

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No: CV2016-00583

BETWEEN

RAHAMAT ALI

Claimant

AND

ROBIN BISNATH

Defendant

Before the Honourable Mr. Justice R. Rahim

Appearances:

Mr. A. Ashraph for the claimant

Mr. M. Khan instructed by Ms. K. Khan for the defendant

Judgment

1. This is a claim for specific performance of an oral agreement for sale of a parcel of land situate in the Ward of Savana Grande comprising of 457.2m² (“the subject land”). According to the claimant, the oral agreement for sale which was made on the 16th February, 2011 is evidenced by memorandum dated the 16th February, 2011 and Agreement for Sale dated the 23rd July, 2014 and registered as DE201502006036 (“the agreement for sale”).
2. By Counterclaim and Defence, the defendant seeks an order that the agreement for sale be set aside and declared null and void. It is the claim of the defendant that he never intended to sell the subject land and further that he never entered into any agreement for sale with the claimant. According to the defendant it was only when he was served with these proceedings and the nature of the document which he signed on the 23rd July, 2014 was explained to him did he understand that his execution of same amounted to an agreement for sale to sell the subject land to the claimant.
3. The defendant alleges that he is unable to read properly as he left school at an early age. He further alleges that he has difficulty in understanding the written word. As such, the defendant claims that his signature on the agreement for sale was obtained by fraudulent means and by undue influence.
4. Both parties agreed that the issues herein are purely factual and opted not to do submissions.

CASE FOR THE CLAIMANT

5. The claimant gave evidence for himself and called one other witness, Attorney-at-Law, Mr. Rennie K. Gosine (“Mr. Gosine”).

6. The claimant is the defendant's nephew. The claimant testified that he and the defendant always shared a very close relationship and that the defendant always treated him as his son as he (the defendant) has no children. The claimant has a daughter and the defendant was always close to her as well. The defendant visited the home of the claimant on a daily basis and would spend the entire Sunday at the claimant's home.
7. According to the claimant, the defendant was an employee of Caroni (1975) Limited ("Caroni Ltd.") and so was entitled to two acres of agricultural land and one residential lot of land under the Voluntary Separation of Employment to Daily Paid Employees ("VSEP") package. The residential lot of land which is the subject land in this claim is described in the first schedule of Deed of Lease dated the 6th June, 2012 and registered as DE201201483263D001 ("the 2012 deed") as follows;

"ALL AND SINGULAR that certain piece or parcel of land situate in the Ward of Savana Grande, in the Island of Trinidad comprising FOUR HUNDRED AND FIFTY-SEVEN POINT TWO SQUARE METRES (457.2m²) and bounded on the north partly by Lot Nos. 555, 556 and 526 and on the South partly by Road Reserve 12.50 metres wide and Lot No. 524 and on the East partly by Lot Nos. 556, 555 and 524 and on the West by Road Reserve 12.50 metres wide and partly by Lot No. 526 and which said parcel of land is shown as Lot No. 0525 on the plan annexed and marked "A" to the Deed of Lease Number DE201102053640D001 and known as Reform Residential Site."

8. The claimant testified that after the defendant received his VSEP package in 2003, he promised that he would sell the subject land to the claimant. The defendant informed the claimant that he had all the documents from Caroni with respect to the allocation of the lands to him and that he would provide the claimant with same. The first document the claimant received was letter dated the 21st July, 2003. This letter from Caroni Ltd. to the defendant informed the defendant that his participation in the enhanced VSEP entitled him to the benefits set out in the statement of benefits attached to the letter. According to the claimant, the defendant signed a copy of the statement of benefits. The claimant also

received from the defendant, the request for consideration for lease of land for agriculture form dated the 25th July, 2003. The defendant also completed and signed this form.¹

9. The defendant further provided the claimant with copies of the Authorization forms which he (the defendant) had signed and delivered to Caroni Ltd. on the 31st January, 2006 and the 9th January, 2007 respectively.²
10. According to the claimant, when the defendant gave him the aforementioned documents, he (the defendant) explained same to him. The claimant testified that the defendant was well aware of the contents of the documents as he had read same. As such, it was the testimony of the claimant that the defendant is able to read and write. That the defendant attended St. John's Anglican Primary School and after writing Common Entrance passed for Pleasantville Junior Secondary School and then moved onto Pleasantville Senior Secondary School. The claimant further testified that he saw the defendant reading the newspapers and that when the defendant visited his home, he would assist the claimant's six year old daughter with her reading and writing skills.
11. The claimant visited Caroni Ltd. with the defendant on several occasions. He also visited an Attorney's office with the defendant. He testified that he has seen the defendant read documents and ask questions. He further testified that he saw the defendant fill out a Query Form dated the 6th January, 2005.³ This query form was taken to Caroni Ltd. by the defendant and the claimant.
12. According to the claimant, in or about September, 2009 the defendant received confirmation from Caroni Ltd that he was allocated the subject land. The defendant gave the claimant a copy of the allocation ticket and letter dated the 11th September, 2009 which confirmed the defendant's allocation of the subject land.⁴

¹ Copies of the letter, the signed statement of benefits and the completed form are annexed to the claimant's witness statement at "B".

² Copies of the signed authorization formed are annexed to the claimant's witness statement at "C".

³ A copy of the query form is annexed to the claimant's witness statement at "D".

⁴ A copy of this letter is annexed to the claimant's witness statement at "E".

