



[2015] JMSC Civ. 31

**IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN CIVIL DIVISION  
CLAIM NO. 2009HCV 06014**

<b>BETWEEN</b>	<b>RICHARD FRANCIS</b>	<b>CLAIMANT</b>
<b>AND</b>	<b>VINTON SIMMS</b>	<b>1<sup>ST</sup> DEFENDANT</b>
<b>AND</b>	<b>MARIA/MARIE SIMMS</b>	<b>2<sup>ND</sup> DEFENDANT</b>

Mrs. Tamara Francis Riley-Dunn for the Claimant instructed by Nelson-Brown Guy & Francis.

Mr. Lawrence Haynes for the Defendants

What portion of the property, if any, did the owner Mr. Banned 'gift' to the Claimant and what portion did he sell to the Defendants and the legal consequences that flow therefrom. Did the Defendants unduly influence the Claimant to sign Instrument of Transfer, alternatively is the transfer null and void by reason of mistake. Alternatively are the Defendants holding a 1/6<sup>th</sup> share of the property on trust for Claimant.

Heard February 5, 6, 7, April 10, July 2, 2014 March 3, 2015.

**McDonald J.**

**Introduction**

[1] This action is brought by the Claimant and seeks from his further Amended Fixed Date Claim filed on 29<sup>th</sup> February 2012 among other things the following:-

- (a) A declaration that the Claimant is entitled to one half share in that property known as Lot 67 East Albion in the parish of St. Thomas, being the lands comprised in Certificate of Title registered at Volume 1428 Folio 927 (hereinafter referred to as 'the said property')
- (b) An order declaring transfer number 1614434 registered on the 10<sup>th</sup> day of

September 2009 on the Certificate of title for the said property null and void by reason of the Defendant's procurement of the said transfer by undue influence, or alternatively that the Defendant have held or holds 1/6<sup>th</sup> interest (in) the said land as trustee for and on behalf of the Claimant.

- (c) Alternatively, an order declaring transfer number 1614434 registered on the 10<sup>th</sup> day of September 2009 on the Certificate of Title for the said property null and void by reason of mistake.
- (d) An order directing the Registrar to amend the Certificate of Title for the said property so that it states that the Claimant is the owner of a one half share of the said property and the Defendants together share the remaining one half share.
- (e) In the alternative, an order requiring the First and Second Defendants to execute and deliver an Instrument of Transfer, transferring a 1/6<sup>th</sup> share of the said property into the Claimant's name as tenants-in-common in unequal shares.

### **Background**

- [2] This dispute centers around "the property" now registered in the names of Richard Francis, Vinton Simms and Marie Simms, at tenants-in-common in equal shares. Prior to March 13, 2009 the said property was unregistered land. The parties obtained their right of ownership through Mr. Henry Barned who then retained sole ownership of the property. He was allotted the land by the Ministry of Environment and Housing.
- [3] The Claimant maintains that he is entitled to receive title for the portion of the property that he occupies, and has occupied exclusively for many years and the Defendants maintain that he is only entitled to a one third share as designated in the Certificate of Title. It is the evidence of Mrs. Simms that the only agreement the Defendants and Mr. Barned had was for them to get 2½ chains by 5 chains of land. She said that if they were to insist upon this, it would have amounted to them claiming almost the entire area of land that Mr. Barned was entitled to, as

they were advised by the Commissioner of Lands that he was only entitled to 1.25 acres and not 1.75. She said that because of this in honour of Mr. Barned's wish that the Claimant should have a portion of the land, the Defendants agreed to give him a 1/3 share and this was explained to him before both Justices of the Peace Mr. Morris and Mrs. Frith and was accepted by him.

- [4] It is the Claimant's case that at no time was any one of the documents that he signed explained to him by Mrs. Frith or Mr. Morris, and neither did he ask them to explain it. He asserted further that he never signed any document with respect to the land with the understanding or agreement that the title when issued would only give him a 1/3 share in the property.

