

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2013/0260

IN THE MATTER OF THE ESTATE OF LLOYD BIBBY DECEASED

AND

IN THE MATTER OF AN APPLICATION BY THE ADMINISTRATRIX OF THE ESTATE OF LLOYD
BIBBY, DECEASED, TO REVOKE DEED OF GIFT NO 4051 of 1995

BETWEEN

PRINCESS BIBBY

(Administratrix of the estate of Lloyd Bibby Pursuant to the order of Justice Wesley James dated
21/11/13 in Claim No. 260 of 2013)

CLAIMANT

AND

ANTHONY CONSTANTINE
KELLY-ANN CONSTANTINE
JIMMY CONSTANTINE
MELVINA CONSTANTINE

DEFENDANTS

Appearances:

Mrs. Ronnia Durham-Balcombe for the claimant.

Mr. Jonathan Lewis for the defendants.

2016: Apr. 5, 7 & 11
Jul. 6

JUDGMENT

BACKGROUND

- [1] Henry, J.: In this case, a mother and son are embroiled in a conflict over ownership of land located at Fountain in the State of Saint Vincent and the Grenadines. Princess Bibby is 90 years of age. She is **Anthony Constantine's mother and Lloyd Bibby's widow. Mrs. Bibby commenced this claim as 'administratrix' of her late husband's estate.**¹ She alleged that her late husband refused her son **Anthony's request for permission** to build a house on part of his land. She alleged further that Anthony Constantine ignored her husband and built a wooden house on the land which he later converted into a wall house.
- [2] She claimed that subsequently, Mr. Constantine asked her and Mr. Bibby to sign two separate documents which they did without knowing what they were. She averred that she did so because she was led to believe that the document she signed constituted her permission for Mr. Constantine to relocate abroad. She maintained that Mr. Bibby was senile when he signed the other document and it was not his act.
- [3] The document signed by Lloyd Bibby was a transfer of part of his land to Princess Bibby by Deed No. 4051 of 1995. Princess Bibby signed Deed No. 4052 of 1995 conveying that parcel of land to Anthony Constantine. By Deed No. 3996 of 2010, he later conveyed it to his children Jimmy and Kelly-Ann, his wife Melvina and himself. Mrs. Bibby seeks an order revoking the three deeds. She also seeks a declaration that the subject **property belongs to her late husband's estate.**
- [4] **Anthony Constantine alleged that he expended considerable effort and time constructing Mr. Bibby's house. He testified that Mr. Bibby gave him the land as payment for that work among other things. He argued that he relied on Mr. Bibby's promise that the land was his and therefore Mrs. Bibby is estopped from bringing the claim. The Constantines submitted that Mrs. Bibby's claim is statute-**

¹ She was appointed administratrix of Lloyd Bibby's estate by order of court dated 21st November, 2013.

barred as it did not arise within the 12 year period immediately preceding the filing. They seek a declaration that they are the beneficial owners of the property and an injunction restraining Mrs. Bibby from trespassing on the subject land or otherwise interfering with their enjoyment. They allege that Mrs. Bibby has unlawfully erected a building on their property and they seek an order that it be destroyed. I have found that the Constantines are the beneficial owners of the subject property.

ISSUES

[5] The issues are:

(1) Whether Anthony Constantine, Melvina Constantine, Jimmy Constantine or Kelly-Ann Constantine secured the execution of Deed of Gift No. 4051 of 1995 from Lloyd Bibby through fraud and if so, to what remedy is Princess Bibby entitled as **administratrix of Lloyd Bibby's estate?**

(2) Whether Princess Bibby's claim as administratrix of Lloyd Bibby's estate is statute-barred?

(3) Whether Princess Bibby as administratrix of Lloyd Bibby's estate is estopped from bringing this claim?

(4) Whether Anthony Constantine, Kelly-Ann Constantine, Jimmy Constantine and/or Melvina Constantine own an interest in the subject property?

(5) If so, whether Princess Bibby as administratrix of Lloyd Bibby's estate has encroached on the Constantine's property?

Preliminary Point – Locus Standi

[6] Prior to initiating this claim, Princess Bibby applied² pursuant to part 21 of the Civil Procedure Rules 2000 ('CPR') to be appointed **administratrix of Lloyd Bibby's estate. Her application was granted. She was also appointed to represent 'the beneficiaries of the estate of Lloyd Bibby deceased, namely Princess Bibby (surviving spouse) and the following children of the marriage namely Sandra Bibby,**

² By Without Notice application filed on 6th November, 2013.

Susan Bibby-Primus, Veronica Bibby-Valkaran, Brenda Bibby, Lester Bibby, Roderick Bibby, Alfano Bibby and any other children of the deceased.'

[7] Mrs. Bibby subsequently applied³ for the order to be amended by replacing 'administratrix' with 'personal representative'. She submitted that she should have been appointed as 'personal representative' and not as 'administratrix'. She submitted further that her appointment as 'administratrix' was made in error, constituted a typographical error, an accidental slip or oversight which could and should be corrected under CPR 42.10. The application was not heard. I propose to consider it at this stage.

[8] The referenced application, affidavit in support and draft order all used the term 'administratrix'. Princess Bibby described herself as administratrix throughout. The application was supported by affidavit of Sherica Lewis, clerk in Phronesis law firm. Ms. Lewis averred that the error was not one of substance and was merely an accidental slip. She did not indicate the basis for attesting that the use of the word 'administratrix' was an error. **There is nothing in the supporting documentation to suggest that an error was made.** Accordingly, there is no basis on which to find that an error was made in the order. **Mrs. Bibby's application for correction of the order is accordingly dismissed.**

[9] I hasten to add however, that it is apparent that Mrs. Bibby's initial application was made and considered pursuant to CPR 21. Part 21 of the CPR empowers the court to appoint a representative to represent the interests of a deceased person's estate in proceedings before the court. **Having regard to the order in its entirety, it does seem that Princess Bibby was appointed to represent Lloyd Bibby's estate and the interests of beneficiaries of that estate. The Constantines have not objected to the case proceeding on that basis. This is the basis on which the matter proceeded and is determined.**

ANALYSIS

³ By Application filed on 15th May, 2015.

