

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law & Equity Division

2014/CLE/gen/00468

BETWEEN

ROOSEVELT DAWKINS

(As Executor of the Estate of Albertha Dawkins)

Plaintiff

AND

SHERYL FERGUSON

Defendant

Before: The Honourable Justice Ian Winder

Appearances: E. Raphael Moxey for plaintiff
Donald Saunders with Michelle Petty-Horton for the defendant

17 and 30 April 2018 and 30 May 2018

JUDGMENT

WINDER J

This is a claim by the plaintiff seeking a declaration that the conveyance dated 14 June 2010 and made by the late Albertha Dawkins is null and void and of no effect.

[1.] The plaintiff commenced this action by specially indorsed Writ of Summons dated 3 April 2014. The Statement of Claim endorsed thereon was settled, in part as follows:

1. The plaintiff is the son and the Executor of the estate of the late Albertha Dawkins, and the co-signor on the bank account(s) held by the late Albertha Dawkins. During the latter years of Albertha Dawkins life the plaintiff and another sibling took responsibility for the primary care of their mother.
2. The defendant is a daughter of the late Albertha Dawkins, and the Attorney by virtue of a Power of Attorney dated 11th August, 2009 and recorded in the Registrar General Department in Volume 010855 at pages 296-299 (sic)
3. The late Albertha Dawkins died on the 24th February, 2012, She (sic) was diagnosed as suffering from memory loss and dementia since 2008.
4. By purported Conveyances dated 14th June 2010, the late Albertha Dawkins purportedly conveyed to the defendant (i) "*ALL THAT piece parcel or lot of land situate in the Subdivision called ad known as "Bel Air Estates" a Subdivision situate on the Southern side of Carmichael Road approximately Seven Thousand nine hundred feet west of Blue Hill Road in the Southern District of the Island of New Providence being Lot Number seventy (70) ...*". The defendant recorded or caused to be recorded this purported Conveyance in Volume 11643 at pages 530 to 534 in the Registrar General Department; and, (ii) "*ALL THAT piece parcel or lot of land situate in the Subdivision called ad known as "Bel Air Estates" a Subdivision situate on the Southern side of Carmichael Road approximately Seven Thousand nine hundred feet west of Blue Hill Road in the Southern District of the Island of New Providence being Lot Number seventy-one (71) ...*". The defendant recorded or caused to be recorded this purported Conveyance in Volume 11136 at pages 183 to 188 in the Registrar General Department.
5. The late Albertha Dawkins was induced to enter into the Conveyances referred to in paragraph 4 of the Statement of Claim (a) when she was not in control of her full mental capacity, (b) whilst acting under the influence of the defendant and (c) without independent legal advice.

PARTICULARS OF UNDUE INFLUENCE

- (1) At the time of executing the Conveyances Albertha Dawkins was 80 years old. She was at the time diagnosed as suffering from memory loss and dementia. The defendant, in addition (sic) to being the biological daughter and the purchaser, had a power of attorney over the affairs of Albertha Dawkins.
- (2) Albertha Dawkins did not have independent advice, legal or otherwise.

6. The defendant accessed the bank account(s) of Albertha Dawkins and the funds thereon were withdrawn and use not to the benefit of or for Albertha Dawkins.

7. The Plaintiff has suffered loss and damage.

AND THE PLAINTIFF CLAIMS

1. An Order that the Conveyances between Albertha Dawkins and Sheryl Ferguson dated 14th June 2010 be declared null and void, and of no effect and the same be set aside;
2. Possession of the property in the Estate of the late Albertha Dawkins;
3. All proper accounts, inquiries and directions,
4. Costs; and,
5. Any other relief the court deems just.

[2.] The Defence dated 12 June 2014 provided, in part, as follows:

