

IN THE SUPREME COURT OF GRENADA  
AND THE WEST INDIES ASSOCIATED STATES  
HIGH COURT OF JUSTICE

GRENADA

SUIT NO GDAHCV 2010/0299

BETWEEN:

JACQUELINE CHARLES  
(Administratrix of the Estate of Joshua Cecil Thorne)

Claimant

and

JEAN MC NEILLY

Defendant

Appearances:

Ms. Claudette Joseph and Mr. Ian Sandy for the Claimant  
Dr. Francis Alexis, QC with Mr. Ruggles Ferguson and  
Ms. Tanya Lambert for the Defendant

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2012: November 20;21;22;  
2013: February 12;  
May 22.  
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**JUDGMENT**

- [1] **Mohammed J:** The Claimant in her capacity as administratrix of the estate of her late father Joshua Cecil Thorne ("Joshua Thorne") is seeking to set aside a deed of gift executed by him on June 10, 2003 ("the June 2003 deed") in favour of the Defendant. The subject matter of the June 2003 deed was Joshua Thorne's home situate at Woodlands, Grenada. The Claimant contends that Joshua Thorne, having been diagnosed with mild senile dementia in 2001, was not of sound mind and therefore incapable of understanding the effect of the June 2003

deed. Alternatively, she contends that Joshua Thorne did not execute the June 2003 deed freely and voluntarily at the material time.

- [2] The Defendant disagrees with the Claimant's position and instead submits that Joshua Thorne was not suffering with senile dementia when he executed the June 2003 deed and as such he fully understood and knew the consequences of his actions and that he did so freely and voluntarily. Although it was not part of her pleaded case, the Defendant also contends that even if Joshua Thorne was suffering from any memory loss at the time he executed the June 2003 deed, he did so during a lucid moment.
- [3] Both parties agreed that the sole issue to be determined by the Court is did Joshua Thorne understand the consequences of his actions when he executed the June 2003 deed.
- [4] For the reasons set out hereafter, I have concluded that Joshua Thorne did not fully understand the degree and extent of his actions when he executed the June 2003 deed. The June 2003 deed is therefore set aside and the Defendant is to pay the Claimant's costs of the action to be assessed if not agreed.

#### **The pleaded case**

- [5] The Claimant's pleaded case is that Joshua Thorne, a retired politician/businessman who died on the 22<sup>nd</sup> June 2010, was diagnosed as suffering from dementia in September 2001, therefore when he executed the June 2003 deed he did not understand its contents and he did not understand the consequences of his actions. She also pleaded that Joshua Thorne was not in receipt of any independent advice in relation to the June 2003 deed, and even if there was, he would not have understood the said advice. She also alleges that the June 2003 deed was manifestly disadvantageous to Joshua Thorne since he received no consideration.

- [6] The Defendant's pleaded case denied that Joshua Thorne was suffering from senile dementia when he executed the June 2003 deed. She did not plead that when Joshua Thorne executed the June 2003 deed it was during one of his lucid moments since it was her case that nothing was wrong with his mental capacity in the first place.
- [7] During the Defendant's cross-examination of the Claimant's witnesses, in particular Dr Herry-Thompson and Joselle Thorne, questions were posed on Joshua Thorne's ability to have lucid moments, in particular in June 2003. Dr Herry-Thompson stated that it was possible that Joshua Thorne may have had lucid moments, but in her view, it was highly improbable and she would have been surprised if he did. Joselle Thorne stated that Joshua Thorne had some good days but she was unable to say if one of these good days was in June 2003 when the June 2003 deed was executed.
- [8] I have attached no weight to the evidence adduced on the line of questioning concerning Joshua Thorne having lucid moments since this was not part of the Defendant's pleaded case. There was not even an alternative pleading that even if Joshua Thorne had senile dementia, when he executed the June 2003 deed he had a lucid moment. In my view, in the absence of any factual basis from the defence, any evidence on this issues falls flat.

**Did Joshua Thorne understand what he was doing when he executed the June 2003 deed?**

- [9] The test to be considered by a Court in determining whether a person who is giving away his property has the mental capacity to do so, was described by Nourse J in **Re Beaney, deceased**<sup>1</sup>.

