THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES
IN THE HIGH COURT OF JUSTICE

SVGHCV2018/0078

BETWEEN:

ANSON RANDALL LAYNE	FIRST CLAIMANT
DAVIDSON EVERSON LAYNE	SECOND CLAIMANT

and

LILLIAN WILLIAMS	FIRST DEFENDANT
THE BANK OF ST. VINCENT AND THE GRENADINES	SECOND DEFENDANT

Appearances:
Ms. Ann-Marie Jack for the Claimants
Mr. Jemalie John for the First Defendant
Ms. Annique Cummings & Mr. Jadric Cummings for the Second Defendant

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2018: July 11
September 3

JUDGMENT

[1] Byer, J.: This was a case which flowed from a series of unfortunate circumstances resulting in brothers impugning the trustworthiness of brothers, sons no longer having a relationship with the woman that gave birth to them and raised them and in the end presenting before this court none other than a family torn apart.

BACKGROUND:

[2] Ralroy Layne of Joseph Land McCarthy died intestate on 7th September 2000 leaving his spouse, the first defendant and issue, namely Wayne Hansel Layne and the claimants as the only persons entitled to benefit from his estate.

[3] The claimants are also the children of the first defendant.

[4] The first defendant applied for and was granted Letters of Administration in Ralroy Layne's estate on 12th January 2006 and recorded as grant No. 09 of 2006.

[5] Pursuant to a lawyer prepared Deed of Assent dated September 5th, 2006 and recorded as 3698/2006 the first defendant was erroneously named as the only beneficiary of the estate.

[6] The first defendant on the strength of that deed, subsequently mortgaged the property inherited from the late Ralroy Layne's estate and secured two further charges from the second defendant dated 12th September 2006, 6th December 2010 and 4th August 2014, recorded as Deeds 3722/2006, 4149/2010 and 2175/2014 respectively.

[7] The first defendant after having obtained the initial mortgages remarried (the apparent impetus for the breakdown of the relationship between mother and sons) and consolidated the mortgage with that of her new husband. The first defendant's new husband subsequently died very shortly after the marriage.

[8] The first defendant defaulted on the said mortgage and the second defendant to realize its debt listed the property, which is the subject of this Claim, for sale. It was, however, at this stage, brought to the second defendant's attention, that the said Deed of Assent had not incorporated the three other beneficiaries of the said Estate of Ralroy Layne.

[9] In light of this realization, the Claimants and Wayne Hansel Layne on the 31st October 2017 executed a Deed of Confirmation effectively transferring their interest as beneficiaries to the First defendant and confirmed and ratified the Deed of Assent 3698/2006. This Deed of Confirmation is recorded as 3518/2017. (Confirmation Deed)

[10] The Confirmation Deed explicitly stated that the three other beneficiaries of the Estate of Ralroy Layne, including the first and second claimants confirm and ratified the Deed of Assent bearing registration number 3698/2006 and released unto the first defendant the entirety of the property herein.

[11] It is this Confirmation Deed and the purported actions of the first defendant that led to the execution of that Deed that lay the basis for this claim.

[12] That being said, I have assessed the issues itemised by Counsel for the claimants and although I am in agreement that the ones stated are in fact the salient issues to be addressed, I will address them all but in a slightly different order than as presented to give ease of reading.

[13] Issues for the **Court's** Consideration

(i) Whether the first defendant committed a fraud/breach of trust when, in her capacity as administratrix of the Estate of Ralroy Layne, she vested the interest in the property the subject matter of this action in herself as sole beneficiary.
(ii) Whether the first defendant holds the estate of the late Ralroy Layne in trust for the remaining beneficiaries.
(iii) Whether Deed of Confirmation No. 3518 of 2017 was executed as a result of undue influence.
(iv) Whether as a result of the foregoing, the second defendant holds a valid and subsisting mortgage.

