

GRENADA

**IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO. GDAHCV2007/0407

BETWEEN:

**JACQUELINE CHARLES
(Legal Guardian of Joshua Cecil Thorne)**

Claimant

AND

**HERBERT J. PREUDHOMME
GEOFFREY U.L. PREUDHOMME**

Defendants

Appearances:

Mr. I. Sandy with Ms. C. Joseph and Mr. T. St. Louis for Claimant
Dr. F. Alexis, Q.C with Mr. R. Benjamin for Defendants

2012: May 17

JUDGMENT

- [1] **PRICE FINDLAY, J.:** On 27th January, 2004, Joshua Thorne, deceased, executed a Deed of Gift in favour of the Defendants. The Deed related to land owned by Thorne comprising 1 Acre 1 Rood and 16 poles. The land was situated at Grand Anse, St. George's.
- [2] The Claimant is the daughter of Joshua Thorne and claims that the deed was obtained by undue influence, the influence of the First Defendant over her father.
- [3] Alternatively, she claims that her father lacked the mental capacity to make the deed, as he had been diagnosed with dementia some years earlier.
- [4] She wants the Deed of Gift set aside and that it be cancelled from the records of the Deeds & Lands Registry

[5] The Defendants assert that there was no undue influence and that Joshua Thorne was of sufficient mental capacity to make the Deed of Gift. They claim that it was a voluntary act of a man who knew what he was doing and ought not to be expunged from the Record at the Deed & Land Registry.

[6] It is not disputed that the First Defendant and Joshua Thorne were long time friends. They were introduced to each other in 1943 or thereabouts, and became business partners and political colleagues. The friendship lasted until Joshua Thorne's death in June 2010.

[7] The Claimant in her claim asks the Court for the following relief:

1. "1. A Declaration that the Deed of Gift dated 27th January 2004 purportedly made from Joshua Thorne to the Defendants is not the Deed of the said Joshua Thorne and is void.
2. Alternatively, that the said Deed of Gift ought to be set aside as having been procured by the undue influence of the First Named Defendant over the said Joshua Thorne.
3. In any event that the Defendants may be ordered to deliver up the said Deed of Gift to the Claimant to be cancelled.
4. That the costs of this action may be provided for.
5. Such further or other relief as this Honourable Court deems just."

[8] The evidence of the Claimant is that she is the daughter of Joshua Thorne. She visited Grenada in late August/early September 2001 from the United States where she ordinarily resides. At the time her father had stopped driving and was being cared for by a caretaker. She had not seen her father in about two years.

[9] At the time of this visit she observed what she termed as 'mental decline'. He asked questions repeatedly and did not seem to recognise persons with whom he spoke. He was also forgetful. He complained of chest pains.

- [10] She took him to see Dr. Thompson. Dr. Thompson administered a Mini Mental State Examination. Her father was unable to say what date, time it was, did not know who the Prime Minister was. She was heartbroken. It was around the September 11th attacks in New York but despite widespread television coverage, her father seemed to have no visible response or reaction to the horrible news.
- [11] She returned to Grenada in December, 2001 and remained through March, 2002. She saw her father daily. She continued to observe his 'mental decline'.
- [12] While assisting her father she came across cancelled cheques filled in by several different persons. She recognised the First Defendant's handwriting on several of these cheques. She did not testify that any of the cheques were more payable to the First Defendant, and there is no evidence that he benefited in any way from the cheques.
- [13] Dr. Thompson opined that her father was suffering from moderate dementia.
- [14] In cross-examination she stated that several persons other than the First Defendant had filled out cheques and had her father sign them. She named her father's nephew and her adopted sister as two of the persons who did this.
- [15] When she saw this happening, she petitioned the Court for guardianship of her father as she testified he did not know what was happening, 'his mind was gone.'
- [16] The cheque writing started in 2001 and she petitioned the Court in 2006 for guardianship.
- [17] She came to the knowledge that the First Defendant and her father were good friends sometime in 2001 when she heard her sister calling the First Defendant 'Uncle P'.
- [18] When shown her Statement of Claim – paragraph 13 (d) & (e) which read as follows:

"d) Joshua Thorne and the First Named Defendant were members of the same political party for a number of years with the First Named Defendant being his senior within the party hierarchy.

e) Having regard to the acts pleaded at 13 (a), 13 (b), 13 (c) and 13 (d) above, the First Named Defendant acquired dominion over the mind of Joshua Thorne."

[19] She stated that she did believe that her father and the First Defendant went way back. She testified that her father trusted the First Defendant and vice versa.

[20] She returned to Grenada every year and she continued to observe the decline in her father's mental health. His memory got progressively worse.

[21] She reviewed her father's bank accounts. Large sums of money were being withdrawn. The rate of the withdrawals were increasing. She learnt from her brother that her father had given away his home and other properties.

[22] She checked with the Deeds & Lands Registry and found that her father had transferred property to several persons including the First Defendant.

[23] The property he had transferred to the Defendants was a property she testified that her father swore he would never part with.

[24] This property, the subject matter of this suit, was transferred to the Defendants by Deed of Gift. She testified to a value of EC\$2,000,000.00.

