

THE REPUBLIC OF TRINIDAD & TOBAGO

IN THE HIGH COURT OF JUSTICE

CLAIM NO. 2017-02155

BETWEEN

MARILYN WILLIAMS

(Substituted to continue this action in place of Aldwyn Williams who died on the 7th August 2017 Pursuant to the Order of the Honourable Mr Justice Seepersad dated 13th September 2017)

Claimant

And

LA TOYA JOSEPH

Defendant

Before the Honourable Mr Justice Frank Seepersad

Date: February 3, 2021.

Appearances:

1. Mr. Fulton Wilson, Attorney-at-law for the Claimant.
2. Mr. Lemuel Murphy and Ms Stacey McSween, Attorneys-at-law for the Defendant.

ORAL DECISION REDUCED INTO WRITING:

1. Before the Court for its determination is the Claimant's claim for by virtue of which the following relief was sought :
 - a) A declaration that the purported deed of conveyance dated the 30th December 2013 and registered on the 9th September 2014 as DE201402046099D001 and allegedly made between the Claimant of the One Part and the Defendant of the Other Part is void and of no effect and ought to be set aside and/or cancelled and/or expunged from the records at the office of the Registrar General of Trinidad and Tobago on the grounds that the execution of the deed was procured by the Defendant's undue

influence over the Claimant and the Claimant did not have the benefit of independent legal advice and did not understand the true nature of the deed he executed.

- b) Costs.
 - c) Such further and/or other relief as the Court may deem just
2. Mr Aldwyn Williams was the owner of the property situate at No. 19 Ninth Street, Beetham Housing Estate in the Ward of St. Anns in the Island of Trinidad. He instituted the instant claim and subsequently passed away. After his death Marilyn Williams, his daughter, was substituted to continue this action on his behalf.
 3. Essentially the Claimant's case asserts that prior to the institution of these proceedings, the deceased was ailing since 2013 and required care both medically and otherwise. The Defendant began to care for him around 2012 which resulted in him placing trust and confidence in her. In the late 2013 the Defendant made arrangements for the deceased to attend the office of Mr. Patrick Godson-Phillips, Attorney-at-law on the pretext that he was going to make a will. Instead the deceased was given a document which purported to assign the lease to the subject property to the Defendant and the document was executed by him without him knowing that it was an assignment of the lease or deed of gift for the subject property.
 4. He did not know the true nature of the transaction and he was not afforded the benefit of independent legal advice nor was he told of his right to same before executing the said document. No instructions were given to Mr. Godson-Phillips to prepare same nor was consent given to the Housing Development Corporation to provide their consent for lease of the subject property.
 5. The Defendant is not the biological child of the deceased though she indicated that she had a close relationship with Mr. Williams having lived next door to him for several years and having known him for over twenty years prior to his death in August 2017.

6. In denying any undue influence on the part of the Defendant, her case is that at all material times the deceased was her predecessor in title of the subject property. She took care of him because he was ailing prior to his death and helped him perform everyday tasks. Mr. Williams promised her that because she was caring for him, the said property was for her to live in for life and after his legs were amputated, she began living in the property. During this time, his children rarely visited him or showed interest in his welfare.
7. With Mr. William's permission and encouragement the Defendant in her Defence pleaded that she constructed a shop on the property. The Defendant claimed that she would usually take the deceased to the doctor. Instead the Defendant's case is that the deceased requested to be taken to an attorney-at-law to prepare a deed to vest the said property in the name of the Defendant. Instructions were given to Mr. Godson-Phillips by the deceased for same and the legal effect of the deed was explained to him.
8. In support of the claim, a witness statement was filed on behalf of Marilyn Williams and with respect to the Defendant's case, the Defendant testified as did the attorney-at-law Mr. Godson-Phillips who prepared the conveyance which is the subject of the dispute in this matter.
9. Having heard the evidence, the Court found that the witness Marilyn Williams was a compelling, forthright and persuasive witness. Her evidence was characterized by an air of plausibility.
10. The Court also accepted her evidence that she visited her father, the deceased, regularly. The Court also found that she assisted with his medical needs and the Court noted that the Defendant did not dispute the fact that Marilyn Williams did visit her father. During her cross examination she initially sought to downplay these visits but then accepted that she was unaware as to when those visits were made as she wasn't with the deceased all the time. The Court therefore found as a fact that throughout his lifetime and for the years immediately preceding his death, the deceased had a close and functional relationship with his daughter Marilyn Williams.

