



[2023] JMSC CIV. 188

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. 2009HCV00039

BETWEEN	STAFFORD DIXON	CLAIMANT
AND	PATRICK BAILEY	DEFENDANT

**Appearances: Mr. Oswest Senior-Smith and Denise Senior-Smith instructed by
Owest Senior-Smith & Co for the Claimant**

Carol Davis for the Defendant

**Heard: 18th, 19th, 20th, 24th, 25th, 26th September 2018, 18th March 2019, 3rd, 4th, 5th,
6th February 2020, 9th May 2022, 23rd June, 4th July 2022, 23rd March and 26th
September 2023**

**Contract – Duress – Whether Threat of Criminal Proceedings Illegitimate Pressure
– Lawful Act Duress**

BROWN BECKFORD J

PROLOGUE

[1] A timely delivery of justice for all. This is the aspirational commitment of our Courts to the citizens of Jamaica. Sadly, this matter, in its second hearing, has been delayed for a number of reasons. Among them are the retirement of the judge initially hearing the matter, illnesses, absences, the Court’s calendar and the unavailability of Counsel. Consequently, we have fallen far short of this commitment. It is little comfort, I am sure,

to the parties that some of the delay was unavoidable. This case reminds us that we must be unfailing in our efforts and zeal to defeat delay in the judicial system. The Court, through this medium, apologises to the parties.

INTRODUCTION

[2] The Claimant, Mr. Stafford Dixon, is a real estate agent who was the client of the Defendant, Mr. Patrick Bailey, an Attorney-at-Law, who at the material time was a partner and principal in the law firm Patrick Bailey and Company. Mr. Bailey acted for Mr. Dixon in a number of real estate transactions. This relationship endured over several years and was from both accounts mutually beneficial. However, the relationship soured and Mr. Dixon accused Mr. Bailey of causing him heavy financial losses in a real estate dealing. Consequently, Mr. Dixon made a report to the Disciplinary Committee of the General Legal Counsel, and also to the police who charged Mr. Bailey with several criminal offences.

[3] Before he was charged by the police, Mr. Bailey agreed to pay Mr. Dixon the sum of One Hundred and Five Million Dollars (**JMD\$105,000,000.00**) as compensation for his losses. He subsequently commenced payments in keeping with an agreed schedule. Mr. Bailey refused to continue the payments, claiming the agreement was made under duress as he was suffering from the effects of a major illness at the time he signed the agreement. This resulted in Mr. Dixon commencing this claim.

BACKGROUND

[4] Mr. Dixon and his then spouse, Ms. Lorna King, were the registered proprietors of all that parcel of land, located in St. Catherine, and registered at Volume 1257 Folio 545 of the Register Book of Titles, which he wished to develop. The land was encumbered with a mortgage in favour of Century National Bank and Trust Company Limited. For this purpose, sometime in 1994, Mr. Dixon entered into an Agreement for Sale and Heads of Agreement with Messrs Oswald Coke and Claude Bernard.

[5] A term of the Heads of Agreement was the discharge of all outstanding mortgages over the land. In the course of this agreement, Crafton S. Miller & Co., Attorneys-at-Law for Messrs Coke and Bernard, settled the mortgage obligations of Mr. Dixon and Ms. King to Century National Bank and Trust Company Limited by the payment of One Million Dollars (**JMD1,000,000.00**) and received from them the title to the said land. An Instrument of Transfer (the validity of which is questioned by Mr. Dixon) was also executed in favour of Villa Palm Estates Company Ltd. ("**VPE**"). VPE was created under the Heads of Agreement as the vehicle to carry out the development. The company issued thirty thousand shares with the shareholders being Mr. Dixon, Mr. Coke and Mr. Bernard, each holding one share. This arrangement between Mr. Dixon and Messrs Coke and Bernard fell through and was eventually settled in favour of Messrs Coke and Bernard after litigation was commenced by them.

[6] Mr. Dixon subsequently entered into a new Agreement for Sale of the said lands to Consortium Construction Limited ("**CCL**") to facilitate the development of the land. This arrangement also encountered difficulties and CCL entered into a contract with a 3rd party, Royale Homes ("**RH**"), to complete the development. CCL assigned its rights and obligations under this contract to Mr. Dixon. RH completed the development in due course. In the course of this transaction, RH acquired the shares of Messrs Coke and Bernard in VPE and completed the transfer from Mr. Dixon and Ms. King to VPE. Mr. Bailey was the Attorney-at-Law for Mr. Dixon in all these transactions.

[7] The development completed by RH was however said to have been at a financial loss to the company, as such, Mr. Dixon did not receive the returns he expected. This, he contended, was facilitated by Mr. Bailey fraudulently transferring or causing the Title to the property to be transferred to RH.

[8] Being discontented with his efforts to resolve his concerns with Mr. Bailey, Mr. Dixon lodged a complaint with the Disciplinary Committee of the General Legal Council, which was ongoing, when in or around November 2007, Mr. Bailey suffered a medical condition which left him hospitalized. Upon his release from the hospital, Mr. Bailey sought a meeting with Mr. Dixon having heard, he said, that Mr. Dixon had made a

criminal complaint against him. The parties agreed to meet on the 9th of December 2007 (the first meeting). Mr. Dixon attended the meeting in the company of his Attorney-at-Law Mr. Oswest Senior-Smith of the Law Firm Oswest Senior-Smith and Co. Said firm represents him in this claim. He was also accompanied by his wife Mrs. Janice Dixon and one Mr. Winston Finzi.

[9] At this meeting, Mr. Bailey agreed to pay to Mr. Dixon the sum of One Hundred and Five Million Dollars (**JMD\$105,000,000.00**). A document signed by Mr. Bailey indicated this sum was to be paid in full and final settlement of all of Mr. Dixon's interest in twenty-two (**22**) acres of land registered at Volume 1257 Folio 545 of the Register Book of Titles. The document also bore the signatures of Mr. Dixon, Mr. Finzi and Mr. Senior-Smith. Mr. Bailey also subsequently signed a Consent Agreement on the 23rd of December 2007 (the second meeting) which among other things stated that Mr. Patrick Bailey disposed the entire interest in the said land. Mr. Bailey was later charged by the police and subsequently acquitted of all charges.

[10] Mr. Bailey refused to honour the schedule of payments in the Consent Agreement having made two payments totalling Sixteen Million Dollars (**JMD\$16,000,000.00**). Mr. Dixon, in his Amended Statement of Claim filed, has sued to recover the sum of Eighty-Nine Million Dollars (**JMD\$89,000,000.00**) being the balance owed on the contract, plus interest and costs.

[11] Mr. Bailey contended that, having recently suffered a serious medical condition and being hospitalized, he entered into the contract under duress of his medical condition and the threat of criminal action. On that basis, Mr. Bailey has not only refused to pay the balance but has counterclaimed for the repayment of the sum of Sixteen Million Dollars (**JMD\$16,000,000.00**), which was already paid, plus interest and costs.

CLAIMANT'S CASE

[12] Mr. Dixon gave evidence on his own behalf. He called no witnesses. His evidence in chief is contained in his witness statement where he makes the following assertions.

