

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 1056 of 2015

IN THE MATTER OF THE WILLS AND PROBATE ACT CH. 9:03

BETWEEN

SADIQUA BOOS

(As Administratrix ad litem in the estate of Tahira Boos)

Claimant

AND

SAADIA LEE YING

BOOS HOLDING AND INVESTMENTS LIMITED

Defendants

BEFORE THE HONOURABLE MR. JUSTICE PETER A. RAJKUMAR

APPEARANCES

Mr. Gregory Delzin for the Claimant

Mr. Anand Singh for the Defendant

JUDGEMENT

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BACKGROUND

1. The Claimant and the First Defendant are sisters. The Claimant's claim relates to property at 25 Stanmore Avenue Port of Spain (the property) which was owned by their deceased mother (the deceased). The Second Defendant is a company incorporated by the First Named Defendant. She and her children are its directors.

2. On 16th May 2011, a Deed of Conveyance was executed by the deceased vesting 25 Stanmore Avenue in the Second Defendant. The Second Defendant is now the registered owner of the property.

3. The Claimant claims that that transaction under which the Second Defendant became the registered owner must be set aside as it is tainted by, inter alia, fraud and undue influence applied to their ailing mother.

4. The Claimant so claims because:
 - a. Their deceased mother was suffering at the time of the transaction with a variety of ailments including cancer, heart disease, and anxiety.
 - b. At the time of signing the Deed of Conveyance, the deceased was not independently represented or advised on the transaction. She did not have available to her independent legal advice and there is no independent evidence that she was advised of the right to obtain such advice.
 - c. The consideration for the transaction was falsely stated in the deed to have been \$4 million dollars paid by the Second named Defendant, and receipt of which was acknowledged. It is undisputed that at no time, then or since, was that entire sum ever paid to the deceased.
 - d. A promissory note was signed by the first defendant as purported consideration for the conveyance after the Deed was executed and two days **after** the deed was registered on 19th May, 2011, promising to pay the Four Million Dollar (\$4,000,000.00) purchase price "together with simple interest at the rate of 1% per annum by 240 equal monthly installments of \$20,000.00 per month **provided** that if any installment or any part thereof

shall not be paid when due then the whole **balance of the principal sum shall become immediately due and payable**".

- e. Although by its terms the sum of \$20,000.00 per month was to be paid to the deceased, it is undisputed that payments of that sum ceased and monthly payments were significantly reduced from August 2012, with that shortfall in payment remaining unsecured.
- f. The transaction was to the manifest disadvantage of the deceased as it divested her of her main asset, her income earning property, and provided her in return with a monthly payment comprising in large part the rental income from the property which she would have received in any event, plus arguably a marginal monthly extra payment.

In fact this amount was less than the rental realizable if both the upstairs and downstairs had continued to be rented. (See page 2 - valuation of Farrell (at which the first defendant was present) which refers to rental income of \$24,000 per month in July 2010). By November 1st 2012 the whole property was fully rented once again.

It is undisputed that

- a. The rental income from the property was allegedly utilized as a significant part of the alleged monthly payment of \$20,000.00, when those monthly payments were being paid.
- b. The Second Defendant was created in March 2011 for the sole purpose of being the purchaser of the property. Despite its misleading name, **Boos HOLDING AND INVESTMENTS LIMITED**, not one director or shareholder carries the name Boos, which is the surname of the deceased and most of her other children, including the claimant, but not the surname of the first defendant and her children, who are the actual directors of the second defendant.
- c. The Second Defendant has provided no consideration for the purchase price of the property. In fact it received the property free and clear of all encumbrances, despite the full purchase price not being paid. The unpaid purchase price was never secured by a charge on the property. This despite the First Defendant claiming that the idea behind creation of the second defendant was to provide for future payments under the promissory note in the event that anything happened to the first defendant - (paragraph 34 of her witness statement). The mere creation of the second defendant in fact achieves nothing of the sort.

- d. The First Defendant is the executrix of the estate of the deceased and therefore responsible in that capacity for enforcing the alleged promissory note, which she has defaulted upon in her personal capacity. The note provides that in the event of default in payment of any installment or any part thereof the whole balance of the principal sum becomes immediately due and payable. Her **duty** as executrix to enforce the promissory note for the benefit of the Estate and her **interest** in continuing to avoid such enforcement against her clearly conflict.

ISSUES

5. **Whether the transaction by which the property at 25 Stanmore Avenue (the property) became vested in the Second Named Defendant was tainted by undue influence, actual or presumed, such that it must be set aside.**

FINDINGS

6. The Claimant submits that the issue of presumed undue influence was proven by the Claimant as:

- i. *There was a relationship of ascendancy between the First Defendant and the deceased.*

I find that there was. The First Defendant was a savvy business woman entrusted by the elderly ailing deceased to collect money on her behalf and to be executrix of her will.

- ii. *The deceased, her elderly mother, was misled by the First Defendant as to the true nature of the transaction.*

In light of the matters set out herein I find that the deceased could not have been fully informed and must have been misled as to actual nature and consequences of the transaction by which she ceased to be the owner of the property.

- iii. *There was unequal bargaining power between the deceased and the First Defendant;*

I find that there must have been as the deceased did not have the benefit of independent legal advice or competent financial advice.

- iv. *The transactions were manifestly to the disadvantage of the deceased;*

I find that the transaction simply provides no benefit to the deceased that she could not have received without it. In fact she gave up ownership of the property and actual rental income of \$13,000.00 per month, and potential rental income **in excess** of \$20,000.00 per month and replaced that with a promise to receive \$20,000.00 per month that was not even honoured, despite the property being fully rented and providing rental income of \$23,000.00 per month by November 1st 2012.

- v. *There is no evidence that the deceased acted with the benefit of any independent legal advice but acted under the influence of the First Defendant.*

In fact there is evidence that the deceased did not act with the benefit of any legal advice, though, if the First Defendant is to be believed, (which is doubtful), her uncle allegedly endorsed and recommended this highly suspicious transaction.

Even if he did it is certainly not clear whether he was provided with **full knowledge** of the relevant circumstances, such as the fact that the rental income of the property when fully rented exceeded the monthly sum of \$20,000.00 that was to be paid, or that the monthly sum of \$20,000.00 to be paid was not secured by a charge on the property.

In those circumstances it is far more likely than not that only if there were excessive trust and confidence reposed by the deceased in the First Defendant could this transaction be explained. Otherwise the necessity for that income earning property to be vested in the Second Defendant, or even conveyed at all, cannot be logically justified or explained given :-

- (i) the lack of immediate payment for the property,
- (ii) payment of the purchase price in installments over 20 years by the rental income from the very property, and
- (iii) shortfalls in payment thereafter, all conveniently undocumented, yet to the advantage of the first defendant.

- vi. *At the time of the execution of the documents, the deceased was suffering from several ailments;*

I find that there is no basis for any finding that the ailments themselves affected the mental competence of the deceased.