#### **Claimant's Case**

- [5] It is the Claimant case that Mr. Barned always intended to gift him a portion of the land and sell only a portion of the land to the Defendants. He relies on Exhibit I which is a handwritten letter signed on 21 July 1997 by Mr. Barned, the Defendants and himself in which Mr. Barned said that he "sold a portion of this property to Mr. Vinton Simms and Mrs. Maria Simms, the size of 2½ chains wide facing the front of this property from left to right side and 5 chains long including my house"

The Claimant contends that Mr. Barned genuinely believed his property to be measure more than 2½ by 5 chains as he had in his possession an application for allotment of land dated 23<sup>rd</sup> February 1993 which states that the lot measured 1¾ acres / 1.75 acres. In reality the Lot measured only 1¼ acres / 1.25 acres.

The Claimant asserted that Mr. Barned's intention was that he was to receive a part of the land was clear.

The Agreement to Transfer Land signed by Mr. Barned on 24<sup>th</sup> April 1998 instructed the Commissioner of lands to issue title in the names of Richard Francis, Maria Simms and Vinton Simms. Again, Mr. Barned's intention to give a portion of the land to the Claimant as a gift was repeated on 11<sup>th</sup> December 2000

(Exhibit 21) when he again described the portion as being half of the property he owned.

- [6] There is no dispute that the Agreement to Transfer was silent on the issue of how the ownership of the property was to be shared. The letter of 21<sup>st</sup> July 1997 is ambiguous as it states that only a portion is being sold, but sell what is the entire parcel of land to the Defendants. The Notice of Possession does not state the share for each person, it simply states all three names. In fact, no other document signed by the parties states unequivocally the interest that each person possesses in the land, same and except the Instrument of Transfer. Apart from the Land Settlement Purchase Form (Exhibit 22) and the Instrument of Transfer (Exhibit 11) which contain the words tenants-in-common none of the other documents stated specifically the share to be held. Mrs. Francis Riley-Dunn asked the court to place no judicial weight on the Land Settlement Purchase Form, but instead look at other documents pertinent to the property. She submitted that the Land Settlement Purchase Form was witnessed by a Notary Public in the state of New York. The Claimant in re-examination said that he did not go to the state of New York to sign the said document. How then did his name appear on the document. She said this leads one to question the credibility and veracity of the Defendants. Mrs. Francis Riley-Dunn submitted that this was an appropriate case for the court to look behind the initial set of documents to properly construe Mr. Barned's intent. Especially since it is admitted by Mrs. Simms in her oral evidence that at the time of purchase the property was never surveyed by the Defendants or Mr. Barned; it is quite possible that the measurement given as the area sold to them was merely a guess.
- [7] She submitted further that the court can look at what exists on the land to interpret the letter signed by all the parties on 21<sup>st</sup> July 1997. She placed relevance on the case of Pennock v Hodgson (2010) ALL ER 287 at page 12 per Mummery LJ.

In this case, the parties were neighbours and there was a dispute between them as to the true boundary line that separated their properties. The property was owned by one individual before it was divided and sold to the parties to the Claim. At the respective dates of purchase each purchasing party thought themselves entitled to the bed of a narrow stream. The Deed of Conveyance was silent on the physical features of the land conveyed, and as such the judge at first instance looked to extrinsic evidence to determine the true intent of the parties at the time of the conveyance, and how the parties operated under that belief. On appeal, the Defendant stated that the Court ought not to have treated evidence of the features of land conveyed as being admissible since it was extrinsic to the conveyance unless the conveyance was ambiguous, the appeal was dismissed.

Lord Justice Mummery stated that “extrinsic evidence of the background of the conveyance is always admitted as part and parcel of contextual construction.” He further added that “looking at the evidence of the actual known physical condition of the relevant land at the date of the conveyance and having the attached plan in your hand... are permitted as in exercise in construing the conveyance against the background of the surrounding circumstances... Although in a sense that approach takes the court outside the terms of the conveyance, it is part and parcel of the process of contextual construction.”

