

**REPUBLIC OF TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**H.C.A. No. 1495 of 1993**

**BETWEEN**

**GRACE BERNARD**

**PLAINTIFF**

**AND**

**PETER RAM**

**AND**

**DULSIE RAM**

**DEFENDANTS**

**Before The Honourable Mr. Justice Gregory Smith**

Mr. P. Deonarine for the Plaintiff

Mr. H. Seunath S.C. for the Defendants

**REASONS**

This matter was begun by an originating summons seeking possession of land in summary proceedings pursuant to Order 94 of the Rules of the Supreme

Court. The affidavits filed in the Order 94 proceedings were lengthy. By Order of Justice L. Jones dated 30<sup>th</sup> March, 1994, the matter was ordered to continue as if commenced by Writ of Summons. The Pleadings were also lengthy, especially so, the Defence and Counterclaim.

A summary of the Plaintiff's case is that since about 1976 she became a close friend of one Boysie Ram, now deceased, (hereafter referred to as "Boysie"). During the period 1977 to 1993 she advanced various sums of money to Boysie to assist him to carry out house repairs and with legal expenses. The Plaintiff alleged that the total amount advanced to Boysie was approximately \$110,000.00. The rest of Boysie's family was well aware of this continuous lending, and Boysie always acknowledged his indebtedness to the Plaintiff. Even though Boysie never had money to repay the Plaintiff, he offered to honour his debt to her in part, in August, 1992, by transferring a portion of land comprising approximately eight acres and eight perches, situated at Rochard Road, Penal, (hereafter referred to as "the lands") into the names of himself and the Plaintiff as joint tenants. The consideration on this conveyance was expressed to be \$60,000.00. Boysie had inherited the lands from his mother and they had only been vested in him after litigation against his siblings. On this land, Boysie had cultivated cane and other short crops and he had also built his house where he lived with his family. By February, 1993, Boysie realized that he still could not liquidate his debt to the Plaintiff and with the knowledge and approval of his family, he conveyed his remaining interest in the lands to the Plaintiff for a

consideration expressed at \$20,000.00. Subsequent to this conveyance, the Plaintiff got planning permission to subdivide and develop the lands and proceeded to survey, level and drain the lands. She then offered Boysie the option to stay where his house had been built or to relocate to any other portion of the lands. After consultation with the family, Boysie decided to relocate to another part of the lands since his wife wanted to be closer to where one of their daughters lived. It was only around the time when the actual process of moving was to begin that a problem arose. One of Boysie's sons, Peter, (the First Defendant) who had established a woodworking shop at their premises, refused to leave, and, Boysie's wife, Dulsie, (the Second Defendant) also had a change of heart. This problem continued even after Peter indicated that he wanted no land and allegedly signed a document to that effect and after Dulsie also signed a document permitting the Plaintiff to move the family house to the new location. Eventually, around the end of September, 1993, the Plaintiff brought workmen to take down the family house and move it to the new location. However, Peter's woodworking shop was left intact and it appears that he has since expanded it somewhat. Tragically, during the process of moving, one of Boysie's sons, Chunilal, committed suicide and Boysie himself fell seriously ill and had to be taken to hospital, where he eventually died on the 17<sup>th</sup> October, 1993. In the period between the moving of the family house and Boysie's death, Dulsie went to live at her brother's premises in Rio Claro; after Boysie's death, she came back to the woodwork shop to live with her son, Peter. In November, 1993, the Plaintiff commenced Order 94 proceedings against Peter and Dulsie.

The case for the Defendants, as summarized, is that Boysie and Dulsie began living on the lands soon after they were married in 1958. They lived in a small "carat house" and around 1967 broke it down and replaced it with a wooden structure. Over time, it was extended; a concrete portion which housed the kitchen was added on. The Defendants alleged that they were relatively well off since they could live comfortably off Boysie's earnings as a farmer. Boysie planted cane and short crops on the lands and also cultivated rice, melons and other short crops on two acres of land at Liberot Trace, which was a few miles away from the lands. The Defendants contended that Boysie also worked at Wimpey until 1979 when he suffered a mild stroke. After this stroke, Boysie reverted to farming as a full time occupation. In addition to planting crops, the Defendants alleged that they also reared cows, chickens, ducks and goats and would sell them to supplement their income. In the circumstances, the Defendants denied that Boysie ever had need to, nor did he borrow any money from the Plaintiff. They stated that they only got to know the Plaintiff around 1983 when she befriended Boysie's three daughters at the Penal Rock Road Community Centre where the Plaintiff taught courses, and even then, she only visited the house on odd occasions. Sometime in June or July 1992 Boysie suffered a second, severe stroke which incapacitated him, so much so, that he was bedridden and could neither walk nor talk. The Defendants contended that at the time of the execution of the transfers of the land to the Plaintiff, Boysie was in such a terrible physical and mental condition that he could not appreciate what he was doing, and they asked for the transfers of the lands to be set aside by the

Court. They also contended that they were never consulted about the transfers of the lands to the Plaintiff and they were totally surprised when they learnt in or about mid September, 1993 that the Plaintiff was the owner of the lands and that she requested them to move. They never consented to the move. They claimed that their household items were taken away without their consent and that the Plaintiff kept harassing them to move and they Counterclaimed for damages for trespass and harassment, and an injunction to prevent the Plaintiff from interfering with their lawful occupation of the lands.

The evidence in this case was taken over a period of nine days and the addresses by Counsel lasted some 3 days. The Plaintiff called five witnesses and the Defendant called five witnesses. I will therefore only attempt to summarise the evidence and highlight salient points.