- vii. *The deceased placed her trust and depended on the First Defendant to look after her affairs and interests in the property and the First Defendant betrayed this trust by preferring her own interests;*

For the reasons set out above I so find. In fact I expressly find that the first defendant took advantage of the position of trust that she was placed in so as to advance her own personal pecuniary interests in acquiring the property on highly advantageous terms that were extraordinarily beneficial to her, and to her family, but to the significant economic disadvantage of the deceased and her estate.

- viii. *The property was the main asset of the deceased and its conveyance (without consideration) calls for an explanation and excites suspicion;*

I find that it certainly does.

- ix. *The purchase price for the property was never paid to the deceased at the time of the execution and/or registration of the Deed of Conveyance;*

This is undisputed.

- x. *The First Defendant has failed to provide the Court with a proper explanation for the transactions, including the reason for not providing consideration for the property at the time of the execution and registration of the Deed of Conveyance.*

I find that *the* reason for not providing consideration was clear from the evidence. No consideration was provided by the First Defendant as she could not afford to pay for the property. She had commitments and could not afford a mortgage. I do find however that the reason why the deceased allegedly wished to divest herself of this income earning property, in favour of receiving less income and giving up the capital value of the property, has never been convincingly explained. The temporary loss of a tenant could not possibly constitute a convincing explanation. Neither can the need for the cosmetic repairs referred to in the independent valuation report.

- xi. Furthermore, after the death of the deceased, the First Defendant failed to collect the debt owed by her to the estate of the deceased and also retained portions of the rental income of the subject property for her own personal use and benefit.*

Clearly on her own admission she did not honour the promissory note. The alleged agreement with her mother is not accepted. In this matter of the allegedly agreed reduced monthly payment also it is clear that the deceased was in an unequal bargaining position, even more so by this time as her health was deteriorating, rendering enforcement of the promissory note unlikely. This is further evidenced by the fact that nothing was put in place to secure the shortfall in payment.

The promissory note only provided for monthly installments of \$20,000.00. Neither that document, nor any other, made provision for securing the shortfall. After the death of the deceased the situation became even more untenable, as the duty of the First Defendant to recover the entire sum, which had become immediately due and owing on the promissory note upon the first default, conflicted with her interest in doing nothing of the sort.

In that untenable situation, even apart from the findings made herein concerning the highly suspicious circumstances surrounding the conveyance, she cannot continue to be entrusted with the executorship of the estate of the deceased. – See for example **Desir and Another v Alcide [2015] UKPC 24 - paragraph 72.**

CONCLUSION

7. I find that the transaction was tainted by both actual and presumed undue influence.

8. It resulted in an income earning property valued at \$4 million dollars, with potential rental income in excess of \$20,000.00, leaving the ownership of the ill and elderly deceased, and being vested in a company owned and controlled by the First Defendant (and her family). The First Defendant was a daughter with acknowledged business acumen, trusted to the extent that she was even named as executrix of the will of the deceased.

9. This conveyance was effected without any payment being made to the deceased. To the extent that the First Defendant sought to claim that some payments had already been made to her

mother since February 2011 to April 2011 (3 months previously), that evidence is rejected as untrue, as (a) it is inconsistent with the express terms of the promissory note, and (b) further, such payments are not reflected in the deed of conveyance.

10. Further the assertion that the deceased would have agreed to accept her own rental income in that period as part payment for her property even prior to the conveyance borders on the incredible, especially given the assertion that a reason for the deceased wishing to sell the property was her declining rental income therefrom. Yet she allegedly was willing to consider even that income to belong to the second defendant and to have it notionally applied to the purchase price of the property.

11. Not only was no payment made to the deceased at the time of the conveyance, but the purchase price was to have been paid beginning the last day of the following month June 2011, and then it was to be paid in installments of \$20,000.00 per month. It is not disputed that a large part of that payment – (initially \$13,000.00) was to come out of rental of the property that the deceased was receiving prior to the conveyance.

12. It is not disputed that by November 1st 2012 the property was rented both upstairs and downstairs and that the rental income at that point - 17 months after the conveyance, was \$23,000.00. This was **in excess of** the \$20,000.00 monthly payment that the deceased was now supposed to receive in substitution for the entire rental income that she had received, and had been entitled to receive from the property prior to the conveyance. The temporary loss of one tenant does not alter that fact.

13. It is not disputed that the First Defendant failed to make payments of \$20,000.00 per month as promised, and in fact contracted, under the promissory note, allegedly because of some unsubstantiated agreement that she then entered into with the deceased under which the deceased allegedly agreed to accept shortfalls in the monthly sum of \$20,000.00 until December 2013.

14. That alleged oral agreement is not accepted. In fact the evidence suggests that the deceased was under the impression that the monies that she received from the First Defendant

were rent from the property and she continued to collect rent from a tenant and issue receipts to the tenant after the conveyance. As a result of the purported conveyance the \$4 million dollar property, and its potential monthly income in excess of \$20,000.00 per month, was replaced by a personal debt, unsecured by the property, in the sum of \$20,000.00 per month. Even that commitment was not met.

15. The fact that:-

- i. the documents relating to this transaction do not support the explanation of the first defendant as to any agreements that she could utilise rents that continued to be received by the deceased as part payment of the alleged monthly installment, combined with
- ii. the absence of any formal record that she had received a reprieve from the deceased from making full payment of the alleged monthly installment,

support the conclusion that this transaction bears too many hallmarks of suspicion, with the explanations therefor continuing to raise more questions than answers.

DISPOSITION AND ORDERS

16. **It is ordered as follows:**

- i. **It is ordered** that the First Defendant be removed forthwith as the executrix of the estate of the deceased Tahira Boos.
- ii. **It is ordered** that the Claimant be appointed the Executrix of the estate of the deceased, Tahira Boos.
- iii. **It is ordered** that Deed of Conveyance dated the 16th day of May, 2011 registered as No. DE201101086978 be **set aside** with immediate effect, save that the rights of the third party mortgagee Republic Bank Limited accrued pursuant to Deed of Mortgage dated the 14th June, 2011 are to remain unaffected by this order.
- iv. **It is ordered** that the property, the subject of the Deed of Conveyance dated the 16th day of May, 2011 registered as No. DE201101086978, be **re-conveyed** to the Estate of the

deceased within 28 days, that is on or before June 17th 2016, in default of which the Registrar is empowered to execute the Deed of Re-conveyance.

