

**IN THE EASTERN CARIBBEAN SUPREME COURT
COMMONWEALTH OF DOMINICA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL DIVISION)**

CLAIM NO: DOMHCV2022/0186

**IN THE ESTATE OF FLORENTINE MAGLOIRE OF PORTSMOUTH IN THE PARISH OF SAINT JOHN IN
THE COMMONWEALTH OF DOMINICA, DECEASED**

BETWEEN:

VANS LE BLANC

- Claimant

V

**[1] JACQUELINE DOUGLAS (As Executrix of the
contested will of Florentine Magloire, Deceased)**

- First Defendant

[2] ANDREW MILLS

- Second Defendant

BEFORE: HONOURABLE MR JUSTICE COLIN WILLIAMS

APPEARANCES:

Ms Cara Shillingford and Ms Janae Jackson for the Claimant

Mrs Zena Moore-Dyer and Mrs Gina Dyer-Munroe for the Defendants

2024: June 17th, 18th, 19th, 20th, 21st, 26th

2025: April 16th

JUDGMENT

1. **WILLIAMS J:** This was a mixed claim, seeking principally to have the last will and testament dated the 23rd of February 2021 bearing the signature of the testatrix, the late Florentine Magloire, also known as 'Antin', declared null and void; and to pronounce in solemn form an earlier document, dated the 17th of June 2018, as the testatrix's last will and testament.
2. Another limb of the Claim was based on the doctrine of promissory estoppel in relation to a property in Portsmouth, in the Commonwealth of Dominica. The Claimant is seeking a declaration with regard to the beneficial ownership of that property.
3. The Claimant sought several reliefs, including declarations and orders.
4. The Claim was brought by Mr Vans Le Blanc. He was named as the executor in the earlier testamentary document of 17th June 2018 which the Claimant was seeking to have pronounced in solemn form.¹

¹ Paragraph 1 of the Statement of Claim, Trial Bundle Volume 1, page 4

5. The Claimant is also the testatrix's only surviving child.² (The Claimant's brother, Keith Valentine Wallace/Magloire died on the 11th of June 2019).³
6. The First Defendant is Ms Jacqueline Douglas; she was named as the Executrix of the contested last will and testament of the deceased, Ms Magloire.⁴ The Second Defendant is Mr Andrew Mills of Portsmouth. He was the testatrix's caretaker in the latter years of her life.
7. Ms Magloire died on the 19th of February 2022, at the COVID Care Centre at Picard, Portsmouth, in the Commonwealth of Dominica. She was 96 years old. A death certificate bearing her name was issued by the Registrar General. The person named in the 'Informants Particulars' of Ms Magloire's death certificate is Andrew Mills of Portsmouth,⁵ (the Second Defendant).
8. Since Ms Magloire's death, four wills have been produced, bearing her signature. Those wills in chronological order are dated:
 - 1) 3rd June 2018;⁶
 - 2) 17th June 2018;⁷
 - 3) 14th June 2019;⁸ and
 - 4) 23rd February 2021.⁹
9. The Claimant was named as the Executor in the first three wills. He was also named as the principal beneficiary in those three wills. He was not named as Executor in the will of the 23rd of February 2021. It is this will dated the 23rd of February 2021 that the Claimant is challenging.
10. The First Defendant, Ms Jacqueline Douglas, was named as the Executrix of the disputed will of the 23rd of February 2021.
11. The Second Defendant was employed by the Claimant in 2018 to be Ms Magloire's (the testatrix's) caretaker.
12. The Second Defendant said that he functioned as Ms Magloire's caretaker from 2018, until she was admitted to the COVID facility in February 2022, where she died.

² The Claimant's birth certificate at page 6 of the 'Bundle of Documents for Use at Trial' shows that he was born on the 11th of June 1944 to Florentine Magloire and Luke LeBlanc.

³ The Birth Certificate and Death Certificate for Mr Wallace are at pages 7 and 8 respectively of the Bundle of Documents for Use at Trial