[25] She met the First Defendant in 2001. He told her that he and her father were good friends. The First Defendant visited her father daily, took him to the beach, the bank and the Treasury.

[26] When her father seemed agitated, the caretaker would call the First Defendant who seemed to be able to calm him. She observed the First Defendant preparing cheques for her father to sign. Again there was no evidence that these cheques were payable to the First Defendant or that he benefitted from them in any way.

- [27] Due to her observations, she questioned her father's mental capacity to transfer the land, which he did, to the Defendant.
- [28] She once more took her father to Dr. Thompson in 2005 for the purpose of getting a medical report. Dr. Thompson opined that her father's short term memory was extremely poor and advised that he needed assistance with his daily activities and business affairs.
- [29] She further had Dr. Spencer visit her father at his home in September 2005. She testified that Dr. Spencer's examination revealed that her father was oriented to persons but not time and place, that his short term memory was poor and he had trouble recalling Dr. Spencer's name even though he had been repeatedly told what it was. She stated that Dr. Spencer was of the view that her father was suffering from senile dementia; a progressive and unrelenting illness.
- [30] As a result of these diagnoses, she applied to the High Court in 2006 and was appointed her father's legal guardian with authority to handle his affairs.
- [31] She stated that in view of the opinions of Drs. Spencer and Thompson, she believed that her father could not appreciate what he was doing and had acted under the influence of the First Defendant in executing the Deed of Gift in January 2004, which deed benefitted the Defendants to this claim.
- [32] In cross-examination, she admitted that she never lived in a house with her father, only for a brief time in 2009. She admitted that his death certificate did not list senile dementia as a cause of death.
- [33] She testified that over the years she would come to Grenada every year and spend time with her father.
- [34] She thought that the First Defendant was one of her father's closest friends, and she listed a few other names she knew her father to be very close friends with.
- [35] She also testified that it was the First Defendant who introduced her father to Mr. Cromwell, the Managing Director of Grand Anse Estates Limited.

- [36] The land, the subject of this suit, was land from Grand Anse Estates but that this was not the only land that her father acquired from Grand Anse Estates. In fact she did not know how much land her father had received /acquired fro Grand Anse Estates. She however disagreed that it was hundreds of acres of land. She could not say what the boundaries of the lands her father got from Grand Anse Estates Ltd. were. She could not say where her father's lands started or where they ended. She was also not sure if her father had given land to his sister.
- [37] Her father gave her a piece of land along the Maurice Bishop Highway around 1989, but she was adamant that her father did not freely give the First Defendant the land in question before the Court.
- [38] She agreed that her father was one of three persons who divided up the property owned by Grand Anse Estates Ltd. She also agreed that the property in this suit was where the farm was and that there was the main building situated on the property.
- [39] She agreed that the property given to the First Defendant was not the entirety of what he owned but disagreed that it was only a very small part of the lands he got from Grand Anse Estates Ltd
- [40] In 2001, her father was showing symptoms of forgetfulness. She stated that she was of the view that since that time her father could not understand the legal documents he was signing.
- [41] She knew her father to use several lawyers to conduct her business in Grenada, but while she knew the name Ovid Gill, she was not aware that her father used his services. She was aware that her father used Ciboney Chambers after his wife's death. She, her dad and the First Defendant attended Ciboney Chambers, but she was not in the meeting. She disagreed that her father did not want her involved in his affairs.
- [42] When shown the affidavit her father swore in the estate of his wife, Elma, she testified that she was of the view that her father did not understand the nature of

what he was doing. She in fact looked at several documents sworn by her father dated between 2001-2003 and on each occasion testified that her father did not know what he was swearing to or signing.

[43] She also testified that the persons before whom he swore and signed those various documents were not being untruthful, but that her father did not understand what he was doing.

[44] Her father joined her as a signatory to his bank account in 2004. She stated it could have been between September-November 2004. He took her to his Bank for that specific purpose, but she admitted that she had not exhibited those Bank documents to the Court.

[45] She said that when she went to the Bank with her father in 2004, she was not satisfied that he knew what he was doing. She said officers in the Bank asked her father if he agreed with what he was doing and he answered yes. The First Defendant was not present when this transaction took place.

[46] She did not say to her father that he did not understand what he was doing nor did she tell the Bank officers that she had previously taken her father to the doctor for his memory.

[47] She testified that her father was not a man to be trifled with. He was not a man who could be pushed around.

[48] She did not stop her father from transferring his account to her name because money was flowing out of the account. She believed the only way to stop it was to have her name placed on the account. She also stated that the Bank had informed her that various persons were accompanying her father to the Bank to withdraw funds. I note that there was no evidence that the First Defendant was one of the persons who accompanied Joshua Thorne to the Bank. There is evidence that he took Mr. Thorne to the Bank from George Ferguson.