- v. **It is ordered** that all leases in respect of the property be **assigned** by the Second Defendant within 28 days, that is on or before June 17th 2016, to the Claimant in her capacity as Executrix of the Estate of the deceased Tahira Boos.
- vi. It is ordered that, in the **alternative** to orders **iv. and v.** above **only**, the Defendants are to pay to the Claimant within 28 days, that is on or before June 17th 2016, the entire sum of **\$4,680,000.00**, without prejudice to their right to **later** reimbursement of expenses substantiated to the satisfaction of the Executrix pursuant to order x. hereunder. (Order xi, which relates to income received from the property from the date of conveyance to date is to apply whether or not payment of **\$4,680,000.00** is now made for the property).
- vii. It is ordered that pending re-conveyance and assignment of the leases the defendants are to pay over all rents received from the property from today May 16th 2016, without deduction, to the Claimant in her capacity as Executrix of the Estate of the deceased Tahira Boos.
- viii. **An Injunction is granted** restraining the Defendants from selling, transferring, or effecting or creating any further charges or encumbrances on the said property at 25 Stanmore Avenue and/or howsoever otherwise disposing of it pending the re-conveyance of the said property to the Estate of the deceased.
- ix. **It is ordered** that the First Defendant and the Second Defendant do indemnify the estate of the deceased and the mortgagee in respect of any and all sums due and owing in respect of the principal sum and interest on loan obtained by way of Deed of Mortgage dated the 14th June, 2011 and all related costs.
- x. **It is ordered** that the First and Second Named Defendant do produce and/or provide to the Claimant within 28 days, that is on or before June 17th 2016, a full account of all

income and such expenses **only** as are supported by receipts, invoices or suitable supporting documentation **produced by independent third parties** in relation to the property situate at 25 Stanmore Avenue Port of Spain for the period 16th day of May, 2011 to May 16th 2016.

- xi. **It is ordered** that the First and Second Named Defendants do pay to the estate of the deceased within 28 days, on or before June 17th 2016, all income received from the subject property from the 16th day of May, 2011 to May 16th 2016, with liberty thereafter to claim reimbursement from the estate of the deceased such legitimate expenditures made in respect of the property situate at 25 Stanmore Avenue Port of Spain (the property) since 16th day of May, 2011 to May 16th 2016. Such reimbursement is to be for **only** such expenses as are supported by receipts, invoices or suitable supporting documentation **produced by independent third parties** in relation to the property, substantiated to the satisfaction of the Executrix of the estate of Tahira Boos.
- xii. **It is ordered** that the First Defendant be immediately restrained from dealing with or making withdrawals from bank account RBL 550224419201, save for the issue therefrom of manager's cheques payable to the estate of Tahira Boos and/ or to the Claimant in the capacity of legal personal representative of the estate of Tahira Boos.
- xiii. It is further ordered that all the bank statements for this account RBL 550224419201 and the current balance on this account be disclosed within 7 days from the date hereof, on or before May 24th 2016.
- xiv. The First and Second Named Defendants are to pay to the Claimant costs on the basis prescribed by the Civil Proceedings Rules for a claim in the sum of **\$4,680,000.00**.
- xv. Liberty to apply.

ANALYSIS AND REASONING

Law – undue influence

17. At Paragraph 836 Categories of Undue Influence in Halsbury's Laws of England¹ it is stated that:

“Undue influence may arise in the context of gifts or contracts. Cases in which a gift or contract has been set aside on the ground of undue influence have traditionally been divided into two categories:

*(1) those cases where the court has been satisfied that the gift or contract was the result of **actual influence** expressly used for the purpose (actual undue influence);*

*(2) those cases in which the **relationship between the parties at the time of or shortly before the making of the gift or contract has been such as to raise a presumption of influence (presumed undue influence).***

The second category has been further subdivided into: (a) those cases in which the relationship falls into one of the well-established categories of relationship, such as solicitor and client, where the relationship as such raises the presumption of the existence of influence; and (b) those cases where, 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 that relationship raises the presumption of undue influence.

A transaction may be set aside for undue influence even where the person who actually benefited by the transaction is a different person from the one who exerted undue influence to bring it about.” [All emphasis added]

18. In the case of **CV 2006-03599 Seeraj v Seeraj** - delivered 21st June 2010, the court dealt with the issue of undue influence. The guidance referred to in **Snell’s Equity 31st edition** is

¹ Halsbury's Laws of England/Misrepresentation (Volume 76 (2013))/4. Undue Influence And Other Voidable Transactions/(1) Undue Influence, Duress And Unconscionable Bargains/(li) Undue Influence/A. Scope of Doctrine Of Undue Influence/836. Categories of Undue Influence.

largely derived from **Royal Bank of Scotland plc v Etridge (No. 2)**, which was reaffirmed as recently as 2015 by the Judicial Committee of the Privy Council in **Alcide v Desir [2015] UKPC 24**.

19. In **Seeraj** the deceased, prior to her death, purported to transfer the premises in dispute by deed of gift to herself and the defendant as joint tenants. The court had to consider whether the deed of gift was the product of undue influence and therefore liable to be set aside. From paragraph 30 of the judgment the law was set out extensively (all emphasis now added):-

“30. The law on undue influence has been clarified in recent decisions and is set out and summarized in Snell’s Equity 31st edition as follows. The principles are set out at some length hereunder –

[Extracts from Snell’s Equity 31st Edition]

*“But in Royal Bank of Scotland plc v Etridge (No. 2) the Court of Appeal and the House of Lords have now confirmed that the basis of the doctrine is not absence of consent but **proof of wrongdoing**. Despite this clarification of the principles, however, the scope of undue influence still remains uncertain. The Court of Appeal has recently confirmed that **the presumption of undue influence can still arise even where the “wrongdoer” is able to satisfy the court affirmatively that his conduct was unimpeachable and that there was nothing sinister in it.**”*

*At page 712 “it is brought into play whenever **one party has acted unconscionably in exploiting the power to direct the conduct of another which is derived from the relationship between them**; and Etridge [6]-[7]: “The law will investigate the manner in which the intention to enter into the transaction was secured...**If the intention was secured by unacceptable means, the law will not permit the transaction to stand**”*

Paragraph 8-09 page 204-205

*“The doctrine of undue influence enables C to obtain relief where **he or she has been induced by the influence of D** to enter into or participate in a transaction in circumstances where the court considers that **the influence was exerted improperly or unfairly**.... The kind of conduct which will attract the Court’s intervention may involve threats or other overt acts of coercion. But **the Court may also intervene where D has exercised no overt pressure on C because he or she has such a power of influence that this is unnecessary**.... cases where the doctrine operates are conventionally divided into two classes. The first class consists of cases of **actual undue influence**. The second class consists of cases of **presumed undue influence**. The legal burden of proving undue influence remains on C throughout but if C establishes the existence of a **relationship of influence** and the nature of the transaction is so suspicious that it calls for an explanation, this satisfies the evidential burden of proving undue influence and the burden moves to D to provide a satisfactory explanation for the transaction. **In the absence of a satisfactory explanation** the inference of undue influence can be drawn and the legal burden of proof will be satisfied even if there is no direct evidence of undue influence... Further, where the relationship between the parties falls into one of a number of recognised categories of **parent and child, guardian and ward, trustee and beneficiary, solicitor and client or medical or spiritual adviser and patient or follower a relationship of influence is presumed**. This is an irrebuttable legal presumption (as opposed to an evidential one) although in order to establish undue influence it remains necessary in all cases for C to establish that the transaction called for an explanation on the basis that it was “immoderate or irrational” or **cannot “be reasonably accounted for on the grounds of friendship, relationship, charity, or other motives on which ordinary men act”**”.*

20. The First Named Defendant carried her elderly mother to a lawyer. There her elderly mother engaged in a transaction at the end of which she had effectively given her property to the Second Named Defendant, as she received not one penny of the four

million dollars that she, curiously, acknowledged receiving. If she had received competent independent legal advice, she would necessarily have been strongly advised to consider whether there were actually any advantages of such an arrangement to anyone except the first named defendant and her family.