[8] Mrs. Francis Riley-Dunn submitted that on the 24<sup>th</sup> April 1998 Mr. Barned prepared a drawing showing the section to be gifted to the Claimant and that sold to the Defendants (Exhibit 20).

Her oral evidence established that in 1997 there were two houses on the land, one occupied by the Claimant and Mr. Barned and the other was accepted to be an old home. Mrs. Simms gave evidence that the house Mr. Barned occupied was located behind the store /shop which was operated by Valcie Perry/ Winsome.

Counsel said that by using the said drawings done by Mr. Barsed oral and written evidence confirms that the division dictated by Mr. Barsed in that 1998 drawing is essentially what exists on the land to this day.

She also asked the court to look at the Defendants actions prior to the issuance of the Certificate of title.

- [9] Counsel Mrs. Francis Riley-Dunn opined that the letter written by Mr. Barsed which was witnessed (Exhibit 21) reflects that he and the Defendants had in fact made an arrangement that they would take ownership of the one-half of the entire property. If the Defendant had agreed to this and have lived their lives and conducted their affairs in keeping with this arrangement up to the point at which the Certificate of title had been issued, it leads to the inescapable conclusion that the Defendants are simply taking advantage of the fact that Certificate of Title had been issued reflecting them both to have a 2/3 interest when it was clearly intended for them only to have a 1/2 interest.

#### **Defendants Response**

- [10] Mr. Haynes submitted that the Claimant has brought in aid of his claim, Exhibit 2 (Agreement for Transfer) the typed letter purportedly signed by Mr. Barsed before his Solicitor in England on the 24<sup>th</sup> April 1998. This is some nine months after Exhibit 1 was executed. Exhibit 1 dated 21<sup>st</sup> July 1997 is signed by all the parties and is therefore the document of them all. It binds all the relevant parties and constitutes a contract. In contrast, Exhibit 2 is signed by Mr. Barsed alone and is distinctly different in purport and meaning to Exhibit 1.

He said that whereas Exhibit 1 speaks to the specific dimension sold to the Simms, Exhibit 2 does not. Exhibit 2 speaks to the amount of land that Mr. Barsed purportedly 'owned' (i.e. 1.75 acres) Exhibit 2 does not. Exhibit 2 therefore cannot be deemed an extension or explanation of Exhibit 1.

The Defendants will ask the court to find that exhibit 2 is of no legal effect and is totally unhelpful in assisting the court in determining the issue raised in the Fixed Date Claim Form, namely, the question of undue influence and mistake

[11] I find that Exhibit 1 letter dated 27<sup>th</sup> July 1997 penned by Mr. Barned signed by him, the Defendants and Claimant is not a contract between them. It is not a contract for the sale of land. Further there is (nothing) in this document dealing with any transfer or consideration. It is a declaration that: (a) Richard Francis is given complete charge of his property and buildings. (b) He sold a portion of the property to Mr. Vinton Simms and Mrs. Maria Simms of the size 2½ chains wide facing the front of the property from left to right side and 5 chains long including his house.

(c) Mr. and Mrs. Simms and himself have given complete and total charge of the entire property and buildings to Mr. Richard Francis.

The fact that Mr. Barned described the property sold to the Defendant does not necessarily mean that it is accurate, that is how he saw it.

[12] It is the evidence of Mrs. Simms that at the time of purchase the property was never surveyed by the Defendants or Mr. Barned. It is quite possible that the measurement given as the area sold to them was merely a guess. It is also her evidence that it was not until 2010, 13 years after the land was purchased that she became aware that the entire parcel of land measured about 1¼ acres which is the equivalent of 2½ by 5 square chains. Despite not having the measurement of the property until 2010, the Defendants contend that Mr. Barned sold them the entire parcel of land. It is clear from the evidence that Mr. Barned genuinely believed his property measured more than 2½ by 5 chains, as he had in his possession an application for allotment of land dated February 23, 1993 which stated that the lot measured 1¾ acres.

