

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

SLUHCV 2007/0486

BETWEEN:

SABINA JAMES ALCIDE

Claimant

and

[1] MARGUERITE DESIR

[2] MARGUERITE DESIR (Qua Executrix
of the Will of the late Albertha Bella Butcher

Defendants

Appearances:

Michel & Company per Mr. Mario R.F. Michel, Mr. Dexter Theordore and
Mr. Eghan Modeste for Claimant
Gordon, Gordon & Co. per Ms. Kim C. St. Rose and Ms. Mahla Daniel for
Defendants

2008: December 16, 17, 18;
2009: January 12, 19, 23, 24;
2011: August 22.

JUDGMENT

[1] **GEORGES J. [AG.]:** On 6th June 2007, the claimant filed a claim form seeking an injunction restraining the first defendant whether by herself her servants or agents or otherwise from transferring withdrawing or otherwise dealing with the funds lodged in bank accounts which at the time of the death of the deceased (Albertha Bella Butcher) were in her name solely or jointly with any other person or in the name of any company under the control of the deceased.

[2] An order was also sought that the said first defendant render an account of her dealings with the bank accounts and other property of the deceased and of the companies under the control of the deceased as well as income and funds from the same which have come into her hands.

- [3] A further order was also sought for the restoration by the first defendant of all monies withdrawn transferred or appropriated by her from accounts in the name of the deceased or of companies under the control of the deceased.
- [4] All further necessary and consequential accounts were similarly requested including a claim for damages further and other relief and costs.

Pleadings

- [5] In her amended statement of claim filed 22nd November 2007 the claimant alleged that she was the lawful niece of the deceased Albertha Bella Butcher and was raised by her as her own daughter.
- [6] The claimant further alleged that during her lifetime the deceased repeatedly told her (and others) that everything which she owned would upon her death be passed on to her.
- [7] The deceased died on 13th April 2007, leaving a last Will and Testament executed before Leandra Gabrielle Verneuil and Mary Juliana Charles Notaries Royal of the firm Gordon, Gordon & Co. on the 22nd day of November 2005 naming the claimant as one of the beneficiaries and therefore an interested party in the succession of the deceased.
- [8] According to paragraph 5 of the amended statement of claim the deceased at the time of her death owned properties listed in a schedule annexed to the statement of claim as follows:
- (i) A portion of land located at Union in the Registration Quarter of Gros Islet measuring 8,791 square feet and registered as **Parcel Number 1250B 774** together with all the appurtenances and dependencies thereof.
 - (ii) A portion of land located at Rodney Bay Industrial Estate in the Registration Quarter of Gros Islet measuring 92,578.38 square feet and registered as **Parcel Number 1257B 6** together with all the

appurtenances and dependencies thereof including the buildings erected thereon.

- (iii) A half share in a portion of land located at Cap Estate in the Registration Quarter of Gros Islet measuring 26,679 square feet and registered as **Parcel Number 1457B 332** together with all the appurtenances and dependencies thereof including the dwelling house erected thereon.
- (iv) Four thousand nine hundred and ninety six (4,996) shares in Bella Warehouse Holdings Company Limited.
- (v) Two (2) shares in Commercial Warehouse Limited.
- (vi) Account(s) at Bank of Saint Lucia Limited.
- (vii) Account(s) at RBTT Bank Caribbean Limited.
- (viii) Account(s) at the Bank of Nova Scotia.
- (ix) Several motor vehicles.
- (x) A significant quantity of expensive jewelry including a specially designed 18 carat gold set comprising a pair of earrings, a necklace and bracelet.
- (xi) Several items of furniture.
- (xii) Numerous personal effects.

First defendant named sole executrix of will

[9] The first defendant is named as sole executrix and a beneficiary of the said last will and testament of the deceased and the undisputed evidence is that since the

death of the deceased she has moved funds from the deceased's bank accounts in her own name on the supposed basis that at the time of the deceased's death those bank accounts were jointly held by the deceased and herself personally whilst the claimant alleges that in actual fact she (the defendant) got her name on to the deceased's bank accounts by actual or constructive fraud and seeks to convert the proceeds to her own use.

Claimant's case

- [10] It is the claimant's case that the first defendant was initially a relatively total stranger to the deceased and that she had been an employee of the bank or banks where the deceased and her late husband had their principal bank accounts or had bank accounts in the names of companies owned by them and that the first defendant thus became familiar with the deceased and her late husband and their finances. The evidence revealed that this was in fact the defendant's first job after leaving school and she was then about 16 years old. The evidence further disclosed that on his visits to the bank Mr. Butcher (the deceased's husband) frequently consulted and sought the advice and assistance of the defendant and a cordial and friendly relationship developed between them. He subsequently introduced Mrs. Butcher (the deceased) to her.
- [11] The deceased who was seriously ill in the last few years of her life eventually became wheelchair bound and vulnerable on account of her medical condition and became even more vulnerable when her husband predeceased her on 1st November 2005. The first defendant, it is pleaded, took advantage of the deceased's vulnerability and manipulated her and caused her to sign documents including a power of attorney dated 22nd November 2005 and bank signature cards which documents the defendant used to get her name onto the deceased's bank accounts and/or to transfer funds from the deceased's bank account or bank accounts in the names of companies under her control to bank accounts in the joint names of the deceased and herself.

All of this the court notes was effected three weeks after the deceased's husband's demise during which the deceased also executed her last will and testament appointing the defendant sole executrix and a principal beneficiary and universal residuary legatee and devisee equally with the claimant.

Further and in the alternative it is pleaded that the consent of the deceased to appending her signature to those documents was obtained by undue influence of the defendant over the deceased.

[12] The deceased who had several close relatives including the claimant her lawful niece never intended for the first defendant to become the owner of her various bank accounts or the sole beneficiary of all funds held in bank accounts in the name of the deceased or in the names of companies under the control of the deceased it is alleged.

[13] The deceased was at the material time seriously ill and recently widowed and the defendant knowing of her vulnerability then and her financial worth worked her way into the deceased's confidence. The first defendant so took advantage of the deceased's vulnerability as to assume complete domination over her and her business and financial affairs causing her to sign documents (referred to at paragraph 11) which were used to get her name onto the deceased's bank account or bank accounts in the names of companies under the control of the deceased to bank accounts in the joint names of the deceased and herself.

This would have been all the more crucial having regard to the degree of trust and confidence reposed in the defendant by the deceased and the fiduciary relationship which then existed between them.

The manipulation and domination of the deceased by the defendant was in the circumstances total and complete and resulted in the rapid depletion of and detriment to the deceased's estate on the one hand and the significant growth/expansion of the defendant's wealth on the other. Further or alternatively it is pleaded that at the time of the signing of the documents referred to in paragraph

11 by the deceased she did not know, appreciate or approve what she was signing.

[14] At the time of signing those documents the deceased was hypertensive and diabetic had suffered from strokes and heart attacks and also had other debilitating medical conditions and was consequently not then capable of understanding and appreciating the nature and consequences of her actions nor did she have the benefit of independent legal advice it is alleged.

[15] By reason of the foregoing the claimant contends that the entry of the names of the first defendant on the bank accounts of the deceased was achieved by actual or constructive fraud on the part of the defendant and that the said bank accounts remain or ought to have remained the sole property of the deceased at the time of her death.

Alternatively the claimant contends that the entry of the name of the first defendant on the bank accounts of the deceased was obtained by undue influence of the defendant over the deceased.

Alternatively the claimant contends that at the material time the deceased lacked the necessary capacity to execute the documents which were used to get the first defendant's name on the bank accounts concerned.

The claimant further contends that the first defendant has interfered and intermeddled with the bank accounts of the deceased and intended unless restrained by injunction from so doing to transfer withdraw or otherwise appropriate to her own use the funds of the deceased now or previously in the said bank accounts.

Defence

[16] On 29th June 2007 the first defendant filed a defence and on 12th December 2007 an amended defence stating in paragraphs 1 and 2 that the claimant was in

actual fact just one of several persons whom the deceased cared for at various times as if they were her own children. The court notes that no other names besides the claimant were mentioned or stand out as prominently as the claimant's in this regard.

- [17] Apart from the specific devise of an undivided one-half share of the house situate at Cap Estate which the deceased told the claimant and others (including the defendant) that the claimant would inherit the first defendant denies (as asserted by the claimant at paragraph 2 of her statement of claim) that the deceased had repeatedly told her (and others) that everything which she (the deceased) owned would upon her death be passed on to the claimant whom she variously referred to as Sabby.

Crux of the case

- [18] That to my mind strikes at the heart of this case for the evidence clearly shows that within a matter of 18 months of the death of the deceased's husband on 1st November 2005, a substantial portion of the properties cash assets and possessions of the deceased who herself died on 13th April 2007 (after a prolonged debilitating illness) fell into the hands of the defendant in her own persona as well as a principal beneficiary and sole executrix of the last will and testament of the deceased Albertha Bella Butcher in which latter capacity she is also sued by amended statement of claim filed 22nd November 2007 for the claims and reliefs sought in the original statement of claim as well as for an additional order that a **Deed of Sale dated 10th April 2007 and registered at the Land Registry on 22nd May 2007** as Instrument Number 2849/2007 be improbated. (My Emphasis)

Deed of Sale

- [19] That Deed of Sale which was purportedly executed by the deceased Bella Butcher as vendor on 10th April 2007 three days before her death at her Cap Estate

residence was signed on her behalf (as her motor skills were impaired and her handwriting was allegedly illegible) by Shawn Innocent Notary Royal practising in the State of Saint Lucia in the presence of Leandra Gabrielle Verneuil Notary Royal acting for the Purchaser Commercial Warehouse Limited a duly registered company acting and represented by its Director Marguerite Desir the first named defendant and major shareholder in respect of a parcel of land at Rodney Bay Industrial Estate consisting of 0.8 hectares situate at Massade in the Registration Quarter of Gros-Islet for a consideration of \$644,000.00 cash paid partly before and at the execution of the said Deed by the Purchaser to the Vendor. An assessment by the Inland Revenue Department of this commercial property for the tax year 2005 put the market value at \$7,442,726.00. And Desmond Auguste Quantity Surveyor and Land Valuer estimated the open market value as at 12th December 2008 at \$7,836,216.00.

