

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 244 OF 2008

BETWEEN:

WINSTON SERGEANT

Claimant

v

MAURICE SERGEANT

Defendant

Appearances: Mr. Carlyle Dougan Q.C. for the Claimant
Mr. Olin Dennie for the Defendant

2008: April 24;
September 16.

JUDGMENT

[1] **THOM, J:** Winston Sergeant and Maurice Sergeant are the sons of John Wesley Sergeant, deceased. John Wesley Sergeant also had six other children. Between 1988 and 1997 John Wesley Sergeant executed several Deeds of Gift conveying land to all of his children except Winston Sergeant. On January 24, 1997 John Wesley Sergeant made a will in which Maurice Sergeant was named as the executor. In his will John Wesley Sergeant made several bequests including a bequest of one parcel of land to Winston Sergeant and Ruby Sergeant jointly. Both Winston Sergeant and Ruby Sergeant did not want to share the land and John Wesley Sergeant in 1997 by a Deed of Gift conveyed the same parcel of land to Ruby Sergeant solely. In his will John Wesley Sergeant also directed that his dwelling house be left as a family home to be shared by his children.

[2] By Deed of Gift dated March 6, 1997 No. 765 of 1997 John Wesley Sergeant conveyed the land on which the family home is situate to Maurice Sergeant.

[3] Winston Sergeant in his claim alleges that John Wesley Sergeant intended to give him the land on which the family house is situated and he informed Maurice Sergeant that if he wanted to keep the land then he had to convey the parcel that was given to him by Deed No. 3296 of 1988 to Winston Sergeant. Maurice Sergeant initially agreed but when the Deed of Transfer was prepared he refused to sign same indicating he wanted to keep his land as described in Deed No. 3296 of 1988 and he would transfer Deed No. 765 of 1997 to Winston Sergeant. This he subsequently refused to do.

[4] Winston Sergeant in his claim sought inter alia the following reliefs:

- (1) A Declaration that John Sergeant deceased intended that 4,590 square feet of land described in Deed Number 765 of 1997 be vested in the Claimant.
- (2) A Declaration that the Defendant used undue influence to induce the said John Sergeant now deceased to convey to himself the said 4,590 square feet of land by virtue of Deed of Gift Number 765 of 1997.
- (3) An Order canceling Deed Number 765 of 1997.

Winston Sergeant outlined the particulars of undue influence as follows:

- (a) The deceased John Sergeant was in 1997 an elderly man in his 80's and was at that time suffering from the effects of old age and senility and as such was susceptible to pressures and promises made by the Defendant.
- (b) On the 20th January 1997 the deceased made his last Will and Testament by which he appointed the Defendant the sole Executor thereof. The original Will was given to the Defendant on the 4th March 1997 and on the 6th March 1997 the Defendant caused the deceased to convey the land

bearing the family home to the Defendant. A copy of the said Will is exhibited.

- (c) The Defendant promised the deceased that if he was given the property described in Deed Number 765 of 1997 he would transfer to the Claimant the land described in Deed Number 3296 of 1988. This the Claimant contends was a deliberate ploy by the Defendant to deceive the deceased in order to get the land described in Deed Number 765 of 1997.
- (d) The behaviour of the Defendant was most unconscionable since of the eight (8) children of the deceased he alone was given two (2) adjoining lots of land, while the Claimant got none contrary to the intention of the deceased. The remaining six (6) children each got one (1) lot of similar size.”

- [5] Maurice Sergeant in his defence denied the allegation of undue influence and alleged that John Sergeant in executing Deed of Gift No. 765 of 1997 acted freely and fully of his own volition with full knowledge and due consideration of what he was doing and intended to give full force and effect thereto.

ISSUE:

- [6] The issue to be determined is whether Deed No. 765 of 1997 was executed as a result of undue influence.

