

IN THE SUPREME COURT OF BELIZE, A.D. 2002

ACTION NO. 386

	(JULIA FELIPA HEUSNER (since deceased)	
	(GEORGE HEUSNER	
	(Administrator of the Estate of JULIA FELIPA	
	(HEUSNER added by Order of Court of	
	(7 th December, 2004)	Claimant
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BETWEEN	(AND	
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	(JULIE AMELIA HEUSNER	Defendant

—
BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Linbert Willis for the claimant.
Mr. Michael Peyrefitte for the defendant.

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JUDGMENT

The facts of this case are sad as they concern a claim to property originally between a mother and daughter. Mrs. Julia Felipa Heusner, the original claimant was the mother of the defendant, Ms. Julie Amelia Heusner. At the time this action was commenced in 2002, Mrs. Julia Heusner was about 85 years old and partially blind. The original action was commenced by a writ dated 29th July 2002 by Mrs. Julia Heusner against Ms. Julie Heusner, her daughter. The claim was for a declaration that a Deed of Conveyance dated 18th December 2000, between mother

and daughter by which premises at #36 Cemetery Road at the corner with Euphrates Avenue, Belize City were conveyed to the daughter, is void on the grounds of fraud. The writ also claimed an injunction to restrain the daughter from entering or remaining on the premises or in any way interfering with the mother's (the claimant) possession of the said premises. It claimed as well damages. However, for some inexplicable reason, on the 4th November 2002, Notice of Motion was brought on behalf of Mrs. Heusner (the mother) claiming the same relief as in the writ of summons.

2. Regrettably, before either the action or the motion could be heard, Mrs. Heusner died on 5th November 2002. But before that she had sworn and filed an affidavit dated 1st November 2002 in support of the aforementioned motion. The Commissioner of the Supreme Court, Mr. Charles Chavannes, who attested Mrs. Heusner's affidavit, clearly stated that at the time of swearing to the affidavit, she was partially blind and that he had to distinctly and audibly read over its contents to her and explain the nature and effect of the exhibits to her and that she appeared to understand the same and then placed her signature thereto in his presence. Mr. Chavannes was later to file a witness statement in this case. However, on Mrs. Heusner's death, one of her other children, Mr. George Heusner who was the administrator of the estate of Mrs. Heusner, was added as a claimant on behalf of Mrs. Heusner's estate by an order of this Court dated 7th December 2004. Mr. Heusner has been given a Grant of Administration, No. 17/2003, issued out of the Probate Registry of the Court on 24 March 2003.
3. The claim in this action relates to the premises at No. 36 Cemetery Road at the corner with Euphrates Avenue. The premises were originally acquired by Mrs. Julia Heusner by a vesting assent in her favour dated 20th September 1979 and recorded in Deeds Book Volume 14 of 1979 at

folios 467 to 480. Mrs. Heusner lived at the material time of this action on these premises together with the defendant Julie Heusner, who is one of her six children. From the statement of claim in this case it would appear that Mrs. Heusner was at the time in poor health with failing eye sight. The defendant performed some chores for her mother which included collecting rent from tenants and paying property and other taxes in respect of the premises. This is not denied by the defendant save to add that she did all this for her mother not only when she was in ill-health with failing eye sight but even at times when she was, to use the expression in the Defence, "fully lucid".

4. At the heart of the claim is the conveyance dated 18 December 2000 by which the defendant says her mother, Mrs. Heusner for a consideration of \$25,000.00 conveyed the property in issue to her. It is the case for the claimant that the Deed of Conveyance was procured by the fraudulent and or false representation made by Ms. Heusner, as to the nature and effect of documents to her mother Mrs. Julie Heusner. By this, it is claimed Ms. Heusner procured her mother's signature on the Deed of Conveyance and the Deed of Rectification which was executed shortly afterwards on 3rd January 2001. This latter instrument was simply to rectify the description of the property as described in the Deed of Conveyance. By this claim, this Court is being asked to make a declaration that the said Deed of Conveyance is null and void and or to order its rescission.
5. The nature of the fraud and or false representation by which it is claimed the defendant procured the signature of Mrs. Heusner on the Deed of Conveyance is said in the statement of claim to have been that the defendant represented to her mother that the Deed of Conveyance was a document from the Belize City Council for the revaluation of the property; and that acting in reliance on this representation, Mrs. Heusner signed the Deed of Conveyance.