He and his former spouse Lorna King were the registered proprietors of twenty-two **(22)** Acres of land registered at Volume 1257 Folio 545 of the Register Bookbook of Titles. He had Ms. King's Power of Attorney to carry out transactions in relation to the land. In or around 1994 he retained the services of Mr. Bailey to deal with the entire sale of the land. He initially entered into a Joint Venture Agreement in 1994 with Mr. Claude Bernard and Mr. Oswald Coke. Corollary to this Joint Venture Agreement he also entered into an Agreement for Sale of the property to Messrs Coke and Bernard. He asserts that at all material times Mr. Bailey was his Attorney-at-Law while Messrs Coke and Bernard were represented by the firm of Crafton S. Miller & Co.

[13] The Joint Venture Agreement was later terminated and thereafter he entered into an agreement with Consortium Construction Limited ("**CCL**") for it to undertake the development of the land. He contended that the Duplicate Certificate of Title was sent to the Attorneys-at-Law for Messrs Coke and Bernard without his authorization.

[14] Subsequently, Messrs Coke and Bernard commenced litigation against Mr. Dixon. He claimed that on the advice of his Attorney-at-Law, Mr. Bailey, the suit was settled by the payment to them of Twenty-Five Million Dollars (**JMD\$25,000,000.00**).

[15] Mr. Dixon also asserted that the land was transferred to Villa Palm Estates ("**VPE**") and subdivided into one hundred and sixty **(160)** residential lots with individual Titles. This he became aware of after the fact. The majority of the lots were sold to individual purchasers and he received from Mr. Bailey the sum of Two Hundred Thousand Dollars (**JMD\$200,000.00**) for the sale of the lots.

[16] As a consequence, Mr. Dixon made a complaint against Mr. Bailey to the Police Fraud Squad and to the Disciplinary Committee of the General Legal Council. He also made Mr. Bailey aware of his intention to commence civil litigation.

[17] Around the 7th of December 2007, Mr. Dixon received a telephone call from Mr. Bailey requesting a meeting with a view to settling the matter. He understood this to refer to both the civil and criminal proceedings. On the 9th of December 2007 he met with Mr.

Bailey in the company of his Attorney, his wife Janice, and Mr. Winston Finzi, an acquaintance of his. At that meeting an agreement was reached for Mr. Bailey to make the payment of One Hundred and Five Million Dollars (**JMD\$105,000.000.00**) to him. This was captured in a Promissory Note executed by them. At a later meeting, a Consent Agreement with a payment schedule was executed by Mr. Bailey and himself. He contended that Mr. Bailey has unlawfully failed to comply with the agreement.

[18] Mr. Dixon was extensively cross-examined as to the details of the various transactions concerning the land. This Court is not being called upon to make any determination on those transactions, accordingly, I decline to enter into the details of those transactions. This will be looked at in more detail later in this judgment. Suffice to say at this point that the contradictions borne out in cross-examination, as well as Mr. Dixon's demeanour in the witness box, which included his refusal to answer certain questions and his belligerence, were considered in assessing his overall credibility.

[19] He insisted, under cross-examination, that he did not sign the transfer in favour of VPE as the nominee /transferee, having told Mr. Bailey that he would not sign the transfer until he received the deposit of Eight Million Dollars (**JMD\$8,000,000.00**) from the agreed upon Twenty-Two Million Dollars (**JMD\$22,000,000.00**) for the sale of the property. He also contended that he objected to the Duplicate Certificate of Title being sent to Mr. Crafton Miller. He further contended that the signatures of Stafford Dixon and Lorna King which appeared on the Instrument of Transfer were fraudulent. Moreover, Ms. King was not in the jurisdiction of Jamaica on the 20th of September 1996, the date appearing on the Transfer. I must note that Mr. Dixon's insistence that he did not sign the Transfer was a regular refrain, as if a talisman, during his cross-examination.

[20] Under cross-examination he agreed that prior to first meeting with Mr. Bailey, Mr. Bailey had called him and inquired whether he made a criminal complaint against him. He further agreed that at the time Mr. Bailey asked for a meeting with him, Mr. Bailey indicated that he wanted to settle with him. He denied that Mr. Bailey told him that he was suffering the effects of his illness or from the effects of medication. He also denied that

Mr. Bailey said words to the effect that he was not in a position to fight anything and that he was not well and was only interested in getting well.

[21] Mr. Dixon agreed that he was aware that Mr. Bailey became ill in November 2007. He was however unable to say how serious it was but that he was aware that he suffered a stroke. He agreed that he attended the Tony Thwaites wing at the University Hospital of the West Indies to visit Mr. Bailey, there he saw Ms. Stacy Allen whom he knew was a partner in the law firm Patrick Bailey & Co. He agreed that he told Ms. Allen that he and his wife were coming from church and wanted to visit Mr. Bailey who was his long-time friend and Counsel. He agreed that he told her he was shocked and distressed when he heard about Mr. Bailey's stroke. He agreed that Ms. Allen advised him that visitors to Mr. Bailey had been restricted and for that reason he was unable to visit with Mr. Bailey that day. He further agreed that he extolled the virtues of Mr. Bailey to Ms. Allen telling her that he was very kind and helpful to him and his family. He also agreed that he probably told her that Mr. Bailey helped him when he was unable to put food on his table.

[22] Mr. Dixon further agreed that by the time he met with Mr. Bailey at the first meeting, he had already made a complaint to the police fraud squad but was not aware that someone from the fraud squad had visited Mr. Bailey. He denied however that the meeting between himself and Mr. Bailey on the 9th of December 2007 was occasioned because Mr. Bailey said he had received a visit from the fraud squad.

DEFENDANT'S CASE

[23] Mr. Bailey gave evidence that he was acquainted with Mr. Dixon from approximately 1980 and that he had acted for Mr. Dixon in a number of sale transactions in which Mr. Dixon was the real estate agent. He agreed that in or around the 23rd of December 2007, he signed the Consent Agreement, agreeing to pay Mr. Dixon the sum of One hundred and Five Million Dollars (**JMD\$105,000,000.00**). He also agreed that he signed the Promissory Note and Payment Schedule, which was written in hand by Mr.

Dixon's Attorney, Mr. Oswest Senior-Smith, promising to pay the said sum. He agreed that all documents bear his signature but contended that he signed them under duress.

[24] He also maintained that no consideration was given by him for the payment of said sum. He acknowledged that the Consent Agreement stated the consideration to be that he disposed of the entire interest in the said land but contended that at no time was he in a position to do so, and he, in fact, did no such thing. He agreed that the land was transferred on the 29th of January 2003 to VPE, a company in which he said he has no interest. He agreed that he made payments to Mr. Dixon amounting to Sixteen Million Dollars (**JMD\$16,000,000.00**). However, said payments were either made under duress or without consideration.

[25] He indicated that in May 2006, Mr. Dixon lodged a complaint against him with the General Legal Counsel, a matter which he was defending vigorously. On the morning of 14th of November 2007, he fell ill and was rushed to the hospital, where he was admitted in the intensive care unit. He was discharged from the hospital on the 29th of November 2009, remaining under the care of a full-time nurse and the part-time care of his neurosurgeon, Dr. Roger Hunter. He was also referred to Dr. E. Anthony Allen, a consultant psychiatrist, and Dr. Michelle Lewin, a psychologist, both of whom he visited over a period of time.