" The degree or extent of understanding required in respect of any instrument is relative to the transaction which it is to effect. In the case of a will, the degree

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<sup>11</sup> [1978] 2 All ER 595

required is always high. In the case of a contract, a deed made for consideration or a gift made inter vivos, whether by deed or otherwise, the degree varies with the circumstances of the transaction. Thus, at one extreme, if the subject matter and the value of the gift are trivial in relation to the donor's other assets, a low degree of understanding will suffice. But, at the other (extreme), if its effect is to dispose of the donor's only asset of value and thus, for practical purposes, to pre-empt the devolution of his estate under (the donor's) will or on an intestacy, then the degree of understanding required is as high as that required for (making) a will, and the donor must understand the claims of all potential donees and the extent of the property to be disposed of."

- [10] The evidence for the Court to determine Joshua Thorne's mental capacity can be considered under three headings, namely:
- (a) the medical evidence;
  - (b) the evidence surrounding the transaction itself; and
  - (c) the evidence from the persons surrounding Joshua Thorne at the material time.

#### **What was the medical evidence ?**

- [11] There were two witnesses who gave evidence on Joshua Thorne's medical condition. They were Dr. Herry -Thompson for the Claimant and Mrs. Joyce Da Breo for the Defendant. The medical report of Dr. Evelyn Spencer dated 6<sup>th</sup> September 2005 was attached to the witness statement of the Claimant<sup>2</sup> but the doctor was not called to give evidence to explain his findings. I have therefore attached no weight to this report since it is not the Claimant's report and she has no medical expertise to adduce such evidence.
- [12] Joshua Thorne was married to Joyce Da Breo's sister-in-law. Mrs. Da Breo stated at paragraph 3 of her witness statement that:

" I am a Registered Nurse. I used to reside in Canada for three (3) years and was employed at the Calgary General Hospital, attached to the Psychiatric

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<sup>2</sup> Filed 28<sup>th</sup> June 2010

Ward for three years. As a Registered Nurse I dealt with patients who suffered from senile dementia. From my experience as a Nurse I was able to identify the symptoms of senile dementia in persons who suffered with the disease."

- [13] Under cross-examination, Mrs. Da Breo admitted that she trained as a nurse in Grenada in the 1950s and she was employed by the Calgary General Hospital between 1974 to 1977 and that persons who exhibited symptoms of senile dementia were placed in a psychiatric hospital.
- [14] I attached no weight to Mrs. Da Breo's evidence on Joshua Thorne's medical condition for the following reasons: She did not perform any medical test on Joshua Thorne since she was not qualified to do so. Her training was limited to nursing and there was no evidence if she received any specialized training in providing nursing care for persons with psychiatric ailments or conditions. Her experience was dated some 25 years before Joshua Thorne's ailment.
- [15] Dr. Emma Herry-Thompson is a physician for the past 28 years specializing in Internal Medicine and Gerontology. She has practiced medicine in various parts of the United States of America and in Grenada. Her training enables her to discern diseases such as Alzheimer's and Dementia. She examined Joshua Thorne ten times during the period 15<sup>th</sup> May 2001 to 21<sup>st</sup> October 2004, and she admitted during cross-examination that she did not examine Joshua Thorne during 2003. The last time she examined Joshua Thorne before June 2003 was June 2002. She prepared a report on 19<sup>th</sup> August 2005 setting out her findings. I do not agree with Counsel for the Defendant that the date of the report is important, in my view, the dates of examination of Joshua Thorne and not the date of the report are material. In the report Dr. Herry-Thompson diagnosed Joshua Thorne's short term memory loss as extremely poor and that he suffered from dementia.