3. Save that the Defendant admits that late Albertha Dawkins died on the 14th day of February, 2012, paragraph 3 of the Statement of Claim, the Defendant does not admit nor deny that since 2008 the late Albertha Dawkins was diagnose with memory loss and dementia. The Defendant will put the Plaintiff in strict proof thereof.
4. As to paragraph 4 of the Statement of Claim, the Defendant avers that the subject conveyances of Lot No. 70 and 71, both dated the 14th day of June, 2010 and recorded in volume 11643 at page 350 to 354 and volume 11136 at page 183 to 188 in the Registrar General Department, respectively, were duly and legally executed and recorded in accordance with the Conveyancing and Law of Property Act and that at the time of the said executions the late Albertha Dawkins was of sound mind.
5. That the Will of the late Albertha Dawkins dated the 14th day of May, 2010 of which the Plaintiff purportedly acts as Executor and relies upon was executed only one month prior to the execution of the subject conveyances. The Defendant therefore avers that the state of mind of the late Albertha Dawkins was sound given the time frame between which both the Will and the conveyances were executed.
6. Save that it is admitted by the Defendant that at the time of the execution of the subject conveyances that the late Albertha Dawkins was 80 years old and that the Defendant did have a power of attorney over the affairs of the late Albertha Dawkins, Paragraph 5 of the Statement of Claim is denied.
7. Further, as to paragraph 5, the Defendant puts the Plaintiff to strict proof with respect to its claim that the late Albertha Dawkins was of sound mind and did in fact secure legal representation and advice with regarding the subject conveyances.
8. Save that it is admitted by the Defendant that she accessed the bank account(s) of the late Albertha Dawkins, paragraph 6 of the Statement of

Claim is denied. The Defendant avers that all funds withdrawn from the same account(s) were used to the benefit of the late Albertha Dawkins.

[3.] At the trial the plaintiff gave evidence and called Carmen Dawkins as a witness in his case. The Defendant gave evidence in support of her case and called Attorney Milton Cox.

[4.] The plaintiff's evidence-in-chief was contained in a witness statement dated 22 March 2018 wherein he stated:

3. As early as about 2008 I began to notice that my mother was losing her memory; and as the years progressed, her memory and cognitive abilities got progressively worse. Examples of this manifestation are as follows:-

- (a) she would constantly ask the same questions over and over;
- (b) she would make preparation to 'go to work' by packing her bag and getting dress even though she had already retired;
- (c) she would gather up old letters from around the house saying she have to take them to the Post Office, (when she worked, it was as a messenger)
- (d) She would constantly empty the contents of a trunk in her bedroom and spread them all over her bed for no apparent reason;
- (e) She forget and leave pot/kettle on the stove with the obvious smelling of burnt metal.

...
5. That in anticipation of starting this action, I instructed my lawyers to enquire of the Public Hospital Authority to have sight of the medical records of our mother and or the attending doctors professional opinion/report regarding our mother's mental competency between 2009 and 2012. I am advised and I verily believe that my lawyers wrote to Public Hospital Authority and/or to the following physicians Dr. Pearl McMillan, Dr. Caroline Burnett-Garraway, Dr. Indira Minus-Grimes, Dr. Winston S. Phillips & Dr. Edwin Demeritte. I have seen the letters in response which my lawyer received from these physicians pursuant to my request. Regarding the mental capacity of Albertha Dawkins the physicians wrote as follows:-

- (i) Dr. Edwin Demeritte's letter dated 12th June, 2013 states-*"..... I cannot render a professional opinion as she started her initial evaluation in September 2009 and was seen on the 14th and 16th September 2009. She however never completed evaluation for a definitive diagnosis to be made. I can state that she was seen because of approximately a 2 year history of decreased memory".*
(our emphasis)

- (ii) Dr. Winston Phillips' letter dated 15th November, 2013 states: "....The above named patient was admitted to the Princess Margaret Hospital on 26/12/2011 with right hip pain due to a fall. She had an existing diagnosis of Alzheimer's disease and hypertension for which she was being treated During the course of her hospitalization, nursing and medical documentation confirms that Ms. Dawkins was confused and disoriented...." Our emphasis.
- (iii) Dr. Indira Minus-Grimes' letter dated 16th July, 2013 states "...prior to referral to the Gerontology clinic, Mrs. Dawkins attended the Flamingo Gardens Clinic where she had been diagnosed with hypertension. Dyslipidemia(sic) Osteoarthritis and Dementia. On further clinical evaluation at the Gerontology Clinic on 1st December, 2011 she was confirmed to have moderate cognitive impairment consistent with dementia. The latter diagnosis is consistent with a patient having decreased independent decision making capacity and decreased performance of executive cognitive functions". Our emphasis.
- (iv) Dr. Pearl McMillan in her letter/report dated 28th July, 2013 along with a copy of the referral notes by Dr. James Adderley for Mrs. Dawkins states: "... She was noted to be an 80 year old woman.....In her social history she was noted to be living alone, cooking for herself and traveling alone by bus. On examination however she was found to be oriented in place and person but not in time. She was further noted to be experiencing difficulty with short term memory and was diagnosed as? Early Alzheimer's disease (sic).