13. The claimant testified that on the 16th February, 2011 whilst at his brother, Imran Ali's house in Golconda, the defendant and he agreed to the following;

- i. The claimant would pay the defendant the sum of \$35,000.00 for the subject land and also pay \$21,500.00 to Caroni Ltd. for the subject land;
- ii. The defendant would transfer the subject land to the claimant within seven days of receiving the 2012 deed and/or when the land became transferable.

14. According to the claimant, by letter dated the 16th February, 2011 the defendant wrote to him indicating that he could use the subject land to build a home. The claimant testified that the purpose of this letter was to inform Caroni that he was now in possession of the subject land. The defendant and the claimant delivered this letter to Caroni Ltd. This letter provided as follows;

"I Robin Bisnath of #54 Ponderosa Settlement, Golconda Village, Cross Crossing, San Fernando is giving permission to my nephew Rahamat Ali of 166 Cipero Road, Golconda Village, Cross Crossing, San Fernando to use my land to build a home for his family since his current home is air-marked for demolition. The land in question is location La Fortune, site Petit Morne, Lot number 1391."

15. On the 15th August, 2012 the defendant wrote to the Chief Executive Officer of Caroni Ltd. requesting the original 2012 deed for the subject land.⁵ Sometime in November, 2012 the defendant received the 2012 deed. The claimant testified that the defendant gave him the original copy of the 2012 deed and told him that the subject land was now his and to do the requisite transfer. However, 12(b) of the 2012 deed prevented the transfer of subject land within five years. Clause 12(b) provides as follows;

"Not to assign sublet transfer part with the possession and/or dispose of the whole or any part of the demised land or building therein or any right or privilege in relation thereto otherwise than by will PROVIDED HOWEVER that the Lessee may subject to the prior

⁵ A copy of this letter is annexed to the claimant's witness statement at "G".

written consent of Caroni had and obtained assign his interest under this lease to any person not less than five (5) years after the grant of this lease.”

16. In or about 2012, the defendant gave the claimant’s brother, Paul Ali (“Paul”) permission to construct a foundation on the subject land. In order to settle the matter with Paul, the claimant paid him the sum of \$27,000.00 for the foundation.⁶
17. On the 27th March, 2014 the defendant and the claimant attended the office of Mr. Gosine. The claimant testified that it was the defendant who had suggested that they visit the office of Mr. Gosine. That the defendant had known Mr. Gosine as Mr. Gosine had prepared the 2012 deed. The claimant testified that he only came to know Mr. Gosine through the defendant.
18. At Mr. Gosine’s office, the claimant and the defendant instructed Ms. Risa Basdeo (“Ms. Basdeo”), to prepare a Power of Attorney (“POA”), a will and an agreement for sale for the subject land.⁷ After reading the instructions, the claimant and the defendant signed same. Thereafter, Ms. Basdeo prepared the will, the POA and the agreement for sale.
19. According to the claimant, the purpose of the POA was to 1) allow him to occupy the subject land, 2) go to Caroni Ltd. to perform any acts with respect to the subject land and 3) apply for approvals to build on the subject land. The purpose of the will was to ensure that in the event the defendant had died before executing the deed of lease, the claimant would still benefit from the subject land.⁸ The execution of the will and the POA was done in Mr. Gosine’s office. Ms. Basdeo and two of Mr. Gosine’s clerks, Lesley Ann Radhay (“Lesley”) and Kemba Leacock (“Kemba”) were also present during the execution of the POA and the will.
20. The agreement for sale however, was not executed because the claimant did not have all the money to give to the defendant at that time. Later that day the claimant gave the

⁶ A copy of the receipt dated the 13th March, 2015 evidencing the payment of the sum of \$27,000.00 to Paul is attached to the claimant’s witness statement at “O”.

⁷ A copy of the instructions dated the 27th March 2014 is annexed to the claimant’s witness statement at “J”.

⁸ Copies of the POA and the will are annexed to the claimant’s witness statement at “I”

defendant the sum of \$35,000.00. He obtained \$24,200.00 from his savings and \$10,800 from his Scotiabank Magna Credit.⁹ The claimant also paid Caroni Ltd. the sum of \$21,500.00 on behalf of the defendant.¹⁰ Subsequently, Caroni Ltd. changed its policy with respect to the subject land and the sum of the \$21,500.00 was reimbursed to the defendant.

21. The claimant testified that sometime in October, 2014 the defendant visited the office of Mr. Gosine to execute a sale of the two acre agricultural lands to one Pooran Sookoo.

22. In or about July, 2015, the claimant began to get very suspicious that the defendant was attempting to sell the subject land to someone else. The claimant confronted the defendant with his suspicions and the defendant denied same. Consequently, the defendant and the claimant attended Mr. Gosine's office and executed sale agreement dated the 23rd July, 2015 and registered as DE201502005036D001. This was the same agreement that was prepared by Ms. Basdeo on the 27th March, 2014 and so the dates on the agreement were changed. According to the claimant, the sale agreement was given to the defendant and him to read before they signed same. He testified that the defendant read the agreement in his presence. He further testified that the Attorney asked if they understood the contents of the agreement and that they both agreed that they did and then signed same.

23. By Deed of Variation dated the 28th July, 2015 and registered as DE201502921254, clause 12(b) of the 2012 deed was removed ("the deed of variation"). In or about mid-February, 2016 the defendant received the deed of variation. At this time, the claimant approached the defendant and indicated to him that as the subject land was now transferable, he should attend the attorney's office to execute the deed of lease. The claimant testified that the defendant refused to so do and indicated that he was making arrangement to sell the subject land to someone else.