[13] At trial the type written letter signed by Mr. Barned and witnessed by his solicitor in England was admitted into evidence as Exhibit 20 and so was document signed by Mr. Barned and witnessed December 2000 along with diagram admitted into evidence as Exhibit 21 [Mrs. Simms in cross examination identified Mr. Barned's signature on Exhibit 20] . These documents were admitted as evidence because they show disposition of property (i.e. declaration against

property interest) against the deceased Henry Barsed's property in keeping with the principle of exception to the hearsay rule. They are declarations against interest, showing that Mr. Barsed was divesting himself of interest, showing that he is no longer the owner of the property.

Exhibit 20 shows how the property is to be divested. It reveals the entire intention. of Mr. Barsed signed before a solicitor in England. It reads:-

"I Henry Barsed sole owner of lot 67 at the above address size 1.75 acres when last surveyed; gave to Mr. Richard Francis one half of the entire property as a gift. This half consist of half the width across the front and down the entire length of the property which include the store at the front and all structures on the land. The other half on the left side when facing the property from the front gate to half the width across and down the entire length including all structures on this side of the land I sold to Mr. Simms.....The diagram below illustrates the division of the property.

[14] In the context of the whole case, Exhibit 20 is looked at as the intention of Mr. Barsed, it is a declaration against his interest and is admirable. Even if there was a misdescription in acreage in Exhibit I, this is clarified by the diagram in Exhibits 20 and 21. It is consistent in showing what he meant as to how the property should be divided.

Exhibit 21 is also a declaration against interest. In exhibit 21, Mr. Barsed is reinforcing the division of property in half and half.

In particular paragraph 3 reads:

"I stated on April 24, 1998 and today 11<sup>th</sup> December 2000 that Richard Francis who is not related to me in any way should be given as a gift the other half of this property which has at the front.

1. A Large container used for business purposes, and
2. A dwelling illustrated by the attached diagram.

The illustrated diagram also identifies the agreed upon property division..."

[15] Exhibit 21 illustrates Mr. Barned's continuing intention that the property be divided  $\frac{1}{2}$  and  $\frac{1}{2}$ . The details as to how the land was to be divided are written in the documents Exhibit 20 and 21 and illustrated in the diagrams therein. There is no other document to contravert that create and put forward by Mr. Barned.

[16] Exhibit 2 – Agreement for Transfer is a document signed by Mr. Barned agreeing to transfer to Mr. Vinton Simms, Maria Simms and Richard Francis his interest in Lot 67 containing 3 roods and for Certificate of Title to be prepared in the name of Vinton Simms, Maria Simms and Richard Francis. This document is initialed to the left corner by the Defendants and the Claimant. It is silent on the issue of how ownership of the property was to be shared.

Attorneys for the parties agreed that in the absence of a delineating portions or any share being mentioned, this prima facie constitutes a joint tenancy to the persons intended to be benefited. However, this is not what happened in this case. Exhibit 2 is dated 24<sup>th</sup> April 1998 and signed by Mr. Barned in the United Kingdom before his Solicitor Lois Hawkins. Exhibit 20 is also dated before the same Solicitor. I find that Mr. Barned is pointing out/clarifying what he means by indicating 3 names in Exhibit 2 and giving the details in exhibit 20, describing how the property should be held by the said three persons. Vinton and Maria Simms in one half holding as tenants-in-common with Richard Francis on the other half as shown in documents exhibit 20 and 21.

[17] The Notice of Change of Possession of Land by Transferee dated 15<sup>th</sup> April 1998 Exhibit 3 signed by the Defendants and Claimant before Clifton Morris Justice of the Peace and the Agreement to Transfer Exhibit 4 signed by the parties on the said date before the same Justice of the Peace are both silent as to how the property is to be divided between the parties.