6. In addition to my personal observation of our mother and the opinion(s) expressed by the doctors above, I firmly believe that from about 2009 our mother was not in complete control of her mental faculties because of the number of conflicting/contradictory actions which she took in executing documents. These included:

- (i) On the 11th August, 2009 she executed a Power of Attorney to Sheryl Ferguson;
- (ii) On the 17th August, 2009 she executed another Power of Attorney to Sheryl Ferguson;
- (iii) On the 14th May, 2010 she executed her last Will & Testament which included the property which is the subject matter of this action;
- (iv) On the 14th June, 2010 she executed two (2) Conveyances to Sheryl Ferguson for the properties which are the subject of this action; and
- (v) On the 2nd September, 2010 she executed a Power of Attorney to Roosevelt Dawkins.

It is my view that given the very close proximity, in time, to the signing of these documents, when looked at objectively, it is very reasonable

to conclude that our mother was not in control of her mental faculties and was not fully aware or cognizant of the documents which she was signing.

- [5.] Carmen Dawkins sought to support the plaintiff case however she (as does the plaintiff) had no knowledge of how and the circumstances by which the challenged documents came to be executed.
- [6.] The defendant contends that on the 14th June, 2010, the late Albertha Dawkins executed the subject conveyances while she was (i) of sound mind, (ii) acting under no influence by the defendant and, (iii) acting with sufficient legal advice of her own attorney.
- [7.] A review of the evidence as to mental deficiency reveals that prior to the execution of the disputed conveyances there was no medical finding to substantiate the plaintiff's claim of mental incapacity. The first formal finding against Mrs. Dawkins is December, 2011. Clinical evaluation at the Gerontology clinic on December 1st 2011 confirmed her to have moderate cognitive impairment consistent with dementia. According to Dr Grimes, the diagnosis *"is consistent with a patient having decreased independent decision-making capacity and decreased performance of executive cognitive functions."* As highlighted by the defence, this diagnosis is approximately 18 months following the execution of the conveyances and the terms *"moderate"* and *"decreased"* were used to describe Mrs. Dawkins' cognitive impairment and decision-making capacity, respectively. This last note is important as Dr Grimes indicated that *"quantification of the patient's level of decision making capacity was not specifically measured" at that evaluation.*
- [8.] At the time of the evaluation Mrs. Dawkins' social history was described as someone *"living alone, cooking for herself and traveling alone by bus"*. This statement mirrors the evidence of the witnesses:
- (1) The defendant gave evidence that Ms. Dawkins often cooked for herself and walked to and from her home;

(2) The plaintiff gave evidence that he would visit Ms. Dawkins "every weekend" and that "she would call me religiously every weekend and say what she needs. So, I would go down there". He also indicated that while their bother, Franklyn, lived with Mrs. Dawkins from 2008, he did not take care of her.

In the circumstances, and on the evidence before me, it is difficult to find, and I did not find that in mid-2010 Mrs. Dawkins was mentally incapacitated, as the plaintiff alleges.

[9.] The Defendant's evidence, via her Witness Statement, was that the late Mrs. Albertha Dawkins was of clear mind and very capable of making decisions on her own; including her decision to gift (via conveyance) the subject properties to her in 2010. The evidence of Mr. Cox, who I accept was not the most impressive witness, also confirmed that Mrs. Dawkins, whom he described as a "senior citizen, of sound mind" gave him "instructions with clarity. And she was able to answer questions posed to her by myself".

[10.] The Plaintiff, who admittedly assisted his mother in securing a Will in May 2010, which names him as the executor and primary beneficiary cannot have it both ways. If the deceased was not of sound mind in June 2010 when she executed the conveyance to the defendant, she could hardly be unimpaired when she made the will in his favour contemporaneously in May 2010. Further, if the Will is impaired, his capacity to pursue these proceedings which derive from the Will of the deceased, are also in jeopardy.

[11.] I find therefore that the deceased was sufficiently competent to execute the impugned conveyances.

[12.] The second prong of the plaintiff's case is the question of undue influence. The relevant law on undue influence was canvassed by this court in **Antonio (by next friend Aneka McKinney) v. Poitier** - [2015] 2 BHS J. No. 35. At paragraphs 30-36 it was stated:

30 According to the learned editors of Hanbury and Maudsley Modern Equity 12th ed page 800, undue influence cases represent equity's recognition of

"a wide variety of situations in which intervention is justified by reason of a defendant's influence of dominance or influence over a plaintiff in procuring his execution of a document (such as a settlement) or his entering into an obligation... Equity intervenes in such cases, not because, as is the case with misrepresentations, the defendant has positively (albeit innocently) misled the plaintiff on a particular and relevant point of fact, but because the defendant has caused the plaintiff's judgment to be clouded, with the result that the plaintiff has failed to consider the matter as he ought."

