

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT LUCIA

CLAIM NO. SLUHCV2012/0816

[1] **INGRID SKERRET**
[2] **GREGORY MCROBERT VALMONT**

Claimants

and

ERNEST VALMONT

Defendant

Appearances:

Mr. Leslie Prospere for the Claimants
Ms. Lydia Faisal for the Defendant

2014: October 1; 2;
November 13.

JUDGMENT

- [1] **BELLE, J.:** This case provides an opportunity to answer the question in what circumstances would the court intervene to stop, vary or reverse a transaction between two relatives on the basis that one of them was the victim of undue influence.
- [2] The discussion is guided by authorities which pronounce upon undue influence in family relationships, in particular situations involving husband and wife, and commercial transactions involving, legal practitioners and financial institutions. I say guided because there is clearly no case cited by the parties which speaks to undue influence in a uncle – nephew relationship where the alleged victim, the uncle is still alive but plays no part in the case.

- [3] One other question which must be answered is how does the absence of any complaint from the alleged victim about the act of undue influence affect the allegation of undue influence where the alleged victim has not entered any transaction in contemplation of death or changed the contents of a Will?

The Facts

- [4] Mr Michael Valmont retired some time in 2002 after having managed the retail division of the Vieux Fort branch of a family owned company called A.F. Valmont & Company Limited for some 17 years. Mr Valmont had previously worked as a clerk of the New York Stock Exchange for 20 years before assuming his managerial duties at A.F. Valmont & Company Limited.
- [5] Mr. Valmont was 72 years old at the time of his retirement and during his working years acquired a number of immoveable properties in Saint Lucia as well as substantial sums of monies that he has deposited into a number of banks in the south of the island. Mr Valmont resided at New Dock Lane situate in the town of Vieux Fort and for approximately 10 years had a live-in Vincentian companion and care taker named Alston Davis.
- [6] The First named Claimant claims that sometime in 2008 she began to observe abnormal behaviour by Mr. Valmont. He had become forgetful and was unable to complete conversations that he had commenced with her. She further observed that he had begun to display extreme paranoia and would invite her to his residence where he held secret conversations with her. He on these occasions informed her of his concern over his decision to add persons to his bank accounts. He expressed concern that these persons were misusing the funds in his bank accounts.
- [7] Sometime in 2008 the First named Claimant received a series of frantic telephone calls from Mr. Valmont much of which she was unable to discern. She drove to Mr Valmont's residence and discovered him in a frantic and disoriented state. He wept and informed her that he suspected that certain persons had been meddling with his bank accounts.
- [8] The First named Claimant in early 2009 provided Mr Valmont with assistance in closing his two bank accounts at the Vieux Fort branch of the Bank of Nova Scotia and placing the proceeds in his

existing bank account at the Vieux Fort branch of Bank of Saint Lucia Limited. It turns out that Mr Valmont jointly owned one of the Bank of Nova Scotia accounts with the Defendant and the other with another of his nephews called Delyle Blenman. The First named Claimant from this occasion began visiting Mr Valmont more frequently to more closely monitor his unusual behaviour and manage his personal affairs.

- [9] On 6th April, 2011 Mr Valmont unknown to the Claimants included the Defendant's name on the bank account. The bank account mandate provided that the surviving joint account holder would become entitled to the proceeds in the bank account. The Defendant in March of 2012 withdrew the remaining balance of \$246,467.00 from the bank account.
- [10] On 11th April, 2011 Mr. Valmont donated to the Defendant one of his immoveable properties situate at Moule a Chique in the Quarter of Vieux Fort registered in the Land Registry as Block 1316B Parcel 171.
- [11] All of the events outlined above took place before the First and Second Claimants were made receivers of Mr Valmont's property on 30th May, 2012.
- [12] After becoming receivers the Claimants caused their attorney to issue a letter to the Defendant demanding the return of the withdrawn proceeds from the bank account. The Defendant refused to satisfy the Claimant's demand for the return of the withdrawn proceeds from the bank account. Subsequently the Claimants issued the instant claim against the Defendant for a series of declarations and orders to compel the return of the bank account proceeds as well as the donated property to their custody.
- [13] The Claimants state in their statement of claim that Mr Michael Valmont was at the time material to this case, an 80 year old retiree and the sole owner of a Bank of Saint Lucia (Vieux Fort branch) chequing account number 416194803 with the sum of EC\$315,186.28 standing to his credit and that he was suffering from dementia at all material times.