21. In fact it raises questions as to whether the deceased even appreciated the effect of what she was doing – conveying her main asset for a promise of future monthly installments, most of which were comprised of rent which she would have received in any event if she had retained ownership.

22. Further the monthly installments were less than the monthly rental income she had been receiving before the loss of one tenant, and less than she would have received once the premises were completely rented once again, as they were by November 1st 2012.

23. The reasons for this transaction are not at all convincing. The alleged need for repairs was inconsistent with the valuation report. Even without factoring in the fact that the defendants failed to honour the promissory note, the transaction is irrational and cannot stand up to any scrutiny.

Paragraph 8-12

*“Equity identified broadly two forms of unacceptable conduct. The first comprises overt acts of improper pressure or coercion such as unlawful threats. Today there is much overlap with the principle of duress as this principle has subsequently developed. The second form arises out of a relationship between two persons where one has acquired over another a **measure of influence**, or ascendancy, of which the ascendant person then takes **unfair advantage**... In cases of this latter nature the influence one person has over another provides scope for misuses **without any specific overt acts of persuasion**. The relationship between two individuals may be such that, without more, **one of them is disposed to agree a course of action proposed by the other**. Typically this occurs when one person*

places trust in another to look after his affairs and interests, and the latter betrays this trust by preferring his own interests.”

24. This is precisely the case here. A relationship of influence has been clearly established. The transaction is highly suspicious. No satisfactory explanation has been provided for it.

Paragraph 8-13 page 208

Actual undue influence

*“In cases where no overt pressure is exerted **actual** undue influence may be proved by adducing **evidence of the relationship of ascendancy** and by the court drawing the **inference** that C was acting under D’s direction without any independent thought... If actual undue influence is proved the transaction will be set aside **even if the transaction was not clearly or obviously disadvantageous to the victim**”.*

25. In fact it is clear that, notwithstanding that the deceased was able to read and manage her own affairs, there was a relationship which can categorically be described as a relationship of ascendancy. I find that there is sufficient evidence that the transaction was entered into as a result of **actual** undue influence. There was clearly a relationship of ascendancy and, given the effect of this transaction and its irrationality, the inference must be drawn that the deceased was acting under the direction of the First Defendant without any independent thought. Significantly, in this case I find that the transaction, by which the property was conveyed by her before even a cent was paid, as I expressly find, was clearly and obviously disadvantageous to the deceased.

Paragraph 8-14

Presumed undue influence

*“But in many cases across the spectrum C cannot point to any overt acts or statements from which the court can make direct findings of undue influence and the relationship between the parties is not one of domination or complete ascendancy. **Even if C is, therefore, unable to prove undue influence directly,***

undue influence may be presumed upon proof of (1) a relationship of influence and (2) a transaction which excites suspicion or calls for explanation. “Proof that the complainant placed trust and confidence in the other party in relation to the management of the complainant’s financial affairs, coupled with a transaction which calls for explanation, will normally be sufficient, failing satisfactory evidence to the contrary, to discharge the burden of proof.” The onus then shifts to D to provide a satisfactory explanation and to satisfy the court that C was free from D’s influence altogether or that any reliance placed by C upon D was not abused. If D is unable to provide a satisfactory explanation then the court may draw the inference that C was induced to enter into the transaction and the legal burden of proof is discharged”.

26. With regard to presumed undue influence, as I have found, there was clearly a relationship of influence by the First Defendant over the deceased, by virtue of which she was entrusted with matters involving the deceased’s business. For example, she arranged the valuation of the property for the deceased, and she was named as executrix of the deceased. She even claims that her mother requested her to reduce her wishes into a revised will just before her death, which she then hastened to do without the benefit of any legal input.. Clearly the deceased placed trust and confidence in the First Defendant in relation to the management of her financial affairs.

27. Furthermore the transaction, both the conveyance and its creative financing, significantly subsidized by, and then completely met by, the rental income which the deceased would have had coming to her even without any conveyance, definitely excites suspicion. It not only calls for, but in fact demands explanation. No satisfactory explanation has been provided for this transaction. In those circumstances the burden shifted to the First Defendant to provide a satisfactory explanation that the deceased was free from the First Defendant’s influence altogether or that any reliance placed by the deceased upon the First Defendant was not abused. The explanations provided are anything but satisfactory.

28. The loss of a tenant temporarily, which left the property still producing income of \$13,000.00 per month, did not require its sale. The fact that a tenant was late with the rent, (it was never claimed that she was in actual default of paying any installment), did not require its sale. The need for repairs and the need to finance these is questionable given the description in the valuation report of the need for **cosmetic** repairs. Those explanations for the desire of the deceased to sell the property, upon closer examination, increasingly appear to be unsubstantiated justifications for this highly suspicious transaction which vested the property in the Second Defendant on extraordinarily beneficial payment terms. Even those alleged payment terms were not honoured by the First Defendant.

Paragraph 8-15

“It is also important to emphasize that the fact in issue which is the subject of the presumption is not the existence of a relationship of influence but that this relationship has been wrongfully abused. In Barclays Bank Plc v O’Brien it appeared to be suggested that proof of a relationship of influence was sufficient to give rise to the presumption of undue influence and that any exercise of influence by one party over another (and, in particular, husband over wife) would be wrongful. This suggestion has now been rejected. Further, there is bound to be a substantial overlap between actual and presumed undue influence particularly in cases of actual undue influence which involve no overt pressure. Where the court finds on the evidence, therefore, that there has been no express or actual undue influence it is not open to the court to infer undue influence from the nature of the relationship between the parties. The claim must be dismissed.”

29. I do not infer undue influence merely from the relationship between the deceased and the First Defendant alone. I find that that relationship was wrongfully **abused** in that the deceased had no independent advice, legal or financial, and that there is no independent evidence that she was advised of the opportunity to obtain such advice. Even the suggestion that the first defendant’s attorney cursorily asked her whether she wanted such advice cannot be accepted, both because it was not corroborated, and because it was

not sufficient. It could not be, given the fact that the deceased was being deprived of her main asset, her \$4 million dollar income earning property, by having her execute a conveyance, and pretending in the conveyance that consideration of 4 million dollars had already been received by her. In fact she had not received one cent.

