

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

PORT-OF-SPAIN

CV 2007 – 01382

BETWEEN

ROSEMARIE MARCHAND

NICHOLAS AZARD MARCHAND

NAOMI ANDREA MARCHAND

Claimants

AND

DR. ROHIT DASS

SHAZMIN ALI-HOSEIN

**(Appointed to continue the proceedings on behalf of
VICTOR HOSEIN who died after the commencement of the proceedings)**

Defendants

Before The Honourable Mr. Justice Devindra Rampersad

APPEARANCES:

Claimant	Mr. Haresh Ramnath
First Named Defendant	Mr. Thomas Cunningham
Second Named Defendant	Richard Sirjoo

Delivered on the 30th day of October, 2012

JUDGMENT

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THE CLAIM

1. This claim was commenced on May 1st 2007 in respect of which the first named defendant filed his defence on 14th June 2007 and the second named defendant filed his defence on 1st June 2007. An amended statement of case was filed on March 03rd 2011 to substitute the second named defendant's wife for him by reason of the fact that he died during the course of the proceedings.
2. The claimants seek an order from this court to set aside a Deed of Conveyance from them to the first named defendant, which was prepared by the second named defendant, on several grounds amounting, in sum, to trickery or undue influence.

THE STATEMENT OF CASE

3. The claimants stated that they were the owners and were seised and possessed of a parcel of land with a dwelling house standing thereon situated at L.P. No. 73 Mission Road, Freeport ("**the premises**") by virtue of a deed of gift registered as number DE 2006 0090 9905 D001 conveyed by the first named claimant's mother to them on the 24th February 2006.
4. The first named claimant said that, at the material time, she was employed by the first named defendant as a cleaner at his office. The second and third named claimants are her children. The first named claimant said that it was well known that she had a history of nervous breakdowns, was diabetic, suffered from high blood pressure and received treatment from time to time at the St. Ann's Mental Hospital and from one Dr. Garnet Sant. Five days after the death of her mother on 30th May 2006, the first named defendant questioned the first named claimant about the premises and indicated to her that he was willing to purchase it for \$600,000.00. She claimed that she was induced to agree to the sale to the first defendant as he offered her permanent employment until retirement and an increase in salary, a life interest in the premises after the sale to him all with the promise that the claimants would be allowed to use and occupy the upstairs portion with

the ground floor being used as the first defendant's office space. The first named claimant said she was also offered free medical care and free prescriptions. She said that she continually refused the first named defendant's offer on the basis that she and her children would have no alternative living accommodations. She said that at the time she was also grieving over her mother's death which affected her mental state and she once again suffered a recurrence of a nervous breakdown.

5. The claimants also stated that the first named defendant told them that the bank held a mortgage over the premises which was in arrears and the premises was up for sale.
6. The claimants said that the first named defendant introduced the first named claimant to Victor Hosein, the second named defendant, who was an attorney and who was supposed to have facilitated the conveyance. The first named claimant said that the defendants informed her that the stated price should be kept below \$350,000.00 in order to avoid stamp duty. The first named defendant instructed the second named defendant not to prepare an agreement for sale but a deed of conveyance directly. The claimants said that the first named defendant informed the first named claimant that he was only prepared to pay the second and third claimants thirty thousand dollars (\$30,000.00) each.
7. The next day, they were taken by the first named defendant to the second named defendant's office and were made to go into his office individually. They each were asked to sign a one page document for the receipt of payments to be made to them for the sale of the premises and they claim that they were not given an opportunity to read the document. There, the first named claimant received a cheque for \$200,000.00 and the second and third named claimants received cheques for \$30,000.00 each. They were not given copies of the document which they signed.
8. In August 2006 the first named defendant visited the premises and forcibly removed the first and third named claimants from the premises and the premises were subsequently padlocked with several of their personal items inside. The first named claimant said that although she initially continued in the employ of the first named defendant, she was subsequently terminated on 11th September 2006 when she enquired about the rest of the payments due to her for the balance of the purchase price of \$600,000.00. The first named claimant claims she was informed that after a survey of the premises, the first defendant reduced the price by \$100,000.00 and he also discounted \$60,000.00 for stamp duty and \$2,000.00 for cleaning the house. The claimants say that, to date, they have only been paid the sum of \$307,800.00.

THE FIRST DEFENDANT'S DEFENCE

9. His defence was filed on June 14th 2007. This defendant defended the claim firstly by stating that at the time that the first named claimant came to work for him, she appeared to be in good health except for one occasion before she was hired when he treated her for pain in her joints.
10. According to him, it was the first named claimant who introduced him to the second named defendant as her attorney-at-law, and he consented to the second named defendant advising him in this transaction. Consequently, the first named defendant said that the claimants always had the benefit of legal advice.
11. Further he said that on 30th May 2006, the first named claimant offered to sell him the premises for a sum of \$340,000.00, and not \$600,000.00 as alleged, claiming that she had borrowed money from some people and they were threatening her life if she did not pay off the loan. The first named defendant denies that he induced the first named claimant to sell the premises or threatened to dismiss her from employment if she refused. He also said that he never made any suggestion of granting a life interest in the transferred premises to the second and third named claimants and never contemplated putting his office on the ground floor. He also denied that he offered the first named claimant free medical care.
12. With respect to the second and third named claimants, the first named defendant denies ever speaking to them about any mortgage on the premises and said that he never induced or coerced them to sell the premises. He says that he met them on two separate occasions and the sale of the premises was discussed with them and on each occasion they individually agreed with the first named claimant's expressed intention to sell the premises to him.
13. The allegations made by the first named claimant in respect of the first meeting amongst the first named claimant, the second named defendant and himself were denied. He denied that the second named defendant was his attorney at law and said that, in fact, the second named defendant was the first named claimant's attorney and it was she who introduced them to each other. In particular, the first named defendant denied being

advised to keep the stated price of the premises at \$350,000.00 and denied any impropriety in the transaction whatsoever.

14. This defendant went on to deny any knowledge of what transpired in the second named defendant's office the next day when the deed was signed by the claimants.
15. The first named defendant said that he requested that the claimants vacate the premises and informed them that he intended to clean the place. He said that the second and third named claimants left within a week of the request whereas the first named claimant remained for about a month. The first named defendant denied that any belongings as listed in the claimants' statement of case were on the premises. He said however that he informed the claimant of the few items that she did leave on the premises and she did not remove them.
16. He denies ever terminating her employment with him and it was in fact the first named claimant who left without giving any notice and or reason.
17. The first named defendant admitted that the sum of \$307,800.00 was paid to the claimant and said that despite his many requests to the first named claimant to collect the balance of the purchase price \$12,200.00 the first named claimant has failed or refused to collect the cheque for the same.

THE SECOND DEFENDANT'S DEFENCE

18. This defence was filed on June 01st 2007. The second named defendant (now deceased) in his defence denied that he was the attorney at law for the first named defendant and instead said that on 8th June 2006 the first named claimant and the first named defendant visited his chambers and the first named claimant informed him that she wanted him to represent her and her children in the sale of the disputed premises which she was selling to the first named defendant for \$340,000.00. He said that he informed the first named defendant of his right to independent legal advice but the first named defendant refused.
19. The second named defendant also denied telling the first named claimant that the selling price should be kept below \$350,000.00 to avoid stamp duty and said that the first named claimant presented her deed of joint ownership together with a valuation report in respect of the said premises in the sum of \$345,000.00.

20. The second named defendant said that it was the first named claimant who insisted that, inasmuch as she was in the employ of the first named defendant, she did not require any down payment but insisted that a deed of conveyance be prepared (instead of an agreement) as she wanted to complete the transaction on or before 26th June 2006.
21. The second named defendant also said that the second and third named claimants visited his office separately on the 12th June 2006 and 16th June 2006. He denied requesting that they sign a one page document.
22. The second named defendant said that it was agreed by the parties that the first defendant would have a survey done on the premises and that after the survey was done the claimant agreed to have a reduction of the selling price in the sum of \$20,000.00. The second defendant said that on 20th September 2006 the first named claimant visited the second named defendant's office in the company of a businessman named Praimchand Rambeharry who she claimed was offering her \$500,000.00 for the premises and she wanted the first named defendant to re-convey the premises to her and set aside the deed. This defendant also alleged that the first named claimant told him that she and the first named defendant concealed the actual cost of the house when conducting the transfer.

AGREED ISSUES

23. On February 28th 2012 the parties filed an agreed Statement of Issues as follows:
 - 23.1. Whether the claimants were tricked and/or induced by the defendants into conveying their premises to the First Named Defendant?
 - 23.2. Whether the claimants were fraudulently induced or misrepresented in selling the premises to the first named defendant?
 - 23.3. Whether there existed as between the first named claimant and the first named defendant a relationship of employer and employee?
 - 23.4. If so, whether the first named defendant exercised undue influence upon the first named claimant in the sale to him of the subject premises from the claimants?
 - 23.5. Whether the first named defendant was in breach of the contract for sale?
 - 23.6. Whether there existed as between the first named defendant and the second named defendant the relationship of attorney at law and client?

- 23.7. Whether the first named defendant failed to complete the contract of sale?
- 23.8. Whether the first named defendant took the first named claimant's premises and converted it to his own use?
- 23.9. What was the purchase price for which the first named defendant bought the subject premises?