[26] After his discharge from the hospital, he went to his office and while there he received a visit from an officer attached to the police fraud squad. From that visit, he understood that Mr. Dixon had filed a report against him with regard to the VPE development. He stated that given his weakened physical and psychological state, he was fearful that he would be arrested. He was also fearful that, being a well-known public figure who worked as a journalist on various programmes for some years he would be exposed to public ridicule if he was arrested and dragged before the Courts.

[27] He contended that even though he knew that the allegations were spurious, he was concerned that in his weakened physical and psychological condition, he could not face attempting to defend possible criminal charges. In those circumstances, he called

Mr. Dixon and asked him “what it was all about” and Mr. Dixon confirmed to him that he had made a complaint to the police.

[28] He requested, and Mr. Dixon agreed, to meet with him at the Pegasus Hotel on the 9th of December 2007 to discuss the matter. Mr. Bailey attended the designated locale for the meeting which was attended by Mr. Dixon, his wife, one Mr. Winston Finzi as well as Mr. Oswest Senior-Smith, Mr. Dixon's Attorney-at-Law. He recalled that in the ensuing discussion, Mr. Dixon had contended that he had lost his land worth millions of dollars and said loss was his (Mr. Bailey's) fault as he had put the matter into his hands and he ended up losing his land.

[29] He recalled that he said, on at least four occasions, words to the effect that “I am not in a position to fight anything, I am not well, I am only interested in getting well again”. He also recalled that in view of his recent illness, he feared that he would end up back in the hospital putting his life at risk. He also stated that he feared that if he did not agree to what was being proposed to him, he would end up facing criminal prosecution and public exposure. Such circumstances, he said, would embody the highest level of stress that his doctor advised him to avoid.

[30] He further stated that although he had not caused any loss to Mr. Dixon, he told the assembled group that they should prepare a document and he would sign it. Counsel Mr. Senior-Smith then drafted the Promissory Note, in his own handwriting, on the back of the file jacket that he had with him, and he (Mr. Bailey) signed same. Mr. Bailey further stated that he agreed to pay the sum of Six Million Dollars (**JMD\$6,000,000.00**) on the 12th of December 2007 and agreed to meet again soon. He also stated that he paid said sum because at that time he felt he had no choice.

[31] The parties met again on the 23rd of December 2007 at the same location. Mr. Bailey stated that at this time he was still feeling most unwell and was still unsteady from the medication that he was taking. This time, Mr. Senior-Smith attended the meeting with a typed written document titled “Consent Agreement”. He signed the document after crossing out the words “*without the knowledge or permission of Stafford Dixon of the*

interest in the said land". Again, Mr. Senior-Smith wrote up, in his own handwriting, the payment schedule, which again Mr. Bailey signed. Subsequently, he made a further payment of Ten Million Dollars (**JMD\$10,000,000.00**). Again, he stated he made said payment because he felt he had no choice. At this time, he was still unwell and still under the care of his doctors.

[32] Mr. Bailey stated that he refused however to make the third payment of Forty-Five Million Dollars (**JMD\$45,000,000.00**) due on the 23rd of June 2008, as by that time he was feeling much better. He also refused to make any further payments.

[33] In so far as the history of the transactions entered into by Mr. Dixon were concerned, Mr. Bailey gave extensive details in his witness statement which stood as his evidence in chief. He stated that in or around September 1994, Mr. Dixon told him that he was indebted to Century National Bank with respect to a loan secured by a mortgage, over the subject property, as such, he (Mr. Dixon) intended to enter into a business venture with Messrs Coke and Bernard. Consequently, Mr. Bailey met with all the parties together with Mr. Crafton Miller, of Crafton Miller and Co, Attorneys-at-Law representing Coke and Bernard. Following that meeting, he wrote to Mr. Miller confirming the proposals, a copy of which letter was signed by Mr. Dixon. Counsel Mrs. Camille Meikle-Gooden also assisted Mr. Dixon as legal adviser, attending a number of the meetings.

[34] Mr. Bailey also gave details of the transaction between Mr. Dixon and Messrs Coke and Bernard. One of the salient features of this agreement with Messrs Coke and Bernard was the creation of an entity called VPE to hold the subject Title and to carry out the proposed development. The shareholders of this company were Mr. Dixon, Mr. Coke and Mr. Bernard. The Company was nominated as the transferee of the land. When this agreement failed. Mr. Dixon entered into a new agreement with CCL, the principals being Mr. Trevor Clarke and Ms. Leslene Davis.

SUBMISSIONS ON BEHALF OF THE CLAIMANT

[35] Counsel on behalf of the Claimant, Oswest Senior-Smith, rejected the Defendant's allegations of operating under duress when signing the Consent Agreement. Reliance was placed on Nelson Enonchong, *Duress, Undue Influence and Unconscionable Dealing* (Sweet & Maxwell 2006), **Barton v Armstrong** (1976) AC 104 and **Pao On v Lau Yu Long** [1980] AC 614. He further asked the Court to reject the evidence of the Clinical Psychologist that the Defendant did not know what he was doing at the time. Mr. Senior-Smith noted that the Expert was unnecessarily evasive and biased in his responses and did not assist the Court in an impartial way.

[36] Counsel argued that due to Mr. Bailey's desire for a settlement, he (Mr. Bailey) initiated a meeting and requested that the Consent Agreement and other documents were drafted. Mr. Senior-Smith argued that Mr. Bailey was fully cognizant at the time of signing the agreement. No one coerced him to sign any documents neither did anyone coerce him to make an amendment to the agreement. Further, Counsel contends that Mr. Bailey signed an earlier statement promising to pay the entire sum stated in the Consent Agreement.

[37] It was also Counsel's submission that the threat to commence legal proceedings against Mr. Bailey was not illegitimate. At all material times Mr. Dixon had an honest belief that Mr. Bailey, as his Counsel, caused him to lose his land, said land Mr. Bailey was retained to advise him on during the stages of construction, development and the eventual sale of the lots. Hence, Mr. Dixon acted in good faith in making said threats. He relied on **Marriott v Hampton** (1797) 7 TR 269, **Universe Tankerships v ITF** (1983) AC 366 and **Sawyer & Vincent v Window Brace Limited** (1943) 1KB 32.

[38] Lastly, it was submitted that there was sufficient consideration to Mr. Bailey when Mr. Dixon initially agreed to no longer pursue legal proceedings against him. Mr. Senior-Smith argues that pursuant to **Longridge v Dorville** 106 E.R. 1136 (1821), **Callisher v Bischoffsheim** (1870) 5 QOBO 449, forbearance or an agreement to forebear prosecution or the institution of legal or equitable proceedings to enforce legal or equitable

proceedings, either absolutely or for a certain time or a reasonable time, is sufficient consideration

SUBMISSIONS ON BEHALF OF THE DEFENDANT

[39] Counsel on behalf of the Defendant, Ms. Carol Davis, argued that there was no consideration for Mr. Bailey's payment of One Hundred and Five Million Dollars (**JMD\$105,000,000.00**) to Mr. Dixon as the agreement indicated that the consideration was that Mr. Bailey had caused Mr. Dixon to lose his land. This, she further submitted, was no consideration as Mr. Bailey had done nothing professionally negligent to cause Mr. Dixon to lose his land. She submitted also that the allegation of Mr. Dixon that the money was to be paid in order for him to refrain from suing or continuing legal action against Mr. Bailey could not be the consideration, as the claimant did not refrain from pursuing criminal and disciplinary proceedings. Reliance was placed on **Dunlop Pneumatic Tyre Co. Ltd v Selfridge & Co. Ltd** [1915] AC 847.