11. The Court considered Exhibit B to Marilyn Williams' witness statement filed on 4th October 2019 which was the deceased's will dated the 5th of January 2015 and noted that she probated same. The Court also accepted Ms. Williams' evidence that she actually cared for her father during the period immediately preceding his death and that she arranged his funeral.
12. In the deceased's will, he left the property at Ninth Street Beetham Gardens for his daughter. Ms. Williams testified that prior to his death, after an attempt was made to transfer the electricity bill for the property from her father's name, she and her father found out about the transfer of the property to the Defendant and the deceased insisted that he was unaware of the said transaction and he decided to approach the Court to have same set aside.
13. The Court also considered Ms. Williams' evidence as to the deceased's waning mental health and reviewed the medical report which indicated that the Deceased was assessed in the latter part of 2015 and he was not able to properly transact business. However, the report dated 22nd May 2017 was not from a psychiatrist so the Court did not place much weight on same. In any event the Court formed the view that, as at the date the deceased made his will, namely the 5th of January 2015, the Court had before it no evidence to suggest that he was mentally unable to discharge his affairs. Based on the contents of the will, the Court is prepared to hold that at that time, i.e. January 2015, it was the deceased's belief that he was the owner of the property.
14. The Court did not form a favorable view of the plausibility of the Defendant's version of events. The Court found that she was evasive as she gave circuitous responses to simple straightforward questions. The Court also felt that she exaggerated her interaction with the deceased. The Court noted that prior to the execution of the transfer of the property she spent time with the deceased but after same that status quo was altered.

15. The Court wondered why, in the absence of any rational explanation, the deceased, a family man with children who had a functional relationship with his daughter Marilyn would elect to disinherit her and give his property to his neighbour.
16. The Defendant testified that she spent substantial time with the deceased and looked after him on a day-to-day basis as she washed his clothes, collected his medication and assisted him with his household chores. There is no evidence that she continued to do these things after the deed was registered and the Court felt that it is probable that the Defendant manipulated the deceased and she got close so as to influence him to transfer his property to her.
17. It is not in dispute on the facts that Mr. Williams went to the office of Mr. Godson-Phillips with the Defendant and that the deed in question was executed. This lawyer had no previous interaction with the deceased and the Defendant took him to Mr. Godson-Phillips. Ms. Williams appears to have had no knowledge of this transaction nor was she aware of those arrangements. Her evidence was that she was informed that her father had been taken somewhere and she made inquiries having been told that her father was taken at the particular time for medical treatment. Her inquiries however debunked that assertion.
18. There were, as it relates execution of the deed in question, some contradictions between the evidence given by Ms. Joseph and that of Mr. Godson-Phillips. In relation to Mr. Godson-Phillips's evidence, firstly the Court noted that no written instructions from the deceased were put before the Court though he attempted to explain the lack of production of those instructions by the fact that his office had moved last year.
19. This action was instituted in 2017, and it must have been known to the Defendant and by counsel that Mr. Godson-Phillips's evidence would have been relevant for the conduct of these proceedings. Witness statements were also filed in this matter and the witness statement of the Defendant was dated the 7th of October 2019.

20. These events occurred well before 2020 which is the year Mr. Godson-Phillips indicated he moved his office. The relocation of his office therefore does not adequately explain the failure to produce the written instructions, which he said he had and which ought to have been made available to Mr. Murphy, counsel for the Defendant during the course of 2019 when the Court had issued its directions with respect to filing of witness statements.
21. In relation to the office visits and the deceased's attendance at Mr. Godson-Phillips's office, the Defendant indicated that she went with the deceased on four occasions. The first was at 6:00 a.m. on a morning after Mr. Williams had indicated that he had wanted to meet with a lawyer. She said that she made some enquiries and was told of Mr. Godson-Phillips and so made those arrangements. Her evidence was that she accompanied the deceased and was outside of his office area. She also said there were two people in front of the deceased and he was eventually called in. The Defendant said she saw no office staff members.
22. She indicated that probably two weeks after she made the second office visit with the deceased to the lawyer's office and then the third visit was made probably a week after that. Finally a fourth visit was made shortly after the third visit to collect a document.
23. Mr. Godson-Phillips gave no evidence of meeting with or seeing Ms. Joseph. He indicated that on the first occasion that the deceased attended his office he was in the company of a driver who Mr. Godson-Phillips said he knew. Ms. Joseph gave no evidence of the driver accompanying the deceased with her to the waiting area of Mr. Godson-Phillips's office.
24. The timeline however for the visits as outlined by Mr. Godson-Phillips did not accord with the timeline outlined by Ms. Joseph. In fact, Mr. Godson-Phillips's evidence was that there were prolonged periods of time between the various visits made by Mr. Williams so much so that the deed was not registered for nearly nine months. Though executed on or about the 30th of December 2013, the deed was registered on the 9th of September 2014.

