

IN THE SUPREME COURT OF BELIZE, A.D. 2008

ACTION NO. 340 OF 1992

**CHRISTOPHER ROE
MARIE ROE
(as Executors of the Estate of Gordon Roe)
MARIE ROE**

Claimants

BETWEEN AND

**GEORGE WESTBY
ERNEST STAINE
(Administrator of the Estate of Abner Westby)
ELIZABETH MICHAEL
ELMA WESTBY
(former Administratrices of the Estate of
Abner Westby)**

Defendants

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Derek Courtenay SC, together with Mr. Michael Young SC, for the claimants.
Mr. Wilfred Elrington SC for the defendants.

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JUDGMENT

The delivery of this judgment only now is much regretted. But this is ascribable mainly to the man-power situation in the Courts. The record shows that this case was commenced in 1992 by Mr. Gordon Roe who was then alive and his wife, the 2nd claimant, first against Mr. George Westby the first defendant seeking an order against him to remove the house he was constructing on the property in issue and an order for the

possession of the land. By summons dated 9th February 1994, the claimants applied for an injunction to restrain the first defendant from constructing further or additional building on the property. The Court instead of granting any injunction made an order for early trial! On 17th October 1995, the Court made a further order joining the rest of the defendants. That is, the present administrator (the second defendant) and former administrators (the third and fourth defendants) of the estate of the late Abner Westby. In the meantime, Gordon Roe died on 17th May 1997.

It was only in 2005 that the case was set down before me for trial. But the case itself was eventually heard at a time when there was only one other judge of the Supreme Court available; and this was in the face of a long and growing list of civil cases. In fact, the record shows that in the midst of the trial of this case, on the first day of the hearing, the Court had to adjourn to take another serious claim involving the Attorney General and BTL, concerning a foreign judgment from the U.S.A. After the conclusion of that case and the decision of the Court, the trial of this case was resumed late in the afternoon of the same day. At the conclusion of the trial, the increasing demand on the Court's time and the increasing spate of litigation and the shortage of judges, approaching a crisis level, all combined to prevent an earlier rendition of this judgment. The delay is, however, much regretted.

2. This case itself is concerned with matters that happened quite some time ago, principally in 1972, 1979, 1981 and 1992. It was therefore not surprising that the memory of some of the witnesses had dimmed with the passage of time by the time the case eventually came on for trial. In 1972, the late Abner Westby owned some landed property in Placencia Village in the Stann Creek District.

3. It is the case for the claimants, Christopher Roe and Marie Roe, as executors of the estate of Gordon Roe, that in 1972, the late Abner Westby agreed to sell to Mr. Gordon Roe, land in the Placencia Village described as follows:

“Beach lot in Placencia bounded on the North by Rosalind Young, on the South by Jane Young, on the West beyond the cement walk by Abner Westby and measuring approximately 160’ x 75’ along with house 36’ x 19/24’ and all appurtenances thereon.”

This description is contained in an undated receipt put in evidence as **Exhibit CR 1**, issued by the late Abner Westby, in which he acknowledged receiving from G. A. Roe & Sons Ltd. the sum of \$1,500.00 as deposit on an agreement for the sale of a beach lot and house (as described) for a total amount of \$7,000.00 in all.

The claimants, Christopher Roe and Marie Roe, are the executors of Gordon Roe. They are the son and wife of the late Gordon Roe, Christopher being one of his sons. His executors have brought this action claiming a declaration that the property on which the first defendant, Mr. George Westby, erected a building is the property of the claimants’ and not part of the estate of the late Mr. Abner Westby nor of his personal representative nor heirs. They also claim an injunction restraining the defendants or any of them or their agents from entering upon or trespassing on or interfering with the claimants’ right to possession of the property. They also claim an order for the defendants to vacate the property and remove any buildings or structures erected thereon by the first defendant or by any of them or on their behalf. Mrs. Marie Roe also claims in her own right by reason of the fact that in a Deed of Conveyance of the property in 1981 she was expressly named as a purchaser together with Mr. Gordon Roe.