[40] Ms. Davis further contended that Mr. Bailey signed the Consent Agreement and other documents accepting liability for Mr. Dixon loss of land under duress. She argued that Mr. Bailey was forced to sign the documents in his weakened medical state because he was threatened with criminal prosecution and feared for his life. She posited that Mr. Dixon well knew of Mr. Bailey's illness and used it to exploit Mr. Bailey's vulnerability. This was evident from the fact that Mr. Dixon was accompanied by his Attorney to the meeting, whilst there was no evidence that Mr. Bailey was encouraged at any time to get his own Attorney. Counsel submitted that the transaction was so rushed that it was written on the back of an envelope.

[41] Further, Ms. Davis submitted that Mr. Bailey's act of deleting the words "*without the knowledge or permission of Stafford Dixon*" on the Consent Agreement was evidence that he only signed the document at the material time because he was under duress. This act evinces that Mr. Bailey was aware that there would be no consideration for the agreement. Counsel submitted that such pressure to sign the documents was illegitimate

and would render the agreement unenforceable. She relied on **Henry Williams and Others v James Bayley** (1866) LR 1 HL 200 and **Universe Tankships v International Transport Workers Federation, The Universe Sentinel** [1983] 1 AC 366.

[42] It was also the contention of Counsel that the dismissal of Mr. Bailey's criminal charges on a no case submission was indicative of the fact that the complaint against the Mr. Bailey was spurious and malicious. Consequently, Mr. Dixon's Claim and Defence to Ancillary claim should be dismissed.

[43] Lastly, Counsel Ms. Davis submitted that if the Court should find that the Consent Agreement was voided for lack of consideration and/or duress, there should be judgment for Mr. Bailey.

ISSUES

[44] Though the cross-examination in this case centred heavily on the details of the various transactions entered into by Mr. Dixon with other parties and the role played by Mr. Bailey as Attorney for Mr. Dixon, this claim is one for breach of contract. There is no issue that the parties entered into a binding legal contract. There is also no dispute that the contract was breached when Mr. Bailey refused to pay the balance of the sums agreed. Mr. Dixon's Attorney was at pains to point out that this was an action for breach of contract and not negligence. The only issue which falls for this Court's determination therefore is whether Mr. Bailey was induced by duress to enter into the Consent Agreement to pay to Mr. Dixon the sum of One Hundred and Five Million Dollars (**JMD\$105,000.000.00**). I specifically decline to make any determination as to whether the Title to the subject property was fraudulently transferred or whether the Defendant was professionally negligent.

THE LAW

[45] It is trite law that a contract is voidable by a party if he entered into the said contract by reason of duress or undue influence, as the existence of any of these factors interferes

with the free consent of that party. Duress has been defined by the authors of **Halsbury's Laws of England** as “*the compulsion under which a person acts through fear of personal suffering.*”¹ There was no controversy that the common law has recognized duress of the person, which includes threats of violence or imprisonment, duress of goods and lately economic duress. Where a contract was made under duress, the innocent party may rescind it. The burden of proof lies on the party who is alleging that he entered into the contract under duress to prove on a balance of possibilities.

[46] These principles are uncontroversial and no issue has been taken by Counsel as to the applicable law. I wish to take, rather than an historical examination, a look at the development of the law and where it stands now.

[47] An examination of the law of duress and its application was undertaken in the recent case of **Pakistan International Airline Corporation v Times Travel (UK) Ltd.** [2021] UKSC 40 by the United Kingdom Supreme Court. **Pakistan v Times Travel** was a case concerning economic duress but its an exposition of the development of the law with respect to lawful threat duress (where the threatened act is in and of itself lawful) gives this Court great guidance as in the case at bar, where there is no allegation that the actions of Mr. Dixon or any of the persons accompanying him were unlawful. An overview of the case is reproduced from the judgment below:²

63. The claimant, Times Travel (UK) Ltd (“TT”), is a travel agent in Birmingham. At the relevant time, its business almost entirely comprised selling tickets for flights to Pakistan on planes owned by the defendant, Pakistan International Airlines Corporation (“PIAC”). PIAC is the national flag carrier airline of Pakistan and, at the relevant time, it was the only airline operating direct flights between the UK and Pakistan. Disputes arose between various travel agents and PIAC as to non-payment of commission that the travel agents claimed was owed to them on the sale of PIAC tickets. PIAC threatened to end any contractual relationship with TT, as it was legally entitled to do, unless TT entered into a new contract under which, inter alia, TT released PIAC from all claims that TT might have against PIAC in relation to commission under the previous contract. TT subsequently sought to rescind the new contract for duress thereby freeing

¹ Halsbury's Laws of England 4th edition, volume 9, para 297

² [2021] UKSC 40, paras 63-64

it to recover the commission, which it claimed it was owed, under the previous contract.

64. At first instance, [2017] EWHC 1367 (Ch), Warren J held that TT was entitled to rescind the contract for economic duress. But that decision was overturned by the Court of Appeal, [2019] EWCA Civ 828; [2020] Ch 98, with the leading judgment being given by David Richards LJ, with whom Moylan and Asplin LJJ agreed. The Court of Appeal held that, as the relevant threat was lawful, duress could only be established if PIAC's demand, that TT give up its claims for commission, had been made in bad faith in the sense that PIAC must not have genuinely believed that it had a defence to TT's claims for commission. It followed that, as Warren J had found that PIAC did genuinely believe that it had a defence to the main claims for past commission - and that, even in relation to a relatively minor claim, where there was clearly no defence, Warren J had still not found that PIAC had been acting in bad faith - lawful act duress was not made out. According to the Court of Appeal, it is insufficient for lawful act duress that PIAC's belief, that it had a valid defence, was unreasonable: in the context of lawful act duress, there is a critical distinction between bad faith demands and unreasonable demands. TT appeals to the Supreme Court against that decision of the Court of Appeal.

[48] Lord Burrows, who authored the minority judgment, took time to give the current state of the law of duress. Lord Hodge, writing for the majority, agreed with him. Lord Burrows pointed out that duress in the law of contract focuses on an illegitimate threat or illegitimate pressure which induces a party to enter into a contract, the remedy for which is the rescission or setting aside of the contract by the threatened party.

[49] Lord Burrows also indicated the two essential elements of duress, as laid down in case law, that a claimant needs to establish in order to succeed in a claim for rescission. He identified that firstly, there must be a threat or pressure exerted by the other party that is illegitimate, and secondly, that the illegitimate threat or pressure caused the person to enter into the contract. Against that legal background, Lord Burrows went on to answer the question, does lawful act duress exist, and if so, what is its scope. Lord Burrows acknowledged that in many contracts it is not unusual that some form of pressure is exerted by one party to induce the other to enter into the contract, and that it was not easy to distinguish between threats that will count as duress and those that would not. After reviewing some academic discussions on the question, he concluded that lawful act

duress, though controversial, does and should exist as a ground for rescinding a contract. He gave three reasons for this.