- [20] The land and buildings were thus purportedly conveyed for a consideration of \$644,000.00 - a mere fraction of the estimated market value it is alleged.
- [21] Further the deceased who died on 13th April 2007 after multiple strokes and heart attacks as well as other debilitating medical conditions was at the date of the purported execution of the Deed of Sale at a stage near death and was then under the complete domination of the first defendant and was incapable of alienating her property it is contended.
- [22] Alternatively it is pleaded that if the deceased did alienate her property by the said Deed of Sale she did so under the presumed or actual undue influence of the first defendant who had by then become her confidante.
- [23] Commercial Warehouse Limited was incidentally incorporated on 8th January 2007 and the Deed of Sale states in the WHEREOF RECORD that:
- "the parties thereto had set their hands after due reading thereof as follows: THE PURCHASER and the VENDOR by one of the said notaries SHAWN INNOCENT at Castries on the 26th day of January 2007 in the presence of the said notaries THE VENDOR having declared her inability

to sign her name on account of illness her signature being hereunto required by law.”

Marguerite Desir the first defendant and Executrix of the Will of Albertha Bella Butcher deceased (the Vendor) maintained under cross examination that the Deed of Sale was in actual fact signed on 26th January 2007 in Castries and not on 10th April 2007 as stated in the first line of the deed.

[24] Those glaring discrepancies in the date and place of the purported execution of the Deed of Sale casts grave doubt in my mind on the authenticity of the document which recited that the parties thereto had hereunto set their hands **after due reading over** etc. And this is all the more important where the vendor Bella Butcher did not actually sign her name. As stated earlier the said deed was in fact only registered at the Land Registry weeks after its alleged execution and after the death of the vendor. (My emphasis)

[25] Shawn Innocent who in fact did so on her behalf declared in his witness statement that this was his one and only interaction with the deceased. It was a brief encounter he said under cross-examination which may have lasted between 45 minutes to an hour yet he went on to attest at paragraph 9 that despite her slurred speech and shaky hands Mrs. Butcher appeared to him to be sound in mind and memory.

And having admitted that the deceased was a stranger to him his ensuing cross-examination reads thus:

“BY MR. MICHEL:

Q. And from that single interaction with this perfect stranger, you feel able to give evidence about the soundness of her mind - -

A. I am not in a position - -

Q. - - and her memory?

A. - - to give evidence as to the soundness of her mind - -

THE COURT: Uh?

THE WITNESS: Or her memory.

BY MR. MICHEL:

Q. You are not in a position?

A. I’m not in a position to give that evidence, My Lord.

MR. MICHEL: He says he is not in a position to give evidence as to the soundness of her mind and memory.

THE WITNESS: I can only speak of how she appeared at the time.

BY MR. MICHEL

Q. You have answered my question, - - -"

No cogent reasons were given for his earlier assertion. He also agreed that he had no idea what influences had prevailed over Mrs. Butcher prior to her signing of the Deed of Sale which rendered his evidence about Mrs. Butcher understanding the purport content and effect of the Deed and her voluntarily agreeing to it as for her own free will and accord perplexing to say the least.

[26] Regarding the actual signing of the Deed of Sale by Mrs. Butcher, Mr. Innocent states in paragraph 8 of his witness statement:

"I gave her to touch the pen then I signed. Ms. Verneuil signed. Bella continued to practice her signature"

One may well wonder what was the purpose of Mrs. Butcher being given the pen to touch? In circumstances such as this it is the usual practice to have the individual concerned place his or her mark (usually an "x") to signify his or her understanding approval and agreement to the contents of the document. Conspicuously nothing of that kind was apparently done albeit that Bella was said to have been practising her signature both before and after execution of the deed of sale. On the whole this witness impressed as being confused and ambivalent and in fact cut a sorry figure at the witness stand for a person of professional standing.

[27] Still more intriguing is the fact that the deceased testatrix Bella Butcher in paragraph 11 of her last will and testament gave and bequeathed to her niece Sabina James Alcide and Marguerite Desir equally her shares in Bella's Warehouses Holdings Company Limited. Thus the purported sale of Bella Warehouses by Bella Butcher to Commercial Warehouse Limited three days before her demise resulted in the transfer of a substantial commercial property to the new company with Marguerite Desir acquiring an additional half share of the

deceased's shares by virtue of the residuary clause of the will and Sabina Alcide being entitled only to one quarter of the shares in Commercial Warehouse Limited in which only the deceased and Marguerite Desir previously held equal shares.

Universal Residuary Legatee and Devisee

- [28] The said defendant Marguerite Desir is also named and constituted with the claimant Sabina James Alcide as equal universal residuary legatee and devisee of all the rest remainder and residue of the deceased's properties wheresoever situated of which she stood possessed at the date of her death.

Power of Attorney

- [29] And by Power of Attorney dated 22nd November 2005 the selfsame date on which the deceased made her last will and testament at the offices of Messrs. Gordon, Gordon & Co before Leandra Gabrielle Verneuil and colleague Mary Juliana Charles Notaries Royal practising in the State of Saint Lucia she duly named appointed and constituted the defendant Marguerite Desir her true and lawful attorney with wide ranging powers to do and to perform on her behalf the following acts matters and things to include but not limited to taking charge of managing transacting and administering all and singular the Constituent's (Bella Butcher's) affairs business and property in Saint Lucia in such manner as she shall think fit.
- [30] In practical terms the defendant was evidently a person in whom the deceased reposed a great deal of trust and confidence and would consequently have relied on her to act in her best interests.

Marguerite Desir – a stranger to the Butchers?

- [31] The evidence reveals that the defendant (Marguerite Desir) was apparently a total stranger to the deceased (Bella Butcher) initially. According to the claimant (Sabina Alcide) she first heard the name Marguerite Desir on **9th November 2005** when she received a telephone call (in the USA) from St. Lucia from someone who identified herself by that name and who told her that she (Mrs. Desir) was handling

some matters for Mrs. Butcher. This would have been just over a week after Mr. Butcher's death.

[32] According to Mrs. Desir (at paragraph 4 of her witness statement) she first became acquainted with Mrs. Butcher when Mrs. Butcher worked with her sister both of whom were nurses at Gros-Islet Health Centre over twenty years ago (i.e. prior to 1988). At that time she said she was a school girl. She was in fact born in 1975. In my view the relationship then (if any) between Mrs. Desir and Mrs. Butcher would have been of a fleeting nature having regard to the circumstances and the difference in their respective ages. Mrs. Butcher would have been in her thirties then. Mrs. Desir's sister was a nurse's aide not a nurse.

[33] The undisputed evidence however is that Mrs. Butcher had in actual fact migrated to Texas USA in **1981** and returned to St. Lucia in 1994 so that it would have been unlikely that she would have been working as a nurse at the Gros-Islet Health Centre when Mrs. Desir alleged. There was evidence from Thomas Elias a long standing friend of Mr. Butcher and a neighbor of the Butcher family in Texas when Mrs. Butcher migrated there in 1981 that she might have returned to St. Lucia for her husband's father's funeral in 1987 but the evidence on that was sketchy and unreliable. Such a visit would in any case in normal course have been brief and would in all likelihood have precluded working as a nurse in the interval. Nevertheless Mrs. Desir went on to say (at paragraph 5 of her witness statement) that **she renewed her friendship with Mrs. Butcher and her husband** after she left school and started to work with the Bank of St. Lucia then called National Commercial Bank at the age of 16. That would have been in 1991 and she continued working there until 2003. (My emphasis)

Joint Accounts opened

[34] Be that as it may Sabina Alcide (at paragraph 15 of her witness statement) stated that in December 2005, Mrs. Desir again telephoned.

[35] Mrs. Desir subsequently telephoned this time to tell her that her aunt needed someone to handle her accounts and her affairs and that she had asked my aunt

to consider my mother but that my aunt did not agree. Marguerite then asked me whether I would be willing to take up the responsibility and I told her that I would and the documentation merely needed to be sent to me for signature.

[36] In January 2006, Marguerite Desir telephoned her and told her that her aunt had done her Will. I told her that I wanted a copy of the Will and she said that she would ask the lawyer for one and get back to her.

[37] Mrs. Alcide spoke to Mrs. Desir about a week later (according to Mrs. Alcide) and again asked her about the copy of the Will and she told her that she had forgotten to ask the lawyer about it. That conversation was emphatically denied by Mrs. Desir.

[38] A few weeks later according to Mrs. Alcide she again spoke to Mrs. Desir at which time she said Mrs. Desir told her that the lawyer had said that copies of the Will could not be given until Mrs. Butcher's passing.

[39] Mrs. Alcide said that she spoke to Mrs. Desir with increased frequency in the course of 2006 during which Mrs. Butcher was becoming seriously ill and became wheelchair bound and Mrs. Desir revealed **that she was now a signatory on Mrs. Butcher's bank account so that she could handle her affairs for her but never told her anything about joint accounts.** (My emphasis)

Plans by Bella Butcher to visit Sabina Alcide in the USA

[40] In December 2006 Mrs. Butcher told the claimant that she wanted to come to the USA to spend some time with her and the claimant told her that she was always welcome to do so. Subsequently Mrs. Desir telephoned Mrs. Alcide to inform her that Mrs. Butcher had informed her of her desire to travel to the United States but she (Mrs. Desir) did not think it was a good idea because of the weather at that time and also because Mrs. Butcher was awaiting results of some medical tests. Up until then Mrs. Alcide said she took Mrs. Desir as a genuine person who was looking out for Mrs. Butcher's interests.