The first witness for the Plaintiff was one Mr. Dipnarine Rampersad, an Attorney-at-Law of some 20 years practise with offices at 5 Gordon Street, San Fernando. Mr. Rampersad testified in chief that he had first seen Boysie on the 15<sup>th</sup> June, 1992, when he prepared a Will for him. Mr. Rampersad next saw Boysie on the 5<sup>th</sup> August, 1992, when he was instructed to, and did prepare an Assent in connection with the Estate of Sookdaye Motiram also called Sookiah (deceased, Boysie's mother), in favour of Boysie. At the same time, he was instructed to prepare a Memorandum of Transfer of the lands from Boysie, to the

Plaintiff and Boysie as joint tenants, and to apply for a new Certificate of Title for the lands. The consideration, as stated by Boysie to Mr. Rampersad, was to be the sum of \$60,000.00, which sum represented loans made by the Plaintiff to Boysie during the period 1985 to 1992. It was also the sum stated as the value of the lands in the inventory of Sookiah's Probate proceedings. Mr. Rampersad stated that Boysie appeared to have had a slight stroke and he had asked Boysie to bring a medical report as to his condition; when he saw Boysie on the 5<sup>th</sup> August, 1992, Boysie had such a report with him from one Doctor Bijai Balliram. Mr. Rampersad stated that on this second occasion, he spoke to Boysie by himself when he was taking instructions and that Boysie appeared to know what he was doing.

In cross-examination Mr. Rampersad stated that he did not receive any instructions from the Plaintiff to prepare the transfer, but that she did pay all the legal fees with respect to the transactions that he did. He stated that he knew the Plaintiff's husband and his family since he grew up in the same area and also had known the Plaintiff before these transactions, but he could not remember whether he had done work for her before this time. Mr. Rampersad stated at first, that he remembered that Boysie had walked up the stairs to the third floor of his building on the 15<sup>th</sup> June, 1992; however, he had to admit that he did not actually see Boysie walk up the stairs and that he could not dispute that Boysie may have been assisted in getting up the stairs. He stated that Boysie's speech was quite in order and clear, but that he had difficulty in signing his name. He also admitted, contrary to what was said in chief, that when he had taken

instructions from Boysie on the 5<sup>th</sup> August, 1992 (the second occasion), it was done in the presence of the Plaintiff. Mr. Rampersad also stated that he did not ask for documentary evidence about the loan between the Plaintiff and Boysie, nor did he make any substantial inquiries as to the details of the loan. In Re-examination Mr. Rampersad indicated that while Boysie had some difficulty in walking, he did walk into his office without assistance.

Doctor Bijai Balliram next testified for the Plaintiff. He stated that he has been a doctor for about 17 years and that he carried on a private practice as a General Practitioner since 1988. On the 5<sup>th</sup> August, 1992 he saw Boysie. He stated that Boysie was in sound mental health but appeared to have a weakness on his right side which he was informed was the result of a stroke ten years before. On the 5<sup>th</sup> August 1992, he issued a medical certificate in terms of what was said above.

In cross-examination Dr. Balliram stated that Boysie's daughter, who had accompanied him to his office did most of the talking; Boysie had to be assisted in walking. He was told by Boysie's daughter that Boysie needed a medical certificate to do some transaction in the bank, and although he did not know the nature of this transaction, he "formed the impression that it related to withdrawing money from an account or something like that". He could understand what Boysie was saying. He stated that he made no inquiry as to whether Boysie had a regular physician, but soon after, stated that he was made aware that for several years before 1992, Boysie had been a patient of one Dr. Furlonge, who Dr. Balliram knew, and that he did not think it necessary to contact Dr. Furlonge.

He stated that brain damage does not necessarily get progressively worse and that in cases, like with strokes, the damage is repairable by itself. He went on to state that in the light of what has happened now, he would have referred Boysie to a neurosurgeon. In Re-examination it emerged that he had since become related to the Defendants through marriage. He also stated that Boysie was well oriented in time and space and understood what was going on around him. He then, curiously enough, stated that the term "sound mind" is a very strong statement and that what he meant to convey in his report was that Boysie was oriented in time, place and person. With the consent of the Plaintiff's Attorney, this witness led further evidence upon questioning from the Defendants' Attorney, to the effect that while Boysie was lucid and oriented in time, place and person, that did not give a good assessment as to his neurological state or as to whether he was competent to make a Will or to dispose of property.

Dr. Balliram's testimony evinced certain weaknesses. As was stated above, he indicated in chief that Boysie was alleged to have suffered a stroke some ten years before and that Boysie was of sound mental health, however, he attempted to limit this statement in cross-examination by saying that the term sound mental health was a strong statement and that what he really meant was that Boysie was well oriented in time, place and person and understood what was going on around him, and even then, he went on to state that this did not necessarily deal with Boysie's psychiatric state nor did it indicate whether Boysie was competent to make a Will or to dispose of property. What is strange about these statements in cross-examination is that inspite of all his misgivings, Dr.

Balliram still gave a medical certificate to enable Boysie to do a transaction at a Bank, the nature of which he was unsure about; this banking transaction may have been complex or, at least, not a simple one; it could for instance have been the making of a Will, in which case some high degree of mental capacity would have been necessary, yet I am asked to believe that Dr. Balliram, as a professional person, chose to treat this very real probability in an off handed manner and chose a course of action which could have misled Bank officials and could have resulted in serious losses to the relevant Bank or even to Boysie and his family. I prefer to believe that Dr. Balliram, as any true professional, would not have acted so capriciously and that his testimony in Court was tainted by his subsequent knowledge and his getting close to the family and I prefer his statements given in chief which were corroborated by his medical certificate which was issued at the same time as his examination of Boysie, which concluded that Boysie was indeed in sound mental health when Dr. Balliram examined him on the 5<sup>th</sup> August, 1992.