⁴ The will of 23rd February 2021

⁵ Death Certificate, page 12 of the Bundle of Documents for Use at Trial

⁶ Exhibit 'D' Trial Bundle Volume 1 pages 22 -23

⁷ Exhibit 'A' Trial Bundle Volume 1 pages 17 -18

⁸ Exhibit 'B' Trial Bundle Volume 1 page 19

⁹ Exhibit 'C' Trial Bundle Volume 1 page 20

Preliminary point

13. This matter came on for trial on Monday the 17th of June 2024. The trial date was set on the 1st of November 2023.¹⁰ There was a pre-trial status hearing on the 31st of May 2024.
14. After the matter was called, Counsel for the Defendants stated certain documents were uploaded and filed on the e-litigation portal that morning by the Defendants. Those were:
 - 1) 'Notice To Court of Attorneys Acting for the Defendants.'
 - 2) 'Notice Of Application To Vacate Trial Date And/ Or For An Adjournment And Leave To File An Application For An Extension Of Time To File and Serve Skeleton Argument And Witness Statements' supported by
 - 3) Affidavit of Ms Natasha Scotland, a clerk at the firm of Dyer & Dyer Solicitors in support of the application.
15. Counsel for the Defendant noted that the application was being opposed, and that an affidavit in opposition to vacating the trial date and for an extension of time was filed by the Claimant.
16. Counsel for the Defendants pointed to Rule 39.6 of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023**. This Rule, in counsel's view, gave a Judge a discretion to adjourn a matter.
17. Counsel for the Defendants noted that the overriding objectives of the Rules had to be considered and questioned how sacrosanct was a trial date.
18. Counsel for the Defendants submitted that the matter was not ripe for trial. Counsel noted that they were only engaged three days earlier, on the 14th of June 2024. Having perused the file, they considered that there was a fundamental defect in the preparation of the matter for trial.
19. In support of the Defendants' submissions, reference was made to the learning in **Blackstone's Civil Practice** and the recent decision of the High Court of Grenada in **Oswald Sitney v Francis Sitney**.¹¹
20. In resisting the application, the Claimant's Counsel noted, *inter alia*:
 - 1) The Claimant was 80 years old;

¹⁰ See Court Order filed on the 14th of November 2023, annexed to the Affidavit of the Claimant filed on the 17th of June 2024 and marked 'VL2'

¹¹ GDHCV: 2021/0127 a decision of Actie J, delivered on the 27th of February 2024

- 2) The Claimant had health issues, deposed to in his affidavit ("I suffer from paroxysmal atrial fibrillation and high blood pressure.")¹²
 - 3) The trial date was set since the 1st of November 2023, and the application was only being made on the day of the trial;
 - 4) The Defendants did not adopt the procedure governing the late filing of witness statements which was governed by Rule 29.7 of the **ECSC Civil Procedure Rules (Revised Edition) 2023**;
 - 5) The Defendants did not apply for any relief from sanctions pursuant to Rule 26.8 of the **ECSC Civil Procedure Rules (Revised Edition) 2023**.
 - 6) The Claimant was of the view that the application was a delay tactic.
21. All submissions made by Counsel were considered and evaluated. It was noted that during the Case Management process, some months earlier, the Second Defendant did express a desire to seek alternative counsel. He took no steps to do so until the last business day before the start of the trial. The Court as constituted at the time was the sole forum available to hear both civil and criminal matters. There was no immediate indication as to how soon a dedicated Judge in the Civil Jurisdiction would be available. Given the age of the Claimant it was just and fair for the matter to proceed as scheduled, particularly since the reasons advanced by the Defendants for adjourning the matter did not have sufficient merit.
22. An order was made:
- "The Defendants' application to vacate the trial date and/or for an adjournment and leave to file an application for time to file and serve skeleton arguments and witness statements is refused.
- "The trial shall commence at 2:00 p.m. today, Monday the 17th of June 2024."
23. The matter was accordingly adjourned to later in the day

The claim

24. The Claimant filed a Statement of Claim on the 10th of October 2022 in which he sought the following reliefs:¹³
- 1) A pronouncement in solemn form that the Will signed by the testatrix on the 17th day of June 2018 is the true Last Will and Testament of the testatrix;

¹² Paragraph 10 of the Claimant's affidavit filed on the 17th of June 2024

¹³ Page 39 of Trial Bundle Volume 1, 'Statement of Claim'