Issue 1 – Did Anthony Constantine, Melvina Constantine, Jimmy Constantine or Kelly-Ann Constantine secure the execution of Deed of Gift No. 4051 of 1995 from Lloyd Bibby by fraud, and if **so, to what remedy is Princess Bibby entitled as administratrix of Lloyd Bibby's estate?**

[10] Mrs. Bibby testified that Anthony Constantine is her son, but not her late husband's biological offspring. She and Mr. Bibby had seven children – Sandra, Susan, Veronica, Brenda, Lester, Roderick and Alfanso. She explained that while she did not raise Anthony Constantine and he did not live with the Bibby family while growing up, he came to live with them for a while when he became an adult. **Sandra Bibby initially denied that Anthony lived in her parent's wattle and daub house or in their concrete house. She later admitted that he did live with them for a short period but she couldn't** remember when. Susan Bibby-Primus said she was not aware that Anthony lived in the concrete house with her parents. For his part, Anthony Constantine said that he never lived in the family house. Rather, he stayed with Mr. Bibby in the wattle and daub house until he had constructed his own dwelling.

[11] Mrs. Bibby testified that at some point, Anthony Constantine moved elsewhere but later returned and asked Mr. Bibby to allow him to put a wooden house on the land. She stated that Lloyd Bibby refused. Under cross-examination, she denied that Mr. Constantine asked her husband for permission to do so. She claimed that although he did not give Anthony Constantine permission, her son nonetheless proceeded to construct his house there in the 1980s or late 1990. She added that in the 1990s, when Mr. Constantine began to convert his wooden house into a wall house, Lloyd Bibby objected and demanded that Mr. Constantine leave the premises but he refused to do. She also testified that Anthony subsequently lived in the wooden house with his 3 children and their mother **Cynthia, someone he had children with before he married. She stated that while he was 'fixing' his** house, those children lived with her and Mr. Bibby. She agreed that Anthony later lived in the board house with his wife and their children Jimmy and Kelly-Ann.

[12] Mrs. Bibby alleged that her husband became senile in or around 1994 when he was 65 years old. Consequently, he had to be kept at home and guided in his daily activities. She alleged further that on 15th June 1995, Anthony Constantine brought an adult female to their home, who forced Mr. Bibby

to write on a document. She testified that her husband kept pulling away while she pleaded with the female to leave her husband alone. Her testimony is that the lady continued forcing Mr. Bibby to write while Mr. Constantine chanted that he had to sign.

[13] Mrs. Bibby averred that immediately before, she herself had signed a document based on Anthony **Constantine's representations that it would benefit her. She claimed that he told her that the** document she was signing was for his employers in Tortola. According to her, he also explained to her that the document would allow him to emigrate, and would ensure that she would be taken care of if either he or Mr. Bibby died. She indicated that she did not read the document as she cannot read. Anthony Constantine denied migrating to Tortola. He testified that he went there for one month only.

[14] **Mrs. Bibby recounted that she did not tell her children what happened even after her husband's** death in 1997. In 2005, her daughter Sandra visited from Trinidad and got into an altercation with Anthony Constantine during which he told them that the land was his. Subsequently, Sandra went to the registry and brought her a deed with her signature on it. She was adamant that she had not instructed any lawyer to prepare a deed for her to transfer land to Mr. Constantine.

[15] She testified that Mr. Bibby always maintained that the land was for the children he fathered with her. She accused Anthony Constantine of deceiving her. She insisted that because her husband was sick at home and was always monitored by her, he never gave instructions to a lawyer to transfer lands to her. The implication is that he did not have the opportunity to be alone at any time to give such instructions. She averred that her husband did not knowingly or voluntarily sign the deed transferring part of his land to her. She asked that the court cancel both deeds and declare that the lands **conveyed in them belong to Lloyd Bibby's estate.**

[16] It is important to note that Princess Bibby brings this claim in a representative capacity. She was not joined in the suit in her personal capacity. Notwithstanding, the language and descriptions she used throughout the case suggested that this distinction was not appreciated. In this regard, she repeatedly **referred to herself in the pleadings as 'claimant'.** Consequently, she attempted to conflate the instant claim with a non-existent claim by her in her personal capacity.

[17] In doing so, she has sought to make out a case against Anthony Constantine for:

- (1) fraud against Mr. Bibby; and
- (2) misrepresentation against her personally.

Because she is not a party to the claim, the court is not concerned with resolving any conflict between Mrs. Bibby personally and the Constantines except to the extent necessary to determine the issues **involving Lloyd Bibby's estate. Be that as it may, it is more convenient to refer to her in that** representative capacity, simply as Mrs. Bibby. This will be done for most of this judgment.

[18] **Mrs. Bibby's daughters, Susan Bibby-Primus and Sandra Bibby** provided similar evidence to her. Susan indicated that she has lived at the family home for over 45 years. She could not remember how long Anthony Constantine has been living on the disputed land. She denied that it was for more than 30 years. She explained that in 1995, she and Sandra went to Anthony and told him that they observed that he was putting an addition on top of his house and they wanted to know what he was doing because nobody gave him authority to do so. He then claimed that he owned the property. This caused them to go to the court to ascertain if that was the case. On discovering that he did, they made inquiries of their mother.

[19] Sandra Bibby recalled that Anthony asked **her father's permission to put a board house on the land and that her father told him 'no'. She testified that Anthony defied her father and brought the board house in pieces and dropped it on the land whereupon Mr. Bibby told him 'Anthony, I told you I don't want no house here, here is my children own.'** She said that her father went back to his house and left Anthony standing there and about two months after when her father was ill, Anthony started putting the house together. She and Susan recalled that their mother denied transferring land to Anthony. They maintained that the land is family land and was never given to their brother Anthony. Sandra Bibby indicated that she and her sister Susan went to lawyers in 2007 and again in 2012 to get Anthony Constantine off the land. They insisted that their father always stated that the land was for his children.

Fraud – actual and constructive

[20] **Mrs. Bibby's contention is that Anthony Constantine secured the transfer of the land to him by fraud.**

In this regard, she submitted that the conveyance to her is invalidated and rendered ineffective by his fraudulent conduct. She reasoned, by implication, that the subsequent transfers are therefore vitiated. Fraud is characterized in law as a false misrepresentation knowingly or recklessly made by someone through words or conduct aimed at inducing another person to act on it to his or her detriment.⁴ **The learned authors of Halsbury's Laws of England describe its manifestation as '... a statement of what is false or a suppression of what is true.'**⁵ This description refers to a subset of fraud referred to interchangeably as deceit. The concept of deceit is categorized as actual fraud as opposed to 'constructive fraud', another subset.

[21] Constructive fraud is not restricted to instances of deceit, but extends to cases where the perpetrator **engages in an 'unconscientious use of power' or 'victimisation' by the 'active extortion of a benefit ... or ... the passive acceptance of a benefit in unconscionable circumstances.'**⁶ Undue influence, abuse of confidence and unconscionable bargains are categories of constructive fraud. In such cases, the 'victim' complains that:

- (1) the alleged gift was extorted from him through deceit or by him being rendered powerless; and
- (2) his act or deed was not freely and voluntarily executed.