- [16] From the first time Dr. Herry-Thompson met Joshua Thorne in May 2001 she was of the opinion that he was not oriented to person, place and time. She was of the view that he was not competent to take care of his affairs and she felt strongly that he had to be looked after. On one of Joshua Thorne's visit with Dr. Herry-Thompson on 11<sup>th</sup> September 2001, she conducted a Mini Mental State Exam ("the MMSE"). According to Dr. Herry-Thompson, the MMSE is an exam used to provide a comprehensive evaluation of cognitive functions since it identifies and assess the severity of cognitive impairment associated with dementia. In the MMSE test Joshua Thorne scored a total of 11 out of 30, which she was of the opinion placed him in the category of moderate dementia but at the lowest end of the scale. In the MMSE test Joshua Thorne scored "0" for Registration, "0" for Attention and Calculation and "0" for Recall.
- [17] In her view, based on the expected decline of untreated mild to moderate Alzheimer's patients of 2-4 points per year, by 2003 Joshua Thorne would have been in the category of severe dementia where he would not have appreciated what he was doing. Under cross - examination she accepted that there was medication to treat senile dementia and that the success of the drugs in arresting the slow progression of the disease varied. She acknowledged that she did not know Joshua Thorne before and she only knew him as a patient; she was not treating him for senile dementia but various physical ailments and she examined him as a whole to ensure that any medication she prescribes has no side effects on him. She was able to identify some flaws in the MMSE test. She acknowledged that if a patient cannot see properly, it would affect the results, and Joshua Thorne wore spectacles; if the doctor administering the test was unaware that the patient suffered from hearing loss ,it would affect the responses; if the patient could not identify the writing on the test, he would not do what was requested of him. She noted that the MMSE test was not conclusive of dementia; she was of the opinion that based on her findings it was highly probable. She was adamant that the Joshua Thorne, who was her patient, would not have understood the June 2003 deed he was signing. When the acknowledgment by the Deputy

Registrar, which appears at the foot of the June 2003 deed was put to her, she stated "I would challenge this. It would have to be a miracle. Maybe he had some healing." She stated that a medically trained person can examine a patient and come to a different conclusion from a lay person.

[18] I accepted Dr. Herry-Thompson's assessment of Joshua Thorne's mental capacity for the following reasons. It appeared to me from Dr. Herry-Thompson's evidence that her paramount concern was her patient, Joshua Thorne. While she admitted that she was not a psychiatrist and her specialty was in internal medicine, in my view, based on her overall medical training as a physician for many years, she was well placed to make such an assessment. She was the only medical expert call to give evidence. She appeared to be independent without any interest to serve and she accepted that there were some deficiencies in the MMSE test.

[19] I therefore cannot agree with Counsel for the Defendant that Dr. Herry-Thompson's medical evidence is unreliable and unsupported. In my view, the only proper medical evidence made available to the Court was that from Dr. Herry-Thompson since the Defendant failed to call any medical evidence of her own. In this regard I agree with the Claimant's position that if Joshua Thorne's power of recall in 2001 was "0" and that got progressively worse by 2 to 4 points per year, then by 10<sup>th</sup> June 2003, the date of execution of the June 2003 deed, even if the June 2003 deed was read over and explained to him, by the time the person so explaining got to the description of the property, Joshua Thorne would have forgotten who the parties to the June 2003 deed were. Similarly, by the time person who was reading over the June 2003 deed had gotten to the end, indicating to Joshua Thorne where to sign, it is reasonable to assume that he would have forgotten who the parties were and which property he was giving away.

[20] For the aforesaid reasons, I preferred the medical evidence of Dr. Herry-Thompson over Mrs. Joyce Da Breo since there was no real comparison in terms of medical expertise and experience. Having been persuaded by the medical

evidence that Joshua Thorne lacked the mental capacity to execute the June 2003 deed, the burden then shifted to the Defendant to demonstrate otherwise.

**What were the circumstances surrounding the execution of the June 2003 Deed?**

[21] In **Wainwright & Anor v Wilson**<sup>3</sup> it was held that if a Claimant succeeds in making out a prima facie case for the person's lack of mental capacity, the burden shifts to the Defendant to prove that he had the necessary capacity to execute the deed. It was the Defendant's case that the June 2003 deed is valid. It was therefore her burden to prove that the circumstances surrounding the execution of the June 2003 deed and from the persons surrounding Joshua Thorne at the material time that he understood the transaction and its consequences.