4. Some of the defendants in this action were also administratrices of the estate of the late Mr. Abner Westby. Mr. Westby died in 1979 and on the 2nd March 1981 Letters of Administration for his estate were issued by the Probate Registry of the Supreme Court to the third and fourth defendants as his daughter and widow respectively. The first defendant, George Westby, a son of the later Abner Westby, was from the evidence away in the U.S.A. at the time of their father's death. But by 1992, he had returned to Belize and commenced building a house on the property in issue in this case. It is not clear when exactly, but some time later, the Letters of Administration issued to Elizabeth Michael and Elma Westby, were revoked and a new grant was issued to the second defendant, and as I have stated they were all joined as defendants by an order of the Court in 1995.
5. From the evidence in this case, it was evident that both Mr. Gordon Roe and Mr. Abner Westby knew each other quite well and there was some arrangement between them for the sale and purchase of land in Placencia. The pity is that neither of them is now alive to say what exactly transpired between them.
6. The arrangement culminated in the payment by Mr. Gordon Roe of the sum of \$7,000.00. Again, from the evidence, several payment vouchers were tendered attesting to this. The first payment was for the sum of \$1,500.00 and an undated receipt signed by Abner Westby was issued describing the property as I have stated at para. 3, above: see **Exhibit CR 1**.
7. Other payment or cash vouchers were tendered in which it was clearly stated that it was on account for payment for beach lot and land in Placencia. And the payments were all made to Abner Westby: see **Exhibits CR 2 (a), (b) and (c)**.

8. Mr. Abner Westby however died in 1979. Letters of administration were issued, as I have stated, to the third and fourth defendants. They on 15th December 1981, executed a Deed of Conveyance as personal representatives of the estate of Abner Westby and vendors of the property in favour of Gordon Roe and Marie Roe, as purchasers. The Conveyance described the property as follows:

“ALL THAT lot, piece or parcel of land situate at Placencia Village, Stann Creek District and bounded on the North by land now or formerly of Rosalin Young, on the east by the sea, in the South by land now or formerly of Jane Young and on the West by land now or formerly the Estate of Abner Westby and more particularly described as follows: Commencing at the North-western corner of the said lot which said corner is on a true bearing of South 24° East at a distance of 418.80 feet from a wooden post demarcating the North-eastern corner of a lot numbered 6 on a plan recorded at the Ministry of Natural Resources as Entry No. 185 Register No. 8 thence in a North-easterly direction for a distance of 161 feet thence in a South-easterly direction for a distance of 66 feet thence in a South-westerly direction for a distance of 145.45 feet thence in a North-westerly direction for a distance of 67.85 feet back to the commencing point as shown coloured red on the attached plan TO HOLD the same unto the purchases in fee simple.” (Emphasis added, more on this later).

This was tendered as **Exhibit CR 6**.

9. In 1992, Mr. George Westby, a son of the late Abner Westby and the first defendant to this action, entered upon the land and started constructing a

building on it. This was responded to by a letter from solicitors acting for Gordon and Marie Roe, requesting Mr. George Westby to stop work on the land and to remove the articles and materials he had placed on the land (see **Exhibits CR 7**). But the first defendant continued building on the land. This has culminated in this action.

10. The case for the defendants can briefly be stated as follows:
 - i) There was no sale of the property by Abner Westby;
 - ii) that the Deed of Conveyance of 15th December 1981 was procured by undue influence;
 - iii) In the alternative, if the Deed was not procured by undue influence and that the late Abner Westby agreed to sell property to the claimants, the land agreed to be sold is materially different from the land described in the narrative description in the Deed of Conveyance of 15th December 1981;
 - iv) the defendants counterclaimed that the Conveyance be set aside as having been procured by undue influence or alternatively, a declaration that the property conveyed to the plaintiffs is not bound on the East by the sea but by the remaining lands of the late Abner Westby;
 - v) in the further alternative, a declaration that the land in the Conveyance is held on trust by the plaintiffs for the benefit of the estate of Abner Westby;

- vi) in the alternative, an order that the claimants execute all necessary and proper acts to give effect to the rights of the second defendant as the administrator of the estate of Abner Westby.
11. Both sides filed witness statements and at the trial Messrs. Christopher Roe, Henry Flowers and Horace Young testified for the claimants and Ms. Elizabeth Michael testified for the defendants.