- [49] She further stated that the land her father gifted to the First Defendant was land that he had said he would never get rid of. He made this statement in her presence. She never heard him say that that piece of land was for 'his partner Herbie'.
- [50] When Dr. Herry Thompson saw her father in 2001, she said that there was no treatment for dementia and that she should not allow her father to drive. She admitted that the report of Dr. Herry Thompson dated 2001 does not state that her father was extremely forgetful, that term was used for the first time in the report dated 19th August 2005 from Dr. Herry Thompson.
- [51] She also admitted that when Dr. Spencer saw her father in 2005, he used the term 'short term memory poor', not extremely forgetful.
- [52] She took him to the doctor in 2005 because she intended to institute guardianship proceedings and needed the report for the proceedings.
- [53] Dr. Emma Herry Thompson is a medical practitioner in Grenada. She runs the Sea Island Medical Clinic in St. George's. She specialized in internal medicine and completed her studies in 1987.
- [54] She practiced in Washington DC, USA, from 1987 to 1988 and from 1993-1997 in Beaufort, South Carolina, and from 1990-1993 she was Medical Director of Magnolia Manor in Georgia, USA.
- [55] She testified that as an internist, she is able to discern diseases such as Alzheimer's and dementia.
- [56] She knew Joshua Thorne, he was her patient. He attended her clinic in May 2001, and on several occasions thereafter. Her report of her findings dated 19th August, 2005 was before the Court.
- [57] She found that Mr. Thorne's short term memory to be extremely poor and he was suffering from dementia.

- [58] During his two visits, that is 15th May and 15th June 2001, she found that he was extremely forgetful and his cognitive functions were impaired. She opined that the stroke that he had suffered five years previous could have contributed to his forgetfulness since the blood supply to his brain would have been compromised. She conducted an MMSE test, a universally accepted test to identify cognitive function impairment associated with dementia.
- [59] The score of 11 which Mr. Thorne attained placed him in the category of moderate dementia but at the lower end of that scale. Expected decline in un-treated Alzheimer's patients is 2-4 points per year.
- [60] There is no evidence of whether Mr. Thorne ever received any treatment for his condition. Neither Dr. Herry Thompson nor Dr. Spencer testified as to prescribing or administering any treatment to Mr. Thorne.
- [61] She goes on to testify that using the lower end of the scale that by 2004 he would have had a score of 5 and using the higher end a score of -1. Both scores would have placed him in the severe dementia category, in a condition whereby he would have no appreciation of what he was doing. In her opinion, it is highly improbable that in 2001 someone at Mr. Thorne's level of mental impairment could have understood the nature and effect of the Deed of Gift which gave the property in question to the First Defendant, far less in 2004.
- [62] Having looked at the Certificate of Independent Legal Advice, 22, 27 January 2004, she opined that it is highly improbable that someone at the lever of mental impairment at which Mr. Thorne was in 2001 could have understood the nature and effect of the legal advice given to him.
- [63] She further opined that it was highly improbable that Mr. Thorne could have understood or appreciated the nature and content of the Deed of Gift he executed on 27th January 2004. His cognitive functions being impaired in 2001 would not have improved in January 2004.

- [64] In cross-examination she said that the August 2005 report exhibited is a summary of the records she had in her office relating to Mr. Thorne. The summary was prepared after the fact. She admitted that she had not exhibited any documents prior to August 2005 which stated that Mr. Thorne was extremely forgetful.
- [65] The 2005 report was done to establish Mr. Thorne's competence. His daughter asked for the report with respect to a land transaction.
- [66] She recalled on one of the visits to her clinic telling the Claimant that systems should be put in place to ensure Mr. Thorne's nutritional needs were met, and to avoid exploitation. This is advice she gives Alzheimer's patients or those with dementia.
- [67] Alzheimer's is a form of cognitive impairment and is treatable to an extent. But before she could recommend treatment she has to be convinced that the benefits would outweigh the risks.
- [68] She was not told that the report she produced was to be used in court proceedings, she only realised that sometime later. She was frustrated when the attorney came to her office. It was then that she realised that it was a litigious process.
- [69] She further states that it was not unusual for a doctor to take one view of the mental condition of a patient and a layperson to have the opposite view.
- [70] The next witness was George Ferguson. He is the son of Joshua Thorne.
- [71] He testified that he and his father had a good relationship. He would take him for drives and he visited him daily but he did not live with him. He took care of his father's land around the home where Mr. Thorne lived, which comprised of approximately 5 acres.
- [72] After the death of his father's wife in 2001, he noticed that his father was getting increasingly forgetful. He would forget the day, the time, or where he was. He would speak to persons and then ask who they were.