[22] The law requires that fraud must be specifically pleaded and proved.⁷ This applies to claims of undue influence. Mrs. Bibby must therefore articulate and prove the allegations of fraud if she is to succeed. No allegation of actual or constructive fraud has been made against Melvina, Jimmy or Kelly-Ann Constantine. **Accordingly, I find that they are not liable to Lloyd Bibby's estate for fraud.**

⁴ Derry v Peek (1889) 14 App Cas 337.

⁵ 4th Ed. Vol. 16, para. 663.

⁶ Hart v O'Connor [1985] 2 All ER 880 at 891, 892, PC (Lord Brightman).

⁷ Derry v Peek (1889) 14 app. Cas. 337.

[23] The assertions of fraud against Anthony Constantine as set out in the statement of claim⁸ appear to fall within the 'constructive fraud' category. Mrs. Bibby charged:

'16. The disposition of the said five thousand (5000 square feet of land belonging to Lloyd Bibby, deceased by Deed No: 4051 of 1995 to the Claimant was procured by fraud and the Claimant wishes to have the deed declared void.'

(Underlining mine).

She then particularized the fraud by describing the circumstances under which she and Mr. Bibby signed the respective deeds.

[24] The relevant portions state:

'a. The deceased Lloyd Bibby was in 1995 an elderly man in his mid 60s and was at the time suffering from the effects of senility. ... The deceased having been diagnosed as being senile since 1994, was kept at home at all times.

b. On the 15th day of June 1995 the deceased purportedly executed a Deed of Gift registered as Deed No. 4051 of 1995 by which he disposed of ... his land to the Claimant. In or around the said day, the First-named Defendant brought an adult female to the deceased's home, and the said female in the presence of the Claimant held on to the hand of the deceased and forced him to write on a document.

...

d. That the deceased never gave instructions to the attorney Theodore L.V. Browne to prepare a Deed of Gift in favour of the Claimant. ... Nevertheless such deeds were purportedly executed ... and ultimately disposed ... the deceased's land to the first named Defendant, which was contrary to the frequent proclamations of the said deceased that the land belonged to his children of the marriage.

e. That at the material time when the Deed of gift was purportedly executed, the

⁸ At paragraphs 9 through 16.

Deceased did not act freely or on his own volition and this was observed by the Claimant. The Claimant who was in her mid 60s at the material time, pleaded with the adult female to leave her senile husband alone but the said adult female continued to force the said Lloyd Bibby, deceased, to write while the First-named Defendant chanted that he had to sign.

- f. ... **At the material time, neither the Claimant nor the said Lloyd Bibby, deceased had full knowledge and understanding of what they were made to sign during the event orchestrated by the First-named Defendant.**

...

- i. That the purported signature of Lloyd Bibby, deceased on Deed of Gift No;4051 of 1995 was not the act of the said deceased as at the material time he was *non compos mentis* and had been forced to sign by an adult female brought to their home by the First-named **Defendant.**'

[25] While these pleadings make a general averment of fraud and do not expressly describe the challenged conduct as undue influence, Mrs. Bibby submitted that Mr. Bibby was coerced into signing the deed and was thereby subjected to undue influence. She also outlined the elements of actual fraud in her submissions. In this regard, she seems to be relying on both actual and constructive fraud in her claim against Anthony Constantine. It is accordingly necessary to evaluate the evidence to ascertain if a *prima facie* case is made out against him.

Actual fraud

[26] In order to establish a *prima facie* case of deceit against Mr. Constantine, Mrs. Bibby must prove on a balance of probabilities that he knowingly or recklessly made a false representation to Mr. Bibby which was accepted and acted on as true, as a result of which he sustained loss.⁹ Although Mrs. Bibby alleged that certain misrepresentations were made to her to induce her to sign a deed, she

⁹ East Pine Management Limited v Tawney Assets Limited, Oldril Holdings Limited and Guildron Trading Limited BVIHCVAP2012/0035.

stopped short of claiming that such or any representations were made to Mr. Bibby by Anthony or anyone, verbally or otherwise to induce him into signing the other deed. In fact, Mrs. Bibby claimed that Mr. Bibby was incapable of understanding any such communications. If this was so, it follows that, on the case presented, he could not have been so induced. Mrs. Bibby did not seek to rely on the representations allegedly made to her as representations on which Mr. Bibby relied and acted.

[27] Mrs. Bibby has therefore failed to prove that Anthony Constantine or anyone else made a false representation to Mr. Bibby thereby inducing him and intending him to act on it. There is also no proof that Mr. Bibby acted on any such false misrepresentation. Furthermore, the pleadings contain no specific particulars of deceit. They are wholly inadequate in this regard. Accordingly, the claim against Anthony Constantine for deceit is not made out and is dismissed.

Constructive fraud – Undue influence

[28] Cases of undue influence fall into two groups:

- (1) Instances where actual influence has been exerted by a stronger party against a weaker, in the form of duress or unfair advantage;¹⁰ and
- (2) Where the relationship between the transferor and transferee raises a presumption that the transferee was in a position to influence the donor.¹⁰

[29] Proof of actual influence requires evidence which demonstrates that the donor was subjected to duress or other use of force which rendered him powerless and incapable of exerting his free will and which resulted in him submitting to and complying with the demands of the transferee or the **transferee's agent. Undue influence is presumed to exist** on proof that a substantial gift was made by a donor who had a special relationship of trust and confidence with the donee (or someone else) which placed him in a position from which he could exert undue influence over the donor.

¹⁰¹⁰ Allcard v Skinner (1887) 36 Ch D 145.

[30] Mrs. Bibby did not allege that a relationship of trust existed between Mr. Bibby and Mr. Constantine or between Mr. Bibby and the unknown female or even anyone else. This is not reflected in the pleadings or her evidence. The presumption of undue influence is therefore not a feature in this case.

[31] **Simply put, Mrs. Bibby's claim is that an unnamed female coerced Mr. Bibby into signing the deed.** In essence, she alleged that Mr. Constantine:

(1) **contrary to Lloyd Bibby's wishes and without instructions from** him, conspired (implicitly) with the lawyer Theodore Browne to prepare transfers of land from Lloyd Bibby to Princess Bibby and from Princess Bibby to Anthony Constantine;

(2) colluded with the adult female to coerce Mr. Bibby to sign the transfer to Mrs. Bibby against his will, at a time when Lloyd Bibby was senile and unable to fully understand and know what he was signing; and

(3) **it was never Lloyd Bibby's intention that Princess Bibby or Anthony Constantine should own the** said land.