Issues for determination

12. In my view, from the evidence in this case, including the documents tendered, and the pleadings of the parties, the following issues arise for determination in this case:
- i) Was there an agreement between the late Abner Westby and Gordon Roe for the sale of property in Placencia?
 - ii) if there was an agreement what was the exact property it related to?
 - iii) Was there an undue influence by which the Deed of Conveyance of 15th December 1981 was procured such as to make that conveyance inoperative to transfer any property to which it relates?

13. I now turn to a consideration and determination of these issues.

i. Was there an agreement between the late Abner Westby and Gordon Roe for the sale of property in Placencia?

Unfortunately, both principals, Mr. Abner Westby and Mr. Gordon Roe, have passed on and the Court did not have the benefit of direct testimony from either of them. But from the evidence, I am left in no doubt that there was an agreement between them and that this involved, among other things, the land in question in this case. It would seem that Mr. Gordon Roe was a meticulous keeper of documents. Christopher Roe, his son and an administrator of his estate and the first claimant in this action, gave evidence and tendered several documents from the file of his late father. Among the documents tendered is **Exhibit CR 1** which I have already mentioned in paragraph 3 above. Also tendered in evidence were **Exhibits CR 2(a), (b) and (c)** – cash vouchers recording the receipt of various sums by Abner Westby, whose signature appears on all these vouchers acknowledging payment on account for “*beach lot and house*” at Placencia. There is also **Exhibit CR 3** which is relied on by both sides. This is a hand sketched plan with the Letters “*G. Roe*” in the middle with the legend: “*PARCEL OF LAND AT PLACENCIA STANN CREEK DISTRICT SOLD TO GORDON ROE BY ABNER WESTBY.*” Again this document bears a signature not dissimilar from those on the cash vouchers in **Exhibits CR 2(a), (b) and (c)** which can be clearly made out as “*A. Westby.*”

14. I am therefore convinced and satisfied that from the paper trail in this case there was an agreement, evidenced in writing, between the late Abner Westby and Gordon Roe for the sale of the property in Placencia to the latter.

ii. What was the exact property the agreement related to?

This is a serious issue between the two sides. Unfortunately, before the death of Abner Westby in 1979, there was no formal survey plan of the land agreed to be sold. However, the receipt, **Exhibit CR 1**, acknowledging the receipt of \$1,500.00 as deposit for the sale of the property contains a description of the cardinal points of the property. It is to be noticed that this description states “*Beach lot in Placencia ...*” and proceeds to give the Northern, Southern and Western boundaries and measurements. There is no reference to the Eastern boundary. It is reasonable therefore to conclude that as a beach lot with three cardinal points referable to the land area, the eastern boundary could only be the Sea. In fact on **Exhibit CR 3**, the hand-sketched plan already referred to and relied upon by both sides, the word “*SEA*” can be seen above the place referred to as the EAST.

15. I am accordingly satisfied that the sea, no doubt the Caribbean Sea, as it is common ground between the parties that the land in question is not on the lagoon side of the Placencia Peninsula, represents the eastern boundary of the beach lot that Abner Westby agreed to sell to Gordon Roe in 1972.
16. This point is put beyond doubt in 1981 when, after a survey was done of the land and a formal conveyance of it was executed by the personal representatives of Abner Westby in favour of the claimants, it was clearly described as being bound on the East by the Sea – see para. 8 above on **Exhibit CR 6**, the Deed of Conveyance. This document itself contains a detailed description and dimensions of the land.
17. I am therefore satisfied that **Exhibit CR 6**, the Deed of Conveyance contains ample and satisfactory description and particulars of the land

agreed by Abner Westby to be sold to the claimants, such as to make it separate, distinct and identifiable.