- 2) A declaration that the Will dated the 14th day of June 2019 is void and of no effect;
 - 3) A declaration that the Will dated the 23rd day of February 2021 is void and of no effect;
 - 4) An order that a Grant of Probate in the estate of Florentine Magloire be issued to the Claimant;
 - 5) An injunction prohibiting the Defendants and/or their agents or servants from entering into or upon any of the Testatrix's properties, intermeddling with, administering, disposing or in any way dealing with the estate of Florentine Magloire;
 - 6) A declaration that the Claimant is the beneficial owner of the property registered in Book R3 Folio 22 of the Register of Titles in the name of Florentine Magloire containing 2,265 square feet and located at Portsmouth;
 - 7) An order directing the Registrar to transfer to the Claimant's name the property registered in Book R3 Folio 22 of the Register of Titles in the name of Florentine Magloire and containing 2,565 square feet;
 - 8) A declaration that the power of attorney dated 5th March 2021 purportedly signed by Florentine Magloire and registered as PA59/2021 is invalid, null and void;
 - 9) A declaration that all acts done by the Second Defendant pursuant to the Power of Attorney registered as PA59/2021 are invalid, null and void;
 - 10) Damages;
 - 11) Costs;
 - 12) Interest; and
 - 13) Any further and/or other relief as this Honourable Court deems just.
25. Evidence was received over five trial days. Seven witnesses, including the Claimant himself, testified on behalf of the Claimant. The Second Defendant and three other witnesses testified on behalf of the Defendants.
 26. The parties were given time to file closing submissions.

The signed wills

The first

27. The first will is dated the 3rd of June 2018.¹⁴ The testatrix's two sons, the Claimant and Keith Magloire, were named as joint and equal beneficiaries of all property, including the residue of the estate. The Second Defendant was not mentioned at all.

The second

28. The second will was dated the 17th of June 2018;¹⁵ that was 14 days after the first will.
29. The Claimant was named executor of the will. The Claimant was also the principal beneficiary in the will; he was named in all of the recitals, including the residual provision.
30. Keith Magloire, who featured prominently in the first will of two-weeks earlier, was mentioned only once in this will. Keith Magloire was bequeathed an equal share along with the Claimant of the "property located at Champs Eilices, Borne."¹⁶
31. The Second Defendant was named as a beneficiary. He was bequeathed three acres of land of his choice of the estimated 200 acres at Morne Repos, One Mile,¹⁷ with the remaining land going to the Claimant.¹⁸
32. The Second Defendant was named as the person "who cared for me and housed me after the passage of Hurricane Maria."¹⁹
33. It is this will that the Claimant wants pronounced in solemn form.

The third

34. In the third will, dated the 14th of June 2019,²⁰ the Second Defendant was to receive:
- 1) A one-third share of the land at Morne Repos, (together with the testatrix's two sons – the Claimant and Keith Magloire);²¹
 - 2) Three acres of land at Café, as well as an equal share in the remaining 17 acres at Café (together with the testatrix's two sons),²² and

¹⁴ Exhibit D, page 22 of Trial Bundle Volume 1

¹⁵ Exhibit A, page 17 of Trial Bundle Volume 1

¹⁶ Exhibit A, page 17 of Trial Bundle Volume 1 at 4

¹⁷ Exhibit A, page 17 of Trial Bundle Volume 1 at 3 (a)

¹⁸ See 3 (a) and (b) of the 2018 will at page 17 of Trial Bundle Volume 1

¹⁹ As above

²⁰ Exhibit B, page 19 of Trial Bundle Volume 1

²¹ Exhibit B, page 19 of Trial Bundle Volume 1 at 4 i

²² Exhibit B, page 19 of Trial Bundle Volume 1, at 4 ii

- 3) The testatrix's house where she grew up and which her mother left to her at Bay Street in Portsmouth.²³

35. Notably, in the third will dated the 14th of June 2019, the gift to the Second Defendant described as "the house on Bay Street, Portsmouth, where I grew up and which my mother left to me" was also gifted to two separate beneficiaries in two separate recitals. That property was also gifted as:

- 1) "[A] residential lot in Portsmouth containing 2,565 square feet,"²⁴ and was given to a grandchild; and
- 2) "[T]he house where I currently live on Bay Street, Portsmouth,"²⁵ and was given to the Claimant.

The same property was given to three different persons in three separate recitals in the will.

36. Also, that will dated the 14th of June 2019 referred to her son, Keith Magloire. He was to receive:

- 1) An equal share with two other beneficiaries (the Claimant and the Second Defendant) of the remaining 17 acres of land at Café;²⁶
- 2) An equal share with the Claimant and the Defendant of 13 acres of land at Destine;²⁷
- 3) The land at Morne Moson, which was said to be a continuation of the land at Destine.²⁸

37. The will of the 14th of June 2019 also devised the residue of the testatrix's estate to Keith Magloire.²⁹

38. On the date of this will, 14th of June 2019, Keith Magloire was already dead.³⁰ He died at the hospital in Portsmouth three days earlier, on the 11th of June 2019.

