



CARIBBEAN COURT OF JUSTICE

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CCJ SETS ASIDE CONTRACT TO SELL HOUSE AT GROSS UNDERVALUE

Judgment was delivered today in the CCJ's first case dealing with when transactions can be set aside because obtained by the exercise of undue influence. In *Campbell v Narine*, heard on 23 February, the CCJ laid down that the issue is a question of fact and the legal burden of establishing that undue influence was actually exercised is on the person alleging undue influence. Since direct evidence of this is often hard for a claimant to produce, a court can infer that such influence was actually exercised if there is evidence of much trust and confidence being reposed by the claimant in the defendant coupled with circumstances surrounding the impugned transaction that raise a suspicion that the transaction was not readily explicable by the relationship between the parties. It is then up to the defendant to rebut such an inference.

Mrs Feinmesser signed an agreement with Mrs Narine for the sale to Mrs Narine of a house in Georgetown, Guyana owned by Mrs Feinmesser, before she emigrated to Canada and Mrs Narine came to live in her Canadian property as a trusted companion. At the time of signature Mrs Feinmesser was seriously ill in a Canadian hospital. The agreement was for a sale at a mere GUY\$2.1M when expert evidence indicated that the house was then worth GUY \$5.2m, Apart from the expert, evidence was only provided by Mrs Narine, herself, and Mr Campbell, who was the executor dealing with Mrs Feinmesser's estate after her death a few months after signing the agreement, and who had instituted proceedings against Mrs Narine to have the agreement set aside.

The High Court found that Mrs. Narine's evidence was very unconvincing and that she was not being frank with the court and so held that she had not rebutted the inference that she had in fact exerted undue influence on the deceased. However, the majority in the Guyanese Court of Appeal was of the view that Mr. Campbell had failed to provide sufficient evidence to demonstrate any undue influence by Mrs. Narine over Mrs. Feinmesser. The CCJ in turn disagreed with the Court of Appeal and determined that there was no basis upon which an appellate court could interfere with the undue influence findings of the trial judge who, had had the benefit of hearing and seeing Mrs Narine in the witness box.

Thus the agreement had to be set aside, and there was no need to address the unconscionable bargain issue. Consequently, the Court ordered that Mrs. Narine give up possession of the property to Mr. Campbell within 6 months of the date of the Court's order.

The full decision of the Court can be accessed via the CCJ's website at www.caribbeancourtofjustice.org.

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