

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO: ANUHCV 1995/0091

BETWEEN:

VERNON DICKENSON
Executor of the Estate of
ARNOLD M. DICKENSON, deceased

Claimant

And

GOLDINE HUGHES nee DICKENSON

Defendant

Appearances:

Ms E Ann Henry for the Claimant

Mr Dane Hamilton for the Defendant

.....
2005: June 21st

November 11th
.....

JUDGMENT

- [1] **Blenman J:** This claim involves a dispute over a property.
- [2] Mr Arnold McDonald Dickenson (Mr Dickenson deceased), who died on the 21st day of June 1990, was the father of Mr Vernon Dickenson (Mr Dickenson) and Ms Goldine Hughes nee Dickenson (Ms Hughes)
- [3] Mr. Dickenson deceased owned property situate at Church Street in Antigua and Barbuda and registered in the Registry of Lands as parcel 11 of **Block 65 1692 D** and Registration Section St John's Central (the property). He owned and conducted a bakery downstairs which business he later co owned and managed it with Ms Hughes. At the date of his death, the property was registered by virtue of an Instrument of Transfer dated 12th February 1990 in the name of Ms Hughes who claims to be its registered proprietor since

she states that her father gave it to her during his life time. She says he signed the transfer in February 1989 (the transfer).

- [4] For his part, Mr Dickenson says that his father made a Will on the 4th day of May 1990 and made the following gift.

"I hereby give and devise my property at Church Street to my said son Vernon subject to his (a) permitting my wife Pearl to live in the said property during her lifetime and (b) allowing my daughter Goldine and my son Harry to operate a bakery for a period of up to 5 years subject to their paying 50% of the expenses for maintaining the property and for insurance and property tax on same."

- [5] The High Court appointed Mr Dickenson as the personal representative of his father's estate. As executor of his father's estate, he seeks to have me declare that the Transfer is invalid since his father did not sign it. He also requested that I cancel the registration of parcel 11 of Block 65 1692 D and Registration Section: St John's Central pursuant to section 140 (1) of the Registered Land Act 1975 and declare that the said parcel of land is and forms part of the estate of Arnold M. Dickenson deceased. In fact, Mr Dickenson (deceased) was not able to sign the Transfer, on the relevant date, as he was suffering from Parkinsons disease and was bedridden. In May 1990, when his father executed the Will, he had to do so by placing a mark on it since he was unable to sign.

- [6] In the alternative, Mr Dickenson says that if his father did sign the Transfer he was acting "under the influence", of Ms Hughes and his action in so doing was not valid. He therefore asks me to set aside the "Instrument of Transfer" and to declare that the property forms part of his father's estate. He seeks to have me cancel the Registration of the Property.

- [7] For her part, Ms Hughes states that the Transfer was validly and properly signed by her father in February 1989 though it was registered in February 1990. She says that her father was mentally alert at the time of signing and she did not induce or influence him to sign it. She denies that the Will was executed before the Transfer and contends that by the date of his death, Mr Dickenson (deceased) had already disposed of his property to her and did not have the ability to give it to Mr Dickenson.

- [8] The issues that arise for my determination are:
- (a) Whether or not the Transfer was signed by Mr Dickenson (deceased);
 - (b) Alternatively, if the deceased signed the Transfer, whether he was induced to execute it under the influence of the Ms Hughes.
- [9] Mr Dickenson gave evidence in support of his claim and called Mr Alvin Langlais (Mr Langlais) a handwriting expert in his support. Ms Hughes testified on her own behalf and called Mr Cyril Maundy Attorney-at-law (Mr Maundy) in her support. All of the witnesses filed statements and were cross-examined on their evidence. Each party sought to convince me as to his or her contention. I heard the testimony on behalf of both sides and had regard to the bundle of agreed documents, which were referred to at the trial.
- [10] Mr Dickenson who is a Dental Surgeon for in excess of 34 years stated that his father died on June 20, 1990 leaving seven children he being the eldest. He operates his practice from the property for several years now. In 1990, his father who was a man of advanced age and whose health was failing, requested Mr Dickenson to contact Attorney-at-law Mr Louis Lockhart (Mr Lockhart), who was a long standing friend of the deceased, to prepare his Will and Power of Attorney. Mr Dickenson says that he complied with his father's request and instructed Mr Lockhart the latter who visited his father and took instructions to draft The Power of Attorney and the Will. At this time, his father was mentally alert and had a good memory to the extent that the deceased reminded him that they had forgotten to mention the promised sale of land to one of his tenants, Christophene P. Daniel.
- [11] On the 9th April 1990, Mr Lockhart returned the Power of Attorney and around 4th day of May 1990, Mr Lockhart took the typed Will to Mr Dickenson (deceased) who was unable to write so he placed his mark on the Will. Mr Lockhart and Ms Avenella Jacobs witnessed this. His father gave him the property by virtue of the Will. To his surprise and after his father's death, in June 1990 he discovered that the property was registered in the name of

Ms Hughes. He learnt, subsequently that Mr Maundy had prepared the Transfer and had witnessed both Ms Hughes' and the deceased's signature.