24. As such, it was the testimony of the claimant that although he paid to the defendant the sum of \$35,000.00 and also paid the sum of \$21,500.00 to Caroni Ltd, the defendant has

⁹ A copy of the claimant's monthly statement from Scotiabank showing the withdrawal of \$10,800.00 is annexed to his witness statement at "K".

¹⁰ Copies of the receipts evidencing the payment of the \$21,500 to Caroni Ltd. is attached to the claimant's witness statement at "L".

failed to take the necessary steps to transfer the subject land. The claimant testified that he is in possession of the subject land and that he cleans and maintains same.

Cross-examination of the claimant

25. During cross-examination, the claimant testified that he visited Mr. Gosine's office on two occasions, on the 27th March, 2014 and on the 23rd July, 2012. He further testified that the defendant did all the speaking with Mr. Gosine.

26. The claimant was shown Notice of application dated the 2nd March, 2016 wherein he had asked the court for an injunction to restrain the defendant from disposing and/or selling and/entering into any agreement for sale of the subject land. The claimant testified that he was unable to read the application because he only attended school up to standard two. This was the first mention of the claimant being unable to read. The claimant was then shown his affidavit in support of the application. At paragraph 6 of his affidavit, the following was stated;

“As the lands could not have been transferred at the time I went to my Attorney's office and instructed him to prepare a Power of Attorney and a will naming me as the executor and beneficiary of the subject lands. I needed the Power of Attorney to carry out transactions with respect to the lands at Caroni. The Will ensured that in the event that the defendant died I would still benefit from the lands. My Attorney also prepared an Agreement for sale but it was not executed at the time. I gave the defendant the said \$35,000.00 later that day but did not return to sign the Agreement...”

27. The claimant was then asked if the contents of that paragraph was true and correct. The claimant testified that it was inaccurate, as the Attorney spoken of in the paragraph was the defendant's attorney not his.

28. During cross-examination, the claimant testified that Haimwattie Persaud (“Haimwattie”), the witness to letter dated the 16th February, 2011 is his wife. He further testified that this

letter was signed sometime in 2012. The claimant was then shown another letter with the same contents as letter dated the 16th February, 2011. This letter was witnessed by one Randir Bridgelal. The claimant testified that this letter may have been signed either in 2011 or 2012. He agreed that both letters spoke of him having permission from the defendant to occupy the subject land because his dwelling was air-marked for demolition by NIDCO.

29. During cross-examination, the claimant agreed that the main purpose for the execution of the POA was for him to get a water and electricity connection to the subject land. That the POA was not in respect of any sale. The claimant further testified that before the defendant and he signed the POA, same was read over to them by Mr. Gosine and that Ms. Basdeo, Lesley and Kemba were present when the POA was being read over to them. Moreover, the claimant testified that the will dated the 27th March, 2014 was read over to him. However, he testified that Mr. Gosine did not explain that the will could be changed.
30. During cross-examination, the claimant testified that he had the sum of \$24,200.00 at home. That he runs a car wash and he worked and saved up that sum of money. He further testified that he withdrew the \$10,800.00 in San Fernando. However, the Scotia Magna credit card statement exhibited by the claimant at "K" showed that the withdrawal was done in Port of Spain.
31. The claimant further testified that although he knew he was going enter into an agreement for sale at Mr. Gosine's office, he did not carry the purchase money in the sum of \$35,000.00 with him to Mr. Gosine's office because the defendant told him to leave the cash at home and that when they returned they would pick up the cash. He further testified that when he paid the defendant the \$35,000.00 he did not ask for a receipt or go back immediately to sign the agreement for sale because he trusted the defendant as he grew up from a little boy by the defendant and so he never thought the defendant would turn on him.
32. During cross-examination, the claimant testified that the defendant told Imran that he was going to sell the subject land to someone else and that it was Imran who called him and informed him of same. The claimant immediately went to the defendant's home and asked

him if the aforementioned was true. The defendant stated that it was not true. Thereafter, the claimant enquired from the defendant as to when would be convenient to execute the agreement for sale and the defendant told him that they would go to Mr. Gosine's office the next day. The claimant testified that next day, the defendant picked him up at about 12:30 p.m. and that they arrived at Mr. Gosine's office at about 1:00 pm.

33. According to the claimant, Paul began building on the subject land in either 2012 or 2013. When he found out that Paul was building on the land, he immediately contacted Paul and Paul and the defendant visited his home the very next day. The claimant testified that the defendant told them both that they would have to settle the matter between themselves. The claimant further testified that Paul gave him receipts and bills evidencing the sums he had spent on the foundation and that he paid Paul the sum of \$27,000.00 in parts. When he had completed paying Paul the \$27,000.00 one receipt was drawn up.

34. The claimant denied that the defendant gave him \$5,000.00 from the \$21,500.00 he was refunded from Caroni Ltd. He testified that the defendant kept the entire sum of \$21,500.00

The evidence of Mr. Gosine

35. Mr. Gosine's Chambers is situated at 24 Harris Street, San Fernando. Mr. Gosine testified that he is well acquainted with the defendant. That he is the Attorney-at-Law for Caroni Ltd. and so he prepared the 2012 deed. He further testified that the defendant executed the 2012 deed in his presence at the office of Caroni Ltd.