Further, at page 801, the learned editors continued:

"...in all cases the question is whether a defendant has taken advantage of his position, or, per contra, has been assiduous not to do so. The question can only be answered in each case by a meticulous consideration of the facts. In some specialized situations, the facts speak for themselves. Contracts between employers and employees which restrict the future freedom of operation of the employee may be unenforceable, even in the absence of proof of undue influence, on the ground that the restriction is unreasonable. Many cases turn, as is natural, on whether a defendant discouraged independent legal advice or proceeded in such a way as to make it unlikely that the plaintiff would think of taking it. For, as with many of the flexible remedies of equity, a defendant is not placed under an absolute bar by virtue of this equitable obligation, but has to adopt proper steps, in view of the obligation, if he wishes to proceed in certain ways. So a genuine insistence on independent legal advice is a natural means of repudiating a charge of having exerted undue influence, even in a case where the possibility of influence was strong, and especially where there is a conflict of interest and duty. But the presumption of undue influence is not rebuttable only by establishing insistence on independent legal advice; it may also be rebutted by showing that the gift was a "spontaneous and independent act."

31 The usual starting point in considering the case law on undue influence is the locus classicus of *Allcard v Skinner* 1887 36 Ch. D 145 and the oft cited passage of Lindley LJ at page 181. There it was said as follows:

The doctrine relied upon by the Appellant is the doctrine of undue influence expounded and enforced in *Huguenin v. Baseley* (1) and other cases of that class. These cases may be subdivided into two groups, which, however, often overlap.

First, there are the cases in which there has been some unfair and improper conduct, some coercion from outside, some overreaching, some form of cheating, and generally, though not always, some personal advantage obtained by a donee placed in some close and confidential relation to the donor. *Norton v. Rely* (2), *Nottidge v. Prince* (3), *Lyon v. Home* (4), and *Whyte v. Meade* (5), all belong to this group. In *Whyte v.*

Meade a gift to a convent was set aside, but the gift was the result of coercion, clearly proved. The evidence does not bring this case within this group.

The second group consists of cases in which the position of the donor to the donee has been such that it has been the duty of the donee to advise the donor, or even to manage his property for him. In such cases the Court throws upon the donee the burden of proving that he has not abused his position, and of proving that the gift made to him has not been brought about by any undue influence on his part. In this class of cases it has been considered necessary to shew that the donor had independent advice, and was removed from the influence of the donee when the gift to him was made.

32 The facts of Allcard were that the plaintiff, a young unmarried woman, had sought a clergyman as a confessor in 1867. A year later she became an associate of the sisterhood of which the clergyman was the spiritual director and in 1871 she was admitted a full member, taking vows of poverty, chastity and obedience. Without independent advice, she made gifts of money and stock to the mother superior on behalf of the sisterhood. She left the sisterhood in 1879 and in 1884 claimed the return of the stock. Proceedings to recover the stock were commenced in 1885. The Court of Appeal held that although the gifts were voidable because of undue influence brought to bear upon the plaintiff through the training she had received, she was disentitled to recover because of her conduct and the delay.

33 Notwithstanding its vintage, Allcard has been cited as authority in this jurisdiction in *Cordes v Sentinel International Limited* Civil Appeal 74 of 2005 and *Johnson v Brown and Powell* CL 1777 of 1989.

34 Counsel for the Plaintiff argues that according to *CIBC Mortgage Plc v Pitt* [1994] AC 200, undue influence is a species of fraud. In *CIBC Mortgage Plc v Pitt* [1994] AC 200, Lord Browne-Wilkinson distinguished the two classes of cases identified in Allcard as 'actual' and 'presumed' undue influence respectively. It seems that it is the actual undue influence which is the species of fraud and not the presumed undue influence. At page 209, Browne-Wilkinson LJ says:

"Actual undue influence is a species of fraud. Like any other victim of fraud, a person who has been induced by undue influence to carry out a transaction which he did not freely and knowingly enter into is entitled to have that transaction set aside as of right."