THE EVIDENCE FOR THE CLAIMANTS

THE EVIDENCE OF TONY BEEPAT

24. Tony Beepat gave evidence on behalf of the claimants as a valuator and auctioneer. He said that he received formal training in the United States at the State of Minnesota Continental School of Auctioneering and Appraisal and the NAA Continued Institute of Appraisal. He admitted that this was not put into his witness statement but stated that he gave the information to his attorney. No documentary evidence of this was produced. He said he was unsure of when he first visited the premises in respect of this matter but stated that he went with one of his assistants. His report indicated that he inspected the premises on Wednesday, 11th January 2006 for the claimants and he placed the value of \$2,683,400.00 for the premises.
25. Mr. Beepat was a very, very difficult witness. He was not straightforward and he bordered on disrespectful on at least one occasion whilst in the witness box. This court was not at all impressed by Mr. Beepat especially after he admitted to the court that he did not use any comparables in coming to a value of the lands or the building thereon.
26. To my mind, Mr. Beepat was most unhelpful and added no significance to these proceedings in respect of the issue he had come to address, namely the value of the premises. As a result, the court has completely disregarded his evidence as to the value since he failed to establish his qualification to give evidence in relation to value of lands and he also failed to give any basis for giving the value which he did.

THE EVIDENCE OF GIZELLE SINGH

27. Giselle Singh was an employee at the Trinidad and Tobago Forensic Sciences Centre. This witness indicated that she prepared a report dated 2nd November 2007. That report was based on the comparison of a photocopied letter dated 26th June 2006 bearing the names of the three claimants against 3 sheets of paper bearing the individual specimen signatures of each one of the claimants. That report was disclosed in the claimants' list of documents filed on 29th April 2008 as item number 7. Copies of the photocopied letter dated 26th June 2006 and the three specimen signatures were not provided but the first named claimant referred to document 13 of the agreed bundle of documents as being the document which was being tested. Attorney-at-law for the first named defendant made a curious objection saying that, since he did not have sight of the report before, the court ought not to take any notice of the report stating that when an expert does not allow the defendants the opportunity to examine the report, the court should not use the report. Mr. Ramnath noted that there was no evidential objection raised at the PTR and so the report was admissible. The witness was relieved without being questioned by either of the defendants' attorneys.
28. The report concluded that there was some evidence to indicate that the respective writers of the specimen signatures may not have executed the questioned signature on the photocopy of the document dated 26th June 2006. Without having been provided copies of the documents used for comparison, this court is unable to comment on this finding other than to say that it is inconclusive even on a balance of probabilities. Further, the normal procedure ought to have been employed where contemporaneous documents containing specimen signatures are used to make the comparison as far as possible. Comparing the questioned signature to signatures specially derived for the exercise by signing a blank sheet of paper does not seem best practice nor does it strike this court as being reliable as there is the danger that the signatures may be deliberately contrived or distorted to purposely differ from the tested document. As such, this report was not very helpful as the court could not have viewed for itself the documents which were compared for the witness to have come to such an inconclusive finding. Consequently, the court is of the view that this report was not of great assistance to the court and was disregarded.

THE EVIDENCE OF KIRT DE COTEAU

29. Kirt De Coteau was a Scientific Officer I and he presented a report of his own dated 5th June 2008. That report also referred to a photocopy of a letter dated 26th June 2006 bearing the claimants' signatures and the comparator documents were more extensive than in the report prepared by missing. Once again, none of those documents used to compile that report were presented to the court. The defendants made the same objection as with Ms. Singh and again there was no cross examination and he was relieved from further attendance.
30. The court draws the same conclusion for the same reasons as in respect of the report prepared by Ms. Singh.

THE EVIDENCE OF NAOMI MARCHAND

31. Generally, Naomi Marchand's evidence was credible and her evidence was consistent with her witness statement. There were no major deviations caused by cross examination save for the issues which the court will raise later on.
32. In essence, Ms. Marchand - the third named claimant – indicated that she first met the first named defendant on 2nd June 2006 when she received a phone call from him indicating that her mother – the first named claimant – had collapsed on the job. Upon attending his office, she was not allowed to see her mother but the first named defendant spoke to her to say how upset her mother was at the loss of her grandmother – who had died on 30th May 2006 – and he also went on to say that the premises was mortgaged by her grandmother prior to her death and the bank had no option but to sell it and that she would receive a payment from the balance of sale from the premises. She said she had no reason to doubt the first named defendant due to the fact that he was looking after her mother medically.
33. Later on, on another occasion, she, together with the other two claimants were given a lift by the first named defendant and were dropped off at the “*Bank Attorney Office* (sic)” where they each went in separately and signed a one-page document with only their names typewritten on it. After signing, she received a check from a company called Excel Holdings for \$30,000.00. She did not know that the first named defendant was the owner of Excel Holdings and his name was not on the document she signed. She said she had no idea what was the document she was signing nor was she given any document to

read nor was anything explained. She said that she did not sign document number 13 on the agreed list - which was the alleged letter of instructions from herself and the other claimants to the second named defendant - and she was not informed of her right to independent advice. As far as she was aware, the second named defendant was the attorney for the Bank.

34. In August of that year, she and her mother were evicted from the subject premises by force. She enumerated certain items which she valued at \$75,000.00 which were left in the premises but did not say what happened with those items.

THE EVIDENCE OF NICHOLAS MARCHAND

35. Nicholas Marchand, the second named claimant, gave evidence along the same lines as his sister – the third named claimant.
36. This claimant also admitted that he was not really around very often so he was not close to his mother but he saw his sister often as she worked right next door to where he worked. When asked if he discussed the premises with his sister, the witness said that he did not even know that his grandmother had left it for them. He was told by the first named defendant's attorney that as a twenty-nine year old man he should have enquired as to why he received the money and had to sign a document to which he replied "*Even at twenty-nine year old I still listen to my mother.*" He also mentioned that his mother was unstable and that she had a tendency to be emotional and depressed.
37. He said when he said he signed a blank page he meant a part of the page was blocked off so he could not really say that nothing was written there. It was put to the witness that the deed was read it to him and he said it was not. When asked if he understood the deed he replied "*I didn't even know there was a deed*". He was then asked what he thought he was signing to which he responded "*When you get money you sign for it like a receipt book with carbon copy*". He too was shown document number 13 and he said that was not his handwriting or signature. It was put to him that document number 13 was his signature and that the deed was read out. He responded that neither was true.
38. He, like his sister, came across as very simple and unsophisticated and they both gave the impression that they were not at all well-educated. Their demeanour and mannerisms suggested an almost puerile character with a certain submissiveness in relation to their mother's wishes or in answering questions about their mother.

THE EVIDENCE OF ROSEMARIE MARCHAND

39. Mr. Cunningham cross examined this witness first. The witness was interrogated about whether or not she wrote anything down while the disputed events were occurring. She said she did not. She said that everything that was said in her witness statement were from recollection although she went on to accept that she did not always remember everything.
40. She stated that she started having anxiety attacks after her divorce so the family doctor, Dr. Sant, began to see her. She was asked if she stopped seeing Dr. Sant and she said that in 2006 after her mother died she was depressed and she needed to see him for regular treatment. She admitted that it was Dr. Sant, and not the first named defendant, who saw her for regular treatment. She insisted however that Dr. Sant was not her only doctor as she was also a patient of the first named defendant. She said she went to work for the first named defendant after seeing an ad in the newspaper but she said that she had seen him before her employment in his capacity as a doctor. She said that she started to work for the first named defendant in May and she insisted that she never told him that she owned the premises and she also said she did not recall why the first named defendant asked her about the premises.
41. She stated in her witness statement that she never really wanted to sell the premises. An offer was made to her by the first named defendant to purchase the premises for the sum of \$600,000.00 but that she would retain a life interest in the premises and he would use downstairs for his office. She did not say anywhere in her witness statement that she ever agreed to that price or offer.
42. She said she gave a copy of her deed to the first named defendant upon his request and, as a result, she went with him to one of his friends to discuss it. Details of that discussion were referred to at paragraphs 21 and 22 of her witness statement. Essentially, that discussion involved an identification of the first named claimant and the children as the owners of the subject premises and a price of \$600,000.00. A life interest was also discussed between the two defendants. The first named defendant was advised by the second named defendant to keep the purchase price of the premises below \$350,000.00 to avoid paying stamp duty and a decision was reached to do a deed rather than an agreement for sale.

43. On the way back from the second named defendant's office, the first named defendant told the first named claimant that the second named defendant had done a search on the premises and he had found out that the premises was mortgaged.
44. On 26th June 2006, she says that the first named defendant met with herself and her two children and informed them that the bank had a buyer for the premises and the three of them had to go to the bank's attorney to collect the cheque for the balance of the mortgage payment and that he would drop them off at the attorney's office on his way home. On the way, he stopped at Republic Bank, Center City Mall, Chaguanas, collected an envelope, gave it to her and told her to give the envelope to the bank's attorney when they got there. She did not know what was in the envelope.
45. After being dropped off, they went into the attorney's office – who turned out to be the second named defendant – and she was called inside alone and was handed a cheque for \$200,000.00 which she was told by the second named defendant was her share of the balance after the bank had sold it. She was then handed a sheet of paper bearing her name and her two children's names typed thereon and she was asked to sign her name and put her ID number. That signature, she was told, was for receiving the cheque and she was not told that she was signing a deed. She was not informed of her right to her own attorney at law. She came out of the inner office and then the second named claimant went in and after about five minutes later, when he came out, the third named claimant went in. They both had in their possession a cheque for \$30,000.00 each by order of Excel Holdings and her cheque was by order of the first named defendant. It was only then she became aware that the first named defendant was the purchaser.
46. She said that she never had a family attorney except for Mr. Faizal Hosein who did the documents for her mother. She said that because she did not have legal advice when she was given the \$200,000.00 she did not know what it was for. When asked why she did not call Mr. Faizal Hosein to get advice she said "*It didn't dawn on me*". She said that for a year after her mother's death she was depressed and this is why she did not file an action until 2007. In fact, she attached to her witness statement a psychiatric report dated 27th January 2009 from one Dr. Samuel Shafe using an assessment done on 28th November 2006. That report, which was not objected to by the defendants, stated that she presented with several months history of feeling depressed, forgetfulness, and crying a lot. These problems were aggravated by ongoing stressors, according to the report, and were often on and off and were made worse by personal problems. The assessment cited

poor sleep, poor appetite, loss of interest in usual activities and sometimes suicidal ideation. The report summarized that she was a middle-aged woman suffering from depression and that the presence of mild retardation¹ made it difficult for her to function at an appropriate level so much so that she may be prone to poor decisions.