[50] His first reason was based on the decision of the House of Lords in the case of **Universe Tankships Inc of Monrovia v International Transport Workers' Federation and Others** [1982] IRLR 200 (“**The Universe Sentinel**”), where their Lordships used the language of the pressure needing to be illegitimate and not unlawful. He quoted Lord Diplock in that case as follows:³

It is, however, in my view crucial... to identify the rationale of this development of the common law. It is not that the party is seeking to avoid the contract which he has entered into with another party, or to recover money that he has paid to another party in response to a demand, did not know the nature of the precise terms of the contract at the time he entered into it or did not understand the purpose for which the payment was demanded. The rationale is that his apparent consent was induced by pressure exercised upon him by that other party which the law does not regard as legitimate, with the consequence that the consent is treated in law as revocable unless approbated either expressly or by implication after the illegitimate pressure has ceased to operate on his mind.

Secondly, the crime of blackmail includes threats of lawful action. He pointed out that in **The Universe Sentinel** Lord Scarman had expressly drawn an analogy with blackmail. Lord Burrows quoted the following dicta of Lord Scarman:⁴

The origins of the doctrine of duress in threats to life or limb, or to property, suggests strongly that the law regards the threat of unlawful action as illegitimate, whatever the demand. Duress can of course exist even if the threat is one of lawful action: whether it does so depends on the nature of the demand. Blackmail is often a demand supported by its threat to do what is lawful, eg to report criminal conduct to the police. In many cases therefore, what one has to justify is not the threat, but the demand...

[51] Thirdly, there have been several cases in which it has been accepted that threats of lawful action should entitle the threatened party to rescind the contract. Lord Burrows noted that legitimate threats to prosecute the claimant or a member of the claimant's family, which were threats to reputation or emotional threats was a long established area,

³ [1982] IRLR 200, pg 205

⁴ [2021] UKSC 40, para 88

though usually thought to be within the equitable doctrine of undue influence rather than the doctrine of duress. He explained that the action threatened in these cases of reputation or emotional threats were lawful. He further observed that though those cases treated the issue as falling within the equitable doctrine of undue influence, the underlying element was an illegitimate, albeit lawful threat. He concluded that it was therefore rational to treat them as examples of duress.

[52] Lord Burrows further explained how one determines the illegitimacy of the threat or lawful act. He cautioned that the concept of lawful act duress should not be widely stated in view of the need for certainty and clarity, particularly in commercial law. He also rejected as a general principle a requirement of good faith. Lord Burrows drew the following conclusions:⁵

- (i) *Lawful act duress, including lawful act economic duress exists in English law.*
- (ii) *Three elements need to be established for lawful act economic duress: an illegitimate threat sufficient causation; and that the threatened party had no reasonable alternative to giving in to the threat.*
- (iii) *As the threat is lawful, the illegitimacy of the threat is determined by focusing on the justification of the demand.*
- (iv) *A demand motivated by commercial self-interest is, in general, justified. Lawful act economic duress is essentially concerned with identifying rare exceptional cases where a demand, motivated by commercial self-interest, is nevertheless unjustified.*
- (v) *In relation to a demand for a waiver by the threatened party of a claim against the threatening party, a demand is unjustified, so that the lawful act economic threat is illegitimate, where, first, the threatening party has deliberately created, or increased the threatened party's vulnerability to the demand and, secondly the "bad faith demand" requirement is satisfied. The demand is made in bad faith where the threatening party does not genuinely believe that it has any defence (and there is no defence) to the claim being waived.*

⁵ [2021] UKSC 40, para 136

[53] Lord Hodge accepted the conclusions at one to four on behalf of the majority. Important to the case at bar, Lord Hodge added in relation to point four, that the court in focusing on the nature and justification of the demand, should have regard to, among other things, the behaviour of the threatening party, including the nature of the pressure which it applied and the circumstances of the threatened party. He echoed the caution of Lord Burrows concerning extending the boundaries of lawful act duress.

[54] Lord Hodge, with whom Lord Reed, Lord Lloyd-Jones and Lord Kitchin agreed, however differed from Lord Burrows on what the law has recognized as an illegitimate threat. In his view, the common law doctrine of duress had been developed by invoking the rules of equity in relation to undue influence. In this way, conduct which had been identified by equity as giving rise to an agreement for which it was unconscionable for the party who had conducted himself or herself in that way to seek to enforce said agreement, was treated as “illegitimate”. He otherwise put *that “morally reprehensible behaviour which was judged to render the enforcement of the contract unconscionable in the context of the undue influence”*, had been treated by the English common law as illegitimate pressure in the context of duress.

[55] To underscore his position, Lord Hodge examined some earlier cases of undue influence, now recognized to be acts of duress. I will deal with the cases that are relevant to the issues to be determined in this case. Lord Hodge noted that the boundaries of the doctrine of lawful act duress were not fixed, but the courts should approach any extension with caution. He considered that there were two circumstances in which the courts had recognised and provided a remedy for lawful act duress. The first circumstance was the exploitation of knowledge of criminal activity; the second concerned using illegitimate means to manoeuvre the claimant into a position of weakness to force him to waive his claim. In the case at bar, we are only concerned with the first circumstance.

[56] The first case was **Henry Williams and Others v James Bayley** (1866) LR 1 HL 20, where a son forged his father's signature endorsing promissory notes for a substantial amount of money. Representatives of the bank discovered the forgery and put pressure on the father to repay the money. The representatives of the bank told the father they

could not compound a felony and that conviction for such an offence would involve transportation for life. Faced with this implicit threat to prosecute his son, unless he took on the debt, the father undertook to repay the debt. Consequently, he granted an equitable mortgage over his property as security. The House of Lords held the contract to be illegal as it was an agreement to stifle a prosecution, and also that the contract was invalid on the ground that it had been procured by undue influence.

[57] The second case reviewed was **Kaufman v Gerson** [1904] 1 KB 591, where the wife of a couple, domiciled in France, agreed to repay money misappropriated by her husband, in consideration for her husband not being prosecuted. Such a contract was valid in France where the couple resided. The Court of Appeal upheld the defence of coercion stating that it was impossible to say that it was not coercion to threaten the wife with the dishonor of her husband and children. The court further held that the contract had been extorted from the wife by threats against the husband if she did not comply. The means by which the contract was obtained was also described as unjust and immoral.

[58] A striking feature of these cases was that the threats were overt. Lord Hodge considered a third case, **Mutual Finance Ltd v. John Welton & Sons Ltd** 2 All ER 657 where the threat was not explicitly made. This case involved a financial institution making an implied threat to prosecute a family member for forgery in order to obtain a guarantee from the family company. The receiver of the guarantee was aware that the guarantee was only received because the father of the alleged forger was in poor health and the shock of the prosecution of his son would likely endanger his life. It was held that the guarantee was obtained by undue influence, and the guarantors were entitled to repudiate it. Porter J stated that the principle of duress by the use of unlawful force or threats of unlawful force, extended to any case where the person entering into the undertaking was influenced by the desire to prevent the prosecution, or the possibility of prosecution of the person implicated. Further, the person entering the undertaking must be known and had intended to have been so influenced by the person in whose favor the undertaking was given.

[59] These three cases, Lord Hodge said, are now seen as examples of lawful acts of duress. In summarizing the cases, he said they were all cases in which the court treated the attempt by the party to uphold or enforce the contract as being unconscionable because of that party's behavior. Lord Hodge went on to note the influence of equity on the development of lawful act duress, and intimated that an improper motive or action or illegitimate pressure are closely aligned with the equitable concept of unconscionability.