[22] In my view one important manner for the Defendant to prove this is to demonstrate to the Court that Joshua Thorne was in receipt of independent legal advice due to the nature of the transaction, and especially since the Claimant alleged in her statement of claim that Joshua thorne was not the beneficiary of such advice. The law regarding giving of independent legal advice is set out in **Inche Noria v Shaik Allie Bin Omar**<sup>4</sup> where Lord Hailsham LC at page 135 stated:

" It is necessary for the Donee to prove that the gift was the result of the free exercise of independent will. The most obvious way to prove this is by establishing that the Gift was made after the nature and effect of the transaction had been fully explained to the Donor by some independent and qualified person so completely as to satisfy the court that the donor was acting independently of any influence from the Donee and with the full appreciation of what he was doing; and in cases where there was no other circumstances this may be the only means by which the Donee can rebut the presumption".

[23] At paragraph 10 of the Defence<sup>5</sup> the Defendant pleaded:

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<sup>3</sup> (2006) All ER 180

<sup>4</sup> (1929) AC 129

<sup>5</sup> Page 17 of Trial Bundle filed 8<sup>th</sup> November 2012

" Further, the Deed of Gift was prepared by an experienced conveyancer Ovid Gill, also a friend of Joshua Thorne for many years and a person well known for his honesty and integrity."

[24] On examination of the June 2003 deed, at the top right-hand corner there is the preparation certificate by an Attorney-at-law from Ciboney Chambers of Ciboney House No 7 H.A. Blaize Street, St George's, Grenada, West Indies. However there was no evidence adduced by the Defendant to indicate that the signature above the preparation certificate was that of Ovid Gill.

[25] While the Claimant acknowledged under cross-examination that she knew that Ovid Gill and Joshua Thorne were not strangers since the latter conducted business with the former, there was no evidence from any witness which placed Joshua Thorne together with the conveyancer Ovid Gill, either at Mr. Gill's office or at another location, even at Joshua Thorne's home. The Defendant<sup>6</sup>, Joyce Da Breo<sup>7</sup>, Ivy Banfield<sup>8</sup> and Ethan Thorne<sup>9</sup>, Joselle Thorne<sup>10</sup> all gave evidence that Joshua Thorne had stopped driving by 2002. However, there was also no evidence to account for who took Joshua Thorne to the conveyancer's office, Ovid Gill, to give instructions to prepare the June deed and/or execute it.

[26] Further, if Mr. Gill had visited Joshua Thorne at his home in Woodlands to take instructions to prepare the June 2003 deed then surely Ivy Banfield, Joshua Thorne's caretaker or his nephew Ethan Thorne who lived with Joshua Thorne during the period 2002-2003 would have been aware that Joshua Thorne's lawyer had paid him a visit.

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<sup>6</sup> Paragraph 10 of witness statement of Jean Mc Neilly filed 18<sup>th</sup> January 2011

<sup>7</sup> Paragraph 6 of witness statement of Joyce Da Breo filed 18<sup>th</sup> January 2011

<sup>8</sup> Paragraph 13 of witness statement of Ivy Banfield filed 18<sup>th</sup> January 2011

<sup>9</sup> Paragraph 5 of witness statement of Ethan Thorne filed 18<sup>th</sup> January 2011

<sup>10</sup> Paragraph 6 of witness statement of Joselle Thorne filed 18<sup>th</sup> January 2011

[27] The other persons who are best placed to give evidence on the circumstances surrounding the execution of the June 2003 deed are the witnesses. I appreciate that Mr Gill, the conveyancer has passed on; however, there were two persons who witnessed the execution of the June 2003 deed, namely Engles Ferguson and Ms Lisa Telesford, the then Deputy Registrar of the High Court of Grenada. However the Defendant failed to call them as witnesses and failed to put forward any reason for not doing so.