[18] The Defendants have asserted that in addition to Instrument of Transfer the Land Settlement Purchase Form had the signature of the Claimant with the words "tenant-in-common" as such he was not unfamiliar with the word, but more

importantly it is evidence that the Claimant agreed to take only 1/3<sup>rd</sup> of the land. On the said form it states tenants-in-common means that in case of death of one party, the interest of the deceased passes to his (or her heirs and assigns). I note that it does not specify tenants-in-common in equal shares or unequal shares. It was also witnessed by a Notary Public in the state of New York. The Claimant's evidence is that he has never been to this state. How then did his signature appear on the document. The Defendants had complete control of the documents. This brings their credibility and veracity into question I do not place any weight on this document.

[19] Exhibit 11 – Transfer of Land dated 30<sup>th</sup> July 2009 is signed by Vinton Simms, Maria Simms and Richard Francis before Cora B. Frith Justice of the Peace. In the section itemized – if more than one transferee state the tenancy-tenants-in-common in equal shares is ticked off. Tenants-in-common in equal shares means simpliciter equal half shares [each would be entitled to 1/3 if there are three persons. However, I find that Exhibit 11 cannot be interpreted in isolation and must be viewed and interpreted in the context of the continuing intention of Mr. Barned since 1998. I find that tenants-in-common in equal shares is referable to the two one half shares. It has to be construed like that in circumstances existing and portrayed by Mr. Barned in Exhibits 20 and 21. I find that the term tenant-in-common in equal shares used in the transfer doesn't change the actual intention of Mr. Barned that he intended that each should have half share as demonstrated in Exhibits 20 and 21. In Mr. Barned's relationship with Claimant and Defendant at no time did he indicate division of the property in any other proportion but one half.

[20] Relying on the case of Pennock v Hodgson (supra), I find that the court can look at what exist on the land to interpret Exhibit I. Exhibit 20 prepared by Mr. Barned shows a drawing of the section gifted to the Claimant and that sold to the Defendants. There is evidence before the court that on 1997 there were two homes on the land, one occupied by the Claimant and Mr. Barned and the other

was accepted to be an old home. Mrs. Simms gave evidence that the home Mr. Barned occupied was located behind the store/shop which is now operated by Valcie Henry otherwise called Winsome. Using the said drawings done by Mr. Barned, and written evidence confirms that the division dictated by Mr. Barned in that 1998 drawing is essentially what exists on the land to this day.

The actions of the Defendants prior to the Certificate of Title being obtained do not indicate that they ever sought to own or occupy the house the Claimant and Mr. Barned occupied. They never charged the Claimant rent or demanded that he write a lease, or even give him permission to remain in the home as a tenant-at-will. They never sought to exercise any acts of ownership of the shop/bar. They never collected any rent from Winsome, never demanded any and never gave her permission to operate the shop from that location. As Mrs. Riley-Dunn submitted all the acts of ownership were exclusively conducted by the Defendants on a distinct and separate portion of the land. Mrs. Simms gave evidence that they restored and improved the old dilapidated house she saw on the section of the land she exclusively occupied.

[21] The Defendants hired a contractor to build this house and a driveway that leads from the front door of their home to the roadway. Surrounding the home is a concrete fence to the front which stops immediately at the sho/store to the front of the section where the Claimant lives. To the side of the house is a fencing stretching from the concrete wall to the front all the way to the back of the property dividing the section occupied by the Defendants from that occupied by the Claimant. The fence is approximately 6 feet tall and built by the Defendants. The fence by her own admission still stands tall to this day.

The reason proffered by her for the fence was that it was to protect building supplies that were being stolen. She also said that the fence was to keep out patrons of the bar in front who from time to time used the premises as a urinal.

[22] I reject this explanation and find that the fence was built with the deliberate attempt to show the world the parcel of land they own, and which they know

themselves entitled to receive. There is no evidence that disproves that area of land gifted to the Claimant was respected and acknowledged by the Defendants up to 2009 when the title for the subject premises was issued.