18. Mr. George Westby, the first defendant however, has taken serious issue with the claimants' title to the property. First he denies that his father, Abner Westby, sold the land to the claimants; secondly he asserts that his father had given him that property. But he states in para. 46 of his Witness Statement as follows:

“46. My father did not sell his land to Mr. Roe. In fact, in April 1979, just weeks before he died, my dad had written to me and told me that he wanted me to have the piece of land which Mr. Roe is now claiming belongs to him.”

19. One of the documents on which reliance is placed by the defendants is a letter dated 20th April 1979, presumably from the late Abner Westby. I say presumably because the only address, if an address it is, on the letter is “*Belize CA.*” But there is no signatory to the letter. I did not have the benefit of any testimony to explain the circumstance and provenance of this letter. I find it therefore difficult to put much or any store on this letter as evidencing any title to the property in favour of Mr. George Westby or the exact description and dimension of the land in question in this case.
20. Moreover, Mr. George Westby, no doubt a son of the late Abner Westby, has not put in evidence in relation to the land itself, any scintilla of title such as a conveyance or an assent by Abner Westby's personal representatives in his favour. These documents would necessarily contain a description and dimension ordinarily on a survey plan. There is none in this case from the defendants, including Mr. George Westby.

21. In the circumstances, the particulars and description of the land in **Exhibits CR 1 and 6** (the Deed of Conveyance) are much to be preferred as the land sold by the late Abner Westby to the claimants. I find therefore no need to have recourse to any extrinsic evidence in this case to determine the location or dimension of the land in question. The survey plan attached to the deed of Conveyance and expressly mentioned therein, was itself prepared by G. V. Bautista, a licensed surveyor. Mr. Bautista made a Witness Statement in this case. I was however informed by Mr. Young SC counsel for the claimants that even though he had been subpoenaed to give viva voce evidence and if needs be, be cross-examined, he could not because of the passage of time since he did the survey in August 1981, and the time of the trial in 2005, his memory, I was informed, was not quite what it used to be. In the event Mr. Bautista was not called. But in the survey plan itself, he gives a clear description of the property. It is to be noticed from his plan that immediately to the left of the property sold to the claimants, there is a property described as part of the “*Estate of Abner Westby*” outside of and separate from the land which is the subject of the survey plan.
22. I am, accordingly, persuaded that the particulars and dimensions of the land as described in **Exhibit CR 6**, the Deed of Conveyance, represent the land Abner Westby agreed to sell to the claimants.
23. *iii. Was there undue influence in procuring the Deed of Conveyance dated 15th December 1981 such as to render defeasible any title to property to which it relates?*

This is, perhaps, the more troubling aspect of this case. In a material sense, it is at heart of the defendants’ case. It is averred on behalf of the defendants that it was the undue influence exerted on the third and fourth defendants that made them sign the Deed of Conveyance of 15th December 1981. This undue influence, it is claimed, was exerted by Mr.

Horace Young. Mr. Young, no doubt at the time, was one of the leading attorneys in Belize and in private practice at the material time. He made a witness statement in this case and gave oral testimony as well in which he was examined in-chief by Mr. Derek Courtenay SC for the claimants and cross-examined at some length by Mr. Wilfred Elrington SC for the defendants.

24. Mr. Young is a retired justice of the Court of Appeal and at the time of his testimony he was then in his 83rd year. As I had said earlier, the passage of time since the transactions giving rise to this case (from 1972 to 1992 when action was commenced and the trial itself in 2005), it is inevitable that memories might have dimmed and recollection of events would not be perfect. This was evident, in the case of Mr. Young, who appeared not to recall certain events. I found him, however, an honest witness without any guile or prevarication, though understandably, because of the lapse of time, he could not recall certain events and people.
25. The charge of undue influence leveled against Mr. Horace Young stems from the averment of the third and fourth defendants, particularly Elizabeth Michael, that they signed off on the Deed of Conveyance of 15th December 1981 in favour of the claimants, in the office of Mr. Young's law firm and felt intimidated in doing so. In the words of the third defendant in her witness statement:

“25. We went to Mr. Horace Young's office one day in January 1982 (sic). We reached the office at about 11:00 a.m. and was given documents to read. We took the documents outside. The documents stated that we were conveying land to Mr. Gordon Roe.