[28] I accept that the acknowledgment clause at the foot of the June 2003 deed which states:

" DULY ACKNOWLEDGED BEFORE ME Lisa Telesford Dep Registrar of the Supreme Court of Grenada and the West Indies Associated States by JOSHUA THORNE personally appeared before me as for his free and voluntary act and deed, I having previously satisfied myself that the said JOSHUA THORNE fully understood the nature and effect thereof"

as being witnessed by the Deputy Registrar raises a presumption of due execution. However there was compelling medical evidence to rebut this presumption and the onus was on the Defendant to adduce evidence to support the presumption. Dr Herry-Thompson stated under cross-examination that a lay person interacting with a person suffering with dementia may form a different opinion from a medical doctor, and be of the impression that the person is normal. The Defendant and Joyce Da Breo also shared this view.

[29] The Defendant failed to present any evidence to persuade this court how the Deputy Registrar satisfied herself that Joshua Thorne understood what he was signing when he appeared before her. In my view, evidence such as the nature of any enquiry made by the Deputy Registrar would have assisted in persuading the court that Joshua Thorne understood the consequences of his actions when he executed the June 2003 deed before the Deputy Registrar.

[30] It was not enough for the Defendant to rely on this clause and the presumption of due execution where the basis of the Claimant's challenge to the June 2003 deed is on incapacity and where there was compelling medical evidence to rebut the presumption. In my view, the Deputy Registrar, who was not called to give evidence, is a lay person in this regard, since she has no medical expertise to assess Joshua Thorne and could have taken the oath without suspecting that Joshua Thorne lacked the necessary mental capacity to execute the June 2003 Deed.

[31] I therefore find that there was no evidence of Joshua Thorne being given any independent legal advice concerning the June 2003 deed and that the Defendant failed to adduce any evidence surrounding the execution of the June 2003 deed.

**What was the evidence from the persons surrounding Joshua Thorne on his mental capacity at the material time?**

[32] The material time for the execution of the June 2003 deed, in my view, was the period before and up to June 2003. There was evidence from several witnesses on their experiences with Joshua Thorne after June 2003, but I have attached little weight to this since the June 2003 deed was already executed. The persons who gave evidence for the Claimant on this issue were the Claimant, George Ferguson and Joselle Thorne, all children of Joshua Thorne. For the Defendant it was the defendant, Joyce Da Breo, Ivy Banfield, Ethan Thorne, and Ian Da Breo.

[33] In my view, the evidence from Joselle Thorne, Ivy Banfield and Ethan Thorne were critical on this issue since they all lived with Joshua Thorne at his home in Woodlands for various periods of time before June 2003. I have not placed much weight on the evidence of the Claimant, George Ferguson, the Defendant, Joyce Da Breo and Ian Da Breo on this issue for the following reasons.

[34] The Claimant does not live in Grenada and she admitted that she has never lived in the same house as Joshua Thorne. She stated under cross-examination that

Joshua Thorne stayed with her when he visited her in the USA. Prior to her visiting in August to September 2001, she stated that she had last seen Joshua Thorne two years before<sup>11</sup>. During the period September 2001 to June 2003 she spent time with him at varying intervals, in September 2001, December 2001 to March 2002, July to August 2003 and subsequently on yearly visits. She formed the opinion that Joshua Thorne had memory problems in 2001 and she took him to see Dr. Herry-Thompson in September 2001. In my view she would have gotten snap shots of Joshua Thorne's mental condition at various points in time with her limited interaction but not an entire picture.

[35] My position with the Defendant is no different. The Defendant lives in Canada and she visited with Joshua Thorne whenever she visited Grenada every winter, where she would divide her time between the Thorne household and the Da Breo household. She admitted that after Joshua Thorne's wife died in 2001 she did not spend any time with Joshua Thorne. When she spent time with Joshua Thorne in 2001 he was not forgetful, erratic or jumping around. Despite spending every winter in Grenada at Joshua Thorne's house she was unaware that Joshua Thorne had suffered a stroke. In any event the Defendant admitted in cross-examination that much of the information in her witness statement was hearsay, based on what she was told.

