAR AND JAMES E. PIERRE OF PIERRE, TWEH & ASSOCIATES APPEARED FOR THE APPELLEE.