²³ Exhibit B, page 19 of Trial Bundle Volume 1, at 4 viii

²⁴ Exhibit B, page 19 of Trial Bundle Volume 1, at 4 vi

²⁵ Exhibit B, page 19 of Trial Bundle Volume 1, at 4 vii

²⁶ Exhibit B, page 19 of Trial Bundle Volume 1 at 4 ii

²⁷ Exhibit B, page 19 of Trial Bundle Volume 1, at 4 iii

²⁸ Exhibit B, page 19 of Trial Bundle Volume 1, at 4 iv

²⁹ Exhibit B, page 19 of Trial Bundle Volume 1

³⁰ Death Certificate exhibited at page 8 of Bundle of Documents for Use at the Trial

The fourth

39. In the disputed will dated 23rd of February 2021,³¹ the Claimant was replaced as the executor of the last will and testament of Florentine Magloire by the First Defendant, Ms Jacqueline Douglas.
40. Also, the Claimant was no longer the principal beneficiary to the testatrix's estate. The Second Defendant was now the principal beneficiary.
41. The Second Defendant was gifted:
 - 1) The residential property at 52 Bay Street in Portsmouth;³²
 - 2) Property in Morne Repos, One Mile, Portsmouth;³³
 - 3) The account at the Portsmouth Credit Union;³⁴
 - 4) Property at Mount Marson in equal shares with "Vance Leblanc;"³⁵ and
 - 5) Half the residue of the testatrix's estate.³⁶
 - 6) He was also named trustee of a property in Café for his daughter, Joyelle Mills, until she reached the age of 21.³⁷
42. In the contested will, of the eight recitals (including the residue) distributing the testatrix's estate, the only time that the name of the Second Defendant was not mentioned at all were in relation to:
 - 1) The house and land in New York;³⁸ and
 - 2) The 13 acres at what was referred to in the document as 'Destina Estate.'³⁹

Claimant's narrative

43. According to the Claimant's narrative, he has resided in Canada for a number of years. He had a good relationship with his mother, the testatrix. He would come to the Commonwealth of Dominica to see her. The testatrix lived at her property at Bourne, in the Portsmouth district.

³¹ Exhibit C, page 20 of Trial Bundle Volume 1

³² At (a)

³³ At (b)

³⁴ At (g)

³⁵ At (f)

³⁶ Page 21 of Trial bundle Volume 1

³⁷ At (e)

³⁸ Exhibit C, page 20 of Trial Bundle Volume 1 at (c)

³⁹ Exhibit C, page 20 of Trial Bundle Volume 1 at (d)

44. In early 2018, his mother, aged 92-years at the time, fell and broke her hip. She was hospitalized, underwent surgery, but she never fully recovered. The Claimant returned to Dominica and made arrangements for his mother's care, first at a nursing home, then with custodians. Arrangements were eventually made for the Second Defendant to become the caretaker at a given rate. The Claimant and the testatrix agreed that he should renovate a property that she owned, at Bay Street in Portsmouth, for her to live. That property was previously damaged during the passage of Hurricane Maria in September 2017. The arrangement with the Second Defendant included permitting the Second Defendant and his family to live in the house to care for the testatrix. The testatrix promised the Claimant that he would get the Portsmouth property upon her death in return for his assistance in renovating the house.
45. The Claimant would pay for his mother's expenses, including paying for house visits by the doctor and sourcing prescribed medication.
46. The Claimant's mother started showing signs of lapses in her memory and confused behavior. The Claimant provided electronic devices to be able to communicate with his mother. These devices got damaged. When the Claimant got to communicate with her by utilizing Whatsapp or Facetime, she had challenges recognising him.

Defendant's narrative

47. The Second Defendant denied exerting any undue influence over the testatrix.
48. The Second Defendant said that it was not until the 8th day of March 2022, after the testatrix was buried that he became aware of the contents of the will.
49. In 2018, the Second Defendant agreed to assist the Claimant by taking care of the testatrix. As a result of his commitment to help Ms Magloire, he and his two school-aged children moved into the testatrix's property. He cooked, washed, cleaned, ran errands and took care of Ms Magloire.
50. The Second Defendant would contact the Claimant about the payment of fees to doctors who made house visits. The doctor who used to visit was Dr Breedy. But the testatrix developed a sore and the Second Defendant contacted Dr Albert Severin to come to the house. He did not communicate with the Claimant regarding the attendance of Dr Severin and any payment of fees.
51. Following Dr Severin's visit to the testatrix, he returned to the house in the company of the lawyer, Mrs Ann Riviere-Leon and the legal intern Ms Petra Fregiste. The Second Defendant did not remain in the room when the doctor, lawyer and intern spoke with the testatrix.
52. The Second Defendant acknowledged that he did ask Dr Breedy to sign a document but she refused to do so. She said that she had to speak with the Claimant first. The document he

had asked her to sign required the signature of a doctor. He denied having any conversation with Dr Breedy regarding any property; after her refusal to sign he did nothing further about it.

