COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

2019/CLE/gen/00597

BETWEEN

WESTON MORTIMER

Plaintiff

AND

JARED FORBES

Defendant

Before:	The Honorable Madam Justice J. Denise Lewis-Johnson
Appearances:	Keith Bell and Cyd Ferguson for the Plaintiff
	Sherita Forbes for the Defendant
Hearing Dates:	17 August, 18 August, 19 August 2021

Civil – Life Interest - Agreement to Satisfy Mortgage – Whether the conveyance is null and void — Attorney representing both parties in transaction — Whether Attorney carried out the instructions of his clients – Ethics - Professional Negligence - Fiduciary Duty – Attorney exercising reasonable skill and care - Damages.

JUDGMENT

1. By a Specially Indorsed Writ of Summons filed 2nd May 2019 Weston Mortimer, ("the Plaintiff") sought the following relief:
    a) **A Declaration that the Plaintiff is the owner of the said property;**
    b) **A Declaration that the Conveyance dated the 30th day of August, AD 2017 is null and void;**
    c) **An injunction restraining the Defendant from selling or disposing of in any way the said Lot numbered 64 situated at Stapledon Gardens**

subdivision in the island of New Providence, Bahamas until after the trial of this action or further order;

d) **Damages;**
e) **That provision be made for the cost of these proceedings;**
f) **Such further or other relief as the court deems just.**

2. Jared Forbes ("the Defendant") filed a Defence and Counterclaim on 26 June 2017 claiming.:
   a) **A Declaration that the Defendant is the owner of the said property;**
   b) **A Declaration that the Conveyance dated 30 August 2017 was made in good faith;**
   c) **An injunction restraining the Plaintiff from further impeding the renovations to the said Lot 64 situated at Stapledon Gardens Subdivision in the island of New Providence, Bahamas until after the trial of this action or further order;**
   d) **Damages;**
   e) **Costs;**
   f) **Such further and other reliefs that the Courts deem just.**

Background

3. By Conveyance dated 23 December 1968 and recorded in Volume 11718 at page 328, the Plaintiff purchased Lot. No 63 situated at Stapledon Gardens ("the property") from Frederick and Mable Dean. From 1968 to the present, the Plaintiff has resided at the said property.

4. On 17 October 1989, the Plaintiff obtained a mortgage from Mr. Grachion Sands in the amount of $38,000.00 to satisfy an outstanding debt. The property was then transferred jointly to the Plaintiff and Mr. Sands. At that time, the property was appraised at a value of $220,000.00.

5. Sometime around 2017 Mr. Sands advised the Plaintiff that he required the satisfaction of the mortgage due to personal financial obligations.

6. The Plaintiff was unable to satisfy the debt on his own and subsequently sought the assistance from his sons, one of whom is the Defendant.

7. The Defendant advised the Plaintiff that he could possibly assist him with payment. He obtained the sum of $60,000.00 from the brother of the Plaintiff who was flexible on the terms of repayment.

8. To satisfy the Defendant's debt, the parties agreed to convert the single dwelling home into a triplex. To complete the renovations, the Defendant had to borrow from a lending institution. It was agreed that the rent from two units would be used to repay the cost of the conversion and the loan, and the Plaintiff would have possession of a single unit of the triplex.

9. To facilitate the transaction between the bank and the Defendant, the parties retained the services of Peter Maynard & Co. Peter Maynard and Co. represented both parties in the transaction to prepare the conveyance and mortgage.

10. The Plaintiff was advised that the Bank required the Defendant's name needed to be added to the Conveyance in order to obtain financing. He had no objection to this but insisted that the Conveyance be in both their names.

11. The Conveyance was prepared and executed without the Plaintiff's name being on it.

12. In November 2017, the Defendant requested that the Plaintiff vacate the premises for the renovations to be completed. The Plaintiff refused. Thereafter in February 2019 the Defendant attempted to evict the Plaintiff from the property pursuant to an action in the Magistrate's Court in which the Defendant claimed to be the owner.

13. The Plaintiff subsequently commenced the present action.

The issues

14. The issues to be determined are:
    i. Whether the conveyance made between the Plaintiff and the Defendant is void;
    ii. Whether there was undue influence; and
    iii. Whether there was a "fundamental breach of trust" by the Defendant.