[41] In conversation with Mrs. Desir about Mrs. Butcher's intended visit to the USA in January 2007 Mrs. Desir suggested to her that she (the claimant) would not be able to facilitate Mrs. Butcher's care in the USA and that Mrs. Butcher could stay at her (Mrs. Desir's) sister's home in Brooklyn, New York and visit the claimant during her stay but the claimant objected to the idea of Mrs. Butcher staying at someone else's home and not with her. How could she be expected to countenance her dear aunt staying with a stranger rather than with her own family? The weather no longer seemed to matter now as far as Mrs. Desir was concerned. Could not her purpose have been to distance Mrs. Butcher from her loving niece one is left to wonder?

[42] Mrs. Alcide asked Mrs. Desir to obtain from Mrs. Butcher her US social security number in order that she (the claimant) could arrange to have a nurse available at no cost to Mrs. Butcher to attend to Mrs. Butcher's medical needs whilst in the United States but a different impression might have been given to Mrs. Butcher by Mrs. Desir which might have caused Mrs. Butcher to believe that Mrs. Alcide did not want her to visit.

[43] Mrs. Desir the claimant said had assured her that she was assisting Mrs. Butcher as a friend and as a Christian and she did not want anything from her.

The Defence

[44] One of the main thrusts of the defendant's defence is that contrary to the claimant's assertion that she had been raised by the deceased (her lawful aunt) as one of her own daughters and that she (her aunt) had repeatedly told her (and others) that everything she owned would upon her death be passed on to her the truth is that she was just one of several persons whom the deceased had cared for at times as her own children. No evidence was however adduced of exactly who any of the several persons that were allegedly cared for by the deceased were.

[45] On the contrary the claimant Sabina who was variously called Sabby features prominently in the deceased's life and the evidence (Trial Bundle C) is replete with letters of love and affection from her to the claimant from 2002 when Sabina

migrated to the USA to further her studies which the deceased and her husband in fact sponsored to the tune of US\$30,000.00. Throughout her residence in the USA she and Mrs. Butcher continued to communicate regularly by telephone and Mrs. Butcher visited in 2003 for her wedding and the following year after the birth of her first child. The next visit in January 2007 was frustrated. And there is significantly an undated handwritten tribute by the claimant to the deceased on her passing in April 2007 which was to have been read at the funeral since she could not for immigration constraints travel to St. Lucia then. That tribute speaks for itself. Why then did the tide of filial love between them wane from 2005? After all the evidence shows that Mrs. Butcher loved all her family and had sent her mother on a pilgrimage to Lourdes all expenses paid and had paid for her sister Monica's radiation therapy in Barbados and for Glenda's visit to Texas while she resided there. Why the radical 'turn around' depicted by Marguerite Desir in the year or so preceding her aunt's death in April 2007? And following her aunt's husband death in November 2005?

Questions on list of assets which claimant alleged belonged to testator

[46] Criticism is made of the last four listed items in the schedule annexed to paragraph 5 of the claimant's amended statement of claim which lists properties/assets which were allegedly owned by the deceased at the time of her death. Those items relate to:

- (ix) Several motor vehicles
- (x) A significant quantity of expensive jewelry
- (xi) Several items of furniture
- (xii) Numerous personal effects

The criticism by the defendants is that that part of the list was vague and requested a specific inventory of them. In my view such specific information would more likely have been within the peculiar knowledge of the defendants and more especially the second defendant who as executrix of the last will and testament of the deceased Albertha Bella Butcher had assumed control of them and would be

legally bound to exhibit a true and perfect inventory of all of the said estate and to render a true and just account thereof whenever required by law so to do.

[47] For example following Mr. Butcher's death on 1st November 2005 according to Cameron James who lived at the Cap Estate residence a number of vehicles came into the ownership of the deceased who instructed the first defendant to sell them. She (Mrs. Butcher) was unable to and had ceased driving for some time. In the final paragraph of his witness statement Cameron James states that:

"Marguerite sold the Mitsubishi Montero, the Nissan Pick Up and the Toyota 4 Runner and she and/or her husband drives the Chevrolet Avalanche."

No proper account has been rendered.

Re Joint Accounts

[48] Regarding funds held in joint accounts with the deceased which since the death of the deceased the defendant had moved to bank accounts in her own name the first defendant states that she did so pursuant to legal advice (by Leandra Verneuil) on the basis that she was now solely entitled to the money by virtue of the right of survivorship and denies that she got her name on the deceased's bank accounts by constructive or actual fraud and now sought to convert the proceeds to her own use. The court notes that all the funds in the joint accounts were derived and/or originated from Mrs. Butcher who was then almost 60 years old and had been recently widowed and was in failing health having suffered from strokes and heart attacks and also had other debilitating medical conditions. Mrs. Desir aged 30 years was then Regional Human Resource Manager at Harris Paints with over 12 years banking experience up to management level and was a highly qualified business executive. One such account Mrs. Desir disclosed in cross-examination stood at \$662,000.00 and at the deceased's death was over \$500,000.00. Vis à vis the deceased she was obviously a person of superior intellect as well as business and financial acumen. Small wonder that Mr. Butcher frequently consulted and sought her advice and assistance at the bank.

The Issues

[49] From the facts outlined the central issue which falls to be determined in this case is whether the first defendant by fraud (actual or presumed) or by taking advantage of the vulnerability weakness or incapacity of the deceased Albertha Bella Butcher as a result of her failing health, medical condition and the recent loss of her husband and business partner caused Mrs. Butcher to do various things to the benefit of herself including:

- (1) Naming her as the sole executrix and a principal beneficiary of her Will
- (2) Opening a joint account or accounts with her and transferring to that account or those accounts almost all of the monies which she and her late husband had;
- (3) Giving her a Power of Attorney; and
- (4) Transferring to a company controlled by herself Mrs. Butcher's property at Rodney Bay Industrial Estate valued at \$7,836,216.00 for a consideration of \$644,000.00.

[50] I pause to mention that that commercial entity/enterprise which was "sold" at such a gross undervalue to Commercial Warehouse Limited (CWL) of which Marguerite Desir was and remains the majority shareholder was in fact the largest revenue earner of Mrs. Butcher's estate yielding according to Mrs. Desir approximately \$65,000.00 per month with a single debtor owing over \$100,000.00 amongst others.

[51] Reasons advanced by Mrs. Desir under cross-examination for the sale of the business (Bella Warehouse Holdings Limited) to CWL at such a gross undervalue (actually 9 percent of the market value) are in my view absolutely preposterous and border on the ludicrous. For example Mrs. Desir proffered that Mrs. Butcher sold the property:

- (i) For the purpose of paying her debts which in respect of Bella Warehouse Holdings Limited allegedly stood at \$881,000.00. The evidence shows

that at the time Mrs. Butcher had substantial bank balances as well as debtors and lucrative income bearing assets.

- (ii) So that she would have died with peace of mind. Her business creditors had been pressing her Mrs. Desir alleged.
- (iii) In order to mitigate the incidence of stamp duty and land tax. This surely would be a gross attempt to defraud the revenue for as the records show (Trial Bundle C) that the Inland Revenue for tax purposes makes its own assessment under the Land and House Tax Ordinance

[52] As I see it the only person who plainly stood to benefit from that monstrous transaction was Marguerite Desir the majority shareholder of CWL and its Managing Director and Controller. Having regard to the obvious degree of trust and confidence reposed by Mrs. Butcher in Mrs. Desir in the management of her personal business and financial affairs as well as the paramount domination which she exerted over her as a result of her vulnerability, failing health and general medical and physical condition Mrs. Desir was clearly able to take and indeed took unfair advantage of Mrs. Butcher by use of her dominant influence over her. And I so find. This was without doubt an unconscionable transaction.

Claimant's testimony

[53] The claimant in her witness statement declared at paragraph 23 that Marguerite had assured her that she was assisting her aunt as a friend and as a Christian and that she did not want anything from her. Cross-examination on that issue is illuminating and reads thus:

"BY MR. MICHEL

Q. And Mrs. Butcher - - and apart from the funds in the bank accounts, you also agreed that you had - - you now have under your control the multimillion-dollar property of Mrs. Butcher at Rodney Bay Industrial Estate, you agree with that?

A. Yes, My Lord.

Q. Yes. Yet you assured that you were just doing this as a friend, you know, there is nothing you wanted out of that, you were just doing that - - these things for Mrs. Butcher as a friend?

A. Yes, My Lord.”

Indeed in the opening paragraph of her witness statement Mrs. Desir proclaimed that she performed the functions of a Eucharistic Minister at the St. Joseph the Worker Catholic Church at Gros-Islet and assisted the priest to give communion in church on Sundays. It later transpired that she was in actual fact a three year trainee in the programme.

After her aunt's death Mrs. Alcide declared that she learnt that Marguerite had all along been receiving a salary of \$5,000.00 per month from her aunt to assist in her care and in handling her affairs. Marguerite however contended that that figure fluctuated depending on the amount of work she did and advice given to the businesses. She incidentally was mainly responsible for paying the helpers at Mrs. Butcher's Cap Estate residence and of course herself as she in fact held and controlled the purse strings to Mrs. Butcher's bank accounts.

[54] In fact it would be true to say that the defendant's testimony as a whole was characterized by half-truths contradictions and blatant untruths. For example on the issue of her monthly salary Mrs. Desir declared that she earned \$30,000.00 a month as Regional Human Resource Manager of Harris Paints. That figure later dropped to \$27,000.00 and a letter of recommendation for a bank loan under the hand of David Tindale the Regional Vice President (Operations) of Harris Paints (St. Lucia) Limited confirmed her monthly salary as \$22,414.43. No salary slip tax return or bank statement was produced by Mrs. Desir to verify the figure given by her.