[32] Mrs. Bibby has not pursued the first allegation (at paragraph 31 above) with any degree of fervor and it arises only by implication. Mr. Theodore Browne is not a defendant or witness in this case. There is no explanation why he was not joined to afford him an opportunity to defend himself against the serious allegations of misconduct and fraud made against him. Furthermore, there is no evidence that he was party to any such fraud. The evidence from which this might be inferred is not sufficiently cogent to permit the court to reasonably draw such an inference. In addition, it was not put to Mr. Constantine that he or his agent instructed Mr. Theodore Browne to prepare the deeds. I therefore find that this did not happen.

[33] Mrs. Bibby **argued that 'proof of undue influence was a species of fraud and a misrepresentation** whereby a person is induced by actual undue influence to carry out a transaction which he did not **freely or knowingly enter into' and which he 'is entitled to have ... set aside as of right.'** In this regard, she urged that undue influence was exerted over Mr. Bibby when he was forced by the adult female to sign the document, while Anthony Constantine chanted that he had to sign. She submitted that

where a person participates in a transaction under improper and unfair influence involving threats or overt acts, a court will intervene and grant relief as in *Rajendranath Seeraj v Barbara Seeraj*¹¹.

[34] It is not alleged that Mr. Constantine forced or induced Mr. Bibby to sign the deed. He is accused of **'orchestrating the event' and chanting. Mrs. Bibby's claim against Mr. Constantine appears to be that he aided and abetted the adult female in her coercion of Mr. Bibby.** She also implied that the female **was Mr. Constantine's agent. The female was not named by Mrs. Bibby.** Mrs. Constantine identified the lady who visited Mr. and Mrs. Bibby on that day as Marlene Edwards. Her name appears as attesting witness on the impugned deed. Ms. Edwards was not called as a witness or joined as a **defendant. To act on Mrs. Bibby's complaint against Ms. Edwards in circumstances where she was not given the opportunity to defend herself would be unjust and contrary to equitable principles, unless there are compelling reasons to do so.**

[35] Melvina Constantine testified that she encountered Marlene Edwards when she was going to a funeral. She explained that Ms. Edwards met her at home and asked her where Lloyd Bibby lived. **She asked her name and was told 'Marlene Edwards from lawyer Browne's office.'** She pointed out to Ms. Edwards where Mr. Bibby lived. When she got back from the funeral she met Lloyd and Mrs. Bibby, their son Roderick and her husband Anthony Constantine. Mrs. Bibby then told her that Ms. Edwards came and brought some documents for her husband and her to sign regarding the piece of land he gave to Anthony.

[36] The impugned Deeds were registered respectively as Deeds of Gift No. 4051 of 1995 and 4052 of 1995. They were accompanied by attestation of Marlene Edwards, legal secretary. In this regard, they comply with the legislative requirements for execution.¹² Both documents are endorsed **'Prepared by R. Theodore L. V. Browne Barrister-at-law' in accordance with the law.**¹³ The fact that

¹¹ CV2006/03599 (unreported Trinidad and Tobago Supreme Court)

¹² Registration of Documents Act, Cap. 132, section 8 (1) (a) (ii) and (3).

¹³ Section 6 (c) of the Registration of Documents act, Cap. 132.

no allegations of fraud have been made against the preparer of the document or the attesting witness is startling, having regard to the import and effect of the allegations of fraud actually made. Mr. Browne and Ms. Edwards are implicated in the alleged undue influence. Their absence from the case leaves gaps in the narrative.

[37] Other than the veiled aspersions against Mr. Browne and Ms. Edwards, no substantive allegations were made of collusion between Mr. Constantine and either of them, to either deceive Mr. Bibby or **coerce him into signing the deed. This seems to be an integral part of Mrs. Bibby's claim. Without** such collusion, the alleged coercion stands on its own as an act totally unconnected to the preparation of the deeds. To conclude that it is, would be illogical and unreasonable. Without instructions for preparation of the deed, they appear in a vacuum. I do not accept this. There is no evidence on which to conclude that Mr. Browne was connected to any plot to deceive or coerce Mr. Bibby into signing a deed to transfer lands to his wife and ultimately to Mr. Constantine. I make no such finding.

[38] Mr. Constantine denied that he was present when Ms. Edwards came to visit Mr. Bibby and his mother. He also denied telling her that his stepfather had to sign the document. He testified that he knew that Mr. Bibby gave instructions to Mr. Theodore Browne to prepare a deed because Mr. Bibby told him that he would do so. Mrs. Bibby relies on his presence to connect Mr. Constantine and Ms. Edwards to the alleged coercion. No other witness testified on this issue. Mrs. Bibby and Mr. Constantine were equally adamant. No motive was advanced regarding why Ms. Edwards would assist Mr. Constantine in perpetuating the alleged fraud. For the court to accept that this took place it must find that Mr. Bibby and Ms. Edwards acted in concert in coercing Mr. Bibby to sign. It must make an adverse finding against Ms. Edwards in circumstances where she was not given an opportunity to defend herself. It must act on the testimony of one witness – Mrs. Bibby. It must conclude that Mr. Bibby was overpowered by Ms. Edwards and further that he did not comprehend what was happening (i.e. he was *non compos mentis*) as alleged. What is the nature of the evidence on this score?

Medical evidence

[39] A medical expert in the person of Dr. Miriam Francis-Sheridan testified regarding Mr. Bibby's mental condition in the years immediately prior to his death. Dr. Francis-Sheridan was registered in February 2004, as a fully qualified medical practitioner under the Medical Registration Act.¹⁴ She is a medical doctor and a graduate of the St. George's University School of Medicine. She exhibited a copy of her registration certificate to an earlier application. However, her report does not chronicle her qualifications as stipulated by the CPR.¹⁵ Dr. Francis-Sheridan did not indicate what aspect of her training and/or qualifications qualifies her to diagnose or treat persons suffering from senility. In this regard, her report does not assist the court.

[40] Dr. Francis-Sheridan deposed that she has had over 27 years experience as a physician and can diagnose many health conditions. She testified that for the past 26 years she has done voluntary work at the Thompson Home in Kingstown, St. Vincent where she has encountered senile residents and that she also does house calls and assist families with the care of their loved ones suffering from dementia. She averred that as part of her medical education she was trained to recognize and **diagnose many mental conditions. She indicated that as a general practitioner she is competent 'to deduce' if a person is** suffering from a mental illness and to diagnose that illness. She stopped short of saying that she was trained and experienced in diagnosing dementia, whether dementia is a mental illness and if so how it manifests.