6. For the defendant, there is a flat denial of the claimant's version. It is claimed by Ms. Heusner in her defence that she bought the property from her mother for the sum of \$25,000.00; and that she freely conveyed it to her. Ms. Heusner denies making any representation to her mother that the Deed of Conveyance was anything other than a conveyance related to the property in question. It is further claimed for Ms. Heusner that on 18th December 2000, she, together with her mother, Mrs. Heusner, walked over to see a Ms. Elizabeth Garbutt who worked at the Magistrate's Court in Belize City and was a Justice of the Peace as well, and that she witnessed the execution of the Deed of Conveyance in issue in this case by both the mother and daughter.
7. At the trial of this claim, there were three witness statements for the claimant viz: i) by George Heusner; ii) by Charles Chavannes and iii) by Maria Heusner. I should add as well that there was an affidavit by Julia Felipa Heusner dated 1st November 2002, intended to be used at the hearing of the Motion, which as I stated earlier was not, in substance, materially different from the writ of summons that had commenced this claim. However, Mrs. Julie Heusner died before the trial. There was no witness statement from her. But in the interest of justice, I do not think this Court should be oblivious of her affidavit. I realize, of course, that there was no cross examination on it, so it must be viewed with some circumspection.
8. There were two witness statements for the defendant, Ms. Heusner, viz: one by herself and the other by Mr. Richard Stuart, an attorney who originally had the conduct of the defence on behalf of Ms. Heusner.
9. Subsequently at the trial Ms. Heusner and Mr. Stuart were cross-examined by Mr. Linbert Willis, the attorney for the claimant and Mr.

George Heusner was cross-examined by Mr. Michael Peyrefitte, the attorney for Ms. Heusner.

10. In the light of the issues joined between the parties, a crucial testimony that would perhaps have been of considerable help and possibly conclusive, was that to have been offered by Ms. Elizabeth Garbutt. She is claimed to be the Justice of the Peace who witnessed the signature and execution of the Deed of Conveyance in this case. It says so expressly on the Conveyance itself. But alas! The Court was bereft of any testimony from her. To be sure, Mr. Stuart in his affidavit and witness testimony for Ms. Heusner stated that when he was first instructed in this matter by Ms. Heusner he contacted Ms. Elizabeth Garbutt who told him that she indeed had witnessed the signing of both the Deed of Conveyance and the Deed of Rectification and that she was willing to so testify in Court and be cross examined. Again, alas! Ms. Elizabeth Garbutt is deceased and there was no testimony from her.
11. I am in the circumstances not inclined to put much, if any weight, on Mr. Stuart's testimony on what Ms. Garbutt is alleged to have told him, especially in the light of the fact that under cross examination by Mr. Willis, Mr. Stuart had to admit that he did not get an affidavit from Ms. Garbutt as to what she allegedly told him. This in my view would have been a more prudent move. As things stand, the thrust of Mr. Stuart's witness statement and affidavit clearly borders on hearsay in respect of the real issue in contention in this case. That is whether or not the Deed of Conveyance was in truth and in fact executed by Mrs. Julia Heusner.
12. In the circumstances of this case, I am therefore left with the unedifying option: which side is more probably than not believable? I had earlier remarked that this is a sad case as it arose out of a dispute within a family: first, between mother and daughter and later continued on behalf of the

mother's estate, by a sibling of the defendant. From the evidence, there are six siblings all born to Mrs. Julia Heusner, including Mr. George Heusner and Ms. Julia Heusner. Mr. George Heusner is now a claimant in these proceedings as administrator of their mother's estate and Julie is the defendant.