- [14] The Claimants describe the Defendant as a paternal nephew of Mr. Valmont. The Defendant at the material times routinely provided Mr. Valmont with assistance in undertaking a number of his personal affairs such as doing errands and driving him to various appointments.

Points of Contention

- [15] The Claimants' specific allegation is that firstly the Defendant caused Mr. Valmont to execute a Deed of Donation before Notary Mr. Nicholas Jean Baptiste procuring the transfer of property to the Defendant. Secondly they accuse the Defendant of causing Mr Michael Valmont to facilitate the addition of his name onto the chequing account on which at the time he had the sum of EC\$315,186.28 standing to his account.
- [16] Thirdly the Claimants allege that the Defendant withdrew the sum of EC\$246,467.00 from the said chequing account.
- [17] All of these things were done according to the Claimants due to the undue influence exercised by the Defendant over Mr. Michael Valmont.
- [18] The Defendant provides a detailed background of the relationship between Mr. Michael Valmont and himself and Mr Valmont and other family members. He also gives evidence to support the view that Mr Valmont was quite capable of handling his affairs and knew what he was doing when he donated the property earlier described and withdrew the sums of EC\$246,467.00 after becoming a signatory to the account.
- [19] The Defendant states in paragraphs 9-11 of his statement of claim:
- "Mr Valmont was not happy with the control that the First Claimant was imposing upon him and his affairs without seeking his opinion and consent and he complained bitterly to the Defendant and others close to him. He was agitated, angry and very upset about the closure of the Scotia savings account, which the Defendant believes was to deny him and Mr Blenman access to the funds."*
- [20] Shortly after the account was opened at bank of Saint Lucia, Mr Valmont requested that the Defendant attended the Bank with him in order to reinstate his name to the account. At all material

times his intention was to give the Defendant full access to the funds as joint owner thereof, as the mandate of the account will clearly show.

- [21] The Defendant states that Mr. Valmont was not suffering from dementia up till the date he was taken from his home in Vieux Fort, which was recorded as the second Tuesday in January 2012. Further, if he is now suffering from dementia with depressive features, the condition was forced upon him by a conspiracy orchestrated by the Claimants in order to ultimately take control of Mr. Valmont's wealth. Mr. Valmont habitually expressed his dislike of the First Claimant and was not on speaking terms with the Second Claimant, neither of whom showed any signs of genuine concern or caring for him before he was taken by them from his home.
- [22] In her evidence in Chief the Claimant states that she and the Defendant are first cousins and that she is aware that as of 2008 the Defendant routinely provided Mr. Valmont with assistance in undertaking a number of his personal affairs such as doing errands and driving him to various appointments. The Claimant states that prior to this she had not known the Defendant to undertake any errands for Mr. Valmont. Mr. Valmont had previously relied on the Defendant's brother Anslem as well as his nephew.
- [23] The First Claimant described Mr. Valmont as an authoritarian, hard-working, reliable, and efficient manager. She obtained this knowledge of Mr. Valmont while she was the general manager of A.F. Valmont & Co Limited. She also thought that Mr. Valmont was very frugal with the company's financial and other resources.
- [24] In outlining the reasons for her belief that the Defendant exercised undue influence over Mr. Valmont the First Claimant says that in early 2008 she began to observe signs of abnormal behaviour by Mr. Valmont. He had become incoherent and could not complete conversations that he had commenced with her. He often appeared disoriented during her visits with him. He was concerned about his health and Norma's capacity to manage his affairs in the event that he was no longer able to do so.

- [25] Mrs Skeret claimed that Mr. Valmont over time displayed increasing forgetfulness as he was very often incapable of recalling rudimentary personal information such as his residential address, his telephone number as well as his bank account information.
- [26] According to the Claimant Mr Valmont had begun to display extreme paranoia wherein during visits with him he sometimes wanted her to hold secret conversations with him. He would during these conversations express strong suspicion of certain individuals. He also told her then that he was concerned about **his decision** to add other persons to his accounts and felt that the accounts were being misused.
- [27] She spoke about responding to frantic phone calls and assisting Mr. Valmont with consolidating **his** various accounts.