The Plaintiff's Evidence

Weston Mortimer

15. The Plaintiff's evidence is that it was agreed between the parties that the Defendant would convert the house into a triplex. Thereafter, he would remain in one of the units for the duration of his life and the remaining two units would pay the balance of the mortgage. He claims that it was never the agreement that the property should be transferred to the Defendant wholly in exchange for $60,000.00 to satisfy the debt to Grachion Sands.

16. The Plaintiff asserted that following the arrangement, the Defendant informed him that his name would need to be added to the deed to obtain bank financing. He had no objection to such but insisted only that the deeds be in both of their names. It was clarified by him during re-examination that he never agreed to a life interest in the property.

17. Further, he claims that it was Mr. Sands and the Defendant who chose the services of Peter Maynard & Co. to prepare the conveyance and that he did not contribute to the payment of legal fees for the transaction. Throughout cross-examination he maintained that the conversation never arose as to the parties seeking separate legal representation.

18. During cross-examination the Plaintiff admitted that he read the documents presented to him at the law offices however he did not understand it.

Grachion Sands

19. Mr. Sands averred that in 1989 he offered to satisfy the Plaintiff's debt with numerous financial institutions. In return the property was transferred in their joint names.

20. Mr. Sands stated that it was never discussed that the Defendant would have full legal title to the property. He maintained that he inquired with the Defendant on various occasions whether he would dispossess the Plaintiff out of the home once he satisfied the debt. Mr Sands stated that he was very deliberate in making this inquiry as he was not prepared to accept any funds from the Defendant if that was his intention. The Defendant indicated to him that the Plaintiff was entitled to a decent home until his death.

21. He testified that the Plaintiff did not wish to use his previous attorneys, thus in an earlier conversation he indicated to the Plaintiff that Maynard & Co. was his firm of choice. He also communicated his choice to the Defendant and the Defendant indicated that he would retain the same firm as well.

22. He later instructed the law firm of Peter Maynard & Co. to prepare a deed of satisfaction of the mortgage releasing the subject property. He claimed that he did not instruct the attorney to prepare any other document nor was he aware that the property had been transferred in the name of the Defendant alone until this action arose.

The Defendant's Evidence

Jared Forbes

23. The Defendant testified that the agreement was that if he satisfied the existing loan, he would retain legal title of the property and the Plaintiff would retain a life interest in the subject property. He claims that the Plaintiff had no objection to this.

24. Under cross-examination the Defendant accepted that although the Plaintiff was to have a life interest in the property, this was not reflected in any of the agreements drafted or in the Conveyance of the property to him.

Jason Maynard

25. Jason Maynard, Counsel and Attorney at Maynard & Co. and the attorney of record for all transactions, testified that during the initial meeting with the parties it was the Plaintiff who stated that in an effort to reduce costs independent counsel would not be necessary. He then had Mr. Sands and the Defendant sign engagement letters. He admitted that the Plaintiff never signed an engagement letter as the legal fees were being paid by Mr. Sands and the Defendant.

26. Mr. Maynard acknowledged that the Plaintiff informed him that the Defendant's name was to be added to the conveyance. He admitted that the Plaintiff never asked for his name to removed.

27. He admitted that the Plaintiff and the Defendant instructed him what they wanted done legally. In his witness statement and during cross examination Mr. Maynard stated that his initial instructions were to handle the satisfaction of the mortgage. He claims that the Defendant made it very clear that although the property was being conveyed to him, the Plaintiff was to remain in the property for the duration of his life. He confirmed during cross-examination that only the Defendant's interests were reflected in the Conveyance. His explanation being that he treated the instructions that the Plaintiff was to retain a life interest in the property as a *'gentlemen's agreement'*.

28. He further asserted that in order to receive bank financing the Defendant's name alone had to be placed on the Conveyance as the bank would not accept a document that indicates a restriction on title. It is for that reason that the Plaintiff's name is not cited on the Conveyance. Mr. Maynard stated that at no time was the Plaintiff under duress to enter into the transaction or to execute the conveyance of the property.

The Conveyance

29. Mr. Maynard prepared the Conveyance dated 30 August 2016 between Weston Mortimer as the Vendor and Jared Forbes as the Purchaser.

30. The Conveyance recites –

"The Vendor has agreed to sell and the Purchaser has agreed to purchase the hereditaments for a like estate in possession free from encumbrances for the sum of Sixty Thousand Dollars (B$60,000.00) in the currency of the Commonwealth of The Bahamas (hereinafter called "the said Currency")."