13. I now turn to the respective case for the parties.

The case for the claimant

This can be gathered from the affidavit of Mrs. Julie Heusner dated 18th November 2002; the witness statements of George Heusner, Maria Heusner and Charles Chavannes respectively dated 30th September 2005. Additionally relying on his witness statement Mr. Heusner was cross-examined at some length by Mr. Peyrefitte, the attorney for Ms. Julie Heusner, the defendant.

14. In her affidavit, Mrs. Julia Heusner stated that by a Vesting Assent dated 20th September 1979, which is recorded in the Lands Registry in Deeds Book Volume 14 of 1979 at folios 467 – 480, she became the owner and proprietor in fee simple of Lot No. 1797 situated at No. 36 Corner of Cemetery Road and Euphrates Avenue. She further stated that sometime in December 2000, her daughter, Julie Amelia Heusner, who resided with her in the premises, and is the defendant in this action, took a document to her. She told her it was a document from the Belize City Council for the revaluation of her property as it was described in the document and that she needed her to sign it so as to be able to show it to the person from the Belize City Council on a visit for the revaluation of the property. Mrs. Julia Heusner stated that she signed the document her daughter, the defendant, presented to her without reading it as her vision was poor to read.

15. Mrs. Julia Heusner further stated that in April 2002, her son, George Heusner, showed her a document and explained to her that it contained a charge by way of mortgage on her property. She exhibited the Deed of Mortgage as "JFH I" to her affidavit. She also stated that George Heusner showed her another document and explained to her that from the document she had on 18th December 2000 purportedly conveyed her property described in the Conveyance. She exhibited a copy of the Conveyance as "JFH II" to her affidavit and called it "purported Conveyance". She however stated that at no time did she intend to convey to Ms. Heusner the property as she had five other children and that Ms. Heusner would have been the least of her children she would have conveyed the premises or any property to. She further stated that George Heusner again showed her another document on 22nd October 2002, and explained to her that it was a Deed of Rectification in which the description of the property in JFH II was corrected. George, she stated, showed her her signature on this document dated 3rd January 2001. She however stated that she could not recall when she signed the document and that it had never before been read to her by anyone. She also exhibited as JFH III and referred to it as "the purported Deed of Rectification".
16. She repeated that Exhibit JFH II (the Deed of Conveyance) which appeared to have been signed by her was not consciously signed by her intending to convey the property described in it to the defendant. And stated that she did not authorize the defendant to create a charge on her property to Barclays Bank or any other money lending institution or any person whatsoever.
17. She further stated that she was then 85 years old and lived in constant fear of the defendant who had threatened to kill her or burn down the

property; and that she lived in constant fear that the defendant would one day carry out her threats.

18. It should be noted here, that Mrs. Julia Heusner's affidavit was dated 1st November 2002, after the commencement of this action, first by writ and then a motion dated 4th November 2002 with her as the original claimant and Ms. Julie Heusner, her daughter, as the defendant. However, Mrs. Julia Heusner as I have already mentioned, died before the action came on for trial.
19. Mr. George Heusner, who as I had mentioned, was, as the administrator of their late mother's estate, by an order of the Court made a claimant to continue this action. He made a witness statement, and was cross-examined at the trial by Mr. Peyrefitte for the defendant.
20. In his witness statement, Mr. George Heusner stated that he was one of the six children of the late Mrs. Julia Felipa Heusner. He stated that the defendant was living with and looked after their mother who was in poor health and had failing eye sight. He stated that the defendant, his sister, collected rent from tenants, ran errands, paid bills and taxes. He visited his mother 3 – 4 days per week. His mother usually confided in him. Because of the defendant's misconduct with regards to money that his mother had received from the sale of a track of land, his mother gave him the title documents to the property in issue to hold for safe keeping. He went on to say that in October, 1999 his mother, the defendant and himself were discussing the need for repairing the house that his mother was living in which is the property in issue in this case. He stated that his mother was considering borrowing money from the bank and using the property as collateral. He further stated that the defendant then suggested that their mother should allow her to borrow the money in her name; but their mother told the defendant that she would not allow her to

handle her money. He went on to say that in February 2000 the defendant told him that she needed the title document to their mother's property to give the Belize City Council so that Council could reevaluate the land for tax purposes. He refused to give her the title document but she kept asking over and over so he eventually gave her one of the title documents for her to show the Belize City Council. He did not receive back the document from the defendant despite several requests.