The next witness for the Plaintiff was one Mr. Roopnarine Rambachan, a well known and experienced Attorney-at-Law of more than 41 years practice, whose offices are at 13-15 Mary Street, Siparia. Mr. Rambachan stated that he had known Boysie from since in the 1960's. In February 1993, he saw Boysie in his "outer Chambers" at about 8.00 a.m., with a young lady (his daughter). He went up to Boysie and asked the nature of his business there. Boysie told him that he owned a parcel of land in the Rochard Road area; that one Grace Bernard (the Plaintiff) had loaned him moneys from time to time, which sums

would have exceeded \$100,000.00; that he had already transferred half of his interest in the lands to the Plaintiff; that he had tried to sell the lands, but could not, and that he had come to transfer the remainder of his interest to the Plaintiff. The Plaintiff was not present at that time and Mr. Rambachan asked Boysie to wait in his outer chambers. About fifteen minutes later, after he received word from his clerk, he saw Boysie, his daughter, and the Plaintiff walk into his room. Boysie walked unaided all the way. He again enquired of Boysie, as to the nature of his business and Boysie repeated what he had said to Mr. Rambachan earlier. Mr. Rambachan then started to speak to Boysie in Hindi asking if he was sure about what he was doing in transferring the remainder of his interest to the Plaintiff and Boysie responded in Hindi; the conversation then returned to English. Mr. Rambachan was then informed that the consideration to be placed on the transfer was \$20,000.00. A memorandum of Transfer was then prepared and executed. Later, in the afternoon, the Plaintiff returned to Mr. Rambachan's office and entered into a Mortgage of the lands with a client of Mr. Rambachan, who lent money. Two other mortgages were prepared by Mr. Rambachan on later dates. Mr. Rambachan next saw the Plaintiff at a later date when he had to write a letter on her behalf to Peter Ram. Mr. Rambachan stated that Boysie understood perfectly when he was spoken to and also understood the nature of the transaction for which he had come to his office. Cross examination of this witness was uneventful and his testimony remained solid and unshaken. There was an attempt to suggest that Mr. Rambachan was less than forthright since he indicated that he was not concerned with the value of the consideration stated on

the transfer yet he stated that he had given consideration to the value of the lands as stated on the transfer. Mr. Rambachan ably dealt with this suggestion by stating that it was not his duty to ensure that a realistic consideration was placed on the transfer, since it was the Board of Inland Revenue that would have to be satisfied of this and the agents of the Board would check and verify this; however, he was well acquainted with the area and he felt that \$20,000.00 was a realistic valuation for the land in question. He also indicated that he spoke to Boysie in Hindi to be satisfied in his mind that Boysie was confident about what he was doing. Mr. Rambachan also stated that from the way Boysie walked into his office he did not get the impression that Boysie was suffering from any disability, and that he also knew, that Boysie was able to understand quite clearly the transaction he was doing.

The Plaintiff next gave evidence in support of her case. The testimony in chief followed the lines of her case as set out earlier in the judgment and I do not propose to repeat it here, save that certain other pertinent matters emerged. The Plaintiff stated that before the final transfer of the lands to her, Boysie had been offered \$15,000.00 for the lands but had to refuse the same. The Plaintiff also indicated that she was present at family discussions, when all the members of Boysie's immediate family (including the Defendants) were in attendance; at these discussions, Boysie informed all about the money loaned to him by the Plaintiff and the transfers which he had intended to make so as to honour his debt. The Plaintiff also stated that after the final transfer of the lands in February 1993, she had been present when the survey of the lands was being done and

that Boysie used to help the surveyors in their work and Dulsie would cook for them; also, while the lands were being levelled and drained, all the members of Boysie's family were alive and present. The Plaintiff stated that she hired carpenters to move the family house to the new spot and that after this was done, two of Boysie's daughters had moved to the new spot to live. With respect to a document signed by Dulsie giving the Plaintiff permission to move the house, the Plaintiff stated that Dulsie voluntarily consented to sign the document and Dulsie indicated to her that it was her son, Peter, who was giving her a hard time and who had caused her to go the Police to make a report adversely to the Plaintiff; the Plaintiff stated that Dulsie volunteered to go to the Police Station with her to withdraw that report. In cross-examination the Plaintiff stuck to her story and denied the contrary allegations in the case for the Defendants, and interestingly enough, it emerged that Boysie had been a recipient of public welfare assistance.

There were some inconsistencies in the Plaintiff's testimony. While at first, she stated that she did not understand that she could have got security for the money loaned to Boysie by way of a mortgage of the lands, she admitted that she knew what was a mortgage and that such a mortgage could have been taken as security for the money loaned in this case. With respect to the written permission given by Dulsie to the Plaintiff to move the family house, she had stated in chief that Dulsie's daughter, Annie, had drawn up the document; in cross-examination she stated that she scribbled the document and that Annie typed it, and even later in cross-examination, she said that she prepared the

document and Dulsie signed it. The Plaintiff stated that the carpenters came to move the family house on the 24<sup>th</sup> and 28<sup>th</sup> September, 1993 and that the moving of the house was completed on the 28<sup>th</sup> September, 1993; however, she accepted that in an affidavit filed in the Order 94 proceedings on the 19<sup>th</sup> November, 1993, she had sworn at paragraph 7, that Boysie and his family began moving on the 28<sup>th</sup> September, 1993 and had completed moving by the 2<sup>nd</sup> October, 1993. Whereas, the Plaintiff's case was that she had given Boysie another spot on the lands, the Plaintiff admitted that in the affidavit filed in the Order 94 proceedings she had stated at paragraph 5 that she only gave Boysie a new spot until she got a sale for the lands; she reconciled the discrepancy by saying that probably someone misunderstood her instructions for the affidavit.

The Plaintiff's final witness was Inwatee Ram (also called Susan Ram), (hereafter referred to as "Inwatee") one of the daughters of Boysie and Dulsie and also Peter Ram's sister. Inwatee's testimony in chief was noteworthy because she purported to give the history of the matter from the perspective of Boysie's family. Inwatee appeared to be a simple but honest person and her evidence was fully supportive of the Plaintiff's case and added credibility to it. Inwatee testified that she knew when the Plaintiff lent money to Boysie because Boysie would tell her when he did so; he also instructed her to make a note of such borrowings in diaries which she kept and had available (but did not produce in evidence). She stated that these diaries documented loans between the period 1977 to 1992 which amounted to about \$60,000.00. She stated that Boysie also borrowed money for things (other than what was pleaded) such as to