Medical Evidence

- [28] The First Claimant confirmed that she took Mr Valmont to see Dr. Thomas Lucas, Dr. Swamy a consultant psychiatrist as well as Dr. Alphonus St Rose.
- [29] She said that on the advice of Dr. Swamy after having felt dissatisfaction with Mr. Valmont's domestic arrangements made him a resident of ASHA Care Centre on 17th January, 2012. ASHSA Care Centre is a voluntary residential facility that is specifically designed for persons with psychiatric disorders. Mr. Valmont remained resident of Asha Care Centre until 13th April, 2012 when she took him under her care and custody.
- [30] Dr Thomas Lucas in his witness statement said that Mr (Michael) Valmont became his patient at the St. Jude Hospital sometime in 2007 following which time he treated him for an enlarged prostate until sometime in 2011. He recalled that Mr Valmont visited in the company of a young man called "Alston" whom he described as being his care giver. Dr Lucas concluded:

"At the end of my course of treatment of Mr. Valmont I however had cause to refer him to a psychiatrist on the basis of my suspicion that he was also suffering with the onset of mid stage Alzheimer's disease. The evolution of my suspicion and referral of Mr. Valmont to a psychiatrist arose from the final two visits with me.

- [31] Dr Lucas then went on to identify these two visits taking place on 28th May, 2011 and 20th June, 2011 when Mr Valmont was 80 years old. He described the visit as follows:

"Mr Valmont on this occasion expressed concerns over his forgetfulness as well as his inability to sleep properly. Given the fact of Mr. Valmont's age and above mentioned concerns I suspected that he may have had the early onset of Alzheimer's disease, I prescribed Aricept 5 mg qd for Mr. Valmont. Aricept is a drug that increases the mental capacity of patients with early Alzheimer's disease.

On 20th June 2011 I again saw Mr. Valmont at the St. Jude Hospital. Mr Valmont on this occasion reported that he was taking his medication and that his sleep pattern had improved. Mr. Valmont appeared better."

- [32] In a statement signed on 28th November, 2013 Dr. Guruswamy Ramachanrappa (Dr. Swamy) a consultant psychiatrist with St Jude Hospital since 1997 until present stated in his witness statement that he examined Mr. Valmont at the Southern Medical Centre, in Vieux Fort on 14th July , 2008. During Mr. Valmont's mental status examination he observed that Mr. Valmont had memory impairment. Mr Valmont at the time also had significant depressive features with spontaneous crying spells loneliness and suicidal ideas. I diagnosed Mr. Valmont as suffering with Dementia with depressive disorder. I advised that he underwent blood tests, medications, psychotherapy and cognitive therapy.

"Mr. Valmont returned to me for a follow up consultation at the Southern Medical Centre in Vieux Fort on 18th July, 2008 after which time he had no further follow up visits with me at this entity until 2011."

- [33] According to Dr Swamy, it is difficult to estimate the duration of Mr. Valmont's illness. When he saw him at Southern Medical Centre in Vieux Fort on 14th July 2008 Mr Valmont's medical condition must have started many months or years before. The early onset Dementia starts before 65 of age and late onset Dementia starts at 65 years of age.

- [34] Dr. Swamy concluded that Mr. Valmont's Dementia has impaired his memory, behaviour and thinking. There was severe impairment noticed during his mental status examinations of him at the ASHA Care Centre and the Tapion Hospital. This presumably was after Mr. Valmont's confinement.

The Legal Submissions

- [35] In **Murray v Deubery** Sir Vincent Floissac CJ defined the doctrine of undue influence in the following terms:

"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 subhead 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 adviser and patient, parent and child, and clergyman (or religious adviser) 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."

- [36] In **Murray v Deubery and Another** (1999) 52 WIR, 147 the Appellant who claimed undue influence was actively involved in making the complaint of undue influence and explaining its effect on him which he set out in his amended defence against a suit for specific performance.

- [37] In **Marie Madeliane Egger v Herbert Egger** Civil Appeal No . 17 of 2002 Alleyne J. A (as he then was) defined actual undue influence in the following passage in his judgement.

*"In **Allcard v Skinner**, Lindley L.J at page 181 distinguishes between the two classes of case involving undue influence. The first 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...."*

- [38] In **Egger v Egger** the Appellant wife had filed a writ seeking declarations and orders including declarations that she was induced to sign a power of attorney in favour of the husband by undue influence exerted by the husband.

- [39] In neither **Murray v Deubery** nor **Egger v Egger** did the court speak to the circumstances of a person who is alive and allegedly acting under undue influence but whose opinion is not sought on the matter because he is allegedly suffering from dementia. In the case at Bar there no one involved in the challenged transactions who gives evidence about them other than the person who is accused of exercising undue influence.