[41] Dr. Francis-Sheridan indicated that she is a qualified physician and was the district doctor for **Kingstown between 1991 and 1993, and the district medical officer ('DMO') for Calliaqua between** February 1993 and December 1995. She treated Lloyd Bibby during her tenure at Calliaqua. She reported that Mr. Bibby came to the district clinic every two months for treatment, up to 1994 when his visits were discontinued because his walking had become difficult and she had diagnosed him as senile. After that time, she and a clinic nurse visited him at his home every 2 to 3 months and she noted a gradual decline in his physical and mental state for a man in his condition. She reported that

¹⁴ Cap. 227 of the Revised Laws of Saint Vincent and the Grenadines.

¹⁵ CPR 32.14.

she did not do any formal mental testing of Mr. Bibby as it would have been taxing. The doctor opined that a person diagnosed with senility cannot recover from that condition. She described dementia as a degenerative disease where the patient does not get better but progressively worse.

[42] The doctor submitted a medical report which she prepared in 1999 from records she compiled during her tenure at Calliaqua. In it, she noted that Mr. Bibby exhibited signs of senility such as wandering aimlessly, plastering his stool over the walls of the house and covering his head with plastic bags. She indicated that he had to be watched carefully or else he would run away. She also recorded that he displayed cognitive problems like confusion, memory loss and poor concentration. She explained that he had to be guided in his daily activities such as eating and bathing as he was unable to care for himself. The doctor opined that as a result of his cerebrovascular accident and his limited ability to walk he may have suffered from a bit of depression and possibly refused to take medication for his hypertension and heart failure.

[43] Dr. Francis-Sheridan concluded that Mr. Bibby's behavior could be attributed to dementia as contained in the WHO International Classification of Diseases (ICD-10) and that the criteria include:

1. Evidence of dementia – decline in intellect, impairment of activities of daily living, depressive conditions, hallucinations and delusions;
2. Insidious onset and gradual deterioration;
3. No evidence of another clinically diagnosable cause of dementia;
4. No history of sudden onset of neurological signs of focal damage (hemiparesis, visual field defects, sensory loss, loss of co-ordination) early in the course of the disease.

[44] She was of the opinion that he was incapable of understanding his actions and would not have had the state of mind to enter into any legally binding transaction. She opined further that he was **suffering from dementia during the time she attended to him. She noted that Mr. Bibby's senility may be due to organic or psychological disorder, however based on the corroborated reports from Mr. Bibby's caregiver and her own observation she concluded that he suffered from senility of psychological origin known as dementia. She based this on the history of 'behavioural and cognitive problems'.**

- [45] Dr. Francis-Sheridan testified that when she treated Mr. Bibby he had no lucid moments. She **indicated that her personal observations related to Mr. Bibby's cognitive problems of confusion,** memory loss and poor concentration. She was with Mr. Bibby for approximately 20 minutes whenever she visited with him. The other reported problems of him wandering off and plastering the house with stool etc. were brought to her attention by Mrs. Bibby. She did not witness those incidents. She explained that it is difficult to say whether Mr. Bibby had reached his end point in the senility spectrum although it might have started when he was under her care. She said that when she first saw Mr. Bibby it was difficult to conclude that he was senile and it was only after she had started the home visits and based on what Mrs. Bibby told her, did she appreciate the extent of his deterioration.
- [46] It appears that Dr. Francis-Sheridan was not given written instructions regarding preparation of her report. **Instead, she noted that Mrs. Bibby's legal practitioner, Mrs. Ronnia Durham-Balcombe gave her oral instructions to 'prepare an unbiased report on the physical and mental health of Mr. Lloyd Bibby, deceased, during the time (she) treated him and to offer (her) expert opinion on his mental capacity to perform any tasks.'** She reported that she and Mrs. Durham-Balcombe had about 3 telephone conversations in which the latter explained to and reminded her of her duties to render an unbiased report to the court, based on information within her expertise and to disclose facts within her knowledge as mandated by CPR Part 32. Regrettably, the court and the Constantines do not have the full benefit of those 3 or so conversations between Mrs. Durham-Balcombe and Dr. Francis-Sheridan, as contemplated by CPR Part 32.
- [47] An expert appointed by the court must indicate in her report whether there is a range of opinion on the matters dealt with in the report and to summarize that range of opinion. That was not done in the instant case. The expert is also required to state the facts or assumptions on which her opinion is based. Dr. Francis-Sheridan, did not state if she had outlined all the facts on which she based her opinion and she did not rehearse any assumptions which informed her conclusions. **Be that as it may, the report is before the court and the findings are submitted for the court's consideration in** resolving the issue of whether Mr. Bibby freely and voluntarily executed the Deed of Conveyance to Mrs. Bibby on that fateful day in 1995.

[48] Although Dr. Francis-Sheridan provided an expert report regarding Mr. Bibby's mental capacity at the time when he allegedly executed the transfer to Mrs. Bibby, the court is unable to conclude from that report and the related information before the court, that Dr. Francis-Sheridan had the requisite expertise to express an opinion of those matters. Not enough information is before the court to determine whether Dr. Francis-Sheridan had the necessary training and qualifications to express an opinion on Mr. Bibby's mental capacity. Further, the medical evidence adduced does not explain what dementia is, how it develops, or the symptoms and effects on one's mental capacity. It would be extremely prejudicial to the Constantines to rely on Francis-Sheridan's report in its current formulation to decide issues related to Mr. Bibby's mental capacity at the relevant time. The probative value of the report is doubtful for the stated reasons. Her conclusions are therefore not factored into that determination. This decision in no way seeks or is intended to question Dr. Francis-Sheridan's *bona fides* and should not be so interpreted.

[49] In these circumstances, the court must examine the other evidence to gain an appreciation of Mr. Bibby's behaviour and capacity at the relevant time. Mrs. Bibby and Susan Bibby-Primus testified that Mr. Bibby was senile. They said that he used to urinate and take stool and put it all over the place, put towel on his head and run away from home. Mrs. Primus explained that her mother moved her father out of the concrete house and placed him in a wooden house next to the family house, where he lived. Neither explained what if any steps were taken daily to monitor Mr. Bibby's activities. It strikes me however that there was nothing preventing him from entertaining guests without their knowledge. Based on their accounts, he was able to leave the premises unobserved. This is inconsistent with Mrs. Bibby's claim that he was always monitored. I am left to wonder whether the decision to move Mr. Bibby into separate accommodation is commensurate with treatment of someone who is mentally deficient. I do not think it is.

[50] Jimmy Constantine described his grandfather's interactions with him in the years before he died and around the time of the execution of the deed. He impressed the court as a witness of truth. He was not afraid to be frank even if his testimony was unfavourable to his parents. For instance, he indicated that he would eat at his grandmother Princess Bibby's house because he preferred her cooking to his mother's. I therefore accept his testimony which was riveting and compelling. He

refuted Susan Bibby-Primus' account that Mr. Bibby used to leave the house as a result of which she had go to look for him. He said that this did not happen one time.