53. The Second Defendant sought under the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2003**, Part 29.9(c) to respond to what the Claimant said about the testatrix starting to show signs of frequent confusion as early at 2019 and that increasingly from 2020, suffered from frequent lapses of her memory and inability to recognise the Claimant – her only surviving son.⁴⁰ The Second Defendant said:

“The person doing most of the calling and corresponding was me. Especially when she is in her good mood, we do a video share with the grandchildren. The only issue when a call [is] on [the] phone is she will take a little time. She ask who is this person. She will take her time to recognise. I would say ‘Vans’ or ‘Ivan’ she will say okay. As in everything, she takes time to recognise.”

Testatrix’s competence

54. Dr Taura Breedy was the physician who had regular contact with Ms Magloire during the two-year period of 2019-2020. She made several house calls to the testatrix and the Claimant would make arrangements for her to be paid.
55. Dr Breedy said in her witness statement:

“Since I had started her home visits, Florentine Magloire was never able to have a complete coherent conversation with me or anyone else. I suggested to Andrew Mills [the Second Defendant] that he contact Dr Wallace or Dr Benjamin since they were psychiatrists, and therefore better able to conduct an assessment of Florentine Magloire’s mental state.”⁴¹

56. Dr Breedy testified about being asked by the Second Defendant to sign a document saying that Ms Magloire was in fact mentally competent. The doctor’s recollection was that the document the Second Defendant wanted her to sign concerned land at Bourne. She said that the Second Defendant told her the document was from the credit union for him to get a power of attorney for Ms Magloire. Dr Breedy said that she refused to sign the document:

“Having observed Florentine Magloire during this and every other visit, I did not believe she was lucid enough to execute any power of attorney so I refused to sign the document.”⁴²

⁴⁰ See paragraph 26 of the Claimant’s witness statement, page 28 of Trial Bundle 2

⁴¹ Paragraph 12, Dr Taura Breedy’s witness statement, page 10, Trial Bundle 2

⁴² Paragraph 11, Dr Taura Breedy’s witness statement, page 20, Trial Bundle 2

57. According to Dr Breedy's testimony, the Second Defendant met her on a subsequent occasion on the street by her grandmother's house and requested of her to sign the paper relating to land in Bourne:

"I made it clear to Andrew Mills [the Second Defendant] that I would not sign any document. I again told him that it would be better to ask Dr Wallace or Dr Benjamin to assess Florentine Magloire."⁴³

58. Consultant Psychiatrist, Dr Griffin Benjamin, previously examined Ms Magloire at her home in Destine, Bourne, in August 2017.
59. Dr Benjamin subsequently examined Ms Magloire at her home in Portsmouth on the 1st and 2nd of May 2021. This was at the Claimant's request. That examination took place 10-weeks after the contested will was signed. Dr Benjamin's report was dated the 4th of May 2021.⁴⁴
60. Ms Magloire was 96 years old at the time when the psychiatrist examined her in 2021. When Dr Benjamin saw Ms Magloire, she was seated in a recliner chair in her bedroom and was unable to walk:

"She has not been able to care for herself for over four years after sustaining hip fracture and surgical intervention in 2017."⁴⁵

61. The psychiatrist diagnosed Ms Magloire as "suffering with Major Neurocognitive Disorder secondary to Alzheimer Disease."⁴⁶
62. Dr Benjamin's clinical diagnosis of Ms Magloire was:

"She presented with significant impairment in her short and long-term memory. A Mini-Mental State Examination was challenging as she exhibited severe cognitive impairment (MMSE less than 17). Although her registration to memory was good, her attention and concentration were deficient, and she could not recall any of the recently acquired memory. Also, she maintained good language abilities but was fully disoriented in time and place. She has demonstrated remarkable control and thoughtfulness for her age, and a pleasant and responsive demeanor to this therapist. However, she clearly exhibited persistent level of confused behavior."⁴⁷

63. Dr Benjamin also noted:

⁴³ Paragraph 13, Dr Taura Breedy's witness statement, page 11, Trial Bundle 2

⁴⁴ Page 39, Bundle of Documents For Use At Trial

⁴⁵ As above

⁴⁶ As above

⁴⁷ As above

“She suffers with irreversible physical and cognitive disabilities. Over the past many year, (sic) she has demonstrated persistent and worsening cognitive impairment that has significantly impacted her ability to attend to activities of daily living.”