- [40] But Counsel for the Claimant argues that in the absence of evidence to support actual undue influence he can rely on the doctrine of presumed undue influence. In this regard he seeks support for his submission that this is a case of presumed undue influence from the words of Lord Nicholls of Birkinhead in **Royal Bank of Scotland v Ettridge** where Lord Nicholls states:

"The presumption of undue influence ...is a rebuttable presumption. It is a presumption which arises if the nature of the relationship between the parties coupled with the nature of the transaction between them is such as justifies, in the absence of any other evidence, an inference that the transaction was procured by the undue influence of one party over the other. This evidential presumption shifts the onus to the dominant party and requires the dominant party, if he is to avoid a finding of undue influence, to adduce some sufficient evidence to rebut the presumption."

- [41] An adequate summary of the concept of Undue influence is stated in the following terms:
Virtually any act of persuasion that overcomes the free will and judgment of another, including exhortations, importunings, insinuations, flattery, trickery, and deception, may amount to undue influence. Undue influence differs from duress, which consists of the intentional use of force, or threat of force, to coerce another into a grossly unfair transaction. Blackmail, Extortion, bad faith threats of criminal prosecution, and oppressive Abuse of Process are classic examples of duress.
- [42] Four elements must be shown to establish undue influence. First, it must be demonstrated that the victim was susceptible to overreaching. Such conditions as mental, psychological, or physical disability or dependency may be used to show susceptibility. Second, there must be an opportunity for exercising undue influence. Typically, this opportunity arises through a confidential relationship. Courts have found opportunity for undue influence in confidential relationships between Husband and Wife, fiancé and fiancée, Parent and Child, trustee and beneficiary, administrator and legatee, Guardian and Ward, attorney and client, doctor and patient, and pastor and parishioner. Third, there must be evidence that the defendant was inclined to exercise undue influence over the victim. Defendants who aggressively initiate a transaction, insulate a relationship from outside supervision, or discourage a weaker party from seeking independent advice may be attempting to exercise undue influence. Fourth, the record must reveal an unnatural or suspicious transaction. Courts are wary, for example, of testators who make abrupt changes in their last will and testament after being diagnosed with a terminal illness or being declared incompetent, especially if the changes are made at the behest of a beneficiary who stands to benefit from the new or revised testamentary disposition.

- [43] Nevertheless, courts will examine the facts closely before finding that a transaction has been tainted by undue influence. Mere suspicion, surmise, or conjecture of overreaching is insufficient. The law permits loved ones and confidants to advise and comfort those in need of their support without fear of litigation. Courts are also aware that the doctrine of undue influence can be used as a sword by the vindictive and avaricious who seek to invalidate a perfectly legal transaction for personal gain. When undue influence is found to have altered a transaction, however, courts will make every effort to return the parties to the same position they would have occupied had the overreaching not occurred.
- [44] Counsel for the Defendant cited Chitty on Contracts (Thirtieth Edition) page 642 paragraph 7-086, where the learned authors state:

*"Transactions not explicable by ordinary motives: As explained earlier, it is not sufficient in order to raise or inference that undue influence has been used that the parties were in the type of relationship in which influence of one over the other is presumed. It must also be shown that the transaction in question was in the words of Lindley L.J. in **Allcard v Skinner**: 'not reasonably to be accounted for on grounds of friendship, relationship, charity or other ordinary motives on which ordinary men act.'*

This need not be shown if undue influence can be proved in other ways, but in all cases in which there is no direct proof, the combination of a relationship in which influence exists and a transaction that "cannot be explained by ordinary motives" seems now to be taken as evidence that undue influence was used, and it will be sufficient to move the evidential burden of disproving undue influence to the other party."

Claimant's Submissions

- [45] The Claimants' counsel argues that the Defendant was aware that he was not a beneficiary of Mr Michael Valmont's Will and that he tried to have him change the Will. He also submitted that the Defendant was aware of the dementia diagnosis since his wife who gave evidence in his support admitted having a conversation with Mr St Jour about the decision to take Mr. Michael Valmont to see Dr. Lucas and Dr. Swamy. Counsel further argues that the Defendant was aware of Mr. Valmont's refusal to take medication but did not report it to the Doctors at the Asha Centre. This behaviour points to the Defendant's intention to deceive the court and to take advantage of Mr Michael Valmont's condition.