Issue #1 - Whether the First defendant committed a fraud/breach of trust when, in her capacity as administratrix of the Estate of Ralroy Layne, she vested the interest in the property the subject matter of this action in herself as sole beneficiary.

[14] The basis for this allegation is rooted in the fact that the Deed of Assent that was executed in favour of the first defendant recited that the said Ralroy Layne having died intestate with Letters of Administration being granted to the first defendant, then went on to transfer all the estate of the said Ralroy Layne to the first defendant and the first defendant alone.

[15] The Administration of Estates Act Cap 486 of the Revised Laws of St Vincent and the Grenadines, Section 62 thereof makes it clear *"if the intestate leaves a husband or a wife and issue, the surviving husband or wife shall be entitled to one third thereof and the issue shall take the two thirds in equal shares" (*my emphasis added).

[16] Thus, the starting point must be that at first blush the first defendant was not entitled to have the property conveyed to her in her sole name. But going beyond that, the question must then be, what does this really mean in terms of the claim as pleaded.

[17] When one therefore considers whether there was fraud or breach of trust by the first defendant, it is generally whether there is an action on the part of the first defendant that can sustain an action of deceit.

[18] In this regard, the words of Lord Herschell in the case of *Derry v Peak* are instructive*: "First, in order to sustain an action of deceit, there must be proof of fraud and nothing short of that will suffice. Secondly, fraud is proved when it is shown that a false representation has been made (i) knowingly, (ii) without belief in its truth; or (iii) recklessly, careless whether it be true or false. Although I have treated the second and third, as distinct cases, I think the third is but an instance of the second, for one who makes a statement under such circumstances can have no real belief in the truth of what he states. To prevent a false statement from being fraudulent there must, I think, always be an honest belief in its truth."*[1] (My emphasis added)

[19] The only evidence that is led by the claimants in this regard can be found in the witness statement of the first claimant at paragraph 17:

> *"17. My brother, Dave, and I then decided to get some legal advice. This was in December 2017. I was informed and verily believe that when the First Defendant completed my father's estate in 2006, and was issued a Grant of Letters of Administration, she unlawfully transferred by Deed of Assent, the said 1.63 acres of land to herself as the sole beneficiary of his estate"*

and paragraph 17 of the second claimant's witness statement:

> *"17. At this point, I felt as if the First Defendant was being dishonest with her actions. So I decided to get legal advice. I went to a lawyer in December 2017, and I retained him to do searches for me. After the searches were done, I was duly informed and verily believe that when the First Defendant completed my father's estate in 2006, and was issued a Grant of Letters of Administration No. 09 of 2006, she unlawfully transferred the 1.63 acres of land as Administratrix to the deceased estate to herself as the sole beneficiary of his estate by Deed of Assent No. 3698 of 2006."*

[1] Derry v Peak [1889] 14 App Cases 337 at 376

[20] On the other side of the spectrum, there is the evidence of the first defendant herself at paragraphs 4 and 5 of her witness statement in which she said:

"4. I firmly deny having any intention of secretly taking all the benefit of the estate of Ralroy Layne for myself. This is evidenced by the fact that all the beneficiaries were named in my Oath leading the Administration…"

5. I instructed a Solicitor to prepare the Deed of Assent. That Deed of Assent was incorrectly prepared due to no fault of my own. I was never aware of the error until the Solicitor acting for the Purchasers of the now foreclosed property drew it to our attention."

[21] When one therefore assesses the evidence on this issue, the claimant's case is based on very bald unsubstantiated claims of fraudulent behaviour of their mother the first defendant.

[22] From the learning and research examined by this Court, it would appear that in order to impugn an action based on fraud there must be an act that is done knowingly, without any belief in its truth or reckless to its truth. In fact, the statement of law is concisely summarized in these words: *'A charge of fraud is such a terrible thing to bring against a man that it cannot be maintained in any court unless it is shown that he had a wicked mind'*[2]*.* I therefore agree with the submission made by Counsel for the first defendant that to prove this there must be credible and reliable evidence upon which a court is entitled to make such a finding.[3]

[23] This is sorely lacking in the case at bar and I do not consider that in light of what transpired that the nature of the conduct complained of by the Claimants meets this threshold.