30. The reality instead was that she only received a piece of paper, probably even unsigned at the time, promising to begin paying her, from the end of the **following** month, \$20,000.00 per month, consisting mostly of her own rent. Even on those inexplicably generous terms the First Defendant defaulted – allegedly with the consent of her mother. Even on her own evidence it does not appear that her mother had any choice but to accept whatever the First Defendant chose to give to her, she having already dishonoured both her own initial alleged promise to pay, as well as her commitment that in those circumstances of default she acknowledged that the entire outstanding sum became due and payable. Recourse against the second defendant, which now had legal title to the property, free and clear of all encumbrances at the time of conveyance, had been rendered difficult as the unpaid purchase price was inexplicably never secured on the property itself.

Paragraph 8-21

*“All transactions whereby benefits are conferred on parents by their children are objects of the court’s jealousy especially where the parent has been guardian of the child’s property. For example, where a daughter made over property to her father without consideration shortly after attaining her majority, the father was required to show that the daughter was a free agent. The presumption operates even after the marriage of the child, but normally lasts only a short time after he or she attains full age. **There is no presumption of a relationship of influence by a child over a parent and such a relationship must be established on the facts: Avon Finance Co. Ltd v Bridger (1979) [1985] 2 All E.R. 281 (son and elderly parents).**”*

Paragraph 8-28 Nature of transaction

“In National Westminster Bank plc v Morgan it was held that the presumption of undue influence will not arise unless the transaction is manifestly to the disadvantage of the person influenced. In Royal Bank of Scotland plc v Etridge (No. 2) the House of Lords declined to depart from their earlier decision although they considered that because of its ambiguity the expression “manifest disadvantage” should be discarded.” Accordingly, the presumption does not arise unless the nature of the transaction is sufficiently unusual or suspicious to require D to provide an explanation: “so something more is needed before the law reverses the burden of proof, something which calls for an explanation. When that something more is present, the greater the disadvantage to the vulnerable person, the more cogent must be the explanation before the presumption will be regarded as rebutted.

31. As I have indicated in this case there is no presumption of undue influence merely from the nature of the relationship.

Paragraph 8-30 Rebutting the presumption

“In the case of gifts, the presumption may be rebutted by affirmative proof that “the gift was the spontaneous act of the donor acting under circumstances which enabled him to exercise an independent will and which justify the court in holding that the gift was the result of a free exercise of the donor’s will” Put more shortly, D must establish that the gift was made as a result of “full free and informed thought about it”

Paragraph 8-31

“The most obvious way for D to rebut the presumption is to prove that C received independent legal advice. The normal standard of the advice required to rebut the presumption is that S, C’s adviser, explained the nature and consequences of the transaction to C with full knowledge of the relevant circumstances.” [Emphasis mine]

32. While this may be the most obvious way of rebutting any presumption, it is not always essential. In this case however, given the creative financing being used in the structure of this transaction, the need to ensure that the deceased had independent legal advice was important. The income earning potential of the property exceeded \$20,000.00 per month, as was most likely indicated by the first defendant herself to the valutors, (as she was the one present), and reflected in their report. The deceased, by the alleged transaction, deprived herself and her estate, for all time, from receiving in excess of \$20,000.00 per month (plus 1% per annum), even while she was actually in receipt of a large part of that (\$13,000.00 per month) even without this transaction.

33. She also allegedly deprived herself and her estate of the capital value of that asset, \$4 million dollars, in effect replacing it with a piece of unsecured paper, promising to pay her the rent of the property plus \$7000.00 per month. When a tenant for the remaining portion were found she would have received less than the amount that the property was generating in rental income. This all demanded that the deceased receive independent legal and financial advice from an adviser with full knowledge of these highly suspicious features of the transaction.

Alleged cash payments to deceased

34. The First Defendant, an experienced business woman, annexed a cheque payment to herself (Saadia Lee Ying) in the sum of \$30,000.00 and claimed that that sum was paid to the deceased. No receipts were produced. That self serving unsubstantiated evidence is not accepted. Further the First Defendant's daughter, Kristen Chin Cheong, a director of the Second Defendant, during cross examination, also claimed to have paid the deceased \$3,000.00 on occasions toward the price of the property. This was the rent of the First Defendant's property located at No. 27 Stanmore Avenue. However the frequency of these payments could not be confirmed by her.

35. Further, Kristen Chin Cheong admitted that she never told the deceased that this was what the purported payment represented. The extract from Kristen Chin Cheong's evidence is as follows:

Q: The money you paid to your grandmother, was it cash.

KCC: Yes

Q: When you paid this money to your grandmother did you tell her what it was for.

KCC: Yes, definitely.

Q: What did you tell her it was for.

*KCC: That was for the **rent that I was paying for my store** on a monthly basis and it was coming indirectly from my mother through me.*

Q: So a more accurate reflection of what took place is that you would go to your grandmother and give her \$3,000.00 in cash.

KCC: Yes

Q: No conversations

KCC: No conversations based on what the cash was for because we understood.

Q: No conversations about what the cash was for.

KCC: Yes...

Rent

36. During the period March 2011 to August 2012 the deceased (Tahira Boos) continued to collect rent from Ms. Olive Reyes in the sum of \$13,000.00 per month. The receipts were issued by Tahira Boos in her own name. They made no reference to any agreement /or sale of the property or payment towards the purported purchase price by the First Defendant or the Second Defendant. This supports the Claimant's case that Tahira Boos was always under the impression that the First Defendant was managing the property on behalf of and for the benefit of the deceased, and that the deceased believed that she still owned it in some fashion and was entitled, as landlord, to continue collecting her rent as before.

37. Repairs were insufficient to explain the need to sell it. The repairs allegedly required are described in the valuation report as being cosmetic. The loss of one tenant was rectified and by November 1st 2012 the entire property was tenanted.

38. It was never established, and on the evidence in fact it was not the case, that the troublesome tenant actually ever defaulted in paying rent, despite allegedly being late on occasion. The Claimant submitted that there was a web of complex transactions in this matter. This is accepted. These included *inter alia*:

- [i] a purported oral agreement for sale,
- [ii] the incorporation of a company in 2011- Boos Holdings and Investments Limited, (the directors of the company were not Tahira Boos or any her children with the surname Boos, except for the First Defendant),
- [iii] execution of a Deed of Conveyance that did not recite the actual terms of the sale, including any alleged prior part payments ,
- [iv] an executed Deed of Conveyance which included a receipt clause acknowledging “receipt” of the payment of the \$4,000,000.00 purchase price although, in reality, the sum of \$4,000,000.00 was never paid by the Second Defendant or First Defendant,
- [v] the registration of the Deed of Conveyance, although the purchase price of \$4,000,000.00 was never paid by the Second Defendant or First Defendant, and
- [vi] the execution of a promissory note, after the Conveyance was executed, which did not bind the purported buyer (the Second Defendant).

39. It is clear that that indeed was the effect of the evidence, and this supports the findings of both actual and presumed undue influence. The promissory note promised eventual payment of the alleged total purchase price, after 20 years to the elderly and ill deceased. Yet there were shortfalls in promised payments. Further, there is no acceptable independent evidence that any ‘short payments’ were even with the consent of Tahira Boos.