Mr. Heusner further stated that in the middle part of July 2000, he received two Powers of Attorney one dated 13th April 2000 and the other the 6th July 2000, both purported to be from Julia Felipa Heusner their mother, appointing Julie Amelia Heusner, the defendant, as her attorney, to utilize the property as collateral in loan agreements. The Power of Attorney dated 13th April 2000 sought to utilize the property as collateral in loan agreement with the Atlantic Bank while Power of Attorney dated 6th July 2000 sought to utilize the same property as collateral in loan agreement with any lending institution. When he showed his mother the two Powers of Attorney, he and his mother confronted the defendant; and his mother told the defendant that she did not sign any Power of Attorney and that she would cancel them. This she did on or about the 5th September 2000. He went on to say that his mother could not walk far distances or climb long stairs because she became severely short of breath.

Mr. Heusner continued that in the month of December 2001, his mother, the defendant and himself met to discuss the non-payment of taxes as the defendant had told him that she was paying the taxes on the property; but in fact the taxes were in arrears and the arrears were accumulating. His mother then told the defendant then that she would give him authority instead to collect the rent from the tenants so that he could use the money to pay off the arrears of property tax. Mr. Heusner stated that his mother also told the defendant that she would give him Power of Attorney so that

he could take care of her and her property. The defendant became annoyed but at no time did she deny that her mother was the owner of the property.

Mr. George Heusner further continued that in fact in January 2002, their mother gave written authority dated 24th January 2002 to William Heusner, Robert Heusner and himself to collect rent and upkeep her property. Also he stated that by Power of Attorney dated 10th April 2002, she made him her Attorney to do all things deemed necessary in respect of herself and her property including collection of rent and payment of taxes. But when he approached one of the tenants to collect rent that tenant refused to pay him the rent so he gave the tenant a notice to quit but the tenant refused to quit and told him that he had seen a better document of title to the property. As a result of this he asked his wife, Maria Heusner, to visit the Land Title Registry to get information regarding the title to his mother's property. He obtained copies of the Deed of Conveyance dated 18th December 2000, by which Julia Felipa Heusner, their mother, purportedly conveyed her property at No. 36 Cemetery Road Belize City, the property in issue, to Julie Amelia Heusner the defendant, for \$25,000.00; and a Deed of Mortgage dated 29th January 2001 between Julie Amelia Heusner, the defendant, and Barclays Bank Plc whereby in consideration of \$40,000 she had charged the property as collateral.

Mr. Heusner further stated that sometime in May 2002, he showed their mother the Conveyance and the Mortgage deed and explained the content of each document to her. As a result both of them confronted the defendant. His mother told the defendant that she did not sign any property to her. His mother told her that the only document that the Defendant had given her to sign was the document which she said was to enable the Belize City Council to reevaluate the property so that she would

pay less tax. The Defendant told their mother that she already had the papers to the property and that their mother could not do anything about it.

21. In my view, Mr. Peyrefitte's cross-examination of Mr. Heusner only served to confirm what he had stated in his witness statement. He denied that he instigated their mother to bring this action and that he was disappointed because the property was not left to him personally. He stated that their mother loved all of her children including the defendant who would get her share of their mother's estate like any of the other siblings.