put a downpayment on a van for her brother, Chunilal, and even to pay the installments on the van, and to buy tools for Peter to conduct his trade (this evidence was led without objection from the Defendants' Attorneys). According to her, while one Mr. Shafeyi Shah was Boysie's lawyer with respect to the probate action concerning the lands, Boysie felt that Mr. Shah took too long with his matter and as a result, he went to Mr. Dipnarine Rampersad to act as his Attorney with respect to the making of a Will and the transfer of the lands. She corroborated the Plaintiff's testimony that before Boysie did any transaction with the lands, and before making his Will, he would have had a family discussion about it. According to her, it was Dulsie who suggested that she should take Boysie to the lawyers' offices whenever any transaction was to occur. She testified that by the date of the second transfer, Boysie informed her that he was owing roughly \$80,000.00 to the Plaintiff. She stated that Peter never lent Boysie any money and in fact, he insisted that he wanted no land, and signed a document to that effect which she and another sister, Annie, witnessed. She corroborated the Plaintiff's testimony that Dulsie cooked for the surveyors and that her father assisted them in their work. She stated that it was Dulsie who was instrumental in deciding on the lot of land that Boysie chose to move to, since Dulsie wanted to be closer to one of her other daughters, Ramratee. Inwatee corroborated the Plaintiff's testimony in stating that it was only after the family had started to pack away things to move that Peter began to misbehave. She stated that Dulsie began to have second thoughts about the move after originally agreeing thereto and giving the Plaintiff permission to move their family house,

because she was embarrassed at having to move the house. She stated that her father got a heart attack on the 28<sup>th</sup> September, 1993, and that Dulsie had left home the day before; she next saw Dulsie only the day after Boysie had died. She also stated that Boysie did not have a stroke in June, 1992, neither was he suffering from memory loss, nor was he bedridden in 1992.

In cross-examination, Inwatee stuck to her story and it also emerged from her that Boysie's mainstay was planting cane, melon, rice and short crops; he did very little husbandry. There were some inconsistencies in her testimony that arose in cross-examination. Whereas at one stage she stated that Dulsie did not leave the family to go to live in Rio Claro on the same day that she signed the document giving the Plaintiff permission to move the house (the 27<sup>th</sup> September, 1993), she retracted that and stated that Dulsie did leave to go to Rio Claro on the same day that she signed that document. Whereas she had stated in an affidavit filed in the Order 94 proceedings on the 19<sup>th</sup> November, 1993, that they had agreed to move to the new lot until the Plaintiff got a sale for the lands, she stated in evidence that this was a mistake and that the new lot was meant to be the new, permanent residence for the family. Although this may be a matter of interpretation and subjective reasoning, she stated in cross-examination that Boysie was not laid up for very long as a result of a stroke in 1979, but she did say that Boysie was bedridden for two years after that stroke.

In re-examination, Inwatee testified that Peter was "close" to the Plaintiff since she would cut his hair and he would visit her. She also stated that Peter used to beat and kick Boysie.

The First Defendant, Peter Ram was the first witness for the Defendants. He stated that he began to learn the trade of a joiner from age 13 and started out in business on his own, at around age 16, in 1989. By dint of hard work and perseverance he managed to purchase all his tools and to expand and upgrade his woodworking shop, so much so, that he now has apprentices working for him. Peter stated that his woodwork shop was divided into two parts. One area was a work area and the other contained living accommodation where he also cooked on a small stove. His deceased brother, Chunilal, was a market vendor; Chunilal was able to purchase a station wagon, and, with the help of Boysie, a van. Chunilal used to give financial assistance to the other members of the family. Although Boysie was a recipient of public welfare assistance from around 1985, he was a prospering farmer with cultivation in two areas; one at the lands and the other at Liberot Trace; in fact Boysie used to enter gardening competitions; Boysie was also the recipient of government subsidies to assist him to buy farming equipment. Boysie had substantial livestock which he used to supplement his income and for matters such as paying legal fees. Boysie kept an account for processing cheques for the payment of money from Caroni Ltd. for canes supplied. According to him Boysie had a stroke in 1979 but was not laid up as a result of it. He had a second stroke in June 1992 and as a result of that stroke he could hardly walk or talk. Curiously enough, he stated that he never knew that the Plaintiff had the lands transferred into her name and that they are still in the name of Boysie Ram. He stated that it was the Plaintiff who

told him he had to move from the lands on or about the 17<sup>th</sup> September, 1993 and that the Plaintiff kept harassing him and his mother to move, so much so that on the 26<sup>th</sup> September, 1993 he had to take his mother to the Police to make a report that the Plaintiff was threatening to break down their house. On the next morning, the Plaintiff and his sister, Annie, came to the house, started arguing, and they ‘hustled’ Dulsie into a car. When Dulsie came back, he took her to her brother’s house in Rio Claro. Subsequently, the Plaintiff and some workmen began to demolish the house. Peter stated that he first got to know the Plaintiff in 1983 through his sisters, and that from since in 1983, he started to express his concern to his mother about their association with the Plaintiff who he felt was having a negative impact on his sisters.

In cross-examination, Peter stated he was close to his father and that Boysie discussed his business with him; in spite of this, he admitted that he was not informed of the transfers of the lands, and/or that Boysie was going to see Mr. Dipnarine Rampersad or Mr. Rambachan. Certain other inconsistencies arose in his testimony. Whereas he stated at one point during his cross-examination that Boysie was not taken to the San Fernando General Hospital as a result of the 1992 stroke, he stated soon after, that Boysie was indeed taken to the San Fernando General Hospital after this stroke and that he had visited Boysie at the Hospital during that time. Whereas he stated that on the morning of the 28<sup>th</sup> September, 1993, the Plaintiff and her husband came to the property and he left them there and went to work, but they had not yet started to break the house, in paragraph 18 of his affidavit in the Order 94 proceedings filed on the 4<sup>th</sup>

March, 1994, he did state that early on that morning a wrecking crew arrived and proceeded to start breaking down the house. While he denied signing a document stating that he wanted no land he did agree that he told his sisters that he wanted no land and that he did want to move to an area where business was brighter to open his own woodwork shop. Whereas he stated in examination in chief that as far as he was aware, the lands were still in Boysie's name, in his affidavit in the Order 94 proceedings at paragraph 6 and 7 and throughout the Defence and Counterclaim, reference is made to the transfers of the lands from Boysie to the Plaintiff; also, Peter was present in Court while the Plaintiff, Mr. Rampersad and Mr. Rambachan gave evidence and referred to the transfers of the land on various occasions. Another inconsistency I noted was that while the Defendants had stated in their affidavit in the Order 94 proceedings at paragraph 13 that Boysie never held any Bank accounts and conducted all his business by way of cash, Peter did volunteer in evidence in chief that Boysie kept a Bank account for processing cheques received from Caroni (1975) Limited.