[36] Both Joyce Da Breo and Ian Da Breo, who both live in Grenada, never resided in the same house with Joshua Thorne. They both maintained that they had regular contact with him and in the case of Joyce Da Breo, she and her husband visited him regularly from the 1960s up until July 2003. Yet Joyce Da Breo was unaware that Joshua Thorne had a stroke in the 1990s and that he was hospitalized in 1991. Ian Da Breo was unaware of the stroke in the 1990s. He was aware of Joshua Thorne suffering with a heart condition and pain in his joints.

[37] While George Ferguson, one of Joshua Thorne's children did not live with him he worked for him cultivating and maintaining the Woodland's property and he visited

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<sup>11</sup> Paragraph 12 of witness statement of Jacqueline Charles filed 18<sup>th</sup> January 2011

him more frequently from 2001. Joshua Thorne gave him instructions of what crops to cultivate up to 1999 but not afterwards. He stated that he did not venture into the house but assisted Ms. Banfield, who could not manage with his father's weight. While he stated he would take Joshua Thorne for a drive and that based on the questions Joshua Thorne posed to him he concluded that his father was forgetful; it was unclear to me when he started this and how often it occurred before June 2003.

- [38] Joselle Thorne, Ivy Banfield and Ethan Thorne all lived with Joshua Thorne for varying periods of time. Joselle Thorne was Joshua Thorne's adopted daughter. She lived with her parents, Joshua Thorne and Elma Thorne at Woodlands as a baby until 1998 and thereafter she visited her father regularly. Joselle Thorne was consistent, clear and precise in her evidence giving details of Joshua Thorne's medical problems. She was the only child of Joshua Thorne who lived with him. She admitted that when she was a child she was told by her mother, Elma Thorne, that her father had his first stroke which left him without any feeling in his right side. He was unable to walk and write but he could talk. He learnt to walk and write again subsequently. She also stated that Joshua Thorne had a second mild stroke in 1991. She observed that after the strokes Joshua Thorne's memory changed. Joshua Thorne would remember things from long ago such as the 1940s and 1950s but not day-to-day activities, he would misplace his keys, he would always keep a black bag with papers near him, they would leave home to go to the beach and he would drive past it, this was while he was driving. After she left Woodlands in 1998 she visited her father at least once a week when she would bring her children, his grandchildren and he would not interact with them nor remember their names. It was Joselle's observation that after her mother died in 2001, her father's memory got worse. She was aware that Joshua Thorne executed a codicil in June 2005 but she was of the view that at the time of execution he was unaware of what he was doing.

- [39] Ivy Banfield knew Joshua Thorne for about 30 years. She used to be his housekeeper and she worked for Joshua Thorne and his wife for over 18 years.

She started helping out Joshua Thorne and his wife Elma Thorne when she returned to Grenada sometime between 1980-1981. After Elma Thorne died she started to work for Joshua Thorne in 2001-2005 where she worked as his caretaker. She spent the days and sometimes at nights at the house in Woodlands caring for Joshua Thorne's needs. Ivy Banfield is a simple woman who tried her best under cross-examination but often contradicted herself. She stated that she did not know if Joshua Thorne suffered a stroke in the 1990s but she recalled that he was hospitalized. She indicated that the only illnesses she knew that Joshua Thorne suffered with were arthritis in his left foot, problems with his eyesight and a heart condition in her witness statement<sup>12</sup>, but under cross-examination she said she went into Dr. Herry-Thompson's office with Joshua Thorne because "he was hard of hearing". In her witness statement <sup>13</sup> she stated that she recalled going with Joshua Thorne to Dr. Herry-Thompson in 2002 for check-ups and to be examined for his heart condition, but under cross-examination she said she took Joshua Thorne once in 2001 and once on another occasion. While she stated in her witness statement<sup>14</sup> that Joshua Thorne never gave her problems to eat, bathe or dress and that he conducted his personal and financial transactions on his own, she confirmed under cross-examination that Joshua Thorne could not be left alone at home. Someone would always stay with him on Sundays, either she, the other caregiver, Marsha or Joselle Thorne.