[12] During cross examination he stated that it was August 1989 that he first learnt that Ms Hughes had stated that her father had given her the property; he found this difficult to believe, particularly in view of the fact that his father always informed him of all of his business transactions. He did not like what he was hearing about Ms Hughes laying claim to the property. While he recalled that Mr Maundy visited his father either in February or March 1989 and does not deny the visit he found it strange that his father would have relied on Mr Maundy's advice and services without consulting his longtime friend Mr Lockhart. He is adamant that the handwriting that appeared on the transfer is not his father's signature.

[13] He admits that his father made the Will on 4th day of May 1990 but denies that he took Mr Lockhart to his father's home for that purpose. He maintained that he took Mr Lockhart to his father's home on the latter's instruction and request. However, when Mr Lockhart got there he told him about the Power of Attorney and his father's intentions in relation to the Will. He admitted that when Mr Lockhart visited his father's home Ms Hughes was operating a bakery downstairs.

[14] With his father's health failing, in 1989 he called a meeting with his siblings to discuss arrangements for the support of their parents. He was aware that Ms Hughes was saying that she owned the property but he asks me to accept that he only became aware of the Transfer after his father died in June 1990. He questioned his father about the property and was reassured by his father that the property would go to him (Mr Dickenson). He does not doubt that Mr Maundy visited his father in early 1989 since his sister Yvonne Gordon confirmed this to him and told him that she permitted Mr Maundy to enter the house. While not disputing that the Transfer was done in February 1989, he maintains that his father did not sign it.

- [15] Mr Dickenson denied knowing of the Transfer in August 1989 and doing everything in his power thereafter to get the property. He agrees that in 1990 Mr Maundy had written to him telling him that in February 1989 he (Mr Maundy) had prepared the transfer on his father's instruction but insists that his father did not sign the Transfer.
- [16] He admits that by virtue of the Power of Attorney which was executed on April 1990 he was the sole person who was given control over his father's business when Mr Lockhart visited his father's home based on his (Mr Dickenson's) arrangements to have the Will signed. This was signed a few weeks before his father died. Under the Will, he is the main person who stands to benefit.
- [17] During re-examination he said that it appeared that the transfer was in process in 1989 but that he became of existence of its receipts within the last year.
- [18] I find it extremely difficult to accept Mr Dickenson's account of what transpired. I am far from convinced that he was as candid as he could have been. I find as a fact that Mr Dickenson was aware long before the deceased's execution of the Will, that his sister Ms Hughes was laying claim to the property and was displeased with this situation and sought to have it rectified. He therefore consulted Mr Lockhart to prepare the Will through which he was the main beneficiary. He was aggrieved since the property is substantial and after all he has been operating his practice in the property for several years.
- [19] I have no basis for accepting the Mr Dickenson's assertion that the signature on the Transfer is not his father's. He was not present at the time of the alleged signing neither was he able to provide me with reliable evidence that his father did not sign the document when Mr Maundy took the transfer to the Mr Dickenson (deceased) in February 1989.
- [20] I am mindful of the fact that the deceased suffered from Parkinson disease but this fact without more is insufficient to persuade me that he could not and did not sign the transfer.

For what it is worth, Mr Dickenson stated that, his father was mentally alert in 1989 even though his motor skills were affected. I must examine this bit of evidence with caution.

[21] I observe that The Medical Report, which is part of the agreed documents and, dated 11th September 1990, states that Mr Arnold Dickenson (deceased) was seen at the Holberton Hospital on 18th May 1990, at which time he was unable to use any of his joints. There is no issue between the parties, that on the 18th May 1990, the deceased had contractures of joints of both upper and lower limbs and was unable to use any of his four limbs. I am unable to utilize the Medical Report in my determination of the deceased's medical condition at the time of signing the Transfer. The alleged signing took place nearly one year prior to the medical examination and the report does not address the deceased's condition in 1989.