SUBMISSIONS:

- [7] Learned Queen’s Counsel for Winston Sergeant after referring the Court to the grounds on which the allegations of undue influence were based referred the Court to the legal principles applicable to the doctrine of undue influence as set out in **Halsbury Laws of England** 4th Ed. Volume 18 paragraphs 329 – 335. Learned Queen’s Counsel submitted

that in this case undue influence is to be presumed. Learned Queen's Counsel quoted the following excerpt from paragraph 334:

"When The Presumption Arises ... What has to be proved to raise the presumption of undue influence is first the making of a substantial gift or the granting of a benefit."

Learned Queen's Counsel further submitted that once the presumption was raised the onus was on Maurice Sergeant to rebut same. Since Maurice Sergeant did not testify at the trial he failed to discharge the onus placed on him and Deed No. 765 of 1997 must be cancelled.

- [8] Learned Queen's Counsel for Maurice Sergeant submitted that Winston Sergeant is bound by his pleadings. He submitted that the pleaded case of Winston Sergeant is that there was actual undue influence. The onus was on Winston Sergeant to prove actual undue influence. This he failed to do.

EVIDENCE:

- [9] Winston Sergeant testified on his own behalf and called three witnesses all being his siblings namely Lloyd Sergeant, Muriel Warner and Violet Sergeant. Maurice Sergeant did not testify, in fact he was not present at the trial.
- [10] The evidence led on behalf of Winston Sergeant is that between 1988 and 1997 John Wesley Sergeant by Deeds of Gift conveyed portions of his land to his children except Winston Sergeant. John Wesley Sergeant promised to give the land on which the family house stood to Winston Sergeant. In 1988 John Wesley Sergeant conveyed to Maurice Sergeant a lot of land by Deed of Gift No. 3296 of 1988. On several occasions John Wesley Sergeant told Maurice Sergeant if he wanted the land on which the family home stood he would have to convey the lot of land described in Deed No. 3296 of 1988 to Winston Sergeant. He initially agreed but subsequently refused to do so. Maurice Sergeant was in the habit of visiting John Wesley Sergeant at nights when he was tired. In

1997 John Wesley Sergeant was in his 90's and was suffering from the effects of old age and senility and was therefore unable to make any conscious decision.

- [11] Under cross-examination both Winston and Lloyd Sergeant agreed that in June 1997 John Wesley Sergeant in their presence and in the presence of Attorney-at-Law, Arthur Williams, conveyed one lot of land to their sister, Ruby.

LAW AND ANALYSIS:

- [12] The doctrine of undue influence was outlined by Sir Vincent Floissac CJ in **Robert Murray v Reuben Duberry and Denfield Matthew** Civil Appeal No. 10 of 1993 as follows:

“The doctrine of undue influence comes into play whenever a party (the dominant party) to a transaction actually exerted or is legally presumed to have exerted influence over another person (the complainant) to enter into the transaction. According to the doctrine, if the transaction is the product of the undue influence and was not the voluntary and spontaneous act of the complainant exercising his own independent will and judgment with full appreciation of the nature and effect of the transaction, the transaction is voidable at the option of the complainant. This means that the complainant may elect to have the transaction rescinded if he has not in the meantime lost his right of rescission. The modern tendency is to classify undue influence under two heads namely, Class 1 (actual undue influence) and Class 2 (presumed undue influence). Class 2 is further classified under two sub-heads. The first sub-head is Class 2 A which is descriptive of the legal presumption which arises from legally accredited relationships such as those existing between solicitors and client, medical advisor and patient, parent and child and clergyman or religious advisor and parishioner or disciple. The second sub-head is Class 2 B which is descriptive of the legal presumption which arises from a relationship whereunder the complainant generally reposed trust and confidence in the dominant party.”

- [13] In a case of actual undue influence the Claimant is only required to prove actual undue influence, he or she is not required to prove that the transaction induced by undue influence was manifestly disadvantageous, see **CIBC Mortgage PLC v Pitt** [1994] 1 A.C. p. 202 at p. 209.