31. The Conveyance further witnesses that –

"In pursuance of the said agreement and in consideration of the said sum of Sixty Thousand Dollars (B$60,000.00) in the said currency now paid by the Purchaser to the Vendor (the receipt whereof the Vendor hereby acknowledges) the Vendor as BENEFICIAL OWNER hereby grants and conveys unto the Purchaser ALL there hereditaments hereinafter described in the First Schedule hereto TOGETHER WITH the appurtenances thereunto belonging TO HOLD the same unto and to and to the use of the Purchaser in fee simple ..."

Whether the Conveyance made between the parties is void?

32. Throughout the course of proceedings, it became evident that the evidence of both parties was that the Plaintiff was to retain at the very least a life interest in the property.

33. During his cross-examination the Plaintiff acknowledged discussions of him retaining a life interest in the property:

"Q. Secondly, was it ever discussed that you and Mr. Forbes -- that the property was to be conveyed to Mr. Forbes in exchange for him paying the 60 thousand dollars debt, loan?

A. No. The agreement was he would be added on -- his name would be added onto the present deed.

Q. Was it ever discussed that you were to be allowed to remain on the property for the duration of your life?

A. It was discussed between Mr. Forbes and I. The agreement was that I would have one of the apartments and the other two apartments were on a mortgage. And when the mortgage was paid, Forbes said he would receive funds from one apartment, and I would receive funds from the other apartment."

34. The Defendant in his pleadings has admitted that the 30 August 2017 Conveyance does not convey the interest intended. At paragraph 9 of his Defence the Defendant said –

> **'the agreement from the very beginning was that the Defendant would own the legal title of the property and that the Plaintiff have a life interest in the subject property."**

35. In paragraph 30 of his Witness Statement the Defendant maintained:

> **"It was agreed between us from the beginning and still is always my intention that the Plaintiff would have a life interest and remain in the said premises until his demise".**

36. Under cross-examination the Defendant further confirmed that the Plaintiff was to retain a life interest:

> **"Q. You would agree that even though there are three agreements, it really was only two agreements for sale with respect to your property; correct?**
> **A. Agreed.**
> **Q. So let's go to that first agreement. I think it's dated the 2nd of August, 2011, JF-2?**
> **Q. Okay good, and according to you, your father was to have a life interest in the property?**
> **A. That's correct.**
> **Q. Okay, please point out in that agreement where it says what you and your father agreed, that is, that you were to have the house once you paid off the debt; and your father is to have a life-time interest in the property. Please point out that in the agreement where it says that?**
> **A. I don't think that was ever put in this agreement.**
> **Q. That was not put in this agreement?**
> **A. Yes.**
> **Q. But you and your father informed Mr. Maynard that he was to have a life interest in the property?**
> **A. That's correct.**
> **Q. And you would agree that this is the agreement dated 4th July 2012 between you and your father for the sale of lot 64 Stapledon Gardens?**
> **A. Correct.**
> **Q. Please point out to the Court where in that agreement the provisions are expressed that you and your father agree to that; that you would have**

the property and your father was to retain a life interest up to his death. Please point out to the Court where that is in that agreement?
A. It's not here.
Q. It's not there. So, you would agree then, Mr. Forbes that the agreement of the 2nd of August 2011 and the agreement of the 4th July, 2012, does not reflect the intention of the parties; yes or no?
A. Yes.
Q. You're saying, yes it reflects or yes it does not reflect; just for clarification?
A. No it does not reflect what you're saying.
Q. It does not reflect the agreement of the parties is that's what you're saying?
A. Yes."

37. The evidence of Attorney J Maynard, who prepared the Conveyance was also that the Plaintiff was to retain a life interest in the property. He stated:

"THE COURT: So, let me equally make sure that I understand; there was no document as between Mr. Forbes and The Plaintiff, that reflected this agreement, the life interest agreement.

THE WITNESS: No, there wasn't, but like I said, that was made clear from the outset. He wanted to make sure his father was comfortable. He said, in the front of his father, I want to make sure you stay on the property for the duration of your life.

That was repeated again in a subsequent meeting. I remember them on first, initially with Mr. Forbes and his father, and secondly with all three of the parties, and during both meetings, it was made clear that The Plaintiff was to remain on the property for the duration of his life."

38. Both parties attended the law firm of Peter Maynard & Co. as clients and retained the firm. Albeit there was no written retainer with the Plaintiff, based on the actions and oral communication between the Plaintiff and Mr. Jason Maynard, I find that there existed an implied retainer. Counsel represented parties with conflicting interests and failed to carry out what were clear instructions.