Defendant's Submissions

[46] The Defendant made several submissions which can be outlined as follows:

1. The allegation of actual undue influence which the Claimants say resulted in the gifts made to the Defendant by Mr. Valmont has not been proved and must fail.
2. The facts of this case and the evidence emerging do not support the suggestion that there was a relationship of trust and confidence in the nature of what is required for a presumption of undue influence to arise. In any event, the other limb (transaction not explicable by ordinary motives) required for the presumption to be made will be explored.
3. Counsel expanded the submission significantly and concluded; "Mr Valmont made these gifts to the Defendant out of love and affection for the Defendant and not because the Defendant had exercised any undue influence over him, of which there is no evidence. Further he made the gifts because he had more than sufficient means to do so.."
4. Finally counsel submitted on the point of presumed undue influence that there is no or insufficient basis for the finding of a presumption of undue influence against the Defendant, as the nature of the relationship that existed between him and Mr. Valmont did not satisfy the requirements. Further, the gifts made to the Defendant have been satisfactorily explained at paragraph 2.24 above as being based on the ordinary motives of Mr. Valmont towards his nephew the Defendant.
5. In relation to the medical evidence, the court was invited to find that the Claimants has not provided the Court with any credible evidence in this case, save a totally bald and post dated assertion of Dr. Swamy; that he indeed diagnosed Mr. Valmont with Dementia in 2008.
6. With regard to the competency of Mr. Michael Valmont counsel submitted that there is no sufficient evidence to prove that Mr Valmont was demented from July 2008, and as such was incapable of donating the gifts he did to the Defendant. The Court is further invited to find that when Mr Valmont donated the gifts to the Defendant he was acting in an informed, objective and reasonable manner, and was capable of understanding the effects of the gifts made.

[47] The court was invited to find that there was no undue influence or breach of trust operating against Mr. Valmont at the Defendant's instance at the relevant time.

Analysis of arguments

[48] The Claimant's counsel argues that this was a case of presumed undue influence but counsel for the Defendant argues that this is not the case since the category of uncle and nephew is not one of the cases presumed to be one of dominance where undue influence can be presumed.

- [49] Secondly counsel for the Defendant argues this was a plain gift based on love and affection which Mr. Valmont could afford to give. It did not place Mr Michael Valmont at any disadvantage. The evidence shows that Mr Valmont was aware of the existence of his bank accounts and that he shared access to them with other persons. Indeed Mr Valmont also consulted the First Claimant who was in a position which was no less influential nor confidential than the Defendant.
- [50] Other than the fact that Mr. Valmont had not in the past made these kinds of gifts to the Defendant or anyone else there was nothing strange about the transaction. The Defendant was Mr Michael Valmont's favourite nephew counsel submitted.
- [51] But I note that even the assumption that Mr. Michael Valmont had not made similar gifts in the past would be speculation since no one knew what Mr Valmont had placed in his Will in terms of the legacies made or who would have been the beneficiaries. There is evidence that Mr. Valmont wished to change his Will to make the Defendant and possibly others beneficiaries. The Defendant may have assumed that he was not a beneficiary under the Will. But no one knew whether the gifts made under the Will were comparable to what Mr Valmont gave to his nephew the Defendant.
- [52] I also note that a clear distinction can be drawn between this case and most other undue influence cases based on the fact that most persons who are victims of undue influence apply to use this concept as a shield or to vindicate rights or the true intentions of others. This happens when persons apply to have a Will revoked because of testamentary incapacity for example. But their interest is clearly the benefit they hope to receive from the estate.
- [53] In this case there is no such issue clearly articulated and while in the case of a Will the testator cannot be asked to explain his actions and therefore other evidence has to be used to determine either his intent or his capacity to make a Will, in this case there was no attempt to determine Mr Valmont's wishes even though Mr Valmont was available to explain his actions if he could. In my view it is somewhat strange that in a family matter no one thought it fit to have a family meeting to discuss this matter with the alleged victim before bringing it before the court.