- [73] After 2001, his father could hardly recall anything at all. Both Dr. Spencer and Dr. Herry Thompson saw him as a result of his condition. Both determined that he was suffering from senile dementia.
- [74] In 2005 he became aware that his father had transferred lands to the Defendants and that they were using the land to obtain a sizeable loan. After inquiring he realized that his father had been signing legal documents and giving his property to other people.
- [75] He told the Claimant what he had discovered. She confirmed what she had been told. His father had transferred 1 acre 1 Rood and 16 poles of land to the Defendants. It was valued at EC\$2,000,000.00.
- [76] The First Defendant and his father were friends, and members of the same political party. The First Defendant was a frequent visitor to his father's home and spent lots of time with his father. His father placed trust and confidence in the First Defendant. The First Defendant would take his father to the beach, the bank, the doctor and to cash his treasury bonds.
- [77] He observed that his father would sign blank cheques at the direction of the First Defendant to pay bills and purchase groceries. The First Defendant would write the cheques and his father would sign them.
- [78] He admitted that his father paid him for the work he did on his father's land. The First Defendant would come on Fridays and make out the cheques. His father would tell the Defendant what amount to write.
- [79] He said that the First Defendant stopped visiting his father in later 2004 but admitted that due to Hurricane Ivan his father had to move from his home. After the hurricane his father stayed at the Wave Crest so that it was impossible for the First Defendant to visit his father at home. His father then went to stay at South Winds.
- [80] The First Defendant visited Mr. Thome at Wave Crest 3-4 days per week.

- [81] He knew that the First Defendant took his father to the doctor in 2001 with his caretaker, Ms. Banfield. He went once with his father to Dr. Herry Thompson and that was in 2004. He stated that it was the First Defendant and the caretaker/companion Ms. Banfield who usually took his father to the doctor. He did not know why his father was taken to Dr. Thompson for in 2001. He knew his father to have a heart condition but he never asked why he was taken to the doctor.
- [82] He brought Dr. Spencer to see his father in 2005, this was the first time Dr. Spencer saw his father as far as he knew.
- [83] Dr. Evelyn Spencer, the House Officer at Mt. Gay Psychiatric Hospital, also gave evidence.
- [84] He has been attached to the Mt. Gay faculty for 10 years and had been practising medicine for 13 years at the time of his witness statement.
- [85] He has done several short courses both regionally and internationally in the field of Psychiatry. For the previous 10 years he has practiced almost exclusively in that area.
- [86] He saw Mr. Thome in late 2004 at the Wave Crest apartments. He was brought to see him by his son, George Ferguson.
- [87] Having observed Mr. Thome he formed the opinion that he was demented. He found him extremely forgetful and within minutes would forget what was said to him. He opined that his cognitive functions were much depressed.
- [88] He knew Joshua Thome as a boy growing up as an astute, quick-witted man, a politician. What he saw in late 2004 was a shadow of the man he once knew. His mental capacity was severely impaired
- [89] He again saw Mr. Thome in 2005 in September, and he conducted a mental status examination. He found him oriented only to person but not place or time. His short term memory was poor and he could not recall his (Dr. Spencer's) name even

though they were introduced and his name was repeated twice during the time he was there.

- [90] He failed the Serial 7's test and his powers of registration and recall were decreased. He formed the opinion that Mr. Thorne was suffering from senile dementia, which is a form of brain disorder characterised by progressive and irreversible mental deterioration. Mr. Thorne could not do a complete mental state examination. Mr. Thorne would have been suffering with the disease for a number of years prior to his examination.
- [91] In his professional opinion, Mr. Thorne, at the time of the execution of the Deed of Gift, would not have been able to understand the nature and content of the document which he executed.
- [92] He further opined that Mr. Thorne would not have possessed the necessary cognitive skills to make any informed decision relative to the Deed of Gift.
- [93] At the September 2005 visit Mr. Thorne did not recognise his daughter, his son-in-law or his sister, all of whom were present.
- [94] Mr. Thorne would not have been able to understand the Certificate of Legal Advice even if it had been read and re-read to him. Mr. Thorne could hear the Deed being read to him but that is all.
- [95] If Mr. Thorne's power of registration and recall was zero as he opined, it would have been at the time, he could not have really understood and processed in his mind what was being asked of him. Mr. Thorne would not have understood the consequences of giving away his property by Deed of Gift.
- [96] He shared Dr. Thompson's opinion of the effect of the stroke on Mr. Thorne's cognitive function.
- [97] In cross-examination, he admitted that we all have memory lapses. He saw Mr. Thorne for about half an hour at the Wave Crest Hotel and this is the only time he

spent with Mr. Thorne professionally, and that he was comfortable to conclude what he testified to after spending that time with Mr. Thorne.

[98] He testified that he was of the view that the memory loss would take about 3-4 years to develop. He felt that Mr. Thorne's memory loss started in or about 2000-2001. He did not think that in 2001 Mr. Thorne could have understood legal documents.

[99] He looked at several documents executed by Mr. Thorne dated between 2001-2003 and gave the opinion that various attestation clauses on these documents could not be true based on his assessment of Mr. Thorne.

[100] He admitted that he had made a psychiatric assessment of Mr. Thorne even though he is not a psychiatrist.

[101] He opined that when Mr. Thorne went to the Bank with his daughter the Claimant in September/October 2004. Mr. Thorne could not have known what he was doing.

[102] He agreed with Dr. Thompson that medical practitioners say persons are forgetful but lay persons see it differently. In cases such as these he would say that the lay people are wrong. A lay person can reasonably take a different view of the mental capacity of a person to that of a lay person.

[103] He admitted that he took notes of his visits with Mr. Thorne but said it was unfortunate that he did not have those notes with him to present to the Court.