39. To this end, the Court must address the actions of Counsel. It is settled law that attorneys are cautioned about acting on behalf of both clients in a land transaction, however, should he do so, he must procure both parties' permission in order to

continue. **The Bahamas Bar (Code of Professional Conduct) Regulations Rule V Commentary 5** provides:

> **"5. Before the attorney accepts employment for more than one client in a matter or transaction the attorney must advise the clients concerned that he has been asked to act for both or all of them, that no information received in connection with the matter from one can be treated as confidential so far as any of the others are concerned, and that if a conflict develops which cannot be resolved, he cannot continue to act for both or all of them and may have to withdraw completely."**

40. Notwithstanding waiver by the parties, acting for both sides is discouraged as both clients will always have competing interests. **The Bahamas Bar Code of Professional Conduct Rule V** describes a conflicting interest as:

> **"One which would be likely to affect adversely the judgment of the attorney on behalf of or his loyalty to a client or prospective client or which the attorney might be prompted to prefer to the interest of a client or prospective client".**

41. In **Alan R. Crawford and Sharon M. Crawford v. Christopher Stubbs, Shanna's Cove estate Company Limited and Donna Dorsett Major (Trading as Dorsett Major & Co., a firm) 2015/CLE/gen/00765** Justice Indra Charles stated:

> "Now the practice of the same attorney acting for a vendor and a purchaser in the same purchase and sale of land may be properly characterised as a non-contentious matter, but it is a practice that has been deprecated by the courts.
>
> It has been said that an attorney who acts for both parties put himself/herself in such an indefensible position that he/she must be liable to one or the other. Take an example. It is the duty of the attorney for the purchaser to undertake certain searches of the property being purchased to determine that what the vendor states is being sold actually conforms to what the vendor has contractually agreed to sell.
>
> Unquestionably, this involves one client - the purchaser - making an inquiry of the other client - the vendor. The attorney is bound to inform the purchaser of the result of the searches undertaken. It is for this reason that courts frown upon attorneys representing both purchaser and vendor, but despite strong judicial admonitions, the practice of the

same attorney acting for both parties in non-contentious matters continues."

42. I accept counsel for the Plaintiff's position that Mr. Maynard failed to capture the interests of one of his clients while benefitting the other. Had the Plaintiff's life interest been captured, there would have been little room for the need for uncertainty, dispute and litigation. However, Mr. Maynard failed to adhere to the instructions of his clients by omitting to capture at the very least the Plaintiff's life interest.

43. In **AW Group Ltd v Taylor Walton [2013] All ER (D) 10 (Oct)** the Court held:

"A solicitor owed his client a duty of care in both contract and in the tort of negligence to exercise reasonable skill, care and diligence in relation to the work he undertook. The extent of a solicitor's responsibilities was derived from his retainer. It was right that he was under no general obligation to expend time and effort on issues outside the scope of his retainer. But if, in the course of doing that for which he was retained, a solicitor becomes aware of a risk, or a potential risk, to his client which it was reasonable to assume the client did not know about it was the solicitor's duty to inform the client.

The standard expected of a solicitor in the performance of that duty was to be assessed against the reasonably competent practitioner having regard to the standards normally adopted in his profession.... It was not an excuse for a solicitor to say that he did not know his client's intentions; it was up to him to find out. It was the duty of a solicitor to ask the client appropriate questions designed to ensure that the solicitor was aware of the client's relevant circumstances and intentions, and that the client had all the relevant information and did understand the legal consequences."

44. Mr. Maynard was the sole attorney with carriage of the matter. Upon his introductory meeting with the parties, an engagement letter was signed only by Mr. Sands and Mr. Forbes. Although there was no written retainer between Mr. Maynard and the Plaintiff, I find that an implied retainer existed based on the conduct and acknowledgement of the parties and counsel. On several occasions during his cross-examination, the Plaintiff stated that he did not understand the documents he signed contrary to the assertions made by Mr. Maynard that all parties were aware of the details of the transactions and how they were to be carried out. Mr. Maynard's evidence was clear that both parties instructed him that the Plaintiff was to have a life interest.

45. I accept the evidence of the Plaintiff that Mr. Maynard failed to properly advise both clients of the implications which would occur once the deed was transferred in the sole name of the Defendant. It is irrelevant the discussions parties may have had before retaining legal counsel. The authorities indicate that once an attorney is retained, it is the attorney's duty to ensure the clients are aware of every detail in their transaction and its legal effects.