[55] After her aunt's death Mrs. Alcide said she also learnt that Marguerite had caused her aunt to sign various documents so that several hundreds of thousands of dollars in bank accounts in the name of her aunt or in the names of companies under her control ended up in joint accounts with Marguerite, which accounts Marguerite closed after her aunt's death and appropriated the funds for herself. Marguerite she continued traveled to the United States of America with her husband and children about two to three weeks after her aunt's death and came to

visit her at her home in New Jersey. That was the first time she ever saw Marguerite Desir.

[56] After her aunt's death she became aware of a Deed of Sale she added dated the 10th day of April 2007 and registered at the Land Registry on the 22nd day of May 2007 by virtue of which her aunt was supposed to have conveyed to a company called Commercial Warehouse Limited her land at Rodney Bay Industrial Estate in the Quarter of Gros-Islet together with the concrete buildings erected thereon for the paltry sum of \$644,000.00 which was a mere fraction of the estimated value of the land and buildings.

[57] By the date of the purported Deed of Sale she continued her aunt – who died on the 13th day of April 2007 after multiple strokes and heart attacks – was in a state of near death and was not then capable of alienating her property she declared.

Marguerite Desir she concluded is or was at all material times the principal shareholder of Commercial Warehouse Limited.

The role of Leandra Gabrielle Verneuil

[58] One of the persons who without any doubt played a pivotal role in this saga is Leandra Gabrielle Verneuil, Notary Royal practising in the State of St. Lucia before whom:

(i) The Deed of Sale in respect of Bella Warehouse Holdings Limited dated 10th April 2007 was signed by Shawn Innocent on behalf of Bella Butcher as Vendor to Commercial Warehouse Limited as Purchaser represented by Marguerite Desir and Mrs. Verneuil as the Executing Notary.

(ii) And who Shawn Innocent allegedly followed to the Cap Estate residence of Bella Butcher where he allegedly signed the Deed of Sale on behalf of Bella Butcher who it is said was then unable to write legibly. This was the first and only occasion that the court heard of that particular disability relating to Bella Butcher.

- (iii) The said Bella Butcher on 22nd November 2005 executed a power of attorney in favour of Marguerite Desir the first defendant.
- (iv) On 22nd November 2005 at the offices of Gordon, Gordon & Co. Bella Butcher also known as Albertha Butcher executed her last will and testament in the presence of colleague Mary Juliana Charles. Mrs. Verneuil was also an acknowledged friend lawyer and adviser of Marguerite Desir who was appointed sole executrix and a principal beneficiary and one of two universal residuary legatees and devisees of the said will. In that will the testatrix left virtually little or nothing to her wide circle of relatives including her mother.
- (v) And who acted for gave advice to and took instructions from the testator Bella Butcher.

[59] But it would clearly seem that Mrs. Verneuil not only took instructions from but also gave instructions to the testator Bella Butcher and declined to carry out some of her specific instructions thus frustrating her wishes. This is vividly illustrated in her cross-examination at page 133 et seq of her transcript which states:

"Mrs. Butcher - - in September, two thousand six, Mrs. Butcher called me and told me she wanted to change her Will. I asked her why, she told me that she did not want to leave the house for Sabina anymore and I think there're a few other references to that, Mrs. Butcher instructed you to change her Will.

A. Yes, she did.

Q. But you refused to, to do so.

A. I didn't refuse, I was hesitant.

Q. So she instructed you to do something which you did not do.

A. I didn't do it.

Q. So you caused Mrs. Butcher's testamentary desires to be perverted by your refusal to carry out her instructions.

A. I don't know all that you're saying - -

Q. You don't know what I am saying.

A. - - all I know I did not - -

Q. You're a lawyer.

A. I did not - -

Q. Carry out her - -

A. Carry out - -

Q. - - specific instructions.

A. - - her specific instructions.

Q. So that what you learnt that Mrs. Butcher desired as her testamentary wishes, you caused them not to be effective by your refusal to carry out her instructions is that what you're telling this court, and you're a lawyer, and you understand what I'm asking you.

A. I did not change her Will as she asked me to.

Q. You did not give effect to her testamentary wishes as per her specific instructions to you. That's what you're saying.

A. Yes.

Q. Thank you. It would have really looked suspicious, would it not, it would look probably have the whole - - it would have given you impetuous (sic) to the scandal let us say, to use your words, to adopt your words, were that one remaining vestige of, of her bequest to her family or legacy to her family were removed. You were probably - - was very alive to that, that possibility. No, not so? You - - did you ever address your mind to that, that if that one remaining footprint of her family were removed that it would have widened the scandal, did you ever consider that?

A. That was the last thing on my mind, My Lord.

Q. That was the last thing. You just refused to carry out the instructions - -

A. No, My Lord.

Q. - - that was given.

A. I didn't just refuse. I told her because she was angry with Sabby, that's how she felt now, so give it some time.

Q. And she told you so again in another part of your Statement, you said, and you still refused to carry out the instructions. Let's go now - -

A. My Lord, in my practice, I have people who would call me to change their Wills - -

Q. I, I don't want your speeches. I want your answers to my questions.

A. - - and later on they ask for it - - be reverted to the original and over and over again. So I asked her to think about it.

Q. And she - - and after she thought about it, she asked you again, according to your Witness Statement, and you still did not carry out her instructions. As lawyers we change Wills, sometimes ten times, you know. As - - you carry out the wishes of the testator. Testator says, I want to leave my property to Joe, you so - - you, you so comply. Tomorrow, the testator or testatrix says, I want to leave it to John, you so comply and the day after to Peter and you carry out your instructions that is your responsibility. Not to tell her what people are saying, and, so on, but to do as the testator or testatrix instructions, not so Mrs. Verneuil?

A. Yes, My Lord.

Q. Very well. Let's see if we can bring this scandal to an end. Miss -
- in - - at paragraph 24 of your Witness Statement you said, that Mrs.
Butcher was also concerned about the residuary clause and Sabina being
a, a beneficiary under her residuary clause, is that correct?

THE COURT: The last sentence.

BY MR. MICHEL:

Q. Is that correct there?

A. Yes, that's correct.

Q. So she was - - she did not want Sabina to, to, to be a beneficiary
under her residuary clause.

A. Yes, that's correct.

Q. And yet you did not carry out the lady's intentions as per her
instructions to you?

A. I said so in twenty-five.

Q. Yeah. So you would agree with me, Mrs. Verneuil, that the
document which you - - which is described as the Last and Will and
Testament of Albertha Bella Butcher dated the thirteenth day of April, two
thousand seven, does not reflect the testamentary wishes of Mrs. Albertha
Bella Butcher, the late Mrs. Albertha Bella Butcher.

A. My Lord, the Will and Testament according to my knowledge was
done - -

THE COURT: Speak up
please.

THE WITNESS: - - in two
thousand and five, not in two thousand and seven.

THE COURT: Uh? Speak up,
I can't hear what you're saying.

THE WITNESS: The Last Will
and Testament - -

THE COURT: Uh-huh.

THE WITNESS: - - was signed in
two thousand and five - -

MR. MICHEL: The witness s
right on that. I said two thousand and seven, I - - the witness is right. I
made an error, let me please correct it and re-put the question.

THE COURT: That's why I
wanted to hear what she was saying.

MR. MICHEL: Yes.

BY MR. MICHEL:

Q. Would you agree with me that the document entitled Last Will and
Testament of Bella Butcher also known as Albertha Butcher dated the
twenty-second day of November, two thousand five, does not reflect the
testamentary wishes of Mrs. Butcher.

A. It does, My Lord.

Q. Notwithstanding that you have told this court, - -

A. It does, My Lord.

Q. - - notwithstanding that you have told this court that - - listen to me and answer my question. Notwithstanding that you have told this court, that she had given you clear instructions contrary to what was, therein, contained and that you did not carry out her instructions.

A. My Lord, - -

THE COURT: That was your evidence.

THE WITNESS: My Lord.

BY MR. MICHEL:

Q. Yes or no?

A. At the time of execution of the Last Will and Testament, it was the wishes of Mrs. Butcher. When Mrs. Butcher and I had the discussions with respect to wanting to change her Will, she never told me come with another Will and another lawyer for us to definitely do it. There were discussions throughout.

THE COURT: But you said you refused to carry them out. You refused - -

THE WITNESS: Well, My Lord, - -

THE COURT: - - to carry them out. That is your evidence.

THE WITNESS: I refused to carry them out when she gave them to me with respect to the fact I wanted her to think about it.

THE COURT: Therefore, the logical conclusion is that you did - - the Will does not truly reflect, as learned Counsel said, the testamentary wishes of Bella Butcher to that extent at least.

THE WITNESS: To that extent, My Lord.

MR. MICHEL: I would not, I would not even use those qualified words.

THE WITNESS: To that extent, My Lord.

MR. MICHEL: The Will is supposed to be the expressed testamentary wishes of the testator as instructed.

BY MR. MICHEL:

Q. You are saying to this that they do not so reflect because there are things contained in the Will that you were instructed should not be in the Will and you did not cause them not to be in the Will and, so that, the net result is, that the document which was submitted for probate did not reflect the wishes of Mrs. Butcher, the testamentary wishes for Mrs. Butcher as expressed to the, the, the Notary before her death.

A. Before her death, My Lord, it did reflect. It did.

Q. Notwithstanding everything you have said.

A. Notwithstanding everything I've said.

Q. Notwithstanding the fact that you have told this court that Mrs. Butcher asked you to remove Sabina as beneficiary of her house and you refused.

A. My Lord, - -

Q. Notwithstanding that you also told this court - -

A. - - the lady whom I know - -

Q. Notwithstanding that you also told this court that she did not want Sabina to be a beneficiary under her residuary clause and you did not carry out her instructions.

A. My Lord, - -

THE COURT: They
said you did not carry out the instructions.