[60] A similar position had earlier been taken by Lord Cross in **Barton v Armstrong** (1976) AC 104 ("**Barton**") who made the point that:⁶

The scope of common law duress was very limited and at a comparatively early date equity began to grant relief in cases where the disposition in question had been procured by the exercise of pressure which Chancellor considered to be illegitimate - although it did not amount to common law duress.

Therefore, one can conclude that the law of duress as it now stands, overlaps with the equitable doctrines of undue influence and unconscionable bargain.

[61] The common law has developed along much the same trajectory in the United States of America. In the case of **Dunham v Anderson – Dunham, Inc.**⁷ the court concluded that the defendant was fearful of losing his position, having been there for thirty-three (**33**) years, and also not wanting to offend his bosses. Based on this inference that the defendant was concerned about his job security, and on the fact that he was asked to sign a contract about which he had no previous knowledge, the court concluded that the defendant's consent was not freely given and that he signed the contract under duress in those circumstances. The Court of Appeal affirmed this decision and, like the trial court, found duress in spite of the absence of an ultimatum: "*He admitted that his job was not put on the line, nor was he threatened or coerced in any other manner; he admitted that he could have left the room at any time, that no one required him to sign, and that he eventually signed the contract voluntarily.*" Nevertheless, because of the

⁶ (1976) AC 104, pg 118

⁷ 466 So. 2d 1317 (La. App. 1st Cir. 1985), cert. denied, 472 So. 2d 29 (La. 1985).

"nature of the transaction, combined with the background of the various witnesses and their relationships with each other," the court reasoned that there was sufficient evidence for the lower court to have found "duress of the circumstances".

[62] Pao On v Lau Yiu Long [1979] 3 All ER 65, the locus classicus of the law relating to economic duress is another instructive case. In that case the Board held that:⁸

To constitute duress of any kind, there had to be coercion of will so as to vitiate consent. Some of the considerations by the Board to determine whether there had been coercion of will vitiating consent included; whether the person alleged to have been coerced did or did not protest, whether he had an alternative course open to him (such as an adequate legal remedy) at the time of the alleged coercion, whether he was independently advised and whether after entering into the contract he had taken steps to avoid it.

[63] There is also some guidance from the case of **Holness (Pauline) v Grant (Aughuton)** [2022] JMCA Civ 43. The Court of Appeal was concerned with an application to Set Aside Summary Judgement. In the course of the decision, the court had to determine whether the issue of unconscionable bargain or undue influence was raised on the pleadings. D Fraser JA., with whom the other members of the court agreed, pointed out that unconscionable bargains stood alone as a cause of action, and was available even where there was no proof of undue influence. He mentioned the caution that the courts have historically adopted regarding reliance on unconscionable bargain to avoid a contract, based on the general principle of contract, the law will not intervene to invalidate agreement merely on the basis that it was a hard bargain. Here too, the unconscionability of the act took precedence.

[64] The last point to consider is whether the illegitimate threat had to be the only, or the substantial reason for entering into the contract. This was answered in the case of **Barton**, where the parties were shareholders in a company and the appellant alleged that he had been coerced into agreeing to buy out the respondent's interest in the company. He alleged that the respondent had threatened to have him murdered. The trial judge

⁸ [1979] 3 All ER 65, pg 67

found that the respondent had made these threats. However, he also found that the appellant's true motivation for making the agreement was commercial necessity, rather than because he was threatened. The appellant appealed. The issue under consideration by the Privy Council was whether the appellant needed to show that the threats caused the appellant to enter into the contract such that the contract was void for duress. The Privy Council allowed the appeal holding that the appellant was not required to show that he would not have entered the contract had the threats not been made. It was sufficient that the threat operated on his mind or 'contributed' to his decision. As this was found to be the case in **Barton**, the contract was void. Lord Cross stated:⁹

Their Lordships think that the same rule should apply in cases of duress and that if Armstrong's threats were a reason for Barton's executing the deed, he is entitled to relief even though he might well have entered into the contract if Armstrong had uttered no threats to induce him to do so.

[65] This case also treated with the burden of proof. The court held that the burden was on the defendant to show that the threat did not contribute at all to the decision. It would not matter that the claimant had other reasons or motives which might have led him to make the same decision. Lord Cross stated that:¹⁰

If Barton had to establish that he would not have made the agreement but for Armstrong's threats then their lordships would not dissent from the view that he had not made out his case but no such onus lay on him. On the contrary it was for Armstrong to establish if he could that the threats which he was making and the unlawful pressure which he was exerting for the purpose of inducing Barton to sign the agreement and which Barton knew were being made and exerted for this purpose in fact contributed nothing to Barton's decision to sign.

Lord Wilberforce and Lord Simon who dissented, accepted that the threats only needed to be 'a' reason to enter the contract, not the only reason or the most important reason. However, they thought that on the facts that it was not established that the threats contributed to the decision. They characterised the decision as entirely motivated by commercial necessity.

⁹ (1976) AC 104, pg 119

¹⁰ Ibid, pg 120

ANALYSIS

[66] The Court's approach to the evidence will be in three parts. Firstly, what, if any pressure was applied to induce the Defendant to sign the Promissory Note and Consent Agreement? Secondly, was the pressure illegitimate? And thirdly, if there was illegitimate pressure, was this a cause of Mr. Bailey signing the Promissory Note and Consent Agreement?

Was there pressure exerted?

[67] Mr. Bailey contends that he feared criminal prosecution having been visited by a member of the Police Fraud Squad. This was heightened due to his recent medical trauma having suffered a heart attack which led to him being hospitalized in the intensive care. He said that it was in this context, fearing for his reputation and health, and indeed his life, that he made contact with Mr. Dixon. The Court appreciates that Mr. Dixon would be hard pressed to refute this evidence given by Mr. Bailey.

[68] Mr. Dixon agreed in cross-examination that he was aware of Mr. Bailey's illness and that it was of a serious nature. He knew that Mr. Bailey was admitted to the intensive care unit. He was also aware that Mr. Bailey had been visited by a member of the fraud squad. Therefore, it is a reasonable inference that Mr. Bailey's request for a meeting to discuss a settlement, having been visited by the police, was at least in part prompted by his illness. It is also reasonable to infer that Mr. Dixon knew this, in view of Mr. Bailey's position in the ongoing contested disciplinary proceedings, where Mr. Bailey was challenging the assertions of Mr. Dixon that he was responsible for his financial losses relating to the property.

[69] Mr. Dixon attended the meeting with his Counsel, his wife and another party who appeared to be present as a witness. Prior to the meeting Mr. Dixon did not inform Mr. Bailey that he would be accompanied to the meeting. This, in Mr. Bailey's words, was when he "*knew the picture had changed*". No evidence was given by Mr. Dixon of what was said by him or his Counsel at the meeting, or whether he gave an explanation for the

presence of the persons with him. He maintained, however, that Mr. Bailey dictated the terms of the agreement, which were written down by the Attorney, suggesting the agreement was all Mr. Bailey's idea. He gave no evidence as to the origin of the figure stated in the documents.

[70] Mr. Bailey, in his witness statement, said while he did not recall the details of the discussions, he did recall that the proposal came from Mr. Dixon, who accused him of causing the loss of his lands worth millions of dollars. Mr. Bailey said that in view of his health, and fearing criminal charges, he told them to prepare a document, which he would sign. This was hand written by Mr. Senior-Smith on a file jacket and which Mr. Bailey duly signed.