Analysis of the Medical Evidence

- [54] The evidence as to Mr. Valmont's clinical diagnosis at the time when he was placed in the Asha Home is mentioned above. Indeed it was obviously the right time to make such a diagnosis. But none of this helps us to determine when exactly Mr Valmont stopped being able to take care of his own financial and other issues. In other words it does not speak to his competence at the time he made the gifts to the Defendant.
- [55] The First Claimant lists a number of things that appeared to be going wrong with Mr Valmont but she never did anything about it and never raised it with the Defendant until she became aware that he had become the recipient of two gifts from Mr. Valmont.
- [56] Apparently the relatives tried to persuade the Defendant to return the gifts. But the evidence does not reveal that Mr. Michael Valmont was ever present at any of these meetings. It is logical to presume that Mr Michael Valmont played no part in the effort to persuade the Defendant to return the gifts. Neither was there ever a meeting held with Mr Valmont and the Defendant in an effort to determine Mr Valmont's true wishes in spite of the fact that he obviously knew that he had given other persons access to his bank accounts including the First Claimant after the alleged frantic conversations.
- [57] In spite of the evidence that Mr. Michael Valmont thought that someone was interfering with his bank accounts she never says that Mr Valmont identified the Defendant as one of the persons interfering with the bank accounts.
- [58] The matter of how to deal with Mr Valmont at any point in time was not decided until the receivership order was made.
- [59] A number of persons knew that Mr Valmont was losing his memory. He was sent to the doctor in 2008 for this very reason. After the doctor's visit at least two family members were aware of his need for assistance in conducting his affairs. Strangely enough they never met to discuss these needs. They each pursued their individual agendas. Now one of them is seeking to point their finger at the other because the other seems to have benefited from the relationship more than they

have. But there is no attempt to uncover Mr. Valmont's wishes beyond what the Defendant says and if indeed he was aware of his gifts to the Defendant what this transaction meant to him.

- [60] I therefore have to conclude that this is not the kind of matter where the court is required to step in to do anything more than it has already done, which is to appoint a receiver to secure Mr Valmont's needs and to prevent the abuse of his property , moveable or immoveable to the advantage of any unscrupulous person.

The Rebuttal

- [61] In the event that it is found that the Defendant is required to rebut the allegation of presumed undue influence in this case, although I hold that he is not because there is an explanation for the gifts which he made, it is instructive to take the following evidence of the Defendant into consideration:

"In addition to the two First Caribbean bank accounts described above, Uncle Michael also had two savings accounts at Scotia Bank in Vieux Fort, which together totalled over \$300,000.00. One of them was joint with me and the other was joint with another of his nephews Delisle Blenman. He had taken both of us to Bank of Nova Scotia with him in order to make each of us signatory to one account.

Uncle Michael complained bitterly to me about the control that the 1st Claimant was forcing upon him and his affairs without first consulting with him and seeking his opinion or consent. He was agitated and very upset about the closure of the Scotia Bank accounts, and I believe that the 1st Claimant's intention was to deny access to the said accounts to Mr. Blenman and me. From the time the 1st Claimant has deposited his money into the Bank of Saint Lucia account, Uncle Michael has been asking me to attend that bank with him to reinstate my name to the account. I had not been eager to do so and had kept promising to accompany him for that purpose.

Eventually in early April 2011, I finally accompanied Uncle Michael to Bank of Saint Lucia where we signed a joint account mandate. Uncle Michael had insisted that the money in the account was as much mine as it was his and his only caution to me was that the money was not to be wasted but should be preserved so that in the event of an emergency it would be available to me.

I obeyed my Uncle Michael's instructions and did not make any withdrawals from the account; that is until the 1st Claimant conduct forced me to do so.

As far as I could have seen and discerned from his actions and mannerisms and based on my daily contact with him, Uncle Michael was not suffering from any mental condition or any dementia at the time that he was taken from his home or any time before that. If he is

now suffering from any such condition, I believe that it arose from the drugs that were being given to him and which from the onset made him very ill. Further, he was taken from his home where he had always lived and had an established daily routine and was placed in an institution for people with mental afflictions. He was kept there for several months before an application was made to the court for deeming him demented.

On one occasion, when Norma Valmont requested to see his phone records, I noted that whilst he had made only eight telephone calls to her in one month, he had made 30 calls to my home number during the same month.

Uncle Michael had always expressed an intention to give me the benefit of some of his property. I know that he had made this intention known to his sister Norma Valmont. The 2nd Claimant was the one holding the documents concerning the land which the Claimants intended to donate to me. He had indicated to me that he was amazed that Uncle Michael had remembered that "he still had that little piece of land" available to donate to me. The 2nd Claimant had sent all the requisite papers to Uncle Michael to facilitate the transaction. I myself had personally discussed the intended donation with my aunt Norma Valmont, who had told me to ensure that Uncle Michael did the necessary paperwork, because a donation by word of mouth was no good.