- [14] Having examined the evidence in this case, I agree with Learned Counsel for Maurice Sergeant that there is simply no evidence of actual undue influence. John Wesley

Sergeant conveyed by Deeds of Gift portions of his land to all of his children except Winston Sergeant. There is no evidence to show that John Wesley Sergeant took any steps to convey the land on which the family home is situated to Winston Sergeant. All of the children with the exception of Lloyd and Muriel reside in the United States of America. The fact that Maurice Sergeant visited his father at nights when he visited Saint Vincent and the Grenadines is not evidence of undue influence. The onus was on Winston Sergeant to prove actual undue influence on a balance of probabilities and he failed to do so.

[15] I do not agree with the submissions of Learned Queen's Counsel that there is a presumption of undue influence. That a father and son relationship existed between John Wesley Sergeant and Maurice Sergeant is agreed by both sides.

[16] In **Halsbury Laws of England** 4th Ed. Volume 18 at paragraph 335 the Learned Authors in dealing with the issue of presumption of undue influence stated:

"PARENT AND CHILD ... There is no presumption of undue influence in the case of a gift to a son, grandson or son-in-law, even where it is made during the donor's illness and a few days before his death."

Similarly in **Chitty on Contracts** 28th Ed. Volume 1 Chapter 7 - 053 the Learned Authors stated:

"PARENT AND CHILD ... Where an adult child acquires a position of dominance over elderly or senile parents it is possible to establish a case of undue influence on the facts although no presumption arises either way." – **Avon Finance Co. Ltd. v Bridger and Another** [1985] 2 AER p. 281

[17] The present case, based on its facts is distinguishable from the case of **Avon Finance Co Ltd.** There is no evidence that Maurice Sergeant had acquired a position of dominance over John Wesley Sergeant. On the one hand the witnesses testified that John Wesley Sergeant was senile in 1997 but at the same time they testified that their sister Ruby protested to John Wesley Sergeant that it was not fair for her to have to share a lot of land with Winston Sergeant and John Wesley Sergeant agreed and transferred the lot to Ruby solely. This was in June 1997. The land on which the family home is situated was conveyed to Maurice Sergeant in March 1997. No medical evidence was led in relation to

John Wesley Sergeant. In the Avon case the U.K.C.A. in refusing to enforce a charge where a son fraudulently procured the signature of his elderly parents to sign a charge on their property for him to receive a loan from the Appellants, the Court held that the transaction was voidable in equity because:

- (i) The plaintiffs had chosen to appoint the son who was the debtor to procure from his parents the security which was needed to further the transaction between the son and the plaintiffs;
- (ii) The relationship between the son and the defendants was such that he could be expected to have some influence over them as his elderly parents and that was a matter of which the plaintiffs should have been aware and;
- (iii) there was no independent advice given to the defendants.”

[18] I also find that this case does not fall within the Class 2 B category. No evidence was led by Winston Sergeant to show that John Wesley Sergeant generally reposed trust and confidence in Maurice Sergeant. Evidence was led that Maurice Sergeant was the Executor of John Wesley Sergeant’s will. This is a single instance.

[19] In conclusion, I find that Winston Sergeant has failed to prove on a balance of probabilities that Deed No. 765 of 1997 was a product of undue influence. I find that Winston Sergeant is not entitled to any of the declarations sought in his claim.

[20] The issue as to whether Winston Sergeant in his personal capacity (he did not bring this claim as representative of the estate of John Wesley Sergeant) could bring an action based on undue influence exerted on John Wesley Sergeant (deceased) was not raised so I will not make a ruling on this issue.

[21] It is ordered that:

- (1) Judgment is entered for Maurice Sergeant.
- (2) Winston Sergeant shall pay Maurice Sergeant costs in the sum of \$10,000.00.

.....
Gertel Thom
HIGH COURT JUDGE