36. According to Mr. Gosine, the defendant attended his office in or about March, 2014 in order to execute the sale of the subject land to the claimant. The defendant presented the 2012 deed to Mr. Gosine and also introduced the claimant. As such, it was Mr. Gosine's testimony that this was the first time he met with the claimant. After having discussions with the defendant, Mr. Gosine instructed Ms. Basdeo (one of the lawyers in his chambers who is no longer so attached) to prepare the agreement for sale, the POA and the will.

37. On the 27th March, 2014 the defendant and the claimant visited Mr. Gosine's office to execute the agreement for sale, the will and the POA ("the documents"). Mr. Gosine testified that he explained the purpose of each document and the consequences of signing same after both men read the documents. Ms. Basdeo also explained the details to the men. Mr. Gosine further advised both men as to the consequences of entering into such an agreement for sale since a deed could not have been executed because of the five year limitation clause within the 2012 deed. The agreement for sale was however not executed on this day as the claimant did not have the money to pay to the defendant at that point. Both men agreed that they would return on a subsequent date to execute the agreement.
38. According to Mr. Gosine, the claimant and the defendant signed the will and the POA in his office in the presence of Ms. Basdeo, Lesley and Kemba. Mr. Gosine testified that in his presence the claimant and the defendant also signed a document indicating that they instructed Ms. Basdeo to prepare the documents.
39. According to Mr. Gosine, the purpose of the will was that in the event the defendant had died within the five years, the claimant would not have been left without recourse. Mr. Gosine testified that the purpose of the POA was for the claimant to use the defendant's name with respect to the subject land to apply for WASA and other approvals and also take possession of the subject land on behalf of the defendant.
40. On the 23rd July, 2015 the claimant and the defendant returned to the office of Mr. Gosine. Mr. Gosine was able to retrieve the agreement for sale from their file however, the date of the agreement had to be changed. Mr. Gosine read and summarized the contents of the agreement for sale to the claimant and the defendant. As such, it was his testimony that the defendant was always aware that the purchase price for the subject land was \$35,000.00. Mr. Gosine testified that the claimant and the defendant also read the agreement for sale and that after reading the agreement for sale, the claimant and the defendant executed same in his presence and in the presence of Ms. Basdeo. Kemba witnessed the execution of the sale agreement.

41. According to Mr. Gosine, it is his usual practice to include a special clause at the end of all documents when the person executing same is unable to read or write. He testified that such a clause was not present in any of the documents as the defendant read and signed the documents.

42. Mr. Gosine testified that the defendant visited his office and retained him for another transaction namely the sale of his two acre parcel of agricultural land. Mr. Gosine remembers preparing the agreement for sale for the two acre parcel of agricultural land. However, he could not locate a copy of the agreement but he was able to locate a will of the defendant dated the 27th October, 2014.¹¹ By this will, the defendant appointed Pooran Sookoo as his sole executor and beneficiary of the two acre parcel of agricultural land. Mr. Gosine and Lesley witnessed this will.

Cross-examination of Mr. Gosine

43. During cross-examination, Mr. Gosine testified that he has known the defendant since 2012. That he has seen the defendant on at least eight occasions. He met the defendant two times at Caroni Ltd. and six times at his office.

44. Mr. Gosine testified that when the defendant visited his office, he took instructions from him for the preparation of the POA, the will and the agreement for sale. Mr. Gosine was then shown notice of application and the claimant's affidavit in support dated the 2nd March, 2016. He agreed that upon reading paragraph 6¹² of the claimant's affidavit in support it would appear that the claimant is the one who gave him instructions for the preparation of the POA and the will. Mr. Gosine was then referred to paragraph 8 of the affidavit which provided as follows;

“...As a result the defendant and I attended my lawyer's office and we executed a sale agreement dated the 23rd of July, 2015...”

¹¹ A copy of this will is attached to Mr. Gosine's witness statement at "D".

¹² See paragraph 26 above

45. Mr. Gosine agreed that upon reading paragraph 8 it would appear that he was acting on the claimant's behalf. However, Mr. Gosine maintained during cross-examination that the defendant was always his client. That the defendant brought the claimant to his office and that he did not know the claimant. Mr. Gosine could not recall who paid for the preparation of the POA, the will and the agreement for sale as his receptionist dealt with the fees. Mr. Gosine testified that he did not see payment as an issue and so did not attach any receipts.
46. Mr. Gosine testified that he could not recall if the claimant had indicated to him or to Ms. Basdeo that he could not read. He further testified that the claimant's Claim Form and Statement of Case would have been read over to him.
47. Mr. Gosine testified that although the instructions dated the 27th March, 2014 stated that the defendant instructed Ms. Basdeo, Ms. Basdeo was under his study and so he had given her the documents to do as part of her training.

CASE FOR THE DEFENDANT

48. The defendant gave evidence and called one other witness his sister, Lisa Bisnath ("Lisa").
49. The defendant testified that the relationship he has with the claimant is the same as the one he shares with his other nieces and nephews. The defendant is not married and has no children. He testified that he takes care of himself and that the house he currently resides in is a small wooden house situate on squatting land. He further testified that he had no land to sell to his neighbour.
50. According to the defendant, when he became entitled to the subject land, he did not have the money to pay for same. Before he actually paid Caroni Ltd. for the subject land, the claimant had asked him to use the land as his (the claimant's) house was air-marked to be broken down for the construction of the Point Fortin Highway. He further testified that the claimant told him that NIDCO had to relocate him and give him money for moving. It was on that basis the defendant gave the claimant permission to stay on the subject land for a

while and build a temporary structure. The defendant testified that he did sign a letter stating that he had given the claimant permission to use the subject land.¹³