40. The cumulative effect of the documents generated for this transaction was:

- a. to vest the property in the second defendant,
- b. to provide suspiciously advantageous payment terms for the first defendant, who was clearly, with her family the beneficial owner, the second defendant having provided absolutely no consideration for the alleged purchase.

Letter dated 20th August, 2013

41. Much was sought to be made of a letter dated 20th August, 2013 allegedly signed by Tahira Boos. It was not accepted by the claimant that she even knew of this letter. The condition of the deceased at the time of execution of this letter, if she even executed it, and the circumstances under which it was allegedly executed, were not clarified in evidence. Significantly, however, one week later the deceased was referred to a doctor Lum Hee at the Port of Spain General Hospital. In the absence of such evidence it has not been proven by the letter at least, that the deceased was actually aware of the nature of the transaction that she had entered into, especially as there is evidence that she continued to collect rent and issue receipts in her own name after the alleged property had been transferred to the company.

42. Further the submission was made that the absence of protest at that time, assuming that the deceased and the claimant knew and appreciated that the letter confirmed (i) the transfer of the property, (ii) the existence of Boos Holdings, (iii) the fact that the claimant also assisted the deceased in management of her affairs, and (iv) the payment of the purchase price over 19 years, was somehow significant.

43. Even if this is considered evidence that that the deceased was aware before her death of the fact that her property had been conveyed to Boos Holdings, given the deteriorating health of the deceased, (who passed away in January 2014), and the preoccupation with her treatment and management of her terminal illness, any absence of protest would be understandable.

Payments

44. The Defendant refers to annexure "F" to the Claimant's Statement of Case. This is alleged to be a **handwritten record** kept by Mrs. Tahira Boos of the sums that were allegedly paid over to her by the First Defendant. This document, although replete with inconsistencies, is alleged to demonstrate inter alia :

- a. that payments started being received by the deceased at the time of the conveyance rather than prior thereto in relation to an agreement to simply manage the property,
- b. that reduced payments were acknowledged at the time of the alleged flood affecting the first defendant's house, and the reason was recorded in shorthand as flood Aug.

c. that in fact despite the figures actually recorded, examination of the document allows one to infer that actually \$20,000.00 was received – \$13,000.00 from the rent and \$7000.00 from the first defendant.

45. If even this is all accepted the fact is that a 4 million dollar property, passed to a company, (which despite its name has nothing to do with the deceased or her children other than the first defendant), for payment of an initial monthly sum of \$7000.00. The remaining portion of the \$20,000.00 monthly payment that she allegedly received was simply rent that she was receiving before the conveyance in any event. In fact by November 1st 2012, with the lease to the second tenant, the alleged monthly payment of \$20,000.00 was even less than the rent received from the property, which effectively began to pay for itself and generate a potential surplus.

46. The benefit to the deceased of this transaction is exceedingly unclear. For the sake of an additional \$7,000.00 per month she would have divested herself of a property worth \$4 million, which if fully rented had produced monthly income in excess of the amount that she had allegedly agreed to settle for.

Default - Conflict between interest and duty to enforce the promissory note

47. Even the sum of \$7,000.00 per month stopped being paid in August 2012, allegedly with the agreement of the deceased, and despite the express written terms of the promissory note that required and mandated that the full amount due and owing then on the promissory note would become payable upon default of any part of the monthly installment.

48. It is not disputed that the First Defendant is in default of the payments under the written terms of the promissory note.

49. It is not disputed that the First Defendant has produced no evidence apart from the cryptic scribble on the handwritten note allegedly by the deceased, that there was any agreement for reduced payments of monthly installments.

50. It is not disputed that there is no evidence as to how long this reduced payment was to be

acquiesced in, save for the bare assertion by the First Defendant that it was up to December 2013.

51. It is not disputed that there is no additional security provided for the shortfall in the alleged monthly installment due.

52. It is not disputed that the Second Defendant has provided no security whatsoever for the alleged outstanding purchase price and that the property, vested in it, is not at risk from any default by the First Defendant in payment of the alleged monthly installment.

53. Curiously there was no mortgage over the property in favour of the deceased to secure the payments allegedly due and agreed under the promissory note. In those circumstances it is difficult to accept that any person in the position of the deceased in receipt of competent and independent legal or financial advice would have even considered in these circumstances effectively gifting, on such extraordinarily generous terms, her major asset, far less an income generating asset, such as the property.

54. **Dependency** – the allegations of dependency by the siblings of the first defendant, upon examination of the evidence turn out instead to be merely constrained income earning abilities based on educational limitations. This is dependency only in the most general sense of the word. However Zaid, Sadiqua and Miriam were all demonstrated to have sources of income.

Independent Advice or otherwise -Failure to provide witness statements relating to alleged independent advice

55. The Defendant pleaded that Mrs. Tahira Boos got advice from her brother and that Ms Paynter had asked her if she wanted any. It was alleged that these two witnesses were not allowed to give evidence though these witness were summoned to give evidence. This is quite disingenuous. It must have been extremely obvious that the issue of independent legal advice and opportunity for independent legal advice were critical in rebutting the several unusual features of this transaction. Yet no witness statement was filed, nor any application made for an extension of time for the filing of a witness statement, or even a witness summary for each of these persons.

The claim that none was filed in the belief that no extension would have been granted does not excuse the fact that no attempt was made to file such evidence and test that belief against reality, or to ascertain whether consent might have been forthcoming, or to file such application and if refused, to seek further relief on appeal.

56. To claim however that no adverse inference should be drawn from the failure to file a witness statement, witness summary or the filing of an application at all, far less one which set out a good explanation for the late filing of such witness statement or summary, is optimistic in the extreme. This case demanded an explanation from the persons who allegedly were responsible for the alleged independent advice that the elderly deceased allegedly received and relied upon, or waived, in entering into this unusual transaction with her most educated business savvy daughter , upon whose judgement she clearly , if not necessarily exclusively, relied.

57. This is especially so when that daughter would have the court and her siblings believe that her mother:-

- a. Fully understood a transaction by which she conveyed her income earning property to Boos Holdings;
- b. Was aware of the composition and directorship of Boos Holdings at the time of conveyance;
- c. Was aware that her executrix the First Defendant would be responsible for enforcing the promissory note allegedly provided as consideration;
- d. Was aware that most of the monthly installment that would be paid to her would consist of rent which she was already receiving;
- e. Was aware that for the approximate payment of \$7000.00 per month additional to the rent which she already receiving, the second defendant would receive the **immediate** ownership of the property. In fact, when a second tenant was secured, she would have been paid less per month than the property had been earning in the past, and would have earned in rent in the future if two tenants were in occupation.

Such evidence would obviously have been important.

58. It is more likely than not that any reasonable defendant would have been quite aware that, in the absence of any foreshadowing of the evidence of such witness, it would have been prejudicial, in the absence of consent, to take the claimant by surprise on the morning of trial with any oral evidence, elicited for the first time in examination in chief, and at that stage any such consent would have been extremely unlikely.