[23] I agree with Mrs. Francis Riley-Dunn submission that it is trite law that acts done upon one part of land within a clearly defined boundary is used as evidence of the ownership of the whole land within such boundary. [Halsbury's Laws of England Volume 4 (2011) 5<sup>th</sup> Edition paragraph 334]. The Defendants had built their fence which acted as a boundary and had control and ownership of this entire area of land within the fence.

I find that these acts prove that this is the area of land bargained for by the Defendants and that they are certainly not entitled to the entire property or 2/3 of the property. The Defendants knew the portion of land which was sold to them, there is no evidence that they sought clarification from anyone, including a surveyor.

[24] Did the Defendants unduly influence the Claimant to sign the Instrument of Transfer.

Sir Vincent Floissac CJ. In **Murray v Deubery and Another (1996) 52WIR page 147** said:

“The modern tendency is to classify undue influence under two heads, namely Class 1, (actual undue influence) and class 2 (presumed under influence). Class 2 is further classified under two sub-heads. The first sub-head is class 2 (A) which is descriptive of the legal presumption which arises from legally accredited relationships such as those existing between solicitors and client, medical adviser and patient, parent and child, and clergyman (or religious advisor) and parishioner (or disciple) the second sub-head is class 2 (B) which is descriptive of the legal presumption which arises

from a relationship where under the complainant generally reposed trust and confidence in the dominant party.”

The doctrine allows for a transaction to be voidable at the option of the complainant if the transaction is the product of undue influence and was not the voluntary and spontaneous act of the complainant exercising his own independent will and judgment in full appreciation of the nature and effect of transaction. (Emphasis mine)

[25] In the case at bar the relationship between the Claimant and Defendants falls outside the customary relationship where undue influence is presumed, but the court is not bound by a set of defined relations.

Mrs. Francis Riley-Dunn submitted that when one looks at the nature of the relationship between the parties, it is evidently clear that there was one of complete trust and reliance by the Claimant on the Defendant with respect to raising a title for the subject premises.

[26] Mr. Haynes submitted that the Claimant did not in fact repose any trust or confidence in the Defendant notwithstanding his bland assertions that:-

“I relied so heavily on this judgment and know how in all land matters that all documents pertaining to the property were prepared by them and I simply signed them without ever obtaining legal advice, and sometimes without even reading what I was signing.”

He said that even if believed, that certainly does not amount to undue influence in law. He said that there was just no basis or reason for the Claimant to repose confidence in them they were in no better position or situation that he was. He never paid any monies towards this transaction and was content for that reason to leave matters up to them. They were not lawyers nor were they even Justices of the Peace. Further having lived for most of their adult lives abroad there is no evidence that they were any more versed in the matters of conveyancing law than the Claimant. The matter was handled substantively by the Commission of Lands. The Defendants were themselves not represented during the actual

transaction but only sought the assistance of an Attorney when they thought that the matter was unduly delayed.

[27] Mr. Haynes said that to establish undue influence it must be shown that the transaction itself was manifestly disadvantageous to the Claimant. He said it is clear that this is not the case. The principal document which all the parties signed Exhibit 1, which is the earliest document in time, declares unequivocally that Mr. Barned sold to the Simms lands 2½ chains wide by 5 chains long, including his house. That this was the basis of the original transaction was never refuted by the Claimant. As the Defendants have pointed out and as the Commissioner of Land eventually verified by survey (again not contested by the Claimant) Mr. Barned was not entitled to as much land as he thought. If therefore the Simms were to be granted the amount of land agreed for, then there would have been no portion remaining. He concluded by stating that not only was there no relation of trust and confidence between the parties but also in all the circumstances the transaction was not disadvantageous to the Defendants and the claim for undue influence therefore fails.