The next witness for the Defendants was Dulsie Ram, the Second Defendant. Her evidence in chief was along the lines as stated earlier in this judgment at pages 3 and 4; she was also supportive of Peter's testimony to some extent. She added that Boysie was laid up for some eight or nine months after his first stroke and later, was a recipient of public welfare assistance; however, after the second stroke in 1992, he never recovered; he could walk a little, but with assistance and while at first he could speak, from some time in 1993, he could no longer respond nor speak. According to her, Peter had a bed, chair and

table in his workshop where he lived, but he had his meals at the family home. Like with Peter, the first time she learnt of the Plaintiff's claim to the lands was in mid September or October, 1993. She went on to state that she did not agree to move to a new lot and described how the Plaintiff and her daughter, Annie, came to her house, took her in a car and confused her to such an extent that she signed a document giving the Plaintiff permission to remove the house. She indicated that she has since received Letters of Administration for Boysie's estate and she commissioned a valuation report of the lands from one Mr. H. Ali-Kajim, who is now deceased, and whose report was put in evidence pursuant to a hearsay notice; this report, dated 30<sup>th</sup> September, 1994 valued the land at approximately \$412,500.00. In cross-examination, Dulsie testified that she had never heard Boysie speak in Hindi; she stated that Boysie was an honest man and if he owned money, he would want to honour his debt. Like with Peter, she testified that the family was close and that Boysie discussed matters with them, but he never told her that he was going to, or that he did actually visit Mr. Dipnarine Rampersad and Mr. Roopnarine Rambachan; Boysie did not even discuss with her why the lands were being surveyed, and she never asked for a reason. She stated that after being laid up for eight to nine months with a stroke in 1979, Boysie was able to work until his second stroke. She admitted that after Boysie had been taken to hospital in early October, 1993, she never visited him there since she too was distressed and seemingly depressed. Accordingly to her, when Boysie got the stroke in June, 1992, she and Susan took him to the

Health Centre where one Dr. Furlonge saw him for about fifteen minutes, prescribed tablets and they then took Boysie home.

Dulsie's testimony in cross-examination also contained several inconsistencies. At one stage she stated categorically that she first knew that the family house was going to be moved on the day she signed the document giving the Plaintiff permission to move the house (27<sup>th</sup> September, 1993); however, she later stated that the Plaintiff had told her two weeks earlier that she was going to break down the house; soon after, she stated that she knew she had to break the house before the 27<sup>th</sup> September, 1993 and that even before this, her daughters had started to pack away things to move. She indicated that she was aware that Susan's birthday and father's day did occur in June 1992 and they took pictures for a "get together" at the family house; however, later, after being shown some pictures, she stated that she did not know if there was a family get together in June, 1992 for father's day or for Susan's Birthday. In addition, her testimony contradicted Peter's testimony in some material particulars. Whereas Peter stated clearly that Boysie was not laid up after the 1979 stroke, Dulsie stated that he was laid up for some eight to nine months after this stroke. Whereas Peter stated that Boysie could neither walk nor talk after the stroke in 1992, Dulsie stated that he could walk with assistance and talk, but that sometime in 1993, he lost the ability to talk. Whereas Peter stated that Boysie was taken to the San Fernando General Hospital as a result of the second stroke in June, 1992 and that he visited him there, Dulsie stated at first, that it was true that Boysie was taken to the San Fernando General Hospital when he had the stroke in June,

1992 and that Peter did visit Boysie there; however, immediately after that, she stated that she could not remember if this was true, and then, she stated that, Boysie was not taken to the hospital but only to the Health Centre and then back home as a result of the stroke in June, 1992. Whereas Peter stated that he kept a small stove in the living area of his workshop where he used to cook his meals, Dulsie stated that Peter had his meals at the family house. Whereas Peter, after some hesitation, stated that Dulsie told him that Boysie had commissioned the survey of the lands, Dulsie stated that Boysie never discussed any issue of the survey with her and she never asked him about it.

The next witness for the Defendants was Roopchand Sudama. He testified that he lived about 200 feet away from Boysie and that he was a tenant paying rent to Boysie; he stated that Boysie had a stroke in 1979. According to him, Boysie could not talk after this 1979 stroke; he merely used to mumble. This witness stated that he only visited Boysie when he had the 1979 stroke and that he would see Boysie when he came to collect rent. He admitted in cross-examination that after Boysie's death, he paid rent to the Plaintiff. Interestingly enough, this witness made no mention of Boysie having a second or later stroke.

The next witness for the Defendant was one Doctor Edison Furlonge, a general medical practitioner. He stated that he has been a doctor since 1984 and had first been assigned to the Penal Rock Road Health Centre in August 1992. He first saw Boysie in November 1992. On this occasion, he diagnosed Boysie as an obvious stroke case because of his gait, namely, he had to drag his left leg when he attempted to walk; he also could not walk on his own, he had to

be lifted; he had slurring of speech to the extent that it was very difficult to understand his words; his memory was impaired and he had mood fluctuations. After a third visit in or around February, 1993, he noted that Boysie started to improve, in that he was no longer bedridden, he could sit on his own and stand on his own for a few minutes; he was partially ambulant; his speech was still slurred; according to Dr. Furlonge, it would have been very difficult for Boysie to transact business at that time. Dr. Furlonge stated that between November, 1992 and August, 1993 he visited Boysie at home on eight occasions. In cross-examination, Dr. Furlonge stated that he had made notes about Boysie while he was under his care but he did not bring them, with him. He also indicated that a stroke did not necessarily affect one's memory or ability to reason.