22. Mrs. Maria Heusner, the wife of Mr. George Heusner, also made a witness statement. The gist of her statement is how at the request of her husband she was able to obtain copies of certain documents from the Lands Department in Belmopan, among which were the Power of attorney dated 13th April 2000 and that dated 6th July 2000 (already referred to in the witness statement of Mr. George Heusner). She further stated that on 13th March 2001 she visited the Municipal Courts then located at Paslow Building in Belize City where she paid by cheque the sum of \$2,836.13 for arrears of property tax owed on the property. She further stated that in April or May 2003 she obtained from the Land Registry in Belmopan, a copy of the Conveyance dated 18 December 2000, which is in issue in this case. She also obtained a copy of the Mortgage Deed between the defendant and Barclays Bank.

23. Mr. Charles Chavannes, a Commissioner of the Supreme Court, also made a witness statement in this case. The sum total of his statement is that on 5th September 2000 and 1st November 2002 he had cause to attend Mrs. Julia Heusner at her home at the corner of Cemetery Road and Euphrates Avenue for the purpose of attesting documents executed by her. He stated the reason he had to visit her instead of having her come to him was that on each occasion, Mrs. Heusner was in poor health

and had difficulty in walking for any far distance and that she also had failing eye sight; and that as a result when she swore to her affidavit on 1st November 2002, he had to read the contents over to her to ensure that she understood it. I have already referred to this affidavit in this judgment.

The Case for the Defendant

24. Ms. Julie Heusner, the defendant, for her part stood pat on the Deed of Conveyance in issue in this case. In both her defence, her witness statement and her counsel Mr. Peyrefitte's submissions, she was, in virtue of the Deed of Conveyance, the undoubted, rightful and unimpeachable owner of the premises in question in this case.

25. In her witness statement she bluntly described herself as the present owner of the property. She described how she came to agree with her mother after she had had discussions with her as to which of her mother's six children would inherit the property. She stated that her mother wanted to leave the property to her. But because she and her other siblings did not get along together, she told her mother that she wanted no part of any arguments about the property. She said that she therefore offered to pay her mother for the property so that there would be no confusion about this. It was therefore decided, she stated, by her mother and herself, that she would purchase the property from her.

Ms. Julie Heusner, the defendant, continued her witness statement by stating that on 18th December she walked with her mother to the Magistrate's Court to see Ms. Elizabeth Garbutt who worked there and was a justice of the peace as well, so that she, Ms. Garbutt, could explain the Conveyance to her mother and have her sign it if she wished. She further stated that her mother and herself were in full understanding of the document and they both signed it freely and it was witnessed by the said

Ms. Garbutt. She also stated that on 3rd January 2001, she and her mother returned to Ms. Elizabeth Garbutt to discuss the Deed of Rectification and that after Ms. Garbutt had finished explaining the document to them they both of their free will signed it. Finally she stated that she did not at any time indicate to her mother that the Deed of Conveyance or the Deed of Rectification were documents from the Belize City Council for the revaluation of the property.

26. Mr. Linbert Willis cross-examined the defendant on behalf of the claimant. She denied that her mother was in poor health in December 2000 and stated that she did not have failing eyesight. Bur she admitted later that she was ill but not in a bad shape and that she was ill with cancer and received treatment before December 2000. She had to admit that her mother died of lung cancer and that she was 85 years old when she died. She had to admit still under cross-examination, that she had two powers of attorney from her mother to use the property as collateral to raise loan for repairs of the property, but these powers of attorney were revoked by her mother in September 2000, although she denied that the powers were fraudulent.
27. I must confess that I find the defendant an unconvincing witness. She was forced to admit that she was sued by her mother for the property in 2002. I was left wholly unimpressed and utterly unpersuaded by her testimony regarding the making and execution of the Deed of Conveyance in this case.
28. Mr. Stuart also made an affidavit and a witness statement for the defendant. I have already referred to this at paragraphs 10 and 11. I do not need to repeat this, save to say again, that he admitted not getting an affidavit from Ms. Elizabeth Garbutt about her witnessing the Deed of Conveyance and Deed of Rectification, purported to have been signed in

her presence by Mrs. Julia Heusner on 18th December 2000 and 3 January 2001.