[24] In the oath of administration leading to the Grant of Letters of Administration, the first defendant clearly stated at paragraph 2:

"RALROY LAYNE late of Joseph Land McCarthy, died on the 7th day of September 2000 intestate in the State of St. Vincent and the Grenadines, as the same is shown on a copy of his Certificate of Death hereto attached, leaving this deponent and three children namely: Anson Randall Layne, Davidson Everson Layne and Wayne Hansel Layne him surviving."

Showing that the persons entitled to the estate of her late husband were herself and the issue of herself and her husband (including the first and second claimants).

[25] The Deed of Assent was prepared by the same lawyer who prepared the Grant and one can only surmise that the same was prepared in error. Indeed, "*if a representor honestly believes his statement to be true, he cannot be liable in deceit, no matter how ill-advised, stupid, credulous or even negligent he may have been".*[4]

[26] In this Court's mind, the first defendant in executing the Deed of Assent can be seen as akin to a representor in a contractual relationship, in that her actions are to be acted on by others. Therefore, I find that having relied on the professional advice of an attorney who prepared the document on her behalf the actions of the first defendant fall short of the description of fraudulent.

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[2] Per Lord Esherin Le Lievre v Gould [1893] 1QB 491 at 498

[3] Para 16 of Closing submissions of the First Defendant filed 20th July 2018

[4] Cheshire, Fifoot and Furmston Law of Contract (15th Ed) pp 341

The use of the word fraudulent in relation to that transaction is therefore not made out in this Court's mind.

[27] For completeness since the same was raised on the claim, although it does not appear to have been pursued at trial or on the submissions of Counsel for the claimants, the claimants also sought to rely on fraud in relation to the controversial Confirmation Deed.

[28] From the pleadings, the claimants averred that beyond the issue of being induced to sign the Confirmation Deed, an issue which this court will examine shortly, that additionally, the claimants signed a deed not knowing its full contents and import as to their entitlement to their father's estate.

[29] Counsel for the first defendant has argued eloquently that essentially this argument is based on the doctrine of non est factum, but submit to this Court that the case of the claimant does not support this argument. Indeed, in relying on the words of Lord Reid in the case of Saunders *v Anglia Building Society*[5] Counsel submitted that "*The plea cannot be available to anyone who was content to sign without taking the trouble to find out at least the general effect of the document… the essence of the plea non est factum is that the person signing believed that the document he signed had one character or one effect, whereas in fact its character or effect was quite different. He could not have such a belief unless he had taken steps… which gave him some grounds for his belief."*

[30] I accept that this is the correct statement of the law and further state that I am also in agreement with Counsel for the first defendant, that the evidence elicited in the trial does not support any such contention. Additionally, the Court is of the opinion that the case of the claimants as adduced fails to support either the possibility of fraud or the particulars of fraud as pleaded in relation to the Confirmation Deed. That being said, and further the claimants apparently not pursuing the same with any seriousness, I decline to make any further analysis of that part of the claim and say that on the basis of the evidence led and the case adduced, fraud is not made out in relation to the circumstances surrounding the Confirmation Deed.

[31] However, additionally the claimants on their pleadings also claimed in the alternative breach of trust with regard to the Deed of Assent.