26. *Mr. Horace called us back inside at just before 12:00 noon. Mom and I did not agree with the documents as we knew that father had not sold any land to Mr. Roe. Mom insisted that Dad did not sell Gordon Roe the property. My mom said "Mr. Horace, Abner did not sell Gordon Roe this property and we are not going to sign anything." Mr. Horace Young stood by the door and said "Look, I am sick and tired of this nonsense, sign the thing and get out of my office. It is time for lunch and I have to leave." His attitude was that it was a done deal and we were just being obstinate.*
27. *We signed and left. Mom cried. This is someone we all respected. Mom left the office crying that day.*
28. *...*
29. *Mr. Horace Young never explained the documents to us or gave us any legal advice on it, he never even suggested that we should receive legal advice on it. We never saw the document before that day and we never got a chance to take it away and have somebody explain it to us.*
30. *At the time, we did not ask to take it away or asked for advice on it. I did not think that we could. I thought it was a done deal. I suppose that we should not have signed but I did not think about that. I did not even think that we could refuse to sign the document."*

26. I also should state that earlier, shortly after Mr. Abner Westby's death in 1979, Mr. Young's law firm processed the petition on behalf of his estate to obtain the Letters of Administration by which the 3rd and 4th defendants became his personal representatives.
27. It is against this background that the issue of undue influence has arisen in this case.
28. I should point out that from the evidence, it would appear that Mr. Young was at the material time, a friend and attorney to Mr. Gordon Roe as well.
29. The law on undue influence relates to the equitable jurisdiction of the Court in which it will grant relief in respect of gifts and **other transactions** procured by undue influence (see generally **Snell's Equity** 30th Ed. by John McGhee, London, Sweet & Maxwell, 2000 at pages 611 and following). It is an equitable doctrine which "*... is brought into play whenever one party has acted unconscionably in exploiting the power to direct the conduct of another which is derived from the relationship between them*" per Stuart-Smith LJ in **Royal Bank of Scotland Plc v Etridge (No. 2) and others appeals (1998) 4 All E.R. 705**, at p. 712.
30. For the purposes of the law, cases of undue influence are now classified into three categories: see the case of **Bank of Credit and Commerce International S.A. v Aboody (1990) 1 Q.B. 923** at p. 953, **(1989) 2 W.L.R. 759 C.A.**, where the English Court of Appeal helpfully outlined the classifications.
31. In 1993 in the case of **Barclays Bank v O'Brien (1994) A.C. 180**, the English House of Lords elaborated upon and, with respect, helpfully explained the categories of undue influence. Lord Browne-Wilkinson who spoke for the rest of the House said this:

“A person who has been induced to enter into a transaction by the undue influence of another (“the wrongdoer”) is entitled to set that transaction aside as against the wrongdoer. Such undue influence is either actual or presumed. In Bank of Credit and Commerce International S.A. v Aboody [1990] 1 Q.B. 923, 953, the Court of Appeal helpfully adopted the following classification.

Class 1: Actual undue influence

In these cases it is necessary for the claimant to prove affirmatively that the wrongdoer exerted undue influence on the complainant to enter into the particular transaction which is impugned.

Class 2: Presumed undue influence

In these cases the complainant only has to show, in the first instance, that there was a relationship of trust and confidence between the complainant and the wrongdoer of such a nature that it is fair to presume that the wrongdoer abused that relationship in procuring the complainant to enter into the impugned transaction. In Class 2 cases therefore there is no need to produce evidence that actual undue influence was exerted in relation to the particular transaction impugned: once a confidential relationship has been proved, the burden then shifts to the wrongdoer to prove that the complainant entered into the impugned transaction freely, for example by showing that the complainant had independent advice. Such a confidential relationship can be established in two ways, viz.,

Class 2(A)

Certain relationships (for example solicitor and client, medical advisor and patient) as a matter of law raise the presumption that undue influence has been exercised.