[22] I turn now to the evidence of Mr Langlais who is a Questioned Document Examiner and worked at the Criminal Investigation Department from 1968 to 1981 and held the position of Corporal. He was requested by Mr Justin Simon (now Queens Counsel and Attorney General) to determine whether the signature of Mr Dickenson was forged. He examined copies of documents, which are agreed by the parties as to have been signed by the deceased and he also examined the Transfer. He is of the view that the individual who wrote signatures on the other documents did not sign the Transfer.

[23] During cross-examination by Learned Counsel Mr Dane Hamilton he said that had he been told that the person's whose signature was affixed to the transfer had Parkinson's disease and his hand was shaking when, he signed, the witness said that he would have expected the signature to be different. He was not told that Mr Dickenson deceased suffered from Parkinson's disease but he knew him. He was of the view that where a person's hand is guided by another the writing would reflect two influences, that of the guidee and the guider. However, he was not told that the hand that signed the transfer was guided. I note that Mr Maundy in his witness statement dated 17th February 2004 said that "he held the deceased hand and tried to guide him as he signed." This was however not put to the witness during his giving of the initial evidence.

- [24] In answer in re-examination by Learned Counsel for Mr Dickenson, Mr Langlais said if he had been told that the hand that made the signature was guided it would have impacted on the determination which he made.
- [25] In view of the evidence from Mr Maundy that he guided the deceased hand I can attach very little weight, if any, to Mr Langlais' evidence which later evidence did not address that point. The answers Mr Langlais gave in cross-examination did not assist Mr Dickenson's case. The questioning of Learned Counsel for Ms Hughes weakened his initial evidence. What is worst is the fact that the answer that he gave in re-examination, by Learned Counsel for the party on whose behalf he was called, did not assist the case but detracted significantly his earlier evidence considerably. Mr Langlais' evidence is unhelpful in my determination of the issue of whether or not the signature was Mr Dickenson's (deceased).
- [26] Ms Hughes testified in her own defence and stated that her deceased father gave her the property. Previously he owned a bakery, which he operated from the property. In 1985 he transferred the bakery to her since she assisted him and took care of him and her mother for several years. Subsequently he told her that he was no longer in charge but that she would be responsible. Mr Dickenson (deceased) lived with his wife and Ms Hughes in the property. Around November or December 1988, Mr Dickenson (deceased) told her that "*it was time for them to get this matter down on paper*" By this she understood that he was saying that it was time for them to get the documents for the bakery and the property settled. She told her father that she would consult a lawyer. She consulted Mr Maundy, Attorney-at-law early in 1989.
- [27] Sometime early in 1989 Mr Maundy visited the property and came with the document. Mr Maundy explained to Mr Dickenson what he came about and *handed him the Transfer*. Mr Dickenson (deceased) read the document and signed it even though his hand was shaking. Mr Maundy signed the document and so did Ms Hughes. She says that even though in 1989 her father was suffering from Parkinson's disease he was not bedridden and maintains that he was alert and was moving around. In fact when Mr Maundy visited

her father, the deceased sat on a couch while discussing the proposed Transfer with Mr Maundy. Her father instructed Mr Maundy of his desire to transfer the property to her.

[28] During cross-examination by Learned Counsel Ms E. Ann Henry, Ms Hughes admitted that her father had dealt with Mr Lockhart previously in other matters but maintains that she was present when her father signed the Transfer. She gave details of how it was done and maintained that her father was alert. On the day of the signing, Mr Maundy gained entrance to the home when her sister Yvonne opened the door for that purpose. Mr Maundy explained the Transfer to her father and assisted him to sign since his hand was shaking. She says her father held the pen and Mr Maundy tried to steady the deceased's hand. She is aware that her father had previously retained Mr Justin Simon Attorney-at-law (now Queens Counsel and Attorney General) to deal with two other matters. At the time of the signing of the document in 1989 she was living with the deceased. Mr Maundy was always her lawyer. However, she admitted that in her witness summary she did not say that Mr Maundy held her father's hand and assisted him.

[29] She maintained that her father gave her the property and stated that she stayed at home with her parents all of the time and worked in the family business. She did not go abroad to pursue studies. While she did not pay her father in cash for the property she did so providing care to him for several years. She insists that she took care of her parents since 1970's even though Mr Dickenson stated that at sometime during her father last years one of his sisters who is a nurse in England assisted in the care of his parents. She did not show anyone the Transfer after it was signed even though she had told one of her sisters about it. She denies that Mr Dickenson had requested her to attend a family meeting in August 1989. In fact he spoke to her after her father had died and her other siblings had returned abroad after the funeral. At that time only herself and Mr Dickenson were in Antigua. She could not have shown him the Transfer for she had already obtained the Deed of Conveyance. She said that she had financial difficulties in paying the taxes on the property and this served to delay the registration of the property in her name.