THE WITNESS: - -
these discussions were done in September of two thousand and six. Mrs. Butcher, if she really wanted this Will changed would have got me to change it by December or January two thousand and seven, definitely, because she did not after our discussions go back on the subject again.

THE COURT: I know
but at the time that she asked you, she made the express wish or request, you said you refused to carry out her instructions. Do you not say that?

THE WITNESS: Yes, I
did, My Lord.

THE COURT: So to
that - -

THE WITNESS: But that
was in September of two thousand and six before - -

THE COURT: So to
that extent, - -

THE WITNESS: Yes, My
Lord.

THE COURT: - - the
question put by learned Counsel, is that the document of two thousand and five, does not reflect the testamentary wishes of the testatrix because she wanted to change and no change took place.

MRS. ST. ROSE: My
Lord.

THE COURT: Yes,
she said so, (inaudible).

MRS. ST. ROSE: My
Lord, the witness - -

THE COURT: That
was the question, was it not?

MRS. ST. ROSE: The
witness has said, that she hesitated and she asked Mrs. Butcher to go

and think about it. The evidence is there, she just said it, that she asked her to go and think about it.

THE COURT: I thought the clear - -

MRS. ST. ROSE: So, I don't think it would be fair to ask the witness what is the, the last testamentary wishes of Mrs. Butcher because Mrs. Butcher didn't die at the same time she executed - - she - - she didn't die until April and perhaps - - we, we don't know if she took the, the instructions, she went to another lawyer or what she did. She went away, she thought about it, and we don't know anymore, so we cannot or the witness cannot vent an opinion as to what was the last testamentary wish, unless there were some later between then and her death, indication that, well, she still wanted to do it or otherwise. The witness can only say what she did - -

THE COURT: The clear - -

MRS. ST. ROSE: - - but she hesitated.

THE COURT: I appreciate that but the clear, unequivocal testimony of the witness is that, at some stage after the Will had been executed, the testator expressed a desire and wish to change her Will, gave her certain instructions, and her own evidence here in this court is that, she refused to carry out those instructions.

MRS. ST. ROSE: Because - -

THE COURT: So I think in the case of that, what do you say?

MRS. ST. ROSE: Because she gave her advice as to what to go and do and so the question is left open.

THE COURT: Let it rests there for the time being. Continue, Mr. - -

MR. MICHEL: Yes, notwithstanding the speech by my learned friend, the witness said more than once that Mrs. Butcher told her to do so. More than once Mrs. Butcher gave her that instruction and more than once she refused to carry out the instruction, speeches notwithstanding. I am going to be winding-up, My Lord."

[60] After Mrs. Butcher's death Mrs. Desir told Sabina that Mrs. Butcher had \$622,000.00 in a joint account at the Bank of St. Lucia and not \$33 million as was allegedly rumoured. She left to Sabina all her shares in Island Foods Limited but that company was put into voluntary liquidation by the time Mrs. Butcher died. Mr. Vern Gill, Mr. Butcher's lawyer had been appointed Liquidator by Marguerite and

Bella but no report of the assets or liabilities of the company or of work done by the liquidator and the cost of the liquidation was made available to the court in respect of a company which in July 2003 was supposed to have been a thriving and lucrative enterprise according to the Branch Manager of the Bank of St. Lucia at Gros Islet. She also left to Sabina and Marguerite Desir equally her shares in Bella Warehouse Holdings Limited but by the date of her death the company owned nothing as it had been sold to Commercial Warehouse Limited. That valuable commercial entity which was owned by Mrs. Butcher was transferred to a company under the control of Marguerite Desir who held the majority shares. In all of this Mrs. Leandra Verneuil played a significant role and featured prominently and Marguerite Desir benefitted handsomely. I am fully satisfied that Mrs. Desir's dominant influence over the seriously ill and vulnerable Bella Butcher in all of those transactions was pervasive throughout assisted without doubt by her friend lawyer confidante and advisor Leandra Gabrielle Verneuil.

- [61] Judging from the nature value and implications of these transactions including the operation of the joint accounts Mrs. Butcher clearly needed **independent** legal advice which she did not get. It is my considered view that she was at a great disadvantage bereft of her lifelong husband and business partner and extremely vulnerable on account of her failing physical and medical condition. She was plainly incapable of competently engaging or giving her true consent to the matters which she was called on to deal with without independent legal advice.
- [62] For example the largest single revenue earner of her estate - Bella Warehouse Holdings Limited was literally sold for a song to Marguerite Desir ostensibly to pay off Bella Warehouse Holdings Limited's outstanding debts notwithstanding that Bella Butcher's bank balances were substantial/adequate and other cash earning assets were available for that purpose. Besides she held sufficient collateral to justify a loan from the bank for that purpose.
- [63] Documentary evidence further reveals that on 20th January 2006, Marguerite Desir as an authorized signatory with Bella Butcher wrote to the Manager of the Bank of

St. Lucia at Massade Gros Islet requesting that he debit two joint accounts with the sums of EC\$200,000.00 and EC\$70,000.00 respectively and prepare a Manager's cheque in favour of Vern Gill for EC\$270,000.00 reference settlement of Will Probate in the name of Epiphane Myers Butcher (Mrs. Butcher's husband). The sole Executrix of Mr. Butcher's will was in fact Sandra Anthony who as such was the person legally responsible for payment of all his just debts. It later transpired that there was not sufficient cash available to pay the pecuniary legacies that Bella Butcher herself had made in her own will. On Mrs. Butcher's death Marguerite Desir promptly transferred all funds standing in the accounts in the joint names of Mrs. Butcher and herself to her personal account. That Mrs. Verneuil advised was Mrs. Butcher's intention adding that she Mrs. Desir was free to do whatever she chose with the money as it was all hers. The total amount so transferred after all the joint accounts had been closed has not been disclosed but would certainly have been substantial.

[64] That to say the least is in my view mind-boggling since as I perceive from the evidence that the avowed object and purpose of Mrs. Butcher opening the initial joint account(s) was for Marguerite to assist her with her banking business which she could no longer carry out personally because of her failing health and physical incapacity. Besides that it had been proving increasingly inconvenient for Marguerite to procure cheques signed by Mrs. Butcher every time she did her banking business for her. That indeed commends itself as being eminently reasonable and practical and the balances standing in the various joint accounts were clearly not to my mind intended to devolve as a gift to Marguerite by virtue of the doctrine of *jus accreendi* on the death of Mrs. Butcher as Mrs. Verneuil had advised. After all on her own admission she (Marguerite) was being paid a monthly salary for personal care given to Mrs. Butcher and for services rendered by way of advice and help in running Mrs. Butcher's businesses to which she was a signatory and in which she had a free hand. I do not in the circumstances believe or accept and I am certainly not by any means convinced that Mrs. Butcher intended that Marguerite should have the benefit of the substantial balances standing in all the joint accounts as a reward or token of her affection and gratitude

for all that she had done for her in her final years. And if Marguerite herself is to be believed - and the evidence certainly does point that way – she herself certainly did not expect it as whatever help and services she rendered to the ailing and distressed widow was done as a friend without any expectation of reward but she nevertheless received a monthly salary averaging \$5,000.00 monthly for services rendered. And without more any notion or assertion that all such monies/balances devolved to Marguerite on Mrs. Butcher's death would clearly be erroneous and altogether wrong in my view.

[65] Let me hasten to say that I recognize and it is well established that as a general rule the legal title in the deceased's moiety in the joint accounts vests in the survivor. In the leading case of **Russell v Scott**¹ Dixon and Evatt JJ observed:

“The right at law to the balance standing at the credit of the account on the death of [the deceased party] vests in the survivor. The position however differs if the amounts were paid in entirety or predominantly by the deceased. In such a case the rights of the estate depend on the deceased's intention in maintaining the funds in a joint account.”

[66] The typical case in which the question arises is where one spouse transfers the credit balance of his personal account to a new joint account. Is he motivated by conditions of convenience, or is his object to effect a gift? The same problem arises where a parent or an aged relative transfers a personally owned balance to the credit of a joint account in the name of himself and a young member of the family.

The solution depends on a consideration of all the facts. Thus, in **Marshal v Crutwell**² a husband, who discovered that he was fatally ill, transferred the balance standing to the credit of his personal account to the credit of a new account opened in the joint names of his wife and himself. Cheques drawn by his wife up to the date of the husband's death were all issued under his direction and related primarily to household expenses. When the husband died, disputes arose between the widow and his remaining heirs concerning the balance standing to the

¹ (1936) 55 CLR 440, 451.

² (1875) IR 20 Eq. 328.

credit of the joint account. Jessel MR held that no gift had been intended, and that the sole object of the arrangement was to provide a convenient method for managing the husband's affairs during his illness. On these facts, the assumption of survivorship was displaced and the estate was held to be beneficially entitled to the sum involved.

[67] The opposite conclusion was reached on the facts in **Re Harrison**³. A husband opened an account in the joint names of his wife and himself. Initially the wife was informed neither of the existence of the account nor that she was entitled to draw on the funds. It was only when the husband's health declined that the branch manager advised her of the arrangement. When the husband died shortly thereafter an envelope containing deposit receipts and indorsed with the wife's initials was discovered among his papers. In the bank's ledger it had been noted: 'Repayable to either or to survivor'. Russell J could find no motive for the opening of the joint account except the husband's wish that the wife take on survival. She was therefore the beneficial as well as the legal owner of the funds in question.

[68] E.P. Ellinger and Eva Lomnicka the learned authors of *Modern Banking Law* (Second Edition) declare (at page 230) that these two cases show that there is a need for a flexible approach to the problem of survivorship. It will be noted that even Mrs. Desir herself with all her years of banking experience expressed hesitation as to her entitlement to the balances standing in the joint accounts of the deceased at her death and turned for advice to her legal advisor. The deceased's intention is discernible only from a careful assessment of the facts. Having regard to all the circumstances I respectfully demur from Mrs. Verneuil's advice and hold that the bank balances standing in the joint names of the deceased and Mrs. Desir vested in the estate of the deceased on her death and did not without more devolve to Mrs. Desir.