47. After the receipt of the money, she continued working for the first named defendant and he indicated that he had more money for her with respect to the sale of the premises, paying her a further sum of \$47,800.00 by 11th September 2006, when she was fired. Before being fired, she was evicted from the house in August and she said that she lost several items which she valued at \$75,000.00 as a result of the eviction.
48. The first named claimant detailed the various steps she took to obtain copies of the documentation in respect of the transaction – none of which was said to have come from the second named defendant (who the first named defendant said was the first named claimant’s attorney). In relation to document number 13, she categorically denied having signed the document and she also denied having seen the results of the survey although she was present when the survey was done.
49. The first named claimant also mentioned that by letter dated 15th June 2007, just short of one year after the signing of the deed on 26th June 2006, the first named defendant’s attorney at law sent a cheque from the first named defendant for the sum of \$12,200.00 – the outstanding balance of the sum of \$320,000.00 referred to in the deed.
50. She was then asked if the second named defendant asked her to get a new valuation. She insisted that he never asked her to get a new valuation. She, like the other claimants, insisted that they all went together to the second named defendant’s office. She maintained that no one read the deed to her and she further claimed that she was told to receive a cheque for partial payment of the mortgage of the premises which was the reason for receiving the cheque.

THE EVIDENCE FOR THE DEFENDANTS

THE EVIDENCE OF FAIZAL HOSEIN

51. Faizal Hosein was the attorney-at-law who prepared the deed of conveyance from the first named claimant’s mother to the claimants. According to the first named claimant,

¹ The report of Dr. Sant described her as having the mind of a 10-year-old

she paid the fees for that conveyance in the amount of \$3,000.00². In those circumstances, that would have made Mr. Hosein the attorney at law of the first named claimant in respect of that transaction. Accordingly, matters between Mr. Hosein and the first named claimant would be caught under the umbrella of legal professional privilege which is a privilege belonging to the client³. What is startling is that nowhere in his witness statement did Mr. Hosein indicate that the first named claimant had waived her right to legal professional privilege and it may very well be that Mr. Hosein has breached the Code of Ethics under the Legal Profession Act Chap. 90:03 of the laws of Trinidad and Tobago.

52. Despite the fact that there was no objection raised by Mr. Ramnath, who appeared for the claimants, this court is of the view that his evidence in respect of the prior deed of conveyance to the claimants, even though already given, should properly be disregarded in light of the fact that there has been no unequivocal waiver of the right to privilege by the first named claimant⁴.
53. Nevertheless, it is apparent from his evidence that the valuation conducted by his son Riaz Hosein, which is document number 10 on the agreed list of documents, was commissioned by him and not by the claimants or by the first named claimant's mother directly.

THE EVIDENCE OF REHANA RAMGOBIN

54. Rehana Ramgobin was the second named defendant's legal secretary. She said that she was present when the meeting with the first named claimant and the first named defendant took place on 8th June 2006. She said that she had a desk in the second named defendant's office and if he wanted to have a private meeting he would have to put her out. She said that on the day in question both the first named claimant and the first named defendant came in to speak about that premises. She admitted that in her witness statement she did not say anything about the second named defendant suggesting that the first claimant should get independent legal advice. Neither did she mention preparing any document for signature on that occasion nor that any such document was signed by

² See paragraph 10 of her witness statement

³ *A-G v Mulholland* [1963] 2 QB 477, [1963] 1 All ER 767, CA, per Lord Denning MR

⁴ See *Burr v Ware Rural District Council* (1939) 1 All ER 688 and *Jacker v International Cable Co.* 5 TLR 13 both referred to in *Poland v Mc Millan* (1943) Law Report of British Guiana 361 - a decision of the West Indian Court of Appeal - for the proposition that if inadmissible evidence has been received (with or without objection) it is the duty of the judge to reject it when giving judgment.

either of the parties as suggested by the first named defendant. At that first meeting, the first named claimant said that she was selling the premises for \$340,000.00 and that price was agreed to by the first named defendant subject to a search and a survey.

55. She said that the second and third named claimants came to the office to speak to the second named defendant on 16th June and 12th June respectively.
56. On the morning of 26th June, the first named defendant came to the office alone to sign the deed which Miss Ramgobin read out from the computer paragraph by paragraph while the second named defendant explained it to her. She said he informed the first named claimant of the right to have another lawyer review the deed but she said it was not necessary. She was then asked by him to sign a statement to that effect which Miss Ramgobin typed on the computer while the second named defendant called it out from manuscript.
57. It was suggested to her that what was signed by the claimants was a page that only had the jurat and the other part of the page was obscure and nothing was read to them. She said that she read out the deed to them from the computer before it was signed she said that she was instructed to put \$340,000.00 and when it was drawn to her attention that the actual registered deed had \$320,000.00 on it, she said that she did not know where the \$320,000.00 that was on the deed came from. She said that the claimants came separately to sign the deed. She said that the first named claimant came in the morning and her two children came together in the evening. Document number13 was shown to the witness and she admitted that the value of the premises as stated on this document differed from the value on the deed. She could not remember which document she made first.
58. She could not say whether Mr. Hosein was a patient of Dr. Dass. The witness said she did not hear them saying that the selling price was \$600,000.00 but when asked if she heard then speak about keeping it below \$350,000.00 to avoid stamp duty she said yes.
59. Mr. Cunningham further cross examined the witness. She said she could not remember if she ever saw Mr. Dass enter the office before. She did say specifically however that she had never seen Mrs. Marchand before that day.

THE EVIDENCE OF DR. ROHIT DASS

60. In his witness statement, the first named defendant denied paragraphs 2, 3, 4, 5, 6, 7, 8, 9 and 10 of the statement of case and proceeded to give his version of events.

61. He said that he employed the claimant in April 2006 as a front desk receptionist and not a cleaner. The first named defendant stated that the first named claimant's daughter had stolen a gold chain and needed money to settle the matter. The first named defendant was asked if he knew that settling a criminal case was a conspiracy and he said that he did not know it was a criminal case. When asked if he was prepared to purchase the premises from them just to be able to pay off their debt he said that they pleaded with him for money.
62. When asked if he visited the premises he said that it was dilapidated house in a vermin infested environment. He said it was termite ridden and the floor was lumber and rotted, the electrical system was not functioning and there was no water or water storage on the site. He was shown the valuation report and the discrepancies between his description and that set out in the valuation done that same year was pointed out.
63. This witness said that the first time he went to the second named defendant's office was when the first named claimant took him there. It was suggested to him that he took the first named claimant there. He said this was not true. When asked what happened at the office, he said that the first named claimant told the second named defendant that she had a property to sell and that she said that she was going to sell it to him. He said that the second named defendant asked her if she was sure she wanted to sell the premises and she responded yes. He said that the second named defendant then asked how much she wanted to sell it for and she said \$340,000.00 and he then told her she needed a deed, valuation and survey. She said she had a deed, valuation report, water rate and land and building taxes but she did not have a survey plan. He said that the second named defendant took the documents and perused them and he realized that there were two other owners. He said that the second named defendant then asked if she discussed the sale with them and she said yes. He said that the second named defendant said that he would need an attorney to represent him and he said that "*I don't have an attorney.*" The second named defendant then suggested that it would only be possible to act for them both if both parties agree and the first named claimant agreed, saying that she had no problem with that.
64. He was asked if the second named defendant prepared a document for him to sign to which he stated that he prepared a short statement. He further said that both he and the claimant signed the said document. He was then shown document number 14 after which

he quickly changed his mind and said that he signed the document and not Ms. Marchand. He admitted that this was also mentioned in the witness statement.

65. When asked if he was aware that the claimants had nowhere else to live he said that the first claimant informed him that she was going to purchase another premises. When questioned about the fact that he just said they were in debt and how could the claimants possibly purchase a new premises he said “*Well it was \$200,000.00 she was going to collect*”. He said he was aware that the consideration on the deed said \$320,000.00 and he admitted that prior to the survey the consideration was \$340,000.00. Later on as he attempted to explain the discrepancy he said that he offered \$320,000.00 but the claimants’ price was \$340,000.00. This defendant was asked if he was aware that the first named claimant had a history of depression and he said no.
66. It was suggested to the first named defendant that he treated the first named claimant on a daily basis with injections and sedatives to which he said no. He said he was aware that her mother had died shortly before this transaction but he insisted that it was the first named claimant who came to him asking him to purchase the premises. He said he was not thinking about purchasing because he did not have any money in the bank for such a purchase⁵. He admitted however that she gave him the numbers for her children because they also owned the premises
67. He denied that the premises was ever mortgaged. He admitted that the second and third named claimants came to his office on the day his mother collapsed but said that he spoke to the second named claimant only about his mother and not about the premises. It was suggested to him that the price discussed was \$600,000 but he denied this saying “*At no time was that figure discussed with me*”. He also denied that they ever agreed that the claimants would have a life interest. He denied knowing the second named defendant and denied that the second named defendant was ever a patient. When asked if the second named defendant said to keep the price of the premises below \$350,000.00 to avoid stamp duty he said that the second named defendant had nothing to do with the price as the first named claimant was the one who suggested the price. He said that the adjusted price between from \$340,000.00 to \$320,000.00 was because of the cost of the survey although he admitted that the survey only cost \$4,000.00. It was suggested to him that the second named defendant asked the first named claimant to wait in the corridor while he

⁵ Notwithstanding this assertion, it seems from the evidence that the purchase of the premises was a cash purchase since no evidence was given of the first named defendant having to take a loan to complete the transaction.

had discussions with the second named defendant and that they told her after that the premises was mortgaged to Royal Bank Limited, Chaguanas. He denied this.