[104] He did not recommend that Mr. Thorne be admitted to a psychiatric facility in 2004 because he saw no need for urgent treatment at that time.

[105] He also testified that it would have been reasonable for both the Deputy Registrar and Mr. Stewart and others to say that Mr. Thorne looked alright to them.

[106] There were certain aspects which one would aim to identify when doing an assessment –

- a. The person's short term memory
- b. Their ability to register and recall new information
- c. The ability to organise and plan

[107] He also testified that despite his cognitive deterioration Mr. Thorne would probably have had lucid moments.

[108] The Defendants called two witnesses, the First Defendant and Mr. Nigel Stewart, the attorney who gave Mr. Thorne the independent legal advice with respect to the Deed of Gift in question.

[109] Mr. Herbert Preudhomme testified that he met Joshua Thorne in 1943 and they became very good friends and remained so until Joshua Thorne's death. This fact is not disputed.

[110] At the time they first met Mr. Preudhomme was better off financially than Thorne. Preudhomme stated that he was very generous to Thorne and his other friends. He sponsored a party for Thorne's birthday in 1944.

[111] Shortly after this, Thorne took Preudhomme to live with him at Thorne's sister's home, after Preudhomme had been in a serious accident. Preudhomme later went to the hospital for 6 months and Thorne visited him and cut his hair.

[112] The relationship continued, and over the years the two men exchanged favours and kindness between themselves.

[113] In 1958 Preudhomme entered the political arena, and Thorne, who had by then married, assisted him in his campaigns. Preudhomme was a successful politician and was a Member of Parliament from 1958-1979 when events took over Grenada and his days as a parliamentarian came to an end. Preudhomme was a Minister of Government holding various portfolios and was Deputy Prime Minister at some point.

- [114] While a Minister, Preudhomme introduced Thorne to one D.B. Cromwell who was the Managing Director of Grand Anse Estates Limited, and recommended that Thorne be made a director of the said company.
- [115] As a result of this directorship, Thorne was able to become the owner of lands forming part of the Grand Anse Estate.
- [116] He testified that over the years Thorne expressed gratitude to him for introducing him to the Company (Grand Anse Estates Ltd.) and promised to give Preudhomme a piece of land.
- [117] He testified that Thorne suffered a stroke in 1986/1987, and that he took him to a clinic in Venezuela, and upon his return to Grenada he took him to the beach regularly. He also, at Thorne's request accompanied him to the Miami Memorial Hospital for treatment to his eyes.
- [118] He said he accompanied Thorne to the doctor here in Grenada on several occasions at Thorne's request. He also assisted him with his banking business and any other transaction in which Thorne sought his assistance. He insisted that he acted on Thorne's direction and did not exercise any independent judgment or discretion in doing so.
- [119] In January 2004, on Thorne's instructions, he took him to the office of Ovid Gill, Thorne's lawyer because he wanted to fulfil his promise to transfer a piece of the land at Grand Anse to Preudhomme.
- [120] Preudhomme did as he was asked and Thorne gave Gill the instructions to prepare the conveyance. I pause here to note that there is no evidence before the Court to suggest that Ovid Gill was ever the lawyer for or had ever acted on behalf of Mr. Preudhomme.
- [121] Mr. Gill had acted for Thorne prior to January 2004, he had made Thorne's will and a codicil.

- [122] Mr. Gill advised Thorne that he should get independent legal advice prior to executing the Deed of Gift in favour of Preudhomme. Mr. Gill suggested someone from the firm of Renwick & Payne.
- [123] Mr. Thorne instructed the clerk to call Mr. Stewart from Renwick and Payne. Mr. Stewart came to the office of Ovid Gill and spoke to Thorne there.
- [124] He could see Mr. Stewart and Thorne speaking and that is when he came to know that Mr. Stewart was advising Thorne. The conversation took place away from him somewhere in Mr. Gill's office. He could not hear what was being said.
- [125] He further testified that to his knowledge Mr. Nigel Stewart spoke to Mr. Thorne and advised him on the matter.
- [126] He testified that at the time Thorne executed the Deed of Gift on 24th January 2004, he was aware of what he was doing and he fully understood the nature and effect of his act. Thorne had acted voluntary and was merely fulfilling the promise he had made to Preudhomme all those years ago.
- [127] In cross-examination he went on to testify that he visited Thorne regularly over the years and he knew the members of the household, including Jeselle Thorne, Thorne's adopted daughter. He admitted that Jeselle would have been a good witness as to Thorne's condition over the years but he did not get a witness statement from her.
- [128] He reiterated that Thorne had promised him land over 25 years prior to him doing so. He said he did not know why Thorne waited so long before doing so. He said that Thorne was a man who did what he wanted, no one dictated to Thorne what he should do.
- [129] He did not know that Thorne only came to own the land he gave him by the Deed of Gift in 2000. He knew Thorne owned lands in Grand Anse because Thorne and D.B. Cromwell were members of the Grand Anse Co-op Farm Ltd.
- [130] He admitted that he ha failed to mention this entity in his witness statement.