[69] As I see it the picture which emerges from a careful perusal of the evidence is that the claimant (Sabina also called Sabby) the niece of Albertha Bella Butcher (Bella)

³ (1920) 90 L.J. Ch 186.

was raised by her aunt and her husband Mr. Butcher as her own daughter. When she was only a few months old Bella in fact brought her to live with her. On moving to Texas in 1981 Bella sent Sabina to live with her (Bella's) own mother and her biological mother.

[70] The defendant (Marguerite Desir) told the court that Bella in fact raised other children as well but supplied no names. Sabina was clearly the daughter that Bella herself had always wished for but never had. Bella often declared and in later years would say to her (and others) that everything she owned was hers. Marguerite however maintained that this only related to Bella's share of the family's Cap Estate residence.

[71] I move on as a great deal of the evidence has already been summarized. In 2002 sponsored by Bella and her husband, Sabina migrated to the United States to further her education. Writing in July 2003, the Branch Manager of the Gros Islet Branch of the Bank of St. Lucia declared the Butchers to be high net worth clients who owned and managed Island Foods Limited which was a wholesale meat outlet supplying meats to merchants islandwide. They conducted several accounts both in their personal capacity and for the businesses including Bella's Wholesale.

[72] A cordial relationship built up between Mr. Butcher and Marguerite from 1994 on his return to St. Lucia from Texas during his visits to the bank where she had been employed since 1991. He subsequently introduced her to his wife and would seek her advice relating to his banking and business needs. She would therefore have been in a position to have a fairly good idea of their personal and corporate affairs as well as their financial worth.

[73] The strong bond of filial affection between Bella and Sabina continued to flourish with Bella attending her wedding in New Jersey in 2003 and visiting the following year after the birth of her son. There also continued to be a steady exchange of correspondence between them as well as regular telephone calls. Meanwhile Marguerite would visit the Butcher's Cap Estate residence. The couple were then

in failing health and she reportedly rendered them such help as she could including taking Mrs. Butcher (who by then was in a wheelchair) to Sunday mass at St. Joseph the Worker R.C Church in Gros-Islet where she assisted the priest with the distribution of communion.

[74] During her 2004 visit to Sabina in New Jersey, Mrs. Butcher told her that everything she had would be hers and it was not until November 2005 about a week after Mr. Butcher's death in Venezuela that she first heard the name Marguerite Desir when she (Marguerite) telephoned her from St. Lucia and identified herself and told her that she was handling some matters for Mrs. Butcher.

[75] This was a defining moment in this intriguing episode because for all intents and purposes Marguerite Desir was a relative stranger to the wider circle of the Butcher family friends and acquaintances. For example Isidora Gonzagues who had known Sabina from childhood living with Mrs. Butcher did not know her except that at Mrs. Butcher's funeral where someone told her that a person who was pointed out to her was in charge of Mrs. Butcher's funeral and she later found out that that person was Marguerite Desir. She herself had known Mrs. Butcher from around 1972 when Mrs. Butcher got married and came to live at City Gate about two houses away from her home she said.

[76] The evidence discloses that it was some time prior to Mr. Butcher's death on 1st November 2005 and in the ensuing months that Marguerite Desir assumed a dominant and indeed predominant role in the personal business and financial affairs of Bella Butcher whom Mrs. Butcher had come to regard as a friend and confidante in whom she reposed a great deal of trust and confidence and relied upon to act in her best interests. Marguerite would assist her in her banking and proffered advice in her businesses as well.

[77] Bereft of her husband and faced with increasing failing health and growing physical incapacity, on 22nd November 2005, Bella Butcher accompanied by Marguerite Desir proceeded to the Bank of St. Lucia and there opened a joint

account in their names in order to facilitate her banking business. She afterwards on that very day executed her will at the offices of Gordon Gordon and Co before Leandra Gabrielle Verneuil executing notary and Mary Juliana Charles in which Marguerite Desir was appointed sole executrix as well as residuary legatee and devisee equally with Sabina and also a principal beneficiary. A power of attorney was also executed in favour of the said Marguerite Desir.

[78] The evidence shows and much of this has been covered in earlier paragraphs of this judgment that thereafter Marguerite Desir soon became a signatory to all the businesses including the accounts controlled in the name of Bella Butcher. In truth and in fact she was in total and complete control of all of the personal business and financial affairs of Albertha Bella Butcher and had also by then completely supplanted Sabina as the object of Bella's affection as well as the principal beneficiary of her substantial wealth and estate. Sabina was no longer Bella's little girl which she had always wished for but never had. Marguerite had taken her place.

[79] How did this come about? In a nutshell the evidence shows that shortly before and following upon Mr. Butcher's passing Marguerite developed a close relationship with this seriously ailing vulnerable and physically dependent widow. She had five paid helpers three of whom had been hired by Mrs. Desir and were beholden to her. She later hired three of them at Harris Paints on Mrs. Butcher's passing. Lisa Charles for example, a second cousin of Mrs. Desir who got the job of housekeeper at the Butcher's residence in 2003 on Mrs. Desir's reference and is at present a production assistant at Harris Paints had no scruples in telling the Court in cross-examination that she knew that the case was about who gets Mrs. Butcher's money and property and that she wanted her cousin Marguerite to keep Mrs. Butcher's money and property. She also admitted that her evidence was intended to make Mrs. Desir keep Mrs. Butcher's money and property for herself.

[80] There can be no denying that the evidence in this case is replete with accounts by both Marguerite Desir and Leandra Verneuil of Mrs. Butcher expressing her

disappointment with Sabina's lack of care and affection for her when she needed her most and her strong dislike and disdain for her own family (including her sister and mother) whom she constantly lamented only wanted her money. But the evidence also shows that the selfsame Mrs. Butcher had in the past been generous towards them and the family appeared to be close. One is left to wonder how did the sudden "turn around" come about?

[81] In cases of this kind it is always a cause of great regret that the person best able to shed light on the answer or answers to such a question is dead. So that all of the distasteful and contemptuous remarks allegedly made by and attributed to Bella Butcher denigrating her family are in truth and in fact the deceased testator (Bella) speaking as it were from her grave largely through the lips of Marguerite Desir and Leandra Verneuil.

[82] Having however seen and heard and carefully observed the demeanour of these witnesses at the witness stand, I am fully satisfied and convinced from the evidence which has thus far unfolded and will continue to unfold that they are witnesses whose testimony must be treated with the utmost reserve for they plainly had an interest of their own to serve.

[83] For it is pellucidly clear in my view that Marguerite Desir ably assisted by her friend confidante and legal adviser Leandra Verneuil took advantage of her dominant position and influence over the vulnerable and seriously ailing Albertha Bella Butcher following the death of her husband to so contrive and manipulate her personal business and financial affairs that in short order nearly all of the deceased's money and the bulk of her estate and possessions fell into her hands and in so doing she had the also contrived to supplant the claimant Sabina Alcide James which up to Mr. Butcher's death on 1st November 2005 had been "Bella's little girl" whom she had repeatedly declared during her lifetime would have inherited everything which she owned.

[84] Let me give a striking illustration. In paragraphs 36 and 37 of her witness statement Mrs. Verneuil related how two days before Mrs. Butcher died she visited

her at the Tapion Hospital, taking along with her her daughter who looks like Mrs. Verneuil's sister and Mrs. Butcher remarked in the resemblance although she hadn't seen Mrs. Verneuil's sister for over 35 years.

[85] So even two days before Mrs. Butcher's death (and this is important because the Deed of Sale by which she was supposed to have sold her valuable property to Mrs. Desir's company (CWL) is dated three days before her death) she was of sound mind and good memory.

[86] While she was at Tapion Hospital with Mrs. Butcher, Mrs. Butcher's brother and his wife she said came to visit Mrs. Butcher so she (Mrs. Verneuil) told Mrs. Butcher that she would leave because her family was there to see her. But Mrs. Butcher did not want Mrs. Vernueil to leave and she held her hand and told her that she did not want her family around. She nonetheless told Mrs. Butcher that she would leave because that was the right thing to do, so she kissed Mrs. Butcher, said goodbye and left. That was the last time she said she saw Mrs. Butcher. She died two days later.

[87] Only thing though the fact of the matter is that Mrs. Butcher was not at or near Tapion Hospital **two days before her death or at any time within the last three weeks of her life.** (My emphasis)

[88] So that this obviously was a blatant untruth and a complete fabrication of Mrs. Verneuil's fertile imagination clearly calculated to lend credence to the defence story of Mrs. Butcher's intense dislike and contempt for her own family which accounts for the manner in which she treated them and favoured Marguerite in the way she did. It was also designed to insinuate that at the date of executing the Deed of Sale Mrs. Butcher must have been of sound mind and memory!

[89] Mrs. Verneuil with the greatest respect had clearly overplayed her hand. Her cross-examination in fact concluded thus:

"BY MR. MICHEL:

Q. Mrs. Verneuil, in conclusion, let me put to you that unfortunately, in the making of your Witness Statement, you stepped

outside of your role and function as a lawyer and assumed the role and function of a defender and supporter of your friend, Marguerite Desir in her determination to keep the money and property of Mrs. Butcher. I am putting that to you, Mrs. Verneuil and expecting you to answer.

A. That is incorrect.

Q And I'm putting it to you that the vigour and verve of your defence and support of your friend caused you to become untruthful in several of the matters which you stated in your Witness Statement and in this Court?

A. That is incorrect.

MR. MICHEL: No further questions for the witness, My Lord."

Not surprisingly learned counsel in her wisdom declined re-examination.