35 I adopt with approval the dicta in the Eastern Caribbean Court of Appeal decision in *Marie Madeleine Egger v Herbert Egger* Civil Appeal No.17 of 2002 which I find adequately express the state of the law in The Bahamas. At paragraphs 31 to 33 of the decision, Alleyne JA states as follows:

[31] In *Royal Bank of Scotland plc v Etridge (No. 2)* [2001] 3 WLR 1021, para. 14, Lord Nicholls of Birkenhead had this to say:

"Proof that the complainant placed trust and confidence in the other party in relation to the management of the complainant's financial affairs, coupled with a transaction which calls for explanation, will

normally be sufficient, failing satisfactory evidence to the contrary, to discharge the burden of proof. On proof of these two matters the stage is set for the court to infer that, in the absence of a satisfactory explanation, the transaction can only have been procured by undue influence. In other words proof of these two facts is prima facie evidence that the defendant abused the influence he acquired in the parties' relationship. He preferred his own interests. He did not behave fairly to the other. So the evidential burden then shifts to him. It is for him to produce evidence to counter the inference which otherwise should be drawn."

And at paragraph 219 of the same judgment, Lord Scott of Foscote said: "The presumption of undue influence ... is a rebuttable evidential presumption. It is a presumption which arises if the nature of the relationship between the parties coupled with the nature of the transaction between them is such as justifies, in the absence of any other evidence, an inference that the transaction was procured by the undue influence of one party over the other. This evidential presumption shifts the onus to the dominant party and requires the dominant party, if he is to avoid a finding of undue influence, to adduce some sufficient additional evidence to rebut the presumption."

[32] In *Inche Noriah v Shaik Allie Bin Omar* [1929] AC 127 at 133 Lord Hailsham, L.C. delivering the judgment of the Court said in relation to the class of case where the relations between the donor and the donee have been such as to raise a presumption that the donee, at or shortly before the execution of the gift, had influence over the donor:

"The court sets aside the voluntary gift unless it is proved that in fact the gift was the spontaneous act of the donor acting under circumstances which enabled him to exercise an independent will and which justify the court in holding that the gift was the result of the free exercise of the donor's will. ... The court interferes, not on the ground that any wrongful act has in fact been committed by the donee, but on the ground of public policy, and to prevent the relations which existed between the parties and the influence arising therefrom being abused."

[33] In the *Royal Bank of Scotland* case [2001] 3 WLR 1021 at paragraphs 9, 10 and 11 Lord Nicholls recognises that the influence one person has over another in particular circumstances provides scope for misuse without any specific acts of persuasion, typically where one person places trust in another to look after his affairs and interests, and the latter abuses his influence and betrays this trust by preferring his own interests. His Lordship affirmed the well-established need to prevent abuse of influence in these cases despite the absence of evidence of overt acts of persuasive conduct. According to his Lordship, the question is whether one party has reposed sufficient trust and confidence in the other to raise the presumption. He said the principle is

not confined to cases of abuse of trust and confidence but includes, for instance, cases where a vulnerable person has been exploited. To quote the learned Law Lord, 'Several expressions have been used in an endeavour to encapsulate the essence: trust and confidence, reliance, dependence or vulnerability on the one hand, and ascendancy, domination or control on the other.'

36 In respect of the issue of independent advice, Nicholls LJ, at paragraph 20 of his judgment in *Royal Bank of Scotland v Etridge* stated as follows:

"Proof that the complainant received advice from a third party before entering into the impugned transaction is one of the matters a court takes into account when weighing all the evidence. The weight, or importance, to be attached to such advice depends on all the circumstances. In the normal course, advice from a solicitor or other outside adviser can be expected to bring home to a complainant a proper understanding of what he or she is about to do. But a person may understand fully the implications of a proposed transaction, for instance a substantial gift, and yet still be acting under the undue influence of another. Proof of outside advice does not, of itself, necessarily show that the subsequent completion of the transaction was free from the exercise of undue influence. Whether it will be proper to infer that outside advice had an emancipating effect, so that the transaction was not brought about by the exercise of undue influence, is a question of fact to be decided having regard to all the evidence in the case."