- [131] He insisted that the Deed of Gift was made by Mr. Gill on Thorne's instruction. He said he knew Mr. Gill as a lawyer practicing in Grenada.
- [132] Thorne and he were very good friends for many years. They did things for each other whenever Thorne asked him to do something he would do it, whether it was taking him to the doctor or to the Bank.
- [133] He testified that Thorne trusted and confided in him. Thorne asked him to write out cheques for him and he did so, but Thorne not he signed them. He denied assisting Thorne to fill out withdrawal slips at the bank.
- [134] He readily admitted to visiting Thorne more regularly after Thorne's wife Alma died in 2000. His friend was alone, he went to see him and keep him company.
- [135] He recalled seeing the Claimant at Thorne's home after 2001, but he could not recall when he first met her. He would visit Thorne at least once a week, but if Thorne needed him and called for him he would go.
- [136] He knew Ivy Banfield, she was Thorne's caretaker. She would sometimes call him to come to see Thorne. Between 2000-2001, he would accompany Thorne for his visits to the doctor. Thorne was seeing Dr. Herry Thompson and Dr. Noel at the time. Dr. Noel was the heart doctor.
- [137] He was aware that Thorne had a stroke in 1986/87, which affected his right side; his right leg and hand were affected. He had difficulty walking and writing. He was not aware that after the stroke Thorne became forgetful. Thorne deteriorated a little but that did not prevent him from doing what he wanted to do. He gave instructions. By deterioration he meant that Thorne complained of his legs.
- [138] Preudhomme took Thorne to the beach. He stated that Thorne recovered, he could walk and write after the recovery.
- [139] Both Preudhomme and Ivy Banfield went to the doctor with Thorne. He did not remember; going into Dr. Herry Thompson's office with Thorne; Ivy Banfield did that not him, he remained outside.

- [140] He was not aware that around 2001 Thorne became extremely forgetful. He did not know of Dr. Herry Thompson's diagnosis of senile dementia in 2001. He was not aware of Dr. Herry Thompson's diagnosis of moderate dementia.
- [141] He stated that he observed no loss of memory in Thorne in 2001. He would tell Thorne something and he would remember it. He did not have to constantly repeat himself to him.
- [142] He never inquired of Thorne what the doctors said to him, and no one ever told him that Thorne was suffering from dementia. Ms. Banfield never told him that Thorne was becoming increasingly forgetful. He did not observe the deterioration described by the Claimant.
- [143] He did not see the forgetfulness nor the mental deterioration described by George Ferguson nor did he agree with the assessment of Dr. Spencer or Dr. Herry Thompson. He spoke of Thorne's regretting putting the Claimant's name to his account because she was away and he did not see her. Thorne told him that he had put her name on his account and that he thought she would stay with him.
- [144] The cheques he wrote for Thorne were for if he had to give money to his nephew, Jeselle, his son George Ferguson. Both Thorne's nephew and son worked for him.
- [145] When the land was to be transferred to him he did not inquire of Thorne what the value of the land was, but he testified that he had an idea of what the land was valued at. He testified its valued was between EC \$500,000.00 and \$1,000,000.00.
- [146] He realised that the land Thorne was going to give him was valuable; he knew Thorne cherished the land.
- [147] He admitted that since being given the land he has contracted to sell it for less than EC \$3,000,000.00 but more than \$1,000,000.00

- [148] He also admitted that when Thorne got lands in 1980 he did not give him any at that time and that Thorne was strong and active at that time.
- [149] At the time of the Deed of Gift both he and Thorne were getting down in age, but Thorne understood what he was doing when he executed the Deed.
- [150] Nigel Stewart gave evidence of his meeting with Thorne at the Chambers of Ovid Gill. At the time he gave Thorne the independent legal advice, he was attached to the law firm of Renwick and Payne. He was admitted to the Bar in 1999. He was a partner in the firm from January 2003 – December 2006 when he resigned.
- [151] He recalled receiving a phone call from Ovid Gill of Ciboney Chambers on 27th January 2004. He was told that Joshua Thorne wished to transfer property to the Defendants and Mr. Gill asked whether he was prepared to give Mr. Thorne independent legal advice. Mr. Gill sent the Deed of Gift and a draft of the Certificate of independent legal advice to him.
- [152] He went to Ciboney Chambers later that day and met with Joshua Thorne in the conference room. They spoke for about half an hour. Mr. Thorne appeared elderly, but in his opinion he seemed physically and mentally fit.
- [153] He inquired of Thorne whether he knew the First Defendant, Thorne responded yes, and that the First Defendant was his friend. He, Thorne, also acknowledges that he knew the Second Defendant.
- [154] He referred Thorne to the description of the property in question, and asked if Thorne owned it and wished to convey it to the Defendants. To both these inquiries Thorne responded in the affirmative.
- [155] Stewart explained the conveyance to Thorne and that by signing the conveyance, he would be passing ownership of the property to the Defendant. Thorne indicated that this was what he intended. He signed the conveyance.
- [156] Stewart testified that he was satisfied that Thorne understood the nature and effect of the conveyance and what it meant once he signed it.