51. According to the defendant, the claimant knew that he did not have the money to pay for the subject land and so offered to lend him the money as he (the claimant) needed a place to stay. The defendant testified that neither did he promise to give the claimant the subject land nor did he give the claimant the 2012 deed and tell him that the land was his. The defendant further testified that except for him borrowing the money from the claimant to pay for the subject land, he never had any other discussion with the claimant about the claimant paying for the subject land.
52. The defendant testified that the subject land became his only major asset and so he had no intention of giving it away to anyone during his lifetime. He intended to hold onto the subject land and may have sold it in a case of emergency such as if he had gotten sick and was in need of money.
53. According to the defendant, in or about March, 2014 the claimant had asked him to accompany him to his (the claimant's) lawyer's office, Mr. Gosine to sign a document for him (the claimant) to use the subject land and to be able to get a water and electricity connection. When the defendant was given the document to sign, he asked the claimant the reason for him signing same. The defendant testified that the claimant told him that it was a POA and that since his name is on the 2012 deed, the POA would allow him (the claimant) to be able to get a water and electricity connection.
54. The defendant testified that the claimant never gave him \$35,000.00 and that he never entered into any agreement with the claimant to sell the subject land. He admitted that he did receive the refund of \$21,500.00 from Caroni Ltd. However, he testified that when he collected the refund, he gave \$5,000.00 to the claimant and kept \$16,500.00 because the claimant had told him that he should keep that sum for allowing him (the claimant) to use the subject land.

¹³ This is the same letter as set above at paragraph 15 above.

55. It was the testimony of the defendant that it was only when he was served with the papers in this action, his lawyer pointed out to him the will dated the 27th March, 2014. The defendant testified that although the signature on the will is his, he does not recall signing a will. He further testified that no one explained anything to him about signing a will. According to the defendant, he trusted the claimant and so signed the document.
56. The defendant testified that he was comfortable with the claimant going to WASA and T&TEC to get connections to the subject land as he (the claimant) would have been better able to fill out the forms and documents. The defendant further testified that he had intentions of residing on the subject land and so it would have been a benefit to him to have a water and electricity connection.
57. The claimant took the defendant to the office of Mr. Gosine again in July, 2015 to sign another document to get the water and electricity connection. The defendant testified that when the claimant gave him the document, he signed same believing it was for the claimant to get the connections. According to the defendant, he only came to understand that the document he signed on the 23rd July, 2015 meant that he had agreed to sell the subject land to the claimant when he showed his lawyer the documents the claimant had served him with for this action and his lawyer explained it to him.
58. The defendant testified that he has trouble understanding written documents as he cannot read and write properly. That he left school after form one because he was a slow learner and his parents were poor. He further testified that even if he tries to read a document, he would not understand same and that someone would have to explain the meaning of the document to him.
59. The defendant testified that he believes the claimant knew he trusted him and that the claimant abused his trust knowing he cannot read and understand properly. According to the defendant, whenever he attended Mr. Gosine's office, no lawyer explained the documents he was signing. Whenever he attended the office, the documents would already be prepared and the claimant would tell him that the documents were all for water and electricity connections. It was only when he brought this matter to his lawyer, his lawyer

told him that the lawyer's at Mr. Gosine's office should have asked him if he wanted independent legal advice. As such, it was the testimony of the defendant that no one at Mr. Gosine's office ever informed him that he should obtain independent legal advice.

60. The defendant testified that he did give Paul permission to use the subject land. He is however unaware what dealings Paul and the claimant had with respect to the foundation Paul had erected on the subject land. He further testified that he never agreed to sell Paul the subject land and that since this whole issue, Paul and the claimant have stopped talking to him even though he tried to help them in their time of need.

61. The defendant did fill out the Query Form dated the 6th January, 2005, however, he did so with the assistance of a representative at Caroni Ltd. He testified that there were other documents which he signed at Caroni Ltd. but that he did not fill out those documents. Those documents were filled out by a representative of Caroni Ltd. and the representative wrote an "x" in the spaces where he had to sign and told him to sign in those spaces. The representative also explained the documents to him.

Cross-examination of the defendant

62. During cross-examination, the defendant testified that he visited the home of the claimant once a month. He further testified that the claimant has no children of his own. That the claimant's daughter, Amber is his adopted daughter. The defendant testified that he was not close to Amber.

63. During cross-examination, the defendant agreed that he signed will dated the 27th March, 2014 and that the effect of the will was that if he died, the claimant would get the land. The defendant further agreed that he signed the POA and that the purpose of the POA was for the claimant to negotiate with Caroni Ltd. and to go to T&TEC. However, he testified that the claimant gave Mr. Gosine instructions for the preparation of those documents and that at the time of signing the POA and the will he was not aware of the true nature of the

documents. That he thought that he was signing a document for the claimant to get a water and electricity connection and approvals from Town and Country to build.

64. The defendant testified that the claimant did give him the \$21,500.00 to pay Caroni Ltd. for the subject land. He further testified that for him to sell the subject land to the claimant, the subject land had to be his but that it was never his intention to sell the land. Moreover, the defendant testified that he sold his two acre parcel of agricultural land because of the claimant. That he did not intend to sell the two acres but his car had gotten into an accident and that was the only alternative. According to the defendant, the claimant told him about Mr. Gosine and also told him about Pooran Sookoo the purchaser of the two acres. The defendant received \$45,000.00 for the two acres.