[32] Breach of trust has been defined in the Legal Dictionary as[6] "*any act which is in violation of the duties of a trustee or of the terms of a trust. Such a breach need not be intentional or with malice but can be due to negligence."* It is has long been recognized that the role of administrator of an intestate's estate stands in a fiduciary relationship with that estate and is answerable to the beneficiaries for the due administration of the estate. If he or she fails to do so according to the law that regulates such distribution, then that administrator can be said to be in breach of the trust relationship that he or she has with those who ultimately benefit from such estate. That is what the claimants state has happened in this case at bar. In fact, this Court is in agreement with the succinct exposition of the law that was stated by Mitchell J as he then was in the case of Clifton St Hill v Augustin St Hill quoted in the Territory of the Virgin Islands case of Eileen Papone and Lourie Anthony v James Anthony[7]. At paragraph 13, it was said:

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[5] [1970]UKHL 5

[6] Legal Dictionary, the freedictionary.com

[7] Claim BVIHCV2010/0113 per Hariprashad- Charles J

"An administrator of an intestate's estate is a trustee. It is always the duty of an administrator to satisfy the beneficiaries that he is properly administering the estate. He is required to act at a higher level even than he would in protecting his own interests. He must report and account. More than that, he is well advised to seek consensus and approval. If he tries and fails to secure the approval and consent of a particular beneficiary, he is opening himself up to a lawsuit. He is not well advised if he then relies on the statutory powers given to him by the Act and acts unilaterally. He is expected in such a case to apply to the court for directions on the administration of the estate. He is not safe in acting unilaterally. Only the shield of directions of the court will protect him absolutely from a lawsuit being brought by a discontented beneficiary. Further, where the court is satisfied that an administrator acted fraudulently in administering the estate, the duty of sale given by the Act will not protect him. The administrator will, in such a case, be liable to be held personally responsible to make good the loss. For these reasons, among others, an administrator should never proceed to act unilaterally in administering the estate. He should always consult with the beneficiaries and attempt to secure their consent to what he is proposing."

[33] Therefore, in this Court's mind that although this Court has already found that the acts of the first defendant in the failure to convey the interests of the claimants and their brother in the Deed of Assent could not amount to fraud, this Court however cannot make the same finding in relation to the claim for breach of trust.

[34] In the case of Doyle v Blake[8] Lord Redesdale had this to say, with which I concur, "*I have no doubt that they (the executors) meant to act fairly and honestly but they were misadvised and the Court must proceed not upon the improper advice under which an executor may have acted but upon the acts he has done if under the best advice he could procure he acts wrongly it is his misfortune but public policy requires that he should be the person to suffer".*

[35] The consequential question at this stage must therefore be whether this is sufficient to cancel the Deed of Assent No.3698 of 2006 as sought by the claimants?

[36] It is the opinion of this Court that the act of the first defendant in conveying the property of the estate to herself in her personal capacity, although amounting to a breach of trust simpliciter does not amount to making the deed void, but rather voidable. The first defendant in that deed only conveyed the interest that could have been conveyed by law, that is her 1/3 interest in the property, the 2/3 interest of the claimants was still therefore vested in the estate at that time and as such the deed is one that could have been rectified to reflect the true legal position. I therefore refuse to set aside the deed on the basis of breach of trust.

[37] That therefore brings me squarely to deal with issue #2.

Issue #2 - Whether the First defendant holds the estate of the late Ralroy Layne in trust for the remaining beneficiaries.

[38] In relation to whether the first defendant holds the interest in the property for the benefit of the claimants and their brother Wayne, having made the finding as to what transpired with the Deed of Assent, this Court reiterates that the said interest of the claimants and their brother Wayne would

[8] 2 Sch & Lef 231 at 243

have remained unvested at the time of the Deed of Assent. However, with the execution of the Confirmation Deed that issue would have been resolved. This however still being a live issue of some magnitude, that is the viability of the Confirmation Deed itself, I will revisit this issue on the analysis of that central issue, to determine whether the Estate of Ralroy Layne holds the said undivided 2/3 share in the property on trust for the claimants and their brother Wayne Layne.

Issue #3 - Whether Deed of Confirmation No. 3518 of 2017 was executed as a result of undue influence.

[39] The most fundamental issue raised in this matter and upon which this entire claim turns in this Court's mind is the circumstances surrounding the execution of the Confirmation Deed.