Class 2(B)

Even if there is no relationship falling within Class 2(A), if the complainant proves the de facto existence of a relationship under which the complainant generally reposed trust and confidence in the wrongdoer, the existence of such relationship raises the presumption of undue influence. In a Class 2(B) case therefore, in the absence of evidence disproving undue influence, the complainant will succeed in setting aside the impugned transaction merely by proof that the complainant reposed trust and confidence in the wrongdoer without having to prove that the wrongdoer exerted actual undue influence or otherwise abused such trust and confidence in relation to the particular transaction impugned.”

32. As I stated earlier, the issue of undue influence, as alleged by the defendants is one of the disturbing aspects of this case. From the facts and evidence, it is not easy to see which category of undue influence, if any, the case of the defendants could readily be fitted into.
33. In so far as the first category is concerned, that is, of **actual or express undue influence**, I am not satisfied, from the evidence, that there was any express or actual undue influence brought to bear on the third and

fourth defendants by Mr. Horace Young. I am afraid it has not been proved affirmatively that they signed off on the Deed of Conveyance (the transaction that is sought to be impugned by the defendants' counterclaim), not of their own free will but as a result of actual or express undue influence exerted upon them by Mr. Young. Mr. Young, of course, denied in his witness statement and his evidence-in-chief, that he ever forced anyone to sign any document, and stated that he would not do that. I am prepared to believe him and on balance, I accept that he wielded no express or actual undue influence on the third and fourth defendants to sign off on the Deed of Conveyance. Under some relentless cross-examination on this point by Mr. Elrington SC for the defendants, Mr. Young stated that he could not recall that he indicated to the third and fourth defendants that they had to sign the conveyance.

34. But more tellingly, I am not satisfied, from the evidence of Mrs. Elizabeth Michael, the third defendant, that any express or actual undue influence was brought to bear upon her or her mother, despite what she stated in her witness statement (which I have reproduced at para. 25 above) to sign the conveyance. Pressed under cross-examination by Mr. Courtenay SC for the claimants, she said that even though she and her mother signed the conveyance reluctantly with a feeling of intimidation, she did not mention this in an affidavit she had sworn in March 1994 to rebuff an application for an injunction on behalf of the claimants. She said she never thought of the matter. She had to admit that any reluctance they might have had was because they thought that only a portion of Mr. Abner Westby's land was sold. It can readily be concluded from this that there was no actual undue influence flowing from Mr. Young to have suborned the will of Mrs. Michael or her mother.
35. Moreover, in her own words when they received the conveyance at Mr. Young's office they went outside to read it and about an hour later came

back inside to sign it, at which point, it is alleged, they felt intimidated. I am not prepared to find any actual or express undue influence on so tenuous a footing. Surely after reading the document on their own outside, they were perfectly free to walk away or even refuse to sign it.

36. In all the circumstances therefore, I find no basis for any actual or express undue influence on the part of Mr. Young that procured the signing of the Deed of Conveyance by the third and fourth defendants.
37. In so far as the other two categories of undue influence are concerned, they stem from the relationship between the parties, often involving a situation of trust and confidence between them. As was stated in **Royal Bank of Scotland and Etridge** *ibid* at p. 711:

“In these cases it is sufficient for the complainant to establish the existence of a relationship of trust and confidence between her and the wrongdoer of such a nature that it is fair to presume that the wrongdoer abused the relationships in procuring her to enter into the impugned transaction ... Class 2A consists of certain well-known relationships which are by presumption of law irrebutably treated as relationships of trust and confidence. Class 2B consists of other cases where the complainant establishes by affirmative evidence that she was accustomed to repose trust and confidence in the wrongdoer.”

38. The relationship between a client and her attorney is quintessentially within Class 2A. On the facts of this case, was the relationship between the third and fourth defendants in the circumstances of this case, such as to give rise to one of trust and confidence flowing from an attorney-client relationship that could undermine and taint the conveyance in issue here?