68. It was suggested that on the day of signing the deed the first named claimant asked him how come she got \$200,000.00 and the children got \$30,000.00 each. He said this was agreed upon between himself and the first named claimant but he admitted that that was not in writing. It was suggested to him that when Rosemarie Marchand asked for the balance of the purchase price he told her he was deducting \$60,000.00 for stamp duty and \$100,000.00 for a quarter lot of land. He denied this. It was also suggested to him that the claimants were evicted. He denied this also and then said he found out after. He admitted that this was not in his witness statement.

THE EVIDENCE OF RAMESH DANIRAM

69. Ramesh Dhaniram was a construction worker. He said he was not involved in the cleaning up which took 4-6 weeks with three persons working five hours per day five days a week. It was suggested to him that the premises did not need extensive cleaning and he said it did. He said he was not present when the first named claimant was evicted from the house and when he came to the premises in June 2006 there was no one in the house. It was put to him that this was not true since she was evicted on July 1st.
70. This witness was not of great assistance at all to the court as he had nothing to contribute to the issues for determination.

THE RELEVANT DOCUMENTARY EVIDENCE

71. An agreed bundle of documents was filed in these proceedings on 27 June 2008. That agreed bundle included:
- 71.1. A medical report of Dr. Garnet Sant dated 11 October 2006 – document number 3 on the list;
- 71.2. Letter from the first named defendant to the claimants attorney at law dated 9th of October 2006 – document number 5 on the list;
- 71.3. A death certificate of Augustine Marchand who died on the 21st of May 2006 – document number 8 on the list;

- 71.4. A valuation report by Reaz Hosein dated 10th of March 2006 – document number 10 on the list;
- 71.5. Cheque for the payment of \$30,000 to the third named defendant dated 27th of June 2006 – document number 11 on the list;
- 71.6. Waiver by the claimants and confirmation of independent legal advice dated 26th of June 2006 – document number 13 on the list;
- 71.7. Confirmation by the first named defendant for advice by the second named defendant dated 8th June 2006 – document number 14 on the list.

CLAIMANTS SUBMISSIONS OF MAY 16TH 2012

- 72. The claimants submitted firstly that the court had to make certain determinations of fact in order to decide the case. It was submitted that much of the evidence of the claimants was not challenged by the defence and therefore should be considered to be fact. In terms of the evidence of Faizal Hosein, the claimants submitted that it was inconsistent. He stated that the premises was dilapidated, termite infested and floor rotten by the valuation report of his son and the report of Tony Beepat suggested otherwise. The claimants also challenged the evidence of Rehana Ramlogan as being inconsistent and said that the evidence of witness Dhaniram could not be believed. They submitted further that the evidence of the first named defendant could not be believed and noted the inconsistencies.
- 73. The claimants submitted that there were no material inconsistencies in the claimants' evidence and since much of it was unchallenged then the evidence of the claimant must be accepted. They relied on the decision of *Satie Bissessar v. Ganase Lall* No. 43 of 2003 in support of their submissions.
- 74. The claimants also submitted that in order for a deed to be set aside as unconscionable certain requirements as set out in *Algoo v Algoo* Civ App No 48 of 2004 must be met. There must be poverty and ignorance of the party impugning, sale at an undervalue and lack of independent legal advice. It was submitted that the claimants fit this criteria.
- 75. It was further submitted that the evidence should be set aside because of the false representations made by the first named defendant. They relied on the case *Derry v Peek* 1889 HL 337. They submitted that the first named defendant represented that there was a

mortgage knowing that this was false. They submitted that the representation was made with the intention that it would be acted upon and they so did causing loss.

76. On the issue of undue influence the claimants submitted that the relationship between the first named claimant and first named defendant was not only employee and employer but that of doctor and patient. They relied on the case of *Royal Bank of Scotland v Etridge* (2002) 2 AC 773 to state that where such a relationship exists one party had influence over the other. In addition the claimants say that when all the facts were taken together, they suggest that the sale was procured by unacceptable means.
77. In terms of fraud on the revenue, the claimants say that the first named claimant thought they were speaking of something else when they told her to keep the price below \$350,000.00 to avoid stamp duty and so she was not a party to the fraud on revenue.

THE FIRST DEFENDANT'S SUBMISSIONS OF MAY 24TH 2012

78. The first named defendant first stated that the claim disclosed no cause of action against the first named defendant and was frivolous and vexatious and should be struck out by reason of the claimants' failure to specifically plead particulars upon which they wanted the court to set aside the deed.
79. In terms of Dr. Sant's evidence the first named defendant found it interesting that he said that the first named claimant had a mentality of a ten year old yet she at trial she seem to be of 'lively intelligence'. In terms of her being a patient of the St. Anns Hospital, the first named defendant submitted that the first named claimant was suffering from a major depression but this was not in any way associated to the sale of her premises. The first named defendant submitted that the evidence of Gizelle Singh and Kirt de Coteau should not be given weight because of the deficiency of their evidence before the court and the evidence of Toney Beepath should not be given weight since he did not provide his qualifications for his report.
80. This defendant also attempted to show inconsistencies in the evidence of the claimants. On the issue of the employer/employee relationship the first named defendant submitted firstly that this relationship never existed between the second and third named claimants and the first defendant or second defendant. It was the first named claimant who submitted that she was an employee of the first named defendant. The first defendant said that although the claimant did not provide any proof of this relationship, that relationship

was admitted and the court now had to determine whether the first named defendant exerted influence. The first named defendant used the case of *Barclays Bank plc v O'Brien* [1994] 1 AC 180 to submit that there must be “actual undue influence” which the claimant has failed to prove.

81. On the issue of the medical adviser/ patient relationship, the first named defendant submitted that there are not enough facts before the court to make the determination of undue influence on this basis.
82. On the issue of the attorney at law/client relationship, the first named defendant submitted that if the second and third named claimants were submitting that the second defendant was not their attorney at law then they could not claim the relief of undue influence against him.
83. In terms of the defendants’ evidence the first named defendant submitted that it was accepted that an attorney-at-law could act for a vendor and a purchaser for the sale of premises once he informed the parties of the need to seek independent legal advice. Further the first named defendant’s attorney submitted that the first named defendant’s evidence was not shaken on cross examination.

THE SECOND DEFENDANT’S SUBMISSIONS OF MAY 24TH 2012

84. The second named defendant’s estate had submissions prepared. The second named defendant submitted on the issue of fraudulent inducement that where there is an alleged fraud the court should only interfere on the ground of public policy and not on the grounds that the wrong has been done. It also must be proven that the advice given was “relevant and effective” to free the donor of the impairment of the influence on his will. They relied on the case of *Pesticcio v Huet* [2004] All ER (d) 36; *Hammond v Osborn* [2002] WTLR 1126; *Inch Noriah v Omar* [1929] in support of the submission.
85. On the issue of independent legal advice the second named defendant submitted that one of the difficulties encountered was whether the absence of independent legal advice is a substantive requirement of the doctrine of unconscionable bargains.

86. In any event this defendant submitted that the claimants had not provided sufficient evidence to prove their damages specifically with respect to undue influence. They submitted that the first claimant was medically and mentally capable of executing the deed and that she at all times intended to convey the premises to her employer.

FURTHER AUTHORITIES CONSIDERED BY THE COURT

87. Other than the authorities mentioned above, the court reflected on:
- 87.1. Its own decision in *Norma Ward v Phyliss Bhagwandeem* [unreported] HCA 3335 of 2003 and the authorities mentioned therein;
 - 87.2. *National Commercial Bank (Jamaica) Limited v Hew and Others* PC 65 of 2002;
 - 87.3. *Credit Lyonnais Bank Nederland NV v Burch* [1997] 1 All ER 144
 - 87.4. *National Westminster Bank plc v Morgan* [1985] 1 AC 686, [1985] 1 ALL ER 821, [1985] 2 WLR 588, [1986] CCLR 86, (48 MLR 579, [1985] CONV 387)

DETERMINATION OF FACTS

88. Both sides' evidence had several inconsistencies.

INCONSISTENCIES IN/CONCERNS ABOUT THE CLAIMANTS' CASE

WHAT WAS THE AGREEMENT?

89. At paragraph 18 of her the statement, the first named claimant said that the first named defendant told her that he would convince her children to sell the premises since she was not interested in selling the premises. He said to her that he would offer \$600,000.00 for the premises with life interest and that "*me and the children could stay in the premises as he wanted to use the downstairs for his office.*" She went on to say that on the next day she went with the first named defendant to the second named defendant's office to discuss the deed of gift which she had gotten from her mother. When asked why he wanted a copy of it, she said that he wanted to do a search of it. At the second named defendant's office, after a private conversation was had between the defendants, the first

named claimant said that she heard the first named defendant tell the second named defendant that “*the premises they had spoken about belonged to this lady*” and that the price was \$600,000 and life interest but that the purchase price should be kept below \$350,000.00 to avoid paying stamp duty. The first named claimant says that the second named defendant asked her if the premises was owned by her and she said that it was jointly owned with her other two children. Quite strangely, at paragraph 22, the first named claimant says that she was of the opinion that the first and second named defendants were discussing some other sale agreement and not with respect to her premises. That makes absolutely no sense since all of what had transpired and what she had described before, including the offer made by the first named defendant to her, the production of the deed of gift from her mother, her identification as the owner, her clarification of the identity of the other co-owners and the discussion of the price which was offered by the first named defendant could only have reasonably been in reference to the subject premises.