Certain weaknesses in his testimony were revealed in cross-examination. Dr. Furlonge put in evidence a report he had done for Boysie dated 21<sup>st</sup> September, 1994; he had earlier stated in cross-examination that the issue of memory impairment was important but he admitted that he did not include any mention of this in his written report; the reason advanced for this was that he made the report from his notes in his private practice and not from the clinic; even then, one wonders how his notes from his private practice failed to alert him to the important issue of memory impairment, especially when he saw the Plaintiff on eight occasions in his private practise. Dr. Furlonge's description of Boysie in November, 1992 when he was first seen suggested that Boysie was in a really bad condition bordering on life threatening; nevertheless, Dr. Furlonge did not refer him to the hospital, to a psychiatrist nor for a brain scan nor for an x

ray; according to Dulsie, he saw Boysie for fifteen minutes, prescribed tablets and sent him home. Even though Dr. Furlonge had stated that it was very difficult to understand Boysie's words when he saw him in November, 1992, he stated in cross-examination that it was as a result of the conversation he had with Boysie that he made his findings. Further, while Dr. Furlonge stated in chief that Boysie was an "obvious stroke case", no evidence, opinion or suggestion was proffered as to whether this was a recent stroke or even perhaps a degeneration caused by the 1979 stroke; not even in the medical report dated 21<sup>st</sup> September, 1994 was this addressed; it was merely stated that on his earliest medical visit at Boysie's house, Boysie was bedridden due to "a previous CEREBRO – VASCULAR Accident (STROKE)". Another lacuna in Dr. Furlonge's testimony is that he merely stated that he saw Boysie "around February 1993" and he made an assessment of him; this visit may have been in January 1993 or early February 1993 in which case it would not necessarily give an accurate assessment of Boysie's medical condition when he went to see Mr. Roopnarine Rambachan to conduct the second transfer of the lands on the 26<sup>th</sup> February, 1993, especially so, when one remembers that Boysie's condition was improving. This lacuna is rendered more critical in the light of the fact that Dr. Furlonge's testimony is silent as to Boysie's condition or rate of improvement between "around February, 1993" and August 1993, by which latter time, according to Dr. Furlonge, Boysie "was doing quite well." In addition, to these matters, Dr. Furlonge's testimony brought to the fore, certain material discrepancies in the Defendants' case. Whereas, Dr. Furlonge first saw Boysie in November, 1992,

both Dulsie and Peter stated that Boysie was taken to see Dr. Furlonge in June/or July 1992 after Boysie had suffered a second stroke. Whereas, Peter testified that after the stroke in June, 1992 Boysie never walked or spoke again and Dulsie testified that he could walk with assistance but only lost the ability to speak in 1993; Dr. Furlonge stated that even in February, 1993, Boysie was partially ambulant and up to August 1993 he could speak but had an impairment in his speech. Further, as was stated above, Dr. Furlonge's testimony did not support the assertion that Boysie did indeed suffer a second stroke.

The final witness for the Defendants was one Bobby Ramsarran, an agricultural officer in the Ministry of Agriculture. Mr. Ramsarran had been attached to the St. Patrick District between 1973 to 1991. He used to advise farmers and perform other regulatory duties. He knew Boysie cultivating two parcels of land and he visited Boysie about three times per year mainly concerning problems with vegetable production. Mr. Ramsarran stated that Boysie was a beneficiary of subsidies from the Ministry and described Boysie as a very good farmer and a relatively large scaled farmer. In cross-examination he stated that he could not find his records about Boysie's farming and that his testimony was based on his memory. He knew Boysie had a stroke between 1978 and 1980 and he had visited him when he had this stroke.

Apart from the relatively insignificant evidence of Mr. Bobby Ramsarran and Mr. Roopchand Sudama, only the evidence of Mr. Roopnarine Rambachan remained unshaken, consistent and wholly credible, and even though the

Plaintiff's case was shaken to some extent, the testimony presented by and on behalf of the Defendants showed some serious contradictions and also contained the more material discrepancies, some of which are re-iterated hereunder.

Peter alleged that Boysie suffered a second stroke in June (later he said July 1992) and was eventually taken to the San Fernando General Hospital as a result; Dulsie alleged that it was at the beginning of June 1992 that Boysie suffered this second stroke and he was only taken to the Penal Rock Road Health Centre as a result of this stroke, where he was seen by Doctor Furlonge. There was no dispute that Doctor Furlonge did not see Boysie till November, 1992 and was not even attached to that Health Centre till August, 1992. This discrepancy in the testimony of Peter and Dulsie on one hand and that of Dr. Furlonge on the other hand was not merely an oversight, since Peter and Dulsie stated and repeated these contentions with conviction and self-assuredness; it seemed to me to be an attempt to mislead the court into believing that Boysie was in such a terrible physical and mental condition in August 1992, that he could not have executed the transfer of a half share of the lands to the Plaintiff at the offices of Mr. Dipnarine Rampersad on the 5<sup>th</sup> August 1992.

This attempt to cover up the defects in the Defendants' case was exacerbated by Peter's attempt to suggest that Boysie was so incapacitated after the second stroke that he had to be taken to the San Fernando General Hospital. This was contradicted by Dulsie in her cross-examination.

When one also considers Dulsie's clear evidence that Boysie worked right up to the "alleged" second stroke, if this stroke was after the first transfer of the

lands in August 1992 and as far away as in November 1992, there is even more force in rejecting the contention that Boysie could not execute a transfer in August 1992.

Even Dr. Balliram's testimony conflicts with that of Dulsie and Peter since his testimony that on the 5<sup>th</sup> August, 1992 (the date of the first transfer) Boysie could walk and talk was not disputed; further, Dr. Balliram made no mention of a recent stroke, but only of a stroke some 10 years before; it therefore seems safe to conclude that Boysie did not suffer a stroke in June or July or even up to 5<sup>th</sup> August, 1992. Bearing this in mind and my previous analysis of Dr. Balliram's evidence and the preference for the conclusion that Boysie was in sound mental health at the date of the first transfer (5<sup>th</sup> August, 1992), I found as a fact that Boysie was in sound mental health and acceptable physical condition as to be able to conduct the transfer of the lands on the 5<sup>th</sup> August, 1992, and I accepted the testimony of the Plaintiff, Inwatee and Mr. Dipnarine Rampersad that he well knew, appreciated and consented to that transfer.