- [30] Mr Maundy, Attorney-at-law and President of the Industrial Court testified in support of Ms Hughes. His eyesight appears to have been failing and he had to be led into court. He gave evidence by way of a witness statement dated 17th February 2004 and stated that he prepared the Transfer and explained the document to the deceased. He stated that it was Ms Hughes who instructed him that her father wanted to give her a parcel of land and that he agreed to prepare the Transfer. He prepared the Transfer and took it to the deceased home for him to sign sometime in February 1989. He spoke to Mr Dickenson (deceased) and explained to him the reason for his being there was that he understood that Mr Dickenson (deceased) wished to transfer the property to his daughter Ms Hughes to which the deceased agreed. The deceased wife was present during the visit so too was another daughter. He explained the contents of the Transfer to Mr Dickenson deceased and the latter agreed. Mr Maundy showed the deceased where to sign. The deceased took the pen, whereupon Mr Maundy noticed that his hand was shaking so he "held his hand and tried to guide him as he signed." On completion of the signing Ms Hughes signed.
- [31] Sometime later, Ms Hughes told him that her brother Vernon was challenging the authenticity of the Transfer and had filed a caution against the lands. Mr Maundy stated in his witness statement, that on the 23rd August 1990 and 10th September 1990 he wrote to Mr Dickenson informing him that he was present when his father signed the Transfer.
- [32] By the time of his cross-examination it was obvious to me that Mr Maundy's memory was not serving him very well. He kept mistaking the Will and the Transfer. He stated that he never spoke to Mr Dickenson but later said that he went to see him to tell him that his father had signed the document. One year having elapsed between Mr Maundy's making of the Witness Statement which contained his initial evidence and his giving evidence in cross-examination his health had deteriorated very badly and his answers during cross examination was of little assistance to the matter.
- [33] I have reviewed the evidence led on behalf of Ms Hughes and of the firm opinion that Mr Maundy prepared the Instrument of Transfer based on instructions he received from Ms Hughes. Mr Maundy explained the Instrument of Transfer to the deceased and the latter

confirmed his desire to give the property to Ms Hughes. I have no doubt that the deceased signed the Transfer.

[34] Mr Dickenson asserts that the Instrument of Transfer is a voluntary transfer since Ms Hughes paid no money to her father. He seeks to have the Transfer set aside on the basis that Ms Hughes exerted undue influence over her father and caused him to sign the Transfer.

[35] I find it useful to deal with the relevant law.

The Law

Section 140 (1) governs the law on the rectification of the Land Register of the Registered Land Act. Cap 37 Laws of Antigua states as follows:-

Subject to the provisions of subsection (2) the Court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration has been obtained, made or omitted by fraud or mistake.

[36] Mr Dickenson though not having pleaded that Ms Hughes committed a fraud has alleged that she exerted undue influence over the deceased. If there is evidence of undue influence in this matter, this is a ground upon which, I can set aside the Instrument of Transfer as requested by Mr Dickenson.

[37] Learned Counsel appearing on behalf of Mr Dickenson referred me to a number of cases including **Inche Noriah v. Shaik Allie Bin Omar [1928] All ER 189**; **Hudson v. Griffith (1979) 36 WIR 92** and **William v. Johnson (1937) 4 ALL ER 34**.

[38] The locus classicus on the issue of undue influence is the Privy Council decision in the case of **Inche Noriah v. Shaik Bin Omar [1928] All E.R. Rep. 189**. In this case, Lord Hailsham LC, at page 193 of the judgment stated

"...Their Lordships are not prepared to accept the view that independent legal advice is the only way in which the presumption can be rebutted: nor are they prepared to affirm that independent legal advice, when given does not rebut the presumption, unless it be shown that the advice was taken. It is necessary for the donee

to prove that the gift was the result of the free exercise of independent will. The most obvious way to prove this is by establishing that the gift was made after the nature and effect of the transaction had been fully explained to the donor by some independent and qualified person so completely as to satisfy the Court that the donee was acting independently of any influence of the donee and with the full appreciation of what he was doing; and in case where there are no other circumstances this may be the only means by which the donee can rebut the presumption."