[40] The claimants' main contention is that the Confirmation Deed was obtained by the undue influence being exerted upon them by the first defendant, their mother.

[41] The concept of undue influence has been recognised to consist of various indicators and which were so succinctly identified in the case of Robert Murray v Reuben Dewberry and Denfield Matthew[9] by Sir Vincent Floissac CJ where he said : *"The doctrine of undue influence comes into play whenever a party (the dominant party) to a transaction actually exerted or is legally presumed to have exerted influence over another party (the complainant) to enter into the transaction. According to the doctrine, if the transaction is the product of the undue influence and was not the voluntary and spontaneous act of the complainant exercising his own independent will and judgment with full appreciation of the nature and effect of the transaction, the transaction is voidable at the option of the complainant. This means that the complainant may elect to have the transaction rescinded if he has not in the meantime lost his right of rescission. The modern tendency is to classify undue influence under two heads namely, Class 1 (actual undue influence) and Class 2 (presumed undue influence.) Class 2 is further classified under two sub-heads. The first sub-head is Class 2A which is descriptive of the legal presumption which arises from legally accredited relationships such as those existing between solicitors and client, medical adviser and patient, parent and child and clergyman or religious adviser and parishioner or disciple. The second sub-head is Class 2B which is descriptive of the legal presumption which arises from a relationship where under the complainant generally reposed trust and confidence in the dominant party."*

[42] The classes of undue influence were further explained in Barclays Bank v. O'Brien[10] and adopted by Thom J in Reece v. Williams[11], at paragraph 27 in the following manner:

> ***"****Class 1: Actual Undue Influence*
>
> *In these cases it is necessary for the claimant to prove affirmatively that the wrongdoer exerted undue influence on the complainant to enter into the particular transaction which is impugned.*

[9] ANUHCVAP No 16 of 1993
[10] [1994] 1 A.C. 180
[11] High Court Civil Claim No. 402 of 2009

Class 2: Presumed Undue Influence

In these cases the complainant only has to show, in the first instance, that there was a relationship of trust and confidence between the complainant and the wrongdoer of such a nature that it is fair to presume that the wrongdoer abused that relationship in procuring the complainant to enter into the impugned transaction. In Class 2 cases therefore, there is no need to produce evidence that actual undue influence was exerted in relation to the particular transaction impugned: once a confidential relationship has been proved, the burden then shifts to the wrongdoer to prove that the complainant entered into the impugned transaction freely, for example by showing that the complainant had independent advice. Such a confidential relationship can be established in two ways, via:

Class 2A:

Certain relationships (for example solicitor and client, medical advisor and patient) as a matter of law raise the presumption that undue influence has been exercised.

Class2B:

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

[43] In the case at bar, I am in agreement with Counsel for the second defendant, who submitted that there was no evidence as to acts of actual undue influence under Class 1 of the concept. Indeed, in support of this submission they relied on the learning from Halsbury Laws of England[12] in which it is stated in relation to the concept of actual undue influence that there must be "*typically some express conduct overbearing on the other party's will…*" and that *"The party who alleges actual undue influence must prove affirmatively that he entered into the impugned transaction not of his own will but as a result of actual undue influence exerted against him. He must show that the other party to the transaction, or someone who induced the transaction for his own benefit, had the capacity to influence the complainant; that the influence was exercised; that its exercise was undue; and that its exercise brought about the transaction".*

[44] The evidence of the claimants surrounding this transaction is contained in the witness statements of the claimants used in this matter. The first claimant at paragraphs 12, 13 and 14 said this:

[12] 4th Ed Vol 16(2) para 418

"12. Sometime thereafter, the First Defendant told me that in order to sell the portion of land, all the children needed to sign a document. The First Defendant called me sometime in October and told me that my brother Davidson or "Dave" as we call him had already signed the document, so I just need to go and sign myself.