65. The defendant agreed that Mr. Gosine did prepare the 2012 deed however he denied meeting Mr. Gosine at Caroni Ltd. He testified that it was just a coincidence that the claimant took him to the same attorney who prepared the 2012 deed.

66. During cross-examination, the defendant testified that he knew he was signing an agreement for sale. That he knew that the agreement was an agreement to sell the claimant the subject land for \$35,000.00 but that he never received the \$35,000.00. However, thereafter the defendant denied agreeing to sell the claimant the land.

The evidence of Lisa

67. Lisa is the defendant's elder sister. She testified that she does not live far away from the defendant. She further testified that the defendant lives by himself and so he would visit her home more often than she would visit his home.

68. According to Lisa, the defendant has always been a slow learner. She testified that the defendant attended St. John's Anglican Primary School and that after writing common entrance he attended Pleasantville Junior Secondary School. However, she testified that he only attended Pleasantville Junior Secondary School up to form one. That due to lack of finances and him being a slow learner, he did not progress with his education. As such, it

was her testimony that the defendant cannot read and understand properly. She testified that even if he attempts to read a document, he would not understand same and would require someone to assist in reading, writing and understanding written documents.

69. Lisa is not aware of the details of the transaction which took place between the defendant and the claimant. She does know however that the defendant treats all his nieces and nephews alike and that he would try to assist them in any way he can.

Issues

70. The main issues for determination are whether there was a contract between the claimant and the defendant for the sale of the subject property and whether the defendant breached that contract.

Issue 1 - *whether there was a contract between the claimant and the defendant for the sale of the subject land*

71. Upon an evaluation of the evidence the court finds that there was a contract between the claimant and the defendant for the sale of the subject land. The claimant testified that the defendant orally agreed to sell him the subject land and that this oral agreement was evidenced by letter dated the 16th February, 2011 and Agreement for Sale dated the 23rd July, 2014 and registered as DE201502006036 (“the agreement for sale”). The defendant however testified that he neither intended nor agreed to sell the subject land to the claimant. That at all material times he had given the claimant permission to use the land on a temporary basis. As such, the defendant testified that he was unaware of the true nature of the agreement for sale when same was executed. That his signature on the agreement for sale was obtained by fraudulent means and by undue influence. The defendant further testified he was not given an opportunity to receive independent legal advice.

Independent legal advice

72. To determine whether the defendant did not have independent legal advice at the time of the execution of the sale agreement, the court has to decide whether at the time of the execution of the sale agreement, Mr. Gosine was acting for the claimant or for the defendant. According to the evidence of the claimant, the defendant introduced him to Mr. Gosine. He testified that at the time of the execution of the POA, the will and the sale agreement, Mr. Gosine was acting on behalf of the defendant. Mr. Gosine corroborated the claimant's evidence in this regard. Conversely, the defendant testified that Mr. Gosine was the claimant's attorney-at-law. That it was the claimant who took him to the office of Mr. Gosine.
73. Upon an examination of the evidence, the court finds that it is more likely than not that Mr. Gosine was acting on behalf of the defendant at the time of the execution of the sale agreement. Mr. Gosine was at the time, the attorney-at-law for Caroni Ltd. He testified that he prepared the 2012 deed and that the defendant executed same in his presence at Caroni Ltd. The defendant agreed that Mr. Gosine prepared the 2012 deed however he denied meeting Mr. Gosine at Caroni Ltd. He testified that it was just a coincidence that the claimant took him to the same attorney who prepared the 2012 deed.
74. The court finds that it is reasonable to believe that the defendant would have come to know Mr. Gosine in his capacity as the attorney-at-law for Caroni Ltd. The court therefore rejects the defendant's evidence that he never met with Mr. Gosine at Caroni Ltd. As a matter of common sense, this court would have had to enquire as to why the defendant would wish to hide the fact that he met with and knew Mr. Gosine from Caroni Ltd as people often times have a motive for acting in the manner that they do. Common sense however provided the answer in that it was clear that he sought to hide that fact because he was the one who took the claimant to Mr. Gosine's office to execute the sale agreement in accordance with the oral agreement he had with claimant to sell the subject land to him and it was in his interest to deceive the court into thinking otherwise. The court therefore does not accept his explanation that it was mere co-incidence.

75. Further, the defendant sought to rely on an affidavit sworn to by the claimant and dated the 2nd March, 2016 in support of his case that Mr. Gosine was the claimant's attorney-at-law. Mr. Gosine during cross-examination agreed that when one reads the contents of the affidavit, it would appear as though he was acting on behalf of the claimant at the time of the execution of the sale agreement but he maintained that at the time he was acting on behalf of the defendant. During cross-examination when confronted with this affidavit, the claimant stated that it was incorrect as Mr. Gosine was the defendant's attorney-at-law.
76. In this regard a determination must be made as to whether the claimant himself was also trying to deceive the court by his testimony. Having scrutinized the evidence the court finds that when viewed in context and taken as a whole with the other evidence, it is reasonable to infer that the claimant was (when answering the questions in cross examination) interpreting the contents of the affidavit as he understood same to be at the time of the execution of the sale agreement. That since at the time the affidavit was sworn, Mr. Gosine was acting on behalf of the claimant, it was logical for Mr. Gosine to be referred to in the affidavit as the claimant's attorney-at-law and the court so finds.
77. Further, upon examination of the instructions dated the 27th March, 2014 it was clearly set out that the defendant instructed Ms. Basedo (who was at all material times acting under the guidance of Mr. Gosine) to prepare the will, the POA and the agreement for sale. The defendant has sort to state that he has difficulty understanding written documents as he cannot read and write properly. He however attended primary school, wrote the Common Entrance examination and in fact passed that examination and attended a junior secondary school. The court therefore rejects outright his testimony and argument that he cannot read and write. Further, should this have been the case, his Claim Form and Statement of Case would have made this fact readily apparent (by way of the relevant signature clauses) but more importantly so too would have his witness statement. However there are no such endorsements present on any of those documents. The claimant's testimony in that regard is therefore another attempt to deceive the court.