[157] He read the certificate of independent legal advice to Thorne and he indicated that he understood that document as well. Stewart signed the certificate and Thorne also signed it.

[158] The Second Defendant took no part in the proceedings.

UNDUE INFLUENCE

[159] The first limb of attack on the conveyance by the Claimant was undue influence.

[160] Undue influence comes into play when one party, usually referred to as the dominant party to a transaction, either actually exerted or is presumed to have exerted influence over the other party to enter into a transaction.

[161] If it is proved that the transaction was as a result of undue influence and therefore not a voluntary act of the donor who exercised his own independent will and judgment with a full understanding of the nature and effect of the actual transaction, if this is not so the transaction is to be considered voidable.

[162] To quote Sir Vincent Floissac, CJ in **Murray v Dewberry & Matthew**, Civil Appeal 16 of 1993 (Antigua & Barbuda):

“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 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 where under the complainant generally reposed trust and confidence in the dominant party.

[163] He then quoted Lord Browne-Wilkinson in **Barclays Bank PLC v O'Brian**:

"Even if there is no relationship falling with Class 2(A), 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 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."

[164] Sir Vincent continued:

"In order to establish a legal presumption that a dominant party exerted undue influence over a complainant to enter into a transaction the complainant must prove (1) that at or shortly before the execution of the transaction, there existed as between the dominant party (or his agent) and the complainant a relationship of trust and confidence from which undue influence by the dominant party over the complainant will legally be presumed and (2) that the transaction was to the manifest disadvantage of the complainant to a degree where it may be said to be unfair to the complainant or otherwise unconscionable."

[165] Lord Eldon in **Huguenin v Basely** put it in this way:

"Take it that she intended to give it to him, it is by no means out of the reach of the principle. The question is not whether she knew what she was doing, had done, or proposed to do, but how the intention was produced, whether all the care and providence was placed around her as against those who abused her, which, from their situation and relation with respect to her they were bound to exert on her behalf."

[166] The evidence before the Court is that Thorne and Preudhomme (the First Defendant) were very close friends and that Thorne did trust the First Defendant.

There was a long and close relationship spanning some 40 years, involving business and politics.

[167] It is also clear that the gift to the Defendants was a sizeable piece of land and quite valuable.

[168] All this against the background of Thorne being a man who, according to the First Defendant, did what he wanted, and no one dictated to Thorne what he should do.

[169] It cannot be said that there was not a relationship of trust and confidence between Thorne and the First Defendant which along with the size of the gift, may give cause to raise the presumption.

[170] Lord Hailsham in the case of **Inche Noriah v Shaik Allie Bin Oman** stated:

“It is necessary for the donee to prove that the gift was the result of the free exercise of independent will. The most obvious way to prove this is by establishing that the gift was made after the nature and effect of the transaction had been fully explained to the donor by some independent and qualified person so completely as to satisfy the Court that the donor was acting independently of any influence from the donee and with a 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.”

[171] I am also guided by the words of Lord Nicholls in **Royal Bank of Scotland plc v Ettridge** where he opined:

“Proof that the complainant placed trust and confidence in the other party in relation to the management of the complainant's financial affairs, coupled with a transaction which calls for explanation, will normally be sufficient, failing satisfactory evidence to the contrary, to discharge the burden of proof. On proof of these two matters the stage is set for the

Court to infer that in the absence of a satisfactory explanation, the transaction can only have been procured by undue influence."

[172] One has to look at the nature of the relationship between Thorne and the First Defendant at the time of or shortly before the conveyance was executed.

[173] The fact that the First Defendant assisted Thorne (at Thorne's request) and took him to the beach and the doctor, and wrote cheques on Thorne's instructions is to my mind insufficient to create a Class 2(B) relationship between the complainant and dominant party.

[174] As Floissac, CJ stated:

"The evidence required is evidence that before or at the time of execution of the transaction, the complainant had habitually, frequently or repeatedly expressed or indicated his trust and confidence in the dominant party."

[175] A study of the totality of the evidence does not lead the Court to believe that the First Defendant had management of Thorne's financial affairs or his affairs in general such that would lead the Court to find that there was undue influence here.

[176] While the evidence is that the First Defendant did assist Thorne in his financial and daily affairs, this assistance does not rise to the required level to lead the Court to believe that Thorne reposed the necessary trust and confidence in the First Defendant to give rise to the presumption.

[177] Showing that the donor received independent legal advice goes toward negating the presumption of undue influence.

[178] Here it is accepted that Thorne received independent legal advice from Stewart.

[179] Lord Nicholls in **Royal Bank of Scotland v Ettridge**, stated:

"Proof that the complainant received advice from a third party before entering the impugned transaction is one of the matters a Court takes into account when weighing all the evidence. The weight or importance to be

attached to such advice 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."

[180] This Court has to consider whether in light of the medical testimony whether Thorne fully understood and appreciated the legal advice rendered to him by Stewart.

[181] It is also clear that proof of the receipt of independent legal advice does not by itself necessarily show that the gift was free of undue influence.

[182] Here the mental capacity of Thorne has to be considered in light of the advice that Thorne received.