Determination

29. I have read with care the witness statements, including the affidavits filed in these proceedings and listened with care to the witnesses who were called for cross-examination. I am convinced that on the whole of the testimony in this case, even with the caveat I expressed regarding the late Mrs. Julia Heusner's affidavit, the case for the claimant is more probably true. That is to say, I am not satisfied or convinced that Ms. Julie Heusner paid \$25,000.00 for the property to her late mother. Rather, I believe the version of the claimant that she falsely and fraudulently procured her signature on the Deed of Conveyance and the Deed of Rectification.
30. From all the evidence in this case, I am not satisfied that the Conveyance dated 18th December 2000, was executed as Ms. Heusner the defendant claims. In particular, I bear in mind that no one in the family, including George Heusner, her brother and who was from the evidence, close to the mother, visiting her three to four days in the week, knew about the defendant's purported purchase of the property from their mother. I will not dwell on some of the uncomplimentary things said about Ms. Heusner and the fact that her mother had to entrust the payment of taxes on the property later to George Heusner, things the defendant used to do, but because of Mrs. Heusner's experience with her handling of her finances, she could not longer trust her with her money. I find it improbable, in the circumstances, that Mrs. Heusner would 'sell' her house to the defendant as the latter claims.
31. A serious chink in the armour of the defendant in this case is that here was a fragile old lady, her mother, being made to walk from Cemetery Road and Euphrates Avenue all the way through to the then Paslow

Building at Queen Street and North Front Street over the Swing Bridge, to have the Conveyance witnessed by Ms. Elizabeth Garbutt, the Justice of the Peace. The latter is now dead, so there was no testimony from her. But I find it improbable that in the circumstances, no other person could be produced to attest to the arrangement between Mrs. Heusner and the defendant to sell her house.

32. I find that on balance, it was more probable that Mrs. Heusner's signature was procured on the Deed of Conveyance by the defendant in the circumstances stated on behalf of the claimant. That is to say, she told her to sign the document, on the representation that the Deed of Conveyance and the subsequent Deed of Rectification, were in fact papers from the Belize City Council for a revaluation of Mrs. Heusner's property for tax purposes.
33. I am therefore satisfied that in law there was an operative false misrepresentation by the defendant as to the nature of the documents she presented to Mrs. Julia Heusner, her mother. This fraudulent misrepresentation I am sure procured the mother's signature on the Deed of Conveyance dated 18th December 2000 and also on the Deed of Rectification dated 3rd January 2001. I am satisfied that from the evidence the defendant preyed upon her hapless, old, frail and ailing mother and made a deceitful statement to her about the Deed of Conveyance knowingly and or recklessly not caring whether it be true or false: **Derry v Peak (1889) 14 App. Case 337.**

Conclusion

34. In the circumstances, therefore, I find for the claimant and grant as follows:

- i. A Declaration that the Deed of Conveyance, made on the 18th December 2000 between Julia Felipa Heusner then of 36 Cemetery Road, Belize City of the one part and Julia Amelia Heusner of 36 Cemetery Road, Belize City of the other part is void as between the parties on the ground of fraud;
- ii. An Order setting aside the said Deed of Conveyance made on the 18th December, 2000 between the said Julia Felipa Heusner of the one part and Julie Amelia Heusner of 36 Cemetery Road, Belize City of the other part on the ground of fraudulent misrepresentation;
- iii. An injunction against the defendant, Julie Amelia Heusner, whether by herself, her servants agents or otherwise howsoever from entering and/or from remaining on lot 1797 situated at No. 36 Corner Cemetery Road, Belize City and from in anyway interfering with the plaintiff's possession as the administrator of the estate of the late Julia Felipa Heusner thereof;
- iv. An award of costs against the defendant, Julie Amelia Heusner, in favour of the claimant; these costs to be agreed or taxed.

A. O. CONTEH
Chief Justice

DATED: 22nd December 2008.