90. Also of note is that there is no evidence from the claimants that any agreement was ever reached in respect of the offer which was made for \$600,000.00 and a life interest. It is also instructive to note that the allegations made in the statement of case with respect to free medical treatment and medication as being part of the purchase consideration were not mentioned in the first named claimant’s witness statement.
91. However, when it was put to her that the first named defendant entered into an agreement to purchase the premises and he paid her everything except \$12,000 she said that was not true and she said that she did not accept the \$12,000 because she was not willing to accept a final payment after she realized what was going on. When asked if she ever discussed \$600,000.00 with the first named defendant, she said “*I can’t recall*”.
92. When Mr. Sirjoo continued cross examination of the first named claimant on the 2nd day of the trial, she indicated that she had remembered what the \$600,000.00 was for and said that was the offer she was given plus life interest to stay on the premises and Dr. Dass would use downstairs as his office. She said that the \$600,000.00 had nothing to do with any agreement she had with Mr. Rambeharry. The claimant was then asked if she would accept that price now and she said she was not willing to accept any money. She said she wanted the premises back and she would not be selling it to anyone.
93. The court also notes that in the correspondence sent out by the first named claimant’s attorney at law dated 27th September 2006 – item 4 on the agreed bundle of documents –

the said attorney-at-law indicated that the purchase price was \$600,000.00 without mention of any of the other riders to that alleged agreement namely the alleged offer of a life interest, medical treatment and medication. Again, the court bears in mind that in her witness statement, the claimant never mentioned agreeing to the price of \$600,000.00. In fact, her witness statement points to her being tricked into signing the deed because she was informed that there was a purported sale by a bank under an alleged mortgage and that the money she was getting was supposed to have been the surplus after the sale. That was not mentioned at all in any correspondence.

WHY DID SHE GIVE HIM HER DEED OF GIFT FROM HER MOTHER?

94. It is rather confusing that the first named claimant would just give the first named defendant a copy of her deed without good reason. According to the first named claimant, when asked why he wanted the deed, he said that he wanted to do a search of the premises⁶. It therefore seems rather strange for the claimant to have agreed to deliver the deed to him to do a search if she was not considering selling the premises to him. Why else would she give him the deed to do a search?

THE AGREEMENT WITH MR. RAMBEHARRY

95. Document 19 in the agreed bundle referred to an agreement dated 5th February 2007 between the claimants and one Primchan Rambeharry.
96. That agreement described the premises and recited the 26th June conveyance to the first named defendant and the fact that proceedings had been instituted in the High Court to set aside the said deed – which was incorrect since these proceedings were commenced on the 1st of May 2007, approximately three months after the agreement was signed. The agreement styled Mr. Rambeharry as “the Investor” who had agreed to bear all of the expenses to be incurred for the High Court proceedings since the claimants were unable to finance the cost of the proceedings.
97. The upshot of the agreement for Mr. Rambeharry was that if the claimants were successful in prosecuting the said High Court action, they would convey the said parcel of land to him and he would pay to the claimants the further sum of \$120,000.00 which together with the expenses and charges paid and discharged by him in accordance with

⁶ Paragraph 18 of her witness statement

clause 1 was to be considered the purchase money for the premises. Clause 1 provided for him to pay and discharge from time to time all expenses to be incurred for the High Court action including the expenses for legal representation, valuation reports, photographs, documentary evidence and all other expenses fees costs charges and disbursements related and incidental and proper in the prosecution by the owners of the said High Court action.

98. Whatever may have been the intention of the parties, it does not seem to have been clearly stated as to exactly what the purchase price would be in the event that the claimants were successful. There were other provisions as well in relation to other matters arising out of the High Court action.
99. This agreement was not referred to in any of the pleadings nor in the issues which the parties had agreed to. Its relevance, however, was in relation to the cross examination of the first named claimant in reference to that agreement. In cross examination she said that she was not selling Mr. Rambeharry the premises. He was just paying had legal fees. She did not agree to sell him the premises. When pressed on that point, she insisted that the document did not reflect their intentions and that was not the document she signed. In this regard, she seemed to have been making every effort to try to avoid what was stated in that agreement.
100. Regrettably, neither of the other two claimants was questioned about this agreement and there were no submissions made in relation to it.
101. The witness said she did not owe Mr. Rambeharry any money but admitted that she told him that she would fight this case to the end and that he will get \$100,000.00. She admitted also that this agreement was put into writing. She said that in that agreement she agreed that Mr. Rambeharry would finance the cost of this action because he was an investor. She said her children were with her when she signed that document and they all read it. When shown the document she said that was not the document that she signed.
102. When questioned about the agreement she had with Mr. Rambeharry and when specifically shown the agreement which stated that upon dissolution of this case Mr. Rambeharry would purchase the premises the claimant insisted that as far as she knew, Mr. Rambeharry was just paying lawyer's fees. She admitted she was not forced or threatened to sign that document however and she admitted that by the words she agreed to convey the said parcel of the land to the investor. She denied however ever going to

the second named defendant's office with Mr. Rambeharry offering to purchase the premises.

THE TONY BEEPAT VALUATION

103. With regard to the valuation done on the premises she said that a valuation was done by her mother before she died. She said that Tony Beepat did that valuation and that she never had one done for herself. It was put to her that she was not speaking the truth when she said that Tony Beepat did a valuation. She said she was speaking the truth.
104. *The memory of Rosemarie Marchand* – in her testimony she initially said that she had a poor memory and she admitted that she did not write things down. Toward the end of Mr. Cunningham's cross examination however she said that maybe she had a diary and maybe she wrote certain things down. Generally however, her statements under cross-examination and her witness statements have been consistent with the testimony of the other claimants.
105. *The valuation done by Tony Beepat* – in his oral testimony he said that he did the valuation because he was asked by Mrs. Marchand. In her testimony however she said that Mr. Beepat did the valuation for her mother. It is unclear which version is the truth although it seems more likely than not that he would have done the valuation for the first named claimant's mother in light of it being done in January 2006 prior to the conveyance to the claimants and before these proceedings were contemplated.
106. *The agreement with Mr. Rambeharry* – the first claimant stated initially that she agreed to pay Mr. Rambeharry \$100,000.00 if he paid her legal fees and that that was the only agreement that she had with him. However under cross examination the agreement she signed with Mr. Rambeharry was shown to her and she was forced to admit that she did sign a document agreeing to convey the premises to him.

INCONSISTENCIES IN/ CONCERNS ABOUT THE DEFENDANTS' CASE

WHO WAS THE SECOND DEFENDANT ACTING FOR?

107. The first named defendant said that the first named claimant told him that she had a lawyer - the second named defendant - and that when they went to the second named

defendant's office on 8 June 2006, **she introduced him to the second defendant.** However, nowhere in the second named defendant's witness statement did he state that he had ever acted for the first named claimant or that he had ever met her prior to the meeting of 8 June 2006 and he definitely did not say anything about the first named claimant introducing him to the first named defendant. To my mind, this is material. The impression given by the first named defendant in his witness statement was one of a display of familiarity between the first named claimant and the second named defendant to the extent that she was able to introduce both defendants to each other. That impression, however, is not borne out by the second named defendant's witness statement nor was it substantiated by putting it to the first named claimant in cross-examination i.e. the fact of the introduction. It seemed as if the first named defendant was going out of his way to establish some sort of acquaintance in his witness statement which did not exist.

108. What is of concern as well is that, according to the first named claimant, when her mother wanted to convey the premises to her in February of that year, she was requested to get an attorney to prepare the deed and she retained the services of Mr. Faizal Hosein. In those circumstances, it seems more probable than not that Mr. Faizal Hosein, who according to her had visited the premises and had personally attended to her mother's signature, could have been considered the first named claimant's attorney at law especially since she had paid him fees on the gift from her mother. It seems hardly likely, without more, that a person who, in February of that same year and less than four months prior to the transaction which is the subject of these proceedings, said that she had to consult the Yellow Pages to obtain an attorney at law to prepare a deed, would then go on to retain and regard the second named defendant as **her** attorney at law in June of that same year. It seems more likely that she was referred or brought to the second named defendant rather than the second named defendant being chosen by her.
109. Of more particular concern, however, is the registration of the deed on 18th July 2006. If in fact the second named defendant was acting on behalf of the claimants, why did he not advise the claimants to refrain from registering the deed, which was purportedly made out for \$320,000.00, in light of the fact that, on the day that the deed was executed, only \$260,000.00 had been paid i.e. the cheque for \$200,000.00 made payable to the first named claimant and the cheques for \$30,000 each made payable to the second and third named claimants?

110. Further, why did the second named defendant register the deed on 18th July 2006 without having confirmed that the balance had been paid and without protecting his “clients” by at least having an agreement in place for the payment of the balance which the first named defendant said was to have been paid by monthly installments of \$10,000.00⁷?
111. It has to be assumed that the second named defendant, who had been called to the bar in the Republic of Trinidad and Tobago in 1995 – more than ten years prior to the execution of this deed ⁸ - would have been aware that an estoppel by deed would arise upon the signing of the deed by the claimants by which they were acknowledging receipt of the sum of \$320,000.00 when that was not so. Further, nowhere in his statement did the second named defendant mention anything about an agreement to accept \$260,000.00 upon the signing of the deed and the balance to be paid by monthly installments of \$10,000.00. Even further, there are no instructions produced instructing the second named defendant to register the deed of conveyance notwithstanding the fact that the full purchase price had not been paid.
112. Nowhere in his witness statement does the second named defendant even refer to the discrepancy in the amount received on 26th June and the amount stated in the deed as having been drawn to the attention of the claimant’s and instructions taken up on it.
113. Even more telling is that the second named defendant never mentioned that he gave a copy of the documents which they signed to the claimants and, subsequent to the transaction when the first named claimant was making her enquiries about it and obtaining documents relative to it, none of the documents were given by him to the claimants.
114. This unusual set of circumstances suggests that the second named defendant was not looking after the interests of the claimants since their interest was not protected at all especially in light of the fact that the deed was registered with a receipt clause acknowledging receipt of \$320,000 when in fact that was not the position. As a matter of fact, it is quite obvious that the second named defendant was acting in the interest of the first named defendant only as he sought to expedite the registration of the deed in favor of the first named defendant even though no explanation is given as to the reason for that haste in registration in the circumstances before him. That haste can only be seen as a

⁷ See paragraph 19 of the witness statement of the first named defendant

⁸ His bar number disclosed on his witness statement is 1995046

desire to give to the first named defendant a benefit which he was not yet entitled to – at least not as set out in the deed of conveyance.