46. As stated in **Meadows v Meadows (1853) 51 ER 833** when dealing with conveyancing matters:

> **"The usual practice is, on the execution of a deed, for the solicitor either to read or explain it to the persons who have to execute it, or the solicitor informs them that the deed is in accordance with some draft or copy previously explained or submitted to them, and the parties usually trust their solicitors."**

47. During Mr. Maynard's cross-examination Counsel for the Plaintiff also asked whether the agreement could have been completed if he cited the name of both parties on the conveyance. Mr. Maynard stated that 'he was unsure as he has never done it that way'. Mr. Maynard continuously referred to the agreement between the parties as a *'gentlemen's agreement'*. However, I do not accept that to be the case. The instructions were given in the context of the client-attorney relationship and this ought to have been adhered to by counsel.

48. According to **Hilton v Barker Booth and Eastwood [2005] 1 All ER 651:-**

> **'If a solicitor puts himself in a position of having two irreconcilable duties, it was his own fault and he therefore had to perform both as best he could. That might involve performing one duty to the letter of the obligation and paying compensation for his failure to perform the other. In any case, however, the fact that he had chosen to put himself in an impossible position did not exonerate him from liability'.**

49. Based on the foregoing, I find that there was to be a life interest vested in the Plaintiff and that life interest was not provided for in the Conveyance.

50. This is the challenge of counsel representing both sides on a transaction. The attorney must go to every extent to avoid preferential treatment to one client over the other. He must not pursue the interest of one side to the disadvantage of the other. When that happens, the attorney has breached his fiduciary duty to his client.

51. Accordingly, the 20 August 2017 Conveyance cannot be allowed to stand as it does not reflect the instructions or the intention of the parties.

Whether there was undue influence on behalf of the Plaintiff?

52. The Defendant has argued that the Plaintiff exercised undue influence on behalf of the Plaintiff and the Defendant.

53. The presumption of undue influence arises based on the nature of the attorney and client relationship, that is the fiduciary relationship. The courts of equity would not allow a dominant party to abuse his influence over another.

54. The Defendant relied on the case of **Jean Helen Bain and Cheryl Patricia Lightbourne v. Wendy Sabrina Bain 2014/CLE/gen/00890** where Winder J. stated that the relevant law on undue influence was discussed by the Court in **Antonio (by next friend Aneka McKinney) v. Poitier [2015] 2 BHS J. No. 35** at paragraphs 30-31. It was stated:

> **"30 According to the learned editors of Hanbury and Maudsley Modern Equity 12th ed page 800, undue influence cases represent equity's recognition of**
>
> > **"a wide variety of situations in which intervention is justified by reason of a defendant's influence of dominance or influence over a plaintiff in procuring his execution of a document (such as a settlement) or his entering into an obligation... Equity intervenes in such cases, not because, as is the case with misrepresentations, the defendant has positively (albeit innocently) misled the plaintiff on a particular and relevant point of fact, but because the defendant has caused the plaintiff's judgment to be clouded, with the result that the plaintiff has failed to consider the matter as he ought."**
>
> **Further, at page 801, the learned editors continued:**
>
> **"...in all cases the question is <u>whether a defendant has taken advantage of his position, or, per contra, has been assiduous not to do so</u>. The question can only be answered in each case by a meticulous consideration of the facts. In some specialized situations, the facts speak for themselves. Contracts between employers and employees which restrict the future freedom of**

operation of the employee may be unenforceable, even in the absence of proof of undue influence, on the ground that the restriction is unreasonable. Many cases turn, as is natural, on whether a defendant discouraged independent legal advice or proceeded in such a way as to make it unlikely that the plaintiff would think of taking it. For, as with many of the flexible remedies of equity, a defendant is not placed under an absolute bar by virtue of this equitable obligation, but has to adopt proper steps, in view of the obligation, if he wishes to proceed in certain ways. So a genuine insistence on independent legal advice is a natural means of repudiating a charge of having exerted undue influence, even in a case where the possibility of influence was strong, and especially where there is a conflict of interest and duty. But the presumption of undue influence is not rebuttable only by establishing insistence on independent legal advice; it may also be rebutted by showing that the gift was a "spontaneous and independent act."

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

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

First, there are the cases in which there has been some unfair and improper conduct, some coercion from outside, some overreaching, some form of cheating, and generally, though not always, some personal advantage obtained by a donee placed in some close and confidential relation to the donor. Norton v. Relly (2), Nottidge v. Prince (3), Lyon v. Home (4), and Whyte v. Meade (5), all belong to this group. In Whyte v. Meade a gift to a convent was set aside, but the gift was the result of coercion, clearly proved. The evidence does not bring this case within this group.