This transfer of the lands on the 5<sup>th</sup> August, 1992 was to the Plaintiff and Boysie as joint tenants. If Boysie had died without any other dealing in the lands, the Plaintiff would have then automatically become the sole owner of the lands by virtue of the right of survivorship which was created by the joint tenancy. Therefore, the later transfer by Boysie of his half share in the lands to the Plaintiff does seem to be consistent with his prior intentions and a recognition of his duty to fulfill his debt to the Plaintiff. Even Dulsie accepted that Boysie was a person who would want to honour his obligations.

I also considered the unshaken evidence of Mr. Roopnarine Rambachan which was presented in a candid and straightforward manner to the effect that on the 26<sup>th</sup> February, 1993, Boysie well knew, appreciated and consented to the transfer of his remaining half share in the lands to the Plaintiff. The fact that they could have conversed in Hindi pointed to the conclusion that Boysie was fully possessed of his mental faculties at that time. Mr. Rambachan could not be shaken on his testimony that Boysie was physically and mentally able to complete this second transfer. As against this testimony, there was the evidence of Dr. Furlonge, which, as was stated above, contained serious flaws and was not of such conviction as to contradict Mr. Rambachan's testimony as to Boysie's condition on the 26<sup>th</sup> February 1993.

In the circumstances, I accepted the testimony of Mr. Rambachan as confirmed by Inwatee and the Plaintiff that on the date of the second transfer, Boysie well knew, appreciated and consented to the transaction.

Bearing all of my previous findings in mind, and the evidence led by the witnesses, I preferred on a balance of probabilities, the Plaintiff's case as set out at pages 1 to 3 above, to the Defendants' case (see pages 2 and 3 above) and I found that the consideration for the transfers of the land was the money lent by the Plaintiff to Boysie, which Boysie always acknowledged, and which amounted to a sum between \$100,000.00 and \$110,000.00. The fact, as admitted by the Defendants, that Boysie was a recipient of public welfare assistance from 1985, did also weaken the allegation of the Defendants that Boysie was so well off that

he did not need to borrow any money from the Plaintiff. I accepted as true, that Boysie did discuss his intention to complete the two transfers of the lands to the Plaintiff with his family and that they well knew and consented to them; it was only upon the actual moving from the lot where they lived, to a new spot on the lands, that Dulsie and Peter had misgivings; however, on reflection, Dulsie voluntarily consented to the move, as was documented by her memorandum dated 27<sup>th</sup> September, 1993. I also accept as true, Inwatee's assertion that Peter signed the document dated 22<sup>nd</sup> July, 1992 indicating that he wanted no land, and that he well knew and consented to the transfers of the lands to the Plaintiff and that while he originally consented to move, he later had a change of mind. This eventually resulted in this present High Court Action.

At the close of the evidence, Counsel addressed the court over approximately three days, mainly upon the issues of fact and also upon the law.

Counsel for the Defendants submitted that there were two issues in this case for decision, namely:-

1. Did Boysie owe the Plaintiff any money and more specifically, did he owe the Plaintiff \$60,000.00 or \$80,000.00 in August 1992 and/or did he in February 1993 owe the Plaintiff \$20,000.00?
2. Whether at the time these transfers were signed, Boysie was in such a state as to appreciate what he was doing?

Having regard to my previous findings of fact, both these questions are to be answered in the affirmative, in favour of the Plaintiff.

Counsel for the Defendants also went on to submit on the authority of In Re Beaney {1978} 1 W.L.R. 770, that it was incumbent on the Attorneys-at-Law to inquire as to all the circumstances surrounding the transfers of the lands, especially since this was Boysie's only asset of value. They ought to have brought to his mind the full implications of the transfers especially given Boysie's mental state. Counsel made particular reference to the dicta of Nourse Q.C. (as he then was at) pg. 774:

*"In the circumstances, it seems to me that the law is this. The degree or extent of understanding required in respect of any instrument is relative to the particular transaction which it is to effect. In the case of a will the degree required is always high. In the case of a contract, a deed made for consideration or a gift inter vivos, whether by deed or otherwise, the degree required varies with the circumstances of the transaction. Thus, at one extreme, if the subject matter and value of a gift are trivial in relation to the donor's other assets a low degree understanding will suffice. But, at the other extreme, if its effect is to dispose of the donor's only asset of value and thus, for practical purposes, to pre-empt the devolution of his estate under his will or on his intestacy, then the degree of understanding required is as high as that required for a will, and the donor must understand the claims of all potential donees and the extent of the property to be disposed of."*

Counsel for the Plaintiff responded that In Re Beaney was a case of a gift unlike here, where there was a transfer for valuable consideration, so that there were presumptions in favour of Boysie's capacity. Further, on the facts, Boysie

well knew and appreciated what he was doing; this was not a one-off transaction but a course of consistent conduct over time, with the full knowledge and approval of Boysie and his family; the evidence here could not lead to a conclusion that Boysie was incapable of or did not understand the full implications of his actions. In addition, this course of conduct was such that by the time of the transfer in February, 1995, it could not be said that this latter transfer had the effect of pre-empting the devolution of Boysie's estate since the transfer of the half share to the Plaintiff as a joint tenant some six months earlier, with the full knowledge and approval of Boysie's family, had already manifested Boysie's intentions as to the devolution of the lands.