[28] The Claimant concedes that he did in fact sign the Instrument of Transfer but states that he did not know that by doing so he would have surrendered 1/3 of the land that he occupies, or at the very least the section occupied by a container which is used as a shop. The Claimant further contends that the only reason why he signed the Instrument of Transfer was because the Defendants asked him to and told him that it was the only way for him to receive title for the property. The Claimant said that he had no idea that the first page had tenants-in-common in equal shares ticked, or even what it meant until it was explained to him by his Attorneys-at-law.

He said that he knew what was agreed. He knew what existed since 1997 and he knew that the Defendants and himself had been trying to get title for the property since then. He was so excited about the title coming that he just signed. He relied heavily on the Defendants guiding him on the correct part, and he believed

in their honesty. He signed without question and without seeking any legal advice.

- [29] There is no dispute that the Defendants had complete control of the entire process leading up to the issue of title. They had a team of lawyers located in New York, i.e. Sarisohn, Sarisohn, Carner, Lebow Braun and Shiebler and at the time the Jamaican law firm of Nunes Scholefield & DeLeon. Mrs. Simms said that the Claimant was neither invited to any of the meetings she had with her lawyers, and she never discussed the content of those meetings with him. I reject her evidence that the Claimant was not left in the dark in the process of obtaining the title.
- [30] The Claimant signed the transfer without independent legal advice. The evidence is that the Defendants are far more educated than the Claimant. Mrs. Simms was head Nurse in New York before she retired and Mr. Simms was an equipment supervisor at an airline. They were able through their Attorneys to possess pertinent knowledge needed for the transaction unlike the Claimant. The Claimant by his own admission is a man of limited education.
- [31] I agree with his Counsel's submission that it was necessary especially in light of the fact that the transaction was complex and involved legally binding consequences that he should have been properly assisted in understanding any documents presented to him to execute the transfer.
- [32] There is no evidence that the Defendants gave the Claimant the Instrument of Transfer to read before the signing, thereby giving him an opportunity of seeking legal advice. Mrs. Simms evidence is that she took the documents from her purse gave the Justice of the Peace the parties signed, she then returned it to her purse and they departed. Neither is there any evidence that the Claimant received a copy of the transfer after it was signed. The document remained in the

Defendant's possession until it was handed in by Mrs. Simms at the Rada Office in St. Thomas.

[33] I reject Mr. Simms' evidence that when they attended on Mrs. Frith J.P. to sign, the transfer Mrs. Frith explained the terms tenants-in-common to the Claimant. I respect Mrs. Simms evidence that Mr. Clifton Morris JP explained the meaning and significance of the agreement for transfer and the Notice of Change of Possession of Land to all the parties at the time of signing.

[34] I accept the Claimants evidence that "I was never told by signing it I was giving up a portion of the land that was given to me by my father or I would never have signed it."

I accept the Claimant's evidence as truthful that at no time was any one of the documents that he signed explained to him by Mrs. Frith or Clifton Morris and neither did he ask them to explain it. He said they are both Justices of the Peace and their role was simply to witness our signatures, and that is what they did. I accept the Claimant evidence (paragraph 15 of his affidavit dated 17<sup>th</sup> April 2013) that "I relied solely on what Mr. Vinton Simms explained to me, and I had no reason to doubt him as we had a very good relationship founded on what I thought was mutual respect.

[35] I reject Mrs. Simms evidence that in honour of Mr. Barned's wish that the Claimant should have a portion of the land they agreed to give him a 1/3 and this was explained to him before both Mr. Morris and Mrs. Frith and was accepted by him.

The Claimant evidence at paragraph 20 of his affidavit dated 24<sup>th</sup> February 2011 is:-

"I am not the brightest person and I do not understand everything that has to do with the process of obtaining title for the property. The Defendants promised me that I would be taken care of and that they

could get everything done much faster than I could. I believed them I believe that they would do what my father wanted and ensure that I got a title for the one-half share of the property that I occupied.”