64. Substantial reliance can be placed on Dr Benjamin’s report for several reasons:

- 1) He was a specialist in psychiatry.
- 2) He knew Ms Magloire for several years, having examined her in 2017 and again in 2021.
- 3) He was in a position to do a comparison of her condition when he last saw/examined her with four years previously.
- 4) He specifically administered the Mini-Mental State Examination to Ms Magloire.

65. Dr Benjamin’s report was done a little more than two months after the contested will was signed on the 23rd of February 2021. His principal findings in relation to Ms Magloire are worth repeating; she:

- 1) Suffered with Major Neurocognitive Disorder secondary to Alzheimer Disease.
- 2) Had significant impairment in her short and long-term memory.
- 3) Exhibited severe cognitive impairment.
- 4) Exhibited persistent level of confused behavior.
- 5) Was disoriented as to time and place.
- 6) Demonstrated persistent and worsening cognitive impairment over the years.
- 7) Maintained good language abilities and demonstrated remarkable control, and thoughtfulness for her age.

66. Dr Benjamin’s observations were useful in assisting in the assessment as to just what the testatrix’s mental capacity was in 2021.

Bay Street, Portsmouth, property

67. When the Claimant returned to Dominica to attend to his mother following her fall, it was necessary to make proper arrangements for her housing.

68. The Claimant testified as to the agreements and undertakings between his mother and himself to repair the Bay Street, Portsmouth, property. The Claimant exhibited proof of his expenditure in furtherance of the promises his mother made to him regarding the property.
69. Reliance was placed on behalf of the Claimant in the submissions on the decision of Redhead J, (Ag), (as he was at that time) in a case out of Montserrat, **Brenda Osborne v Audith Osborne and John Patrick Osborne (as Administrators of the estate of John Alfred Osborne [deceased])**.⁴⁸ In that case, Justice Redhead ordered the Administrators of the late John Osborne's estate to transfer to the Claimant certain property that the deceased told her in his lifetime that he was giving to her, but he never signed any document doing so. The Claimant had expended sums of money on the property in pursuance of the promise that was made to her. No mention however was made of the property in the will and the residue of the estate was going to someone else. Redhead J stated:

"I hold that the claimant... has spent a considerable sum of money on the said house... in reliance of the promise made... that the... house is her house."⁴⁹

"...having regard to the detriment suffered by the Claimant in this case, I do not think the Claimant's equity could be satisfied in any other way than an order that the said house be conveyed to the Claimant in fee simple."⁵⁰

70. Reference was made in the Claimant's submissions to the text, **Commonwealth Caribbean Property Law** by Mr Gilbert Kodilyne,⁵¹ where he said that:

"It has now become accepted that the claimants will be able to establish an estoppel if he can prove (a) an assurance; (b) reliance; and (c) a detriment, in circumstances where it would be unconscionable to deny a remedy to the claimant."

71. There was no dispute as to the Claimant's involvement in the renovation of the Bay Street, Portsmouth property. He obtained funding of \$130,000.00 to have the work done. His mother, the testatrix, promised him the property.

No evidence

72. The Claimant sought:

"A pronouncement in solemn form that the will signed by the testatrix on the 17th day of June 2018 is the true Last Will and Testament of the testatrix."⁵²

⁴⁸ MNIHCV: 2012/0012

⁴⁹ At paragraph [106]

⁵⁰ At paragraph [107]

⁵¹ Paragraph 12 of the submissions

⁵² Paragraph 19 I, Statement of Claim, at page 15 of Trial Bundle Volume 1

73. However no evidence was adduced regarding the due execution of the 17th of June 2018 document.

Power of Attorney

74. There was evidence on behalf of the Claimant coming from Dr Breedy of efforts made by the Second Defendant to get her to sign a Power of Attorney.⁵³
75. It is apparent that Mrs Riviere-Leon, who prepared the disputed will, also prepared the Power of Attorney and handed the document over to Dr Severin. Dr Severin facilitated the signing of the document.
76. The validity of this Power of Attorney is directly connected to the validity of the disputed will.