WHAT WAS THE PRICE?

115. Rehana Ramgobin said that she was instructed to put \$340,000.00 as the price of the deed and she never made any changes so she was unsure of how it was possible for the deed to have \$320,000.00. This puts doubts in the mind of the court that the price was as the defendants stated it was.
116. According to the first named defendant, the agreed price for the premises was \$340,000.00⁹. According to him, he was supposed to have paid \$260,000.00 down on the signing of the deed and the balance to be paid in installments of \$10,000 per month. No one else mentioned this arrangement – not even the second named defendant who was supposed to be looking after the interest of the claimants. Yet, in his letter dated 9 October 2006 – document number 5 on the agreed list – he said that he offered the first named claimant a purchase price of \$320,000.00 one month prior to her accepting the same and there was no pressure on her to accept that offered price. He said in that letter that the first named claimant went to the second named defendant’s office and informed him of her intention to sell the premises for \$320,000.00. Of course, this was in contradiction to what was said by Rehana Ramgobin. This is also in contradiction to his own assertion that the agreed price was \$340,000.00 but was reduced to facilitate the survey.
117. However, at paragraph 20 of his witness statement, he said that he visited the land with a surveyor who, after taking measurements of the land, informed him that the size of the land was in fact 12,254 ft.² instead of 12,600 ft.² as indicated on the claimants’ deed. A perusal of the survey plan which is annexed to the **deed of conveyance signed on 26th June** indicates on it that the surveyor went on to the lands to do the **survey on 6th July 2006** for the first named defendant. The following matters arise as a result:
- 117.1. Why was the execution of the deed of conveyance not postponed until after the survey so that the amount of land could have been confirmed?
- 117.2. Why was there no meeting after the survey to discuss the outcome of the survey and to confirm the amount of the deduction of \$20,000.00 as alleged by the first

⁹ See paragraph 10 of his witness statement

named defendant in the presence of the second named defendant, whom the first named defendant tried to establish as being the attorney at law for the claimants?

117.3. Why this sense of haste an urgency once again?

WHO WAS PRESENT FOR THE MEETING ON THE 8TH JUNE 2006?

117.4. Rehana Ramgobin was the only person who mentioned that **she** was present for the meeting on 8 June 2006. Her presence was not referred to by the first named claimant, the first named defendant nor the second named defendant in their respective witness statements nor did they refer to her presence in cross-examination at all.

117.5. The court can see no motive for this witness to be untruthful in relation to her presence at this initial meeting and she was not seriously challenged on this allegation. Consequently, the court finds that she was present together with the first named claimant and the two defendants.

WHAT WERE THE DOCUMENTS SIGNED?

THE ALLEGED INSTRUCTIONS DATED 8TH JUNE 2006 – DOCUMENT 14

117.6. This document states as follows:

"I Dr. Rohit Dass do hereby state that I was to be advised by Attorney at Law Victor Hosein that I am entitled to independent legal advice and also to have another lawyer look after my interest in pursuance of my request to purchase premises situate at Freeport and owned jointly by Rosemarie Bertille Marchand, Nicolas Azard Marchand and Naomi Andrea Marchand.

I understand clearly the consequences of what Mr. Hosein has indicated to me but I am declining to have independent legal counsel. I understand clearly also from Mr. Hosein and Rosemarie Bertille Marchand that he is representing the interest of the Vendors but I am at liberty to use his services. Rosemarie Bertille Marchand and I have therefore agreed to use Mr. Hosein's services in this conveyance."

117.7. According to the first named defendant, when he first went to the second named defendant's office with the first named claimant on 8 June 2006, he said that he

was advised of his rights to independent legal advice and that the second named defendant said that he could act for both parties if both parties agreed for him to do so and that he wanted them both to consent in writing. He went on in his witness statement to once again refer to the second named defendant as the first named claimant's lawyer which this court has dealt with previously, again showing his intent upon establishing that relationship. He went on to say that the second named defendant prepared a document which **they both read and they both signed**. He maintained that position in cross examination yet when document 14 in the agreed bundle was shown to him, he then changed his story to say no, he alone signed the document. After cross examination about the quality of his memory, which he described to be excellent, and in answer to the court, the first named defendant said that she signed something and he did not know if it was a "separate one". That "separate one" was never produced for the court and was never mentioned before. On the other hand, the first named defendant's witness Rehana Ramgobin, who was the second named defendant's legal secretary at the time and who said that she was present on 8 June 2006 when the first named claimant and the first name defendant came to the second named defendant's office, mentioned nothing about the preparation or signing of these instructions.

117.8. Very importantly, the second named defendant's evidence about what transpired at that meeting must be borne in mind. The second named defendant mentioned nothing at all about informing the first named defendant that he had a right to independent legal advice. In fact, it was the first named defendant, according to the second named defendant, who mentioned that "*he was aware that he can have a lawyer of his own choice*"¹⁰. Further, the second named defendant did not mention anything in his witness statement about saying to the first named defendant or to the first named claimant that "*he can act for both parties if we both agreed for him to do so and he would like to have from us our consent in writing that he told me that I was entitled to independent legal advice and that the First Claimant agreed that her lawyer would act for me also.*"¹¹ There was definitely no mention by the second named defendant in his witness statement of

¹⁰ Paragraph 4 of his witness statement

¹¹ Paragraph 11 of the first named defendant's witness statement.

him preparing a document for either the first named claimant or the first named defendant to have both read and signed.

117.9. Having regard to the evidence of Ms. Ramgobin and the second named defendant and the inconsistencies referred to above, it is manifestly obvious that this document did not exist on 8 June 2006 and was rather, to my mind, manufactured to suit the requirements of these proceedings on behalf of the first named defendant. The document itself is a self-serving one intended to establish that the second named defendant was representing the interest of the claimants. To my mind, in light of the fact that it is a fairly detailed document, it is unlikely that Ms. Ramgobin would not have been aware of this document having been dictated by the second named defendant and typed by her and presented to the first named defendant for signing. Yet, neither she nor the second named defendant made any reference to it. Consequently, this court is of the view that this was a deliberate concoction by the first named defendant and or the second named defendant to try to establish some sort of full disclosure in relation to legal advice.

THE ALLEGED INSTRUCTIONS - DOCUMENT 13

117.10. Agreed document 13 was dated 26 June 2006. It stated as follows:

“We the undersigned do hereby state that we were advised by Mr. Victor Hosein Attorney at Law to do a valuation of our premises described in Deed No. DE 2006 00909905 and which we are selling to Dr. Rohit Dass for \$320,000.00. However we do not see the need for this evaluation as we have an arrangement with Dr. Dass already.

We were also advised by Mr. Hosein that we can take a draft copy of the Deed of Conveyance to any lawyer of our choice for advice but we do not see the need for this as we are satisfied with the contents of the Deed of Conveyance that Mr. Hosein has now read out to us.”

117.11. The claimants insist that the signatures on that document were not their signatures. That document was referred to the Forensic Science Center as a result of which the reports referred to above were done.

117.12. Rehana Ramgobin said that she typed up instructions which were called out by the second named defendant after she had read out the deed to the first named claimant. She never formally identified that document to be the same as document 13 in the agreed list. Technically, even though she said that she typed up those instructions, she never said that she printed those instructions out and

she admitted that she did not see those instructions signed. Even more curious was the fact that she said nothing about the second and third named claimants being given any instructions to read when they came later in the day to sign the deed. The only thing that was read when they came was the printed deed. She said that after having advised them of their rights to have another lawyer review the deed, they refused this advice and both of them executed the deed in the presence but, once again, no mention was made about the execution of the alleged instructions.

117.13. When she was shown document 13 during cross-examination, she admitted that the document had a different value from the value she placed on the deed as the price of the premises was an agreed sum of \$340,000.00. In fact, that was the amount that she had placed as the consideration on the deed and she was also surprised to know that the deed carried a consideration of \$320,000.00 which was not the figure that she had put on the deed when she prepared it and read it out.

117.14. When the court looked at the document number 13, the following discrepancies were noticed:

117.14.1. The font was different from the font used in the deed dated 26 June 2006 although it was allegedly prepared by the same person;

117.14.2. It was not witnessed by anyone;

117.14.3. The alleged signature of the first named claimant shows dissimilarities with her signature on the deed dated 26th of June 2006 and her witness statement especially in relation to the “R” and “s” in “Rose”, the “M”, “r” and the accent over the “e” in her 2nd name, the “B” and tilde in her 3rd name and the “M”, “h” “n” and “d” in her surname.

117.14.4. Similarly, there were several dissimilarities in the signatures of the second and third named claimants.

117.14.5. The impression when one looks at the alleged signatures on document number 13, is that they were all deliberately written as opposed to fluid flowing signatures.

- 117.15. It is unfortunate that the original of this document was never produced for examination and no reason was given for this failure.
- 117.16. It is worthy of remark that the document purports to inform the claimants that they could take a draft copy of the deed of conveyance to any lawyer of their choice for advice. Why would this have been necessary? If as alleged, the second named defendant was acting on behalf of the claimants, they therefore would have had confidence in the second named defendant to have prepared the deed on their behalf. Why would they have to be informed to take the deed of conveyance to a different attorney?
- 117.17. Having regard to the discrepancies referred to above in the signatures and the evidence of the parties which was considered in this section, and otherwise, the court is of the view, on a balance of probabilities, that the claimants did not in fact sign this document and, once again, it was a manufactured document of convenience to assist the case for the defendants.