[36] It is the Claimant's case that he met the Defendants for the first time in 1996 when they came to stay with Mr. Barsed and himself. They again visited in May 1997 to finalize the agreement for them to purchase one half of the land, and thereafter travelled to Jamaica on numerous occasions to follow up on the title being issued and the construction of their house. Before their house was finished they stayed at his house once, and he cooked for them and made them feel comfortable. He said they had a wonderful relationship during those times, and that good relationship continued for many years. It only ended in 2009 when the title was issued for the land and the Defendants now claim to be entitled to 2/3<sup>rd</sup>s of the land instead of one half as was always agreed and understood.

[37] I find that by signing the Instrument of Transfer without seeking independent legal advice, the Claimant had given away a large portion of his land much to his disadvantage. By signing the Instrument of Transfer the Claimant unwittingly gave away 1/3<sup>rd</sup> of the land that he occupies. I do not find that he signed it after full, free and informed thought about it.

[38] I find that this gift is so large, or the transaction so improvident, that it could not be reasonably accounted for on the ground of friendship, relationship, charity or other motives on which ordinary men acted and if the person effecting it had reposed in the other such a degree of trust and confidence as to place the other in a position to influence him into effecting it. See *Goldsworthy v Brickell and Anor* (1987) Ch 378.

[39] It is the Claimant's evidence that he has centered his life around this property the way in which it has been since he was given the property by Mr. Barsed. He collects rent for the shop/bar and has been doing so from Mr. Barsed left for

England in 1998 and has invested all that he has in improving his one half share of the land.

To give him 1/3 of the property as demonstrated on the survey would reduce the entrance to his property to a mere walk through and deprive him of the rental income from the shop/bar which would make no commercial sense.

I find that the Claimant reposed trust and confidence in the Defendants that he was aware of the relationship with Mr. Barsed and the Defendant and that they had entered into a transaction with him, he trusted them to do any transaction in relation to the property and to give effect to his father wishes.

[40] I find that the Certificate of Title which the Defendants rely on was procured by undue influence over the Claimant and the transfer ought to be set aside.

[41] There was no submission from the Claimant's Attorney on the issue of mistake, and I take it that this claim although in the alternative has been abandoned. In any event as Mr. Haynes rightly pointed out it cannot avail the Claimant to say that the transfer was not his document. He gave no evidence of what he thought the document was other than it was to get his name on the title. It seems reasonable to conclude that the Claimant from his own mouth was be either ignorant of what he was signing or was careless. See *Gillman v Gillman* (1946) 174 LT 272 and *Mercantile Credit Co. Ltd. V Hamblin* (1965) 2 QB 242.

The Claimant says in paragraph 27 of his affidavit dated 24<sup>th</sup> February 2012 "I had no idea that the first page had tenants-in-common in equal shares ticked, or even what it meant until it was explained to me by my Attorney-at-law." Mr. Haynes submitted that there was no evidence that he was in any way prevented from reading the various documents which he signed in the process of completing this transaction. He cannot say that the document is not his merely because he was ignorant of what he was signing. I find that the claim for mistake fails.

[42] The Court makes the following:-

1. A Declaration that the Claimant is entitled to a one-half share in that property known as Lot 67 East Albion in the parish of Saint Thomas, being the land comprised in Certificate of Title registered in Volume 1428 Folio 927 of the Register Book of Titles (hereafter referred to as “the said property”)
2. An order declaring transfer number 1614434 registered on the 10<sup>th</sup> day of September 2009 on the Certificate of Title for the said property null and void by reason of the Defendant’s procurement of the said transfer by undue influence.
3. An order directing the Registrar to amend the Certificate of Title for the said property so that it states that the Claimant is the owner of a one-half share of the said property and the Defendants together share the remaining one-half share.
4. In the event that either party fails and/or refused to sign the said Instrument of Transfer the registrar of the Supreme Court be authorized to sign for and on behalf of the defaulting party.
5. An order that the First and Second Defendant pay all costs relating to the transfer of the said property.
6. That costs be in the claim.