Credibility assessment

77. The evidence of the Claimant and his witnesses was preferred to the testimony from the Second Defendant and the witnesses for the Defendants. Where there were conflicts of evidence, given the credibility of the witnesses for the Claimant, their recollection of the facts was considered to be accurate and was accepted.
78. In particular, the evidence of the Claimant's witnesses, Dr Taura Breedy and Ms Olivia Douglas, were considered to be honest, truthful and reliable.
79. The witnesses for the Claimant were in contrast to the Second Defendant and the witnesses Mrs Ann Riviere-Leon and Dr Albert Severin. The Second Defendant, Mrs Riviere-Leon and Dr Severin were unimpressive during their testimony; they often appeared to lack the elements of truth and persuasiveness.
80. It was quite noticeable, for example, that the witnesses Mrs Riviere-Leon and Dr Severin seemed intent to repeat a particular set of words. Despite the question asked in cross examination, they would always repeat the same set of words, even before getting to what the answer was. It created the impression that there was a prepared script, from which there was to be no deviation.
81. Mrs Riviere-Leon for example, repeated several times that the testatrix, whom she was meeting for the very first time, was insistent that the Claimant must be excluded from the will and is not to get anything. However, according to the witness, she intervened and counseled the testatrix not to do that, but to include the Claimant in the will. According to Mrs Riviere-Leon, the testatrix relented and that was how the Claimant was named in the will. That very

⁵³ See paragraphs 56 and 57 above

act raised the obvious concern that the document could not reflect Ms Magloire's intention but that she was in fact easily influenced and told what to do.

82. It was noted as well that the Second Defendant sought to dismiss the crux of the Claimant's case that the testatrix showed signs of confusion. For example, in cross examination, he sought to explain Ms Magloire's inability to recognise her friend, Mrs Douglas by saying that "Antin was a tricky lady;" he also said that "she played a lot of tricks," so she would "pretend she don't know you." The Second Defendant did not see such behavior as Ms Magloire's diminishing faculties, but her pretending not to recognise persons because she did not want to speak with them.
83. It was noteworthy that while the case for the Defendants was that Ms Magloire was so coherent and ensured the correct spelling of names, it is only in the disputed will that certain spelling errors occurred. The names of the testatrix's son, the Claimant, Vans Le Blanc, was repeatedly misspelt as "Vance;" and the property at Destine misspelt as "Destinia." Those names were all correctly spelled in the three earlier wills. Reference was also made to the spelling of the name of testatrix's nephew, Ivan, appearing as "Ivon" in the disputed document.
84. The narrative of the events as told by the witnesses for the Defence at times did not seem rational, reasonable or believable.
85. The demeanour of the Second Defendant and the main witnesses for the Defence did not exude confidence nor truthfulness.

Submissions and the law

86. The Closing Submissions on behalf of the Claimant⁵⁴ raised the issue of what a prudent and competent solicitor ought to do in preparing a will for an elderly, ill person. Reference was made to the decision of Mitchell J, QC, as he was then, in **Sherwin Williams and Sheldon Williams v Robert B. Layne and Vervina Layne**.⁵⁵
87. The Claimant contended that: "On a balance of probabilities... it is probable that the 2021 will was created through undue influence by Dr Severin and Andrew Mills. It is also probable that the testatrix did not have the mental capacity to make a will in 2021."⁵⁶
88. The Claimant also referred to the learning in **The Law of Succession, 11th Edition**⁵⁷ and the reference⁵⁸ to the decision of Cockburn, CJ, in **Banks v Goodfellow**.⁵⁹

⁵⁴ Filed on the 18th of July 2024

⁵⁵ Civil Suit 440 of 1996 (Saint Vincent and the Grenadines)

⁵⁶ Paragraph 120 of Claimant's Closing Submissions

⁵⁷ By Parry and Clark

⁵⁸ At page 62

⁵⁹ (1870) LR 5, (1870) QB 549

89. The submissions on behalf of the Defendants⁶⁰ also drew attention to the learning in what was termed “the seminal case,”⁶¹ **Banks v Goodfellow**. Counsel in the submissions pointed to the four components of the test to determine testamentary capacity.⁶²
90. The Defendants’ submissions also helpfully referred to the learning in **Simon v Byford**,⁶³ as well as **Derek Carr, Margaret Helen Watson, Alan Kenneth Cole v Catherine Ann Beaven, Marilyn Jane Watson, Edwin Richard John Watson, Janet Dixon, Edwin Luke Watson**,⁶⁴ and **Frank Michael Wilkes v George Alan Wilkes**.⁶⁵
91. The issue canvassed in the main had to do with the state of the testatrix’s mind at the time when Mrs Riviere-Lyon, Ms Fregiste and Dr Severin made an unscheduled visit to the home of the testatrix.
92. Crucially, what can one say about the actual day the will was executed? Was the testatrix fully oriented, alert, lucid and competent? Was she still willing to proceed with the information Mrs Riviere-Lyon said she recorded – what if the testatrix wanted to make a change (as she did on previous occasions)? While the witnesses for the Defendants say that the will was in keeping with her original instructions, what opportunity was given to the testatrix to confirm that the document presented for signing was in keeping with her instructions?