Uncle Michael had kept apologising to me about how inaccessible the land was and suggested that I could sell it and purchase a better piece elsewhere. At that time, no one had suggested that I had in anyway influenced my uncle to procure the donation or the Bank account, allegations which are farthest from the truth.

I never asked my Uncle for anything. However he was intent on ensuring that he gave me certain benefits. I never persuaded or pushed him to do anything for my benefit. For years he had been insisting that he wanted to change his will to add me as a beneficiary; to revise the gift that he had made to Alston Davis in his current will and also to add some of other nephews and relatives.

Eventually sometime in 2011, after the deed of donation had been done, he asked me to drive him to Castries to see his lawyer who was also his Godchild. He told me that he was going there to revise his will. I dropped him off at the lawyer's office and went away asking him to telephone me when he was finished.

About one hour later Uncle Michael telephoned me to pick him up. When I did he was quite distraught and visibly shaken and unhappy. He then told me that the lawyer had refused to accept his new last will and testament because she had asked him someone's name and he could not remember.

After the 1st Claimant had taken Uncle Michael away, she immediately began to make regular large withdrawals from the account at Bank of Saint Lucia. The Bank found this to be unusual and contacted me by telephone to come into the Bank. I went into the Bank and observed the activity on the account.

Further, I have my doubt that all or any of the signatures on the cheques and other documentation are that of my uncle as they differed from his signature as shown on the Bank of Saint Lucia account documents.

I know and believe that the Claimants' claim against me is a witch hunt because they have not challenged any other of my Uncle's activities including deeds of sale and a donation to my cousin Delisle Blenman.

It was very painful for my wife and I to see Uncle Michael gradually deteriorate into "skin and bones." He would plead with us to get him out of the facility which we were powerless to do. When it was time for us to leave after each visit Uncle Michael would sob and all three of us would end up in tears. Visiting Uncle Michael was always a very painful and harrowing experience. On one of our visits he had informed us that he had fallen from his bed at the facility and had been hospitalized at Tapion Hospital. We ceased visiting Uncle Michael after he was taken away from the facility and kept at the home of the 1st Claimant, as by then the family was very hostile towards me. Further they had slandered my good name all over Vieux Fort, alleging that I had "stolen" Uncle Michael's land and money.

The 1st Claimant's various actions as set out at paragraph 3, 9, and 25 of my defence show a great degree of dishonesty in her dealings with my uncle's affairs. Whilst they caused Dr. Swamy to declare that my Uncle was demented since July 2008, they were at the same time cashing cheques purportedly signed by him whilst in the alleged state of dementia. Further, they produced to Bank of Saint Lucia, a letter dated the 10th day of March 2012, by which my uncle appeared to have authorised the Claimants to make enquiries and to obtain statements of his Bank of Saint Lucia account.

Norma Valmont had found out that Uncle Michael had added me to the Bank of Saint Lucia account after the 1st Claimant had closed the Scotia account; and he had also subsequently donated the land to me. Shortly thereafter, my uncle had sought to set aside his current Will intending to make me a beneficiary thereto.

Although their receivership is under challenge in the counterclaim, they have applied to the court to put up my Uncle's residence at new Dock Lane for sale. In an affidavit filed on the 17th day of July 2013, I have objected to that proposal, and showed the court that the Claimants are extortionate and wasteful in their handling of my Uncle's affairs."

- [62] I have taken all of the evidence into consideration and I conclude that in this case the evidence takes us no further than mere suspicion, surmise or conjecture that overreaching has taken place. Counsel for the Defendant listed the various circumstances which rebut undue influence in this case....