[51] He testified that one day his grandmother, Mrs. Bibby came to his parents' home and told them that she and Mr. Bibby had transferred the land to his father 'so that their other children would not fight with him over the land.' He explained that he recalled the 'day' but not the 'date'. He remembered that he had broken his tooth that day. He quipped that he was not good with dates but his memory is 'spot on.' He recounted that he had just come from his grandfather's house where he had performed the 'monkey dance' for him at his request. He described how his grandfather would get a laugh each time he did so. This is not behavior that one would associate with someone who is mentally incapacitated.

[52] It did not go unnoticed that this supposedly senile man was reportedly left up to his own devices during periods of the day and presumably at night, in a house by himself. Mrs. Constantine explained that she would check in on him daily before going to work and prepare meals for him. Anthony Constantine said that he and his wife helped to take care of Mr. Bibby. They never saw him plaster stool on walls, put plastic bags over his head or run away from home as described by the Bibbys. They indicated that he would converse with them and tell them what happened during the day. Anthony Constantine said he was a daddy to him. He indicated that Mr. Bibby got physically ill and his physical condition worsened closer to his demise. As a result, he and his wife took him to the hospital.

[53] Jimmy Constantine acknowledged that his grandfather's health was fading but he was not senile because he used to call him and ask him to do those dances for him. He is not a medical practitioner and has no medical training, experience or qualification which would equip him to proffer a valid opinion as to Mr. Bibby's mental capacity. His and the other witnesses' expressed opinion on this is therefore repeated for context only, but is ignored in assessing whether Mr. Bibby was mentally incompetent.

[54] Jimmy Constantine recalled that his grandmother Princess Bibby told his parents 'We done handle the stuff. We signed the paper for the land.' Jimmy Constantine explained that his parents and

grandmother were in the porch when she was relaying this information. He said that he was not in the conversation because he was small so he was in the back listening. Unlike his mother, he did not recall seeing his uncle Roderick there. He insisted that his parents did not tell him about these incidents. He remembered them happening. His account mirrored his parents in all material respects. Mrs. Bibby denied that this ever happened. She also denied visiting the Constantines or speaking with them that afternoon. Jimmy said he did not remember if his mother had been at a funeral that day for a relative. I note that Jimmy would have listened to his mother testify about being at a funeral and **it would have been convenient for him to merely corroborate his mother's testimony on this point.** He did not do so.

[55] On the issue of the mental capacity to make an *inter vivos* gift, the test to be applied was enunciated in *Re Beaney*.¹⁶ In that case, **it was held that 'the question is whether the person making it was capable of understanding the effect of the deed when its general purport has been fully explained to him.'**¹⁷ **It is established law that 'the mental capacity required ... in respect of any instrument is relative to the particular transaction which is being effected by means of the instrument and may be described as the capacity to understand the nature of the transaction when it is explained.'**¹⁸

[56] Mrs. Bibby must establish on a balance of **probabilities that when Mr. Bibby 'signed' the deed, he did not have the requisite capacity to understanding its effect even if it was fully explained to him.** If she raises a *prima facie* **case which creates doubt as to Mr. Bibby's capacity, the evidential burden shifts to Mr. Constantine to show that Mr. Bibby was mentally capable.**

[57] Having listened and observed the witnesses during this case, I was struck by the manner in which they gave their evidence. Susan Bibby-Primus and Sandra Bibby seemed particularly incensed at Anthony Constantine. Mrs. Bibby appeared to want nothing to do with Melvina Constantine and sadly, seemed torn between her children with Lloyd Bibby on the one hand and Anthony Constantine

¹⁶ [1978] 1 WLR 770.

¹⁷ *Ibid.* at para. 773 A-B.

¹⁸ (1954) 91 CLR 423

on the other. This was especially poignant at the *locus* where Susan Bibby-Primus appeared to have difficulty restraining herself when her mother was being questioned and even interjected at one point.

[58] **I accept Jimmy Constantine's testimony that on that day, his grandfather asked him to do** the monkey dance for him and was delighted by his performance. This is not the way in which a mentally incapable person behaves. This is someone who was very much aware of what was happening. He was present during the conversation in which Mrs. Bibby related how they transferred the land to Anthony Constantine. It seems that she did this almost in a conspiratorial manner which suggested to me that she and her husband did not want the other children to know about it. Mr. Bibby for his part, wished to ensure that those children did not force Mr. Constantine to leave after his death.

[59] **No forensic report was furnished in respect of Mr. Bibby's 'questioned signature' on the deed. There** is nothing remarkable about it. Admittedly, I am no handwriting expert but, it certainly does not look contrived to me. The other surrounding circumstances are also telling. For over 30 years, this Lloyd Bibby took no legal action to have Anthony Constantine move his house from the subject lands. There is no evidence whatsoever that he attempted to evict Mr. Constantine from the disputed lands during **that period. This is quite telling. I prefer Anthony, Melvina and Jimmy Constantine's account to** that of Princess Bibby and Susan Bibby-Primus. Their testimony had the ring of truth in it and is credible. I believe them.

[60] Princess Bibby and her daughters testified that Lloyd Bibby demanded that Anthony Constantine leave and not construct a concrete building on the land. I reject that testimony as it is not reasonable. If he was so against Mr. Constantine being there, one would reasonably expect that he would have taken steps to have him leave, other than merely asking him to do so. Jimmy Constantine described his grandfather Lloyd Bibby as a stern man who was not to be messed with when he took a firm stand. To my mind, such a man would not just stand idly by, feebly protest and watch someone trespass on his land, build a house and live there.

[61] Mr. Bibby is depicted as an impotent man or someone without the conviction of his own will. What is more, no explanation is given for his inaction. I find that hard to accept. It is more probable that he took no such action because he had no objections to Anthony Constantine living and making his home there. I find this to be the case. I find too that Lloyd Bibby always intended that Anthony Constantine would have the property on which he constructed his house. He gave effect to that intention by arranging for preparation and signing of the deed of gift. I also find that Mrs. Bibby was a willing participant in the transfer of land to Mr. Constantine as described by Jimmy and his parents. She knew all along and agreed. For some reason which is perhaps only known to her, she has now resiled from that position.