THE DEED DATED THE 26TH OF JUNE 2006

- 117.18. As mentioned in the preceding section, the deed which was prepared by Ms. Ramgobin had a consideration of \$340,000.00. Yet, the deed which is in evidence as document number 2 in the agreed bundle carries a consideration of \$320,000.00. There is no mention by anyone that the deed for \$340,000.00 which Ms. Ramgobin prepared was re-done for a consideration of \$320,000.00 instead.
- 117.19. Further, the deed of conveyance **dated 26 June 2006** states in the schedule as follows:
- “All and singular that certain piece or parcel of land (together with the buildings standing thereon) comprising TWELVE THOUSAND SIX HUNDRED SQUARE FEET but now found to comprise TWELVE THOUSAND TWO HUNDRED AND FIFTY-FOUR (12,254 sf) by a recent done by Licensed Surveyor Ganeshdath Ramcharitar on the 6th July 2006 more or less known as Lot No. 128 in the Schedule to deed registered as No. 1855 of 1965 and also delineated and shown colored pink on the Plan hereto annexed and marked ‘A’ and known as Lot No. 128.”*

117.20. Without a doubt, as stated in the schedule quoted above, the survey was not done until 6th July 2006 so that it was not available on 26th June 2006 when the deed was prepared. The second named defendant never disclosed when he received the plan but the plan carries a date of 7th July 2006 as the date it was entered so that the plan could have been received somewhere between 7th July 2006 and 18th July 2006 when the deed was registered. There was no mention whatsoever by anyone of any meeting with the parties after 7th July 2006. In fact there was no mention of any meeting of the claimants with the second named defendant at his office or elsewhere after the deed was signed on 26th June 2006 until 17th January 2007 when there was an alleged conversation between the first named claimant and the second named defendant.

117.21. It seems quite obvious that the document purportedly signed on 26th June 2006 **could not** have been the same document which was registered on 18th July 2006 since the plan referred to in the schedule to the deed was not available on 26 June 2006. There is absolutely no evidence whatsoever of the claimants authorizing any alteration of the original deed.¹²

117.22. In fact, when one looks at the layout of the deed dated 26th June 2006, the deed is rather unnaturally formatted in a very narrow column so that the the testimonium is located at the bottom of page 3, the schedule takes up the entirety of page 4 and the attestation clause and execution is somewhat conveniently located on the very top of the 5th page of the deed with absolutely no link to the rest of the contents of the deed itself.¹³

WHAT WAS THE REASON FOR THE SALE?

118. In his witness statement, the first named defendant said¹⁴ that the first named claimant told him that she wanted to sell the premises because her daughter – the third named claimant – had stolen a gold chain and she had borrowed money to settle the case. He said that she also told him that the people from whom she had borrowed the money were

¹² Coke's Commentary on the Littleton's *Tenures* (19th edition, 1832, with notes by F Hargrave and C Butler) at 225b states that a deed cannot be altered after execution without fraud or wrong and there is a rebuttable presumption against these.

¹³ As a matter of practice, this court deprecates such a layout since it harbors the possibility of exactly what is being alleged in these proceedings – that the attestation clause alone was shown to the parties without any obvious visual linkage to the rest of the deed.

¹⁴ Paragraph 5

harassing her to repay it and were threatening her family. This raises a number of questions:

- 118.1. Why did he not advise her to go to the police about the harassment and the threats?
 - 118.2. Why was this allegation not put to the first named claimant or to the third named claimant, in relation to the alleged settlement of “the case”?
 - 118.3. Why would he agree to purchase a premises in which the first named claimant was living at the alleged insistence of the first named claimant without even finding out how much money was owing to “*the people from whom she had borrowed the money*”? It could very well have been an amount which he could have possibly loaned her rather than her having to resort to sell the premises in which she was living.
119. It is important to bear in mind that this alleged larceny of a gold chain by the 3rd named claimant and borrowing of money by the first named claimant to settle the case was not put to either of them for them to meet that allegation and was never substantiated or corroborated.

WHAT DID THE FIRST DEFENDANT KNOW OF THE FIRST CLAIMANT’S STATE OF HEALTH?

120. According to the medical report of Dr. Sant, the first named claimant was a confirmed diabetic and had been so for the past 20 years prior to the date of that medical report which was 11th October 2006. The report says that she was insulin dependent and suffered from high blood pressure. According to his defence, the first named defendant admitted having treated the first named claimant prior to her being employed. One would have expected a doctor who is dealing with a patient for the first time to have inquired into her medical history before administering any type of medical diagnosis and treatment. However, in paragraph 3 of his witness statement, the first named defendant denied the allegation in paragraph 2 of the statement of case that it was well known to him that she had a history of numerous breakdowns, was diabetic, suffered from high blood pressure and received treatment from time to time at the St. Ann’s Medical Hospital. This court wonders how that denial can be consistent with his duties as a

medical doctor on treating the first named claimant as a patient to ascertain her medical history.

121. On a balance of probabilities, it seems more likely than not that the first named defendant would have been aware of the first named claimant's medical history and condition especially since he treated her on the day when she collapsed in his office. As any good doctor would have done, he would have had to have ascertained her medical history so that it seems that the first named defendant deliberately attempted to mislead the court about his knowledge of her state of health.

THE PHYSICAL CONDITION OF THE PREMISES

122. Mr. Faizal Hosein gave evidence that the disputed premises was in a poor state of repair even going so far as to say that it was almost unfit for human habitation. The first named defendant also said it was termite ridden but Reaz Hosein, who prepared the report referred to at document 10 of the agreed bundle, did not have this to say about the premises as he described the premises to be in "fairly good" condition and certainly Mr. Beepath stated in his report that it was in good condition and even annexed a picture as evidence of the same.

INDEPENDENT LEGAL ADVICE

123. Rehana Ramgobin, who claims to have been present, did not say anything in her witness statement about the second named defendant suggesting to the first named claimant at the first meeting on 8th June 2006 that she should seek independent legal advice. She said very importantly and definitively that she had never seen the first named claimant before but, rather ambivalently in cross examination, she said that she could not remember if she had seen the first named defendant visit the office of the second named defendant before.
124. The court finds that there was no offer whatsoever for the claimants to have obtained independent legal advice.

THE DETERMINATION OF THE ISSUES

125. At this point, it is important to note that this court does not believe that there was ever any agreement reached for the sale of the premises for \$600,000.00 with a life interest to

the claimants, or any one of them, together with free medical treatment and medication since that was not stated to have been an agreement reached in the first named claimant's witness statement.

126. Therefore, the issue is whether or not the claimants' were tricked into selling the premises because of this allegation of there being a mortgage on the premises.
127. It is difficult to understand why a woman, of obviously financial little means¹⁵, who was not a healthy person but who was suffering from diabetes and high blood pressure, who was an outpatient of the St. Ann's Psychiatric Hospital, and who was working as a cleaner (or a receptionist, according to the first named defendant) with the first named defendant, would agree to sell the premises where she had lived since she was ten years old (she was fifty-two years old on 29th January 2009 when she signed her witness statement and the incident occurred in June 2006 – two and a half years before) and which had recently been given to her by her mother just about 3 months or so prior to her mother's death. It seems more likely than not that it had to have been because of the apprehension of some impending doom which would have forced her sell and move out of the premises. The 2 explanations for the sale which were given were:
 - 127.1. According to the claimants, because of the alleged impending sale by the bank under a mortgage;
 - 127.2. According to the first named defendant, because of the harassment and threats meted out to her because of a loan she took to settle a case which involved the alleged theft of a necklace by the 3rd named claimant.
128. Which version is more probable? That the first named claimant wanted to sell the premises in which she was living to raise money to repay an unspecified loan for the settlement of a case which was not put to the claimants in cross examination? Or that the first named defendant, the first named claimant's employer and doctor, being aware of the death of the first named claimant's mother and her mental state, came up with a ploy to get the premises from her after she refused to accept his offer to purchase the premises?
129. To my mind, the latter version, in light of all of the circumstances of the case and the evidence led, seems to be the more probable explanation for the sale.

¹⁵ Working for \$400 per week in respect of which the first named defendant never paid contributions to the National Insurance Board – see paragraph 14 of her witness statement

130. What is also of concern is the fact that within one month of her mother's death, the premises was sold to the first named defendant at a time when, according to the uncontroverted evidence of the first named claimant, she was in an emotional state crying every day and that the first named defendant recommended using sedatives to calm her down and that she would be given injections on a daily basis along with tablets which she took daily. She said that she could not sleep or eat. Even though these matters were not put directly to the first named defendant except for the fact that he gave her sedatives and injections on a daily basis and which he denied in cross-examination, the court bears in mind and accepts that there was at least one occasion when the situation was allegedly so extreme (the day she collapsed – an incident which was not challenged) that the second named and third named claimants were called and they gave, to my mind, credible evidence about what transpired. The first named defendant admitted that there was a situation which occurred which resulted in second named claimant being summoned to his office but claimed further that it was as a result of her knee. Bearing in mind the evidence which the court has before it, the court prefers the version given by the first named claimant about her emotional state especially in light of the agreed medical report of Dr. Sant dated 11th October 2006, which is item 3 on the agreed bundle of documents, and which described two occasions of acute signs of anxiety and depression along with sleeplessness and uncontrollable weeping, and the unopposed psychiatric report of Dr. Samuel Shafe annexed as exhibit 'A' to the first named claimant's witness statement. Dr. Sant described the first named claimant in his report as showing extreme signs of unusual behavior recently which occurred when her mother passed away in May of that same year. Regrettably, those signs were not detailed or set out. The court bears in mind that Dr. Sant is not a qualified specialist doctor to give a psychiatric evaluation of the first named claimant and to diagnose and treat depression and anxiety but treats with his report, which was an agreed document, as corroborating, to some extent, that an unusual situation had developed in the first named claimant's life coupled with her already existing diabetes, for which she is insulin-dependent, and high blood pressure. The report from Dr. Shafe describes him as a consultant psychiatrist and carries the header of "Mental Health and Wellness Center, North West Regional Health Authority" and a stamp stating "Psychiatric Social Workers Department, 27 – 1 – 09, St. Ann's Hospital, Ministry of Health". That report and its contents were described earlier on in this judgment.