[13.] The plaintiff says that *"the evidence shows that the defendant was the daughter of the Albertha Dawkins, (sic) and she had Power of Attorney over the affairs of Mrs. Dawkins which put her in principal and agent relationship, and a trustee and beneficiary relationship all of which engendered the opportunity and conditions for the defendant to exercise undue influence over Mrs. Dawkins. ... This great rush by the defendant to have the Conveyances executed so soon after the 14th May, 2010 is not readily explained given the relationship between the parties – parent and daughter – always existed. In all the circumstances therefore, it is submitted that the conveyance(s) were executed as a result of undue influence being exerted upon Mrs. Dawkins by the defendant and as such they should, without more, be set aside."*

[14.] The plaintiff raises a strong case notwithstanding the only witnesses to the circumstances leading up to the execution of the conveyance are Attorney Milton Cox and the defendant. That evidence is, in my view, nonetheless ambivalent as to

whether this case meets the depiction of undue influence as set out in Allcard, of *'some unfair and improper conduct, some coercion from outside, some overreaching, some form of cheating, and generally, though not always, some personal advantage obtained by a donee placed in some close and confidential relation to the donor.'*

[15.] I am satisfied however that the presumption of undue influence ought to be made as both elements set out in ***Ethridge (No. 2)*** above apply. Firstly, the appropriate relationship existed in this case of mother and daughter. The evidence was that the deceased placed some dependence on the defendant as she in fact gave her power of attorney over her affairs. It would appear that the defendant took advantage of her position. Additionally, she was not assiduous in ensuring she did not. Secondly, the transaction calls for some explanation. The conveyance was such that it cited the payment of a consideration of \$65,000 but was in fact an outright gift. The gift was not innocuous as the conveyance of her home by the deceased represented a transfer of a substantial portion of her estate to the defendant. She would have no other home to live in. She retained neither a life nor a beneficial interest. It is further suspicious as the deceased had less than a month earlier devised the properties in her last Will and Testament to the plaintiff. The Defendant did not disclose her acquisition to anyone until the death of the deceased.

[16.] The presumption of undue influence is a rebuttable presumption. Under the law, where there is the presumption of undue influence the burden shifts to the Defendant to prove that the impugned transaction represented the free will of the deceased. The authorities say that the issue of independent advice is a relevant factor but also that this issue must be considered in light of all the circumstances. There is no evidence as to any independent advice being given to the plaintiff. Attorney Milton Cox gave no evidence as to providing any counsel to the deceased so as to "bring home to her a proper understanding of what she was about to do." In fact, Cox's evidence was that he was unaware that the property being conveyed was her dwelling house. Whilst it is a relevant consideration the absence of

independent advice is not, by itself, determinative of the question of whether the presumption could be rebutted.

[17.] I am satisfied, on balance, that the burden has shifted to the defendant and that she has not discharged the burden of proving a balance of probability that the gift to her represented the true will of the deceased and was not the product of undue influence. I rely on the following facts:

- a) Whilst I am not prepared to find that the deceased was not in control of her mental faculties in June 2010, I will acknowledge that she was at the onset of what would soon be diagnosed as dementia.
- b) There is no explanation for the inter vivos gift of her dwelling home to the defendant who was one of several children of the deceased.
- c) There is no independent discussion with anyone as to why the home would be gifted to the defendant or why the shift less than a month after devising the property to the plaintiff by will. The desire that the defendant should have the property is inconsistent with her last will and testament made in May 2010.
- d) The evidence of attorney Milton Cox, who acted for both parties in the transaction, and under cross examination confirmed that:-
 - (i) The deceased came to his office by *herself contradicting the evidence of the defendant who said she took Mrs. Dawkins to the office.*
 - (ii) The price(s) for the lot(s) were determined by the vendor and purchaser *contradicting the evidence of the defendant who said she did not determine the price of the lots and she did not know who did.*
 - (iii) He formed the impression that Mrs. Dawkins was a senior citizen but he was not aware that the property was her residential home. It is surprising that Mr. Cox did not recall that one of the Conveyance for property in Bel Air Estates was the dwelling home of Mrs. Dawkins after having represented her in the Magistrate Court, approximately one year earlier, in having one of her sons evicted from her home, which was that very same address.
 - (iv) He was aware that the defendant had Power of Attorney over the affairs of Mrs. Dawkins;
 - (v) Consideration was paid for the purchase *contradicting the evidence of the defendant. Mr. Cox maintained that monies passed for the conveyance(s) although he stated that he could*

not remember how much was paid or how the funds were disbursed to the vendor.

- e) The defendant does not disclose to anyone the acquisition by her of the home.

[18.] In all the circumstances I find, on a balance of probabilities, that there was a presumption of undue influence and that the defendant has not discharged the burden of proving that the gift to her represented the true will of the deceased and was not the product of undue influence. In the circumstances I set aside the Conveyances between Albertha Dawkins and defendant dated 14th June 2010 and declare that they are null and void, and of no effect. The plaintiff shall be entitled to her reasonable costs to be taxed if not agreed.

Dated this 28th day of January 2019



Ian Winder

Justice