- [39] The case of **Hudson v. Griffith (1979) 36 WIR 92** upon which Mr Dickenson relied is unhelpful and distinguishable from this case. In that case the donor executed a deed of gift disposing of all her property to a third party. Evidence was led before the court that prior to the execution of the deed of gift, the donor had exhibited disorientation of such proportions that she was confused to the donee's house. The gift was successfully challenged as having been executed under undue influence. Sir William Douglas, Chief of Justice concluded that the facts disclosed were sufficient to impose a duty of care and confidence on the donee and to cause the presumption of undue influence.
- [40] A different result was revealed in **Williams v. Johnson (1937) 4 All ER 34** where the relationship between the Plaintiff and the Defendant was that of patient and physician, and would ordinarily raise the presumption of undue influence. The Privy Council held that the onus lay upon the appellant to prove the gift was the result of the free exercise of the respondent's independent will having been discharged to the trial judge's satisfaction, the Court in the circumstances of this case could reverse such findings only if there was no evidence at all to support it.
- [41] Ms Hughes' Counsel referred to the following cases: **Royal Bank of Scotland v. Etridge [2001] (No. 2) 4 ALL ER 449 at p 458 – 459, letter (j) – (a)** deals with Burden of Proof and Presumptions. It states that whether a transaction was brought about by the exercise of undue influence **is a question of fact**. The general principle is that he who asserts a wrong has been committed must prove it. This is the general rule. The evidence required to discharge the burden of proof depends on the nature of the alleged undue influence the personality of the parties, their relationship, and the extent to which the transaction cannot

readily be accounted for by the ordinary motives of ordinary persons in that relationship. At page 459 of the report at letter (a) – (b) it is stated that “Proof that the complainant placed trust in the other party in relation to the management of the complainant financial affairs, coupled with a transaction which calls for explanation will normally be sufficient, **failing satisfactory evidence to the contrary**, to discharge the burden of proof”

[42] In **CIBC Mortgage PLC v. PIH [1993] 4 ALL ER 433** it was held that proof of actual undue influence was a species of fraud and a misrepresentation whereby a person is induced by actual undue influence to carry out a transaction which he did not freely or knowingly enter into is entitled to have the transaction set aside as of right.

[43] In **Goldsworthy v. Brickwell [1987] 1 ALL E.R 853 at page 865 letter (b)** states that undue Influence is usually of two kinds (1) express or as it is nowadays more usually known actual undue influence and (2) that which in certain circumstances is presumed from confidential relation, by which in this context is meant a relationship wherein one party has ceded such degree of trust and confidence as to require the other, on grounds of public policy, to show that it has not been betrayed or abused. In cases where there is no confidential relationship actual undue influence must be proved.

[44] I have given careful consideration to the evidence in this matter, and I find as a fact that when the deceased prepared and signed the Transfer giving the property to Ms Hughes, he intended to do so because of the fact that she took care of himself and his wife. I am satisfied that Ms Hughes took care of her parents for several years and her father gave her the property due to the services and support she provided to him over the years. The deceased voluntarily gave the property to his daughter with full knowledge of the nature of his act and the requisite intention.

[45] I have no doubt that Ms Hughes was the daughter who stayed close to her parents and assisted her father in his business hence the reason for his transferring the bakery to her earlier. I am unconvinced that she applied any pressure whatsoever on the deceased. Mr Dickenson deceased exercised his independent will in giving his daughter the property

[46] It is passing strange that Mr Dickenson would ask me to find that his father acted under the influence of Ms Hughes in effecting the Transfer, in circumstances which are very similar to those which obtained when, as he alleged his father signed the Will giving him the property. Be that as it may, Mr Dickenson has not presented me with any reliable evidence to raise the presumption that his father acted under the influence of Ms Hughes in signing the transfer. In February 1989 Mr Maundy visited Mr Dickenson (deceased), the latter who was mentally alert and explained to him the purpose of the visit. Mr Maundy ensured the deceased understood the nature of the Transfer after which the deceased signed.

With respect, I do not agree that the presumption of undue influence arises in this matter.

[47] I have considered the authorities on undue influence cited by both counsel. However, having regard to my findings of fact Mr Dickenson cannot rely on undue influence.

[48] In conclusion and for the reasons stated, Mr Vernon Dickenson Executor of the Estate of Arnold M Dickenson deceased has failed to establish the claim against Ms Goldine Hughes nee Dickenson. I therefore dismiss the claim and enter judgment for Ms Goldine Hughes nee Dickenson together with prescribed costs unless otherwise agreed.

[49] I thank learned counsel for their assistance.

Louise Esther Blenman
High Court Judge