25. The Stamp Duty Assessment was made on the 27th of August 2014. According to the Defendant all these transactions in relation to the deed would have spanned a period of five to six weeks from the date of first introduction to the collection of the envelope from Mr. Godson-Phillips's office. This timeline was evidently wrong and bolstered the Court's view that the Defendant was not a credible witness.
26. Notably, no valuation report was also produced to the Court in relation to the said property and Mr. Godson-Phillips indicated that none was prepared in relation to this deed though that would have been the standard practice, as was established during cross-examination where Mr Godson-Phillips accepted that the usual practice required the submission of a valuation report to the Stamp Duty Department for the calculation of the relevant stamp duty sums.
27. Notably as well in the deed which was prepared by Mr. Godson-Phillips there was no inclusion of any revocation clause nor was the required consent of the Housing Development Corporation obtained in relation to the transfer which was purported to be effected by virtue of the instrument which he prepared. In the round the Court was left with a sense of unease as to the propriety of the said transaction.
28. The Court did form the view that there was the existence of a relationship between the deceased and the Defendant and that the deceased likely placed a degree of trust and confidence in her. This was plausible given the proximity of their houses, his age, lack of mobility and his need for assistance. While his daughter visited him, she lived some distance away. The Defendant however was not only known to him since she was a child but she was literally a next door neighbour. She was also young, able and willing to assist (albeit for self-serving motives). The Court understands how easy it is for old, vulnerable people to become dependent upon those who are close to them.
29. The evidence of Ms. Williams coupled with the Court's rejection of the Defendant's evidence resulted in a circumstance where the Court had a degree of disquiet in relation to the deed and the transfer of the deceased's proprietary interest to Ms. Joseph was not

readily explicable having regard to the nature of the relationship which existed between them and more importantly the fact that he had and continued to remain in close contact with his daughter.

30. At the end of the day the Court formed view on the evidence that Ms. Joseph's relationship with the deceased could be equated, almost, to a parent and a child. This is a young lady who grew up in front of him and he had a relationship of a friendship with her over the years. The Court in the circumstances is prepared to hold that a presumption of trust and confidence operated in relation to Ms. Joseph and the deceased.
31. By the Defendant's own evidence, she accepted that she was vested with the responsibility of managing some of the deceased's affairs. She also said that she assisted him with the payment of his bills and tended to some of his medical needs.
32. Notwithstanding the nature of their relationship, the transaction which occurred in relation to the deed of assignment executed on the 30th of December 2013 is one which raises issues in the Court's mind. The Court kept asking itself, "Why did the deceased disinherit his daughter Ms. Williams and give his property to the Defendant?" The evidence does not suggest that Mr. Williams had any rational or reasoned position to warrant the execution of such a transaction.
33. The deed is simply not readily explicable by the relationship enjoyed between the parties. In circumstances this Court has come to the conclusion that the transaction was procured by the undue influence of the dominant party i.e. the Defendant, Ms. Joseph, and something about the transaction calls for an explanation.
34. A transaction that is not readily explicable by the relationship of the parties remains one of the two elements which is necessary to give rise to the rebuttable evidential presumption of undue influence which results in the shifting of the evidential burden of proof from the party who is alleging undue influence to the party who is denying it. The Court therefore had regard to the dicta of the **Royal Bank of Scotland plc v Etridge (No 2) [2001] UKHL**

44 as well as the decision of the Court of Appeal of the Republic of Trinidad and Tobago in the decision of **Baptiste v Scotiabank T&T Ltd Civ. Appeal No. 37 of 2009**.

35. The Court also had regard to the law as outlined in **Goldworthy v Brikell And Another [1987] Ch. 378** at 387:

“Where an influential relationship and a disadvantageous transaction are shown a presumption of undue influence arises and it is for the party seeking to uphold the transaction to show that the influence was not abused. That burden is a heavy one: he must establish affirmatively that no domination was practiced so as to bring about the transaction but that the grantor was scrupulously kept separately advised in the independence of a free agent”.

36. The Court also addressed its mind to the decision given by Justice of Appeal Hamel-Smith (as he then was) in the case of **Jagoo v Jagoo (2000) 61 WIR 388**.

37. In the Court’s view, there existed on the facts the existence of an influential relationship, which is a relationship which Ms. Joseph had with the deceased as well as a disadvantageous transaction, which is the actual assignment in question. Where such circumstances arise it is for the party seeking to uphold the transaction to show that the influence was not abused. The burden is a heavy one and it must be established affirmatively that, *inter alia*, that no domination was practiced so as to bring about the transaction.