13. On or around the 31st of October 2017, I went to the office of Saunders and Huggins to sign the document. I indicated who I was, and the lady at the front desk brought the document for me and told me where I needed to sign. I did so.

14. I had never gone to that office before. I did not tell any lawyer to prepare this document, nor was I told that I should get separate legal advice. The contents of the document were never discussed with me."

*W*hile the second claimant said this at paragraph 14:

"14. On or around the 31st of October 2017, I went to the office of Saunders and Huggins. I remember I was parked badly downstairs, I ran upstairs, and met with who I believe to be the secretary. I told her who I was, and that I came to sign a document. She pointed out to me where to sign and I did. I have been duly informed and verily believe that the document is a Deed of Confirmation which bears registration No. 3518 of 2017. A copy of the said deed is exhibited herewith at page 9 of the bundle marked ***"RL1"****."*

[45] In cross examination, it was also clear that the first defendant was no where around when the document was signed and there was no evidence that the claimants were prevented from seeking independent legal advice nor was the first defendant the catalyst for the decision of the claimants and their brother to execute this document, even if they believed it was merely to sell a portion of land to assist in the liquidation of the mortgage as originally envisioned.

[46] Therefore, the requirements for there to have been actual undue influence in this Court's mind are not met. That therefore leads to the next category, presumed undue influence or the Class 2 type of relationship as identified above.

[47] In the case of Marie Madeleine Egger v Herbert Egger[13], our Court of Appeal examined the very tenets of this presumed influence in the context of a husband and wife relationship. The Court in accepting the submissions of Counsel to the prerequisites of this kind of relationship, stated at paragraph 30 that the first prerequisite is that there is an existence of a legally accredited relationship of trust and confidence from which it will be legally presumed or inferred that the dominant party acquired influence over the complainant and secondly, the fact that the nature of the transaction was not readily explicable on the basis of the said relationship or on the basis of the ordinary motivations of actions of ordinary men and women and therefore at that point it calls for an explanation that the influence was not undue or abused.[14]

[48] Indeed, it is not doubted that on the factual matrix of this case at bar, the relationship of parent and child exists and thereby the presumption is raised as per Class 2A identified above. However, it is only a presumption and a finding of the same can only be made after the same has been examined using a two - pronged approach.

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[13] SLUHCVAP No 17 of 2002

[14] Op Cit Para 30

[49] So firstly, the presumption arises from the very relationship. As stated this exists here. However, as Counsel for the second defendant helpfully provided to this Court, there are authorities in how the court assesses those relationships and determines the extent and relevance of such relationships.

[50] Thus, in the case of **Pauling's S**t (No. 1), Re[15] Wilmer J quoted Farwell J in Powell v Powell[16] where he said *"A man of mature age and experience can make a gift to his father or mother because he stands free of all overriding influence except such as may spring from what I may call filial piety; but a young person (male or female) just of age requires the intervention of an independent mind and will, acting on his or her behalf and interest solely, in order to put him or her on an equality with the maturer donor who is capable of taking care of himself".*

The case went on to say as well that "t*he question of the duration of the presumption has also been much discussed. Lord Cranworth L.C. considered that it should be taken as a period of a year after the child attained 21 (see Smith v. Hay) but this has not been received with approval. In our judgment the question is one of fact and degree. One begins with a strong presumption in the case of a child just 21 living at home and this will grow less and less as the child goes out in the world and leaves the shelter of his home. Nevertheless, the presumption normally lasts only a "short" time after the child has attained 21 (see Lancashire Loans Ltd. v. Black, per Greer L.J.), and it seems impossible and undesirable to define it further. A married daughter with a separate establishment of her own may be emancipated directly she attains 21, whereas a spinster who has never left home might be able to rely on the presumption for a longer period. We reject, however…that this presumption continues indefinitely until it is proved that the undue influence has ceased to exist. That is to confuse a case of actual undue influence with the presumption. On the other hand, it may not be difficult for a spinster daughter living at home to prove a case of actual undue influence for many years after she has attained the age of 21".*