MENTAL CAPACITY OF JOSHUA THORNE

[183] I look at this issue both in the context of the Independent Legal Advice and as an issue on its own.

[184] The two doctors who gave evidence on behalf of the Claimant both agree that Thorne was suffering from dementia from about 2001.

[185] Dr. Spencer opined that Thorne's dementia would have started around the year 2000.

[186] Both doctors opined that lay persons would take a different view of Thorne from that of medical practitioners, as lay persons were not qualified to assess the mental capacity of persons.

[187] One telling piece of evidence was that Thorne had a stroke in 1986/87. This had an effect on his cognitive processes.

[188] Both medical practitioners struck me as reliable witnesses. Dr. Herry Thompson had a history with Thorne since 2001, and Dr. Spencer from sometime in 2004/2005.

[189] As stated in **RE: Beanye**:

“Mother should have been in a condition to fully understand:

1. That she was disposing of her only asset of value and depriving herself of title to it.
2. That she was thereby pre-empting the provisions of her will, and
3. That she was preferring one child and cutting the other out from all benefit.”

[190] As in the case of **Billington & ors v Blackshaw**, Lord Justice Merrit found that “the medical condition such as senile dementia is progressive and rapid deterioration at a later date is some indication of how much was present at an earlier stage.”

[191] Both Drs. Herry Thompson and Spencer in their evidence were of the view that Thorne by 2004 was incapable of managing his affairs and would not have been able to appreciate the nature and effect of the transaction he purported to make between himself and the Defendants.

[192] While Dr. Spencer testified that he may have had lucid moments it is not for this Court to speculate that on the day in question when he received the independent legal advice and executed the conveyance that he was in fact experiencing one such lucid moment.

[193] I accept the evidence of the doctors that Thorne (despite the fact that he executed several documents between 2001 and 2005) was not of sufficient mental capacity to understand the nature and effect of the conveyance to the Defendants.

[194] This being so, I also find that Thorne would have been incapable of understanding the independent legal advice given to him by Mr. Nigel Stewart. Whether that

advice was sufficient in its terms is not an issue given the findings on Thorne's mental capacity.

[195] Garret, J in **John Charles Williams v George Williams** et al stated:

"I have no doubt that on the three occasions Mr. Donaghy saw John, he formed the impression, as a result of the questions asked, that John was in agreement with what was proposed. I am also quite prepared to accept that either at the execution of the deed or perhaps the meeting of 30th July, or possibly at both Mr Donaghy explained the general effect of the transaction in terms that he says he would have done. But this would come nowhere near the steps which Ms. Samuel and Dr. El-Komy say would have been required to bring home the matter to him.

[196] I find that while Mr. Stewart did his best to explain to Thorne the nature of the document he was signing and while Thorne may have appeared to him to have understood what was being said to him, based on the evidence of the two doctors, Thorne could not have possibly understood the nature and effect of the Deed of Gift which he signed on 27 January 2004.

[197] I find that the evidence of Drs. Herry Thompson and Spenser to be reliable and in light of the progressive and rapid deterioration which symptomatic of the condition, as well as the medical view that Thorne was suffering from the condition since 2000-2001, that Thorne's condition had deteriorised to the point where by the 27 January 2004 he no longer possessed the capacity to understand the nature and effect of the document he signed that day. Nor did he have an appreciation of the independent legal advice rendered by Mr. Stewart.

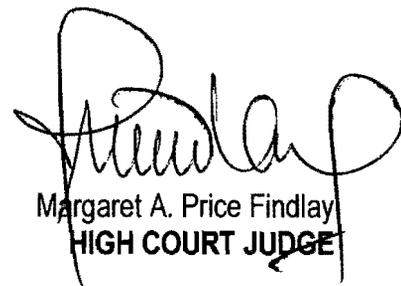
[198] Certainly Dr. Spencer's evidence of his meeting with Thorne presented a patient who had little or no grasp of what was going on around him. Granted that he examined Thorne after the execution of the document in question, but he opines that this state would have existed in 2004 at the time of the execution of the document.

[199] In conclusion and for the reasons stated the Claimant has proved her case to the satisfaction of the Court. I find that the Deed of Gift signed by Thorne was done at a time when he lacked the mental capacity to have a full appreciation of the nature and effect of the Deed of Gift.

[200] I therefore make the following orders:

- a) A declaration that the Deed of Gift dated 27th January, 2004 between Joshua Thorne and Herbert & Geoffrey Preudhomme is not the deed of Joshua Thorne and is hereby set aside.
- b) A declaration that the Deed of Gift dated 27th January, 2004 made from Joshua Thorne to the Defendants is void.
- c) The Defendants are to deliver up possession of the said Deed of Gift to the Claimant to be cancelled.
- d) Should the Defendants fail to deliver the said Deed of Gift to the Claimant, the Registrar is hereby ordered to cancel the said Deed of Gift.
- e) Costs to the Claimant to be prescribed costs unless otherwise agreed.

[201] I wish to thank Counsel for their assistance.



Margaret A. Price Findlay
HIGH COURT JUDGE