[62] **Based on Mrs. Bibby's assertions, Mr. Bibby was senile. Accordingly, his mind could not have been affected one way or the other by Anthony Constantine's alleged chants. On the case advanced, the adult female was the person subjecting Mr. Bibby to physical force; presumably on Mr. Constantine's instructions. This was not put to him. I accept Anthony Constantine's testimony that he was not even home when the deeds were being executed. I reject the claim that Anthony Constantine colluded with Ms. Edwards to get Lloyd Bibby to sign the impugned deed. Having regard to all the evidence before the court on this issue, Mrs. Bibby has failed to establish on a balance of probabilities that Anthony Constantine secured the execution of the deed of gift from Lloyd Bibby to Princess Bibby by undue influence.**

Non est factum – It was not his act

[63] The expression '*non est factum*' is a plea raised by someone who contends that a document is not 'his deed'. It might have been signed by him but when he did so he thought that it had a particular character or effect which he has since discovered is not the case. **Essentially, Lloyd Bibby's representative has claimed that when he signed, he did not know what he was signing. It is established law that the plea is not available to someone:**

'who was content to sign without taking the trouble to find out at least the general effect of the document.' ... 'He could not have such a belief unless he had taken steps or been given information which gave him some ground for his beliefs. ...

The plea cannot be available to anyone who was content to sign without taking the

trouble to try to find out at least the general effect of the document.¹⁹

[64] Mrs. Bibby has provided no information regarding attempts made by Mr. Bibby or her on her husband's behalf to ascertain in advance what the impugned deed dealt with. Nor did she indicate what he or she thought he was signing and the basis for such belief. In the premises, they cannot avail themselves of this plea. For the foregoing reasons, I find that Lloyd Bibby understood the nature of the documents he was signing when he did so and that he voluntarily executed Deed of Gift 4051 of 1995. I therefore make no order setting it aside. I also make no order setting aside Deed of Gift No. 4052 of 1995 from Princess Bibby to Anthony Constantine.

Issue 2 – **Is Princess Bibby's claim statute**-barred?

[65] Mrs. Bibby's entire case rests on her allegations that on 15th June, 1995, she and Mr. Bibby deceased, executed the impugned deeds of gifts involuntarily and with no idea what they were signing. Mr. and Mrs. Constantine and their children submit that her claim is statute-barred by section 17 of the Limitation Act ('the Act'),²⁰ as the wrongs complained of allegedly took place more than 12 years before the action was initiated. They argue further that Mrs. Bibby's and Mr. Bibby's titles were extinguished at the end of that 12 year period in 2007, by virtue of section 19 of the Act. Mrs. Bibby has countered that in cases of fraud, the limitation period does not start to run until the fraud is discovered.

[66] Section 17 of the Act provides that no one shall bring an action to recover land, more than 12 years after the right of action accrued to him or to some person through whom he claims. The Act²¹ provides further that where the claim involves land 'of a deceased person' the right of action is to be treated as having accrued on his death. Further, section 32 effectively postpones the commencement

¹⁹ Gallie v Lee [1971] AC 1004 (Lord Reid).

²⁰ Cap. 129 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

²¹ Paragraph 2 of Part I of the Schedule.

of the period of limitation until the fraud is discovered or could reasonably have been discovered with reasonable diligence.

[67] Mr. Bibby died on 14th May, 1997. It appears that he did not leave a will and it seems also that his estate has not been administered. Mrs. Bibby averred that she did not know what document she and her husband signed in 1995 and she did not discover this until 2005 when her daughter Sandra made inquiries at the Deeds registry. For the reasons provided before, I do not accept this. Having found **that she and her husband knew what they were signing I find further that Mr. Bibby's cause of action** arose in 1995 or at the very latest on his death in May 1997.

[68] While it appears that **no administrator has been appointed to administer Mr. Bibby's estate**, it is commonly accepted that one year after the date of death is a reasonable time for commencement and in some cases, completion of administration. It follows that a legal personal representative would with reasonable diligence, be expected to discover any unauthorized dealings with the **deceased's property during that period. By extension, Mrs. Bibby would reasonably have been** expected to discover the alleged fraud by 15th May, 1998 and be armed with the materials necessary **to challenge the Constantines' title to the subject lands by that date. Her claim should therefore have** been filed by May, 1998 by which date it would have realistically accrued. In the circumstances, I find that her claim as **the representative for Lloyd Bibby's estate, would have become statute-barred** by 15th May, 2010, some 3 years before she lodged this claim.

Issue No. 3 – **Is Princess Bibby as administratrix of Lloyd Bibby's estate estopped from bringing** this claim?

[69] Anthony Constantine contends that his step-father promised him the subject land and gave it to him because he was grateful for the assistance he rendered to him in getting his house built. He testified that before 1995, his stepfather always told him that he was going to give him a deed because if he did not do so, his children would chase him from there. He said that he was not present when Mr. Bibby spoke to Mr. Theodore Browne but he knew that they talked because they are good friends

and Mr. Bibby told him that he would speak to Mr. Browne. He explained that he built the concrete house for Mr. Bibby and was the only tradesman on the construction. He named Prince Samuel and Darnell Samuel as carpenters who assisted him. He testified that his stepfather was so grateful that he gave him a portion of the land for himself.

[70] Mrs. Bibby and Sandra Bibby testified that Mr. Bibby rewarded Anthony Constantine with a cattle in **exchange for his labour. Mrs. Bibby added that her son's contributions** to the construction were not substantial. Mr. Constantine responded that the cattle was not given to him as payment but was an investment made by Mr. Bibby. He explained that he took care of the cattle for Mr. Bibby as they had agreed and later sold it and divided the earnings equally with Mr. Bibby.

[71] **He submitted that he relied on Mr. Bibby's promise and gift of the land, built his house on it and has lived there with his family for over 30 years. During that time he made renovations to the property and expended considerable sums of money to make it a comfortable and modern home and he has thereby acted to his detriment. He argued that Lloyd Bibby's estate is now estopped from resiling from Lloyd Bibby's promise to him that he would be permitted to remain and make his home on the disputed land.**

[72] Princess Bibby contended that Anthony Constantine has suffered no detriment but has instead gained a substantial benefit by getting the land free and not having to pay stamp duty. She contended further that he was able to build his house and raise his family which should be viewed as another benefit. She argued that there is no evidence that he paid taxes or utilities or would have lost out on a bargain to get land elsewhere. Instead, he has gained more.

[73] Mrs. Bibby argued further that the equitable claim of proprietary estoppel and reliance on a legal title are mutually exclusive and Mr. Constantine cannot rely on both. The court notes that this principle is applicable where the person relying on estoppel is making two inconsistent claims. It does not apply if the claims are consistent. It appears to me that the Mr. Constantine is relying on the impugned deed as proof of his interest, right and title to the property. This posture does not seem to be inconsistent with his purported reliance on the doctrine of proprietary estoppel to shield him from

Princess Bibby's claim of ownership. Propriety estoppel does not confer a right, merely an equitable remedy.