[51] Thus, it is clear to this Court that in the case at bar the mere existence of the relationship could not suffice especially with children who are "middle aged" and have been with great emphasis independent of their mother to the period of signing this Confirmation for many years. The first claimant was already married and proudly said in cross examination that he paid the bills in the house. The second claimant made no bones to say that for many years previously, and even at the time of execution he had no relationship with his mother (the reason for which could be reasonably inferred had to do with their mother's new relationship which seemed to have started within a year of the death of their father). Be that as it may, this Court is at a loss how the parental/child relationship in these circumstances without more, could amount to undue influence.

[52] So that being said, we must now assess whether Class 2B is relevant. This ground is based on the assessment of whether the donor of the gift reposed their trust and confidence in the individual who benefits from the gift.

[53] Again when one examines the evidence of the claimants, the Court is slow to see that the case as set out by the claimants is made out under this ground at all.

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[15] [1964] Ch 303 at 337

[16] [1900] 1 Ch. 243

[54] The evidence that was led before this Court was the same as that for the earlier point as to Class 2A. The claimants baldly told the Court that their mother called them and told them to go sign the document. It was of some concern to the court that the first claimant from his demeanour and the way in which he answered his questions that he may have been struggling with some issues of borderline illiteracy, and this was confirmed when he told the Court in answer to it that he had left school at the age of 14. However, this in and of itself would not suffice to make a finding that this claimant "reposed sufficient trust and confidence"[17] in the first defendant.

[55] The first claimant told the Court that the relationship was very close and that he and the first defendant discussed everything. Yet still he told this Court that he knew nothing about the property being mortgaged. That is in this Court's mind raises a very unlikely scenario if they in fact discussed everything. He cannot have it both ways. Having said so, having gone so far to bring his mother to Court, I think it is more likely on a balance of probabilities that even though the first defendant may have made the indication that her sons should sign the document, it was clear that such indication was simply in this Court's mind the manifestation of the intention already formulated by the claimants and their brother to help their mother. There is no evidence on a balance of probabilities that substantiates that there was any "influence" by the first defendant on the first claimant.

[56] With regard to the second claimant the Court is even more convinced that this was the position as well. The opening ambit from the second claimant was how "horrible" his relationship was with his mother. He further added to this when in answer to questions from the Court as to the driving of his mother to and from work that they did not communicate during the drive and had little to no interaction generally. Additionally, although he excluded it from his witness statement he did clearly state on cross examination, which evidence was substantiated by Ms. Paula David the attorney who prepared the Confirmation Deed, that he visited the office twice and sought and spoke to Counsel Ms. David as to the contents of the deed. In fact, the Court is satisfied that the second claimant knew full well what he was signing by the mere fact that he asked why his half brother was not also included in the deed.

[57] It must be bourne in mind therefore; that it is not the mere existence of words of trite encouragement that is uttered that can amount to "undue influence". I find that the words complained of that the first defendant is said to have uttered to the claimants to "go sign" are not sufficient to reach the threshold as required. In fact, as was stated in the case of Kenneth Charles Hart et al v Susan Ann Burbridge et al[18] by Sir William Blackburne "*It is trite that nobody lives in a vacuum; every normal person is influenced to a greater or lesser degree by the events and experiences of daily life, by the milieu in which that person lives and has his or her being and, not least, by those others whom that person meets and with whom he or she interacts. It is not to be suggested that such everyday influences disable a person from freely exercising his or her will. The question only arises when the influences go beyond a point where the freedom of that person to act independently is compromised such that the court concludes that the transaction was not the act of a free agent."*

[58] I am therefore satisfied on the balance of probabilities that there were no influences exerted on the claimants that went "beyond a point where freedom …to act independently [was] compromised".