131. From the above evidence and bearing in mind the inconsistencies, the court finds that:

- 131.1. The first named claimant was in the employ of first named defendant from 30 April 2006, as admitted by the first named defendant in his witness statement. The first named defendant says she was a receptionist while the first named claimant says that she was employed as a cleaner. Neither brought documentary evidence and none was necessary. Indeed it is sufficient that they both accept that she was under his employ so that the relationship of employer/employee applied when the transaction was negotiated and when it culminated in the signature of the deed on 26 June 2006.
- 131.2. The first named claimant was treated by the first named defendant prior to her employment with him – this was admitted in the defence. Therefore, the first named defendant had a doctor/patient relationship with the first named claimant. That relationship continued after the commencement of her employment when she collapsed on the job and was treated by the first named defendant.
- 131.3. The claimant was a person with a history of mental issues including mental retardation and depression and was prone to forgetfulness and bad judgment. This can be determined from the medical reports as well as the evidence of the first claimant and her son.
- 131.4. That Dr. Dass, and Ms. Marchand went to the office of Victor Hosein where she was informed of a mortgage on the premises. It is inconceivable that this witness would make up such detailed facts to the same and it seems the only logical explanation for the agreement to give up the premises in circumstances where the claimants were not of any substantial means and there was no definite plan for their relocation. At the very least, the first named defendant took advantage of the first named claimant who was his employee and his patient.
- 131.5. The second and third named claimants' visited the first named defendant's office on the day that their mother collapsed upon the bidding of the first named defendant and it was only then that they were informed of anything to do with the sale of the premises. Nothing was suggested to them to dispute this evidence.
- 131.6. That the second named claimant and the third named claimant did not act independently but acted upon the instructions and direction of their mother, the first named claimant.
- 131.7. That the first claimant, her son and her daughter attended the office of the second named defendant on 26 June 2006 after being dropped off by the first named

defendant and they went into the second named defendants' office separately and they each signed a document showing only the attestation clause in relation to them alone, individually. Their evidence was not successfully contradicted so the court accepts the evidence. Despite Rehana Ramgobin's contention that the first named claimant signed the deed first and the second and third named claimants came later in the day to sign, **the first named defendant admitted in cross-examination that he dropped off all three claimants together and that he had given the first named claimant an envelope with the cheque.**

131.8. The first named and third named claimants were evicted from the premises. Although the first named defendant initially said he could not remember he admitted that it was true. At the time, the first named defendant was the registered owner of the premises pursuant to the deed of conveyance dated 26 June.

131.9. The first named defendant did not sign the alleged instructions dated 8th June 2006 on that date.

131.10. On a balance of probabilities, and bearing in mind all of the evidence before the court, the claimants did not sign the alleged instructions dated 26th June 2006.

WHETHER THE CLAIMANTS WERE TRICKED AND/OR INDUCED BY THE DEFENDANTS INTO CONVEYING THEIR PREMISES TO THE FIRST DEFENDANT.

132. The court finds that, on the balance of probabilities, the claimants were in fact tricked into conveying their premises to the first named defendant.

WHETHER THE CLAIMANTS WERE FRAUDULENTLY INDUCED OR MISREPRESENTED IN SELLING THE PREMISES TO THE FIRST DEFENDANT?

133. Following on from the preceding paragraph, the court finds that for there to have been a sale, there would have had to have been a meeting of the minds and there was no such

contract or agreement on the accepted evidence. Therefore, the court finds that the claimants did not agree to sell their premises to the first named defendant.

WHETHER THERE EXISTED AS BETWEEN THE FIRST CLAIMANT AND THE FIRST DEFENDANT A RELATIONSHIP OF EMPLOYER AND EMPLOYEE?

134. There is no doubt about this as this relationship was admitted by the first named defendant.

AND IF SO, WHETHER THE FIRST DEFENDANT EXERCISED UNDUE INFLUENCE UPON THE FIRST CLAIMANT IN THE SALE TO HIM OF THE SUBJECT PREMISES FROM THE CLAIMANTS?

135. Bearing in mind the finding of the two relationships referred to above of employer/employee and doctor/patient, and bearing in mind the medical condition of the first named claimant and the fact that the second and third named claimants basically followed along with what the first named claimant had to say, even if the court is wrong on the finding of the trickery/inducement to convey and there was in fact sale, there is no doubt that the presumption of undue influence arose.

136. The issue of manifest disadvantage can, to my mind, be inferred from the circumstances before this court that the first and third named claimants lost their interest in this premises where they had lived so many years without any obvious alternate option for accommodation. Consequently, the evidential burden to validate the transaction shifted onto the first named defendant and in light of all of the matters and inconsistencies referred to above, this court is of the view that that burden was never discharged. As a result, even if this court was wrong on the deceit, this court is of the view that the deed of conveyance was procured by the undue influence exerted by the first named defendant on the first named claimant who, from all the evidence before the court, received a largely disproportionate share of the alleged proceeds of sale in relation to the premises.

WHETHER THE FIRST DEFENDANT WAS IN BREACH OF THE CONTRACT FOR SALE?

137. As mentioned above, there was no contract between the parties for the reasons given so that the first named defendant could not be in breach of contract.

WHETHER THERE EXISTED AS BETWEEN THE FIRST DEFENDANT AND THE SECOND DEFENDANT THE RELATIONSHIP OF ATTORNEY AT LAW AND CLIENT?

138. There is no doubt that, having paid the fees for the deed of conveyance and in light of the preferential treatment meted out by the second named defendant to the first named defendant that the relationship of attorney at law and client existed between them both.

WHETHER THE FIRST DEFENDANT FAILED TO COMPLETE THE CONTRACT OF SALE?

139. Likewise, there is no doubt that the first named defendant never completed the alleged sale. However, for the reasons given, the court holds that there was no contract of sale. Consequently, there was nothing to complete.

WHETHER THE FIRST DEFENDANT TOOK THE FIRST CLAIMANT'S PREMISES AND CONVERTED IT TO HIS OWN USE?

140. Quite obviously, this was done. It must be remembered, however, that the premises was jointly owned by the claimants.

WHAT WAS THE PURCHASE PRICE FOR WHICH THE FIRST DEFENDANT BOUGHT THE SUBJECT PREMISES?

141. The court is of the view that there was never any agreed purchase price.

CONCLUSION

142. Even if the court does not find that there was an inducement, the court cannot overlook the fact that Dr. Dass, an educated professional, sought to purchase premises from a grieving, mentally ill, employee. Certainly the circumstances are questionable at best.
143. The claimants submitted that under the law as established in *Royal Bank of Etridge* (2002) AC 773, in which Lord Nicholls stated that in such relationships (employee and employer; doctor and patient) the law presumes irrebutably that one party had influence over the other, the complainant need not prove he actually reposed trust and confidence. I tend to agree with this submission and I agree with the further submission of the claimant that even if undue influence was not proven the sale was procured by “unacceptable means”.

SHOULD THE DEED BE SET ASIDE?

144. The claimants submitted that in order for a deed to be set aside certain criteria must be established as stated in *Algoo v Algoo* Civ App No 48 of 2004. According to the claimant’s submissions there must be:
- 144.1. Poverty and ignorance of the party impugning
 - 144.2. Sale at an undervalue
 - 144.3. Lack of independent legal advice
145. In the case of *Bradshaw v Hardcastle and another* [2002] All ER (D) 219, the court found that a deed should be set aside for undue influence. In this case a man on his death bed was forced to sign over certain premises by his new wife. His daughter the claimant was able to void the deed on the basis of undue influence.
146. In *Hart v O'Connor* [1985] 2 All ER 880, the Privy Council, in deciding whether to void certain contracts for the sale of farmlands, accepted that contracts for the sale of land may be voided where one party was not of sound mind but stated that “*where a contract was entered into by a person of unsound mind whose affliction was not apparent and whose consequent incapacity was not known to the other contracting party the validity of that*

contract was to be judged by the same standards as a contract made by a person of sound mind.” In that decision the Privy Council did not void the contracts.

147. In the present circumstance, however, the first defendant was a medical doctor who was the employer of the first claimant and ought to have known not only of her anxiety attacks but also of her mental illnesses and her status as an outpatient of the St. Ann’s hospital. In such a circumstance it might also be equitable to void the transaction on the basis that it was not only procured by undue influence but that it was unfair.

THE ORDER

148. In the circumstances, the court hereby grants an order setting aside the deed of conveyance dated 26 June 2006 and registered as No. 200601797961D0001 and executed between the claimants and the 1st defendant.
149. Against both defendants, the court awards damages for fraudulent misrepresentation and/or fraudulent inducement in effecting a conveyance of the subject premises to the first named defendant.
150. The assessment of the damages is adjourned to be dealt with in relation to the damages on the footing of fraudulent misrepresentation and/or fraudulent inducement to 29 January 2013 at 9:45 AM in POS 20.
151. In that regard, permission is granted to the claimant’s to file particulars of damages by 14 December 2012.
152. The defendants shall pay the claimants’ costs to be quantified after the assessment of damages is completed.

Devindra Rampersad
Judge