[90] The trial of this matter took seven hearing days spread just over five weeks. Eight witnesses testified for the claimant and nine for the defendants.

As a star witness the evidence of the first witness the claimant in this case has already been dealt with fairly comprehensively. Suffice it to say that in her closing testimony she declared that she was not trying to get money for herself from this case but was seeking to obtain justice for her aunt Mrs. Butcher and her family and would have no problem if the Will were set aside and everything that Mrs. Butcher had went to her family. I believe her. She impressed as a truthful and sincere witness on the whole. She declared that she always felt loved and appreciated by her aunt even to her death when she spoke to her two days before she passed when she expressed her love for her.

[91] She told the court under cross-examination that Marguerite Desir had manipulated Mrs. Butcher by means of attaining her trust in her vulnerable state. She added that she did not know how it was done but it was done pointing out that she was not around personally prior to or after the death of Mrs. Butcher to observe the relationship between the parties. I venture to say that manipulation has not got to be necessarily overt. It is not infrequently underhand and covert and can be properly deduced on reviewing a person's relationship with another after the fact.

[92] The evidence of Mrs. Butcher's lifelong friend Isadora Gonzagues has been mentioned earlier. On moving from City Gate where Bella resided two houses

away from her to Cap Estate they obviously did not see much of each other as before as Ms. Gonzagues had no private transportation but they remained friends and she visited her at the hospital when she was sick. When Mr. Butcher lived at City Gate the witness testified that she was always very close to her family especially her mother and sister and the claimant who lived with her.

[93] Cameron James brother of the claimant said he got to know Marguerite Desir between 2003 and 2004 while he was employed at Island Foods. He drove Mr. Butcher and resided at Cap Estate from 2000. Mrs. Desir he said came to the Butcher's residence at Cap Estate occasionally but would more usually call and speak to Mr. Butcher on the phone. Significantly he revealed that while Mr. Butcher was alive Mrs. Desir did not appear to be close to Mrs. Butcher until just before Mr. Butcher died. After he died Mrs. Desir he said got closer to Mrs. Butcher and after a time came to Mrs. Butcher's home frequently and eventually every day. In the course of his evidence the witness appeared to have contradicted himself or seemed uncertain. The impression one got was that he was of low intelligence had poor communication skills and was nervous.

[94] Glenda James the claimant's sister told the court that she first got to know Marguerite Desir at the time of Mr. Butcher's death in November 2005 when she met her at the Butcher's residence at Cap Estate between the death and burial of Mr. Butcher. After that initial encounter in November 2005 she started meeting Mrs. Desir often when she visited her aunt Mrs. Butcher whom she visited at least every other weekend. She had a relatively close relationship with her aunt but Mrs. Butcher was much closer to the claimant whom she spoke about very often. She recalls that when she was going to the United States of America in late 2006 Mrs. Butcher wanted to go together with her but Mrs. Desir spoke with her (Glenda) about why Mrs. Butcher should not go because of the weather and the effect that it might have on Mrs. Butcher health. At the time she believed that Mrs. Desir was genuine.

- [95] Sometime afterwards, whilst Mrs. Butcher was hospitalized at the Tapion Hospital, she was speaking to Mrs. Desir who told her that she was getting a monthly salary of \$30,000 at Harris Paints, which she (Glenda) subsequently found out was untrue. Thereafter she started to have doubts about the honesty and genuineness of Mrs. Desir, which doubts were reinforced as time went by. She disclosed that she knew Mrs. Butcher being very close to her sister and mother, but towards the latter part of her life it seemed that she was no longer close to her family.
- [96] She went on to reveal that Mrs. Butcher had a good relationship with her mother and would not say that her mother did not like her. Her mother visited her while she was at the hospital and on one such visit whilst Mrs. Butcher's mother was there having spent the entire day with her Mrs. Desir's mother walked into Mrs. Butcher's room and Mrs. Butcher reached out to Mrs. Desir's mother and tried to speak to her while ignoring her own mother. She (the witness) said that she found this to be particularly strange. She was not aware of any hostility between her mother (Monica James) and Mrs. Butcher and she was not aware of any allegation being made by Mrs. Butcher that Cameron was Mr. Butcher's son. This witness impressed as being honest and trustworthy on the whole.
- [97] Daniel Alcide husband of the claimant said he knew Mrs. Butcher whom he called "aunty" and who treated him, spoke to him and spoke of him as her son-in-law and treated and spoke to and of his and the Claimant's children as her grandchildren. He came to know Marguerite Desir he said from the latter part of 2005 when she started telephoning his wife from St. Lucia. He met Mrs. Desir for the first time in April 2007 when he traveled to St. Lucia along with his daughter Rhesa to visit Mrs. Butcher who had suffered another stroke and whose state of health was becoming severe. At that time the claimant was unable to travel to St. Lucia because of her US immigration status then he declared and so he and his daughter came on her behalf. Mrs. Desir and her husband had picked himself and Rhesa up from his family home in St. Lucia and brought them to Mrs. Butcher's home at Cap Estate where they lived for the remainder of their stay in St. Lucia. During his visit Mrs. Butcher was completely immobile and it was extremely

difficult to understand what she was saying. Shortly after he returned to the United States of America from his visit Mrs. Butcher died and he had to return again to St. Lucia to attend the funeral on behalf of the claimant who was still unable to travel outside of the USA. After Mrs. Butcher's funeral he was invited to and he attended, on behalf of his wife the reading of Mrs. Butcher's will by Mrs. Leandra Verneuil. When Mrs. Verneuil was reading the Will she seemed extremely nervous and uncomfortable he said. After the reading of the Will he asked about Mrs. Butcher's residual estate and her bank accounts and was told by Mrs. Verneuil that Mrs. Butcher's accounts were joint accounts with Mrs. Desir and that Mrs. Desir would get the money in the accounts. He enquired of Mrs. Verneuil as to how could this be when as far as he knew Mrs. Desir was only a signatory on Mrs. Butcher's accounts. Mrs. Verneuil could not explain other than to tell him that Mrs. Desir would receive the funds in the accounts. Mrs. Verneuil also told him that there was stock in Bank of Saint Lucia and that Mrs. Butcher had made a personal loan of approximately \$450,000 to a company called "Preferred Horizon Limited" which she would recoup and it would go to the estate of Mrs. Butcher.

[98] Monica James mother of Sabina Alcide James the claimant said she first met Marguerite Desir in November 2005 when Mrs. Desir came to the Butchers' residence at Cap Estate on the day that Mr. Butcher died. When her sister, Mrs. Butcher became very ill during the last few weeks of her life she moved into her home at Cap Estate to take care of her and was living at her home at the time of her death. She took care of her sister whilst living at her home and slept on the bed next to her. Her sister welcomed her at her home and she was happy to be there with her sister. Her sister never asked her to leave. She and her sister and herself were very close they loved each other. Mrs. Butcher was also very close to her mother she added. On the day of Mrs. Butcher's death Mrs. Desir came to Mrs. Butcher's home, accompanied by her husband and took two bags from the dressing table in Mrs. Butcher's bedroom – one bag containing money and miscellaneous items belonging to Mrs. Butcher and another bag containing Mrs. Butcher's jewelry – and left with them. Among the items of jewelry contained in the bag were Mrs. Butcher's bracelet, her chain and her earrings. The chain and

earrings that Mrs. Butcher was buried with were not the same ones in the bag that Mrs. Desir took she declared. On that same day Mrs. Desir gave her a bracelet from among Mrs. Butcher's things and told her that Mrs. Butcher left that for Rhesa – the claimant's daughter.

[99] In cross-examination it transpired that the witness was in fact paid for staying with her sister during the last six weeks of her life. That it was said confirmed that they could not have been that close as the witness said. It further transpired that she did not usually assist her sister personally as such but was relegated to washing wares and cleaning up rather than providing companionship of any kind. And also she attested that she used to bathe her sister but this was denied by other witnesses as well as by Cameron. It appears also that Mrs. Butcher resented her sister performing those personal offices in preference to Marguerite Desir.

[100] Like the evidence of the claimant Sabina Alcide, the testimony of Marguerite Desir the defendant has already been dealt with extensively earlier in this judgment as has the evidence of Leandra Gabrielle Verneuil and both have been the subject of cogent and incisive comment by this court. It is felt that further elaboration is unnecessary.

THE LAW

Undue Influence: the two classes

[101] The doctrine of undue influence has been helpfully defined in the case of **Murray v Deubery**⁴ by Sir Vincent Floissac CJ in which the appellant agreed to sell land to the respondent in Antigua. The respondent paid a deposit of \$10,000 and obtained a receipt. The agreement provided for a completion date which was delayed because of litigation to determine the ownership of the land after it was discovered that the land was registered in another party's name. After interim legal proceedings the respondent paid the full purchase price but the appellant

⁴ (1996) 52 WIR 147 at page 151.

failed to transfer the land. In his amended defence the appellant claimed undue influence. There the learned Chief Justice said that:

“The doctrine of undue influence comes into play whenever a party (the dominant party) to a transaction actually exerted or is legally presumed to have exerted influence over another party (the complainant) to enter into the transaction. According to the doctrine, if the transaction is the product of undue influence and was not the voluntary and spontaneous act of the complainant exercising his own independent will and judgment with the full appreciation of the nature and the effect of the transaction, the transaction is avoidable at the option of the complainant. This means that the complainant may elect to have the transaction rescinded if he has not in the meantime lost his right to rescission.

The modern tendency is to classify undue influence under two heads, namely class 1 (actual undue influence) and class 2 (presumed undue influence). Class 2 (presumed undue influence) is further classified under two sub-heads. The first sub-head is class 2 (A) which is descriptive of the legal presumption which arises from legally accredited relationships such as those existing between solicitor and client, medical advisor and patient, parent and child, and clergyman (or religious advisor) and parishioner (or disciple). The second sub-head is Class 2(B) which is descriptive of the legal presumption which arises from a relationship whereunder the complainant generally reposed trust and confidence in the dominant party.”