Findings

93. It is believed that Ms Magloire was not competent, nor lucid, nor did she have an interlude of lucidity, neither did she possess testamentary capacity on the 23rd of February 2021 – the date of the will:
 - given the clarity with which Dr Benjamin described Ms Magloire’s debilitating condition; and
 - given the observations made by Dr Breedy of Ms Magloire; and
 - being satisfied with the evidence from the Claimant and his witnesses about the diminished capacity of Ms Magloire; and
 - not being convinced by the evidence of the Defendant and his witnesses; and

⁶⁰ Amended Defendants’ Closing Submissions filed on the 19th of July 2024

⁶¹ Paragraph 151

⁶² See pages 25 to 27 of the Amended Defendants’ Closing Submissions

⁶³ (2013) EWHC 1490

⁶⁴ (2008) EWHC 2582 (Ch)

⁶⁵ (2000) WL 33201465

- noting the absence of any evidence to support Ms Magloire's capacity at the time of her actually signing the will.

94. Based on the accepted evidence, the Claimant has established that the property at 52 Bay Street in Portsmouth must be conveyed to him as he acted to his detriment on reliance of the assurances given to him by the testatrix.
95. The Power of Attorney, PA59/2021, in the name of Florentine Magloire and appointing the Second Defendant, Mr Andrew Mills as her true and lawful Attorney, is null and void.

Costs

96. The Claimant has succeeded in this Claim. The Claimant is therefore entitled to costs.
97. Counsel on behalf of the Claimants submitted that: "The value of the properties at stake in this claim is undoubtedly significant."⁶⁶
98. Counsel for the Claimants stated:

"Since no valuation is before the Court at this stage, one will have to be obtained to properly calculate costs. In these circumstances, an award of assessed costs is more appropriate."⁶⁷
99. Counsel referred to Rule 65.2 of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023** and cited BVIHCMAP2013/0006 **Andriy Malitskiy and Igor Filipenko v Oledo Petroleum Ltd** as authority for the proposition of adopting a two-step approach to costs.
100. Counsel however went on to append a Claimant's Bill of Costs to the submissions, amounting to \$75,811.45.
101. On the other hand, Counsel for the Defendants said that there ought to be prescribed costs invoked per Rule 65.5(2)(d),⁶⁸ of the **Eastern Caribbean Supreme Court Civil Procedure Rules (Revised Edition) 2023**. Counsel for the Defendants submitted that the claim ought to be treated as one for \$50,000.00.
102. The Claimant succeeded in having the will of the 23rd of February 2021 set aside. The property which the Claimant demonstrated he had a beneficial interest in, involved a payment of \$130,000.00. While that figure may not represent the true or full value, it represents the minimum value. The \$130,000.00 was the only figure that arose in the trial that is available for assessing costs.

⁶⁶ Paragraph 171 of the Claimant's Closing Submissions filed on the 18th of July 2024

⁶⁷ As above

⁶⁸ Paragraph 173 of the Amended Defendants' Closing Submissions filed on the 19th of July 2024

103. The Second Defendant shall pay costs of \$21,000.00.

The Order:

104. It is ordered as follows:

1. The will dated the 23rd day of February 2019, in which the First Defendant Ms Jacqueline Douglas was named as executrix, is null, void and no effect.
2. No order is made for a Grant of Probate in the estate of the late Florentine Magloire in accordance with the will dated the 17th day of June 2018, as no evidence was adduced with regard to its validity.
3. The Claimant is at liberty to take appropriate steps for a Grant of Probate in relation to the will dated the 17th day of June 2018.
4. The Claimant is declared to be the beneficial owner of the property registered in the name of Florentine Magloire at Book R3 Folio 22 of the Register of Titles containing 2565 square feet and located in Portsmouth in the Commonwealth of Dominica.
5. The Registrar of Titles shall take all necessary steps to ensure a timely transfer to the Claimant, Mr Vans Le Blanc, of the 2565 square feet of land located in Portsmouth in the Commonwealth of Dominica and registered at Book R3 Folio 22 in the Register of Title accordingly to facilitate the transfer of title to the Claimant.
6. The Power of Attorney, PA59/2021, dated the 5th of March 2021 is declared to be null and void.
7. The Second Defendant shall pay \$21,000.00 costs to the Claimant within 28 days of this order, that is, by Wednesday the 14th of May 2025.

**Colin Williams
Judge**

By The Court

Registrar