[17] Egger v Egger Op Cit at Para 33
[18] [2013] EWHC 1628 (CH) Para 49

There is no evidence to support this contention of the claimants, and I find that the Confirmation Deed was not obtained by undue influence.

[59] For completeness, there remains in the concept of undue influence whether the transaction can be explained on the basis of ordinary motivations of ordinary men and women. This Court takes the view that in looking at the way in which the transaction unfolded, it is clear to the Court that the initial impetus to help the first defendant emanated from the claimants and their brother. This was a decision that the boys came to without the input of the first defendant. It further appears to this Court that it was without a doubt the intention of the claimants and their brother to assist in the situation in which their mother found herself. The end result may not have been what they thought it was, but they were all men of the age of majority and having found that they were not influenced unduly, I also find that in any event the Confirmation Deed was one that would or could have arisen as between children and their parent.

[60] That being said, there is now the need to revisit the issue of whether the first defendant holds the interest of the claimants and their brother on trust. Having found that the Confirmation Deed stands and should not be set aside, this Court therefore finds that there no longer exists interests to which the claimants and their brother would now be entitled. That therefore leaves the final issue as to what if any claim lies against the second defendant.

Issue #4 -Whether the second defendant holds a valid and subsisting mortgage.

[61] By operation of the provisions of the Administration of Estates Act[19].

"*A conveyance by a personal representative of a legal estate to a purchaser accepted on the faith of such a statement shall, (without prejudice as aforesaid and unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration), operate to transfer or create the legal estate expressed to be conveyed in like manner as if no previous assent or conveyance had been made by the personal representative."*[20] And at Section 51(7) that *" an assent or conveyance by a personal representative in respect of a legal estate shall, in favour of a purchaser, unless notice of a previous assent or conveyance affecting that legal estate has been placed on or annexed to the probate or letters of administration, be taken as sufficient evidence that the person in whose favour the assent or conveyance is given or made is the person entitled to have the legal estate conveyed to him, and upon the proper trusts, if any, but shall not otherwise prejudicially affect the claim of any person rightfully entitled to the estate vested or conveyed or any charge thereon.*" (My emphasis added)

[62] From this framework, in which conveyance is defined in Section 2[21] to include a mortgage, it is in this Court's mind that indeed the first defendant effected a valid mortgage with the second defendant of the legal interest to which she was entitled, that is her 1/3 interest in the property. She could not, it is determined, convey that interest to which she had no right, the right of her children at the initial execution of the Mortgage Deed.

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[19] Cap 486 Revised Laws of Saint Vincent and the Grenadines 2009

[20] Section 51 (6)(b)

[21] Administration of Estates Act Cap 486

[63] Indeed, it would appear that in fact Section 51(7) may have envisioned transactions of that nature when it specifically spoke of conveying the legal estate. The only legal estate which the first defendant had in her name at the time of the Deed of Assent was for her undivided one third interest. However, with the execution of the Confirmation Deed which, (which I have now determined is valid and subsisting) the claimants and their brother gave the first defendant all their undivided two thirds interest which completed the entitlement under the Estate. That Confirmation Deed perfected the title of the first defendant and related back to the point when she would have conveyed the legal interest to the second defendant. The mortgage and subsequent further charges are therefore in this Court's mind valid and subsisting and this prayer also fails.

IT IS HEREBY ORDERED AS FOLLOWS:

ORDER

1. The claim for damages for loss of entitlement is dismissed.

2. The declaration of interest in favour of the Claimants in the land, the subject matter of this action, is declined.

3. The cancellations of the Deed of Assent 3698 of 2006, Deed of Mortgage No. 3722 of 2006; Deed of Further Charge No. 4149 of 2010; the Second Deed of Further Charge No. 2175 of 2014 and the Deed of Confirmation No. 3518 of 2017 are refused.

4. Prescribed Costs to the First and Second Defendants on an unvalued claim pursuant to Part 65.5 CPR 2000.

Nicola Byer
HIGH COURT JUDGE

By the Court

Registrar