The second group consists of cases in which the position of the donor to the donee has been such that it has been the duty of the

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

55. The Defendant also relied on the case of **Macklin v Dowsett [2004] EWCA Civ 904** to establish the relationship of ascendancy and dependency between the parties. In that case Dowsett's bungalow was condemned by the local authority. He was given the planning permission to rebuild one in its place on the condition that he began construction within five years. He demolished the bungalow and resided in a caravan on the land. Dowsett later sold the land to the Macklins with rent free tenancy for life. Before the expiry of the planning permission, the Macklins began construction of the bungalow on the land. Dowsett then entered into a second agreement with the Macklins that the land was to be surrendered for £5,000 if he failed to complete the new bungalow within three years. Auld LJ stated that:

"In order to succeed on the defence of undue influence, Mr Dorsett had to show two things 1) that, in entering into the option agreement, he had reposed trust and confidence in the Macklins or that they had acquired some ascendancy over him; and (2) that the transaction was not otherwise readily explicable by the relation between them."

56. The Court of Appeal found that were was a relationship of ascendancy and dependency and thus presumed undue influence between the parties. Mr. Dowsett, in no firm financial position, was able to live on the land with a life interest, rent free and debt free. The Macklins entered the second contract to "preserve and enhance the commercial value of their own future interest in the property and notionally at any rate, to preserve for him the somewhat theoretical opportunity to support that aim by building the bungalow himself."

57. The Defendant submits that in the present case, the Plaintiff depended on the Defendant to have his mortgage and all relating bills paid while he remains with a life tenancy over the property. There was only a great benefit to him. However, there was no ascendancy borne upon the Defendant.

58. The Court is of the view that undue influence does not arise in this action. There was no abuse of influence by the Plaintiff. Both parties wilfully and voluntarily chose to enter into the transaction. The outcome however was not intended by the parties. The Plaintiff did not cause the Defendant to act to his detriment.

59. The Court finds the Plaintiff to be a truthful witness, and accepts his evidence that he was not aware that the conveyance was being put in the name solely of the Defendant. I am of the view that the Plaintiff executed the Conveyance believing he was conveying the property in both his name and that of the Defendant. I do not accept that he intended to deprive himself of any interest in the property, or to put the Defendant at a loss. They both agreed to the terms of the transaction.

60. I find that the Defendant fundamentally breached the Plaintiff's trust by not providing the Plaintiff with a life interest in the property.

61. The Court also rejects the Defendant's assertion that it was Grachion Sands who breached the Plaintiff's trust and confidence and finds that it was the Defendant who betrayed his father at his most vulnerable time and deprived of a life interest in his home.

Conclusion

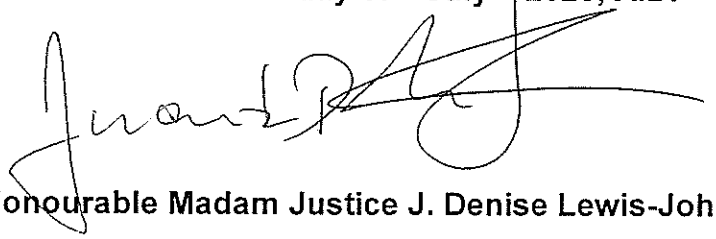
62. For the reasons stated herein the Court finds for the Plaintiff and declares that:-

i. The Conveyance dated 30th August 2017 from Weston Mortimer to Jared Johann Forbes and recorded in Volume 12880 at pages 348 to 354 is null and void;
ii. Subject to the Defendant completing the triplex within two years, Lot 64, Christie Avenue, Stapledon Gardens is to be conveyed to the Plaintiff and Defendant as joint tenants;
iii. The Plaintiff is to be restrained from impeding the renovations to Lot 64 in creating a triplex;
iv. The Defendant's counterclaim is dismissed,
v. The Defendant did not plead Special Damages as is required, nor was it "strictly proved'.

vi. The Plaintiff remains in physical possession of the property. He resided and continues to reside there and thus did not suffer the loss of finding alternative residence. I will hear the Plaintiff as to damages.

vii. Cost to the Plaintiff to be taxed if not agreed.

Dated this 17th day of July 2023, A.D.



The Honourable Madam Justice J. Denise Lewis-Johnson