I am not satisfied that it would be reasonable, fair and proper to so find in the circumstances of this case for the following reasons:

39. In the first place, though it was Mr. Young's law firm that processed the application for the grant of Letters of Administration in favour of the third and fourth defendants, it has not been established that that firm, once the Letters of administration had been obtained, continued to act for and on behalf of the third and fourth defendants. On the contrary, on the evidence, on 23rd December 1981, Mr. Young's law firm wrote the defendants what can only be regarded as an adversarial letter demanding that they execute an assurance on the property in favour of Mr. Gordon Roe, a client of his. Surely, this would readily imply that the Letters of Administration was a one-off exercise and not a continuing or subsisting attorney-client relationship. If anything, the tone and content of this letter clearly demonstrated that it was, in so far as the land in question was concerned, the claimants who were Mr. Young's clients and not the third and fourth defendants.
40. I can therefore find no warrant, on the evidence, to import a client-attorney relationship between Mr. Young and the third and fourth defendants that would ground a presumption of undue influence that could or should impugn successfully the conveyance signed by the latter.
41. Secondly, the Deed of Conveyance was in fact, expressly made between the third and fourth defendants as personal representative of the late Abner Westby **and** the claimants. I do not see any good reason to impugn it to the prejudice and disadvantage of the latter.

Although, if the facts warrant it, the doctrine of undue influence can be extended to impugn a transaction where the person exerting the undue influence may not be the person who receives the benefit of the

transaction. **Bullock v Lloyd's Bank and Another (1954) All E.R. 726** at p. 729.

In any event, as I have found, there was no undue influence in this case, either actual or presumptive flowing from an attorney-client relationship.

42. I am satisfied that, on the evidence, there was also no de facto relationship between Mr. Young and the defendants under which the latter generally reposed trust and confidence in the former which could give rise to a presumption of undue influence on his part resulting in the procurement of the Deed of Conveyance. On the contrary, Mr. Young is to be believed when he said that he hardly personally knew the third and fourth defendants.

43. Moreover, I am not convinced that the Deed of Conveyance was on the evidence in this case, to the manifest disadvantage of the defendants. If anything, it is the fruition of the agreement between the late Abner Westby and Gordon Roe concerning property in Placencia. It is clear that it was only a part of Mr. Westby's land, the portion that he had agreed to sell, that was in fact included in the description and particulars as stated in the conveyance. The balance which is clearly shown in the survey plan, forms part of Mr. Abner Westby's estate.

Conclusion

44. It is for all these reasons that I must dismiss the counterclaim of the defendants and enter judgment for the claimants as follows:
 1. I grant a declaration that the property on which the First Defendant erected the building is the property of the

Claimants and not of the estate of the late Abner Westby nor his personal representatives nor heirs.

2. An injunction restraining the Defendants or any of them whether by their servants or agents from entering upon or trespassing on or interfering with the Claimants' rights to possession of the property set out below:

Property

ALL THAT lot, piece or parcel of land situate at Placencia Village, Stann Creek District and bounded on the North by land now or formerly of Rosalin Young, on the East by the sea, on the South by land now or formerly of Jane Young and on the West by land now or formerly the estate of Abner Westby and including the accreted portion of the land all as designated in the plan attached to the Deed of Conveyance dated the 15th December 1981 recorded in Deeds Book Volume 1 of 1982 at folios 1025 to 1042.

3. An Order that the Defendants vacate the premises and remove any buildings or structures erected by the First Defendant or by any of the Defendants or anyone on their behalf.

Finally, although the first defendant has been foolhardy in entering on the land and persisting on staying on it and continuing construction, it is reasonable to award damages for trespass against him as I find he had no title to be or remain there. I however award the sum of \$100.00 for his trespass. This award is greatly tempered by the consequences to the first

defendant that would flow from this judgment. But I must say that he has only himself to blame.

I award the costs of these proceedings fit for two counsel to the claimants to be agreed or taxed.

A. O. CONTEH
Chief Justice

DATED: 11th November 2008.