78. Moreover, the defendant attended Mr. Gosine's office to execute the sale of his two-acre parcel of agricultural land. This evidence serves to support the claimant's evidence that Mr. Gosine was the defendant's attorney-at-law and that the defendant was well aware of what he was doing.

79. The court therefore finds that it is both logical and plausible that it was the defendant who introduced the claimant to Mr. Gosine and that Mr. Gosine was acting for the defendant at the time of the execution of the agreement for sale. Consequently, as Mr. Gosine was acting for the defendant, he was afforded independent advice by his attorney Mr. Gosine and the court so finds.

Fraud

80. In **Singh and Singh v. Singh and Tai Chew**¹⁴, Narine J (as he then was) stated the following in relation to fraud at page 24, paragraph 2;

"The burden of proving fraud lies on the person who alleges it. It must be distinctly alleged and distinctly proved. The standard of proof is on a balance of probabilities. However, the standard is flexible, and requires a degree of probability commensurate with the seriousness of the occasion. The more serious the allegation the more cogent is the evidence required to overcome the likelihood of what is alleged. The very gravity of an allegation of fraud is a circumstance which has to be weighed in the scale in deciding as to the balance of probabilities. See: Smith New Court Securities Ltd. vs. Scrimgeour Vickers (Asset Management) Ltd. (1996) 4 AER 769; Re Dellow's Will Trusts, Lloyds Bank Ltd. vs. Institute of Cancer Research (1964) 1 AER 771; Hornal vs Neuberger Products Ltd. (1956) 3 AER 970."

81. Having regard to the facts set out above and to the findings thereon by this court, the court is of the opinion that the defendant was well aware of nature of the documents that he was

¹⁴ HCA 530 of 1991

signing. That the claimant did not hide any relevant information in relation to the true nature of the documents which the defendant signed. The court also accepted the testimony of Mr. Gosine that the documents were read over to the defendant prior to execution. Further the evidence of the written instructions to Ms. Basdeo was unchallenged and the court accepts same. The court therefore finds that the defendant has failed to discharge the burden to prove that his signature on the sale agreement was obtained via fraudulent means.

Undue influence

82. Undue influence may be proven by (1) proof of actual undue influence and (2) proof of the existence of a relationship which raises a presumption that undue influence has been exercised and which said presumption has not been rebutted by the other party.¹⁵
83. Actual undue influence does not apply in the circumstances of this case. Presumed undue influence arises out of a relationship between two persons where one person has acquired over another a measure of influence, or ascendancy, of which the ascendant person then takes unfair advantage.¹⁶ In order to prove presumed undue influence, the defendant must first prove the existence of a relationship of trust and confidence and further that the transaction is so suspicious as to call for an explanation.
84. The presumption of undue influence is a rebuttable evidential presumption which shifts the burden of proof to the alleged wrongdoer. The presumption cannot be rebutted merely by evidence that the complainant understood what he or she was doing and intended to do it, but only by showing that he or she was either free from the influence of the alleged wrongdoer or had been placed by the receipt of independent advice in an equivalent position.¹⁷ One of the most important factors in showing that a person in a relationship which gives rise to the presumption of undue influence acted freely and of his own volition is the provision of independent legal advice to enable him to reach an informed decision

¹⁵ Halsbury's Laws of England, Volume 22 (2012) 5th Edition, paragraph 294.

¹⁶ Halsbury's Laws of England, Volume 47 (2014), paragraph 20, Royal Bank of Scotland v Etridge (No 2) [2001] UKHL 44 at 8.

¹⁷ Halsbury's Laws of England, Volume 47 (2014), paragraph 22.

about the transaction. However, it is only a factor to be taken into consideration and is not decisive. It is for the defendant to rebut the presumption of undue influence once it has arisen.¹⁸

85. The court finds that the defendant has failed to prove the existence of a relationship of trust and confidence between the claimant and himself. It is his own testimony that he treated the claimant in the same manner as all of his other nephews and that he was not dependent on him for his care. Further, this is not one of those relationships recognized in law as creating a rebuttable presumption of such a relationship.

86. The court further finds that there is nothing in the circumstances surrounding the sale agreement that would give rise to any suspicion calling for an explanation. There is no evidence from the defendant that at the time of the sale agreement he was bound or beholden to the claimant for his general care and support. Although the claimant testified that he shared a father-son relationship with the defendant, the defendant testified that his relationship with the claimant was the same he shared with his other nieces and nephews. Further, the defendant testified that he takes care of himself. Additionally, it is clear that the defendant had independent legal advice. The court therefore finds that there was no undue influence and in the circumstances the agreement for sale was a valid one and that it evidenced the oral agreement the defendant made with the claimant to sell the subject land.

The payments

87. The claimant testified that he paid \$35,000.00 to the defendant and also paid \$21,500.00 to Caroni Ltd. According to the claimant, the sale agreement was not executed on the 27th March, 2012 because he did not have the \$35,000.00 with him at the office of Mr. Gosine. Mr. Gosine corroborated this evidence of the claimant. The claimant testified that sometime later on the 27th March, 2012 he paid the defendant the \$35,000.00. He had the sum of \$24,200.00 at home and he withdrew the \$10,800.00 from his Magna credit card.