59. Conversely however no positive or favourable inference can be drawn that such persons, even if permitted to testify for the first time at trial, would have supported the Defendants' defence.

60. The suggestion that Ms. Paynter would have supported the evidence of the first defendant if she had been "permitted" to testify cannot be accepted.

61. It would have been necessary to explain, if Ms. Paynter had in fact already prepared a promissory note for \$4 million dollars, why would she have had the deceased execute a Deed of conveyance, especially without independent legal advice, which expressly stated that the deceased had **received** the sum of \$4 million dollars, rather than the truth, which was that the purchase price would actually begin to be paid to her the following month by installments in the sum of \$20,000.00 per month.

62. This is just one of the many issues that she would have been required to explain. Even if her explanations corroborated the evidence of the First Defendant, this would still not have rendered the transaction immune from the criticism that it was improvident and most likely entered into as a result of undue influence. Even on the evidence of the First Defendant it is not explicable otherwise. Paragraph 44 makes it clear that attempts to obtain a witness statement from Ms. Paynter were futile.

63. I decline to refrain from drawing adverse inferences from the failure to provide a witness statement from her in these circumstances. The evidence of the First Defendant reeks with inconsistencies. The only common thread is that all the peculiar aspects of this transaction

curiously, but probably not coincidentally, turned out to benefit the First and Second Defendant. These include:

- a. No security for repayments under the promissory note,
- b. No obligation on the part of the second defendant to repay the purchase price if the first defendant did not do so,
- c. No actual receipt by the deceased of the entire purchase price despite her being presented with a deed of conveyance that provided that she acknowledged that she had, and,
- d. No record anywhere of the alleged agreement that the Defendants either pay to the deceased the rental income, even rental income prior to the conveyance, as part payment toward the alleged purchase price, and no record, (the cryptic scribbled handwritten note notwithstanding), of any agreement to vary these payments because of any flood.

64. The deceased was an elderly person who, though competent in everyday affairs, has not been established to be a person who was sufficiently “informed” to understand the implications of this transaction without demonstrated actual independent advice, legal or otherwise . Even simply suggesting it could be obtained, as claimed, would not suffice in the circumstances of this case. In any event Ms. Paynter is clearly described as attorney of the First Defendant – (paragraph 38 witness statement), despite the First Defendant unconvincingly attempting to claim otherwise at trial.

Company Formation

65. The Second Defendant was incorporated on March 14th 2011. The reason for its incorporation was explained by First Defendant at paragraph 34 of her witness statement. It was to cater for the possibility of anything happening to her before the 20 years of payments on the promissory note had been paid. It was to be **coupled** with a binding agreement “which would ensure that the company would continue paying the debt”. She clearly knew of the flaw in the arrangement for continued personal payments, and promised both the deceased and her uncle that she would structure the transaction to protect against this fundamental flaw in the alleged arrangement, that on her own admission was brought to her attention and recognized by her and her mother. Notwithstanding this, there is absolutely no evidence of any “binding agreement” with the company to continue paying the debt.

Collection of rent by the Deceased

66. According to paragraph 45 of the witness statement of the first defendant, from June 2011 to July 2012 the monthly rental income of \$13000.00 from Olive Clarke never went to the company. Instead there was an oral agreement that the rental income would be collected by the deceased, but notionally applied to the monthly sum of \$20,000.00 that was due from the first defendant every month under the promissory note.

67. The sum collected from Mrs. Clarke and allegedly so applied amounts, she claims, to \$182,000.00 (paragraph 47). However this web of transactions as described becomes more tangled the more it is examined. Why was the Deceased permitted to collect the rent and issue receipts rather than the First or Second Named Defendant collecting the rent, recording it as income for the Second Defendant, and then paying it over to the Deceased? This would have been more reflective of the arrangement described, if indeed the arrangement were for the rent to be applied to the purchase price. The daughter of the First Defendant was a director of the Second Defendant and was next door at 27 Stanmore Avenue. She could easily have collected the rent on behalf of the Second Defendant.

68. The reason for the direct collection of rent by the deceased is more consistent with her not realizing that she was not still the owner of the property, and the landlord. In fact, not having been paid for her property, it would not have been unreasonable for her to have believed that she still retained ownership, especially if the effect of the conveyance had not been pointed out to her, as it should have been.

69. **This alleged oral** agreement for application of rent is not only (a) unsupported by any documentary evidence, but (b) contradicted by the terms of (i). the promissory note and (ii) the conveyance. Neither of these reflect either this agreement, nor any credit applied prior to their execution, despite this alleged agreement allegedly being in effect.

70. I expressly find that this alleged agreement is an afterthought, designed to justify allegations of payment that were never made. I further expressly find therefore that the sum of \$182,000.00 allegedly paid pursuant to this alleged agreement, which allegedly modified the

terms of the alleged promissory note, cannot be considered a payment to the deceased for the property. In fact the evidence strongly suggests that the deceased believed that it continued to be exactly that – rent that she was entitled to collect on her own behalf for her property, and issue receipts for.

CONCLUSION

71. I find that the conveyance was tainted by both actual and presumed undue influence.

72. It resulted in an income earning property valued at \$4 million dollars, with potential rental income in excess of \$20,000.00 leaving the ownership of the ill and elderly deceased, and being vested in a company owned and controlled by the First Defendant (and her family). The First Defendant was a daughter with acknowledged business acumen, trusted to the extent that she was even named as executrix of the will of the deceased.

73. This conveyance was effected without any payment being made to the deceased. To the extent that the First Defendant sought to claim that some payments had already been made to her mother since February 2011 to April 2011 (3 months previously), that evidence is rejected as untrue, as (a) it is inconsistent with the express terms of the promissory note, and (b) further, such payments are not reflected in the deed of conveyance.

74. Further the assertion that the deceased would have agreed to accept her own rental income in that period as part payment for her property even prior to the conveyance borders on the incredible, especially given the assertion that a reason for the deceased wishing to sell the property was her declining rental income therefrom. Yet she allegedly was willing to consider even that income to belong to the Second Defendant and to have it notionally applied to the purchase price of the property.

75. Not only was no payment made to the deceased at the time of the conveyance, but the purchase price was to have been paid beginning the last day of the following month June 2011, and then it was to be paid in installments of \$20,000.00 per month. It is not disputed that a large

part of that payment – (initially \$13,000.00) was to come out of rental of the property that the deceased was receiving prior to the conveyance.

76. It is not disputed that by November 1st 2012 the property was rented both upstairs and downstairs and that the rental income at that point - 17 months after the conveyance was \$23,000.00. This was **in excess of** the \$20,000.00 monthly payment that the deceased was now supposed to receive in substitution for the entire rental income that she had received, and had been entitled to receive from the property prior to the conveyance. The temporary loss of one tenant does not alter that fact.

77. It is not disputed that the First Defendant failed to make payments of \$20,000.00 per month as promised, and in fact contracted, under the promissory note, allegedly because of some unsubstantiated agreement that she then entered into with the deceased under which the deceased allegedly agreed to accept shortfalls in the monthly sum of \$20,000.00 until December 2013.