Actual Undue Influence

[102] The two classes of undue influence emerged in the law from the judgment of Lindley L.J. in **Allcard v Skinner**⁵. There the learned judge distinguished between the two classes by stating that actual undue influence requires proof by the person seeking to set aside the transaction of:

“Some unfair and improper conduct, some coercion from outside, some overreaching, some form of cheating, and generally, though not always, some personal advantage obtained by a donee placed in some close and confidential relation to the donor. (My Emphasis)

The facts of **Allcard v Skinner** were that Allcard was introduced to Skinner when she joined the Protestant Sisterhood of the Poor. She gave all her wealth to Skinner and upon deciding to leave the Sisterhood she requested her gifts back.

⁵ (1887) 36 Ch.D 145 (C.A.) at page 181.

She filed suit claiming undue influence which the court found existed but held that she was guilty of laches.

[103] On the facts of **Sabina Alcide v Marguerite Desir** actual undue influence is established on the evidence which demonstrated that the defendant Marguerite Desir by her conduct acted unfairly and improperly, used coercion on the mind of Mrs. Bella Butcher, overreached, cheated, and gained for herself in dubious circumstances personal advantage which resulted in her enriching herself in short order with the fruits of Mrs. Butcher's hard earned wealth.

[104] In **CIBC Mortgage Plc v Pitt**⁶ Lord Browne Wilkinson said that:

"Actual undue influence is a species of fraud. Like any other victim of fraud, a person who has been induced by undue influence to carry out a transaction which he did not freely and knowingly enter into is entitled to have the transaction set aside as of right."

That case clearly set the bar high for the party who alleges actual undue influence to prove his case. This is because the onus rests on the person who seeks to set aside the transaction on the basis of actual undue influence. In **Egger v Egger Civil**⁷, Alleyne J.A. said that actual undue influence is a question of fact and the party alleging it must prove its existence on the evidence.

Definition of Actual Undue Influence

[105] Lord Hobhouse of Woodborough at paragraph 103 of **Royal Bank of Scotland plc v Etridge**⁸ defined actual undue influence thus:

"Actual undue influence is an equitable wrong committed by the dominant party against the other which makes it unconscionable for the dominant party to enforce his legal rights against the other. **It is typically some express conduct overbearing the other's will...**...he who alleges actual undue influence must prove it." (My emphasis)

⁶ [1994] 1 AC 200 (H.L.).

⁷ Appeal No. 17 of 2002 at page 11.

⁸ No. 2 [2002] 2AC 773.

Presumed Undue Influence

[106] Even where a court is not convinced that the high threshold of actual undue influence is met by the complainant this does not preclude it from making a finding of presumed undue influence based on its assessment of the evidence. The court may resort to the doctrine of presumed undue influence if there is (1) a fiduciary relationship between the parties or, (2) if there is de facto existence of a relationship of trust and confidence. Lord Browne-Wilkinson in **Barclays Bank plc v O'Brien**⁹ puts it in this way:

“Even if there is no relationship falling within class 2(A) (a fiduciary relationship such as attorney client etc), if the complainant proves the de facto existence of a relationship under which the complainant generally reposed trust and confidence in the wrongdoer, the existence of such relationship raises the presumption of undue influence. In a class 2(B) case therefore, in the absence of evidence disproving undue influence, the complainant will succeed in setting aside the impugned transaction merely by proof that the complainant reposed trust and confidence in the wrongdoer **without having to prove that the wrongdoer exerted actual undue influence** or otherwise abused such trust and confidence in relation to the particular transaction impugned. (My emphasis)

[107] In **Royal Bank of Scotland** (supra) Lord Nicholls of Birkenhead had this to say:

“Proof that the complainant placed trust and confidence in the other party in relation to management of the complainant’s financial affairs, coupled with calls for explanation, will normally be sufficient, failing satisfactory evidence to the contrary, to discharge the burden of proof...in the absence of a satisfactory explanation, the transaction can only have been produced by undue influence. In other words proof of these facts is prima facie evidence that the defendant abused the influence he acquired in the parties’ relationship. He preferred his own interest. He did not behave fairly to the other. So the evidential burden then shifts to him. It is for him to produce evidence to counter the inference which otherwise should be drawn.”

In **Sabina Alcide v Marguerite Desir** the evidence was sufficient, even if the court were minded to conclude that actual undue influence was not made out, to raise the presumption of undue influence because of the clear trust and confidence the deceased Bella Butcher reposed in the defendant. This shifted the burden on the

⁹ [1994] 1 AC 180.

defendant to rebut the presumption and she has singularly failed.

[108] In **Egger v Egger** (supra) Alleyne J.A. had this to say:

“In the **Royal Bank of Scotland** case Lord Nicholls recognizes that the influence one person has over another in particular circumstances provides scope for misuse without any specific acts of persuasion, typically where one person places trust in another to look after his affairs and interests, and the latter abuses his influence and betrays his trust by preferring his own interests. His Lordship affirmed the well established need to prevent abuse of influence in these cases despite absence of evidence of overt acts of persuasive conduct. According to His Lordship, the question is whether one party has reposed sufficient trust and confidence in the other to raise the presumption. **He said the principle is not confined to cases of abuse of trust and confidence but includes, for instance cases where a vulnerable person has been exploited...**”
(My emphasis)

So even if one were to be generous to Marguerite Desir and say that the relationship between her and Mrs. Butcher was not one based on trust and confidence the above passage clearly demonstrates that the vulnerable state of Mrs. Butcher at the time of the ghastly raving of her estate by Marguerite Desir was enough to establish undue influence and set aside the foul transactions.

[109] Alleyne J.A at paragraph 43 of **Egger’s case** points out that the party seeking to raise the presumption of undue influence must prove that:

“The nature of the transaction was not readily explicable on the basis of the ordinary motivations of actions of ordinary men and women and therefore calls for an explanation that the influence was not abused.”

Sabina Alcide has proven this and so the burden shifted to Marguerite Desir to prove that the relationship was not abused and there was no undue influence. This for her was a formidable and indeed a futile task in which she could not succeed considering the evidence.

Independent Legal Advice

[110] The kind of evidence needed to rebut the presumption of undue influence was explained by Lord Hailsham LC in the Privy Council in **Inche Noriah v Shaik Allie**

Bin Omar¹⁰ where His Lordship said:

“But 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 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 donor was acting independently of any influence from the donee and with full appreciation of what he was doing; and in cases where there are no other circumstances this may be the only means by which the donee can rebut the presumption.**” (My emphasis)

[111] The court cannot be satisfied that Marguerite Desir came into possession of Mrs. Butcher's wealth without exerting sinister influence over her. The facts of the case undoubtedly show that it was one which clamoured for independent legal advice as well to a widow whose health had been steadily declining in both body and mind and whose speech was not infrequently slurred and was at times altogether incomprehensible. None was in fact given.

[112] Lord Nicholls at paragraph 20 of the **Royal Bank of Scotland case** (supra) confirmed that the court can take into consideration the presence or absence of independent advice when weighing all the evidence. There he said:

“Proof that the complainant received advice from a third party before entering into the impugned transaction is one of the matters a court takes into consideration when weighing all the evidence. The weight, or importance, to be attached to such evidence depends on all the circumstances. In the normal course, advice from a solicitor or other outside adviser can be expected to bring home to a complainant a proper understanding of what he or she is about to do. **But a person may understand fully the implications of a proposed transaction, for instance a substantial gift, and yet still be acting under undue influence of another. Proof of outside advice does not, of itself, necessarily show that subsequent completion of the transaction was free from the exercise of undue influence; it is a question of fact to be decided having regard to all the evidence in the case.**”

¹⁰ [1928] All ER Rep 189 at page 193.

The parts of the emphasized passage show clearly that it is not enough for Mrs. Desir to say that she ensured for example that Mrs. Butcher was told that she had only a life interest in the property at City Gate which her husband left to her under his will and which she nevertheless allegedly insisted be passed to her mother. The adviser who advised her was not by any means independent and even if the court were to conclude that she was that still did not preclude undue influence in the circumstances.

[113] Alleyne J.A in **Eggers case** (supra) makes an appropriate observation about **Allcard v Skinner** [1887] Ch. 145

“Lindley L.J. said the court throws upon the donee the burden of proving that he has not abused his position and in particular that in such cases it is considered necessary to show the donor had independent advice and was removed from the influence of the donee when the gift to him was made.”

Conclusion

[114] Based therefore on the whole of the evidence adduced as well as analysis of the cases referred to I entertain no doubt that the first defendant exerted undue influence to procure her name on the personal bank accounts or the accounts of companies in the name of or under the control of Albertha Bella Butcher also known as Bella Butcher at the Bank of St. Lucia, the RBTT Bank and the Bank of Nova Scotia.

[115] I am equally satisfied and convinced that the Deed of Sale dated the 10th day of April 2007 and registered at the Land Registry on 22nd May 2007 as Instrument Number 2849/2007 and purportedly executed by the said Bella Butcher as vendor was executed by her (if at all) without independent legal advice and for that reason ought to be improbated.

[116] I accordingly order that the first and second defendants render an account of their dealings with the bank accounts and other property of the Deceased and of the companies under the control of the deceased, and that the first defendant and the

second defendant also render an account of income and funds from the same which have come into their hands.

[117] And it is also ordered that the Deed of Sale dated the 10th day of April 2007 and registered at the Land Registry on the 22nd day of May 2007 as Instrument Number 2849/2007 be improbated.

[118] It is also ordered that all further and consequential accounts be rendered to the claimant by the first and second defendants without undue delay.

[119] On the issue of costs I will hear Counsel in Chambers in 14 days. Written submissions are to be filed in 7 days.



Ephraim Georges
High Court Judge [Ag.]