¹⁸ Halsbury's Laws of England, Volume 88 (2012), paragraph 455.

The defendant testified that he never received \$35,000.00 from the claimant. That he was refunded the \$21,500.00 from Caroni Ltd. and gave the claimant \$5,000.00 therefrom and kept \$16,500.00 because the claimant told him to keep same for allowing him to use the subject lands. The claimant denied that the defendant gave him \$5,000.00 from the \$21,500.00.

88. Firstly, the court finds that the sum of \$21,500.00 which was paid to Caroni Ltd. was paid to the defendant because it was the defendant who owed same to Caroni Ltd. Therefore, the actual amount paid by the claimant was in fact \$56,500.00 and not \$35,000.00.

89. Secondly, the court finds that it was more probable than not that the claimant did pay to the defendant the sum of \$35,000.00. The court considered that the fact of withdrawal of the sum of \$10,800.00 only from his Magna credit card did not demonstrate that the claimant paid \$35,000.00 to but taking the fact that he did withdraw that sum of money in the context of all the circumstances, one could reasonably infer that the claimant did pay same to the defendant.

90. Additionally, the evidence of Mr. Gosine and the claimant was that the sale agreement was not initially executed on the 27th March, 2012 because the claimant did not have the \$35,000.00 at that time. The fact that the sale agreement was subsequently executed, supports the fact that the claimant did pay to the defendant the \$35,000.00.

91. Moreover, the court finds that the sale agreement appears to be a memorandum of receipt of the sum of \$35,000.00. At clause 1 of the sale agreement, the following is stated;

“The Licensee (the claimant) will on the execution of this agreement pay to the owner the sum of THIRTY-FIVE THOUSAND DOLLARS (\$35,000.00) [the sum of whereby the Owner (the defendant) hereby acknowledges].

92. The court notes that the clause does not state “the receipt of which the owner hereby acknowledges” but it is clear to the court that that was in fact the ordinary and natural meaning of the words in brackets otherwise why use those words. They are meaning less

otherwise. The court therefore finds that clause 1 was an acknowledgement of receipt of \$35,000.00 by the defendant.

93. Finally, the court is not satisfied that the defendant has proven that he returned the sum of \$5,000.00 to the claimant. It means that he has pocketed both the purchase price and the refund from Caroni Ltd. Once again another act of deception by the defendant.

Issue 2 – *whether the defendant breached the contract*

94. Having regard to the court's findings above, it is clear that the defendant agreed to sell the subject land to the claimant, received payment but failed to perform his contractual obligation to execute a deed of lease in favour of the claimant.

95. Specific performance of a contract for the sale of land is an equitable remedy which can be ordered by the court in cases where damages for breach of contract would not adequately compensate the innocent party's loss. Specific performance will not be awarded where the applicant is himself guilty of some misconduct (such as misrepresentation).¹⁹

96. Having regard to all the circumstances set out above, the court finds that this case is an appropriate one for the exercise of the discretion to grant the equitable remedy of specific performance in the face of clear deception by the defendant.

Damages for breach of contract

97. Although the claimant has proven breach of contract, he has not proven any specific loss in that regard. In circumstances where there is no quantifiable loss caused by the breach, nominal damages are generally awarded to mark the fact that there has been a breach of

¹⁹ Halsbury's Laws of England, Volume 23 (2016), para 453.

the contractual entitlement.²⁰ As such, the court will award the sum of \$5,000.00 as nominal damages for breach of contract.

Costs

98. The court stipulates that the value of this claim is \$56,500.00 (\$35,000.00 + \$21,500.00). Consequently, the defendant will be ordered to pay to the claimant the prescribed costs of the claim based on this stipulated value of the claim.

Injunction

99. On the 14th March, 2016 the court granted an injunction by consent restraining the defendant whether by himself, his servants and/or agents from disposing and/or selling and/or entering into any agreement for sale of the subject land. The costs of this application were reserved. The parties will therefore be heard on the costs of the application.

Disposition

100. The order of the court is as follows;
- a. The injunction granted on the 14th March, 2016 is hereby discharged.
 - b. The defendant shall convey to the claimant all and singular that certain piece or parcel of land situate in the Ward of Savana Grande, in the Island of Trinidad comprising four hundred and fifty-seven point two square metres (457.2m²) and bounded on the north partly by Lot Nos. 555, 556 and 526, on the south partly by road reserve 12.50 metres wide and Lot No. 524, on the east partly by Lot Nos. 556, 555 and 524 and on the west by road reserve 12.50 metres wide and partly by Lot No. 526 (“the subject land”) within fourteen days of the date of this order by the execution of a deed of conveyance.

²⁰ Pan Trinbago INC. v Keith Simpson and others Civ. App. No. S-027 of 2013, para 61 per Mohammed J.A.

- c. Should the defendant fail so to do, the Registrar of the Supreme Court is empowered to execute the said deed of conveyance in place of the defendant.
- d. The defendant is to pay to the claimant nominal damages in the sum of \$5,000.00 for breach of contract.
- e. The counterclaim is dismissed.
- f. The defendant shall pay to the claimant the prescribed costs of the claim.
- g. The defendant shall pay to the claimant the prescribed costs of the counterclaim.

Dated the 1st day of June, 2018

Ricky Rahim

Judge