[63] Counsel pointed to:

1. The fact that Mr Valmont was a single man and unmarried with no children of his own and thus intended to direct his succession to those he wanted rather than leaving it to the operation of law.
2. The fact that Mr Valmont enjoyed good familial relations with the Defendant and his family which included home visits, exchange of gifts, going for drives, spending Christmases and special occasions together , discussing current affairs etc. (*There was no evidence which would indicate that Mr. Valmont enjoyed such relations with any other members of his extended family*);
3. *Mr Valmont considered the Defendant his favourite nephew.*
4. *The donation of the land to the Defendant concerned a very small plot of land as seen by the deed of sale, which was valued at \$10,000.00 This was not a significant value for a man of Mr. Valmont's means and financial position in the local context.*
5. *Mr Valmont had kept apologizing to the Defendant about how inaccessible the donated land was and suggested that he could sell it and purchase a better piece elsewhere.*

Conclusion

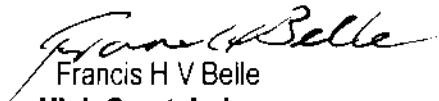
[64] Counsel for the Claimants fought hard to persuade the court that the Defendant procured a change in the nature of the Bank of Saint Lucia joint account in 2008. However this was rejected because the Claimants had failed to make any such allegation in pleadings or their witness statement and it would not have been possible for the Defendant to mount a defence to it in the final hours of the trial.

[65] Much emphasis was placed on the nature of the medical evidence by both sides. However at the end of the day the medical evidence of Dr. Lucas could do no more than say that there were signs of dementia when he examined Mr Valmont but it could not conclusively establish that Mr. Michael Valmont was **incompetent** to make the gifts that he had made to the defendant. Neither would Dr Swamy's alleged diagnosis of 2008. While I do not reject the fact that these diagnoses were made, they carry little or no weight in this matter because there is evidence of Mr Valmont's determination to carry out his wishes which evidence has itself not been shaken.

- [66] No psychological profile had been provided to prove that it was not in Mr Valmont's nature to give something to a loved one even though it is agreed that he was not generous. The parties would have to consider the contents of the Will before arriving at such a conclusion.
- [67] I accept that Mr Valmont had no children of his own and no-one had denied that the Defendant was his favourite nephew. Who would be the closest thing to a child of his own in the circumstances? No meeting or consultation was held to determine what these gifts meant to Mr Michael Valmont. Yet the Claimants are of the view that Mr Valmont should have been granted the opportunity to obtain legal advice. But it is clear based on the uncontested evidence that Mr Valmont was determined to do what he did even after he went to a lawyer's office and the lawyer refused to assist him.
- [68] I have come across one case cited in Chitty on Contracts 29th Edition para 7- 082 page 556 in which the gift of an aging widow to her nephew was set aside. In *Inches Noriah v Shaik Alie Bin Omar* the Privy Council in considering the adequacy of independent evidence opined that independent advice may be effective even though it was not shown that the advice was taken; but then it must be given "with a knowledge of all relevant circumstances and must be such as a competent and honest adviser would give if acting solely in the interests of the donor." In *Noriah v Shaik Alie Bin Omar* the gift was set aside for although the widow had received independent advice from a solicitor, he did not know at the time that the gift comprised almost all of her property, nor did he advise her that she could equally well have benefited her nephew by Will.
- [69] In the case at Bar Mr Valmont wanted to benefit his nephew by Will but he was prevented from doing so. Who then would have given independent legal advice to Mr. Michael Valmont?
- [70] In the absence of Mr Valmont there is no evidence to show that Mr. Valmont was not merely carrying out his wishes when he made the gifts to the Defendant.
- [71] It has not escaped my thoughts that the individuals involved in the attack on these gifts could possibly fall into the category of the vindictive and avaricious, possibly thinking of what they had to lose rather than whether Michael Valmont was merely expressing his wishes. In any event they

made it impossible for anyone to take advantage of Mr Valmont other than themselves after obtaining the power of receivership over Mr. Michael Valmont's assets. But up to this point there was still no independent person advising Mr Valmont.

- [72] I note that none of the alleged suspicious transactions took place after Mr. Valmont's assets were placed in receivership or after he was declared incompetent.
- [73] I do not accept the Claimant's argument that the Defendant was aware of Mr. Michael Valmont's incompetence and took advantage of it. Therefore when one weighs the situation in the balance there is no basis for declaring that the gifts made to the Defendant by Mr. Valmont were due to undue influence actual or otherwise.
- [74] The Claimants' case on the Claim is therefore dismissed with costs awarded to the Defendant pursuant to Part 65 of the CPR 2000.
- [75] I note in closing that the court made an order severing the issues in this case and therefore now orders that on the application of either party the Defendant's counter-claim may proceed to case management in preparation for trial if so desired.
- [76] In my view counsel for both sides made their best effort to ensure that justice was done in this case in the highest tradition of the legal profession and I thank them.



Francis H V Belle
High Court Judge