- [40] Despite Ivy Banfield's contradictions, she was able to corroborate parts of Joselle Thorne's evidence. She confirmed under cross-examination that Joselle Thorne visited her father with her children and that Joshua Thorne could not recall the children's names; she remembered hearing Joshua Thorne singing the popular 1950s song "Jean and Dinah" which she told him not to sing since "it was not a good song". This to me confirmed Joselle's evidence of memory loss suffered by Joshua Thorne since he remembered things from the 1940s and 1950s.

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<sup>12</sup> Paragraph 6 of witness statement of Ivy Banfield filed 18<sup>th</sup> January 2011

<sup>13</sup> Paragraph 10 of witness statement of Ivy Banfield filed 18<sup>th</sup> January 2011

<sup>14</sup> Paragraphs 6, 7, 11 and 13 of witness statement of Ivy Banfield filed 18<sup>th</sup> January 2011

[41] Ethan Thorne lived with his uncle Joshua Thorne at Woodlands around 2002-2003, where he would sleep at the house at nights and spend the days transporting him to do his personal business. He admitted knowing that Joshua Thorne suffered with arthritis in his feet and a heart condition. Yet he was unaware that Joshua Thorne had eye problems. He admitted taking Ms. Banfield and Joshua Thorne to Dr. Herry-Thompson, and he never saw Joshua Thorne stand in a queue at the bank, which I accept due to Joshua Thorne's age and standing in society as a politician/businessman. He rebuts Joyce Da Breo's evidence that Joshua Thorne stood in line at the bank. He stated that Joshua Thorne was attending to by an officer at the RBTT Bank in an office. Yet he could not recall if Joshua Thorne was exhibiting signs of memory loss while he was living with him. He remembers details of a transaction in 2001 when Joshua Thorne accompanied him to purchase a bus<sup>15</sup>. He confirmed that Ivy Banfield spent most of her time at Woodlands.

[42] Much was said by the Claimant's witnesses about Joshua Thorne having suffered a stroke sometime previous to 2001. However there was no direct medical evidence adduced to confirm this allegation and as such I am not prepared to accept this position. Joselle admitted that she was a child and her knowledge is based on what her mother told her. Further, while I accept Joselle's evidence on Joshua Thorne's behavior while she lived with him and even after, this Court is not ignorant to the fact that Joselle Thorne has instituted legal proceedings to set aside the 2005 codocil, and any finding on Joshua Thorne's mental capacity in the instant matter may have a favourable impact on those proceedings.

[43] At best, from the evidence of the persons who interacted with Joshua Thorne at the material time, I have concluded that certainly this was not a man who was in control of himself or his affairs. It could have been precipitated by a stroke, but all I can say is that there were some major health issues which caused him to be so. He could not be left alone, not even on Sundays when Ms. Banfield went to her

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<sup>15</sup> Paragraph 6 of witness statement of Ethan Thorne filed 18<sup>th</sup> January 2011

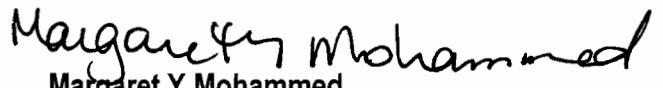
home, since either the other caretaker, Marsha, or Joselle Thorne had to stay with him. While the Defendant said she knew Joshua Thorne to be a private person, he could not attend to his doctor by himself but he had to be taken and someone had to be in the examination room with him.

[44] From the evidence of persons surrounding Joshua Thorne at the material time, I am convinced that Joshua Thorne could not look after himself.

[45] In light of the medical evidence, the lack of any evidence surrounding the execution of the June 2003 deed and the persons surrounding Joshua Thorne at the material time, I therefore find that at the time Joshua Thorne executed the June 2003 deed he did not fully understand the degree and extent of his actions when he executed the June 2003 deed.

#### **ORDER**

1. The Deed of Gift dated the 10<sup>th</sup> day of June 2003 made by Joshua Cecil Thorne to Jean Mc Neilly is set aside.
2. The Defendant is to deliver up the said Deed of Gift within 14 days of this order to the Claimant to be cancelled.
3. The Defendant to pay the Claimant costs of the action to be assessed in default of agreement.

  
**Margaret Y Mohammed**  
Judge