[71] I find Mr. Bailey's account to be the more probable scenario. Mr. Dixon being present with his Attorney and a witness, no doubt intended that this meeting would end with an agreement of some sort. It is also unlikely that Mr. Bailey would be the one determining the amount of loss Mr. Dixon claimed to have suffered.

[72] The medical evidence supports the undisputed evidence of Mr. Bailey of his medical condition. I do not make any finding at this time as to whether Mr. Bailey was suffering a mental impairment.

[73] All this evidence therefore is the backdrop or circumstances in which the Promissory Note and Consent Agreement were signed. Did these circumstances jointly put any pressure on Mr. Bailey to enter into the Consent Agreement? Undoubtedly, they did. I find that Mr. Dixon's attendance at the meeting with his Attorney-at-Law and a witness, without warning, in the circumstances described above, constituted pressure on Mr. Bailey.

Was the pressure illegitimate?

[74] The next question is whether this pressure is illegitimate. It appears to me to be a reasonable inference that Mr. Dixon and his Attorneys were aware that the possible

pending criminal charges and visit from the fraud squad would be a relevant circumstance operating on Mr. Bailey's mind. Mr. Dixon agreed that Mr. Bailey in his telephone call to him said he wanted to settle the civil and criminal proceedings. Mr. Dixon intended to leave that meeting with some form of settlement as he took along with him two persons whose only role could be to be witnesses to whatever agreement was made. Mr. Dixon had visited Mr. Bailey twice in the hospital, once in ICU when he did not see him due to Mr. Bailey's visitor restrictions. Mr. Dixon was, therefore, contrary to the evidence given by him, aware that Mr. Bailey had been seriously ill. It could be that his visits were not merely altruistic, as Mr. Bailey was visited by the fraud squad mere days after his discharge from the hospital.

[75] In his Amended Particulars of Claim, Mr. Dixon asserted that Mr. Bailey agreed to pay him the sum in order for him to "... *refrain from suing and continuing with **disciplinary and/or other legal proceedings**...*" There can be no doubt that other legal proceedings included criminal proceedings as Mr. Dixon had already made a criminal complaint to the police. Though it was not expressed that signing the documents would affect the bringing of criminal charges, it is beyond peradventure that Mr. Dixon knew that Mr. Bailey wished to avoid a criminal prosecution. Consequently, Mr. Dixon used this knowledge to his advantage to extract an agreement from Mr. Bailey in order to compensate him for the losses he claimed were caused by Mr. Bailey. It is this unexpressed ultimatum that is unconscionable and therefore illegitimate. In the circumstances where it was clearly likely that Mr. Bailey would be disadvantaged by his illness, it was repugnant to morality and socially acceptable standards to have exacted, under the threat of criminal proceedings, a promise from him to pay what, by any standards, was an extremely large sum of money.

[76] I therefore conclude that illegitimate pressure was brought to bear on Mr. Bailey to induce him to enter into the contract.

Was the illegitimate pressure a cause for the Defendant entering the contract?

[77] Mr. Bailey contends that he had no legal responsibility to Mr. Dixon, there being no merit in his various claims/reports, and but for the duress, he would not have entered

into the contract. The central question is whether Mr. Dixon's claim that Mr. Bailey fraudulently transferred his Title had any merit. This area was the main focus of the evidence given and requires a closer examination of the transactions relating to the property in question. I find this may be the best understood in point form instead of narrative. Areas in dispute are noted.

- Mr. Dixon and Ms. Lorna King are former spouses and were the registered proprietors of 22 acres of land situated in St. Catherine.
- At all material times Mr. Dixon had a Power of Attorney granted by Ms. King to deal with the land
- There was a mortgage over said land in favour of Century National Bank.
- The mortgage payments were in arrears.
- In about 1994 Mr. Dixon entered into agreement /discussion with Messrs Bernard and Coke to develop the land.
- Mr. Dixon and Ms. King executed an Agreement for Sale of the land to Messrs Bernard and Coke
- The parties also entered into a Heads of Agreement (a Joint Venture Agreement).
- The terms of the agreement included:
 - (i) That the property had a current market value of Twenty-Two Million Dollars **(JMD22,000,000.00)**.
 - (ii) That a Development company would be incorporated to take the development to completion.
 - (iii) That Messrs Coke and Bernard would have no less than 66 2/3 percent of the shares and Mr. Dixon 33 1/3 percent.

- (iv) That the profits from the sale of the lots would be divided between Coke, Bernard and Mr. Dixon, as to one third each.
 - (v) That Messrs Coke and Bernard would make a cash “investment” of Eight Million Dollars (**JMD8,000,000.00**).
 - (vi) That should the agreement be rescinded, Messrs Coke and Bernard would be repaid all sums advanced by them.
- The mortgage was redeemed by Messrs Coke and Bernard and upon payment by them of One Million Dollars (**JMD1,000,000.00**), the Duplicate Certificate of Title was sent to their Attorneys-at-Law Crafton S, Miller and Company.
 - The vehicle, VPE, to carry out the development under the Joint Venture Agreement was incorporated, the shareholders of which were Mr. Dixon, Mr. Bernard and Mr. Coke, in equal shares.
 - Title is sent to Patrick Bailey and Company to effect the transfer.
 - On instructions to from Mr. Dixon not to effect transfer, the Title and transfer are returned to Crafton Miller & Company (area of dispute).
 - Messrs Coke and Bernard are unable to complete the Joint Venture Agreement.
 - Mr. Dixon enters into agreement with CCL to develop the land.
 - Messrs Coke and Bernard sue Mr. Dixon and demand repayment of sums advanced.
 - CCL was unable to complete agreement and entered into a sub-contract with RH.
 - Mr. Dixon is aware of this and makes no demur, though not a party to this arrangement.
 - CCL exits contract completely.

- RH obtains mortgage over land for Twenty-Five Million Dollars (**J\$25,000,000.00**) which is paid to Messrs Coke and Bernard to settle the litigation against Mr. Dixon. (This was disputed)
- Mr. Dixon retains one-third interest in VPE.
- Messrs Coke and Bernard transfer their shares in VPE to RH
- RH subdivides the land into 160 lots and completes the development.
- Two Hundred Thousand Dollars was (**J\$200,000.00**) was paid to Mr. Dixon.

As seen, the areas of dispute are (1) Whether the transfer was signed by Mr. Dixon and Ms. King? and (2) Whether Mr. Dixon agreed to transfer the property to VPE?

[78] The Claimant vehemently denies that he or Ms. King signed a transfer in respect of the land. He gave evidence that the Instrument of Transfer was sent to him and he refused to sign it. He said he told Mr. Bailey that the transfer was not to be effected until a deposit of Eight Million (**J\$8,000,000.00**) was paid to him. He also requested that the Title not be sent to Mr. Crafton Miller. This is inconsistent with his evidence under cross-examination in which he stated that he agreed that the Title would be returned to Mr. Crafton Miller.

[79] Exhibit 8, the Instrument of Transfer, was shown to Mr. Dixon. He denied that his signature or that of Ms. King appeared on the document. He stated that Ms. King was not in the island at that time, not being in island since some two years prior. Ms. King had given him her Power of Attorney concerning all transactions relating to the land.