From the citation of In Re Beaney (above), it is evident that there is no set formula, as to the requisites for showing that a donor had the necessary degree of understanding to complete a transaction, whether this transaction is by way of gift or is in the nature of a commercial transaction ("a deed for consideration"). The degree of understanding required "varies with the circumstances of the transaction." (See In Re Beaney above). Therefore, even if I accept that the Attorneys who prepared the transfers were at fault in not bringing to Boysie's mind the full implications of the respective transfers (which I do not accept as a correct representation of the facts as they occurred in this case), for the reasons stated before, I have already found that at the time of each of the transfers, Boysie well knew, appreciated and consented to them; I also found that these transfers were consistent with his expressed, prior intentions and in recognition of his duty to honour his debt to the Plaintiff. In these circumstances, I found that

Boysie himself had and manifested the necessary degree of understanding to complete the two transfers in questions, according to the test as stated in Re Beaney (above).

Counsel for the Defendants admitted that on the present facts a strong case could not be made out for the issue of undue influence to succeed. Nevertheless, Counsel cited the authorities Inche Noriah v Shaik Allie Bin Omar (1929) AC. 127 and Re Brocklehurst (1978) 1 All E.R. 767, and stated that because of the relationship between the Plaintiff and Boysie, this may be a case of presumed undue influence which the Plaintiff would have had to rebut.

Counsel for the Plaintiff responded that the cases cited by the Defendants were cases of a gift which were different to the present matter where there was a commercial transaction, so that there was no presumption of undue influence to rebut. The Defendants would have had to prove actual undue influence by the Plaintiff over Boysie, which they failed to do (See Barclay's Bank plc v O'Brien (1993) 4 All E.R. 417. In any event, the Defendants' case was that the Plaintiff did not have a close relationship with Boysie and themselves, so that to argue that this was a situation of presumed undue influence, would be contrary to the case of the Defendants. Counsel went on to submit that even assuming that this could be a case of presumed undue influence, the factual scenario was such that it was proved that the Plaintiff did not exercise any influence over Boysie's decision; further, Boysie attended upon Attorneys and always resorted to his family for advice, thus nullifying any alleged influence that the Plaintiff may have had over him. Counsel also submitted that even assuming that there was any

undue influence (which he denied) this only rendered the transfers voidable, and Boysie's subsequent acts of ratification such as by assisting in the survey, draining and leveling of the land, and the fact that he took no steps to set the transfers aside for up to fourteen months (in the case of the first transfer) and eight months (in the case of the second transfer) when the Plaintiff was no longer having any influence on him, put it out of his power to rescind these transfers. (See Chitty on Contracts (General Principles) 27<sup>th</sup> ed para 7-037 and see Mitchell v Homfray (1882) 8 Q.B.D. 587).

Based upon the facts of this case, and the admission of Counsel for the Defendants on this issue, I accepted the submissions of Counsel for the Plaintiff on the issue of undue influence and I found that there was no undue influence in the making of these transfers as was alleged.

On the authority of Allcard v Skinner (1887) 36 Ch D 145 at page 187 and Ramsarran v Ramsarran H.C.A. 2374 of 1990 at page 31 and 32, Counsel for the Plaintiff submitted that the Defendants' Counterclaim should be dismissed since they did not sue in the capacity of the Legal Personal Representative(s) of Boysie. Counsel for the Defendants accepted the proposition but applied for an amendment to reflect the capacity of Dulsie as administrator of the Estate of Boysie which eventually, Counsel for the Plaintiff admitted could be done. The amendment was granted and the matter proceeded to decision.

Counsel for the Plaintiff also submitted that the Defendants' Counterclaim based on trespass to the goods of and harassment of the Defendants had been abandoned since no evidence was led on these issues which would have

implicated the Plaintiff in any wrongdoing, nor was she cross-examined on these matters. Counsel for the Defendants did not address the Court on these issues nor did he respond to the submissions of Counsel for the Plaintiff on them. Having regard to this and to the factual situation, these claims could not be supported and I dismissed them.

With respect to the relief sought in the Counterclaim for a Declaration that the transfers were at a gross undervalue, Counsel for the Plaintiff indicated that the only evidence of this was from a statement in the inventory of Boysie's estate dated 28<sup>th</sup> March, 1994 that the value of the lands was \$412,500.00, and the hearsay statement of one Mr. H. Ali-Kajim. Counsel stated that little weight ought to be attached to both statements since firstly, the statement on the inventory was not proof of the value of the estate and it was also self-serving since it was made by Dulsie. Secondly, Mr. H. Ali-Kajim was not cross-examined and his statement contained several flaws. Thirdly, Counsel urged the Court to accept the forthright and unshaken evidence of Mr. Rambachan on the issue which confirmed that \$20,000.00 was a fair price for the lands at the time of the transfers, especially as he stated his familiarity with the lands and his knowledge of the value of lands in that area. Counsel for the Plaintiff did not respond to this submission but in his address he had asked the Court to accept the accuracy of Mr. Ali-Kajim's hearsay statement and that of Dulsie on the inventory.

I accepted the submissions of Counsel for the Plaintiff on this issue. With respect to Mr. Ali-Kajim's report, I also noted that it was made after the Plaintiff had obtained planning permission to develop the lands and had done work to

improve the lands and his valuation may not have been indicative of the value of the land prior to the grant of planning permission and the work done. In the circumstances, I rejected the Counterclaim for a Declaration on this issue.

In all of the circumstances, I gave judgment for the Plaintiff in terms of paragraph A of the prayer for relief in the Statement of Claim (namely an order for possession as against the Defendants). The Defendants' Counterclaim was dismissed. The Defendants were ordered to pay the costs of the Claim and the Counterclaim.

Counsel for the Defendants asked for a stay of execution of my orders pending the hearing and determination of an appeal since if the order for possession were enforced, it may have harsh consequences for the Defendants, especially so for Peter, whose business may be ruined. Counsel for the Plaintiff contended that having regard to my findings of fact, there was no reason to deprive the Plaintiff of the fruits of her judgment, especially by granting a stay as asked for.

I considered both arguments and while I did not wish to render an appeal nugatory by making the order for possession immediately enforceable, I did not

want to prolong the matter by granting a stay pending the hearing and determination of an appeal (if any). In the circumstances, I granted a stay of execution of my orders for six weeks.

Dated this 2<sup>nd</sup> day of March, 2001

**Justice Gregory Smith**  
**JUDGE**