[74] In any event, the law²² enjoins the court to grant 'all such remedies ... as any of the parties may appear to be entitled to in respect of any legal or equitable claim or matter so that, as far as possible, all matters in controversy ... may be completely and finally determined, and all multiplicity of legal proceedings ... avoided.' For completeness, it is useful to address this aspect of Mr. Constantine's defence.

[75] The doctrine of proprietary estoppel is a rule of law²³ through which equity intervenes to prevent one party from acting in an unconscionable, inequitable and unjust manner towards another who has acted to his detriment in reliance on a promise from the former.²⁴ Anthony Constantine claimed that **he acted to his detriment by relying on Mr. Bibby's promise that he would own the land.** Based on this promise, he constructed his home and has lived there since.

[76] In law a party may avail himself of the defence of proprietary estoppel if he proves that the other party made a clear and unequivocal representation or promise to him on which he reasonably relied to his detriment.²⁵ He must satisfy the court that he has suffered substantial detriment through his reliance on that assurance.²⁵ If he succeeds in doing so, equity will intervene and prevent the donor from cancelling the transaction.²⁵ In the words of Lord Chancellor Cranworth:

'If a stranger builds on my lands supposing it to be his own, and I, perceiving
his mistake, abstain from setting him right, and leave him to persevere in his error, a court of equity will not allow me afterwards to assert my title to the land on which he has expended money on the supposition that the land was his own.
It considers that, when I saw the mistake into which he had fallen, it was my duty

²² Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act, Cap. 24, section 20.

²³ Canada and Dominion Sugar Co Ltd v Canadian National (West Indies) Steamships Ltd [1947 AC 46].

²⁴ Ramsden v Dyson [1866] L.R. 1 HL 129.

²⁵ Calixtus Henry v Theresa Henry et al SLUHCVAP2007/027. See also Thorner v Majors and others [2009] UKHL 18.

to be active and to state my adverse title; and it would be dishonest in me to remain willfully passive on such an occasion, in order afterwards to profit by the **mistake which I may have prevented.**²⁶

[77] Mr. Constantine stands in the shoes of that man who built his house. I am satisfied that Lloyd Bibby made a promise to Anthony Constantine that he would be entitled to live on the subject land and own the property. His behavior as attested to by Anthony Constantine demonstrated that he intended his step-son and family to live on and own the subject land. Acting on this assurance, Mr. Constantine expended considerable resources and constructed his family home and has lived there for over 3 decades, during a significant part of which Lloyd Bibby was alive. In this regard, he has acted to his detriment.

[78] There is no evidence that Lloyd Bibby sought to evict Anthony Constantine or his family from the property. In fact, the evidence is that Anthony Constantine resided with Mr. Bibby while he was building his wooden house. This would to my mind be unthinkable if Mr. Bibby objected at all to him doing so. I find that Mr. Constantine **reasonably relied on Mr. Bibby's assurances to his detriment.** In all the circumstances, Mr. Constantine is entitled to avail himself of the protection of the equitable doctrine of proprietary estoppel. It would be unconscionable, inequitable and unjust to require him to vacate the disputed lands. On this basis, I make no order cancelling the challenged deeds of gift.

Issue No. 4 - Do Anthony Constantine, Kelly-Ann Constantine, Jimmy Constantine and/or Melvina Constantine own an interest in the subject property, and if so to what remedies are they entitled?

[79] **Having regard to the foregoing findings, I find that Lloyd Bibby's estate does not own the disputed property.** I declare that it is owned by Anthony Constantine, Melvina Constantine, Jimmy Constantine and Kelly-Ann Constantine as reflected in Deed of Gift 3996 of 2010. That deed is to be given full effect in accordance with the Registration of Documents Act.

²⁶ Ramsden v Dyson [1866] LR 1 HL 129 at page 140 (Lord Chancellor Cranworth).

[80] The schedules to the 3 impugned deeds describe the subject land as comprising 5,000 sq. ft. They describe the boundaries. No survey plan is attached. From a visit to the area on 11th April, 2016, the court observed that Mrs. Bibby and the Constantines access their respective properties from the main road, through a common access road.

[81] Neither side presented any survey plans or a report from a licensed surveyor. It is therefore impossible for the court to go beyond the description in the deeds and make a declaration regarding respective boundary demarcations. It is prudent and advisable for the parties to seek to resolve and finalize this with the assistance of a licensed land surveyor and they are encouraged to do so.

Issue No. 5 - **Has Princess Bibby as administratrix of Lloyd Bibby's estate encroached on the Constantines' property?**

[82] Anthony Constantine alleged that between 2006 and 2008 Princess Bibby constructed a galvanize structure on the disputed land without his permission. Melvina Constantine and Jimmy Constantine were not co-owners during at that time. They gave no evidence on this aspect of the claim. Anthony Constantine's evidence is that his mother:

'erected a galvanize structure on (his) land without (his) full permission and/or consent.'

Princess Bibby is not a party to this claim in her personal capacity. Her actions cannot therefore be attributed to Lloyd Bibby or his estate or be chargeable against him. Mr. Constantine has not made any allegations that Lloyd Bibby or anyone representing his estate has so trespassed on the property. For this reason, his claim in trespass fails and I make no award of damages.

[83] The court has wide power to grant a permanent injunction if satisfied that the party seeking it has acted promptly, is likely to suffer grave damage in the future and it is just and equitable to do so. The court will also consider whether damages would be an adequate remedy for any loss suffered by the applicant. **The Constantines' claim for injunctive relief was brought only after Princess Bibby filed her claim. It is made 11 years after the property was registered in Mr. Constantine's name, 4 years after it was registered in his wife and children's names and 8 to 10 years after the alleged trespass.**

[84] **Not only is there no assertion against Mr. Bibby's estate, of such** trespass, but in addition, the Constantines have not applied in a timely manner and they have provided no evidence that they have or will suffer any loss. In the premises, there is no basis on which to conclude that it is just and equitable to grant injunctive relief in this case. No injunction is ordered.

ORDER

[85] It is declared and ordered:

1. **Princess Bibby's claim as administratrix of Lloyd Bibby's estate is dismissed.**
2. Anthony Constantine, Kelly-Ann Constantine, Jimmy Constantine and Melvina Constantine are the beneficial and legal owners of the subject property conveyed to them by Deed of Gift No. 3996 of 2010.
3. **Princess Bibby as administratrix of Lloyd Bibby's estate** shall pay agreed costs of \$8000.00 to Anthony Constantine, Kelly-Ann Constantine, Jimmy Constantine and Melvina Constantine.

[86] I am grateful to counsel for their written submissions.

.....
Esco L. Henry
HIGH COURT JUDGE