[80] Mr. Bailey on the other hand contends that Mr. Dixon and Ms. King had in fact signed the Instrument of Transfer at his office. He exhibited, as proof of her attendance at his office, a copy of a page of Ms. King's passport which he said he made at the time. This is an issue of credibility. The signatures on the Transfer have been a bone of contention between them. It also forms the basis of the reports made to the Disciplinary

Committee of the General Legal Council and to the Police Fraud Squad. On this issue, Mr. Dixon has produced not one bit of supporting evidence. He did not seek to produce proof that Ms. King was and remained out of the island at the time of the purported signing of the transfer. Said evidence could have been produced from the Passport, Immigration & Citizenship Agency (“**PICA**”) or by production of the relevant passport pages. No explanation was given for Ms. King’s unavailability to give evidence. No explanation offered for how the Mr. Bailey may have come in possession of pages of the passport of Ms. King, she being off the island. He produced no expert or other evidence of the handwriting of Ms. King. Given the importance of this claim of fraud to Mr. Dixon, the paucity of the evidence to support it is striking. I am reminded that the more serious or germane the allegation of fraud, the more cogent should be the evidence required to prove it.¹¹

[81] It seems, as turned out to be in the case of **Regina v Patrick Bailey**, that Mr. Dixon would have had a real difficulty proving beyond a reasonable doubt that the signature was a forgery and therefore fraudulently obtained. As admitted, Mr. Bailey is a seasoned and experienced senior Attorney-at-Law, practicing at the criminal and civil bar. He would be able to assess the state of the evidence against him. In any assessment of the allegations and evidence, he would have had to conclude that Mr. Dixon’s case was not overwhelming. It appears that this position would have been justified as the charge of forgery was not proceeded with and the charge of fraudulent conversion was dismissed on a no case submission in the Parish Court.

[82] The next question is whether Mr. Bailey negligently or fraudulently handed over the Title and Instrument of Transfer. As pointed out, there is some inconsistency as to whether Mr. Dixon authorized Mr. Bailey to send the Title and Instrument Transfer to Mr. Crafton Miller. Here Exhibit 23, letter dated May 7, 1997 from Patrick Bailey & Company to Crafton Miller & Company is relevant. This letter is written after a meeting which

¹¹ **Vaccianna v Herod** [2005] EWHC 711 (Ch), para 21

included Mr. Bailey, Mr. Miller and Mr. Dixon. Mr. Bailey makes it clear that ethically and professionally, having given an undertaking to receive the Title to execute the transfer, he was bound to return it since the transfer was not to be executed. This evidence would stand against any claim of dishonest or fraudulent conduct.

[83] The final aspect is the transfer to VPE and RH interest in VPE. Mr. Dixon's credibility on this is clearly in question as he gives several accounts as to his knowledge of the transfer to VPE. At first, he contends that he had knowledge of the company VPE, only having been given the company documents by Mr. Bailey. He had no knowledge of the shareholding and specifically that he, Mr. Bernard and Mr. Coke each held one share. Mr. Dixon is not a novice in business matters. He is a real estate agent. He has a company, Magnus Realty. I find he was well aware of the company documents and understood what they were. I am fortified in this when one looks at paragraph 58 of the Defence of the 1st and 4th Defendants in the suit brought by CCL against Stafford Dixon, Patrick Bailey & Company, Villa Palm Estates Limited and Lorna Jannett King, 1st to 4th defendants respectively. In the Defence, signed by Mr. Dixon for himself and on behalf of Ms. King, Mr. Dixon states that:

... the 1st and 4th Defendants aver that the Claimant will know from as far back as on or around October 25, 2002 that the subject land would be transferred to Villa Palm Estate Limited which Company, following the resignation of Messrs Ossie Cole and Claude Bernard, would have been the vehicle to complete the subdivision and also to protect the interest of the main stakeholders being the Claimant, the 1st Defendant and Royale Homes Limited (and as set out in letter dated October 25, 2002 from Messrs Wong Ken & Co., Attorneys-at-Law to the 2nd Defendant a copy of which was received by the Claimant.

[84] Initially Mr. Dixon denied making this statement, then admitted it, then reverted to denying it again. When confronted with his signature on the document, he said that this paragraph was not included in the document he signed. Notably, his Attorney was not Patrick Bailey & Co. That bald self-serving assertion of dishonesty on the part of Learned King's Counsel representing him then is being given short shrift.

[85] The foregoing makes it clear that Mr. Dixon must have been well aware of the arrangement that VPE would be the vehicle to complete the development of the land. It

was a term of the Heads of Agreement, which he did not deny that he signed. He knew that the settlement with Messrs Coke and Bernard would be satisfied by a mortgage over the land. He says he was told by Mr. Bailey that was the best course. Whether that was good advice or not is not for this Court's deliberation. What is clear is that there is no evidence that he made any objection to this course of action.

[86] The mortgage used to defray his obligation to Messrs Coke and Bernard could not be obtained by VPE or RH without the security of the property. RH had no reason to hand him the money he needed to pay Messrs Coke and Bernard as a gift. It stands to reason that his claim to be unaware of the transfer of the property to VPE would have difficulty being sustained. Again, Mr. Dixon's case was not overwhelmingly pointing to success such that this was the probable cause of Mr. Bailey entering into the agreement.

[87] Against this background, it is a reasonable inference that the threat of criminal prosecution, so soon after he suffered a debilitating illness, was a substantial cause of Mr. Bailey agreeing to pay these sums and to signing the Consent Agreement and Promissory Note. The medical reports in evidence support the undisputed evidence of Mr. Bailey's medical condition. It is not necessary for which me to determine whether Mr. Bailey was mentally impaired at the time he entered into the agreements. All that the Court is required to determine is whether the threat of criminal prosecution was a cause of Mr. Bailey entering into the contract. Mr. Dixon, who bears the burden of proof, has not satisfied the Court on a balance of probabilities that it was not.

[88] The Court concludes that the Promissory Note and Consent Agreement were signed by Mr. Bailey under the threat of criminal proceedings being brought against him, this constituted illegitimate pressure. Consequently, Mr. Bailey signed said documents under duress. Mr. Bailey took steps to reprobate the validity of the Consent Agreement when he refused to make the third payment on the 23rd of June 2008. This was about six **(6)** months from when the contract was made and in a reasonable time. For these reasons it is just that the contracts be voided. All sums paid thereunder must be repaid.

POSTSCRIPT

[89] There were no submissions on the rate of interest. The Attorneys-at-Law for the parties were asked at the time of delivery of the Judgment to indicate to the Court their consideration for the formulation of the Orders including the interests. Counsel Ms. Davis undertook to do so and to indicate to the Claimant's Attorneys-at-Law, this was done. No alternate formulation was proffered by the Claimant's Attorneys-at-Law. The Orders below reflects that formulation.

ORDERS

- (1) Judgment for the Defendant on Claim.
- (2) Judgment for the Defendant on the Counterclaim for the sum of Sixteen Million Dollars **(JMD\$16,000,000.00)** with interest on the sum of Six Million Dollars **(JMD\$6,000,000.00)** at Three per cent **(3%)** per annum from 12th December 2007 to 7th February 2008 and interest on the sum of Sixteen Million Dollars **(JMD\$16,000,000.00)** at Three per cent **(3%)** per annum from 8th February 2008 to the date of Judgment (September 26, 2023).
- (3) Cost of the Claim and Counter Claim to be the Defendant's.
- (4) The Defendant's Attorney-at-Law to prepare file and serve order.