38. On the facts of this case, the Court is of the view that this obligation was not discharged by the Defendant. There is absolutely no evidence of any independent legal advice being given to the deceased and the Court is of the view that it is more probable and plausible, in these circumstances, to conclude that the deceased was effectively misled into attending a lawyer's office and executed the assignment in circumstances which were not of his making or consistent with his wishes. The Defendant was not his biological child nor did he share a unilateral relationship of closeness with her. He had children with whom he

interacted and had a good relationship with Ms. Williams. It is possible to conclude that in the moment he merely conformed to the directives of the Defendant. The Attorney should have safeguarded the interest of this elderly man but the evidence does not establish that this was done or the nature of the transaction was explained to the deceased.

39. The Court is of the view that Ms. Joseph used the influence which she had upon the deceased and she took him to the office of Mr. Godson-Phillips. The Court is regrettably not satisfied that the attorney obtained proper instructions or that a proper explanation as to the nature of the transaction was advanced. The deceased was not afforded the benefit of independent legal advice and it is more likely than not that he did not fully appreciate or understand the nature of the said transaction.

40. The Court's findings are bolstered by the fact that while the deceased was alive, he took steps, having been informed of the existence of this deed to have same set aside and he instituted the instant action. Although his memory may have been fading with time, there is no evidence to suggest that at the time he made his will in January 2015 that he was not in a mental state to do so and the will clearly expressed an intention to divest the interest in the property to his daughter and not to the Defendant. In addition there is no evidence to suggest that he was incapable of giving instructions for the institution of the instant proceedings.

41. In addition, the Court did not accept Ms. Joseph's evidence as to the construction of the parlor. The Court accepted Ms. Williams's evidence that there was a structure there and the Court found it plausible, having looked at the receipts, to conclude that the majority of the work done on the parlor by Ms. Joseph was done after the death of Mr. Williams. The Court was also not inclined to accept Ms. Joseph's evidence that she spent substantial monies for the erection or improvement of the preexisting structure.

42. In the circumstances the Court is prepared to set aside the deed dated the 30th of December 2013 registered on the 9th of September 2014.

43. The Court, however, feels compelled to indicate that with alarming regularity it has been tasked with the obligation to determine matters such as this based on the assertion that undue influence was exercised upon elderly persons. Very often the matters involve the divesting of real property by elderly persons in favor of persons who are tending to them at the material time.
44. Attorneys-at-law have a fiduciary responsibility to their clients and they also have a social obligation so as to ensure that citizens, especially the elderly and vulnerable are not manipulated or disenfranchised by those with whom they interface. Consequently, a significant degree of caution ought to be exercised when dealing with such persons who are engaged in land transactions.
45. Mindful though that there are obligations of confidentiality which may arise, lawyers should ensure that elderly persons are thoroughly interviewed in the absence of the persons who may have brought them to the lawyer's office. If in the course of the interview, if it is discovered that there are other persons who share close familial bonds with the elderly client, then some inquiry should be made by the attorney as to whether careful thought and consideration has been given by the elderly person as to whether there is an real intent to disinherit those other relatives from benefiting from the elderly person's real or personal property. With almost mandatory rigidity these instructions should be reduced into writing and signed by the client.
46. Where the persons who bring or make the appointments for elderly persons seem to be the mouthpiece of the elderly person this situation should instill disquiet in the Attorney's mind.
47. Routinely when dealing with land transactions, especially when persons are of advanced age, proper medical certificates prepared ideally by a psychiatrist should be presented so that the attorney can make a proper assessment as to the mental competence of the person who is executing the document.

48. The need for independent legal advice should be discussed and the due execution of such documents should be undertaken by another attorney, so that the attorney who actually prepared the document does not take the execution.
49. This Court is also resolute in its view that all deeds of gift should mandatorily contain a revocation clause. Ultimately a deed of gift should be viewed as if it creates a resulting trust by the insertion of the power to revoke the transaction. This would serve to protect the elderly from those who may have exercised dominance and undue influence upon them and also guards against any changes in circumstance.
50. Too often many of our nation's elderly persons are abused and taken advantage of by persons who take care of them. It may not be physical abuse but depriving someone of their property is a form of abuse. In this case the Court found that the Defendant abused the dominance and the trust and confidence which the deceased deposited in her and the presumption as the impropriety of the transaction has not been discharged by the Defendant.
51. For the reasons outlined the assignment dated to the 30th of December 2013 and registered on the 9th September 2014 is set aside.
52. The Defendant is to pay to the Claimant the cost of this action. No budgeted cost application was filed in respect of this claim and no value was put on the claim so the Court is of the view that there is no reason for it to depart from the usual process of deeming the claim valued at \$50,000.00 and ordering the Defendant is to pay the sum of \$14,500.00 in costs.

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FRANK SEEPERSAD
JUDGE