78. That alleged oral agreement is not accepted. In fact the evidence suggests that the deceased was under the impression that the monies that she received from the First Defendant were rent from the property and she continued to collect rent from a tenant and issue receipts to the tenant after the conveyance. As a result of the purported conveyance the \$4 million dollar property, and its potential monthly income in excess of \$20,000.00 per month, was replaced by a personal debt, unsecured by the property, in the sum of \$20,000.00 per month. Even that commitment was not met.

79. The fact that:-

- i. the documents relating to this transaction do not support the explanation of the first defendant as to any agreements that she could utilise rents that continued to be received by the deceased as part payment of the alleged monthly installment, combined with
- ii. the absence of any formal record that she had received a reprieve from the deceased from making full payment of the alleged monthly installment,

lead to the conclusion that this transaction bears too many hallmarks of suspicion, with the explanations therefor continuing to raise more questions than answers.

DISPOSITION AND ORDERS

80. **It is ordered as follows:**

- i. **It is ordered** that the First Defendant be removed forthwith as the executrix of the estate of the deceased Tahira Boos.
- ii. **It is ordered** that the Claimant be appointed the Executrix of the estate of the deceased, Tahira Boos.
- iii. **It is ordered** that Deed of Conveyance dated the 16th day of May, 2011 registered as No. DE201101086978 be **set aside** with immediate effect, save that the rights of the third party mortgagee Republic Bank Limited accrued pursuant to Deed of Mortgage dated the 14th June, 2011 are to remain unaffected by this order.
- iv. **It is ordered** that the property, the subject of the Deed of Conveyance dated the 16th day of May, 2011 registered as No. DE201101086978, be **re-conveyed** to the Estate of the deceased within 28 days, that is on or before June 17th 2016, in default of which the Registrar is empowered to execute the Deed of Re-conveyance.
- v. **It is ordered** that all leases in respect of the property be **assigned** by the Second Defendant within 28 days, that is, on or before June 17th 2016, to the Claimant in her capacity as Executrix of the Estate of the deceased Tahira Boos.
- vi. **It is ordered** that, in the **alternative** to orders **iv. and v.** above **only**, the Defendants are to pay to the Claimant within 28 days, that is on or before June 17th 2016, the entire sum of **\$4,680,000.00**, without prejudice to their right to **later** reimbursement of expenses substantiated to the satisfaction of the Executrix pursuant to order x. hereunder. (Order xi, which relates to income received from the property from the date of conveyance to date is to apply whether or not payment of **\$4,680,000.00** is now made for the property).
- vii. **It is ordered** that pending re-conveyance and assignment of the leases the defendants are to pay over all rents received from the property from today May 16th 2016, without

deduction, to the Claimant in her capacity as Executrix of the Estate of the deceased Tahira Boos.

- viii. **An Injunction is granted** restraining the Defendants from selling, transferring, or effecting or creating any further charges or encumbrances on the said property at 25 Stanmore Avenue and/or howsoever otherwise disposing of it pending the re-conveyance of the said property to the Estate of the deceased.
- ix. **It is ordered** that the First Defendant and the Second Defendant do indemnify the estate of the deceased and the mortgagee in respect of any and all sums due and owing in respect of the principal sum and interest on loan obtained by way of Deed of Mortgage dated the 14th June, 2011 and all related costs.
- x. **It is ordered** that the First and second named Defendant do produce and/or provide to the Claimant within 28 days, that is on or before June 17th 2016, a full account of all income and such expenses **only** as are supported by receipts, invoices or suitable supporting documentation **produced by independent third parties** in relation to the property situate at 25 Stanmore Avenue Port of Spain for the period 16th day of May, 2011 to May 16th 2016.
- xi. **It is ordered** that the First and Second Named Defendants do pay to the estate of the deceased within 28 days, on or before June 17th 2016, all income received from the subject property from the 16th day of May, 2011 to May 16th 2016, with liberty thereafter to claim reimbursement from the estate of the deceased such legitimate expenditures made in respect of the property situate at 25 Stanmore Avenue Port of Spain (the property) since 16th day of May, 2011 to May 16th 2016. Such reimbursement is to be for **only** such expenses as are supported by receipts, invoices or suitable supporting documentation **produced by independent third parties** in relation to the property, substantiated to the satisfaction of the Executrix of the estate of Tahira Boos.

- xii. **It is ordered** that the First Defendant be immediately restrained from dealing with or making withdrawals from bank account RBL 550224419201, save for the issue therefrom of manager's cheques payable to the estate of Tahira Boos and/ or to the Claimant in the capacity of legal personal representative of the estate of Tahira Boos.

- xiii. **It is further ordered** that all the bank statements for this account RBL 550224419201 and the current balance on this account be disclosed within 7 days from the date hereof, on or before May 24th 2016.

- xiv. The first and second named defendants are to pay to the claimant costs on the basis prescribed by the Civil Proceedings Rules for a claim in the sum of **\$4,680,000.00**.

- xv. Liberty to apply.

Dated the 20th day of May, 2016

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Peter A. Rajkumar

Judge

The Court is indebted to counsel for all parties for the diligence of their research and the thoroughness and detail of their written submissions and to Judicial Research Counsel E. Ali for her contribution to the judgement.

ADDENDUM

CHRONOLOGY

December 2008	Tahira Boos was diagnosed with cervical cancer.
January 7, 2009	Tahira Boos was diagnosed with a heart defect - moderate to severe mitral regurgitation.
August 18, 2009	Tahira Boos executes a Will prepared by Ms. Joan Charles.
Early 2011	Tahira Boos performed CT scan where a spot of cancer was found.
March 2011	The Defendant incorporated the Second Defendant Company . Only the First Defendant and her children were listed as Directors.
May 11, 2011	Tahira Boos purportedly executed a Deed of Conveyance prepared by J.D. Sellier and purportedly transferred the subject property to the Second Defendant Company.
May 19, 2011	The Deed of Conveyance was registered.
May 21, 2011	The First Defendant executed a Promissory Note promising to pay Tahira Boos the sum of \$4,000,000.00 in monthly installments of \$20,000.00. starting the following month June
June 2011	The subject property was mortgaged by the Second Defendant Company in order to secure a loan in the sum of \$680,000.00 from Republic Bank Limited.
Late 2011	Dr. Gordon Narayansingh confirmed the cancer had returned.
August 2012	Tahira Boos continued to collect rent from Olive Reyes and issued receipts to Ms. Reyes.
July 2013	Tahira Boos was diagnosed with cancer in other parts of her body and started radiation.
December 2013	The First Defendant prepared a document claiming that it was the last Will of Tahira Boos and asked Tahira Boos and the Claimant and her siblings to sign the document.
12/30/2013	Tahira Boos was admitted to the Port of Spain General Hospital
1/14/2014	Tahira Boos was transferred to the Living Waters Hospice.
1/29/2014	Tahira Boos died.